

Case No. 73837

In the Supreme Court of Nevada

IN THE MATTER OF THE W.N.
CONNELL AND MARJORIE T.
CONNELL LIVING TRUST, dated
May 18, 1972

Electronically Filed
Sep 05 2018 10:18 a.m.
Elizabeth A. Brown
Clerk of Supreme Court

APPEAL

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

RESPONDENT'S APPENDIX

VOLUME 1: RA0001-RA0059

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INDEX TO RESPONDENTS' APPENDIX
(Alphabetical Order)

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Notice of Entry of Order Granting Motion to Withdraw as Counsel	12/14/2016	1	RA0022- RA0025
Transcript from Audio of Oral Argument Before the En Banc Court April 3, 2018	n/a	1	RA0026- 0059



CLERK OF THE COURT

1 ACCT
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7 **DISTRICT COURT**

8 **CLARK COUNTY, NEVADA**

9
10 In the matter of

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

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

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

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

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

HUTCHISON & STEFFEN

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

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

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

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

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

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

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

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

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

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

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

HUTCHISON & STEFFEN



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Attorneys for Fredrick P. Waid
Court-appointed Trustee

CERTIFICATE OF SERVICE

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

- ☒ [X] by placing same to be deposited for mailing in the United States Mail, in a sealed envelope upon which first class postage was prepaid in Las Vegas, Nevada; and/or
- ☒ [X] pursuant to EDCR 8.05(a) and 8.05(f), to be electronically served through the Eighth Judicial District Court's electronic filing system, with the date and time of the electronic service substituted for the date and place of deposit in the mail; and/or
- ☐ [] Pursuant to EDCR 7.26, to be sent via facsimile; and/or
- ☐ [] to be hand-delivered;

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

Via U.S. Mail Only:

Eleanor Ahern
111 Paradise Pkwy.
Mesquite, NV 89027

Via Wiznet Only:

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

Via Wiznet Only:

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

Via U.S. Mail Only:

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

Via Wiznet Only:

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


An Employee of Hutchison & Steffen, LLC

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EXHIBIT A

HUTCHISON & STEFFEN
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02/01/17

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

Type	Date	Memo	Account	Split	Amount
AMERICAN EXPRESS					
Check	04/07/2014	CSH CK #291...	CONNELL TRUST #8737649197	Unknown Expe...	-5,000.00
Check	07/03/2014	CSH CK #674...	CONNELL TRUST #8737649197	Unknown Expe...	-10,000.00
Check	12/26/2014	CSH CK #241...	CONNELL TRUST #1985753274	Unknown Expe...	-10,000.00
AMERICAN PATROLS					
Check	03/05/2014	RE: AIRAERI...	CONNELL TRUST #1985753274	Unknown Expe...	-1,000.00
BANK OF AMERICA					
Check	03/05/2014	CSH CK #241...	CONNELL TRUST #1985753274	Unknown Expe...	-2,000.00
BARBARA SHORTZ					
Check	04/07/2014	CSH CK #291...	CONNELL TRUST #8737649197	Counseling Ex...	-2,301.40
Check	10/17/2014	CSH CK #241...	CONNELL TRUST #1985753274	Counseling Ex...	-3,000.00
Check	10/17/2014	CASH / CSH ...	CONNELL TRUST #1985753274	Counseling Ex...	-3,000.00
Check	12/19/2014	REF #9166	CONNELL TRUST #1254900135	Counseling Ex...	-8,600.00
BREATH OF LIFE SYSTEMS					
Check	12/19/2014	REF #9167	CONNELL TRUST #1254900135	Unknown Expe...	-5,198.46
BRENNAN LEGAL COUNSEL					
Check	05/13/2013	CSH CK #745...	CONNELL TRUST #8737649197	Legal Expense	-2,000.00
BURKS SECURITY					
Check	12/26/2014	CSH CK #241...	CONNELL TRUST #1985753274	Security Expen...	-30,400.00
CENTURY LINK					
Check	12/31/2014	CSH CK #241...	CONNELL TRUST #1985753274	Telephone Exp...	-1,000.00
CIRRUS AVIATION SERVICES					
Check	03/17/2014		CONNELL TRUST #1985753274	Airline Expense	-23,160.60
Check	07/21/2014	CSH CK #674...	CONNELL TRUST #8737649197	Airline Expense	-7,709.91
CITY OF LAS VEGAS SEWER SERVICES					
Check	12/31/2014	CSH CK #241...	CONNELL TRUST #1985753274	Utilities Expense	-612.00
CLARK COUNTY ASSESSOR					
Check	12/31/2014	CSH CK #241...	CONNELL TRUST #1985753274	Taxes - Property	-7,000.00
CONNELL FAMILY FOUNDATION					
Check	05/08/2013	(NOT USED ...	CONNELL TRUST #8737649197	Unknown Expe...	-27,449.54
COX COMMUNICATIONS					
Check	12/31/2014	CSH CK #241...	CONNELL TRUST #1985753274	Cable Expense	-800.00
CURT BAGGETT					
Check	08/20/2013	CSH CK #745...	CONNELL TRUST #1985753274	Unknown Expe...	-1,000.00
Check	02/14/2014	RE: W/M CO...	CONNELL TRUST #8737649197	Unknown Expe...	-7,000.00
DAREL BURKS					
Check	10/17/2014	CSH CK #241...	CONNELL TRUST #1985753274	Security Expen...	-3,000.00
Check	12/19/2014	REF #9164	CONNELL TRUST #1254900135	Security Expen...	-2,000.00
DAVID MANN					
Check	11/14/2014	RE: REIMBU...	CONNELL TRUST #1985753274	Unknown Expe...	-10,000.00
DCP MIDSTREAM					
Deposit	08/07/2013	CK #818622	CONNELL TRUST #8737649197	Gas/Oil Leases	62.54
DEE DETAILING CLEANING					
Check	12/31/2014	CSH CK #24...	CONNELL TRUST #1985753274	Janitorial Expe...	-550.00
DOUG EDWARDS					
Check	01/26/2015	CSH CK #241...	CONNELL TRUST #1985753274	Legal Expense	-10,000.00
ELEANOR M AHERN					
Check	03/06/2013	CSH CK #745...	CONNELL TRUST #8737649197	ELEANOR M A...	-17,548.22
Check	03/06/2013	LESS 3899.5...	CONNELL TRUST #8737649197	(UNKNOWN) ...	-17,548.22
Check	09/11/2013	CSH CK #241...	CONNELL TRUST #1985753274	AHERN/POD ...	-2,000.00
Check	09/11/2013	CSH CK #241...	CONNELL TRUST #1985753274	(UNKNOWN) #...	-5,000.00
Check	09/11/2013	CSH CK #241...	CONNELL TRUST #1985753274	ELEANOR M A...	-5,000.00
Check	09/11/2013	CSH CK #241...	CONNELL TRUST #1985753274	AHERN/POD J...	-5,000.00
Check	09/11/2013	CSH CK #241...	CONNELL TRUST #1985753274	(UNKNOWN) ...	-5,000.00
Check	09/11/2013	CSH CK #241...	CONNELL TRUST #1985753274	AHERN/POD ...	-5,073.80
Check	09/11/2013	CSH CK #241...	CONNELL TRUST #1985753274	AHERN/POD ...	-7,000.00
Check	09/11/2013	CSH CK #241...	CONNELL TRUST #1985753274	AHERN/POD ...	-11,000.00
Check	03/23/2015	CSH CK #084...	CONNELL TRUST #1254900135	Unknown Expe...	-100,000.00
EXPERT JET CHARTER					
Check	09/06/2014	CSH CK #678...	CONNELL TRUST #8737649197	Airline Expense	-53,003.90
FORENSIC SPECIALIST LIMITED					
Check	10/27/2014	REF #8699	CONNELL TRUST #1254900135	Unknown Expe...	-9,613.94
GAMMETT AND KING CPA'S					
Check	02/24/2014	RE: W/M CO...	CONNELL TRUST #1985753274	Accounting Ex...	-5,000.00
HANDWRITING LLC					
Check	12/31/2014	RE: CURT BA...	CONNELL TRUST #1985753274	Unknown Expe...	-5,477.00
INTERNAL REVENUE SERVICE					

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02/01/17

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

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

11:57 AM

02/01/17

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

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

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EXHIBIT PAGE ONLY

EXHIBIT B

HUTCHISON & STEFFEN

A PROFESSIONAL LLC

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

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

CASE No. P-09-066425-T

~~~~~

Cross-Reference Case Number: **P066425**  
Supreme Court No.: **66231**

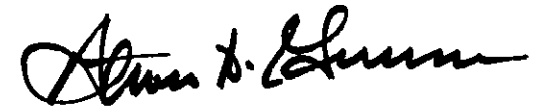
P-14-080595-E (Companion Case)

RA0012

wherein his clients deposition had to be taken and there was a meeting arranged to discuss concerns; however he received an e-mail yesterday from Ms. Ahern that she would not accept the settlement. Mr. Lenhard noted he advised his client he was going to move to withdraw immediately and did not want to be responsible for the deposition scheduled on November 29th. Additionally noted there was a meeting scheduled today; however there was another doctor's appointment which interfered with the meeting. Mr. Moody requested an order establishing Ms. Ahern must appear for the deposition in light of the events today. Mr. Moody further noted in the event the deposition does not occur, Mr. Waid plans to file his report and accounting without Ms. Ahern's cooperation. Mr. Lenhard noted he has not signed off on the order and requested not to. Mr. Coffing requested to set his motion to adjudicate lien at the same time as the motion to withdraw. COURT ORDERED, Motion to Adjudicate Attorney's Lien RESET. Court suggested counsel send the motion to withdraw on order shortening time to have the matter heard by November 23, 2016. At the request by Mr. Powell, COURT FURTHER ORDERED, Evidentiary Hearing SET. 11/23/16 9:30 AM - MARQUIS AURBACH COFFING'S MOTION TO ADJUDICATE ATTORNEY'S LIEN 02/09/17-02/10/17 - EVIDENTIARY HEARING

[Parties Present](#)

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CLERK OF THE COURT

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Telephone: 702.382.2101  
Facsimile: 702.382.8135

*Attorneys for Eleanor Connell Hartman Ahern*

**DISTRICT COURT**

**CLARK COUNTY, NEVADA**

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

CASE NO.: P-09-066425-T

DEPT. NO.: XXVI

**MOTION TO WITHDRAW AS COUNSEL ON  
ORDER SHORTENING TIME**

Date of Hearing: November 23, 2016

Time of Hearing: 9:30 a.m.

KIRK B. LENHARD, ESQ., of BROWNSTEIN HYATT FARBER SCHRECK, LLP  
("Counsel"), hereby moves on an order shortening time ("Motion") for leave to withdraw as  
counsel for Eleanor Connell Hartman Ahern ("Ms. Ahern"). This Motion is based on the  
Affidavit of Kirk B. Lenhard, Esq., and the Points and Authorities attached hereto, together with  
all pleadings and papers on file herein.

DATED this 14th day of November, 2016.

**BROWNSTEIN HYATT FARBER SCHRECK, LLP**

By: 

KIRK B. LENHARD, ESQ., Bar No. 1437  
[klenhard@bhfs.com](mailto:klenhard@bhfs.com)  
100 North City Parkway, Suite 1600  
Las Vegas, NV 89106-4614

*Attorneys for Eleanor Connell Hartman Ahern*

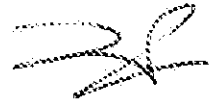


**ORDER SHORTENING TIME**

Good cause appearing, it is hereby ordered that the **MOTION TO WITHDRAW AS COUNSEL ON ORDER SHORTENING TIME** shall be heard on shortened time on the - 23rd day of November, 2016 at the hour of 9:30 o'clock a.m. in Department XXVI.


DATED this 18th day of Nov., 2016.

  
\_\_\_\_\_  
GLORIA STURMAN, DISTRICT COURT JUDGE



DATED this 14th day of November, 2016.

**BROWNSTEIN HYATT FARBER SCHRECK, LLP**

By:   
\_\_\_\_\_  
KIRK B. LENHARD, ESQ., Bar No. 1437  
[klenhard@bhfs.com](mailto:klenhard@bhfs.com)  
100 North City Parkway, Suite 1600  
Las Vegas, NV 89106-4614

*Attorneys for Eleanor Connell Hartman Ahern*

**AFFIDAVIT OF KIRK B. LENHARD, ESQ. IN SUPPORT OF**  
**MOTION TO WITHDRAW AS COUNSEL OF**  
**RECORD ON ORDER SHORTENING TIME**

STATE OF NEVADA           )  
                                          ) ss.  
COUNTY OF CLARK        )

Kirk B. Lenhard, Esq., being duly sworn, states as follows:

1. I am a Shareholder with the law firm of Brownstein Hyatt Farber Schreck, LLP ("BHFS"), and counsel of record for Eleanor Connell Hartman Ahern ("Ms. Ahern") in this action. I make this Affidavit in support of BHFS' Motion to Withdraw as Counsel of Record on Order Shortening Time ("Motion"). I have personal knowledge of the matters set forth in this Affidavit and, if called as a witness, could and would competently testify thereto.

2. This request is made in good faith and without dilatory motive

3. BHFS' representation of Ms. Ahern in the above-titled matter has been ongoing since on or about April 20, 2016.

4. After Ms. Ahern retained BHFS to represent her in this matter, BHFS attorneys, including myself, zealously advocated on Ms. Ahern's behalf, including, but not limited to, defeating a motion to hold her in contempt, a motion to forfeit her interest in the trust and a motion to impose punitive damages, and appearing in Court on numerous occasions concerning discovery related issues and issues regarding the protection of her attorney client privilege. However, as of late, Ms. Ahern has refused to follow the advice of the undersigned and the undersigned and Ms. Ahern are in a fundamental disagreement as to the best course of action in this matter. In sum, there has been a break-down in the attorney client relationship which prevents further representation by BHFS.

5. Since at least November 7, 2016, Ms. Ahern has been aware that BHFS would be filing the Motion and has been put on notice that she must retain new counsel.

6. In this matter, Ms. Ahern's deposition is scheduled for November 29, 2016, and there is an evidentiary hearing scheduled for February 9, 2017, at 10:00 a.m.

RA0017

## MEMORANDUM OF POINTS AND AUTHORITIES

### I. INTRODUCTION

BHFS' representation of Ms. Ahern began on or around April 20, 2016. BHFS quickly and thoroughly reviewed the facts and law of this case in order to represent Ms. Ahern, and diligently worked on her behalf to facilitate a resolution of this matter. Nonetheless, Ms. Ahern and undersigned counsel have a fundamental disagreement regarding the course of action to take in this matter and there has been a break-down in the attorney client relationship which prevents further representation by BHFS. Thus, in accordance with NRPC 1.16(b) and EDCR 7.40, BHFS respectfully requests that this Court permit it to withdraw as counsel of record for Ms. Ahern.

### II. DISCUSSION

#### A. Relevant Law.

Nevada Rule of Professional Conduct 1.16(b), governing the withdrawal of counsel, provides, in relevant part, as follows:

Except as stated in paragraph (c), a lawyer may withdraw from representing a client if withdrawal can be accomplished without material adverse effect on the interests of the client, or if

...

(4) A client insists upon taking a ction that the lawyer considers repugnant or with which the lawyer has fundamental disagreement;

...

(7) other good cause for withdrawal exists.

NRPC 1.16(b)(4) & (7).

EDCR7.40 permits counsel for a party to move to withdraw, provided the motion includes an affidavit with "the address, or last known address, at which the client may be served with notice of further proceedings taken in the case in the event the application for withdrawal is granted, and the telephone number, or last known telephone number, at which the client may be reached..." EDCR 7.40 (b)(2)(ii). Further, "the attorney must serve a copy of the application upon the client and all other parties to the action or their attorneys..." *Id.* Finally, EDCR 7.40(c)

1 provides that "[n]o application for withdrawal or substitution may be granted if a delay of the trial  
2 or of the hearing of any other matter in the case would result."

3 **B. Good Cause Exists To Permit BHFS To Withdraw As Counsel And BHFS**  
4 **Has Complied With All Rules Relating Thereto.**

5 Here, BHFS' further representation of Ms. Ahern has been made untenable by her refusal  
6 to take the advice of counsel and insistence on taking action with which the undersigned has a  
7 fundamental disagreement. (*See* Affidavit of Kirk B. Lenhard, Esq., ("Lenhard Aff'd.") at ¶ 4.)  
8 In sum, there has been a break-down in the attorney client relationship that prevents BHFS to  
9 continue its representation of Ms. Ahern. (*See id.*) Additionally, withdrawal of undersigned  
10 counsel can be accomplished without material adverse effect on the interests of Ms. Ahern,  
11 because she is aware of this Motion, has been given ample time to retain replacement counsel prior  
12 to her deposition, and the evidentiary hearing is scheduled to take place in February, 2017, and  
13 will not be delayed by the withdrawal. (*See id.* at ¶¶ 5 & 6; *see also* EDCR 7.40(c); NRPC  
14 1.16(b).) Therefore, good cause exists and BHFS' withdrawal should be granted.

15 In accordance with the requirements of EDCR 7.40, the Lenhard Affidavit, *supra*,  
16 includes Ms. Ahern's last known address where she "may be served with notice of further  
17 proceedings taken in the case in the event the application for withdrawal is granted, and the  
18 telephone number, or last known telephone number," at which she may be reached. (*See* Lenhard  
19 Aff'd. at ¶ 7.) Further, this Motion is being electronically served on all parties in this matter and  
20 served on Ms. Ahern via U.S. Mail and email. (*See id.* at ¶ 8.) Thus, as BHFS has demonstrated  
21 that good cause exists and has satisfied all requirements to be permitted to withdraw as counsel of  
22 record for Ms. Ahern, the Motion should be granted.

23 ///

24 ///

25 ///

26 ///

27 ///

28 ///

1 **III. CONCLUSION**

2 Due to the fact that Ms. Ahern is insistent upon taking action with which the undersigned  
3 has a fundamental disagreement, Kirk B. Lenhard, Esq., of BHFS, respectfully requests that this  
4 Honorable Court issue an Order permitting him to withdraw as attorney of record for Ms. Ahern,  
5 and good cause exists for the same.

6 DATED this 14<sup>th</sup> day of November, 2016.

7 **BROWNSTEIN HYATT FARBER SCHRECK, LLP**

8  
9 By: 

KIRK B. LENHARD, ESQ., Bar No. 1437  
[klenhard@bhfs.com](mailto:klenhard@bhfs.com)  
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Las Vegas, NV 89106-4614

*Attorneys for Eleanor Connell Hartman Ahern*

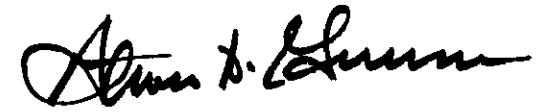
**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that I am an employee of Brownstein Hyatt Farber Schreck, LLP, and pursuant to NRCP 5(b), EDCR 8.05, Administrative Order 14-2, and NEFCR 9, I caused a true and correct copy of the foregoing **MOTION TO WITHDRAW AS COUNSEL ON ORDER SHORTENING TIME** to be submitted electronically for filing and service with the Eighth Judicial District Court via the Court's Electronic Filing System on the 21<sup>st</sup> day of November, 2016, to the following:

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

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

/s/ Paula Kay  
an employee of Brownstein Hyatt Farber Schreck,  
LLP



CLERK OF THE COURT

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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

**NOTICE OF ENTRY OF ORDER  
GRANTING MOTION TO  
WITHDRAW AS COUNSEL**

**Date of Hearing: November 23, 2016**

**Time of Hearing: 9:30 a.m.**

PLEASE TAKE NOTICE that an Order Granting Motion to Withdraw as  
Counsel was entered on December 13, 2016. A copy of said Order is attached  
hereto.

DATED this 14<sup>th</sup> day of December, 2016.

**BROWNSTEIN HYATT FARBER SCHRECK, LLP**

By: /s/ Kirk B. Lenhard  
KIRK B. LENHARD, ESQ., Bar No. 1437  
klenhard@bhfs.com  
Las Vegas, NV 89106-4614  
Telephone: 702.382.2101  
Facsimile: 702.382.8135

*Attorneys for Eleanor Connell Hartman Ahern*



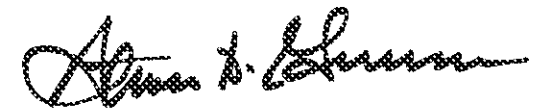
**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that I am an employee of Brownstein Hyatt Farber Schreck, LLP, and pursuant to NRCP 5(b), EDCR 8.05, Administrative Order 14-2, and NEFCR 9, I caused a true and correct copy of the foregoing **NOTICE OF ENTRY OF ORDER GRANTING MOTION TO WITHDRAW AS COUNSEL** to be submitted electronically for filing and service with the Eighth Judicial District Court via the Court's Electronic Filing System on the 14<sup>th</sup> day of December, 2016, to the following:

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

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

/s/ Paula Kay  
an employee of Brownstein Hyatt Farber  
Schreck, LLP



CLERK OF THE COURT

1 **ORDG**  
2 KIRK B. LENHARD, ESQ., Bar No. 1437  
3 klenhard@bhfs.com  
4 BROWNSTEIN HYATT FARBER SCHRECK, LLP  
5 100 North City Parkway, Suite 1600  
6 Las Vegas, NV 89106-4614  
7 Telephone: 702.382.2101  
8 Facsimile: 702.382.8135

9 *Attorneys for Eleanor Connell Hartman Ahern*

10 **DISTRICT COURT**

11 **CLARK COUNTY, NEVADA**

12 In the Matter of

CASE NO.: P-09-066425-T

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

DEPT. NO.: XXVI

**ORDER GRANTING MOTION TO  
WITHDRAW AS COUNSEL**

Date of Hearing: November 23, 2016  
Time of Hearing: 9:30 a.m.

17 Brownstein Hyatt Farber Schreck, LLP's Motion to Withdraw as Counsel for  
18 Eleanor Connell Hartman Ahern ("Motion to Withdraw") came on for hearing  
19 November 23, 2016. Emily A. Ellis, Esq., appearing on behalf of Eleanor Connell  
20 Hartman Ahern; Joseph J. Powell, Esq., appearing on behalf of Ms. Montoya and  
21 Ms. Bouvier; Russel J. Geist, Esq., appearing on behalf of Fredrick P. Waid, in his  
22 capacity as the acting trustee of The W.N. Connell and Marjorie T. Connell Living  
23 Trust, dated May 18, 1972 (the "Trust"); and upon the Court's consideration of the  
24 pleadings and papers on file herein, noting no opposition was filed, and good cause  
25 appearing therefore,

26 ...

27 ...

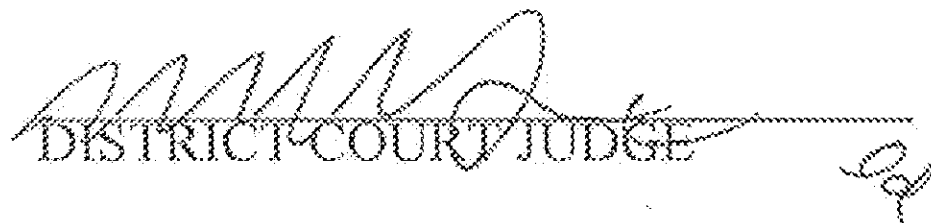
28 ...

018177\0001\15274010.2

BROWNSTEIN HYATT FARBER SCHRECK, LLP  
100 North City Parkway, Suite 1600  
Las Vegas, NV 89106-4614  
702.382.2101


1 IT IS HEREBY ORDERED that Brownstein Hyatt Farber Schreck, LLP's  
2 Motion to Withdraw as counsel for Eleanor Ahern is GRANTED.

3  
4 DATED: December 9, 2016.

5  
6   
DISTRICT COURT JUDGE

7 Respectfully Submitted By:

8  
9 BROWNSTEIN HYATT FARBER SCHRECK, LLP

10  
11 By:   
12 KIRK B. LENHARD, ESQ., Bar No. 1437  
13 klenhard@bhfs.com  
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15 Las Vegas, NV 89106-4614  
16 Telephone: 702.382.2101  
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18  
19 *Attorneys for Eleanor Connell Hartman Ahern*  
20  
21  
22  
23  
24  
25  
26  
27  
28

**In the Matter of: The W.N. Connell and  
Marjorie T. Connell Living Trust, Dated  
May 18, 1972, an Inter Vivos Irrevocable  
Trust**

**Transcription from Audio of Oral Argument Before the En  
Banc Court**

**April 3, 2018**



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1

BEFORE THE EN BANC COURT

2

CHIEF JUSTICE DOUGLAS PRESIDING

3

4

5 IN THE MATTER OF: THE W.N. CONNELL ) SUPREME COURT  
6 AND MARJORIE T. CONNELL LIVING ) NO.: 71577  
7 TRUST, DATED MAY 18, 1972, )  
AN INTER VIVOS IRREVOCABLE TRUST. )

7

8 JACQUELINE M. MONTOYA and )  
9 KATHRYN A. BOUVIER, )

9

Appellants,

10

vs.

11

ELEANOR CONNELL HARTMAN AHERN,

12

Respondent.

13

14

15

16

17

TRANSCRIPTION FROM AUDIO OF ORAL ARGUMENT

18

BEFORE THE EN BANC COURT

19

20

Oral Argument heard on April 3, 2018

21

10:30 a.m.

22

Las Vegas, Nevada

23

24

25

Transcribed by Melinda J. Songstad, RPR, CCR 919

1 A P P E A R A N C E S

2

3 COUNSEL FOR APPELLANTS:

4 DANIEL P. KIEFER, ESQ.  
Rushforth Lee & Kiefer, LLP  
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7

8 COUNSEL FOR RESPONDENT:

9 KIRK B. LENHARD, ESQ.  
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klenhard@bhfs.com

12

13

14 EN BANC JUSTICES:

15

16 CHIEF JUSTICE MICHAEL L. DOUGLAS PRESIDING

17 JUSTICE MICHAEL P. GIBBONS

18 JUSTICE KRISTINA PICKERING

19 JUSTICE JAMES W. HARDESTY

20 JUSTICE MICHAEL A. CHERRY

21 JUSTICE RON D. PARRAGUIRRE

22 JUSTICE LIDIA S. STIGLICH

23

24

25

1 TRANSCRIPTION OF ORAL ARGUMENT FROM AUDIO

2 Heard on April 3, 2018 - 10:30 a.m.

3 \* \* \* \* \*

4 CHIEF JUSTICE DOUGLAS: And that is

5 In Re: Connell Living Trust, 71577.

6 Mr. Kiefer, if you're ready. And if you  
7 wish to reserve any time, please so state.

8 MR. KIEFER: Good morning, Chief Justice.  
9 If it please the Court, Daniel Kiefer on behalf of  
10 the appellants. I'd like to reserve three minutes  
11 for rebuttal.

12 CHIEF JUSTICE DOUGLAS: Thank you.

13 MR. KIEFER: It's important to note, I  
14 think at the outset, that some of the issues in the  
15 case have been narrowed by the briefing. And what  
16 I mean by that is currently, based on the briefs that  
17 have been submitted, there's no dispute regarding  
18 Ms. Ahern's conduct. Whether or not she did these  
19 things is not in question.

20 Furthermore, there's no dispute regarding  
21 the application of NRS 163.00195. And what I mean by  
22 that is Ms. Ahern selected not even to address the  
23 statute, and yet this Court has said that that statute  
24 is mandatory. So what we're left with is we're left  
25 with a pure legal question of whether or not

1 Ms. Ahern's undisputed conduct rises to the level to  
2 breach or violate the no-contest clause.

3 JUSTICE: How old is she?

4 MR. KIEFER: I'm sorry, Your Honor?

5 JUSTICE: How old is she?

6 MR. KIEFER: I believe she's in her  
7 eighties.

8 JUSTICE: Well, eighties. Is she 81?  
9 Is she 89?

10 MR. KIEFER: I apologize, Your Honor. I  
11 don't know the exact date.

12 JUSTICE: Okay. Before you go there, can  
13 you address something for me, just so we have it laid  
14 out? Violation and no-contest clauses of beneficiary,  
15 or is it trustee? Would you address that first?

16 MR. KIEFER: Certainly. The no-contest  
17 clause does not specify who the actor is. It says  
18 a person. Whether you take an act -- whether you  
19 have a dual role as trustee or beneficiary, it's  
20 irrelevant, Your Honor, because the issue is the  
21 settlor's intent. The settlor intended that anyone  
22 related to this trust who has a beneficial interest  
23 cannot take the acts specified in the no-contest  
24 clause.

25 JUSTICE: I guess what concerned me



1 initially, and I went back through and I went  
2 through the trust documents, ordinarily you have  
3 a hold harmless clause for the trustee, for very  
4 specific reasons, who is going to act as a trustee  
5 without a hold harmless. And I went through the  
6 trust, and I didn't see it, which surprised me. And  
7 was there one? Did I miss something?

8 MR. KIEFER: I apologize, Your Honor. I  
9 don't know exactly, but I do not believe there was  
10 a hold-harmless clause. But to more directly address  
11 your question, the issue of trustee versus beneficiary  
12 is it's really a red herring. That was a defense that  
13 was kind of created out of --

14 JUSTICE: Well, not if there was a hold  
15 harmless. I don't -- I don't get that impression.  
16 And, again, maybe we can get some light on it on the  
17 other side.

18 MR. KIEFER: Sure.

19 JUSTICE: And would it -- what effect would  
20 it have if there was a hold-harmless clause for the  
21 trustee, in your opinion?

22 MR. KIEFER: Certainly. It would protect  
23 the trustee in her capacity as trustee. But as this  
24 Court noted in its last opinion in this very case,  
25 Ms. Ahern took action as trustee for her own benefit

1 as beneficiary. In fact, one of the reasons this  
2 Court was so upset with her the last time is because  
3 she was taking inappropriate actions as trustee to  
4 benefit herself as beneficiary.

5 JUSTICE: Yes. But doesn't that undermine  
6 your argument if she was acting as a beneficiary? And  
7 you can make that distinction. A beneficiary can't  
8 make distributions; only the trustees. Wouldn't she  
9 have to, by necessity, be acting as her role as  
10 trustee?

11 MR. KIEFER: Well, let me put it this way,  
12 Your Honor. If Ms. Ahern was only a beneficiary and  
13 she wanted to steal \$2 million and she filed something  
14 with the Court saying give me \$2 million, it would be  
15 immediately rejected and she would have invoked the  
16 no-contest clause. The fact that she had easier  
17 access to the money due to her role as trustee should  
18 not excuse the same act.

19 FEMALE JUSTICE: You know, I struggle,  
20 though, to have the language of the no-contest clause  
21 read as a hold, applied to her breaches of fiduciary  
22 duty as the trustee. I understand that you think  
23 you've hopped over that fence, but I have some real  
24 difficulty with reading that clause as a hold. The  
25 first sentence says, "We want these to be administered

1 and distributed without litigation or dispute of any  
2 kind." I know you weight the word "or" pretty  
3 heavily, but litigation or dispute in the context of  
4 a no-contest clause usually means the initiation of  
5 litigation over a trust or a distributive scheme. So  
6 that's where my head goes with that first sentence.

7 And then you have the second sentence, which  
8 is cluttered with a lot of appositives, but it talks  
9 about seeking or "establish to assert." I don't know  
10 what that means. But any claim to the assets of  
11 these, and then you quote Webster's for what "attack"  
12 means and that her contact as trustee was somehow  
13 an attack on the Court. But I see this as more  
14 litigation related. And these are forfeiture clauses.  
15 We're to instruct -- to construe them very literally  
16 and very closely. So I need you to persuade me why  
17 her misconduct as trustee violated the no action --  
18 or the no-contest clause.

19 MR. KIEFER: Certainly. First, I think we  
20 need to address the issue of the no-contest clause.  
21 It's a bit of a misnomer, and here's why. In the  
22 statute, NRS 163.00195 at Sub 2 makes very clear that  
23 the beneficiary's interests can be reduced or removed  
24 based on conduct other than formal court action, but  
25 for years --

1 FEMALE JUSTICE: But you're of the mind  
2 on the tenth provision it's called no contest?

3 MR. KIEFER: Correct. But then it defines  
4 no-contest clause at Section 6A as one or more  
5 provisions in the trust that express a directive  
6 to reduce or eliminate the share allocated to  
7 a beneficiary or to reduce or eliminate the  
8 distributions to be made to a beneficiary if the  
9 beneficiary takes actions to frustrate or defeat  
10 the settlor's intent as expressed in the trust.

11 FEMALE JUSTICE: You're reading the statute,  
12 not the clause in the trust document.

13 MR. KIEFER: Correct.

14 FEMALE JUSTICE: I want you to walk me  
15 through the clause in the trust document and tell me  
16 how the clause -- through this woman's conduct.

17 MR. KIEFER: Certainly. So what you have to  
18 remember is that the District Court took jurisdiction  
19 of the trust, took jurisdiction and provided  
20 instructions to Ms. Ahern, specific instructions:  
21 Segregate the money, don't touch it, and provide me  
22 an accounting. Ms. Ahern -- that would have been part  
23 of the administration of the trust. When the Court  
24 takes jurisdiction of a trust, it can then dictate the  
25 administration of the trust. She then looked at those

1 orders, took the money, failed to segregate it, and  
2 then submitted a false accounting where the District  
3 Court, quote, said she intentionally misled the Court.  
4 That was to seek, that was to oppose, set aside, or  
5 attack the administration or distribution of the  
6 trust. If the Court gives you an order regarding  
7 administration of the trust and you disregard it,  
8 you are certainly attacking or setting aside the  
9 administration of the trust. And that would be how  
10 I'd respond to that, Your Honor. And --

11 FEMALE JUSTICE: So you'd think any  
12 violation of fiduciary duty by the trustee that has  
13 a trust being administered by the Court, if the  
14 trustee is also a beneficiary, will automatically  
15 denote the no-contest provision?

16 MR. KIEFER: I do not, Your Honor. There  
17 are --

18 FEMALE JUSTICE: Then tell me what  
19 distinction in this clause you've drawn.

20 MR. KIEFER: Certainly. For example, I  
21 can bring -- as beneficiary, I can bring a petition  
22 compelling accounting from a trustee. I can bring  
23 a petition asking for damages against a trustee for  
24 failing to properly invest trust assets. I can bring  
25 a petition against a trustee for failing to make

1 trust assets lucrative, i.e., renting out a house.

2 FEMALE JUSTICE: No. But my question was  
3 the averse of that. What conduct by a trustee that  
4 is in violation ostensibly of a court order would not  
5 cause the triggering of a clause like this in your  
6 reading?

7 MR. KIEFER: For example, if she failed to  
8 account, certainly failed to account and therefore was  
9 asked again to account.

10 JUSTICE: So, Counsel, under your position  
11 and the examples you've cited, in every instance in  
12 which the trustee is hauled into court under each  
13 of the requests that you have made on behalf of  
14 beneficiaries, the response the trustee makes to  
15 those, even a meritless -- even a merit response,  
16 a merit, one that has merit, would constitute a  
17 violation of the no-contest -- the clause, Clause 10.

18 MR. KIEFER: Well, I would respectfully  
19 disagree with that.

20 JUSTICE: Well, what would be the  
21 distinction?

22 MR. KIEFER: The distinction would be what  
23 the clause says. The controlling factor here is what  
24 the settlors intended as directed by the primary --

25 JUSTICE: But you rely on the words

1 "attack," "oppose," and so forth. So when the  
2 trustee walks into court and opposes the petition for  
3 an accounting or a petition directing the trustee to  
4 invest funds, and they oppose it, they've just  
5 violated the no-contest clause in your view.

6 MR. KIEFER: Well, and I think it's  
7 actually -- let me restate that, Your Honor.

8 JUSTICE: Have they?

9 MR. KIEFER: Based on what we've said, I  
10 think yes, and I think that this Court's ruling in  
11 ATS 1998 Trust would say the same thing, because this  
12 Court examined, in July of last year, the exact same  
13 provisions of the no-contest clause and found them to  
14 be extremely broad. And in that case, a beneficiary  
15 who merely alleged that the administration of the  
16 trust had been improper, this Court said was a prima  
17 facie violation of the no-contest clause. Now, that  
18 beneficiary was saved by the safe harbor provisions.  
19 And, in fact, in this case, there's never been any  
20 allegation that any of the safe harbor provisions  
21 apply.

22 JUSTICE: But isn't the point, from what  
23 you've just made -- we're dealing with the trustee  
24 here, not the beneficiary. I mean, yes, they have  
25 dual capacities, but the role in which the trustee

1 is responding, both in the innocent response of saying  
2 I oppose the petition directing me to invest funds in  
3 a particular way because I've got investment managers  
4 that tell me to do it this way and I'm going to follow  
5 their advice or the facts in this case, where the  
6 Court undertakes administration, tells the trustee to  
7 do something, and the trustee wrongfully ignores the  
8 Court's direction. In any event, the trustee is  
9 acting in this capacity, not the beneficiary.

10 MR. KIEFER: Well, even if that's the case,  
11 Your Honor, I'm not sure why we'd want to protect the  
12 trustee who's also a beneficiary who is so willing  
13 to violate court orders regarding administration --

14 JUSTICE: Well, there's lots of remedies  
15 available, many remedies available to the Court, lots  
16 of law enforcement remedies available.

17 MR. KIEFER: Certainly.

18 JUSTICE: But the no-contest clause is quite  
19 a different matter, and so is the statute that governs  
20 no-contest clauses.

21 MR. KIEFER: And I agree. And the key  
22 there, Your Honor, is that the remedy of choice here  
23 was designated by the settlors, and their intent  
24 dominates. That's the key. The settlors were the  
25 ones who put in this incredibly broad provision,



1     because they wanted to dictate how this trust was  
2     run. And, in fact, it does not seem that there were  
3     problems with the way that the trust was run for  
4     many years. But now that she's run afoul, now that  
5     Ms. Ahern elected to run afoul of the settlor's  
6     intent, she can no longer reap the benefits from the  
7     trust.

8             Essentially what we're asking, Your Honor,  
9     is that the tap be shut off and it be shut off not  
10    according to what we wanted but according to what the  
11    settlers wanted. The settlers could have elected  
12    any language they wanted in their no-contest clause.  
13    They elected what this Court deemed extremely broad  
14    language.

15            FEMALE JUSTICE: But how factually -- I'm  
16    sorry -- factually is this applied to this -- the  
17    non-contest provision? If this be that, kind of what  
18    my colleagues are saying, she is not saying that she  
19    was right to have that money. She agrees she owes  
20    the trust money. She's not attacking the validity of  
21    the trust. She's not making a claim contrary to the  
22    trust. How factually are you fitting into this  
23    clause?

24            MR. KIEFER: I'll give you the quickest  
25    response to that, Your Honor. After she was removed

1 as trustee, she went to the bank and withdrew  
2 \$500,000. I don't know how someone could make that  
3 claim and go get that money and put it her own pocket  
4 and not be making a claim to trust assets.

5 JUSTICE: With regard to that, would you  
6 address something simply for me?

7 MR. KIEFER: Certainly.

8 JUSTICE: In your opinion, was she subject  
9 to any undue influence of the others? And if she  
10 wasn't, tell me why not.

11 MR. KIEFER: She was absolutely not subject  
12 to undue influence, and this is why. The entering  
13 brief has done a good job of trying to muddle this  
14 situation regarding undue influence. Ms. Ahern  
15 attended the trial both days. She could have got  
16 on the stand and testified regarding her -- the  
17 alleged influence. She elected not to. She didn't  
18 call any witnesses regarding that, except for her  
19 daughter. And here's the problem that belies the  
20 whole argument. She -- prior to that, she had  
21 submitted an affidavit to the Court saying Ms. Noona  
22 has never influenced me; she has never had any effect  
23 on my decisions regarding the trust. That means that  
24 her own testimony stands unrefuted on the record.

25 CHIEF JUSTICE DOUGLAS: Two minutes.

1 JUSTICE: So how do you explain --

2 CHIEF JUSTICE DOUGLAS: He's at two minutes.

3 JUSTICE: I'm not going to use up your time.

4 MR. KIEFER: I'll reserve the rest for  
5 rebuttal.

6 JUSTICE: Thank you.

7 MR. KIEFER: If you don't mind, Your Honor.

8 CHIEF JUSTICE DOUGLAS: Thank you.

9 Mr. Lenhard.

10 MR. LENHARD: May it please the Court,  
11 Counsel. I appear today on behalf of Eleanor Connell  
12 Ahern, the former trustee of the Connell Trust.

13 I'm in a somewhat unusual position with the  
14 Court as far as today, because I'm asking you to  
15 affirm an order. To say it was harsh on my client  
16 would be a mild understatement. I'm asking you to  
17 affirm or -- explaining her conduct as trustee, affirm  
18 an order where it was determined that she had  
19 improperly administered the trust. She had violated  
20 her duties as trustee. She had failed to segregate  
21 65 percent of the trust per a court order. She had  
22 misapplied trust income. I'm asking that order be  
23 affirmed because we did not realistically challenge  
24 those findings at the trial.

25 I'm also agreeing that her interests have

1    been surcharged, as the Court ordered, to repay the  
2    funds that had been improperly paid. And, in fact,  
3    her interest has been surcharged, and it continues  
4    to be surcharged today. As well, she had to pay  
5    compensatory damages, punitive damages, and attorneys'  
6    fees.

7                   The other beneficiaries to this trust have  
8    been made whole plus. The only thing we challenged at  
9    that trial, and Judge Sturman agreed, was that she  
10   should not be removed as a beneficiary of that trust.  
11   She should not forfeit her interest as a beneficiary  
12   of that trust. I would not be standing here today if  
13   the daughters would have accepted that decision of the  
14   Court. I would not be challenging that order. I'm  
15   standing here today because the daughters want more.  
16   They basically want to throw their mother out on the  
17   street, and I have to oppose that. She is a  
18   beneficiary of that trust, and she has not violated  
19   that no-contest clause.

20                  JUSTICE: Can I have you address something?  
21   I was about to ask a question of opposing counsel.  
22   He indicated that the language on the no-contest  
23   provision was very broad in that the settlors  
24   specifically created that language, but in reading  
25   that, you know, the argument on the other side of

1 that is, well, if they specifically wanted to craft  
2 that language, why didn't they include the trustee's  
3 actions as well as other persons and the  
4 beneficiaries?

5 MR. LENHARD: Let me address that, if I can.  
6 First of all, I don't see that language as that rock.  
7 It is a classic, solid litigation, no-contest clause.  
8 Don't file suit. If you file suit, you're going to  
9 get one dollar. That's what that clause says. What's  
10 the beginning? The grantor specifically desired that  
11 these trusts created here and be administered and  
12 distributed without litigation or dispute of any kind.  
13 Could it be any clearer?

14 Now, if the settlors decide to apply the  
15 no-contest clause to the actions of the trustee, it  
16 would have been very easy to state that exact language  
17 in the no-contest clause. Its absence is telling.  
18 That tells the Court -- it told the District Court,  
19 and I'm hoping it tells this Court, that the settlors  
20 did not intend to include the actions of the trustee  
21 under the no-contest clause.

22 JUSTICE: If you did -- if you didn't  
23 interpret it that way, would you ever have a case  
24 where any trustee who happened to be a beneficiary  
25 would agree to act as a trustee? And here, when you

1 have family relationships and you specifically want  
2 a particular trustee, it just seems to diverge. It  
3 just doesn't make sense.

4 MR. LENHARD: I'll tell you this. If the  
5 trustee with the potential custody is my client, I  
6 wouldn't let them do it.

7 JUSTICE: Unless there's a hold harmless  
8 clause.

9 MR. LENHARD: Because the risk is too great.

10 JUSTICE: Mr. Lenhard, would you  
11 distinguish, if you can, the assertion that was made  
12 that this differs because there was a specific  
13 overlay -- that is, order of the Court -- of what the  
14 client was not to do, the trustee.

15 MR. LENHARD: I don't see that as different,  
16 because, again, she violated the Court's order. And  
17 clearly that's not in dispute, Your Honor. She  
18 violated the Court's order as the trustee. And the  
19 actions of the trustee --

20 JUSTICE: But there's no -- in this case,  
21 as Justice Parraguirre pointed out, there's no hold  
22 harmless.

23 MR. LENHARD: I understand that. Clearly,  
24 there's not a hold harmless. But, again, at the  
25 settlor's desire to hold the actions of Ms. Ahern for

1 liability as the trustee, they would have said actions  
2 of the trustee would be included in the no-contest  
3 clause. They are absolutely omitted. They're not  
4 there. That should -- hopefully would tell the Court  
5 it was not intended to include the actions of --

6 JUSTICE: Shouldn't we strictly construe  
7 a forfeiture clause?

8 MR. LENHARD: Absolutely. We cite that in  
9 our brief. And I don't believe there is a Nevada case  
10 on point in a trust circumstance. But Nevada law is  
11 clear. Forfeitures, forfeiture clauses, are to be  
12 strictly construed. If you strictly construe this  
13 language, Ms. Ahern remains in the trust as a  
14 beneficiary because her actions were all taken as  
15 a trustee. And keep in mind that was a factual  
16 determination by Judge Sturman. And I think the Court  
17 is well aware of the standard of review of a factual  
18 determination.

19 JUSTICE: Abuse of discretion.

20 MR. LENHARD: Exactly. And can you say  
21 that, following that two-day trial, Judge Sturman  
22 abused her discretion in determining that Ms. Ahern  
23 was acting as a trustee and abused her discretion --  
24 or, actually, the interpretation of the no-contest  
25 clause was a de novo reputé. Now, can you state that

1 she reviewed and interpreted this clause improperly  
2 when clearly the clause does not call for actions of  
3 a trustee?

4 JUSTICE: Let me ask you one more question.  
5 I hate to take up your time. I think I misheard you  
6 and --

7 MR. LENHARD: That is --

8 JUSTICE: I might have misheard you earlier  
9 or misunderstood. Did you say her distributions as  
10 a beneficiary have ceased?

11 MR. LENHARD: They're on hold. She can  
12 surcharge. Let me --

13 JUSTICE: Right. The surcharge and the  
14 distributions ceasing pursuant --

15 MR. LENHARD: The --

16 JUSTICE: The District Court -- the District  
17 Court said there was no violation of the no-contest  
18 clause. So why were they ceased?

19 MR. LENHARD: Because she -- Judge Sturman  
20 decided -- now, keep in mind I went through this trial  
21 and then before the second trial I was removed as  
22 counsel. So I'm here on this appeal. So I'm going  
23 to tell you what I'm not in.

24 JUSTICE: Okay.

25 MR. LENHARD: Okay? Judge Sturman



1 determined that her actions as trustee -- and there  
2 had been money that had been misappropriated had to  
3 be repaid by her other interests as a beneficiary in  
4 the trust, and that surcharge is still in effect.

5 JUSTICE: I see. So it's not as a result  
6 of a violation of the no-contest clause in your --

7 MR. LENHARD: No. No, sir.

8 JUSTICE: Okay.

9 MR. LENHARD: Absolutely not.

10 JUSTICE: I understand.

11 MR. LENHARD: And that surcharge exists  
12 today, and my understanding is it's supposed to be  
13 paid off.

14 JUSTICE: Okay. Got it.

15 MR. LENHARD: But she has not received  
16 a dime from that trust --

17 JUSTICE: So let's be clear. There was --  
18 Judge Sturman found no violation of the no-contest  
19 clause?

20 MR. LENHARD: I hope I'm as clear as I can  
21 be, and if I'm not being clear, let me make this as  
22 clear as I know how to make it. She found no  
23 violation of the no-contest clause.

24 JUSTICE: And our standard review is abuse  
25 of discretion?

1           MR. LENHARD: On a factual determination as  
2 to the -- her actions as a trustee. As to the legal  
3 interpretation of the no-contest clause, I believe  
4 that's a de novo review, in all candor. So it's  
5 a little different standard, obviously.

6           JUSTICE: Next review.

7           MR. LENHARD: Now, there's something else  
8 and -- I'm so tall, I have a hard time getting down  
9 to the --

10          CHIEF JUSTICE DOUGLAS: Seven and a half  
11 minutes.

12          MR. LENHARD: There's a big -- there is a  
13 big issue that's being avoided in this case.

14          JUSTICE: Under risk points?

15          MR. LENHARD: Yes, sir.

16          JUSTICE: Sounds like I read this stuff;  
17 right?

18          MR. LENHARD: If -- I have to disagree with  
19 my colleague on the issue of undue influence. We  
20 spent two days at trial walking through two documents  
21 that were submitted by counsel for the appellants.  
22 One was what we call the "Let's get the record  
23 straight" document. The second was the EPS document,  
24 the Elderly Protection Services document. And I just  
25 want to state: That was returned by the daughters

1 who submitted it to Elderly Protection Services. We  
2 went on the assumption that when those documents were  
3 submitted, they were truthful. The documents  
4 submitted by counsel to the Court, the "Let the record  
5 be straight," clearly has the representation by  
6 counsel it was true and accurate. But even with that  
7 understanding, we asked Ms. Montoya at trial about  
8 that document. And she inspects it. She reviewed it  
9 for accuracy. She saw nothing inaccurate. And she  
10 was comfortable with representations contained in that  
11 document.

12 And what did we establish as a result of  
13 those two documents? It's a rather sad picture, but  
14 it's important for you to understand that picture  
15 because it puts into context Judge Sturman's ruling.  
16 But before we even go there, keep in mind that one  
17 year before this trial, Fred Wade, the trustee, went  
18 to the Court in April of 2015. And he saw it guarding  
19 their life, but he didn't properly notice the hearing,  
20 and Judge Sturman was correct in denying it at that  
21 time.

22 But what did Mr. Wade say? The independent  
23 court-appointed trustee. He said there were two  
24 powers of attorney out there granted by Ms. Ahern. He  
25 was concerned. And, more importantly, what he said

1 was, "Who knows how much these people have billed her  
2 for." Fred Wade knew as early as 2015 that there were  
3 people influencing this woman and had their hands in  
4 her pocket.

5 What did we establish at trial through the  
6 EPS document and the "Let the record be straight"  
7 document? First we established that she is eccentric.  
8 Eleanor is an eccentric person who has a lot of people  
9 in her life that do not have her best interests at  
10 heart.

11 JUSTICE: But does that let her off the hook  
12 in terms of what she was charged to do?

13 MR. LENHARD: No. But she paid a horrible  
14 price as a result of it. She paid millions of dollars  
15 back in compensatory and punitive damages and  
16 determinants' fees. She has paid the price.

17 JUSTICE: You know, this case --

18 MR. LENHARD: She has paid the price.

19 JUSTICE: This comes under, partially, the  
20 first part of this no-contest provision where it talks  
21 about without litigation, but that's not a part of  
22 this, or "a dispute of any kind." This is kind of  
23 a dispute of any kind that we're into. You have --

24 MR. LENHARD: You -- I'm sorry. I didn't  
25 mean to cut you off, sir.

1 I don't think you can read the second part  
2 of that clause without reading the first part of that  
3 clause which --

4 JUSTICE: That's why they put them over  
5 there, Counsel. And I know you want to distinguish,  
6 but I'm -- I have a problem with --

7 MR. LENHARD: Let's -- let's be --

8 JUSTICE: It means that.

9 MR. LENHARD: Let's do "or" and say they're  
10 disjunctive rather than conjunctive.

11 JUSTICE: Judge Sturman had no problem with  
12 the order.

13 MR. LENHARD: No, she didn't.

14 JUSTICE: But Judge Sturman is not reviewing  
15 this justice hearing.

16 MR. LENHARD: I understand that.

17 JUSTICE: I'm one vote out of seven.

18 MR. LENHARD: I understand.

19 "Establish to assert any claim to the assets  
20 of these trusts established herein. Attack or oppose  
21 or seek to set aside." That still implies litigation.  
22 That implies an effort to go into court and set aside  
23 the trust. That is what Judge Sturman found in  
24 reviewing the totality of these documents.

25 JUSTICE: And you left off the last part,

1 "and distribution of said trust."

2 MR. LENHARD: But you have to read that --

3 JUSTICE: And if there's no money, you can't  
4 distribute, and that was the issue that got borne out  
5 to us by the taking of funds. And I don't know  
6 whether the record got into that, whether there was  
7 a loan document or anything else to categorize it, or  
8 whether it was just a flat taking of the money.

9 MR. LENHARD: To say it was confused as to  
10 how the money went back and forth would be a mild  
11 understatement. I'm going to read that in the side  
12 section and get back to the interpretation because,  
13 again, I say you have to read the document as a whole.  
14 But let's only read it from "or" on. It's still  
15 "Attack, oppose, or seek to set aside the  
16 administration or distribution of set assets." That  
17 implies some type of effort to go into court and  
18 somehow reverse or set aside the language of the trust  
19 document. That was not done here. But I think you're  
20 talking about a policy here. And let me make it real  
21 clear. Out of her interest in this estate, the  
22 daughters have been made totally whole. They have  
23 not lost a nickel in this case.

24 JUSTICE: And they tried to get a  
25 guardianship for this woman in 2015?

1 MR. LENHARD: The trustee tried to have  
2 a guardian ad litem appointed. It was denied.

3 JUSTICE: And how old is she? Is she 81,  
4 89, 86?

5 MR. LENHARD: She's in her early eighties.  
6 She's sitting in the courtroom today.

7 All I can say, again, is that through the  
8 actions of Mr. Wade, through the actions of the Court,  
9 she has been made whole. And I want to go back again  
10 to the influence issue, because this is a sorry story  
11 that was presented to the Court. And it's something  
12 that I think bothered Judge Sturman. And so we're  
13 clear, Judge Sturman has stated concerns about undue  
14 influence from my first day in this case. But as  
15 early as 2012, the testimony was clear that Ms. Ahern  
16 disappeared from the daughters' lives, that Luana  
17 became her financial advisor, her spiritual advisor,  
18 and her accountant. She took over her banking and  
19 financial relationships.

20 But even more disturbing than this was the  
21 testimony presented through the "Let the record be  
22 straight document" of one elderly home caregiver, a  
23 lady names Monelle. She told us about efforts to keep  
24 the mother from the daughters. She was told to pray  
25 to keep the mother from the daughters. She was told

1 by Luana the daughters wanted to institutionalize  
2 Ms. Ahern. When the daughters confronted Ms. Ahern  
3 with these facts, she said, I don't want to have to  
4 choose between Luana and the two of you. It's kind of  
5 a sad story, isn't it? Well, it gets worse. One of  
6 the neighbors related the incident to the daughters  
7 where Ms. Ahern thought they were trying to kill her.

8 Then we go on to the banking issues set out  
9 by the Elderly Protection Services document. We had  
10 an incident where Ms. Ahern shows that the bank is  
11 trying to withdraw a significant sum of money. She  
12 was told God told her to do it. In the alternative,  
13 Suzanne and Luana told her to do it. Luana tries to  
14 withdraw funds from the drive-up window. The bank,  
15 of course, wouldn't allow it.

16 CHIEF JUSTICE DOUGLAS: Finish your  
17 statement, please.

18 MR. LENHARD: All right. All I'm stating is  
19 this is a woman who was influenced by others and did  
20 not have her best interests at heart. This fact is  
21 taken into account by Judge Sturman. When you apply  
22 these facts to the no-contest clause, I am confident  
23 you will determine the settlor did not anticipate the  
24 situation for the trustee that his elderly daughter  
25 could be influenced by others and, as a matter of law,



1 would be thrown out of the trust. And as a matter of  
2 policy, I can't believe that's the policy of the State  
3 of Nevada to possess nothing more than retribution,  
4 undue advantage. Thank you.

5 CHIEF JUSTICE DOUGLAS: Thank you.

6 Counsel, you have a little less than two  
7 minutes for rebuttal.

8 MR. KIEFER: Thank you, Your Honor.

9 JUSTICE: Why should we ignore the issue of  
10 undue influence in this case of an 81-year-old or  
11 82-year-old person? Right? It's -- you've done a  
12 big thing in this court. You should ought to make  
13 sure that people are protected. They're protected  
14 persons now.

15 Sir, we have a guardianship commission that  
16 Justice Hardesty was able to create. And maybe this  
17 would not have existed had his commission and the  
18 statutes been in effect with what we have now with  
19 protection of people who are in their eighties.

20 MR. KIEFER: And I totally understand. If  
21 I had heard what I just heard from opposing counsel,  
22 I would feel the same way. But there's a big problem  
23 with what was just stated: It was all argument.  
24 There was no testimony on the --

25 JUSTICE: Excuse me. Just -- can we get the

1 clock started, please?

2 MR. KIEFER: He specifically stated  
3 Ms. Noona did this, Ms. Ahern did this. Neither of  
4 those parties took the stand and testified as to  
5 anything. What he's relaying is information that he  
6 has been told or that's merely argued. We had a trial  
7 for this very purpose. Whatever it was they wanted  
8 the Court to know, they need to tell the Court.

9 Now, here's the other issue, Your Honor.  
10 How can we say on one hand that she should be  
11 surcharged and punitively punished but she's not  
12 responsible for her actions because of undue  
13 influence?

14 JUSTICE: So you want to take her trust fund  
15 away?

16 MR. KIEFER: The Court is all -- and, again,  
17 this isn't about making the beneficiaries whole.

18 JUSTICE: Wait. You didn't answer my  
19 question. So you want to take her trust money away?

20 MR. KIEFER: The settlors want to --

21 JUSTICE: The beneficiary.

22 MR. KIEFER: The settlors want to take her  
23 money away because they specifically --

24 JUSTICE: You're their advocate.

25 MR. KIEFER: -- had forbidden her actions.

1 JUSTICE: You're their advocate.

2 MR. KIEFER: I agree, Your Honor. But  
3 the problem is, if ever there was a case where a  
4 no-contest clause should be enforced, it's this one.  
5 This woman stole millions of dollars. And the one  
6 thing that can't save her, despite her dual role  
7 as trustee and beneficiary, is that right after she  
8 was removed as trustee, acting with no authority as  
9 trustee, she went to a bank and took \$500,000. If  
10 that doesn't violate the no-contest clause, I'm not  
11 sure what does.

12 JUSTICE: Counsel -- Counsel, we've been  
13 informed that most of this money has now been paid  
14 back and such. The real question for us is we have  
15 a standard abuse of discretion. Why was the District  
16 Court wrong?

17 MR. KIEFER: Sure. First -- first, the  
18 no-contest clause was not deemed not triggered. The  
19 only thing that Judge Sturman said was it was too  
20 harsh. That's not an acceptable exemption under  
21 NRS 163.00195.

22 JUSTICE: No. She said it wasn't violated.

23 MR. KIEFER: She said it was too harsh, in  
24 fact, was what it --

25 JUSTICE: The ruling is it wasn't violated.

1           MR. KIEFER: I would respectfully disagree,  
2 Your Honor. She said it was too harsh. Thank you.

3           JUSTICE: I'm glad I get to write.

4           CHIEF JUSTICE DOUGLAS: With that, this  
5 matter is --

6                       (End of audio transcription.)

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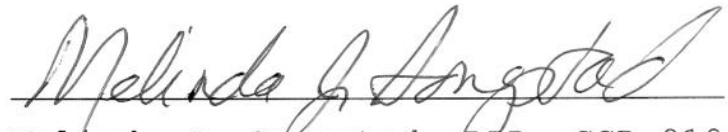
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**CERTIFICATION OF AUDIO TRANSCRIPTION**

I, Melinda J. Songstad, certify that the foregoing is a true and correct transcription, to the best of my ability, of the audio file as provided to me.

I further certify that I am neither counsel for, related to, nor employed by any of the parties or attorneys in this matter, and further that I am not financially or otherwise interested in the outcome of this matter.

Certified to by me this 5th day of June, 2018.

  
Melinda J. Songstad, RPR, CCR 919