

Petition Could Validate a 'Lost' 1938 Hughes Will

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SAN FRANCISCO, Jan. 12—What may be the first move in an attempt to probate a "lost will" that Howard R. Hughes is believed to have signed in 1938 took place today in Nevada District Court in Las Vegas.

Incomplete descriptions of the putative 1938 will have circulated among Mr. Hughes's former associates since a few weeks after his death on April 5. Soon after his death, managers of his companies and their lawyers said privately that no signed will had been found.

In the absence of a will, probate courts have worked over a purported will found in Salt Lake City, which now has been discredited. Mr. Hughes's surviving relatives, all cousins except for one 87-year-old aunt, have agreed on division of what would be left after the Internal Revenue Service took 77 percent of the estate, with no will found.

The document filed today in Las Vegas was supported by an affidavit from Nadine Henley, senior vice president of Summa Corporation, the Hughes holding company. Miss Henley said she was secretary of the Howard Hughes Medical Institute and either knew herself, or believed, that the statements in the attached petition were true.

The import of the petition is to ask the Nevada probate court to recognize that the Medical Institute is entitled to petition, and to request that the court stand ready to accept an unsigned will for probate if the institute can produce evidence that a copy of the will was once signed but then was lost.

Report of Unsigned Copy

"Petitioner [the institute] is the principal devisee and legatee and is therefore a person entitled to petition this court for probate" under the provisions of Nevada law, the petition said.

Soon after it was known that no signed will had been found, sources familiar with the internal affairs of Summa Corporation said that a report circulated that an unsigned carbon copy of the 1938 will had been found.

These sources said the report also described the will as providing that Mr. Hughes wanted to give the bulk of his estate to medical research through a vehicle he subsequently would create.

In 1953 he did create the Medical Institute and gave to it the properties that had been the aircraft division of Hughes Tool Company. That property today is the immensely valuable Hughes Aircraft Company, which is owned entirely by the Medical Institute.

In his lifetime, Mr. Hughes was the sole trustee of the Medical Institute and thus could influence its management. Before his death he named as directors of the Medical Institute F.W. Gay, executive vice president of Summa, and Chester C. Davis, chief counsel of Summa.

After Mr. Hughes died, Summa sources said the by-laws of the Medical Institute provided that the directors succeeded to the powers of the trustee. However, no public announcement has been made of this, and Summa sources, as well as those of the aircraft company, said today that copies of the by-laws were not available for inspection.

Cousin as Administrator

Also, after Mr. Hughes died, Lawrence A. Hyland, who had been general manager of Hughes Aircraft, quickly was named president. Sources within Summa said this was a surprise to Mr. Gay when he read it in the papers.

Neither Mr. Gay nor Mr. Davis appeared as signatories to any of the documents filed in Las Vegas today.

In the absence of a will, managers of

Mr. Hughes's affairs moved soon after his death to have one of his cousins, William Rice Lummis, a Houston lawyer, named to administer Summa Corporation.

There have been frequent reports from inside the company that Mr. Lummis and Mr. Davis have clashed. Authoritative sources said last fall that Mr. Davis had told Mr. Lummis that as a director or trustee of the Medical Institute, he felt obligated to attempt to swing the Hughes inheritance to the institute.

If the "lost will" can be produced in some form, and if its provisions are somewhat as they are vaguely outlined by reports from within Summa, the effect would be to place Mr. Davis and Mr. Gay, and perhaps Miss Henley, in control of all of Mr. Hughes's fortune through their directorships of the Medical Institute.

In a way this would parallel the loose controls that Mr. Hughes was able to maintain over the Aircraft Company after he gave it away to the institute.

The validation of the "lost will" would mean that Mr. Lummis would no longer

be needed to direct the Summa Corporation and that the various agreements among prospective heirs of Mr. Hughes to divide the estate would be meaningless.

What is known about the "lost will" was pulled together last month and filed in a petition to the probate division of Los Angeles Superior Court. The author was Gordon W. Treharne, a deputy county counsel.

What was shown was that agents of Summa searched files and a safe in the former home of Neil McCarthy, who had been a Hughes lawyer. The petition said the search turned up a will, unsigned, and a handwritten codicil that cut off someone who had been named in the will.

Mr. Treharne's petition asked that Mr. Davis and others be required to produce in court what they took from the safe and file drawers. Hearing on the petition will be held Monday in Los Angeles.

No date has been set for the hearing sought by the petition filed today in Las Vegas.