

AMERICAN ARBITRATION ASSOCIATION
CASE NO. 01-22-0000-9524

NICHOLAS ABAZA, ET AL.	§
	§
Claimants / Counter-Respondents	§
	§
VS.	§
	§
RICHARD ALLISON, JR. AND	§
CAROLINE ALLISON	§
	§
Respondents / Counter-Claimants	§

THE LAWYERS' POST-HEARING BRIEF

“I have seen very few attorneys willing to work on their case as hard as I saw Mr. Borunda working on this case. He was putting his all into this case.... I will tell you this: you are not going to find anybody who is going to outwork Mr. Borunda. I’ve got about eight lawyers up here that I know will outwork everybody else in the county twice over, and Mr. Borunda is on that list.... So, Ms. Allison, I want to tell you, if your distrust of your attorney was that you don’t think he worked hard enough or you don’t think he drove a hard enough bargain, I want to tell you that I put him in the, you know, I put him in the 90th percentile. I put him in the top 10% of hardworking lawyers driving hard bargains.... I don’t doubt him giving this case his all because I saw him do it. And outworking just almost every lawyer that I could imagine except for just a small handful.”

The Honorable Weldon Copeland, Presiding Judge, Cause No. PB1-1332-2019, *In the Estate of Richard Gerard Allison, Deceased*, in the Probate Court No. 1 of Collin County, Texas - November 3, 2021. Lawyers’ Exhibit 255.

The Lawyers are good and honest lawyers who did good and honest work for the Clients. Because of the Lawyers’ good and honest work, the Clients recovered approximately \$10,000,000.00 in a settlement of their probate disputes with their stepmother Robin. The Lawyers seek in this arbitration proceeding the 35% contingent fee that the Clients agreed to pay.

The Lawyers submit this post-hearing brief and respectfully show as follows. For brevity, the Lawyers cite their hearing exhibits as “Ex. ___” and cite testimony from the hearing transcripts as “Volume:Page:Line - Volume:Page:Line.”

I. A VERY BRIEF FACTUAL OVERVIEW

Rich and Caroline had a difficult and complicated relationship with their father. For many reasons, their father restructured his estate plan in 2013 to leave sole access to -- and sole control of -- all of his assets to Robin, his wife of (at that time) approximately 21 years. And, rightly or wrongly, he did so without telling Rich and Caroline.

Based on estate planning documents that their father had signed before he married Robin, and/or based on their father's representations to them, Rich and Caroline believed that when their father died they would both inherit half of his assets. Rich and Caroline didn't find out about their father's restructured estate plan -- which gave them no access to, and no control of, any of their father's assets as long as Robin was alive -- until after their father died in 2017.

When Rich and Caroline -- especially Caroline -- discovered that they would have no access to, and no control of, any of their father's assets until after Robin died, they were perhaps understandably surprised and upset. They realized that Robin, who was 62 years old when Dr. Allison died, might reasonably be expected to live for another twenty or 25 years (or more) -- meaning that Rich and Caroline might be in their mid-60s or early-70s (or older) before they gained access to, and control of, whatever was left of their father's assets. Further, Rich and Caroline were legitimately concerned that "whatever was left" of their father's assets after Robin's death might end up being very little or literally nothing.

Rich and Caroline were convinced that their father's 2013 estate plan was not what he had intended. They insisted that this estate plan was a result of Robin's undue influence over their father during a time when he lacked testamentary capacity. So, in 2019, Rich and Caroline retained counsel to help them remedy this perceived injustice.

The Lawyers prosecuted probate litigation designed to achieve Rich and Caroline's stated goals of (1) invalidating their father's 2013 estate plan (which included a will, a trust, and a

beneficiary designation in a retirement account) and (2) reverting back to the result that they asserted their father had intended: that Rich and Caroline would each receive 1/2 of his assets free of trust.

After almost two years of contentious litigation, Robin made a last and best settlement offer to Rich and Caroline at a mediation in April 2021. Rich and Caroline had a choice: they could accept Robin's last and best offer or they could reject Robin's last and best offer. The Clients chose to accept the last and best offer and settle their disputes with Robin.

Rich and Caroline -- especially Caroline -- have likewise accepted the benefits of their settlement recovery. But Rich and Caroline do not want to pay the Lawyers the 35% contingent fee that they agreed to pay.

Therefore, Rich and Caroline have contrived a false narrative designed solely to attempt to avoid their payment obligations to the Lawyers. Their false narrative attempts to reinvent history, ignores the reality of their contemporaneous words and actions, and it evanesces when subjected to reasoned and dispassionate scrutiny.

II. WHAT HAS HAPPENED TO THE CLIENTS' SETTLEMENT RECOVERY?

It seems appropriate to begin with a brief discussion of what has happened to the Clients' settlement recovery since April 2021. The main asset in Clients' settlement recovery was a Fidelity brokerage account in the name of the Minaki Limited Partnership. According to Caroline, "So as far as getting access to the Fidelity account, we were not able to get access to the Fidelity account." 6:1312:6 - 6:1312:8.

The Clients signed a Mediated Settlement Agreement ("the MSA") in which they agreed to settle their disputes with their stepmother Robin on April 13, 2021. The Clients chose to settle based, at least in part, on Robin's representation in the MSA that the Fidelity brokerage account had an asset balance of at least \$9,500,000.00. Ex. 193, ¶ 3.1.q). The next day, the Clients

learned that the actual asset balance in the Fidelity account was \$9,900,609.53. Ex. 194. These assets continued to appreciate significantly in the months following the Clients' settlement.

On December 7 and 8, 2021, the Clients finally signed documents to effectuate the settlement to which they agreed in the MSA. By this time, as will be discussed in more detail later, the Lawyers were no longer representing the Clients. However, these final settlement documents were reviewed, revised and approved by the Clients' subsequent attorney.

On December 27, 2021, Caroline (1) withdrew \$567,231.22 in cash from the Fidelity account, (2) transferred \$10,264,241.80 in securities out of the Fidelity account, and (3) in doing so incurred costs, fees and charges of \$1,707.72. Ex. 283. Caroline's net transfer of \$10,829,765.30 left a balance of exactly \$3.52 in the Fidelity account. Ex. 283. Caroline then transferred this cash and these securities into a new brokerage account at Schwab. Ex. 284.

On December 29, 2021, Caroline sold various stocks and mutual fund shares totaling \$4,002,035.26. Ex. 284.

On January 2, 2022, Rich sent Mr. Borunda an e-mail alleging that "there is a legal hold preventing me from gaining access to the [Fidelity] account. Fidelity advised they have to err on the side of caution to protect account and Robin is the only authorized person." Ex. 285. It remains uncertain whether Rich's misstatement resulted from a deliberate intent to deceive or merely from a lack of knowledge and awareness of what Caroline was doing.

On January 6, 2022, Caroline sold additional mutual fund shares totaling \$1,427,532.69. Ex. 289. When combined with dividends and interest in the amount of \$5,850.39 that were credited to the new Schwab account as of December 31, 2021, Caroline -- in approximately two weeks -- was able to take the assets that had been in the Fidelity brokerage account and generate a cash balance in the new Schwab account of \$6,002,649.56 (initial cash transfer of \$567,231.22

+ first liquidation of \$4,002,035.26 + second liquidation of \$1,427,532.69 + December 2021 dividends and interest of \$5,850.39 = cash balance of \$6,002,649.56).

On January 7, 2022, the day after Caroline's second liquidation of assets, she wire transferred \$6,000,000.00 to Jet Lending, L.L.C., a "hard money lender" owned by Caroline's friend Eddie Gant. Exs. 286 - 289. Caroline has used the income and/or principal of the \$6,000,000.00 loan to amass significant real estate holdings that are owned by Kensington Station, L.L.C., **a sole-member L.L.C. that Caroline formed on May 25, 2021 -- about six weeks after she signed the MSA.** Exs. 214-216. 6:1422:25 - 6:1423:20

As of the date of the arbitration hearing, Kensington Station, L.L.C. owned, or had already bought and sold ("flipped"), several properties in the Houston area and the Austin area. Exs. 290, 291, 293-296, 299-302. As Caroline explained in her deposition, taken about a month before the arbitration hearing:

- Q. How many of the properties held by Kensington Station, L.L.C., were financed or purchased with funds that either relate to the income interest received from the loan to Jet Lending or maybe even were financed by the principal?
- A. I couldn't answer that question.
- Q. Who could?
- A. I mean, there's properties that come and properties that go.
- Q. And who was --
- A. When you -- when you exit them, they're off the books.
- Q. Who decides whether the properties come and go? You as the sole member of your sole-member L.L.C.s?
- A. So, as the sole member of my L.L.C.s, I make those decisions.

Caroline deposition, 118:8-23 (excerpts attached as Exhibit A).

Caroline also admitted that she has unilaterally -- i.e., acting without her co-trustee brother -- withdrawn principal from the Schwab account, loaned that money to Kensington Station, L.L.C., and then used the money to make real estate purchases for her sole-member L.L.C. Caroline deposition, 113:1-115-19 (excerpts attached as Exhibit A); Ex. 292.

Despite the Clients' insurances that they never obtained access to the Fidelity brokerage account, in nearly three years since the Clients obtained their settlement recovery, Caroline has turned the assets in the Fidelity brokerage account into a multi-million dollar real estate portfolio owned by her single member L.L.C. Meanwhile, Richard apparently remains destitute and lives in a homeless shelter and the Lawyers have received no payment for their good and honest work.

III. DR. ALLISON'S ESTATE PLAN

The structure of Dr. Allison's estate plan, as he established it in 1989 and then revised it in 2011 and again in 2013, was explained during the hearing and is generally summarized and graphically represented in Lawyers' Exhibit 323. 1:147:20 - 1:158:14; 1:163:11 - 1:169:10.

The 1989 Trust. Dr. Allison established the 1989 trust when he was single and Rich and Caroline were about eighteen years old. Dr. Allison was the sole grantor, trustee, and lifetime beneficiary. When he died, his assets were to be distributed 1/2 to Rich and 1/2 to Caroline, either in trust or outright if they were older than 35.

The first 2011 trust amendment. In this document, Dr. Allison listed his grandchildren (at that time, Rich's three children) and amended the order in which various successor trustees would serve, notably appointing Robin to serve before Caroline and excluding Rich.

The second 2011 trust amendment. In this document, Dr. Allison "carved out" certain assets to be distributed to Robin when he died. These assets included personal effects such as household furnishings, vehicles, jewelry, and clothing, and also included 100% ownership of an entity called the 41st Street Limited Partnership. Additionally, Dr. Allison made his grandchildren equal beneficiaries along with Rich and Caroline. Thus -- rather than Rich and Caroline each taking 1/2 of the remaining assets after the carve-out to Robin -- these assets were to be divided into equal shares for Rich, Caroline, and each of their children (again after the carve-out to Robin).

The 2013 trust amendment and restatement. This document, along with a new will and a new beneficiary designation in a retirement account, effected a profound and substantial change to Dr. Allison's estate plan. He brought Robin into the trust as a co-grantor, co-trustee, and co-lifetime beneficiary. While both Dr. Allison and Robin were alive, they shared equal access, control, and discretion over trust assets. When one of them died, the surviving spouse would have total access, control, and discretion over trust assets. Under this new estate plan, neither Dr. Allison's children nor his grandchildren were guaranteed to receive anything.

IV. DR. ALLISON DIES IN 2017: WHAT HAPPENS NOW?

The effect of Dr. Allison's estate plan after he died in 2017 was also explained during the hearing and is generally summarized and graphically represented in Lawyers' Exhibit 323. 3:722:14 - 3:750:3.

Under **the 1989 trust**, Rich and Caroline would each have received 1/2 (50%) of Dr. Allison's assets free of trust. Under **the 2011 trust amendments**, Robin would have taken the designated items of personal property and the 41st Street Limited Partnership. Rich, Caroline, Rich's three children and Caroline's daughter would each have received 1/6 (16.67%) of the remaining assets. Rich and Caroline would have received their 1/6 shares free of trust because of their ages at the time of Dr. Allison's death. However, all of the beneficiaries would have been required to deal with a myriad of complicated tax and other issues that were not "cleaned up" until the 2013 estate planning documents. Under **the 2013 trust amendment and restatement**, Robin took all of Dr. Allison's assets, and -- for the remainder of her life -- she retained 100% access, 100% control, and 100% discretion over these assets. Rich and Caroline had zero access, zero control, and zero discretion. This fundamental and inescapable truth played out in the context of three sub-trusts that were created after Dr. Allison died.

The Surviving Grantor's Trust. The Surviving Grantor's Trust was to be funded with various items of personal property, but was a revocable trust. Robin, as the sole trustee and sole lifetime beneficiary of this trust, could -- and allegedly did -- literally fund the trust one day and then revoke it the next day. Richard and Caroline had no rights under this trust: no access, no control, and no discretion. Robin had 100% access, 100% discretion, and 100% control.

The Marital Trust. The Marital Trust was to be funded with assets in excess of the estate tax exemption of (at that time) approximately \$5,000,000.00. Robin was also the sole trustee and sole lifetime beneficiary of this trust. Richard and Caroline had no rights under this trust: no access, no control, and no discretion. Robin had 100% access, 100% discretion, and 100% control. Robin was required to distribute the income from this trust every three months, and had discretion to distribute principal to herself based on a modified "HEMS" (health, education, maintenance, and support) standard.

The Family Trust. The Family Trust was to be funded with assets equal to the estate tax exemption. Again, Robin was the sole trustee and sole lifetime beneficiary of this trust. Richard and Caroline were contingent remainder beneficiaries with no access, no control, and no discretion. Robin had 100% access, 100% discretion, and 100% control. Robin was required (by the term "shall") to distribute principal and income to herself as the lifetime beneficiary based on a HEMS standard. Robin was not required (by the term "may") to distribute principal and income to contingent beneficiaries -- Rich, Caroline, and their children -- also based on a HEMS standard. Thus Rich and Caroline had a right to request HEMS distributions from Robin, who had wide discretion to say "yes" or "no." If Robin said "no," then Rich or Caroline had a right to sue her. Texas courts have the power to overturn Robin's decision regarding a distribution request only if her decision constituted fraud, misconduct, or an abuse of discretion.

V. DID DR. ALLISON DISINHERIT RICH AND CAROLINE?

Did Dr. Allison disinherit Rich and Caroline? Maybe -- but not necessarily.

Again, Rich and Caroline had no guarantee of any inheritance under the 2013 estate plan. As long as Robin was alive, Rich and Caroline had a right to request discretionary distributions from the Family Trust and limited recourse if Robin declined. As “descendants” and contingent remainder beneficiaries, Rich and Caroline also stood to inherit at least some of “whatever was left” when Robin died. But that contingent remainder interest depended on hundreds, or perhaps thousands, of variables -- all or almost all of which were not only unknown but also unknowable. When would Robin die? Would Rich or Caroline or both die before Robin? Would Robin, as Rich and Caroline legitimately worried, mismanage Dr. Allison’s assets such that they substantially diminished in value? Would Robin, as Rich and Caroline might have legitimately worried, exercise her discretion to funnel assets to her grandchildren and effectively disinherit Rich and Caroline? These are but a few of the unanswerable questions that stood between the Clients and the first dollar of an inheritance on the unknowable future date of Robin’s death.

VI. RICH AND CAROLINE UNDERSTOOD THEIR CIRCUMSTANCES

Before the Clients approached the Lawyers regarding representation, the Clients generally understood that their father’s 2013 estate plan gave Robin -- for as long as she lived -- sole and complete access, control, and discretion with respect to Dr. Allison’s assets. Caroline’s own words in numerous e-mails to Robin reveal her understanding of that truth. For example:

“It’s really your property. As is the rest of my dads estate, to which I’m happy for you.”
Ex. 24.

“My dad left everything to you. Its really all yours to do with as you please.” Ex. 25.

“You’ve made it very very clear to my brother and me that all I get is the boat and all he gets is the stamp collection.” Ex. 30.

“I’m going to surmise that the reason why you are withholding the information about the trust is because you had my dad, during his state of dementia, make you the sole

beneficiary of everything, with us as contingent beneficiaries. If that's the case, you know and I know, that that is not right and it's not fair." Ex. 31.

"I'm very hurt that my dad decided to leave everything to you." Ex. 35.

"And just know that its a huge disappointment that my dad set up this trust (under the influence of you and his dementia medical condition) that only benefits you." Ex. 38.

"According to the trust, there's no benefit passing to us. No income, No assets. And we can't even get access to the education component of the trust because the "Trustee" says so." Ex. 40.

"My brother and I did not even get an inheritance at all, thanks to you." Ex. 41, p.1.

Caroline had not confused or misinformed herself, and her occasional late night alcohol consumption isn't particularly relevant. 5:1057:3 - 5:1058:6; 5:1040:15 - 5:1040:23. The Clients generally understood their inability to access or to control any of their father's assets as long as Robin was alive -- and Mr. Abaza and Mr. Borunda answered their questions and explained additional details about their rights (or lack of them) before litigation against Robin was initiated.

Similarly, prior to litigation, Mr. Abaza and Mr. Borunda also explained to the Clients the no contest clauses in the 2013 trust and will. Caroline vehemently and repeatedly insisted at the hearing that she didn't know about the no contest clause before filing her petition. 6:1240:19 - 6:1241:9; 6:1250:3 - 6:1252:9; 6:1253:5 - 6:1254:21. However, she testified under oath to exactly the opposite in her deposition in the probate litigation. 6:1316:10 - 6:1321:9.

VII. DISCUSSIONS REGARDING ATTORNEYS' FEE ARRANGEMENTS

During early 2019, the Clients approached Mr. Abaza and Mr. Borunda -- collectively referred to for brevity as "the lawyers" (with no capital "L") -- regarding legal representation. Over a period of several weeks, the parties discussed and exchanged e-mails regarding various fee options including an hourly fee contract, a contingent fee contract, or a hybrid arrangement. 1:185:25 - 1:189:3. Richard was a sophisticated litigant, having been involved as a plaintiff in numerous gender discrimination lawsuits in California. Exs. 20, 27. 5:1147:12 - 5:1156:6.

Caroline was likewise sophisticated, and had previously hired attorneys on both hourly fee contracts and contingent fee contracts. Exs. 13-18, 134.

The lawyers explained the differing fee arrangements and answered all of the Clients' questions. As just one example, Mr. Abaza explained to Rich that a contingent fee would be owed on the gross, not the net, of any recovery: "35 percent are all the attorney fees. If we recover 100 dollars we take 35 dollars. If [we] recover 1,000,000, we take 350k and the rest is yours minus your one half of costs split with your sister." Ex. 57.

Rich elected to proceed on a contingent fee basis and signed a contingent fee contract. Ex. 58. He read the contract carefully -- as evidenced by his numerous handwritten notes and interlineations, which were eventually incorporated into a second contingent fee contract that he signed later. Ex. 106.

Caroline, mistakenly believing that Robin would "cave" as soon as a lawsuit was filed, negotiated a reduced retainer and a reduced hourly fee and agreed to pay half of the litigation expenses. She elected at this time to proceed on an hourly fee basis and signed an hourly fee contract. Ex. 50.

VIII. THE CLIENTS' GOALS FOR THE LAWYERS

As the lawyers and the Clients were discussing various options regarding attorneys' fees, they were also discussing various options regarding how to attain the Clients' stated goals: to invalidate the 2013 estate planning documents and to wrest control of Dr. Allison's assets away from Robin. 1:144:11 - 1:146:22; 1:162:17 - 1:163:10; 1:189:4 - 1:194:2. The Clients were adamant that Dr. Allison's 2013 estate plan did not reflect his intent. Caroline bluntly stated that Robin "screwed us" (Ex. 53) and referred to the estate planning aspects of the 2013 documents as Robin's "tax BS excuse." Ex. 41. The Clients frequently echoed to the lawyers Caroline's

sentiments in an October 22, 2018 e-mail to Robin: “What you are doing is wrong, and you know what you did and what you’ve done.” Ex. 35.

The lawyers provided the Clients with a draft of the petition that was eventually filed in Collin County district court, and asked the Clients to provide comments and information. Ex. 61. Caroline responded with revisions and additions to the draft petition. She noted, as the Clients had noted many times before, that “Financial performance has been terrible as [Robin is] turning my dad’s assets into liabilities and fire saling everything so she can focus on her antique jewelry business.” Ex. 61. 1:158:15 - 1:162:16. Exs. 26, 35, 36, 60. Understanding her rights (or lack of them) under the 2013 documents, and also understanding the presence and effect of the no contest clauses, Caroline stated:

I am seeking a lot more than \$1M. Everything must be sold off, and equally distributed, including the family trust, and marital trust, as well as Robin’s trust.... The worst thing for all of us is that she has told me outright that there is unlikely to be much of anything left of my dad’s \$15M estate, as she does not know what she’s doing in making money decisions.... Robin is clearly incapable ... and will drive the estate into ruins.” Ex. 61.

IX. CAROLINE REPEATEDLY ASKS TO SWITCH TO A CONTINGENT FEE CONTRACT

As the Clients’ litigation against Robin progressed, Caroline quickly got behind on paying her legal fees and expenses. Eventually, Caroline made the decision to switch from an hourly fee contract to a contingent fee contract like Rich’s. Caroline claims that she made this decision because Mr. Borunda “deceived” her. However, her words and actions -- and Mr. Brounda’s -- at the time that the events at issue transpired are wholly inconsistent with her hearing testimony.

The lawyers never requested, suggested, or implied that Caroline should switch to a contingent fee contract. The lawyers never raised this issue. Caroline did. At least four times.

First, very early in the representation, Caroline asked about the possibility of switching to a contingent fee contract later. The lawyers told her that she could, but that she would need to get independent legal advice. 3:541:20 - 3:543:21.

Second, on March 30, 2020, Caroline responded to receiving an invoice from Mr. Abaza as follows: “Nick: Right now is a terrible time for us.... I don’t have cash flow coming in.... Sorry about this, but if everything needs to be paused, then as I understand it, the courts are closed through June. There’s nothing I can do if I don’t have income.” Ex. 115. Understanding the difficulties that many were experiencing at the outset of the Covid pandemic, Mr. Abaza offered to defer Caroline’s payment of his bills. Ex. 114. Caroline stated that the hourly attorneys’ fees “have really been crushing to my family.” Ex. 114. Likely referencing Caroline’s mistaken notion that Robin would “cave” as soon as a lawsuit was filed, Mr. Abaza noted that “your stepmother is trying to protect millions and I didn’t think she will just roll over and she hasn’t.” Ex. 116. Caroline responded:

“If my stepmother has millions, then the contingency was to be a bit of a motivator, right? ...This is going to be a very bad year for my income. I thought we’d be good through the election. But not the case.... **If you want to do a deal where I get my \$40K back and we do contingency for the 35% for both my brother and me, I’d happily give you the ammunition you need to share in my Dad’s wealth with you both. Or we wait. Which may be a cheaper, equally effective option.**” Ex. 116.

Thus Caroline evidenced a clear understanding that switching to a contingent fee contract would relieve her of the “crushing” burden of attorneys’ fees, but remaining on an hourly fee contract might be “cheaper.” She later noted that “Hiring attorneys on contingency does help.” Ex. 134.

Caroline also expressed concerns regarding hourly attorneys’ fees to Mr. Borunda: “Jorge: I’ve had 3 substantial deals fail to close this month [and] covid is killing my cashflow. I’ll need an extension as I have minimal income coming in right now. You’re doing great work and I appreciate all you are doing. I’ll need an extension through June at least.... Thanks.” Ex.

119. Mr. Borunda agreed. “I completely understand, Caroline. My wife is in mortgage lending, so I’m witnessing the problems first-hand. Hang in there. I can draw down on the retainer ... for the time being and we can revisit things when we’re on the other side of this craziness, if that works for you.” Ex. 118. Caroline expressed appreciation both to Mr. Borunda and to Mr. Abaza (Exs. 120, 124, 132), and elected at that time to continue to proceed on an hourly fee basis. 1:197:14 - 1:203:1.

But it wasn’t long before Caroline raised this issue for the third time. 2:222:5 - 2:227:1. On August 25, 2020, Mr. Abaza sent invoice and -- without even waiting for Caroline to complain -- offered that “I can defer on a payment for time being if need me. Note, there is a lot of time that I did not bill.” Ex. 155. Caroline responded, “Nick: These bills are killing me. I can’t keep up. I can’t fund a trial. I don’t see how we are going to get through this. I don’t have a war chest. I don’t know what to do.” Ex. 155.

The next morning, August 26, 2020, Caroline sent a text to Mr. Borunda:

“Jorge, I am feeling crushed by these legal bills..... **If you guys want to refund me my money that I paid you, I’ll sign off on the 35% just like my brother did. But these bills, and being double-billed is crushing me.... If this continues, I’m going to be forced to drop this case....**” Ex. 157.

Mr. Borunda texted back promptly. “Good morning, Caroline. I’m happy to discuss your concerns. But I think a meeting is better than doing so via text or email.” Ex. 157. Caroline admitted that she “just can’t keep up” with the hourly fees although “I really am trying.” Mr. Abaza also suggested that Caroline and Mr. Borunda meet to discuss fees, and Caroline again expressed that she was “really overwhelmed and worried” about the fee issue. Ex. 155.

Mr. Borunda met with Caroline that afternoon to discuss Caroline’s concerns and to discuss payment options. When Mr. Borunda agreed to make additional accommodations and concessions regarding Caroline’s past due fees, she again elected to continue to proceed on an hourly basis. “Jorge, thanks for the conversation and all the work you are doing! You and nick

have been so great! Thanks also for working with me on payment. This is all very stressful and scary. I've got a bad migraine and hopefully Advil will help. Sta[y] safe during the storm hugs to you and your family". Ex. 157. When Mr. Abaza also agreed to make new accommodations and concessions, including cutting some of his time, Caroline seemed grateful to him as well. "Thanks Nick! Thanks for working with me on the billing! Really appreciate it!" Ex. 156.

The fourth and final time that Caroline raised the issue of switching from an hourly fee contract to a contingent fee contract followed a September 21, 2020 text exchange. 2:227:4 - 2:237:17; Ex. 165. Rich sent a text indicating that Robin had been calling various family members and saying that she was not interested in settling the Clients' lawsuit. Rich mentioned Robin obtaining "all the dirt on the kids and myself" as well as his "FBI file" and "a lot of damaging evidence" from Rich's ex-wife. Caroline, apparently as concerned about this development as Rich, observed that "She is gunning to get us to drop the case, if she is making calls like that." Ex. 165.

Shortly after discussions regarding this text exchange, Caroline again approached the lawyers and asked to switch to a contingent fee contract. The lawyers had exhaustively discussed this issue with Caroline at least three times before. Mr. Borunda discussed the issue with Caroline again, and again advised her to get her own independent advice. 2:233:17 - 2:234:11. Caroline chose to switch to a contingent fee arrangement. She received a draft contingent fee contract, considered it, reviewed it carefully (catching two typographical errors), and then signed it. Exs. 166-169.

Caroline chose to switch to a contingent fee contract because she believed -- with good reason -- that it was to her advantage to do so. She talked to Mr. Abaza and Mr. Borunda to confirm that she would no longer be responsible for the outstanding hourly fees and litigation expenses for which the lawyers had already sent invoices and expected payment. Ex. 171.

Caroline's switch to a contingent fee contract eliminated all of her explicitly-stated concerns about cash flow, crushing legal fees, keeping up with hourly invoices, paying expenses, funding a trial, not having a war chest, being forced to drop the case, feeling overwhelmed, feeling worried, being stressed, being scared and having migraines. The Lawyers (capital "L" because by this time Mr. Trevino had become part of the team) now bore those burdens -- just as they undertook the risk that they could work on the case for years and obtain no payment.

For these and many other reasons established by the evidence, Caroline's contingent fee contract (Ex. 169) is now, and was at the time it was signed, valid, enforceable, fair, and reasonable. Likewise, Richard's contingent fee contracts (Exs. 58 and/or 106) are and were valid, enforceable, fair, and reasonable. These contingent fee contracts satisfy the requirements of applicable Texas law and the Texas Disciplinary Rules of Professional Conduct, including but not limited to Rule 1.04(d). The Lawyers earned the contingent fees sought in Lawyers' Exhibit 304, which fees are fair and reasonable and are not unconscionable. The Lawyers did not breach any fiduciary duty to the Clients, and even the breaches alleged by the Clients did not adversely affect the Clients in any meaningful way and/or were not a proximate, producing, or other cause of recoverable damages. Even if one or more of the contingent fee contracts is not enforceable by one or more of the Lawyers, the Clients still owe the contingent fees sought in Lawyers' Exhibit 304 under the principal of equitable estoppel. Expert Report of Dan Tostrud (December 20, 2023) at pp. 6-16; 2:295:8 - 2:298:5; 3:561:15 - 3:564:23; 4:874:12 - 4:877:3; Ex. 304.

X. THE CLIENTS' "CASE WITHIN A CASE" AGAINST ROBIN

Caroline's decision to switch to a contingent fee contract facilitated a significant additional benefit both to her and to Rich: the addition of Mr. Trevino to the Clients' legal team. Mr. Trevino was hired to take the case to trial. When Mr. Borunda had to return to Mexico to attend to a family emergency and then contracted Covid-19, Mr. Trevino continued and

expanded the Lawyers' discovery efforts and trial preparations. Although Robin's lawyer, to everyone's surprise, raised with Mr. Trevino the possibility of scheduling a second mediation, those efforts got little traction and the Lawyers and the Clients agreed that it was more beneficial to gather additional information instead. 4:758:23 - 4:762:4.

Unfortunately, however, much of the information gathered was not good for the Clients' case. 4:762:5 - 4:772:8; 1:167:1 - 1:168:14; 1:204:1 - 1:207:21. Rich and Caroline had assured the Lawyers that everyone in the family "hated" Robin and would testify favorably both regarding her undue influence and Dr. Allison's lack of capacity. Those assurances proved false. During her deposition, Rich's ex-wife Kim did not support the Clients' positions on these issues. Conversations with Rich's children did not yield helpful evidence. Additional medical records obtained contained no notes or other information to support a lack of capacity argument, leaving the Lawyers with hundreds of pages of medical records and one reference in one 2014 record that Dr. Allison had been having memory issues for a year or so. The Lawyers subpoenaed a pre-marital and a marital agreement, but those documents did not yield the hoped-for benefit. The corporate books and records that Mr. Trevino inspected contained evidence that Dr. Allison had been keeping partnership financial records by hand after 2013, and that Robin's involvement in Dr. Allison's business affairs did not substantially increase until after 2013.

These negative developments accentuated complications in the Clients' case that had manifested earlier. The Clients had gone years at a time with literally no contact with their father. Dr. Allison kept a file of letters to and from his children, some of which Robin used as summary judgment exhibits -- and which would likely have been trial exhibits if the Clients had not accepted Robin's last and best settlement offer at mediation. Exs. 2-6, 9, 10. One example is a lengthy 2006 letter from Caroline to her father, replete with disrespectful insults and an

interesting (and unfortunately accurate) foreshadowing that Robin would be “the only one you can count on to take care of you when you get sick or in your elder years!” Ex. 2, p. 8.

The Clients spoke of blame at the hearing. Dr. Allison noted more than once Caroline’s tendency to blame others for her problems. As merely one example:

“As usual, I have heard from you again only when you want money. You never call or write and I never hear from you on Christmas, my birthday, or other special occasions. You never send cards or gifts. You don’t seem to realize how important this is. **You have alienated yourself from every member of our family so I should not be surprised that it is now my turn. And don’t blame Robin. She has made every effort to get along with you. She has certainly treated me better than you have.**” Ex. 4.

In 2010, after Caroline told her father that she would not have anything to do with him unless he divorced Robin, Dr. Allison conveyed this to Caroline:

“I am now over the age of 70 and do not have a lot of time left. You have caused me deep sadness by your ultimatum that I divorce my wife before you will have anything to do with me again. Surely you realize by now that this is not going to happen. Someday you are going to look back and regret the time that you have wasted.” Ex. 6.

While the Clients’ “case within a case” against Robin was not unwinnable, substantial evidence existed that could have led a jury reasonably to conclude that Dr. Allison changed his estate plan for reasons other than a lack of capacity and Robin’s undue influence.

Finally, given the lack of favorable evidence from family members, medical records, and corporate documents, the Lawyers and the Clients agreed to amend their pleadings and abandon their attempt to return to the 1989 trust that would have allowed the Clients to each recover 1/2 of their father’s assets. Accordingly, a win at trial now meant that the Clients could each recover only 1/6 of their father’s assets under the 2011 trust amendments -- after the substantial carve-out for Robin. Overestimating Dr. Allison’s total assets at \$20,000,000.00 and underestimating the carve-out for Robin at \$1,000,000.00, a trial victory for the Clients would have resulted in an

award of 1/6 of \$19,000,000.00, or approximately \$3,000,000.00 for Rich and \$3,000,000.00 for Caroline.

XI. THE APRIL 13, 2021 MEDIATION AND SETTLEMENT

The parties' April 13, 2021 mediation was discussed at length during the hearing. 2:239:12 - 2:269:7; 4:772:9 - 4:819:2. The morning of the mediation was spent updating financial information regarding the current values of Dr. Allison's assets. The Lawyers had valuation information that was current through the end of 2020, but wanted updated information for certain assets through March 31, 2021 (less than two weeks before the mediation). That information was discussed and obtained.

The Clients repeatedly alleged that the Lawyers somehow fell short in their efforts to ensure that the Clients knew the total value of all assets at issue in their dispute with Robin. This allegation fails for several reasons, including the fact that the Clients have produced no evidence of a single asset -- or a single dollar -- that the Lawyers missed.

The Clients also asserted that they thought they were receiving cash rather than a brokerage account. The Lawyers explained that Robin had rejected the Clients' demands for a cash-based settlement, and that Robin's last and best settlement offer included a brokerage account at Fidelity. Before any of the Lawyers were involved, Caroline had requested from Robin information regarding "bank accounts and brokerage accounts" -- and had also asked Robin to become a co-trustee of the trusts. Ex. 40. In August 2019, Caroline had informed Mr. Borunda and Mr. Abaza that "My dad held brokerage accounts at vanguard and fidelity." Ex. 67. In September 2019, Mr. Borunda mentioned in an e-mail to the Clients that they had "both mentioned investment accounts with significant assets." Ex. 69. The Clients understood that their settlement recovery was to include a brokerage account that contained cash and securities.

The Lawyers and the Clients also discussed both tax issues and attorneys' fees issues -- and these issues are explicitly addressed in MSA item 3.1t). Ex. 193, p. 5. With respect to capital gains taxes, the cash in the accounts allocated to Robin as part of the Marital Trust included proceeds of the sales of apartment complexes that had sold for more than their tax basis. Accordingly, there were potential capital gains issues with the cash in the accounts allocated to Robin, just as there were with the assets in the brokerage account allocated to the Clients.

After full explanation by the Lawyers and input from the mediator, the Clients made an informed decision to accept Robin's last and best offer to settle the case. To be sure, the Lawyers agreed with the Clients' informed decision; but it was the Clients' decision. The Clients' settlement recovery -- guaranteed to be at least \$9,500,000.00, and which grew to more than \$10,800,000.00 by December 2021 -- thus significantly exceeded their best day at trial, which again was a combined recovery of perhaps slightly more than \$6,000,000.00.

The MSA defined Robin both in her capacity as a trustee and also in her capacity as an individual. Not so for the Clients. Rich is defined in the MSA only in his individual capacity and the same is true for Caroline: neither of them was a trustee at that time. So what did Rich and Caroline, in their individual capacities, recover pursuant to the MSA? In addition to various items of personal property, Rich and Caroline -- in their individual capacities -- "have the right to access all principal and income from the Family Trust" except for a \$1,000,000.00 holdback for their children's educational expenses. The MSA provided that the Clients would be named as co-trustees of the Family Trust, but if either Rich and/or Caroline didn't want to serve as a trustee, then someone else could be appointed and the MSA still provided that Rich and Caroline -- in their individual capacities -- "have the right to access all principal and income from the Family Trust" except for the \$1,000,000.00 holdback.

XII. THE CLIENTS WORK TO GET THE MSA APPROVED

In the immediate aftermath of the settlement, Caroline sent two e-mails expressing concerns. Mr. Trevino met with the Clients at a restaurant in Sugar Land and addressed any concerns raised by Rich or by Caroline. At the conclusion of this dinner meeting, the Clients expressed their understanding of, and appreciation for, the settlement recovery that they had achieved. 4:819:3 - 4:824:20. Caroline even took photos. Ex. 200



After sending the photos to Mr. Trevino after dinner, another text message from Caroline the next day exclaimed, “We are excited! Thanks for everything you guys have done!” Ex. 201.

Over the next couple of months, the Lawyers and the Clients worked cooperatively to obtain court approval of the MSA. 4:824:21 - 4:827:14. Mr. Trevino drafted consents for Rich’s children and sent them to the Clients, asking whether the Clients wanted him to contact the

children or “if you think it is better coming from you. Basically, the consent agreements are to make sure the kids are aware of the settlement and are fine with everything.” Ex. 203. Rich chose to take the lead on communicating with his children -- although he tried to deny it at the hearing. 5:1179:2 - 5:1183:23. Hunter returned his consent form to Rich with a note that said “Here is that form that you requested.” Ex. 207. Rich informed Mr. Trevino that his other two children, “Erik and Ella are going to consult an attorney before signing.” Ex. 207. It is unknown whether they did or didn’t do so, but all three eventually signed the consent -- which read in part that “I have had the opportunity to review [the MSA] and have it explained to me to my satisfaction by the attorney of my choosing.” Exs. 206, 207, 208, 210, 211.

Caroline wanted to be sure that all issues regarding “baby Kensington” were addressed, and communicated with Mr. Trevino regarding the guardian ad litem. Ex. 202. She was also concerned that Rich’s ex-wife Kim “wants to derail everything and ... just needs to be ignored.” Ex. 204. In May, Caroline formed Kensington Station, L.L.C., her sole member LLC that owns some of the houses in the real estate portfolio that she has amassed since the settlement. She voiced no complaints about the settlement when Mr. Trevino delivered the paintings that the Clients received as part of their recovery. The Lawyers consulted with tax advisors to try to minimize any tax burden of the settlement on the Clients by offsetting capital gains against attorneys’ fees. Ex. 217.

On June 14, 2021, with the consent and approval of every person who did or might have an interest in the settlement, Judge Weldon Copeland approved the MSA and gave the parties two weeks to sign all documents necessary to effectuate the settlement. Ex. 220.

At that point, the Clients began “ghosting” the Lawyers, refusing to meet and/or to discuss the final settlement documents that were supposed to be signed before the end of June. 4:827:15 - 4:830:2; 4:872:8 - 4:874:11; 2:283:10 - 2:294:20. The communications between the

Lawyers and the Clients begin to devolve, and it became apparent that Caroline didn't have a problem with the settlement, she just didn't want to honor her contingent fee contract. Ex. 244. In October 2021, Caroline flatly stated that "fees must [be] negotiated before anything further is signed" and offered "a buyout \$100k each. Including my brother.... I'll pay cash. And before my brother and I sign anything further." Ex. 251. Robin's attorney eventually filed a motion to show cause and then a motion for enforcement and for sanctions. Exs. 254, 262.

XIII. THE CLIENTS FIRE THE LAWYERS BEFORE THE FINAL SETTLEMENT DOCUMENTS ARE SIGNED

On November 3, 2021, Judge Copeland conducted a video hearing regarding enforcement of the MSA. By this time, the Clients had relieved the Lawyers of their duty -- and authority -- to represent them. Caroline required Mr. Borunda to appear at the hearing and tell Judge Copeland that Caroline "had lost confidence in [his] representation" and that Caroline had "retained, recently, separate counsel to help her review and understand the pending documents" and wanted a continuance of the hearing "to allow sufficient time for that new counsel to review the documents." Ex. 255, 5:15. Caroline attended the call by phone, but not video, to ensure that Mr. Borunda followed her instructions.

By this time, Caroline had already called Robin's lawyer directly to discuss the final settlement documents. Ex. 255, 3:13. Caroline told Judge Copeland that the Clients "have expressed to our attorneys the changes we wanted made to the documents. Those have not been implemented." Ex. 255, 10:25. However, about five minutes later, she admitted to Judge Copeland that Rich had never seen the documents but was receiving them that day: "This is the first time he's actually looking at the documents." Ex. 255, 15:03. Judge Copeland set another hearing for December 1, 2021 to allow the Clients to hire new counsel.

By no later than November 10, 2021, Caroline had hired a lawyer named Jeff Crouch to review the final settlement documents. Ex. 257. By no later than November 15, 2021, Caroline

had hired The Kassab Firm to sue the Lawyers -- although she certainly didn't disclose that fact to them. Ex. 258. The extent to which Mr. Crouch and Mr. Kassab collaborated in advance of the December 1, 2021 hearing (and in advance of the Clients' subsequent signing of the final settlement documents about a week later) is unknown to the Lawyers.

Having had at least three weeks to prepare, Mr. Crouch appeared as counsel for the Clients at the December 1, 2021 hearing. When Judge Copeland asked Mr. Crouch whether the Clients should sign the final settlement documents as currently drafted, Mr. Crouch stated, "There are some documents that I believe we could go ahead and sign that I don't have any issues with." Ex. 266, 3:07. Mr. Crouch added that "the issue is the form of some of these documents and whether or not they adequately, contain adequate provisions to ensure the success of the closing of the settlement." Ex. 266, 10:54. He indicated that "There's not going to need to be wholesale changes, judge, but there's going to need to be some changes to some key documents -- not all of them, probably two to three at the max -- because they don't contain sufficient provisions to accomplish the goal." Ex. 266, 11:49. Judge Copeland set another hearing for December 7, 2021.

So, during the weeks that he represented the Clients after the Lawyers had been relieved of their duties and authority, what did Mr. Crouch do to "ensure the success" of the MSA and to "accomplish" the Clients' "goal"? He made minor modifications to one of the final settlement documents. Ex. 270, 3:30. At the final December 7, 2021 hearing, Mr. Crouch approved the final settlement documents as the attorney for the Clients. He did not, however, make any of the arguments or allegations that the Clients or their expert witnesses have made in this arbitration proceeding. He did not say that anything in the final settlement documents was unclear, lacking, or problematic. He did not say that there were any disputes or deficiencies that needed to be resolved by court ruling. He did not say that the court needed to sign any additional orders or

take any additional action. Caroline signed the final settlement documents on December 7, Rich signed on December 8, and Caroline sued the Lawyers on December 9, 2021. Exs. 275, 280.

XIV. THE EXACT RELIEF THAT THE LAWYERS ARE REQUESTING

The Lawyers respectfully request that the arbitrator enter a final award against the Clients for the contingent fees and case expenses set out in Lawyers' Exhibit 304 -- specifically, against Rich for \$1,416,915.68 and against Caroline for \$1,352,149.80 -- plus pre- and post-judgment interest, attorneys' fees incurred in this arbitration proceeding, all fees, costs, and expenses relating to this arbitration proceeding, and any other damages or relief to which they are entitled. The Lawyers also respectfully request that the final award require the trustee(s) of the Allison Family Trust to liquidate sufficient trust assets to pay the award and extend the "freeze" on the Charles Schwab One account of the Minaki Limited Partnership referenced in the arbitrator's September 14, 2023 order until the final award and all accrued interest has been paid in full.

Respectfully submitted,

THE LITTLE LAW FIRM, P.C.

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CERTIFICATE OF SERVICE

This is to certify that a true and correct copy of the above document has been served upon all parties in accordance with the applicable rules of the American Arbitration Association on this the 23rd day of February, 2024.

/s/ Joseph R. Little

Joseph R. Little

Exhibit A

Caroline Allison - October 11, 2023

1 Q. I'm showing you what we've marked as Exhibit 10
2 to your deposition. It's the Minaki Limited Partnership
3 Schwab account statement from August of 2022. Do you
4 see that?

5 A. Yes, I do.

6 Q. I want you to turn to page 10 of 12. Down at
7 the bottom it says Rich 173, just so you and I can make
8 sure we're on the same page.

9 A. Okay.

10 MR. KASSAB: Are you there?

11 THE WITNESS: I think so, yeah.

12 Q. (BY MR. LITTLE) Page 10 of 12, Rich 173?

13 A. 173, yes.

14 Q. Okay. At the top of the page it says there was
15 a client request to pay funds in the amount of
16 \$309,583.95 out of the partnership Schwab account. Do
17 you see that?

18 A. I see that, yes.

19 Q. Who made that request?

20 A. So, the trustee of the trust made that request.

21 Q. Meaning you and Rich or just one of you?

22 A. So, the trustee of the trust made that request;
23 and so, as co-trustees, we make decisions together.

24 Q. So, you and Rich both requested that transfer
25 out of the account?

Caroline Allison - October 11, 2023

1 A. So, for that transfer, it was -- as trustee of
2 the trust, I, as trustee, my duties as trustee, had made
3 that request.

4 Q. And why?

5 A. So, if you go back in time, the market tanked a
6 lot. During that year, I think it was off; and this
7 account is heavily invested in tech stocks in
8 particular. And the market tanked significantly by the
9 springtime. And so, by a little later in the year there
10 was some recovery of the market to lock in or attempt to
11 lock in some of the -- the market coming back, a rebound
12 as they say in the market, to liquidate some funds and
13 lock in some gains and especially knowing that there
14 were going to be big tax bills and that sort of thing.
15 Lots of bills, lots of legal fees and ...

16 Q. Where did that \$309,583.95 go?

17 A. So, that was a check that was made payable to
18 Minaki.

19 Q. To the limited partnership?

20 A. To the Minaki Limited Partnership.

21 Q. And it went into what, some kind of operating
22 account?

23 A. Uh-huh.

24 Q. Yes?

25 A. Yes.

Caroline Allison - October 11, 2023

1 Q. And then was used for what?

2 A. And then it was used to make a loan to
3 Kensington Station.

4 Q. Your sole-member L -- or one of your sole-member
5 L.L.C.s?

6 A. Yes.

7 Q. And what did your sole-member L.L.C. do with the
8 \$309,583.95 that it was loaned by the Minaki Limited
9 Partnership?

10 A. It made investments.

11 Q. Bought some houses?

12 A. It made real estate purchases.

13 Q. What specifically?

14 A. It made real estate purchases. There were a
15 few, but I -- I'm not sure of the addresses. I'd have
16 to look and see what was purchased.

17 Q. Where would you find that information?

18 A. So, there was -- I mean, I'd have to look back
19 at the records of what was purchased.

20 Q. The \$6 million that was loaned to Jet Lending --
21 do you remember we talked about that earlier?

22 A. Yes, I remember.

23 Q. You talked about kind of reallocating a little
24 bit to bring in some interest because the partnership
25 loaned \$6 million at 8 percent, correct?

Caroline Allison - October 11, 2023

1 no money from trust that's in my personal pocket.

2 Q. How many of the homes purchased through
3 Kensington Station, L.L.C., were made with money that
4 traces back to either interest income from the loan to
5 Jet Lending or maybe even the principal of the \$6
6 million that was loaned to Jet Lending?

7 A. I'm sorry. What was the question again?

8 Q. How many of the properties held by Kensington
9 Station, L.L.C., were financed or purchased with funds
10 that either relate to the income interest received from
11 the loan to Jet Lending or maybe even were financed by
12 the principal?

13 A. I couldn't answer that question.

14 Q. Who could?

15 A. I mean, there's properties that come and
16 properties that go.

17 Q. And who was --

18 A. When you -- when you exit them, they're off the
19 books.

20 Q. Who decides whether the properties come and go?
21 You as the sole member of your sole-member L.L.C.s?

22 A. So, as the sole member of my L.L.C.s, I make
23 those decisions.

24 Q. So, the \$6 million that was loaned to Jet
25 Lending, do you know whatever happened to that \$6