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IN THE COURT OF APPEALS
OF THE STATE OF WASHINGTON
DIVISION I

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In re the Estate of Homer R. House (Deceased)

LINDA McMURTRAY and LARRY PIZZALATO,

Appellants,

v.

JANET CORNELL, ROBERT HOUSE, SUSAN TERHAAR and JUDITH THEES,

Respondents.

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# BRIEF OF RESPONDENTS JANET CORNELL, ROBERT HOUSE, SUSAN TERHAAR AND JUDITH THEES

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## I. INTRODUCTION AND CASE SUMMARY

Homer Virgil House ("Homer V. House"), the grandfather of Respondents Janet Cornell, Robert House, Susan Terhaar and Judith Thees, (the "House Siblings") died in 1974. In 1924, Homer V. House sold property he owned in Colorado. Unbeknownst to his family, Homer V. House retained an interest in mineral rights on the property.

In 2011, one of Homer V. House's great-grandchildren was contacted by ancestry.com, which led to the discovery of the Colorado mineral rights owned by Homer V. House. As a result, a petition to determine the heirs of Homer V. House was opened in Colorado. At that time, four of Homer V. House's sixth children had died, including Homer Ray House ("Homer R. House"), the father of the House Siblings.

Homer R. House died in Washington in 2004. His second wife, Vera House, died in 2007. Homer R. House had four children from a previous marriage (the "House Siblings"), and Vera had two children (the "Appellants"), all of whom were adults when Homer and Vera married. Neither Vera nor Homer R. House ever knew about the mineral rights owned by Homer V. House. And neither of Vera's children ever even knew Homer V. House.

Nevertheless, upon learning of the mineral rights owned by Homer V. House, Vera's children, Larry Pizzalato and Linda McMurtray, filed a petition to be appointed personal representatives of Homer R. House's estate and asserted that Homer R. House's one-sixth share of Homer V. House's mineral rights belonged to them, to the exclusion of Homer R.

House's children. Because Janet Cornell was designated as the successor personal representative of her father's estate under his Will, the court appointed her as personal representative. Shortly thereafter, Ms. Cornell initiated mediation in an attempt to resolve the disposition of the Colorado mineral rights, but no resolution was reached.

Ms. Cornell then requested that the probate court exercise its authority to distribute the mineral rights, and the issue was set for trial. Appellants filed a motion for summary judgment, asserting that they were entitled to the mineral rights because, they argued, the asset was distributed after Homer R. House died from a Family Trust to either the Decedent's Trust or the Survivor's Trust, despite the fact that no one knew the asset existed.

The Estate and the House Siblings reasoned that all the parties to this lawsuit signed a Trust Termination Agreement in 2005 confirming that they had no claims to any interest in the Family Trust, the Decedent's Trust, the Survivor's Trust or the Estate of Homer R. House. For these reasons, the trial court concluded that it could not find, as a matter of law, the disposition of the Homer V. House's mineral rights. Because there is no undisputed legal basis for the disposition of the mineral rights, the House Siblings argued at trial that the distribution of the Colorado mineral rights, which lay fallow for more than 70 years, would require the trial court to make an equitable determination. Approximately $65,000 has been distributed from Homer V. House's estate to Homer R. House's

estate, representing Homer R. House's one-sixth interest in his father's mineral rights.

After a full trial, the trial court ordered that Appellants are not beneficiaries of the Estate of Homer R. House and had waived any and all claims in his Estate or trusts he created. The trial court further concluded that there were substantial equitable considerations that weighed in favor of distributing the mineral rights to the House Siblings and ordered that the House Siblings receive 25% equal shares of the mineral rights. The trial court based its equitable determination on extensive findings of fact and conclusions of law that should be affirmed by this Court.

## II. ISSUES RE APPELLANTS' ASSIGNMENTS OF ERROR

1. The trial court correctly found that there are no documents conveying an interest in the Colorado mineral rights from Homer R. House to the Family Trust and correctly concluded as a matter of law that title to the Colorado mineral rights was not transferred by deed during the lifetime of Homer R. House or from the Family Trust to any other trust. RP 205; CP 610 [COL 4, 5].

2. The trial court correctly concluded as a matter of law that because no one knew about the Colorado mineral rights, they were not transferred out of the Estate of Homer V. House or distributed by Vera House to any trust following the death of Homer R. House. CP 605-07, 610, 612 [FOF 31, 32; COL 3, 5, 20].

3. The trial court correctly concluded as a matter of law that by signing the Trust Termination Agreement in October 2005, the parties

to this litigation waived "any and all claims, demands, actions or cause of action, known or unknown, that any of them may have or hereafter may acquire, arising out of or in any way connected with the Family Trust, the Decedent's Trust, the Estate of Homer R. House, or their respective rights or interests thereunder," which bars any claim to the Colorado mineral rights. CP 608, 611 [FOF 39; COL 11].

4. The trial court properly exercised its equitable authority under RCW 11.96A by balancing the equities among the parties and distributing the Colorado mineral rights to the grandchildren of Homer V. House. CP 607, 612-13 [FOF 31; COL 22, 23, 29].

5. The trial court properly exercised its discretion pursuant to RCW 11.96A.150 to order Appellants to pay the attorney's fees their actions forced the Estate and the House Siblings to incur. CP 930.

## III. STATEMENT OF RELEVANT FACTS

### A. The Majority of Homer R. House and Vera House's Assets Were Distributed to Appellants.

In 1991, Homer R. House and Vera House executed a trust agreement creating a Family Trust. CP 96-123, 606. When the first spouse died, the Trust assets were to be divided between a Survivor's Trust and a Decedent's Trust. CP 102-03, 606. The Decedent's Trust was to be funded with $1,500,000, the estate tax exemption amount at the time of Homer R. House's death on February 14, 2004. CP 37, 102, 604, 606. The surviving spouse was to receive nothing from the Decedent's Trust. CP 37, 105-08. The remaining Trust assets were to be allocated to the

Survivor's Trust to provide for the needs of the surviving spouse. CP 37, 102-04. When the second spouse died, the Decedent's Trust was to be distributed in six equal shares to Homer and Vera's six children. CP 36, 106.

When Homer died in 2004, there was no probate and his four children received no information about the assets in their father's Estate or the Family Trust. CP 35. Based on litigation that occurred after Homer died, the House Siblings were able to determine that the Family Trust held about $3 million of assets when Homer died: two Bellevue houses and two Morgan Stanley investment accounts. CP 37. Vera did not maintain the Survivor's Trust for her needs during her lifetime. CP 37-38. Instead, she transferred the two Bellevue houses from the Family Trust to the Survivor's Trust, and then quit claimed the houses outright to her children, Appellants Linda McMurtray and Larry Pizzalato. CP 38, 133-60. The assessed value of the houses exceeded $700,000. CP 38, 156.

Less than a year after Homer died, Vera exercised a power of appointment to distribute the remaining assets in the Survivor's Trust to herself. CP 38, 131. Vera also executed a Will leaving everything she owned to her two children. CP 38, 162-69. A few months later, without any disclosure of Vera's actions, she and her two children negotiated to terminate the Decedent's Trust. CP 38, 182-89. Although Vera was not entitled to anything from the Decedent's Trust, she received $100,000 under the Trust Termination Agreement. CP 38, 183. The remaining assets in the Decedent's Trust, approximately $1,220,000 in a Morgan

Stanley account, was then distributed to the six children in equal shares. CP 38, 183. As parties to the Trust Termination Agreement, Vera and all six children gave up any interest any of them might have had or thereafter might acquire in the Estate of Homer R. House, the Family Trust or the Decedent's Trust:

> The Trustee (as Trustee, Trustor, and individually as Vera J. House), and each of the Beneficiaries, hereby mutually release and discharge each other from any and all claims, demands, actions or causes of action, **known or unknown**, that any of them may have or **hereafter may acquire**, arising out of or in any way connected with the Family Trust, the Decedent's Trust, the Estate of Homer R. House, or their respective rights or interests thereunder.

Emphasis added. CP 38, 184.

After Vera's death in 2007, a second Morgan Stanley account worth approximately $780,000 was discovered. CP 39, 180, 200. The account was titled in the Survivor's Trust, with Larry Pizzalato and Janet Cornell named as successor trustees. CP 39, 200. Because Morgan Stanley would not distribute the account solely to Larry Pizzalato, Vera's children filed a declaratory judgment action. CP 39, 196-204. The trial court determined that, based on Vera's exercise of the power of appointment in 2005, the account assets were hers to dispose of to her children. CP 39, 218-20.

As a result of Vera's actions after Homer died, instead of an equal 16.5% interest distributed to all six children, Vera's children, the

Appellants here, received about 30% each, and the House Siblings each received about 10%. CP 40.

### B. Appellants' Litigation Tactics Forced the Estate and the House Siblings to Incur Substantial Attorneys' Fees.

Janet Cornell, as personal representative of the Estate of Homer R. House, represented the interests of the House Siblings as beneficiaries of the Estate in defense of the claims asserted by Appellants Linda McMurtray and Larry Pizzalato. CP 669. However, when Appellants served each of the four House Siblings with extensive interrogatories, requests for production of documents and requests for admission, the House Siblings were forced to retain their own counsel to represent them in this matter. CP 669. The positions consistently taken by the Appellants in this lawsuit unnecessarily forced both the Estate and the House Siblings to increasingly participate in every stage of the litigation at substantial cost. CP 669.

Despite Ms. Cornell's role as personal representative of the Estate, Appellants insisted throughout this litigation, that the personal representative should not participate in the proceedings and went so far as to file a motion to bifurcate trial of the probate and TEDRA issues, even though both matters exclusively addressed the distribution of the Colorado mineral rights. CP 514-17.

As demonstrated by the House Siblings' responses to Appellants' extensive discovery requests, they had little or no personal knowledge regarding the facts in dispute. CP 634. Nevertheless, Appellants served

the four House Siblings with trial subpoenas, requiring them to travel great distances and sit through trial. CP 635. As the record shows, the only witness the Appellants called to testify was the personal representative. CP 635.

Appellants' litigation tactics indisputably forced the Estate and the House Siblings to incur substantial fees and costs, which would otherwise have been unnecessary to resolve this dispute.

## IV. ARGUMENT

### A. The Standard of Review for a Judge's Exercise of Equitable Authority Is Abuse of Discretion.

The appellate court reviews a trial judge's exercise of equitable authority for abuse of discretion. *Weidert v. Hanson*, 172 Wn. App. 106, 110, 288 P.3d 1165 (2012). In doing so, the appellate court reviews the record to determine whether the trial judge's grant of equitable relief is based upon tenable grounds or tenable reasons. *Id.* "On equitable matters, a court has broad discretion, which will be disturbed on appeal only if the trial court abused its discretion." *Sac Downtown Ltd. v. Kahn*, 123 Wn.2d 197, 205, 867 P.2d 605 (1994).

Likewise, the appellate court reviews an award of attorney's fees under TEDRA for abuse of discretion. *Estate of Jones*, 152 Wn.2d 1, 20, 93 P.3d 147 (2004); *Irrevocable Trust of McKean*, 144 Wn. App. 333, 344, 183 P.3d 317 (2008).

## B. Appellants Waived All Claims in the House Family Trust and the Estate of Homer R. House.

The trial court correctly concluded that the 2005 Trust Termination Agreement bars any claims by Appellants and the House Siblings for the Colorado mineral rights, which were unknown to any of them until 2011. CP 611. Paragraph 6 of the Trust Termination Agreement specifically provides that all parties:

> mutually release and discharge each other from any and all claims, demands, actions or causes of action, **known or unknown**, that any of them may have or hereafter may acquire, arising out of or in any way connected with the Family Trust, the Decedent's Trust, the Estate of Homer R. House, or their respective rights or interests thereunder.

Emphasis added. CP 184.

The release language in the Trust Termination Agreement bars any claims "arising out of or in any way connected with the Family Trust, the Decedent's Trust, the Estate of Homer R. House, or [the parties] rights or interests thereunder," including the "unknown" Colorado mineral rights. CP 184. By agreeing to "terminate the Trust entirely" the parties are bound by their agreement to relinquish any rights or interests in the Family Trust, the Decedent's Trust or the Estate of Homer R. House and to waive any claims against the Family Trust, the Decedent's Trust or the Estate of Homer R. House. CP 182-189; CP 191-194 [FOF 38].

Washington law "favors the private settlement of disputes and gives releases great weight in order to support the finality of such settlements." *Bennett v. Shinoda Floral, Inc.* 108 Wn.2d 386, 395-96, 739 P.2d 648 (1987). Release language barring any and all known or unknown

claims, demands, actions or causes of action, are broadly construed to include all future related claims. *See e.g., Planich v. Progressive Am. Ins. Co.*, 134 Wn. App. 543, 142 P.3d 173 (2006) ("release 'from any and all claims, causes of actions, demands, rights and damages' . . . could not be clearer"); *Nationwide Mut. Fire Ins. Co. v. Watson*, 120 Wn.2d 178, 189, 840 P.2d 851 (1992) (release of "any and all claims . . . known or unknown . . . clearly constitute a release of all claims").

Appellants' attempt to avoid the application of the Trust Termination Agreement to the Colorado mineral rights, which were unknown to the parties until 2011. Ironically, Appellants argued for the enforcement of the release language in the Trust Termination Agreement against the House Siblings in prior litigation regarding the disposition of the Morgan Stanley account. In fact, Appellants described the Trust Termination Agreement as all-encompassing to preclude the House Siblings from making a claim to the account. CP 208-211; 215-216. Appellants cannot take a contrary position in this litigation to avoid the clear effect of the Trust Termination Agreement.

### C. The Trial Court Properly Exercised Its Equitable Authority Under RCW 11.96A to Determine the Distribution of the Mineral Rights.

RCW 11.96A, the Trust and Estate Dispute Resolution Act (TEDRA), grants the trial court "full and ample power and authority" to resolve all matters relating to trusts and estates. RCW 11.96A.020. Accordingly, there is a statutory basis for the exercise of equitable

authority under TEDRA. *Bartlett v. Betlach*, 136 Wn. App 8, 21, 146 P.3d 1235 (2006).

There is no definitive legal basis to determine the distribution of the mineral rights owned by Homer V. House, particularly because the 2005 Trust Termination Agreement prevents all parties from claiming the asset. Because the Trust Termination Agreement precludes any claims to the mineral rights under either the Family Trust or the Estate of Homer R. House, the trial court necessarily exercised its equitable authority under TEDRA to determine the distribution of the mineral rights. The trial court properly balanced the equities to distribute the mineral rights to the House Siblings. The bases of the trial court's decision in balancing the equities are comprehensively identified in the trial court's finding of fact and conclusions of law. [FOF 30, 31, 32; COL 22, 23, 29, 35]

### D. The Trial Court Properly Exercised Its Discretion Under RCW 11.96A.150 to Order Appellants to Pay the Estate and the House Siblings' Attorney's Fees.

Pursuant to RCW 11.96A.150, the trial court had the authority to order Appellants Linda McMurtray and Larry Pizzalato to pay the Estate and the House Siblings' attorneys' fees and costs incurred to defend this lawsuit regarding the mineral rights owned by their grandfather, Homer V. House. RCW 11.96A.150(1) provides in relevant part:

> Either the superior court or the court on appeal may, in its discretion, order costs, including **reasonable attorneys' fees**, to be awarded **to any party**: (a) **from any party** to the proceedings. . . .

> The court may order the costs to be paid in such amount and in such manner as the court determines to be **equitable**.[1]

(Emphasis added.)

RCW 11.96A.150 squarely recognizes that trial judges have discretion in their authority to act equitably. Accordingly, the appellate courts consistently have reviewed TEDRA attorney fee awards under the abuse of discretion standard and "will not interfere with the decision to allow attorney fees in a probate matter, absent a manifest abuse of discretion." *In re the Estate of Black,* 116 Wn. App. 476, 489, 66, P.3d 670 (2003), affirmed, *Estate of Black,* 153 Wn.2d 152, 173, 102 P.3d 796 (2004). The Court of Appeals in *Black* noted, "because of the almost limitless sets of factual circumstances that might arise in a probate proceeding, the legislature wisely left the matter of fees to the trial court, directing only that the award be made **as justice may require**." (Emphasis added). *Id.* Under the plain language of RCW 11.96A.150(2), a superior court can award fees to any party as part of any Title 11 action and has the discretion to award attorneys' fees regardless of whether Appellants brought their claim in good faith. *In re Guardianship of Matthews*, 156 Wn. App. 201, 212, 232 P.3d 1140 (2010).

Nevertheless, Washington courts have consistently found that equity requires a party who unsuccessfully brings a suit that does not

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[1] As defined by RCW 11.96A.030(4), Defendant is a "party" subject to RCW 11.96A.150(1). *See* RCW 11.96A.030(4)(e) (including "devisee" as party) and RCW 11.96A.030(4)(i) (defining party to include "[a]ny other person who has an interest in the subject of the particular proceeding").

benefit the trust or estate to pay the attorneys' fees of others involved in the litigation. In exercising its discretion under this section, the court may consider any and all factors that it deems to be relevant and appropriate, which factors may but need not include whether the litigation benefits the estate or trust involved." Washington courts, in cases such as *Estate of Black*, 153 Wn. 2d at 173 (confirmation of testator's intent and availability of estate assets to defray costs of all parties supported award of fees to multiple parties) and *Estate of Jones*, 152 Wn. 2d at 20 (all reasonable and necessary fees awarded to prevailing parties and ordered paid by party whose conduct necessitated litigation) have applied this equitable standard based upon the factual circumstances of the case before the court.

**1. The House Siblings' Attorney's Fees Were Necessary to Respond to Appellants' Discovery Requests, Meritless Motion for Summary Judgment and Participate in Trial.**

Appellants try to turn the success of the House Siblings on its head by arguing that RCW 11.96A.150 is not a "prevailing party" statute. As the court in *In re Estate of Earls,* 164 Wn. App. 447, 457-458, 262 P.3d 832 (2011), specifically stated, being a prevailing party is an equitable factor for the court to consider. *See also, In re Estate of Cooper,* 81 Wn. App. 79, 87, 913 P.2d 393 (1996). The Estate and the House Siblings are the prevailing parties in this matter and the trial court weighed that factor accordingly.

As Appellants pointed out below, courts are guided by the lodestar method to calculate fee awards, which requires the court to multiply the

reasonable hourly rate by the number of hours reasonably expended on the matter. *Scott Fetzer Co. v. Weeks*, 122 Wn.2d 141, 148-50, 859 P.2d 1210 (1993). The attorneys must provide reasonable documentation of the work performed. *Bowers v. Transamerica Title Insurance Company,* 100 Wn.2d 581, 597, 675 P.2d 193 (1983). "This documentation need not be exhaustive or in minute detail, but must inform the court, in addition to the number of hours worked, of the type of work performed and the category of attorney who performed the work." *Id.* The Estate and the House Siblings met their burden of proving the reasonableness of the fees they incurred and provided contemporaneous records documenting the hours worked and the record demonstrates that Appellants highly litigious methods and blatant unwillingness to negotiate led to the increased costs in this matter.

Appellants served each of the four House Siblings with extensive interrogatories, requests for production of documents and requests for admission, which required the House Siblings' attorneys to spend 40 hours gathering information and responding to those discovery requests. CP 634-35, 677-87. Nine hours were spent on legal research related to the Colorado property rights. CP 677-80. Ten hours were spent responding to Appellants' baseless motion for summary judgment. CP 635, 688-91. Three hours were spent to file a joinder in the Estate's petition for distribution. CP 682, 689. Just over 50 hours were spent to prepare for trial, including responding to Appellants' baseless motion to bifurcate the trial and filing a motion in limine to object to the admission of more than

100 exhibits offered by Appellants that were irrelevant and not produced during discovery. CP 635, 690-94.

In *Villegas v. McBride*, 112 Wn. App. 689, 696-97, 50 P.3d 678 (2002), the decedent's sister filed a creditor's claim against her brother's estate for loans she allegedly made to him during his lifetime. The estate moved for summary judgment, which was granted and then affirmed. *Id.* at 678-79. The estate requested attorneys' fees and costs incurred at the trial court level because the litigation deprived the beneficiaries of part of their inheritance. *Id.* at 696-97. The Court of Appeals agreed that diminution was an equitable ground for an award of attorneys' fees under RCW 11.96A.150 and awarded not only fees and costs on appeal, but remanded for attorneys' fees and costs incurred below. *Id.* at 697.

Similar to *Villegas*, equity in this lawsuit demanded that Appellants compensate the Estate and the House Siblings for the legal costs incurred to defend their meritless position. The Estate and the House Siblings made numerous attempts to reach a fair and equitable distribution of the Colorado mineral rights with Appellants. Appellants, however, have been highly litigious throughout this matter. Appellants served the House Siblings with unduly burdensome discovery requests, filed an unnecessary summary judgment motion in advance of trial, a baseless motion to bifurcate the trial, tried to prevent the personal representative of the Estate from participating at trial and failed to negotiate in good faith at mediation. Additionally, they personally attacked the House Siblings regarding their efforts to obtain a guardian for their father and tried to

offer documents relating to the guardianship proceeding as evidence of their unclean hands, which they argued barred their equitable claims to the Colorado property.

Appellants' attacks and attempt to admit more than 100 exhibits, many of which were never produced during discovery, required the House Siblings to incur more fees to file motions in limine. At every stage of this litigation, Appellants steadfastly insisted that the one-sixth interest in the mineral rights owned by the House Siblings' grandfather, Homer V. House, should pass entirely to them. The Estate and the House Siblings should not be forced to bear the costs of the protracted litigation that resulted from Appellants' actions.

### 2. The Trial Court Properly Allocated the Fees Incurred by the Estate to Appellants to Preserve the Estate for the Beneficiaries.

Washington courts favor attorney's fee awards where the result is to make the estate whole and preserve the same for the intended beneficiaries. Courts have consistently found that equity requires a party who unsuccessfully brings a suit that does not benefit the estate to pay the attorneys' fees of others involved in the litigation. For example, in *In re Estate of Kerr,* 134 Wn.2d 328, 344, 949 P.2d 810 (1998), the Washington Supreme Court held that an award of fees to the estate from a party who tried to remove the personal representative was proper under former RCW 11.96.140.[1] The Court reasoned that because the estate bore the cost of

[1] In 1999, the Washington Legislature repealed RCW 11.96.140 and adopted RCW 11.96A.150 in its place.

litigation to defend its personal representative and the estate received no benefit from the plaintiff's action, the trial court properly awarded fees under RCW 11.96.140. *Id.* at 344; *see also In re Korry Testamentary Marital Deduction Trust for Wife*, 56 Wn. App. 749, 756, 785 P.2d 484 (1990) (holding that unsuccessful litigation against an estate, prosecuted for personal benefit, is not a "substantial benefit" to the estate). Similar to *Kerr*, equity here demanded that Appellants compensate the Estate for the legal costs incurred to defend their baseless claim. The beneficiaries should not be forced to fund the protracted litigation pursued by Appellants to defend the Estate.

In *Estate of Black*, the court reasoned that because the dispute involved all the estate beneficiaries, "an award against the estate would not harm any uninvolved beneficiaries." 153 Wn.2d at 174. That is not the case here. The substantial cost of litigation caused by the Appellants in this case provided no benefit to the Estate. In addition, no portion of any attorneys' fees allocated to the Estate would be borne by the Appellants. To the contrary, any fees allocated to the Estate would be paid only by the House Siblings. The attorney's fees incurred by the Estate to defend against Appellants' unwarranted litigation tactics far outweigh the assets in the Estate. To allocate those fees to the Estate, and thereby the House Siblings, would be inequitable, and therefore contrary to the trial court's determination of an equitable allocation of attorneys' fees under RCW 11.96A.150. .

The trial court's award of attorney's fees against Appellants appropriately placed the financial responsibility for their litigation tactics, pursued without regard for the financial consequences, on the appropriate parties: Appellants Linda McMurtray and Larry Pizzalato. This Court should affirm the trial court's award of attorney's fees against Linda McMurtray and Larry Pizzalato.

### E. This Court Should Award the House Siblings Their Fees on Appeal.

The Court should also award the House Siblings their appellate attorney fees under RCW 11.96A.150 and RAP 18.1. This Court has discretion to award attorney fees on appeal. RCW 11.96A.150(1); *Kwiatkowski v. Drews*, 142 Wn. App. 463, 500-01, 176 P. 3d 510 (2008).

## V. CONCLUSION

The trial court properly concluded, as a matter of law, that the parties waived any and all claims or causes of action, known or unknown, in any way connected with the Family Trust, the Decedent's Trust and the Estate of Homer R. House, and therefore, correctly exercised its equitable authority to distribute the Colorado mineral rights to the House Siblings based on extensive findings of fact and conclusions of law. Likewise, the trial court properly exercised its equitable authority under TEDRA to order Appellants to pay the attorney's fees their litigation tactics forced the Estate and the House Siblings to incur. This Court should affirm the trial court's decisions and award the Estate and the House Siblings their attorneys' fees on appeal.

DATED this 7th day of January, 2014.

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