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The Honorable Anne Ashby
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VIA EMAIL: AASHBY@ANNEASHBYLAW.COM

RE: *Caroline Allison and Richard Allison ("Clients") v. Borunda, P.C., et. al.*
CAUSE NO. 03-22-0002-4507 – American Arbitration Association

Dear Arbitrator Ashby:

Thank you for the opportunity to present to you this *Expert Report* as a testifying expert witness in the above referenced matter in lieu of giving live testimony, I am honored to do so. This Report is a comprehensive analysis of the standard of care for attorneys involved in estate and trust litigation matters on a contingency fee. My design is to provide you with my analysis and opinion testimony drawn on more than thirty (30) years of practicing exclusively in litigation and almost exclusively in estate and trust litigation to aid you in deciding the above referenced case and for this *Expert Report* to be a ready reference regarding the standard of care and its application to the facts of this case.

While a new medical doctor's oath begins with "Do No Harm," an attorney must do more than avoid harm, he or she must take affirmative action to shield and benefit the client. In practicing estate and trust litigation an attorney must actively and affirmatively work to protect and pursue and secure the client's inheritance rights to the fullest extent possible. The law of Wills and trusts is governed by statutes and case law interpreting those statutes. Generally, it is an area of strict statutory enforcement because it is designed to protect and advance the fundamental right of all of us to dispose of our property as we desire when we are no longer able due lack of authority, incapacity or death. *See Archer v. Anderson*, 556 S.W.3d 228, 234 (Tex. 2018) ("*Fundamentally, probate law protects a donor's right to freely dispose of his property as he chooses.*"). Without strict compliance, estate plans and trusts could be "dust in the wind" without any adherence to the substance of the settlor's or testator's desires, which, ultimately, is the "Rulebook" for how their property should pass. An attorney operating in this specialized area knows, or should know, the importance of such adherence because the money and rights at stake are often substantial.

I was hired by Caroline Allison ("**Caroline**") and Richard Allison ("**Rich**") (collectively, "**Rich & Caroline**" or "**Clients**") as a testifying expert regarding the standard of care of her prior attorneys, Nicholas Abaza ("**Abaza**") of the LAW OFFICES OF NICHOLAS ABAZA, P.C. ("**Abaza, PC**"), Jorge Borunda ("**Borunda**") of BORUNDA, P.C. ("**Borunda, PC**") and Michael Trevino ("**Trevino**") and the Law Offices of Michael A. Trevino, PLLC ("**Trevino, PLLC**") (collectively, "**Attorneys**") in relation to (i) the Estate and Trust of their father, Dr. Richard Allison, Sr., (ii) a settlement with his surviving spouse, Robin, and (iii) the modification of trusts and activity after the settlement. The rate of my compensation for these services is \$650.00 per hour.

The standard of care requires an attorney to review and understand the area of law of the case in which the attorney is involved and, if a settlement opportunity arises, to understand the law well enough to negotiate a deal, to understand the terms of any settlement reached, to accurately write

and paper it, and to accurately advise the client of all rights and interests associated with rejecting it or entering it. Alternatively, if the attorney does not understand the area of law or the terms or a term of a settlement agreement, the standard of care requires the attorney to identify area of the representation they do not understand and to seek counsel from other attorneys or professionals to supply that knowledge, so they can properly advise the client on the subject and the agreement to allow them to make an informed decision about both.

In this case, the standard of care for Attorneys representing Clients in relation to their father's substantial estate was not met by Attorneys and Clients have been damaged as a result. Attorneys did not give proper and good legal advice in relation to the rights and interests of Clients in their father's Estate and Trusts, they did not give correct advice regarding the negotiation and, later, settlement of their claims, they did not accurately memorialize the settlement reached and, later, making matters worse, demanded to be rewarded for their sub-par legal work by being paid substantial fees, based upon their incorrect contingency fee agreements that were not commensurate with the work done or the result achieved. As a primary point, the Attorneys here advised Caroline and Rich Allison that a mediated settlement agreement would allow the two of them to have unfettered access to all Family Trust assets except \$1,000,000.00, this advice, for reasons detailed below, was incorrect, and Caroline and Rich Allison do not have such unfettered access. Instead, they gave up other valuable rights and assets.

My qualifications are in my *curriculum vitae* attached hereto as **Exhibit A**. A list of documents reviewed in preparing this report is attached hereto as **Exhibit B**.

Scope of Engagement. Rich & Caroline hired me to examine the facts surrounding the negotiation and implementation of the *Mediated Settlement Agreement*, signed on April 13, 2021 (the “MSA”), in the Trust Lawsuit, and to formulate opinions and to prepare this *Expert Report* focusing on whether Attorneys met the required **standard of care** related to, at least, the following:

- A. Legal Capacities. Whether Attorneys made the effort to determine the proper legal capacities of the respective Parties when representing Clients, drafting the *MSA* and advising Clients to enter it.
- B. Advice. Whether Attorneys gave proper advice regarding their interests in the father's Trust and property and whether it was in their best interests to enter the *MSA* considering the desires of Clients when it was negotiated, prepared, and signed.
- C. Draftsmanship. Whether Attorneys met the standard of care in drafting the *MSA*, by ensuring the written terms accurately captured and matched all the negotiated terms, namely, whether Attorneys objected to ambiguous or unclear terms during the negotiated terms, whether the draft captures all material terms negotiated and whether the *MSA*, as written, accomplishes all the goals and expectations of Clients vis-a-vis their understanding of the settlement negotiated, along with the numerous errors in the *MSA*.
- D. Failure to Seek Expertise. If an attorney meets an issue outside of his expertise, the attorney must take action to obtain advice or answers from a qualified source to any

questions and postpone having the client sign any settlement agreement until the unknown issue is resolved and, as in this case, if a settlement agreement presents trust questions, tax questions, or other issues unfamiliar to the attorney that attorney seeks outside counsel to obtain the advice needed to address those issues.

- E. Contingency Fee Arrangement. Whether Attorneys met the standard of care in drafting and entering their contingency fee arrangement with Clients and the various capacities of them and Attorneys and their law firms, in calculating their fees.
- F. Legal Malpractice/Fiduciary Duties. Whether Attorneys breached their standard of care and committed legal malpractice harming Clients, which, because of the anti-fracturing law, collectively, encapsulates negligence, fiduciary duties, and breach of contract, such as whether they fully disclosed all information that materially affected Clients' interests and were always watching out for Clients' best interest, instead of their own, whether they breached their duty of loyalty and good-faith and fair dealing, among others.

Factual Summary

The Richard Allison (Revocable) Trust. Richard Allison (“**Richard**”) created the Richard Allison Trust on May 26, 1989 (the “**RA Trust**”), naming himself Trustee and placing the bulk of his assets and investments in the RA Trust. Richard had two children from a prior marriage: Rich & Caroline. For several years, Rich & Caroline were to be the primary beneficiaries of the RA Trust but, later, Richard married Robin Alice Bump n/k/a Robin Alice Allison (“**Robin**”). The RA Trust was amended and restated several times, most recently on April 11, 2013 (the “**Restated RA Trust**”), and it made Robin a grantor, a Co-Trustee with Richard, and a lifetime beneficiary of all assets owned by Richard (and the Restated RA Trust) at the time of his death. The Restated RA Trust relegated Rich & Caroline to contingent remainder beneficiaries. Also on April 11, 2013, Richard executed his *Last Will & Testament* (the “**Will**”), leaving the bulk of his Estate to the Family Trust, one of many sub-trusts to be created under the Restated RA Trust upon the first death of a grantor.

The Restated RA Trust sub-trusts included: (i) an Exempt and Non-Exempt Surviving Grantor's Trust, revocable trusts held for the benefit of the surviving grantor; (ii) an Exempt and Non-Exempt Marital Trust, held for the benefit of the surviving grantor; (iii) the Allison Family Trust, a trust held for the benefit of the surviving grantor and other listed beneficiaries; (iv) a contingent Special Needs Trust; and (v) an Exempt and Non-Exempt Descendants' Trust. Robin was to be named the sole Trustee of all the sub-trusts created under the Restated RA Trust and the sole beneficiary of several of them, effectively granting her control over, and the sole benefit of, Richard's entire Estate. The Restated RA Trust expressly provided Rich was never to serve as a trustee of any sub-trust created thereunder.

The Contest. Richard (“**Decedent**”) died on April 17, 2017 (“**Decedent's DOD**”). On July 22, 2019, Robin filed her *Application to Probate Will of Richard Gerard Allison and for Letters Testamentary* (the “**Application**”) in Probate Court, No. 1 of Collin County, Texas, in Cause No.

PB1-1332-2019 (the “**Estate Cause**”). Rich & Caroline wanted to understand the terms and validity of Richard’s RA Trust amendments and Will, and subsequently determined to hire counsel to represent them. On May 29, 2019, Caroline formally executed an “Engagement Agreement for Legal Services,” hiring Borunda and Abaza to represent her on an hourly basis (the “**Hourly Agreement**”) that did not include an arbitration clause, such that Texas law would apply to all disputes between her and Attorneys. In June 2019, Rich also hired Borunda and Abaza to represent him but on a contingent fee basis agreeing to pay them thirty-five percent (35%) of the property recovered on Rich’s behalf, property he would not otherwise been entitled to (“**Rich’s Contingency Fee Agreement**”). Rich’s Contingency Fee Agreement provided Rich would split any attorneys’ expenses equally with Caroline (meaning, Caroline would effectively pay 50% of all attorney’s fees incurred in the Contest) and that Borunda and Abaza would split their contingent fee sixty percent (60%) to Borunda and forty percent (40%) to Abaza; neither Borunda’s nor Abaza’s respective law firms are associated with Rich’s Fee Agreement; additionally, neither Trevino nor his law firm ever signed a contingency fee agreement with Rich.

Eventually, the Attorneys told Caroline and Rich that the Will was problematic and needed to be challenged, along with the RA Trust amendments. The Clients followed that advice, and the Attorneys filed pleadings making those challenges (the “**Contest**”).

The initial arrangement, with Caroline paying Attorneys hourly and Rich on a contingent basis, lasted until October 2020 after Caroline had paid approximately \$70,000.00 in attorneys’ fees and expenses and requested a contingency arrangement if she would be refunded what she had paid. Attorneys agreed to switch from an hourly rate to same thirty-five percent (35%) contingency fee percentage as Rich using a “Change to Contingency Fee Agreement” (the “**Caroline’s Contingency Fee Agreement**”) and it added Trevino as one of her Attorneys as well; Caroline signed it on October 16, 2020. But Caroline was not refunded what she had paid. Rather, Caroline would only be reimbursed for any attorneys’ fees she had already paid to Attorneys up to that point from any recovery. As it would turn out, Caroline’s Contingency Fee Agreement contained a provision Rich’s did not, it said the percentage would be applied to “the amount (money and property) recovered **and/or kept** that Caroline Allison has an interest therein,” somehow staking a fee on property Caroline already owned and charging her a fee if she “kept” it. Caroline’s Contingency Fee Agreement also prohibited her from entering any settlements without Attorneys’ approval and consent – a direct ethical violation. It also included an arbitration clause requiring arbitration to resolve disputes between them. After representing to Clients that the Contest could drag on for years and culminate in a costly trial, Attorneys agreed to mediation with Robin and her attorneys to occur in April 2021. Clients wanted two things out of mediation: (i) some of the inheritance they believed they were entitled to from Richard’s Estate, free, outright, and not held in trust; and (ii) a complete “divorce” and severance from Robin.

The Mediation. The Mediation took place on April 13, 2021, and was reportedly grueling, lasting more than twelve (12) hours and going late into the night before reaching a settlement. During the Mediation, both sides drafted the *MSA* with the intention to memorialize the results of the mediation. The *MSA* was a complex legal document and difficult for Clients to understand, especially after a long day and late at night. Clients were relying on Attorneys’ advice, but the advice they received turned out to be incorrect. The *MSA* had multiple errors and did not reflect or accurately capture the negotiated terms being described by the lawyers in their testimony;

ultimately, it failed to accomplish Clients' intentions. Attorneys were lacking in regard to prioritizing their Clients' best interests, either failed to competently read or understand the *MSA*, or knowingly advised Clients to sign an incomplete, ineffective, and deficient settlement agreement that did not accurately reflect and accomplish Clients' stated goals or all the above. Because of the deficient *MSA*, Clients have received no distributions of settlement funds and they are at risk of incurring significant tax liabilities or losing tax benefits. Clients did not obtain a full severance from Robin but, instead, are arguably Robin's fiduciary. In sum, rather than accomplishing Clients goals through mediation and the *MSA*, Clients ended up in a far worse position because of Attorneys' sub-standard work and advice than they were before the Litigation (having assets still restricted in the Family Trust without the unrestricted discretion to distribute as promised while giving up assets).

The Fee Demand. After negotiating and advising Clients to enter into the *MSA* that failed to accomplish Clients' goals, Attorneys soon demanded their contingent fee from Clients, but they were missing key information on many levels. Abaza testified as follows:¹

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1 advance of the first mediation. But it was -- what I
2 was referencing in that spreadsheet was, I think, the
3 limited partnerships, primarily. We knew everything
4 that there was in this estate.
5 Q. And let me stop you there. And I want to ask
6 you this question, because I think it's important. So
7 the mediation day was what?
8 A. April 13, 2021.
9 Q. So today is November 14 of 2023, right?
10 A. Yes.
11 Q. So we are two and a half years postmediation?
12 A. Correct.
13 Q. And we've been litigating this deal for almost
14 two full years now, the lawyers and the clients, right?
15 A. Yes.
16 Q. So in that two-and-a-half-year period, almost
17 two years of which has been spent in active litigation
18 in this arbitration matter that we're here on today --
19 A. Yes.
20 Q. -- has anybody ever brought up one asset or one
21 dollar in one account that you didn't know about when
22 all the parties went to mediation in April of 2021?
23 A. No.
24 Q. Not one?
25 A. Not as far as I've seen. No.

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1 Q. Not as an asset?
2 A. No.
3 Q. Not a bank account?
4 A. No.
5 Q. Not a gold coin?
6 A. No.
7 Q. Not a nothing?
8 A. Nothing. Look, this is one of the things
9 that's very interesting to me. We've been very
10 criticized for the notion that we should have gone out
11 and gotten forensic accounting and that our failure to
12 do so is a deviation from the standard of care. I think
13 that's nonsense.
14 Q. I'm sorry. You said you think that's --
15 A. Nonsense. We pored over all the financial
16 records in this case that we've procured, the
17 accountings. We interviewed our clients about their
18 understanding of the assets. We did a lot of discovery
19 on this stuff. And at no point did anything come to our
20 attention that made us think something's missing,
21 something's wrong, we need to hire a forensic accountant
22 to go and ferret this out.
23 And here we are, as you mentioned, a long
24 time later. My understanding is that Rich and Caroline
25 have spent something like a hundred-plus thousand

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1 dollars on their forensic accounting, their examination
2 of this thing. They've had discovery and subpoena power
3 for a long time now. They've come up with nothing, not
4 one single solitary thing. They've come up with a very
5 interestingly crafted piece of fiction. And we can get
6 into that later, if you want.
7 Q. We will.
8 A. But there's nothing there. We knew what was in
9 the estate. We knew the values of those assets.

¹ ARBITRATION TRANSCRIPT – NICK ABAZA TESTIMONY, V2 at 241:5-243:9.

Apparently, at a time when he really did not know the status of the need for information before the mediation and in the trial preparation, he testifies they were not missing a single piece of information and that Clients' claims about Attorneys' lack of performance, to him, were "fiction", which underscores his complete lack of diligence and knowledge of the status of discovery pre-mediation, two-and-a-half years post-mediation. While the other attorneys, even as late as the *Mediation Letter*, were claiming the opposite. Going into the mediation, Attorneys admitted to the mediator, Jeff Yates, they had "significant discovery left to conduct and [] intend to pursue motions to compel ... if settlement is not achieved."² The existence of this knowledge gap should have been disclosed to Clients and been a factor in whether to enter any settlement because attorneys could not accurately calculate the assets at issue and any alleged gross recovery without such information.³ One critical item about which the Lawyers had no information was Robin's personal net worth, which was (1) the trigger to evaluating the likelihood she would ever be able to invade and drain the corpus of the Marital Trust and then move on to the assets in the Family Trust, and (2) necessary to evaluate any distribution decisions she would make if Caroline and Rich simply decided to ask for a distribution, which the Lawyers never counseled them to do.

To extract their fee from Clients and knowing Caroline was disputing the same, Attorneys hired Joseph R. Little to intimidate Rich, and, on February 2, 2022, Mr. Little sent a letter to Rich demanding Rich remit \$1,557,500.00 to Attorneys within thirty (30) days (the "**Demand Letter**"). *Clients' Exhibit 248*. The Demand Letter calculated the "reduced" contingency fee amount based on various, unsupported, figures, including a Fidelity Account, which Attorneys valued based on an unverified representation to be "at least \$9,500,000.00." The Demand Letter was entirely deficient, admittedly non-compliant with Texas Disciplinary Rule of Professional Conduct Rule 1.04(d), and overestimated Attorneys' purported contingent fee based on improper figures and an incorrect calculation. It was Attorneys' duty, as fiduciaries, to calculate the Recovery and their fees correctly. Despite knowledge of the issues presented by the Demand Letter, notwithstanding the unconscionable fee agreements, Attorneys excessively claim that the \$1,557,500.00 demanded was less than the "just amount owed."

More than a year later, on August 17, 2023, Borunda sent a letter to Rich & Caroline which was presented as a settlement statement, "pursuant to Texas Disciplinary Rules of Professional Conduct 1.04 and 1.14, and any other applicable rules," for their "review, consideration, revision, and approval." (the "**Settlement Statement**"). *Clients' Exhibit 244*. The Fidelity Account was again used but, this time, it was identified as the Minaki LP Account, for which Borunda stated the balance was \$9,900,609.53, as of April 14, 2021 (mediation date). Borunda then admits Attorneys made a miscalculation in the ownership percentage of Minaki LP and, to account for it, Attorneys "agreed to reduce the recovery by 3%." Attorneys do not explain how a reduction of the Minaki LP interest by 3% correlates with a 3% decrease in the Minaki LP account, again failing to meet their duty of full disclosure. Attorneys then effectively admitted that they had previously and, mistakenly, included in their earlier fee demands a portion of a \$1 million of the Recovery that was supposed to be set aside for the grandchildren's education ("**\$1M Set Aside**"). Attorneys then make additional deductions of partnership interests they mistakenly included – interests which were conveyed pursuant to the *MSA* they advised Clients to execute, and which Attorneys should have known not to include before making any demand for attorneys fees.

² *Clients' Exhibit 157*.

³ *See*, Discussion of Fee Demands, at 5-6, *supra*.

Rich & Caroline could not have given informed direction to their counsel or informed consent to a settlement without knowing the value they would receive, and Attorneys admit they lacked that vital information both at mediation and during the subsequent contingency calculations. This is highlighted by Attorneys admitting they did not have all the information necessary to calculate their contingency percentage with accuracy (or changing the number multiple times) and blaming the information gap on Rich & Caroline. Attorneys estimated various partnership interest amounts to be \$300,000 and made a further reduction for a sale of assets that occurred before the settlement. After accounting for those admitted prior errors and adding expenses (\$32,574.42), Borunda reached a gross recovery of \$8,036,165.66 with Rich & Caroline owing \$1,416,915.68 and \$1,352,149.80, respectively.

So, a year and a half after sending the first demand, Attorneys finally figured out what they believe is an accurate contingency fee computation. How would Clients have ever paid any amount prior to that date, i.e., August 17, 2023? They could not have. Attorneys sued their Clients on December 7, 2021 seeking 35% of the value of the Family Trust, thereafter making an incorrect and reportedly “reduced” demand of \$1,557,500.00 on February 2, 2022, and both of these prior assertions were actually higher than the demand in the subsequent settlement statement not given until August 2023. This is all below the standard of care.

The same day the Settlement Statement was sent, Attorneys’ counsel, Joseph Little, sent a follow up letter claiming that the Attorneys did not have to omit the education “hold back” from their fee calculation, but did it out of courtesy. This was completely improper and deceptive as the Lawyers had no fee agreement with the grandchildren. Little then stated Rich really owed “in excess of \$3.3 million” after applying “pre-judgment interest” and that every day Rich did not pay, another \$733 would be added to the fees Rich purportedly owed. These representations in Borunda’s Settlement Statement are a sham, and, as an excessive fee and interest demand, become another breach of the standard of care owed to Clients.

As shown further below, the Lawyers did not effectuate a distribution for Clients. Caroline and Rich have not received any personal distributions. They cannot, as promised, make an unfettered, outright distribution of everything but \$1,000,000.00 in the Family Trust. And there are multiple other errors associated with the MSA that remain in place.

AUTHORITY

Trust Code and Cases: The Texas Trust Code is found in Texas Property Code §§111.001 through 117.012.

TEX. PROPERTY CODE §111.004(2), (4) and (18). Definitions.

- (2) “Beneficiary” means a person for whose benefit property is held in trust, regardless of the nature of the interest...
- (4) “Express trust” means a fiduciary relationship with respect to property which arises as a manifestation by the settlor of an intention to create the relationship and which subjects the

person holding title to the property to equitable duties to deal with the property for the benefit of another person...

- (18) “Trustee” means the person holding the property in trust, including an original, additional, or successor trustee, whether or not the person is appointed or confirmed by a court.

TEXAS PROPERTY CODE §112.034. Merger.

- (a) If a settlor transfers both the legal title and all equitable interests in property to the same person or retains both the legal title and all equitable interests in property in himself as both the sole trustee and the sole beneficiary, a trust is not created and the transferee holds the property as his own. This subtitle does not invalidate a trust account validly created and in effect under Chapter 113, Estates Code.
- (b) Except as provided by Subsection (c) of this section, a trust terminates if the legal title to the trust property and all equitable interests in the trust become united in one person.
- (c) The title to trust property and all equitable interests in the trust property may not become united in a beneficiary, other than the settlor, whose interest is protected under a spendthrift trust, and in that case the court shall appoint a new trustee or cotrustee to administer the trust for the benefit of the beneficiary.

TEXAS PROPERTY CODE §112.035. Spendthrift Trust.

- (a) A settlor may provide in the terms of the trust that the interest of a beneficiary in the income or in the principal or in both may not be voluntarily or involuntarily transferred before payment or delivery of the interest to the beneficiary by the trustee.
- (b) A declaration in a trust instrument that the interest of a beneficiary shall be held subject to a “spendthrift trust” is sufficient to restrain voluntary or involuntary alienation of the interest by a beneficiary to the maximum extent permitted by this subtitle.
- (c) A trust containing terms authorized under Subsection (a) or (b) of this section may be referred to as a spendthrift trust.
- (d) If the settlor is also a beneficiary of the trust, a provision restraining the voluntary or involuntary transfer of the settlor's beneficial interest does not prevent the settlor's creditors from satisfying claims from the settlor's interest in the trust estate.

Note. Remainder of statute omitted for brevity and because it is not applicable or less applicable.

TEX. PROPERTY CODE §112.054. Judicial Modification, Reformation or Termination of Trusts.

- (a) On the petition of a trustee or a beneficiary, a court may order that the trustee be changed, that the terms of the trust be modified, that the trustee be directed or permitted to do acts that are not authorized or that are forbidden by the terms of the trust, that the trustee be

prohibited from performing acts required by the terms of the trust, or that the trust be terminated in whole or in part, if:

- (1) the purposes of the trust have been fulfilled or have become illegal or impossible to fulfill;
 - (2) because of circumstances not known to or anticipated by the settlor, the order will further the purposes of the trust;
 - (3) modification of administrative, nondispositive terms of the trust is necessary or appropriate to prevent waste or impairment of the trust's administration;
 - (4) the order is necessary or appropriate to achieve the settlor's tax objectives or to qualify a distributee for governmental benefits and is not contrary to the settlor's intentions; or
 - (5) subject to Subsection (d):
 - (A) continuance of the trust is not necessary to achieve any material purpose of the trust; or
 - (B) the order is not inconsistent with a material purpose of the trust.
- (b) The court shall exercise its discretion to order a modification or termination under Subsection (a) or reformation under Subsection (b-1) in the manner that conforms as nearly as possible to the probable intention of the settlor. The court shall consider spendthrift provisions as a factor in making its decision whether to modify, terminate, or reform, but the court is not precluded from exercising its discretion to modify, terminate, or reform solely because the trust is a spendthrift trust.
- (c) The court may direct that an order described by Subsection (a)(4) has retroactive effect.
- (d) The court may not take the action permitted by Subsection (a)(5) unless all beneficiaries of the trust have consented to the order or are deemed to have consented to the order. A minor, incapacitated, unborn, or unascertained beneficiary is deemed to have consented if a person representing the beneficiary's interest under Section 115.013(c) has consented or if a guardian ad litem appointed to represent the beneficiary's interest under Section 115.014 consents on the beneficiary's behalf.

Note: Subsections (b-1), a portion of (c), (e) and (f) involve trust reformation and are intentionally omitted because they have no application to this case.

TEX. PROPERTY CODE §113.029. Discretionary Powers; Tax Savings.

- (a) Notwithstanding the breadth of discretion granted to a trustee in the terms of the trust, including the use of terms such as "absolute," "sole," or "uncontrolled," the trustee shall exercise a discretionary power in good faith and in accordance with the terms and purposes of the trust and the interests of the beneficiaries.
- (b) Subject to Subsection (d), and unless the terms of the trust expressly indicate that a requirement provided by this subsection does not apply:
 - (1) a person, other than a settlor, who is a beneficiary and trustee, trustee affiliate, or discretionary power holder of a trust that confers on the trustee a power to make

discretionary distributions to or for the trustee's, the trustee affiliate's, or the discretionary power holder's personal benefit may exercise the power only in accordance with an ascertainable standard relating to the trustee's, the trustee affiliate's, or the discretionary power holder's individual health, education, support, or maintenance within the meaning of Section 2041(b)(1)(A) or 2514(c)(1), Internal Revenue Code of 1986; and

- (2) a trustee may not exercise a power to make discretionary distributions to satisfy a legal obligation of support that the trustee personally owes another person.
- (c) A power the exercise of which is limited or prohibited by Subsection (b) may be exercised by a majority of the remaining trustees whose exercise of the power is not limited or prohibited by Subsection (b). If the power of all trustees is limited or prohibited by Subsection (b), the court may appoint a special fiduciary with authority to exercise the power.
- (d) Subsection (b) does not apply to:
 - (1) a power held by the settlor's spouse who is the trustee of a trust for which a marital deduction, as defined by Section 2056(b)(5) or 2523(e), Internal Revenue Code of 1986, was previously allowed;
 - (2) any trust during any period that the trust may be revoked or amended by its settlor; or
 - (3) a trust if contributions to the trust qualify for the annual exclusion under Section 2503(c), Internal Revenue Code of 1986.
- (e) In this section, "discretionary power holder" means a person who has the sole power or power shared with another person to make discretionary decisions on behalf of a trustee with respect to distributions from a trust.

TEXAS PROPERTY CODE §113.051. General Duties of Trustee.

"The trustee shall administer the trust in good faith according to its terms and this subtitle. In the absence of any contrary terms in the trust instrument or contrary provision of this subtitle, in administering the trust the trustee shall perform all of the duties imposed on trustees by common law."

Standard of Care & Proximate Cause – Legal Malpractice:

Cosgrove v. Grimes, 774 S.W.2d 662 (Tex. 1989) ("*Cosgrove*").

A lawyer in Texas is held to the standard of care which would be exercised by a reasonably prudent attorney. The jury must evaluate his conduct based on the information the attorney has at the time of the alleged act of negligence. In some instances, an attorney is required to make tactical or strategic decisions. Ostensibly, the good faith exception was created to protect this unique attorney work product. However, allowing the attorney to assert his subjective good faith, when the acts he pursues are unreasonable as measured by the reasonably competent practitioner standard, creates too great a burden for wronged clients to overcome. The instruction to the jury should clearly set

out the standard for negligence in terms which encompass the attorney's reasonableness in choosing one course of action over another. *Cosgrove*, at 664-665.

If an attorney makes a decision which a reasonably prudent attorney could make in the same or similar circumstance, it is not an act of negligence even if the result is undesirable. Attorneys cannot be held strictly liable for all of their clients' unfulfilled expectations. An attorney who makes a reasonable decision in the handling of a case may not be held liable if the decision later proves to be imperfect. The standard is an objective exercise of professional judgment, not the subjective belief that his acts are in good faith. To the extent that some Texas courts have recognized an exception to attorney negligence based on the subjective good faith of the attorney, those cases are disapproved. *Cosgrove*, at 665 (citing e.g., *Tijerina v. Wennermark*, 700 S.W.2d 342 (Tex. App.—San Antonio 1985, no writ); *Medrano v. Miller*, 608 S.W.2d 781 (Tex. Civ. App.—San Antonio 1980, writ ref'd n.r.e.); *State v. Baker*, 539 S.W.2d 367 (Tex. Civ. App.—Austin 1976, writ ref'd n.r.e.); *Hicks v. State*, 422 S.W.2d 539 (Tex. Civ. App.—Houston [14th Dist.] 1967, writ ref'd n.r.e.); *Cook v. Irion*, 409 S.W.2d 475 (Tex. Civ. App.—San Antonio 1966, no writ).

Saulsberry v. Ross, 485 S.W.3d 35 (Tex.App.—Houston [14th Dist.] 2015, pet. denied) (“**Saulsberry**”).

During their attorney-client relationship, Saulsberry owed Ross a duty to act as a reasonably prudent attorney could do in the same or similar circumstances based on the information that Saulsberry had at the time of the alleged malpractice. *Saulsberry*, at 44, *see Cosgrove v. Grimes*, 774 S.W.2d 662, 664–65 (Tex.1989) (op. on reh'g); *Swinehart v. Stubbeman, McRae, Sealy, Laughlin & Browder, Inc.*, 48 S.W.3d 865, 874 (Tex. App.—Houston [14th Dist.] 2001, pet. denied).

Proximate cause consists of cause in fact and foreseeability. *Id.*, at 44-45 (citing *Akin, Gump*, 299 S.W.3d at 122 (citing *IHS Cedars Treatment Ctr. of DeSoto, Tex., Inc. v. Mason*, 143 S.W.3d 794, 798 (Tex. 2004))). To establish the cause-in-fact element, a plaintiff must prove that (1) the defendant's negligent act or omission was a substantial factor in bringing about the harm at issue, and (2) the harm would not have occurred but for that act or omission. *See Id.*, at 45. Neither of these components can be established by conjecture, guess, or speculation. *See Id.* If the causal link between an attorney's negligence and the client's harm is beyond a jury's common understanding, then proximate cause must be proved through expert testimony about what the attorney should have done. *Id.*, at 48 (citing *see Alexander v. Turtur & Assocs.*, 146 S.W.3d 113, 119–20 (Tex.2004)). The expert testimony must tie “the specific conduct that is in issue” to the client's adverse result. *See Id.* at 45 (quoting 5 Ronald E. Mallen & Jeffrey M. Smith, *Legal Malpractice* § 33.17 at 138–39 (5th ed. 2000)).

Pierre v. Steinbach, 378 S.W.3d 529, 533-34 (Tex.App.—Dallas 2012, no pet.) (“**Pierre**”).

An action for legal malpractice is based on negligence. *Cosgrove v. Grimes*, 774 S.W.2d 662, 664 (Tex.1989) (op. on reh'g). To state a claim for legal malpractice, a plaintiff must show that (1) the attorney owed the plaintiff a duty; (2) the attorney's negligent act or omission breached that duty; (3) the breach proximately caused the plaintiff's injury; and (4) the plaintiff suffered damages.

Akin, Gump, Strauss, Hauer & Feld, LLP v. Nat'l Dev. & Research Corp., 299 S.W.3d 106, 112 (Tex.2009).

A plaintiff must generally present expert testimony to establish the breach and causation elements of a legal malpractice claim. *Alexander v. Turtur & Assocs., Inc.*, 146 S.W.3d 113, 117, 119–20 (Tex.2004). Breach of the standard of care and causation are separate inquiries, and an abundance of evidence as to one cannot substitute for a deficiency of evidence as to the other. *Id.* at 119.

A lawyer in Texas is held to the standard of care that would be exercised by a reasonably prudent attorney. *Cosgrove*, 774 S.W.2d at 664. Expert testimony is not required if the attorney's lack of care and skill is so obvious that the trier of fact can find negligence as a matter of common knowledge. *Mazuca*, at 97.

See, James v. Mazuca & Associates v. Schumann, 82 S.W.3d 90, 97 (Tex. App.—San Antonio 2002, pet. denied). (*Missing the statute of limitations is a classic example of negligence that any layperson can understand. No expert testimony is necessary in such cases.*).

Trust Title & Spendthrift Character:

Bradley v. Shaffer, 535 S.W.3d 242, 247-48 (Tex.App.—Eastland 2017, no pet.) (“Bradley”).

A trust is a mechanism used to transfer property. *Faulkner v. Bost*, 137 S.W.3d 254, 258 (Tex. App.—Tyler 2004, no pet.) (citing *248 *Jameson v. Bain*, 693 S.W.2d 676, 680 (Tex. App.—San Antonio 1985, no writ)). “[W]hen a valid trust is created, the beneficiaries become the owners of the equitable or beneficial title to the trust property and are considered the real owners.” *City of Mesquite v. Malouf*, 553 S.W.2d 639, 644 (Tex. Civ. App.—Texarkana 1977, writ ref’d n.r.e.). The trustee is merely the depository of the bare legal title. *Id.* The trustee is vested with legal title and right of possession of the trust property but holds it for the benefit of the beneficiaries, who are vested with equitable title to the trust property. *Jameson*, 693 S.W.2d at 680. A trust beneficiary who has capacity to transfer property has the power to transfer his equitable interest, unless restricted by the terms of the trust. *Faulkner*, 137 S.W.3d at 260.

“[A] spendthrift trust is one in which the beneficiary is prohibited from anticipating or assigning his interest in or income from the trust estate.” *Long v. Long*, 252 S.W.2d 235, 246 (Tex. Civ. App.—Texarkana 1952, writ ref’d n.r.e.) (quoting *Cronquist v. Utah State Agric. Coll.*, 114 Utah 426, 201 P.2d 280, 282 (1949)). “Texas courts have long upheld and enforced spendthrift provisions, justifying this restraint on alienation not out of consideration for the beneficiary, but rather for the right of the donor creating the trust to control his gift.” *Burns v. Miller, Hiersche, Martens & Hayward, P.C.*, 948 S.W.2d 317, 321 (Tex. App.—Dallas 1997, writ denied). The Texas Trust Code also specifically protects the right of a trust settlor to include a spendthrift provision in a trust. TEX. PROP. CODE §112.035; *see* TEX. PROP. CODE §111.001. Section 112.035(a) provides that “[a] settlor may provide in the terms of the trust that the interest of a beneficiary in the income or in the principal or in both may not be voluntarily or involuntarily transferred before payment or delivery of the interest to the beneficiary by the trustee.” Assignments of [beneficial interests in trusts] are invalid when they are subject to a spendthrift provision in the trust.” *Faulkner v. Bost*, 137 S.W.3d 254, 260 (Tex. App.—Tyler 2004, no pet.).

Hallmark v. Port/Cooper-T. Smith Stevedoring Co., 907 S.W.2d 586, 589 (Tex.App.—Corpus Christi-Edinburg, 1995, no writ) (“**Hallmark**”).

A trust is a method used to transfer property. *Jameson v. Bain*, 693 S.W.2d 676, 680 (Tex. App.—San Antonio 1985, no writ). “[W]hen a valid trust is created, **the beneficiaries** become the owners of the equitable or beneficial title to the trust property and **are considered the real owners**; the trustee is merely the depository of the bare legal title.” *City of Mesquite v. Malouf*, 553 S.W.2d 639, 644 (Tex. Civ. App.—Texarkana 1977, writ ref’d n.r.e.). The trustee is vested with legal title and right of possession of the trust property but holds it for the benefit of the beneficiaries, who are vested with equitable title to the trust property. *Jameson*, 693 S.W.2d at 680. (Emphasis added).

Separation of Capacities:

Elizondo v. Tex. Natural Res. Conservation Comm’n, 974 S.W.2d 928, 931 (Tex.App.—Austin 1998, no pet.). (“**Elizondo**”)

A person who sues or is sued in his official or representative capacity is, in contemplation of law, regarded as a person distinct from the same person in his individual capacity and is a stranger to his rights or liabilities as an individual. It is equally true that a person in his individual capacity is a stranger to his rights and liabilities as a fiduciary or in a representative capacity.

Alexander v. Todman, 361 F.2d 744, 746 (3d Cir.1966); accord *Bender v. Williamsport Area Sch. Dist.*, 475 U.S. 534, 543-44 & n. 6, 106 S.Ct. 1326, 89 L.Ed.2d 501 (1986) (“The fact that Mr. Youngman was sued in his official capacity does not give him standing to appeal in his individual capacity. Acts performed by the same person in two different capacities ‘are generally treated as the transactions of two different legal personages.’”); *Airlines Reporting Corp. v. S & N Travel, Inc.*, 58 F.3d 857, 862 (2d Cir.1995) (“Where a party sues or is sued in a representative capacity, however, its legal status is regarded as distinct from its position when it operates in an individual capacity.”); *Northern Trust Co. v. Bunge Corp.*, 899 F.2d 591, 595 (7th Cir.1990) (“In the eyes of the law a person who sues or is sued in a representative capacity is distinct from that person in his individual capacity.”); *McGinnis v. McGinnis*, 267 S.W.2d 432, 435 (Tex.Civ.App.-San Antonio 1954, no writ) (“William L. McGinnis, the individual, is not the same party as William L. McGinnis, the next friend of Janie Barr's estate and person.”).” *Elizondo v. Tex. Natural Res. Conservation Comm’n*, 974 S.W.2d 928, 931 (Tex. App.-Austin 1998, no pet.).

See also *Werner v. Colwell*, 909 S.W.2d 866, 870 (Tex.1995) (Court cannot render judgment against a party in a capacity in which she was not sued).

Fiduciary Duties and Responsibilities of Trustees:

Fiduciary duties are the highest civil duties known to law and trustees are held to very high and very strict standards of good faith, honesty, and ethical conduct. *Slay v. Burnett’s Trust*, 187 S.W.2d 377 (Tex. 1945). Justice Cardozo eloquently described a trustee’s standard of care as follows:

A trustee is held to something stricter than the morals of the marketplace. Not honesty alone, but the punctilio of an honor the most sensitive, is then the standard of behavior. As to this there has developed a tradition that is unbending and inveterate. Uncompromising rigidity has been the attitude of the courts of equity when petitioned to undermine the rule of undivided loyalty by the ‘disintegrating erosion’ of particular exceptions.... Only thus has the level of conduct for fiduciaries been kept at a level higher than the trodden by the crowd.

Meinhard v. Salmon, 249 N.Y. 458 (1928). Three primary sources define the duties and responsibilities of trustees: (1) the trust instrument, (2) the Texas Trust Code⁴ and (3) the common law. Section 111.0035(a) of the Texas Trust Code provides that, except as provided by the terms of the trust instrument, the Texas Trust Code governs: (a) the duties and powers of a trustee, (b) relations among trustees and (c) the rights and interests of a beneficiary. TEX. PROP. CODE §111.035(a). Further, Section 113.051 of the Texas Trust Code provides that “[i]n the absence of any contrary terms in the trust instrument or contrary provisions of this subtitle, in administering the trust the trustee shall perform all of the duties imposed on trustees by the common law.” TEX. PROP. CODE §113.051.

There are three main categories of trustee’s fiduciary duties: (1) the duty of loyalty, (2) the duty of care/prudence and (3) the duty of full disclosure.

(1) The Duty of Loyalty and Impartiality

The trustee has an affirmative duty to administer the trust solely in the interest of the beneficiaries – meaning, a trustee cannot personally benefit from serving, and must place the interests of the beneficiaries above his own at all times. *Slay v. Burnett’s Trust*, 187 S.W.2d 377 (Tex. 1945). Generally, the trustee is strictly prohibited from engaging in transactions that involve self-dealing or a personal benefit to the trustee or that otherwise involve or create a conflict between the trustee’s fiduciary duties and personal interest. TEX. PROP. CODE §113.053; RESTATEMENT (THIRD) OF TORTS §78. When a fiduciary profits or benefits in any way from a transaction or he places himself in a position in which his self-interest might conflict with his obligations, a presumption of unfairness arises that shifts the burden of proof and persuasion to the fiduciary or party claiming the validity or benefits of a transaction to show that the transaction was fair and equitable to the beneficiary. *Keck, Martin & Cate v. National Union Fire Insurance Co.*, 20 S.W.3d 692, 699 (Tex. 2000); *Stephens County Museum, Inc., v. Swenson*, 517 S.W.2d 257, 260–61 (Tex. 1975); *Sorrell v. Elsey*, 748 S.W.2d 584, 586 (Tex. App.—San Antonio 1988, writ denied). Furthermore, a trustee is required to invest and manage the trust assets solely in the interest of the beneficiaries. TEX. PROP. CODE §117.007. In addition, a trustee has a duty of impartiality, which requires the trustee to deal impartially with multiple beneficiaries. See RESTATEMENT (SECOND) OF TRUSTS § 183; BOGERT §541 and §612; *Commercial Nat. Bank of Nacogdoches v. Hayter*, 473 S.W.2d 561 (Tex. Civ. App. 1968, writ ref’d n.r.e.).

⁴ Title 9 of the Texas Property Code.

(2) The Duty of Care/Prudence

The trustee has an affirmative duty to administer the trust as an ordinary, capable and careful person would use in the conduct of his own affairs. *Interfirst Bank Dallas, N.A., v. Risser*, 739 S.W.2d 882, 888 (Tex. App.—Texarkana 1987, no writ); RESTATEMENT (THIRD) OF TORTS §77. This duty encompasses many sub-duties, including, but not limited to, (a) the duty to take, retain and preserve trust assets, (b) the duty to keep records and render proper accounts, (c) the duty not to commingle trust funds and (d) the duty to comply with the prudent investor rule. As to the latter, Texas Trust Code §117.004(a) provides that a trustee “shall invest and manage trust assets as a prudent investor would, by considering the purposes, terms, distribution requirements, and other circumstances of the trust. In satisfying this standard, the trustee shall exercise reasonable care, skill, and caution.” TEX. PROP. CODE §117.004(a).

(3) The Duty of Full Disclosure

The trustee has an affirmative duty to make a full and accurate disclosure of all material facts known to the trustee that might affect a beneficiary’s rights. *Huie v. DeShazo*, 922 S.W.2d 920, 923 (Tex. 1996) (orig. proceeding); *see also Montgomery v. Kennedy*, 669 S.W.2d 309 (Tex. 1984); *Kinzbach Tool Co. Inc. v. Corbett-Wallace Corp.*, 160 S.W.2d 509 (Tex. 1942). A trustee “owes its principal a high duty of good faith, fair dealing, honest performance and strict accountability.” *Ludlow v. DeBerry*, 959 S.W.2d 265, 279 (Tex. App.—Houston [14th Dist.] 1997, no writ).

Contract Authority – Condition Precedent:

Hohenberg Bros. Co. v. George E. Gibbons & Co., 537 S.W.2d 1, 3 (Tex. 1976) (“**Hohenberg**”).

A condition precedent may be either a condition to the formation of a contract or a condition to an obligation to perform an existing agreement. *Hohenberg*. Where there is a condition precedent to the formation of a contract, then no binding contract will arise until the specified condition has occurred or been performed. *See Sharifi v. Steen Auto., LLC*, 370 S.W.3d 126, 144 (Tex. App.-Dallas 2012, no pet.). On the other hand, conditions precedent to an obligation to perform are those acts or events which occur subsequent to the making of a contract and which must occur before there is a right to immediate performance and before there is a breach of a contractual duty. *Hohenberg*, at 3.

DWOP Authority:

Tex. Mut. Ins. Co. v. Olivas, 323 S.W.3d 266 (Tex.App.—El Paso 2010, no pet.) (“**Olivas**”).

“We review a trial court's decision to dismiss a case for want of prosecution under a clear abuse-of-discretion standard. *See State v. Rotello*, 671 S.W.2d 507, 508–09 (Tex.1984); *Fox v. Wardy*, 234 S.W.3d 30, 32 (Tex. App.-El Paso 2007, pet. dismissed w.o.j.); *Dick Poe Motors, Inc. v. DaimlerChrysler Corp.*, 169 S.W.3d 478, 484 (Tex.App.-El Paso 2005, no pet.); *Herrera v. Rivera*, 281 S.W.3d 1, 6 (Tex. App.-El Paso 2005, no pet.); *Fox v. Wardy*, 225 S.W.3d 198, 199 (Tex. App.-El Paso 2005, pet. denied) (“The decision to dismiss a case for want of prosecution

rests within the sound discretion of the trial court and can be disturbed on review only if it amounted to a clear abuse of discretion.”) *Olivas*, at 272 (Tex. App.—El Paso 2010, no pet.)

“Both Rule 165a of the Texas Rules of Civil Procedure and the court's inherent power grant a trial court authority to dismiss a case for want of prosecution. *See* Tex. R. Civ. P. 165a(1)-(2); *Villarreal*, 994 S.W.2d at 630; *Fox*, 234 S.W.3d at 32; *Dick Poe Motors*, 169 S.W.3d at 484. ... Under the common law, a trial court possesses the inherent power to dismiss a case independently of the rules of procedure when a plaintiff fails to prosecute its case with due diligence. *Villarreal*, 994 S.W.2d at 631–32; *Dick Poe Motors*, 169 S.W.3d at 484.” *Olivas*, at 274.

Republic Nat. Bank & Trust Company v. Bruce, 130 Tex. 136, 140 (Tex. 1937) (“***Trust Company v. Bruce***”):

By accepting the trust, a trustee becomes bound to execute it, in accordance with the provisions of the trust instrument, unless such directions are declared invalid by a court of competent jurisdiction, or unless a court of equity decrees otherwise. So, too, after acceptance, he must execute the trust without any further request from anybody, and he can be relieved from all or part of his duties only by the consent of all the beneficiaries, or by putting the administration of the trust into the hands of a court of equity. Every violation by a trustee of a duty which equity lays on him, whether willful or forgetful, is a breach of trust, for which he is liable. 65 C. J., p. 647.

ANALYSIS AND OPINIONS

Preface. After Richard died, the Family Trust, by its terms, became irrevocable⁵ requiring application of an ascertainable standard when exercising discretion to distribute income, principal or both, and offering spendthrift creditor protection by preventing a beneficiary from promising, pleading, hypothecating, or encumbering any interest in it. The apparent goal of the settlement was for the remainder of the Family Trust property, after the \$1M Set Aside, to be distributed equally and outright to Rich & Caroline. Because the settlement was contingent upon and subject to approval by the court and the court appointed guardian ad litem for minor beneficiaries and all other interested persons signing the *MSA* agreeing to all its terms, the options to accomplish the settlement goals were myriad. The *MSA* was subject to Court approval, the approval of all interested persons,” and the approval of a guardian ad litem for one minor grandchild, so the most obvious option was to distribute all but the \$1M Set Aside that was to be preserved for Decedent’s grandchildren’s education to Rich & Caroline; essentially terminating the Family Trust as to all property, except the \$1M Set Aside. *See* TEX. PROP. CODE §112.054. In spite of this statutory option, Attorneys, apparently, thought that, if Rich or Caroline or both had an unfettered right to access all the property in the Family Trust, except for the \$1M Set Aside, then they could distribute all the Family Trust property to themselves without regard to the grandkids or that the Family Trust would cease to exist under the merger of interests doctrine, i.e., they would be the beneficiaries and the Co-Trustees with unfettered control over the assets. *See* TEX. PROP. CODE §112.034. Although, Attorneys’ precise thinking is unclear, unfortunately, the language of the *MSA* did nothing of the sort. Attorneys forgot about the contingent beneficiaries, the grandkids, preventing the merger, and the goal of the settlement was not accomplished.

⁵ The Family Trust became IRREVOCABLE, upon Richard DOD. REVISED RA TRUST, 13, Art. X(B), (RAA 000186).

FAMILY TRUST OWNS THE PROPERTY:

Contrary to the intent of Clients, after the *MSA*, it cannot be disputed that Rich & Caroline, Individually, do not own the Family Trust's property, the Family Trust does. *Bradley*, at 247 (*supra*). **So, Attorneys' assertions that the "right to access" the Family Trust, as Trustees, gives them the discretion and right to take/distribute all the Family Trust property, except the \$1M Set Aside, was wrong.** Attorneys ignored legal title and Clients' obligations as Co-Trustees to people/beneficiaries other than themselves. While distributing the Family Trust property to Rich & Caroline may conform with what Attorneys intended for the settlement, the *MSA* is so poorly written that the intent is never accomplished.

Now, ignoring the Health, Education, Maintenance and Support ("HEMS") standard in the Family Trust to distribute the assets outright to Rich or Caroline or both, without a judicial modification of the Family Trust, would, by definition, nullify the purpose of the Family Trust and Decedent's intent for his property and would be a breach of trust and eliminate the Family Trust's spendthrift protections, violating its terms and statutory law. *See Ackers v. Comerica Bank & Tr.*, 630 S.W.3d 292, 296 (Tex. App.—Eastland, 2020) (citing *Bradley*, at 248 (citing *Faulkner v. Bost*, 137 S.W.3d 254, 260 (Tex. App.—Tyler 2004, no pet.)). Because of the spendthrift provision, neither Rich, nor Caroline, as beneficiaries, can even demand that distributions be made. *In re Estate of Lee*, 551 S.W.3d 802, 819 (Tex. App.—Texarkana, 2018), (citing *see Faulkner*, 137 S.W.3d at 260); *see also* TEX. PROP. CODE §112.035(b) (spendthrift provision prevents voluntary transfer of beneficial trust interest)." Since all distributions are subject to the HEMS standard and the Family Trust is a spendthrift trust, Attorneys' did not accomplish what they told Rich and Caroline was being accomplished – that the Family Trust assets could be outright distributed to themselves without any restriction in place.

TEXAS PROPERTY CODE §113.029 NOT ELIMINATED.

Texas Property Code §113.029 applies to the exercise of a trustee's discretion, "unless the terms of the trust expressly indicate that a requirement provided by this subsection does not apply." TEX. EST. CODE §113.029(b). Importantly, §113.029 first requires a trustee to "exercise a discretionary power in good faith and in accordance with the terms and purposes of the trust and the interests of the beneficiaries." The Restated RA Trust Agreement, comprised of multiple documents, is the "Rulebook" for the Trustee(s) to follow. Next, if §113.029 is not overridden, then a person who is the beneficiary and the trustee may only exercise his or her discretion in accordance with the HEMS standard and cannot exercise that discretion to discharge a legal obligation. TEX. PROP. CODE §113.029(b)(1) and (b)(2), respectively. Here, it is true and undisputed, or cannot be disputed, that the following documents did not negate the application of TEX. PROP. CODE §113.029:

- i.) The 2013 Amended Trust (*Clients' Exhibit 32*);
- ii.) The *MSA* (*Clients' Exhibit 158*);
- iii.) Purported Modification Documents, dated December 21, 2021 (*Lawyers Exhibit 275*).

Instead of overriding §113.029, which was mandatory to complete the contemplated settlement, the *MSA* at Paragraph 3.1(p), merely provides that Rich & Caroline will (i) be Co-Trustees of the Family Trust, (ii) maintain the \$1,000,000.00 for the grandchildren, and (iii) “shall have the right to access all principal and income from the Family Trust, save and except the \$1,000,000 set aside for the grandchildren’s educational expenses set forth above at the discretion of the co-trustees.” See *MSA*, at ¶3(p)(i)-(iii). These terms chosen or approved by Attorneys do not eliminate the HEMS standard, and do not preempt application of §113.029, meaning Rich & Caroline, as beneficiaries and Co-Trustees of the Family Trust, are bound by its terms and by §113.029. The *MSA*, by naming Rich & Caroline, as Co-Trustees, made them duty bound to follow the Trust Agreement establishing the mandatory HEMS discretionary distribution standard and, in their respective Individual capacities, provided them no legal title whatsoever to the Family Trust assets. The outcome bears no resemblance to the desired and expected result, which drastically affects Rich’s and Caroline’s interests and prohibits their ability to pledge a contingency fee percentage of their Recovery or even pay it after the property was “Recovered” because it remained locked up in the Family Trust. The result is a colossal and abject disaster for Clients. Not only have Rich & Caroline foregone interests they owned before the litigation began, but they also, relying upon Attorneys’ advice, never established the ability to receive the settlement proceeds in fee simple, outright, and free of trust, as they intended.

Contrary to Borunda, Abaza, and Trevino’ testimony, Rich & Caroline were required to and now, as Co-Trustees, must, comply with the HEMS distribution standard and honor the Family Trust terms outlining Decedent’s desires, including its spendthrift provision. The standard of care requires an attorney practicing in and representing a client to know, understand, and apply Texas trust law, particularly TEXAS PROPERTY CODE §113.029 and its mandated compliance unless superseded. Here, the standard of care required Attorneys to have known that, under the terms of the *MSA*, Rich & Caroline were not receiving “unfettered” access to the property and funds in the Family Trust, as was intended and expected by the settlement. *Finger v. Ray*, 326 S.W.3d 285, 296 (Tex. App. 2010) (citing *Murphy v. Gruber*, 241 S.W.3d 689, 693 (Tex. App.-Dallas 2007, pet. denied)) (recognizing a lawyer ‘can commit professional negligence by giving an erroneous legal opinion or erroneous advice, ... or by not using a lawyer’s ordinary care in preparing, managing, and prosecuting a case.’). Attorneys also intentionally made Rich & Caroline the Co-Trustees of the Family Trust, binding them to all its terms and requirements and establishing new fiduciary duties to others that one, or both, of them neither wanted, nor had before. Instead, a prudent practitioner would have advised Clients the intended outcome should have been accomplished by terminating the Family Trust, except for the \$1M grandchildren’s set aside, thereby enabling an outright, fee simple distribution. Writing the *MSA* and modification documents to leave the Family Trust in place, left all terms, standards, and requirements intact, which, together, prevented “unrestricted” access, contrary to the explanation and advice given to Rich & Caroline and, later, included in a Court filing. *Clients’ Exhibit 235*, at 2.

SEPARATION OF CAPACITIES:

Attorneys were well-aware that the law considers a person in two or more capacities to be separate and distinct persons. In his deposition, Borunda testified and confirmed he knew the law treats a person holding multiple capacities or offices as distinct persons and, strongly testified it is

axiomatic, as follows:⁶

19 Q. Did you agree or disagree with her
20 characterization that assets held in an individual
21 capacity are different than assets held in a trust
22 capacity?
23 A. I think that's an axiomatic proposition.
24 Q. And likewise, would you agree there's a
25 difference between someone acting in their capacity

1 as a trustee versus someone acting in their
2 individual capacity?
3 MR. LITTLE: Objection, form.
4 A. Yes.

The law is established, clear, and consistent regarding the separation of legal capacities and that one person can hold several capacities. Rich & Caroline, respectively, in their Individual capacities, are strangers to their rights as Co-Trustees of the Family Trust. *Elizondo*, at 931 (*supra*). The law does not allow a judgment against a trust to be executed against an individual beneficiary of that trust and vice versa. *See McCamey v. Hollister Oil Co.*, 241 S.W. 689, 695 (Tex. App.—Fort Worth 1922), *aff'd sub nom, Hollister v. McCamey*, 115 Tex. 49, 274 S.W. 562 (1925) (*Confirming a beneficiary cannot be held liable for obligations incurred by the trustee.*). Under Attorneys' theory, they can get a judgment against Rich & Caroline, Individually, and collect it from the Family Trust – in which Rich & Caroline are Co-Trustees and beneficiaries – which is patently incorrect. TEX. R. CIV. P. 124; *see U.S. Fidelity Guar. Co. v. Goudeau*, 272 S.W.3d 603, 609 (Tex. 2008). Rich or Caroline could be the Trustee of 40 different trusts created by 20 different settlors for 100 different beneficiaries, and Attorneys could no more collect from those trusts than they can the Family Trust. Logically, because the beneficiaries own beneficial title to the property (the real owners of the property), forcing a Trust to pay the Trustee's individual obligations means the beneficiaries of a trust are paying the obligations for which they have no liability. Rich & Caroline each have “two different legal personages” and the property they own as Co-Trustees of the Family Trust is not owned by either of them individually, so the Family Trust cannot be obligated to pay their individual liabilities, including Attorneys' contingency fee claim. It is a violation of the standard of care for Attorneys to seek payment from anyone besides the client with whom they have a contract. And in this instance, Rich and Caroline have not been sued in any trustee capacity.

FEE AGREEMENT (CONTRACT) FAILURES.

Initially, Attorneys' first failure to meet the standard of care was agreeing to represent two aligned clients on two separate fee bases. Representing Rich based upon Rich's Contingency Fee Agreement and Caroline, based upon the Hourly Agreement. Caroline agreed to pay Attorneys for

⁶ Report Exhibit D, BORUNDA DEPOSITION, October 24, 2023, at 275:19-276:4.

their representation by the hour and expenses, while Rich paid none. Their two co-clients, while aligned in position, instantaneously were converted to two-unaligned parties having an inherent financial and motivational conflict of interest because they have different interests in how the case progressed to outcome. One co-client might want to settle because it is costing her large sums of money out-of-pocket, that her brother is not incurring, while he might want to continue fighting because it is not costing him anything; or the reverse might be true. Exactly what would be expected in such a situation ended up happening. Caroline, feeling the burden and financial burn of paying hourly attorneys' fees and expenses out-of-pocket, while her brother paid none. Attorneys got the best of all worlds because they got help with their contingency representation of Rich by Caroline paying them as they went. Abaza testified all the fees and expenses were incurred together and could not be segregated between Rich vis-à-vis Caroline or among the respective Attorneys.⁷ The standard of care requires they get one or the other Client separate representation or obtain a written conflict waiver from both.

NO DISCLOSURE OR CONFLICT WAIVER.

When representing Rich and, separately, Caroline on two different fee arrangements, the standard of care for Attorneys, as their fiduciaries, would have required Attorneys to disclose the potential conflicts that the two very different fee arrangements could or did create, to make them aware of it and to allow them the time and opportunity to discuss whether to continue on those bases amongst themselves and with other legal counsel or advisors. While purported conflict "waivers" were included in the deficient fee agreements with Caroline and Rich, they did not comply with the standard of care for such a clause. The standard of care would have required disclosure of all information that materially affected both Clients' interests and to get them both to sign a specific conflict waiver; instead, they put it in *Caroline's Contingency Fee Agreement* without disclosure and did not seek Rich's written agreement to waive conflict, as required under TEX. R. DISC. PROF'L. COND, Rule 1.06. Since no disclosure of the conflict occurred, it would be impossible for a conflict waiver to have been prepared and signed so, clearly, none exists. The standard of care required Attorneys to advise them to discuss and decide to agree to pay for representation on the same basis or to advise that one or the other of them must hire separate counsel.

FAILURE TO OBTAIN FULL INFORMATION OF ROBIN'S PERSONAL NET WORTH.

Initially, in litigation, every attorney is expected to prepare their case for trial. *See DWOP Authority above, included to show the negative consequences from not pursuing trial preparation.* By that foundation, Attorneys were duty bound to work up Clients' case for trial and also for mediation; presumably, the trial preparation would coincide with the mediation preparation. It is not possible to properly advise a client to settle when lacking vital information, and the best practice to meet the standard of care is to advise the client to postpone mediation or settlement negotiation until the necessary information is obtained. If, despite the attorney's advice, the client insists on attempting mediation or settlement, it is incumbent upon the attorney to advise the client of the risks of doing so without vital information. Further, if the client wants to settle under such circumstances, the attorney must confirm the client understands he or she is doing so without vital information and risks leaving property on the table and giving up valuable interests and rights because all information is not yet known. "As a fiduciary, an attorney is obligated to render a full and fair

⁷ ARBITRATION TRANSCRIPT – ABAZA TESTIMONY (V2 298:22-302:3).

disclosure of facts material to the client's representation.” *Id. Powell v. Grijalva*, No. 14-19-00080-CV, at *12 (Tex.App. July 21, 2020) (citing *Willis v. Maverick*, 760 S.W.2d 642, 645 (Tex. 1988)).” Attorneys did not meet this standard of care, because regardless of whether the case was being properly prepared and the lack of risk of a DWOP of the case, Attorneys failed to obtain vital information absolutely necessary to making an informed decision whether to continue the lawsuit or, certainly, to settle.

Specifically, Attorneys admitted that at the time of mediation, discovery was incomplete, and they had failed to obtain a proper accounting of the trusts and other assets at issue.⁸ Borunda said he – Attorneys – would pursue a motion to compel on personal assets, including bank statements, of Robin. *See, Clients’ Exhibit 127*, stating:

With respect to Robin’s estate planning and bank records to 2012, I see those as a bit of a reach and, given what we’ve seen from this judge, it is unlikely the court will compel Robin to provide that information. We have requested it previously, but Robin objected. We will pursue a motion to compel on this and various other issues shortly, but I want you to understand that the probability of actually getting it through this judge is less than great.

However, no motion to compel was filed or pursued. Information about Robin’s personal wealth was entirely missing as of and during the mediation, making it impossible to truly assess Clients’ position and provide the advice of a prudent attorney. *See Cosgrove*, at 665. Knowledge of Robin’s personal wealth – property she owned or inherited in her own right – was absolutely necessary to any settlement because the Restated RA Trust provided that (i) Robin was mandatorily required to withdraw income from the Marital Trust, (ii) she could not withdraw principal unless and until she first exhausted her own assets, and, even more importantly, (iii) she was prohibited from distributing income or principal from Family Trust unless and until she first exhausted her own assets and, then, those of the Marital Trust.⁹ Determining whether and how much Robin would ever need and be entitled to receive from the Family Trust should have been completed before any settlement was considered, particularly one where the Clients gave up their remainder beneficiary rights to a Marital Trust with over \$5,000,000.00 in principal that could not be invaded until Robin exhausted her personal assets. It was also very pertinent to discover information regarding Robin’s health insurance to determine the extent of whether Robin’s assets would be protected and the potential burn rate of any depletion of Robin’s personal assets and the Marital Trust assets in the event of a catastrophic illness.

The standard of care was to fully discover Robin’s assets and personal wealth, to be fully prepared for mediation and trial. Failure to pursue information about Robin’s financial situation was a breach of the standard of care that prevented Attorneys from being able to advise the Clients of the value of rights being given up or the propriety of Robin simply denying any reasonable demand for a distribution they may make. In essence, it impacted the Clients’ ability to have an effective mediation and settlement negotiation and the ability of the Clients to make an informed decision about whether to settle. *Ballesteros v. Jones*, 985 S.W.2d 485, 495 (Tex. App. 1999) (*Holding a reasonably prudent attorney could not have advised his client to accept a settlement without*

⁸ BORUNDA DEPOSITION, 187:23-188:20.

⁹ *Clients’ Exhibit 32*, RESTATED RA TRUST, at 15.

properly investigating the full extent of the assets owned by the opposing party at the time of settlement, among other things).

Attorneys' breach of the standard of care damaged Clients because they (i) potentially gave up enormously valuable property by settling for a set, liquidated sum instead of being counseled to wait to receive interim discretionary distributions from Robin and all remaining assets at Robin's death, or (ii) failed to at least discover all relevant information about Robin's assets. Robin could have – heaven forbid – died the next day and all the assets would have belonged to Rich & Caroline; this was an unlikely, but possible, event. Robin might live another ten (10) years, or she could live another twenty-five (25) years, all the while (1) the Trusts, particularly the Family Trust, would be appreciating in value, (2) Robin owed fiduciary duties to Rich and Caroline to make reasonable distribution decisions, and (3) eventually transferred in trust or outright to Rich & Caroline, their children, or all of them, the assets including those that were given up in the *MSA* (such as the rights to the Marital Trust). Giving up these rights is a damage Clients have sustained. See ROB HANCOCK'S REPORT (*Clients' Exhibit 26*) and SUPPLEMENTAL REPORT (*Clients' Exhibit 298*).

LOSS OF THE GENERATION-SKIPPING TRANSFER TAX.

Attorneys do not specialize in tax law and are not knowledgeable about complex trust taxation matters. The standard of care required Attorneys to consult with someone (another attorney specializing in tax law, a tax law professor, or a Certified Public Accountant) who is knowledgeable about the generation-skipping transfer (“GST”) tax, how the GST Tax may be affected or put at risk because of the *MSA*, and actually follow said expert's advice. Attorneys should have consulted with an expert or advised Clients prior to executing the *MSA* to consult with an expert so the expert could properly inform Clients how the *MSA* may affect the GST Tax and Clients' children. Attorneys appear to have hired attorney Paul Strug to serve as their “tax expert,” before the first mediation, but there is no indication that Attorneys asked Mr. Strug for his input regarding the *MSA*, and they had no definitive tax opinion on the issue. If the *MSA* had accomplished what it was supposed to do, the assets held in the Family Trust (save for the \$1,000,000.00 for Clients' children) would have been distributed outright to Clients, which would have resulted in the loss of the GST exemption and significant tax liability would have been incurred. Attorneys failed to advise Clients of this risk because they are not qualified to do so. The standard of care required Attorneys to either consult with an expert who understood the potential tax implications and ramifications of the *MSA* or provide Clients with an opportunity to do so. Attorneys failed wholly failed in this regard.

SPENDTHRIFT TRUST PROTECTIONS.

Settlors' intent to provide spendthrift protection to the Family Trust is clear, as illustrated by Article XIII(C):¹⁰

¹⁰ See, *Clients' Exhibit 32*, at 40-41.

C. Spendthrift Provisions. After the death of the last to die of the Grantors, each trust created by this Trust Agreement shall be a spendthrift trust to the fullest extent allowed by law. Prior to the actual receipt of trust property by any beneficiary, no property (income or principal) distributable under any trust created by this Trust Agreement shall, voluntarily or involuntarily, be subject to anticipation or assignment by any beneficiary, or to attachment by or to the interference or control of any creditor or assignee of any beneficiary, or be taken or reached by any legal or equitable process in satisfaction of any debt or liability of any

beneficiary, and any attempted transfer or encumbrance of any interest in such property by any beneficiary hereunder prior to distribution shall be void.

Settlors did not want any beneficiary to anticipate, pledge, or encumber Family Trust assets for any purpose other than that for which it was created. Despite Rich & Caroline being beneficiaries and their appointment as Co-Trustees, a merger of interests was prevented by the spendthrift provision, *supra*, and the inclusion of contingent future beneficiaries. TEX. EST. CODE §112.034 (*A trust terminates if the legal title to the trust property and all equitable interests in the trust become united in one person.*); but see, TEX. PROP. CODE §112.034(c) (*prohibiting occurrence of merger of interests if the beneficiary's interest is protected under a spendthrift trust*); see also, *Moody v. Pitts*, 708 S.W.2d 930, 934 (Tex.App.—Corpus Christi, 1986) (citing *Olivas v. Zambiano*, 543 S.W.2d 180, 182 (Tex.App.—El Paso, 1976 no writ); *Cole v. Grigsby*, 35 S.W. 680, 690 (Tex.Civ.App. 1894)) (“*The general rule is that courts will not allow a merger to defeat a vested remainder.*”). With this spendthrift provision in place, Rich and Caroline could not simply disburse to themselves money on an unfettered basis.

NEGOTIATION ERRORS DURING MEDIATION.

It is fundamental in an attorney's practice and a fundamental tenet of standard of care that an attorney give a client correct legal advice. TEX. R. DISC. PROF'L. COND. 1.03(b) (“A lawyer shall explain a matter to the extent reasonably necessary to permit the client to make informed decisions regarding the representation.”); see also, *Royston, Rayzor, Vickery, & Williams, LLP v. Lopez*, 467 S.W.3d 494, 503 (Tex. 2015). Logically, attorneys serve no purpose if they give their clients advice that is contrary to the law because the clients can make a wrong or bad decision on their own. Attorneys must know and understand the law in the area they practice so they can provide their client the best advice possible under the circumstances of their case. TEX. R. DISC. PROF'L. COND. 1.01; see generally, *Id.*, at cmt. (1)-(6) (“A lawyer generally should not accept or continue employment in any area of the law in which the lawyer is not and will not be prepared to render competent legal services.”).

Rich & Caroline relied on Attorneys to provide good advice, understandably relied upon the advice given, and made their decisions to enter the *MSA* based upon Attorneys' representations and descriptions of the document. Central to the mediation and settlement negotiation was Attorneys' assurance to Rich & Caroline they would have “unrestricted” access and control over the assets of the Family Trust, except for the \$1M Set Aside. Attorneys' advice to Rich & Caroline was equivalent to telling them they would own fee simple – outright – title to all the assets in the Family

Trust, except for the \$1M Set Aside. Attorneys' advice was WRONG and violated the standard of care by insufficiently, or inaccurately, explaining the matter in an area of law in which they lacked requisite knowledge, thereby preventing Clients from making informed decisions regarding the settlement and *MSA*.

When all the litigation started and at mediation, Rich and Caroline had remainder interests in the Marital Trust, and Attorneys did not compute its value or maybe they could not. Rob Hancock calculated and opined the present value of their interest in the Marital Trust was \$2,003,556. *Clients Exhibit 298*. Attorneys had an obligation to reasonably ascertain the value of the remainder interest to advise Rich and Caroline what they were losing by giving up their interest in the Marital Trust. This would have included investigating Robin's personal assets to determine any likelihood of depletion. Attorneys failed to get the help or expert advice on such computation and failed to provide Rich and Caroline advice in the pros and cons analysis of whether to enter the settlement versus keeping what they already had and insisting that Robin fulfill her fiduciary duty. Rich & Caroline could not make a correct decision due to the lack of due diligence about what they had before the settlement versus what they were to get from the settlement.

In addition, Attorneys had an obligation to disclose to Rich & Caroline issues regarding potential capital gains on the encumbered Minaki assets and to advise them to seek tax advice before signing the *MSA*. Attorneys never made such disclosure and never gave Rich & Caroline such advice. The Minaki account balance on the date of the settlement was \$9,900,609.53. It was known that the total cost basis for the Minaki account was (as of March 31, 2021) \$6,423,870.41 when the account was valued at \$9,561,019.20 (leaving 32.8% of the account subject to a capital gains tax). At that rate, approximately \$3,247,399.94 was subject to a twenty percent (20%) capital gains tax, which translates to \$649,479.99 – a factor that had to be considered when deciding whether to enter the *MSA* because Borunda testified he was seeking to get paid in cash. *See, Report Exhibit D, Borunda Deposition*, at p. 277 (lawyers seeking cash).

When advised at mediation that the signed version of the *MSA* was the final offer, Attorneys should have told Rich & Caroline that the document did not provide unbridled discretion to distribute all Family Trust assets except the \$1M Set Aside, to themselves. Early and outright distribution of Clients' inheritance being the goal, Attorneys' standard of care required them to reject the "final offer" and demand an outright, fee simple distribution. If that agreement could not be reached, the mediation should have ended without a settlement. Unfortunately, Attorneys breached their standard of care and proceeded anyway. Worse, Attorneys were so fixated on a settlement and apparently blinded by the expectation of receiving a significant contingency fee they disregarded their obligation to (i) make sure their advice was correct¹¹, (ii) seek out expertise from other attorneys or professionals to ascertain the effect of the end result of what they negotiated¹² (before advising the Clients to settle)¹³ and (iii) reject, or at least advise Clients to reject, the settlement because its terms did not comport with their prior advice or expected result.¹⁴ In short, Attorneys breached their standard of care and favored their own interests over their Clients'. It appears

¹¹ TEX. R. DISC. PROF'L. COND. 1.03(b).

¹² TEX. R. DISC. PROF'L. COND. 1.01 and cmts.

¹³ There was testimony at the final arbitration hearing that Attorneys sought advice from a CPA and tax attorney after the *MSA* was entered, but not before.

¹⁴ TEX. R. DISC. PROF'L. COND. 1.02(a)(1)-(2) and cmts.

Attorneys continuously ask this Tribunal to ignore the “black cloud” that overhangs this entire litigation caused by the *MSA*.

APPOINTMENT AS CO-TRUSTEES CREATING NEW FIDUCIARY RELATIONSHIPS/OBLIGATIONS.

Article IX-C of the Restated RA Trust specifically excludes Rich from being a trustee of any trust created by it, including the Family Trust, as follows¹⁵:

C. Election. After the surviving Grantor's death, each Beneficiary of a trust, specifically excluding RICHARD GERARD ALLISON, JR., who has attained age 30 may elect at any time to be a Co-Trustee of such Beneficiary's trust and at age 35 may elect to be the sole Trustee of such Beneficiary's trust; provided that if a Beneficiary, after having elected to be the sole Trustee, dies, resigns, becomes incapacitated or otherwise ceases to act and such Beneficiary fails to appoint a successor Trustee for such Beneficiary's trust within 30 days thereafter, the last Trustee to serve prior to such Beneficiary shall become the Trustee of such trust.

Attorneys disregarded, or simply failed to address, the above provision by affirmatively making Rich a Co-Trustee under the *MSA* and Modification Documents. For example, Borunda was aware of the above provision, but unbothered by it and proceeded to advise Clients they would become Co-Trustees of the Family Trust, as he testified in his deposition¹⁶:

13 Q. Yeah. Part of the MSA that was ultimately
14 entered in the case, one of the provisions of it is
15 that Caroline and Rich will become trustees over the
16 trust?
17 MR. LITTLE: Objection, form.
18 A. Over which trust?
19 Q. Over the family trust.
20 A. Right. They were to become the trustees of
21 the family trust.
22 Q. And did you have any -- did you provide any
23 explanation to either Rich or Caroline as to what
24 that role might entail?
25 A. Yes.

¹⁵ See, *Clients' Exhibit 32*, at 25.

¹⁶ *Report Exhibit D*, BORUNDA DEPOSITION, 166:13–170:16.

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1 Q. And tell me about those conversations.
2 A. At mediation we walked them through what
3 the impact of the settlement would be, that they
4 would -- that Robin would step aside as trustee, that
5 she would forfeit all her rights to the family trust,
6 that Rich and Caroline would become co-trustees, that
7 they would have as -- and they would become the
8 beneficiaries, the primary beneficiaries of that
9 trust, other than a million dollar set-aside for
10 their children's education, and that at some point in
11 the future when I think the youngest of them turned
12 25, that they would receive whatever was left over in
13 that educational holdback.
14 But with respect to the balance of the
15 account, they as beneficiaries and trustees would
16 have the right and discretion to distribute any or
17 all of that to themselves without any qualification.
18 Q. And that was told to them during mediation?
19 A. Yes.
20 Q. And who was present during that
21 conversation?
22 A. At various points in time, myself -- and in
23 various combinations, myself, Michael, sometimes
24 Nick, sometimes the mediator, Richard and Caroline.
25 Q. Did you think it was a good idea to make

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1 Richard a trustee?
2 A. I thought it was a good idea to give
3 Richard and Caroline the ability to have access to
4 and distribute to themselves the totality of the
5 trust assets.
6 Q. That wasn't my question. And my question
7 was specifically only to Rich. Did you think it was
8 a good idea to make him a trustee?
9 A. It's -- yes, I didn't see any problem with
10 that.
11 Q. Wasn't there a trust agreement that stated
12 specifically that he was not to be a trustee?
13 A. There was.
14 Q. So making him a trustee over the trust
15 didn't bother you at all?
16 A. No.

Borunda failed to meet the standard of care by not only ignoring the Trust terms, but also by not considering Rich's background, history, sophistication in business (or lack thereof), whether the Trust allowed him to serve and whether he was qualified to serve. Rich has no background in serving as a trustee and testified in his deposition that he did not want the role of being a trustee. "I didn't sign up to be a trustee in the agreement; and I had no idea that this agreement gave me a

bunch of obligations to my stepmom, to other people. I wasn't looking for that."¹⁷ Rich did not even know what he is a trustee of ("I don't know. We're—I mean, I got made a trustee of something."¹⁸) or who the purported beneficiaries are ("That's why we [hired] Sarah Pacheco..."¹⁹). In fact, Rich became Co-Trustee of the Family Trust against his will and desires, and those of the Settlor:²⁰

9 Q. (BY MR. LITTLE) Are you a co-trustee of The
10 Allison Family Trust?
11 MR. SUAZO: Objection, form.
12 A. Sir, apparently, I mean, after this case, I
13 got appointed a trustee. There was no qualifications.
14 I mean, you know, some guy like me, a disabled Veteran
15 and putting, you know – that lives in a homeless
16 community got put in charge of a trust; but I – I
17 didn't sign up to be part of that; but, yeah, I guess
18 I got put as a co-trustee under threat of going to
19 jail, you know, contempt of court or whatever crap
20 they were trying to throw on me to do this thing. So
21 I didn't want – I didn't want to be a trustee. I
22 never asked to be signed up to be one, and apparently
23 I'm not a good enough trustee or whatever it was, but
24 nobody trained me to be a co-trustee.

Since Rich did not want to be Trustee, it was negligent and a breach of duty by Attorneys advise rich to accept the *MSA* appointing him as Co-Trustee, a fiduciary capacity he was not permitted to hold under the Restated RA Trust Agreement. Even after taking this action against Clients' wishes and best interests, Attorneys failed to explain to Rich & Caroline the meaning of their appointment and its associated rights, duties, and obligations.²¹ There is no evidence that Attorneys provided a written explanation to Rich & Caroline explaining what their obligations would be as trustee or how to accomplish their positions. Caroline testified she was given no explanation of her duties as a trustee. *Vol. 7*, at p. 1290. Likewise, I have seen no evidence of an explanation given to Rich or Caroline as to what transpires in the event of a deadlock in decision making between Rich & Caroline as Co-Trustees.

Notwithstanding Attorneys' lack of disclosure and advice relating to the improper appointment of Rich & Caroline as Co-Trustees, the advice Attorneys did give to Clients included incorrect information about the powers they possessed as Co-Trustees. Borunda testified he advised Rich & Caroline at the second mediation that, aside from the \$1M Set Aside, Rich & Caroline, as beneficiaries and Co-Trustees, would have the right and discretion to distribute any or all of the monies to themselves without qualification.²² This advice was incorrect because the Restated RA

¹⁷ *Report Exhibit E*, RICHARD GERARD ALLISON, JR., DEPOSITION, October 12, 2023, 17:20-23.

¹⁸ *Id.*, at 152:21-22.

¹⁹ *Id.*, at 65:13-19.

²⁰ *Id.*, at 64:9-24.

²¹ *Id.*, 17:20-20:23.

²² BORUNDA DEPOSITION, at 169:1-19.

Trust was a spendthrift Trust with distributions limited by an ascertainable standard – HEMS – which entirely negated the position that Clients would possess an unfettered right to distribute Trust property to themselves up to the educational holdback amount, regardless of whether they were both beneficiary and trustee. *State v. Rubion*, 158 Tex. 43, 308 S.W.2d 4 (1957); *see, Estate of Dillard*, 98 S.W.3d at 395 (analyzing *Rubion*).

Based on the spendthrift provision in the Restated RA Trust, Rich & Caroline could not make any distributions to themselves without meeting the Trust’s distribution standards, regardless of the holdback amount. “The unauthorized and wrongful assumption and exercise of dominion and control over the personal property of another, to the exclusion of or inconsistent with the owner’s rights, is in law a conversion.” *Duncan v. O’Shea*, No. 07-11-0088-CV, 2012 WL 3192774, at *6 (Tex. App.—Amarillo Aug. 7, 2012, no pet.) (citing *Waisath v. Lack’s Stores, Inc.*, 474 S.W.2d 444, 447 (Tex.1971)).

Borunda doubled down on his incorrect position and advice when he reiterated it, under oath, during his arbitration testimony. *See, Vol. 2*, at 266. Borunda stated Rich & Caroline “would have the authority and the discretion to distribute everything within the Allison Family Trust to [themselves], save and except a million dollars educational holdback.” *See, Vol. 3*, at 512. He, and Trevino, also testified he explained the *MSA* multiple times to Clients. *See, Vol. 2*, at 261. Borunda testified Attorneys were trying to get Clients the right, as individuals, to withdraw as much of the income and principal as they wanted, besides the educational holdback. *See, Vol. 2*, at 338. Trevino testified that the main benefit of the *MSA* was that Rich & Caroline obtained “unfettered access to control over that family trust as co-trustees,” besides the educational holdback. *See, Vol. 2*, at 248:1-249:23. Trevino repeated this at arbitration stating, “[s]o except for the million dollars, they could have done whatever they wanted with the principal and income inside of the Family Trust.” *Vol 4*, at p. 801. Attorneys took this course either understanding their position was incorrect and misrepresenting the law to Clients, or by being so misinformed of, or unfamiliar with, the law that they provided the incorrect advice in breach of the standard of care of providing advice to clients. TEX. R. DISC. PROF. CONDUCT, 1.01, 1.03, 2.01.

Coupling the incorrect advice that they could withdraw everything but \$1,000,000.00 from the Allison Family Trust and the absence of any guidance on trustee responsibilities under the Allison Family Trust, it is not surprising that Rich & Caroline have been threatened with litigation by one of their own family members. *Clients Exhibit 243 and Clients’ Exhibit 272*.

FLAWS IN MSA.

The following are, in my opinion, mistakes or flaws in the *MSA* that would have and should have been caught by a careful diligent attorney practicing in the estate and trust litigation area in Collin County, Texas. Attorneys should have been more diligent in negotiating the settlement but, more importantly, in writing it to accurately state and accomplish the agreed settlement terms, and Clients’ intentions, and to eliminate all ambiguity and uncertainty.²³ Attorneys violated the standard of care by failing to do so. The flaws and errors in the *MSA* are myriad and begin with

²³ TEX. R. DISC. PROF’L. COND. 1.01, 1.02(a)(1)-(2), 1.03.

the initial paragraph,²⁴ shown below, which reveals numerous foundational problems with the contract.

MEDIATED SETTLEMENT AGREEMENT

This is a Mediated Settlement Agreement. This Mediated Settlement Agreement (the “Agreement”) is entered into by and between ROBIN ALICE ALLISON, INDIVIDUALLY AND AS TRUSTEE OF THE RICHARD ALLISON TRUST AS AMENDED AND RESTATED (IN ITS ENTIRETY) ON APRIL 11, 2013, AND OF ALL TRUSTS CREATED THEREIN (“ROBIN”), RICHARD ALLISON, JR (“RICHARD”) AND CAROLINE ALLISON (“CAROLINE”), COLLECTIVELY, THE PARTIES. In consideration of the mutual promises contained in this Agreement, and with the intention of being bound by this Agreement, now and forever after, the Parties stipulate and agree as follows:

The term “**Robin**” is a defined term in the *MSA* to include: (i) Robin, Individually, (ii) Robin, as Trustee of the Richard Allison Trust, and (iii) Robin, as Trustee of “all trusts created therein”, without identifying any other trust specifically. So, one word defines, in the eyes of the law, more than three people even though *Elizondo* dictates Robin, in each capacity, is a stranger to her rights in the other capacities. The three named “parties” could just as well have been (i) Robin, Individually, (ii) John Doe, as Trustee of the Richard Allison Trust and (iii) Jim Smith, as Trustee of “all trusts created therein”. So, defining “Robin” to include three different legal personages was sloppy, negligent, and legal error that fell short of the standard of care. Why the failure to adequately define all Parties to the *MSA* was erroneous becomes evident in its terms section, including the Releases at Paragraph 3.3 and Paragraph 3.4.

The “Terms of Agreement” Section of the *MSA*, at Paragraphs 3.1-3.6, contains numerous errors, inaccuracies, or omissions breaching Attorneys’ standard of care, as follows:

Paragraph 3.1(a):

- a) Contract and Court Approval. This Agreement shall be binding on all Parties as a contract immediately upon it being fully executed by all Parties, although ultimately being dependent on Court approval as the terms of this Agreement may impact other persons, including contingent beneficiaries.

The fundamental discrepancy between the green and pink-highlights above is self-evident because they are diametric opposites. It is elementary contract law that there can be no binding and enforceable contract if there is a contingency that must occur before it becomes effective and the contingency never occurs. *Sharifi v. Steen Automotive, LLC*, 370 S.W.3d 126, 143-44 (Tex.App.—Dallas 2012, no pet.); see, *Fred v. Ledlow*, 309 S.W.2d 490, 491 (Tex.App.—San Antonio 1958, no writ) *Cont’l Transfer & Storage Co. v. Swann*, 278 S.W.2d 413, 415 (Tex.Civ.App.—Amarillo 1954, writ ref’d n.r.e). If a contract must be approved to be binding, then it is not a contract until

²⁴ See, *Clients Exhibit 158*.

approval is obtained. *Id.* The provision mentions impacting “other persons, including contingent beneficiaries”, which necessarily required the approval of all the contingent beneficiaries, one of whom was a minor. The minor’s interest also required representation. So, without the signature agreement of all those impacted by the *MSA*, there was no binding agreement. *Estate of Harley Webb*, 266 S.W.3d 544, 550-551, (Tex. App.—Fort Worth, 2008, pet. denied) (“*A family settlement agreement generally requires that all the beneficiaries of a will be included in the agreement.*”) (citing *Pickelner v. Adler*, 229 S.W.3d 516, 524 (Tex.App.—Houston [1st Dist.] 2007, pet. denied) (*holding a family settlement agreement “generally requires all heirs’ or beneficiaries’ agreement on the distribution”*)). It was fundamental to get the entire family (that had an interest) to agree to the negotiated deal and to sign the *MSA* to obtain an enforceable family settlement agreement. Therefore, no binding agreement existed when Robin, Rich, and Caroline left the mediation. Attorneys either did not know this, or did not explain this to Clients, again breaching their standard of care.

Paragraphs 3.1(b), 3.1(c), 3.1(i), 3.1(k) 3.1(l) 3.1(n), 3.1(o)(i) and 3.1(o)(ii), 3.1(q), 3.1(t), 3.1(v), 3.1(x) and 3.1(y). All these *MSA* Paragraphs begin with, or use the word, “Robin” to describe a requirement or action on her part, in some capacity. None of them differentiate in which capacity she is required to act, which is a fundamental flaw in the *MSA* violating Attorneys’ standard of care.

Paragraph 3.1(b): Reads, in pertinent part (verbatim): ***Robin shall receive all of the interest in the property located at 811 Creekwood Drive South, Fairview, Texas 75069 (the “Property”), so as to vest Robin with 100% ownership in the property, free of trust. Robin shall be solely responsible for the payment of any and all expenses associated with the Property that may be due and owing, including, but not limited to, ad valorem, property taxes.*** (Emphasis added).

Robin in which capacity? This *MSA* provision does not differentiate Robin, as referenced, to be Robin, Individually, or one of her other capacities and, in this instance, the lack of differentiation is substantive, creating an interpretation and construction problem. Because Robin is a defined term which includes her in multiple capacities, using the word “Robin” is not specific enough to identify who is to receive the property located at 811 Creekwood Drive South, Fairview, Texas, 75069 (the “**Creekwood Property**”). This provision defined the term – the “Property” – to capture the Creekwood Property, which creates another problem in subsequent Paragraph 3.1(x). Additionally, this *MSA* provision is not specific enough to identify which Robin (Robin in what capacity) is required to pay all expenses associated with the Creekwood Property. In this provision, the differentiation of capacities is a significant difference because Paragraph 3.1(b) could require the Creekwood Property to be distributed to Robin, Individually, Robin, as Trustee of the Restated RA Trust, or Robin, as Trustee of one of the other trusts created in the Restated RA Trust, and that one of them is required to pay all expenses and taxes on it. It could mean that Robin, Individually, gets the Creekwood Property but Robin in a trustee capacity must pay the expenses on it.

The Parties may say, “Well, it means Robin, Individually” but that is not what the *MSA* contract says. The discrepancy is such a major flaw in the *MSA* that it

absolutely requires a judicial construction of the *MSA* or a new written amendment or agreement modifying or clarifying the defined term in the *MSA*, such as: “The term ‘Robin’ in this Paragraph 3.1(b) is Robin in her Individual capacity only, and not as Trustee of the Restated RA Trust or as Trustee of the Marital Trust or as Trustee of the Family Trust.” The fact that this provision could be interpreted to mean the Creekwood Property is to be distributed to Robin in one of her other capacities is evidence of the gravity of failing to properly write this provision to accomplish its goal. At a minimum, failing to obtain a judicial construction or written agreement modifying or clarifying this defined term creates substantial risk of future litigation over the rights, obligations, and performance of under the *MSA* and it should have been right the first time. And, while Robin’s counsel could be equally culpable for this failure, he is not of concern here. Attorneys should have ensured there was no ambiguity or discrepancy in who received the Creekwood Property and who pays its expenses and taxes. No one can properly perform this provision without such modification or clarification, so it was a violation of the standard of care for Attorneys not to pay attention enough to make sure this term could be understood and easily and correctly performed.²⁵

Paragraph 3.1(c): in pertinent part (verbatim): ***Robin** shall receive all of the contents in the Property, subject to the provisions set forth herein.* (Emphasis added).

Robin in which capacity? The same analysis above regarding Paragraph 3.1(b) equally applies here and is adopted and incorporated here by reference as if fully stated. This is a major flaw in the *MSA* and a deviation from the standard of care.

Paragraph 3.1(e): in pertinent part (verbatim): ***Caroline and Rich** agreed to convey all of their partnership interests in the following entities to the **Marital Trust**, and the **Marital Trust** shall be solely responsible for any and all taxes, costs and other expenses associated with them: (i) CDR Associates, LP, (ii) Kingsman, LP, (iii) Seville Associates, LP, and (iv) Lagarto Creek, LP.* (Emphasis added).

The term also purports to, respectively, obligate CDR, Kingsman, Seville and Lagarto (the “**4 Entities**”) to accept the transfer of Rich & Caroline’s interest in them to the Marital Trust. Presumably, the transfer would be accepted if Robin is the authorized representative or agent for each, but in the process of completing a settlement agreement and making it binding, the entity must be consulted. Each entity, for example, is entitled to know whether Rich, Caroline, or both have clean, unencumbered title to transfer and meet all the requirements for transfer, and to determine if the terms of the Marital Trust comport with each entity’s company agreements. And, if the answer is, “Well, Robin is its general partner and can sign on its behalf”, then Robin in that specific capacity should have been included as a Party to the *MSA*. Attorneys’ failure to include all the necessary and affected parties to the *MSA* was a breach of the standard of care.

²⁵ TEX. R. DISC. PROF’L. COND. 1.01, 1.02(a)(1)-(2), 1.03, 2.01.

Paragraph 3.1(f). Reads (verbatim): *The **Trustee(s)** of the Family Trust, shall transfer all of its interest in 41st Street, LP, consisting of 49% limited partnership interest, to **Robin, individually.*** (Emphasis added).

Oddly, this *MSA* provision, instead of identifying which Trustee is required to perform, uses the word, “Trustee(s)” to require an action on behalf of the Family Trust. What does the phrase “Trustee(s) of the Family Trust” mean in terms of the action required? Does this require “Robin, as Trustee of the Family Trust” or “Rich & Caroline, as Trustees of the Family Trust,” or both? When is it to be done? Interestingly, this provision does differentiate Robin, in her individual capacity, which affirmatively indicates someone, presumably Attorneys, knew there was a difference, and did not bother to use that specificity throughout the rest of the *MSA*. This proves and establishes intentional conduct by Attorneys – they intentionally ignored the importance of differentiating Robin’s capacities in the other provisions because they knew it would complicate things and they wanted to get the deal done as quickly and easily as possible, without concern for Clients’ intent or best interest.

The Provision also purports to obligate 41st Street, LP, to accept the transfer of the 49% limited partnership interest. Just as stated above, the transfer of 41st Street, LP, to Robin would, obviously, be accepted by Robin if she is the authorized representative or agent for its general partner. But, in the process of getting a settlement agreement completed and making it binding, the entity must be consulted. 41st Street, LP, would have the same rights and interests as the Four Entities above and that analysis is incorporated here by reference as if fully stated. If the response is, “Well, Robin is its general partner and can sign on its behalf”, then Robin in that capacity should have been included as a Party to the *MSA*. Attorneys’ failure to obtain an agreement or resolution of 41st Street, LP was a breach of the standard of care.

Paragraph 3.1(g): Reads (verbatim): *Richard G. Allison Co, LLC shall transfer or assign all of its interest in Minaki, LP, consisting of 1% general partnership interest, to the Family Trust.*

It is elementary to any contract requiring action by a person or entity, to make said person/entity a party to the contract binding them and requiring performance, lest they be sued for enforcement. *MSA* Paragraph 3.1(g) requires action by Richard G. Allison Co, LLC, an entity that is not party to the contract. The provision is essentially an esoteric promise that Rich & Caroline would have no method to enforce had Richard G. Allison Co, LLC refused to transfer or assign its interest in Minaki to the Family Trust. If Robin is the representative of Richard G. Allison Co, LLC, then it would have been simple to add her to the *MSA* or, at a minimum, add a signature line to the *MSA* for Robin to sign as representative of Richard G. Allison Co, LLC. No client could be held to have the knowledge necessary to ensure the various capacities that were required to complete the deal and bind all those necessary to accomplish it, were captured by the agreement. Rich & Caroline left mediation believing they had a deal entitling them to almost the entirety of Minaki, LP. However, they were mistaken, due to the inaccurate advice, even deception

(intentional or not), of Attorneys, and they actually had nothing. Robin's inclusion, as representative or agent of Richard G. Allison Co, LLC, was a uniquely legal issue incumbent upon Attorneys to secure. Attorneys' failure to include Robin in that capacity was a per se violation of the standard of care because it constitutes a matter uniquely delegated to the attorney.

Paragraph 3.1(h): Reads (verbatim): *The trustee of the Marital Trust shall transfer all of its interest in Jackson Square, LP, consisting of 23% limited partnership interest, in equal shares to Hunter Allison, Ella Allison and Erik Allison.* (Emphasis added).

The "trustee of the Marital Trust" is called out by name and is required to act, but never signs it by name – the presumption will be that phrase references Robin, as Trustee of the Marital Trust. A lazy way to require a supposed party to the MSA to act. Assuming the latter is no harm, this MSA term suffers from the same issues and analysis stated above relating to the Four Entities and the 41st Street, LP and the Jackson Square, LP would have the same rights and interests as all of them and that analysis is incorporated here by reference as if fully stated. But, if the answer is, "Well, Robin is its general partner and can sign on its behalf", then Robin that capacity should have been included as a Party to the MSA. Attorneys' failure to obtain an agreement or resolution of Jackson Square, LP, as well as Hunter Allison, Ella Allison, and Erik Allison, was a breach of the standard of care.

Paragraph 3.1(j): Reads (verbatim): *The Richard G. Allison Co, LLC shall transfer all of its interest in Jackson Square, LP, consisting of ½% general partnership interest, in equal shares to Hunter Allison, Ella Allison and Erik Allison.*

While this provision does not directly affect Rich & Caroline, it is consideration for the MSA that, again, failed because no one that could bind Richard G. Allison Co, LLC signed the MSA. See analysis immediately above regarding Paragraph 3.1(g), which is incorporated here by reference as if fully stated. Rich & Caroline could not have known this was an issue and had every right to lean on Attorneys to ascertain that all authority needed to make the MSA binding was obtained. It was a breach of the standard of care for Attorneys to fail to do so.

Paragraph 3.1(k): Reads (verbatim): *Robin shall resign as Trustee of the Family Trust and waive all rights to receive any interest, income and or principal whatsoever from the Family Trust.*

Robin in which capacity? Giving the benefit of the doubt that "Robin" in this MSA term means "Robin, as Trustee of the Family Trust" (even though not defined), this is the MSA term that was supposedly to effectuate a "divorce" from Robin and eliminate her from the Family Trust for all purposes and to forever exclude her from all concerns of Rich & Caroline in all possible capacities. This was a primary goal Attorneys' representation of Rich & Caroline.

The provision should have required and effectuated a disclaimer of Robin's interest and eliminated her as a beneficiary and an "interested person" under TEX. PROP.

CODE §111.004(7) that would, in turn, eliminate her standing to ever have a right, concern, care or say in anything that happened with the Family Trust going forward. Instead, it simply provides that Robin shall resign and waive her “rights to receive any interest, income and principal whatsoever from the Family Trust” through an undefined mechanism and at an undefined time in the future.

Paragraph 3.1(l): Reads (verbatim): *Robin shall continue to serve as trustee of the Marital Trust and acknowledges that it is irrevocable, and distributions can only be made of income realized from the Marital Trust, and the corpus of the Marital Trust cannot be invaded, less expressly authorized by the terms of the Marital Trust.*

This turns out to be a meaningless provision and it is unclear why it was included. Robin already serving as Trustee of the Marital Trust and will continue. The Marital Trust is already irrevocable and acknowledged as irrevocable. Income can only be distributed from “income realized” by the Marital Trust, already a term and corpus (principal) of the Marital Trust can only be invaded as authorized by the terms of the Marital Trust. It is unclear why this provision was included. It may just be there for clarification, which is harmless, or may be to make it appear that the Marital Trust was doing something other than what it was already doing to make it appear as if it was adding consideration for the MSA. Attorneys should have explained to Rich & Caroline why it was being included and its effect and it was below the standard of care for them to have not explained it to them.

Paragraph 3.1(m): Reads (verbatim): *Caroline and Rich shall be named as co-trustees of the Family Trust.*

This MSA term underscores the problem with the entire MSA. Neither Rich nor Caroline ever wanted to be a trustee or fiduciary, and never would have affirmatively “signed-up” for such duty placing them and all their actions under a microscope if it had not been for Attorneys assuring them that, once they were Co-Trustees, they could exercise their discretion to distribute all but \$1 million from the Family Trust to themselves. The advice was incorrect and, now, they not only are stuck being Co-Trustees but have not received any of the distributions promised. It was a breach of the standard of care for Attorneys to create this disaster for their Clients, Rich & Caroline.

Paragraph 3.1(n): Reads (verbatim): *The personal property specifically distributed in the Surviving Grantor’s Trust shall be distributed in accordance with the terms of the Surviving Grantor’s Trust by **Robin**.* (Emphasis added).

Robin in which capacity? The same analysis above regarding Paragraph 3.1(b) and 3.1(c) equally apply here and is adopted and incorporated here by reference as if fully stated. Is all the personal property to be distributed to Robin, Individually, or as Trustee of the Restated RA Trust or as Trustee of one of the other Trusts created by the Restated RA Trust? Again, this discrepancy is such a major flaw in the MSA that it absolutely requires a judicial construction of the MSA or a new written

amendment or agreement modifying or clarifying the defined term “Robin” in the *MSA*, such as: “The term ‘Robin’ in this Paragraph 3.1(n) is Robin, as Trustee of the Grantor’s Trust only, and not Individually or in any other capacity.” The fact that this provision could be interpreted to mean the personal property could be distributed to Robin, Individually, the Marital Trust or the Family Trust is evidence of the gravity of failing to properly write this provision to accomplish its goal. Failing to obtain a judicial construction or written agreement modifying or clarifying this defined term creates substantial risk of future litigation over the rights, obligations, and performance of under the *MSA*, and it should have been right the first time. Attorneys should have ensured there was no ambiguity or discrepancy in the *MSA* about who would get the personal property. No one can properly perform this provision without such modification or clarification, so it was a violation of the standard of care for Attorneys not to pay attention enough to make sure this term could be understood and easily and correctly performed.²⁶

Paragraph 3.1(p): This *MSA* provision reads as follows:

- p) The Family Trust shall be amended as follows:
- i. Caroline and Richard shall be named as Co-Trustees and shall effectuate the transfers herein
 - ii. Caroline and Richard shall insure that the balance of the Family Trust does not fall below \$1,000,000 until the youngest of Decedent’s grandchildren attains 25 years of age, except that the balance can fall below \$1,000,000 in the event it is being used for educational expenses of such grandchildren, and thereby reducing the minimum required balance by the amount expended for educational expenses
 - iii. Caroline and Richard shall have the right to access all principal and income from the Family Trust with the exception of the \$1,000,000 in principal set aside for the grandchildren’s educational expenses set forth above at the discretion of the co-trustees

All 3 Attorneys testified that the main asset Rich & Caroline would receive from the *MSA* was the Minaki, LP, Securities Account at Fidelity with “at least” \$9.5 million on deposit.²⁷ The “intent”, as explained by Attorneys and as understood by Clients was that they, as Co-Trustees, would be immediately entitled to split and distribute that account to themselves equally (50/50) or as they saw fit. However, the *MSA* failed to consider – and Attorneys did not discuss with Clients – that the Family Trust did not own 100% of Minaki, LP (notably, Hunter Allison owned 1%), and that such contemplated distribution would necessarily be limited by the terms of the Family Trust and the partnership documents for Minaki, LP. The *MSA* also did not designate Rich & Caroline as the primary beneficiaries of the Family

²⁶ TEX. R. DISC. PROF’L. COND. 1.01, 1.02(a)(1)-(2), 1.03, 2.01.

²⁷ See, *MSA*, Paragraph 3.1(q).

Trust, nor make clear who the Family Trust beneficiaries would be and in what proportions or their corresponding rights.

Importantly, *MSA* Section 3.1(p) states the Family Trust would be amended to allow Rich & Caroline the “right to access all principal and income” therefrom, but Attorneys failed to consider or include any terms in the *MSA* related to changing the distribution standard in the trust instrument. Without amending or changing the (HEMS) distribution standard, Rich & Caroline’s “right to access” is limited to “such amounts of the income and principal ... as are necessary, when added to the funds reasonably available to the Grantors’ descendants from all other sources known to the Trustee, to provide for their health, support, maintenance, and education, taking into consideration their age, education and station in life.” *See*, Restated RA Trust, Article V(B).²⁸ The distribution standard does not authorize or permit Rich & Caroline, as Co-Trustees, to distribute the entirety of the Minaki, LP Securities Account, contrary to the advice from Attorneys. The *MSA* should have made clear, with all Parties agreement, that the distribution standard would be amended (and TEX. PROP. CODE §113.029 would be superseded) to allow outright distribution of all but \$1 million of the Family Trust – in their sole discretion – to themselves and it did not do so.

The language of the *MSA* at 3.1(p) is unnecessarily vague and it is unclear exactly what is being agreed to by the Parties. The *MSA* should have also made clear the Family Trust would be amended to reflect who the beneficiaries are and what they are entitled to receive; it does not. Instead, the *MSA* granted the grandchildren standing to hold Rich & Caroline, as Co-Trustees, to the distribution standard and challenge any distribution that deviates from it, as well as an accounting of all the Family Trust’s assets and its administration, despite the intent that they are only entitled to the \$1,000,000.00 set aside for educational expenses. Creating these fiduciary duties for Rich & Caroline will lead to nothing but angst and dispute they did not want – it has already started.²⁹

Lastly, Attorneys failed to consider the distribution standard set forth in the partnership documents for Minaki, LP. Because the Family Trust did not own 100% of Minaki, LP, the Minaki, LP Securities Account at Fidelity could not be equally distributed to Rich & Caroline as they were told by Attorneys. Hunter Allison is a 1% LP owner and, presumably, under the terms of the partnership documents, would be entitled to his pro rata distribution of any property from Minaki, LP, to its owners. So, he would be entitled to 1% of the Minaki, LP Securities Account, if it was distributed. Attorneys wholly failed to inform Rich & Caroline or take into consideration that the Family Trust did not own 100% of Minaki, LP. Hunter

²⁸ The term “Grantors’ descendants” is defined to include Caroline and Richard and their respective descendants. *See* Article I of the Trust instrument.

²⁹ In a letter dated April 14, 2023, from Michael Collins sent on behalf of Hunter “Allie” Allison, he wrote: “My client is entitled to an accounting of the assets fo the Minaki Limited Partnership and an accounting of the Allison Family Trust.” He cites to TEX. PROP. CODE §113.141, 113.151 and §113.152. *Clients’ Exhibit 243*.

Allison sent a letter to Rich & Caroline earlier this year raising this very issue.³⁰ All of these failures were a gross deviation from and violation of the standard of care.

Paragraph 3.1(v): Reads (verbatim): *The Parties agree upon the Court’ approval of this Agreement, ...*

The first and most obvious point of this *MSA* term is it unquestionably confirms the condition precedent that requires the *MSA* to be approved by the Court before it is binding on anyone, contrary to Paragraph 3.1(a), which states it is a binding contract, a incorrectly drafted sentence in the *MSA* but one, undoubtedly, read and relied upon by Rich & Caroline, despite it being untrue.

Paragraph 3.1(w): Reads (verbatim): *Within 14 days after the Court approves this Agreement, Counsel for Richard and Caroline shall prepare amendments to the Family Trust to facilitate the terms of this Agreement.* (Emphasis added).

Again, this *MSA* term boldly confirms the condition precedent that requires the *MSA* to be approved by the Court before it is binding on anyone, contrary to Paragraph 3.1(a), which states it is a binding contract, a incorrectly drafted sentence in the *MSA* but one, undoubtedly, read and relied upon by Rich & Caroline, despite it being untrue. It was incumbent on Attorneys and within their standard of care to know what needed to be done to obtain a judicial modification of the Family Trust, to prepare proper pleadings under TEX. PROP. CODE §112.054 to obtain such modification and then prepare Family Trust modification documents that would permanently replace those in the Restate RA Trust that conflicted. Attorneys failed at every level to do any of the latter breaching their standard of care. *Please see Trust Modification Failures Section below that is incorporated here by reference as if fully stated.*

Paragraph 3.1(x): Reads (verbatim): *Within 14 days after the Court approves this Agreement, Counsel for Robin shall prepare amendments to the Marital Trust to facilitate the terms of this agreement.* (Emphasis added).

Again, this *MSA* term confirms the condition precedent that requires the *MSA* to be approved by the Court, leaving Robin’s attorneys’ to prepare the pleading and to file for judicial modification and to prepare modifications of the Marital Trust. The *MSA* is unclear what modifications would be made, other than the meaningless Paragraph 3.1(l) above that does not require any changes to be made. So, all “interested persons” in the Restate RA Trust and the Marital Trust did not know

³⁰ Mr. Collins, on behalf of Hunter “Allie” Allison, further wrote: “You are the Trustees of the Allison Family Trust, which owns 96% of the Minaki Limited Partnership ... My client owns a 1% interest in the Minaki Limited Partnership and has not received any distributions from the Minaki Limited Partnership. If any other individual has received a distribution from the Minaki Limited Partnership, Hunter Allison is also entitled to a distribution. My client has not received K1’s for the Minaki Limited Partnership for 2021 and this last tax year (2022).” *Clients’ Exhibit 243.*

what they were agreeing to, despite Robin, as Trustee of the Marital Trust having an affirmative duty of full disclosure to advise them of such modifications. Absent full disclosure, that Attorneys should have ascertained Robin provided, the grandchildren and other “interested persons” in the Restate RA Trust could have a basis for setting aside the *MSA*, its approval, and all the documents, which exposes Rich & Caroline to further liability to their “new found” beneficiaries of the Family Trust.

Paragraph 3.1(y): Reads (verbatim): *Within 14 days after the Court approves this Agreement, Counsel for Robin shall prepare any and all assignments, transfers, deeds, etc. to facilitate the terms of this Agreement as it pertains to the Homestead and various entities to facilitate the terms of this Agreement.* (Emphasis added).

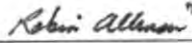
Again, this *MSA* term, again, confirms the condition precedent that requires the *MSA* to be approved by the Court. Because it refers to the “Homestead” as a defined term that is never defined in the *MSA*. At Paragraph 3.1(b) the property located at 811 Creekwood Drive South, Fairview, Texas, 75069 is described and is defined as “Property”, not as “Homestead”. While the Parties may understand which property is Robin’s “Homestead” the discrepancy requires a construction of the *MSA* by a Court or a new written amendment or agreement modifying or clarifying the defined term in the *MSA* like the following: “The terms ‘Property’ and ‘Homestead’ are interchangeable and are defined to mean the same property – the property located at 811 Creekwood Drive South, Fairview, Texas, 75069.”

A minor point but one that is further indicative of Attorneys’ total carelessness and lack of attention to detail is the *MSA* is totally missing any Paragraph 4 – the *MSA* includes Paragraphs 3.1-3.6, then jumps to Paragraph 5.1. If it was too late for Attorneys to do their job at mediation to stay on point to get the *MSA* written accurately, then it was too late for Clients to be required to sit down ready through the *MSA*, to understand it fully and sign it. Attorneys should have protected Clients from being in that situation or signing a document after midnight that Attorneys apparently did not fully understand or seek out advice regarding trust law and tax law that they so desperately needed.

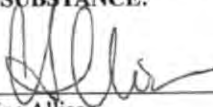
It is never advisable under any circumstance to include in any contract, agreement, settlement agreement or otherwise, an “orphan signature page”, which is a term I have given signature pages that have nothing else on them but signatures that can be attached to anything. The signature page of the *MSA* is on Page 12 of 12 and contains the following:

WITNESS OUR HANDS this 13th day of April, 2021.

READ, UNDERSTOOD, APPROVED AND
AGREED AS TO FORM, CONTENT
AND SUBSTANCE:


Robin Allison, in all capacities

READ, UNDERSTOOD, APPROVED AND
AGREED AS TO FORM, CONTENT
AND SUBSTANCE:


Caroline Allison

READ, UNDERSTOOD, APPROVED AND
AGREED AS TO FORM, CONTENT
AND SUBSTANCE:


Richard Allison, Jr.

MEDIATED SETTLEMENT AGREEMENT - Page 12 of 12

Also, potentially significant is the large blank space on Page 11 of 12 after Paragraph 5.15. Nothing is done to indicate the space is intentionally left blank, leaving the possibility for someone to take a version of the *MSA*, type in new and additional provisions into that space, and pass it off as being “the *MSA*.” Thankfully that did not occur, but it could and there is no reason to leave that opportunity when all the signatures on the next page 12 of 12 would have fit in the blank area on Page 11 of 12. These seem like minor issues because nothing has come of them, but they should be considered to show the lack of attention to detail and, worse, lack of concern for Clients and protection of their rights. A diligent attorney, operating under the applicable standard of care – doing what a prudent lawyer is expected to do and would do in the same situation – buttons up these types of problems and leaves no room for potential malfeasance or post-execution alterations.

Failure to Ensure Robin fully Disclaimed Her Interest and Standing in the Family Trust and to Terminate Family Trust to Accomplish Outright Distribution to Rich & Caroline.

The fundamental premise, intent, and goal of the settlement, if there was to be a settlement, was that Rich & Caroline would receive their inheritance from their father early, i.e., before Robin’s death, and, to meet that goal, Rich & Caroline would receive that early inheritance, i.e., the settlement amount, in fee simple, outright, and free of trust. Other than the \$1,000,000.00 set aside for the grandchildren, which was consideration and incentive for them to sign the *MSA* and the

GAL for the minor to approve it, Rich & Caroline were supposed to receive all the remaining settlement property outright and free of trust. It was from that money that was to be paid to Rich & Caroline outright that Attorneys were to be paid a contingency fee. Attorneys' failure to effectuate the goal of the settlement violated the standard of care and has caused this entire mess – leaving the settlement property in the Family Trust, making Rich & Caroline Co-Trustees and fiduciaries that can only distribute trust funds according to the HEMS standard, imposing the restrictions of the spendthrift clause that prevents the beneficiaries, including Rich & Caroline, from demanding or even requesting a distribution, delaying, even prohibiting, distribution or receipt of settlement funds to Rich & Caroline, lawsuits and this arbitration. The harm to Rich & Caroline is obvious because the result has been an utter disaster, yet Attorneys believe, and have sued, to be paid a fee for the colossal disaster they created by their failure to abide by the standard of care in protecting their Clients from all these problems they were trying to avoid in the first place.

The *MSA* left in place all the protections and restrictions on the Family Trust property that existed before the litigation – namely, the HEMS standard for distribution, the spendthrift clause, disclaimers and fiduciary obligations – none of them were addressed; in other words, the *MSA* wholly fails to accomplish the goals of Rich & Caroline because none of the problems they were attempting to “undo” with Robin at the helm were addressed but left in place but, now, with Rich & Caroline as Co-Trustees. Neither Rich nor Caroline may voluntarily or involuntarily alienate the interest of a beneficiary in this trust. Rich & Caroline cannot pledge the trust assets or incur personal debts with the security of knowing they can simply make distributions to themselves to pay it off because the *MSA* never requires the spendthrift provision to be amended.

The *MSA* purports to seek a disclaimer by Robin of her interest as a beneficiary in the Family Trust. As Mr. Trevino stated in his deposition, Robin “was giving up all rights whatsoever” and would have “no interest” in the Allison Family Trust. *Vol. 4 at page 794-795*. This reflects an apparent intent to accomplish a disclaimer by Robin. If she were to disclaim completely, it must have been perfected in accordance with TEX. PROP. CODE, Chapter 240, as required by Article XIII(D) of the Restated RA Trust requiring that “[a]ny disclaimer pursuant to this Section shall be made in the manner provided by law.” So, the roadmap for accomplishing a disclaimer was set by the Restated RA Trust and statute. The standard of care requires Attorneys to have known that roadmap and then to mandatorily require Robin’s disclaimer in the *MSA* or other necessary documents outside the *MSA* or both to memorialize and complete the settlement. The *MSA*, at Paragraph 3.1(k), required Robin to, at some point in the future, waive her right to “any interest, income and/or principal from the Family Trust,” but the *MSA* did not remove her as a beneficiary or require her to mandatorily and forever disclaim all her interest in the Family Trust. Because the *MSA* drafted by Attorneys did not require Robin’s global and total unconditional disclaimer removing her as a beneficiary, whether she remains a beneficiary of the Family Trust remains uncertain, and that would leave Rich & Caroline in the potential position of owing fiduciary duties to Robin, owing her regular accountings as Settlor or named beneficiary, leaving a relationship with her they thought would be ended; worse, a fiduciary relationship they never wanted.

If Robin had properly and fully disclaimed as expected, then “any property...so disclaimed shall be payable in the same manner as would have been the case *had the Disclaimant failed to survive the Husband or the Wife.*” (Emphasis added). This treatment is like statutory provisions specifying

that a disclaimant is treated as having died immediately before the decedent, i.e., as having predeceased the decedent. *See*, TEX. PROP. CODE §§240.051(f), 240.0511(c), 240.0512(c), and 240.052(c). The latter is exactly what Rich & Caroline thought would happen, based upon Attorneys' advice. Yet, another reason the advice that Rich & Caroline have unfettered access to the Family Trust aside from the \$1,000,000.00 set aside for grandchildren is incorrect, and in violation of the standard of care to provide this incorrect explanation. Further complicating the Spendthrift Provisions of the 2013 Trust at Paragraph XII-C creating a scenario whereby a surviving grantor is not a beneficiary to cause the trust to "be a spendthrift trust to the fullest extent allowed by law."

Also, the failure of Robin's mandatory disclaimer caused impediments to Rich & Caroline's search for a corporate trustee. *See, Clients' Exhibit 271*. Caroline testified that there were difficulties getting corporate trustees to take over this role. *Vol. 7*, at pp. 1314-1315. Specifically, Caroline was turned down by Cumberland Trust and Northern Trust. These difficulties were created by the absence of compliance with the standard of care by Attorneys.

The standard of care for any attorney, whether writing or proofing a settlement agreement, is to make sure the agreement is written clearly and without ambiguity to capture and encapsulate the intent and substance of the client's agreement. With any contract or settlement agreement, but particularly one of this magnitude and importance. In this case, it was incumbent on Attorneys to accurately memorialize the intended outright distribution to Rich & Caroline of all settlement proceeds – their inheritance from their father – that required modification or termination of the Family Trust, an override of Texas Property Code §113.029, and elimination of the HEMS standard and the spendthrift clause. Attorneys wholly failed to do so, and the goal of the settlement was not contained in the *MSA*, so they violated the standard of care and actually caused harm to their Clients in the process; harm that was foreseeable.

TRUST MODIFICATION FAILURES.

Attorneys should have known the purported modifications were ineffective and not in compliance with the statute allowing judicial modification or termination. TEX. PROP. CODE §112.054. Attorneys negligently omitting in violation of the standard of care a required legal proceeding and required language in the consent of the interested persons – the grandchildren – and in an order of modification or termination. All Parties acknowledge that, as of Decedent's DOD, the Restated RA Trust, including the Family Trust, are irrevocable. Art. X(B) of the Restated RA Trust expressly provides, in part: "[T]he trusts created under this Trust Agreement shall become irrevocable, and the surviving Grantor **shall thereafter be without power to revoke or amend any of the provisions of such trusts.**" The latter along with the HEMS standard, no override of TEX. PROP. CODE §113.029, and the spendthrift clause underscore the application of meeting a specific requirement or requirements of §112.054. Absent the latter, the Family Trust could not be modified or terminated. Attorneys thought they could merely get the *MSA* approved and have Robin sign a *Modification and Amendment to the Richard Allison Trust and Consent Agreements* (the "**Trust Modification**"). Attorneys incorrectly believed nothing else needed to be done and that these documents would have the effect of modifying the Restated RA Trust in a way that comported with the terms of the *MSA* and its compliance with the statute. However, the Trust Modification had no legal effect because such modifications were expressly disallowed by the

terms of the Restated RA Trust and Attorneys skipped the required legal action to effectuate a change. Since the Family Trust (and Marital Trust) became irrevocable on Decedent's DOD, court action was required to modify or terminate either of them, along with, in this case consent, of the beneficiaries of the Family Trust. TEX. PROP. (TRUST) CODE §112.054

The *MSA* called for Attorneys to prepare documents needed to effectuate the settlement (Section 3.1(w)) and only vaguely described what was to be modified at Section 3.1(p).³¹ The statute (§112.054) has specific requirements that must be met and a specific order or judgment modifying a trust containing specific findings of the requirements in the statute. After the *MSA* was approved, Attorneys were required to a formal petition outlining the requested modifications and providing the consent to the changes of all beneficiaries of, here, the Family Trust. Attorneys never got any court order after the one approving the *MSA*, so they, apparently, did not know the requirements and failed to meet the standard of care to obtain the modifications necessary to accomplish the settlement. Rich & Caroline have been required to hire new counsel – Sarah Pacheco – file the required lawsuit to get the required orders necessary to make the modification because Attorneys failed to even seek the judicial modification required by the statute.

The judicial modification requires a pleading that shows how the Family Trust was to be modified and which of the subsections of §112.054 is relied upon because only one of those bases will allow a judicial modification. Because this one is being done by agreement, after all approvals and agreements are obtained, an order or judgment containing the new provisions that will be ordered to replace the old provisions must be entered. Attorneys completely skipped this step, which is why a modification has not yet occurred, despite the attempted *Trust Modification*. Without a court order making the required findings and ordering specific changes, no modification was accomplished in this case, so the settlement was not accomplished. The standard of care to effectuate a judicial modification required all the latter and it was never done, preventing completion of the settlement causing harm to Rich & Caroline that prevents Attorneys from ever getting paid – lack of meeting the condition precedent of Rich & Caroline receiving something from their work. It did not happen because Attorneys did not know to or know how to make it happen, violating the standard of care.

Even if Attorneys did comply with applicable law and met the required standard of care, the *MSA* does not contain the language in the *Trust Modification*, which states “The Trustee(s), as defined in the *MSA*, shall distribute the income and principal of the trust to the Beneficiaries in such amounts as the Beneficiaries, in their discretion, may direct.”³² The latter gives the discretion to make distributions to the “Primary Beneficiaries” defined as Rich & Caroline, totally eviscerating the power of the Co-Trustees to exercise their discretion within the HEMS Standard and their fiduciary duties to all Family Trust beneficiaries. If a Beneficiary acquires unfettered control over the assets of the Trust to the exclusion of its Trustee, the Trust ceases to exist, which would eliminate all GST benefits and protections of even the \$1M Set Aside for the grandchildren, which was not intended. Further, it would also nullify the purpose of the Family Trust. To do any of it, the modification would have to supersede the statutory requirement of TEX. PROP. CODE §113.029 establishing the mandatory application of the HEMS standard. Handing off all the discretion to make distributions to the Primary Beneficiaries exposes the Trustee to breach of fiduciary duty

³¹ See, Language of §3.1(p) on p. 34, *supra*.

³² *Lawyers Exhibit 275*, MODIFICATION AND AMENDMENT TO THE RICHARD ALLISON TRUST.

claims because someone else is dictating distributions contrary to the Family Trust Terms and purpose, which makes evident the difference in the Trust Modification language and that of the *MSA*:

iii. Caroline and Richard shall have the right to access all principal and income from the Family Trust with the exception of the \$1,000,000 in principal set aside for the grandchildren's educational expenses set forth above at the discretion of the co-trustees

The Trust Modification deviates from the *MSA* which only provides that Rich & Caroline “shall have the right to access all principal and income”, a power every trustee of the Family Trust would have based upon legal title. The *Trust Modification* prepared by Attorneys violates the terms of the Family Trust and the *MSA*, the terms of statute, the purpose of the Trust and does not accomplish the intent of the settlement that Rich & Caroline have fee simple title to all but the \$1M Set Aside. Failure to seek a judicial modification that eliminates all these problems underscores the gross failure of Attorneys to meet the standard of care in trust law. It would be expected that an attorney knowledgeable in the trust area knows a judicial modification is required in this situation. Attorneys did not have such knowledge because they never sought a judicial modification, so the standard of care required them to seek out information from someone that did have that knowledge, a requirement (standard) they affirmatively decided to ignore. So it was not only impossible for them to meet the standard of care based on their lack of knowledge of trust law but they affirmatively decided to breach the standard of care by refusing to consult with other attorneys or professionals, which included seeking tax advice related to, at a minimum, the effect of capital gains tax on the settlement and the Minaki transfer and losing the generation skipping tax exemption.

Attorneys further violated their standard of care by failing to properly obtain consent from other beneficiaries of the Family Trust, especially the grandchildren. The *Consent Agreements* state the grandchildren have reviewed, understand, and consent to the *MSA*. However, the consent forms do not disclose that because of the *MSA*, Rich & Caroline now had the purported power and authority to reduce the Family Trust down to the \$1M Set Aside, thereby reducing the amount of principal and interest that could be provided to grandchildren. The grandchildren were Family Trust beneficiaries and were owed fiduciary duties both before and after the *MSA*. If there were to be modifications the consent of the beneficiaries, and the approval of the guardian ad litem for Kennsington White, a minor, was mandatory by statute and per the *MSA* (Paragraph 3.1(s)). To consent the beneficiaries were entitled to disclosure of all information that materially affected their interests, i.e., how their rights may be affected by the modification, i.e., that the HEMS distribution standard was to be removed from the Family Trusts, thus removing protections that benefited the grandchildren. The *Consent Agreements* illustrate the failure to make the required disclosures and obtain the required informed consent. Although not their attorneys, Attorneys were obligated to assist in providing them as much information as needed to make sure they were provided such information to ensure they would not have grounds to undo or set aside the settlement or its approval and, if it had been pursued correctly, any judicial modification order. Therefore,

Attorneys violated their standard of care by failing to provide information to all beneficiaries signing agreement to modification.

UNCONSCIONABLE EFFORT TO APPROVE CONTINGENCY FEES

The worst of the process was revealed when Attorneys attempted to sneak language approving their 35% contingency fee into the *Order Approving Mediated Settlement Agreement*. See Client's Exhibit 193.

has also approved the MSA on her behalf. Moreover, the Court finds that attorneys' fees and expenses incurred by all the Parties were actual and necessary. Specifically, the Court finds that litigation incident to this estate was necessary and proper in determining the property/beneficiaries of the estate, the property/beneficiaries of the Allison Family Trust and/or Allison Marital Trust and was in all respects essential to the proper settlement of the estate and/or Trusts. The Court also finds that a contingency fee of 35 percent of the value of the Allison Family Trust's assets is a proper, reasonable and necessary attorneys' fee incurred in connection with the above-captioned matter.

IT IS THEREFORE ORDERED, that the contingency fee described above is hereby APPROVED.

It appears the Attorneys knew their demand for this contingency percentage was either contested or unconscionable and attempted to get the Probate Court to bless it to have a “big stick” to whack their Clients over the head with. This emphasizes the Attorneys motivation – their fees, not the Clients’ interests. Attempting to get the opposing counsel, and later the Court, to adopt this language into its order is an egregious breach of fiduciary duty and the standard of care. Without telling their Clients, the red-lines in the proposed order Attorneys originally submitted to Michael Collins for his consideration would have built in a finding that their contingency fee percentage was “reasonable and necessary” and that their contingency fee was APPROVED, essentially, giving the Attorneys a judgment they could enforce against the Clients without due process. Michael Collins objected to Attorneys’ proposed language, stating “We do not agree with the language you added so I am preparing a motion for approval sponsored by Robin only and the parties can indicate their approval at the hearing.”³³ If it had not been for Michael Collins, Clients’ opposing counsel, objecting and refusing to agree to the language, it appears those findings and that ordered paragraph would have been entered and could have potentially barred Clients’ complaints about the fees on res judicata or collateral estoppel grounds. The standards of care and conduct dictate no attorney should go behind their clients’ back to seek out an order that benefits them to the detriment of their client, and they, certainly, should not do it without telling them. If this truly was for tax reasons as the lawyers have suggested, then this would have been a simple disclosure to have made to the client. More importantly, merely because it involved a purported

³³ See, Clients’ Exhibit 195.

tax benefit does not excuse non-disclosure of this extremely vital event the lawyers were seeking to accomplish.

IMPROPERLY SEEKING CONTINGENT FEE WITHOUT A WRITTEN CONTRACT.

The applicable standard of care under the Disciplinary Rules and the Government Code requires an attorney or law firm to have a written fee contract entered at the beginning of the representation. *Hoover Slovacek LLP v. Walton*, 206 S.W.3d 557, 565 (Tex. 2006) (citing *Levine v. Bayne, Snell Krause, Ltd.*, 40 S.W.3d 92, 96 (Tex. 2001) (citing RESTATEMENT (THIRD) OF THE LAW GOVERNING LAWYERS §§ 38(1), 18) (“Lawyers have a duty, at the outset of the representation, to ‘inform a client of the basis or rate of the fee’ and ‘the contract’s implications for the client.’”). Sound policy supports these requirements. Both attorneys and clients understand from the outset the parameters of representation and that it will not be on an hourly basis, i.e., one not requiring a written fee agreement. The attorneys and clients understand how expenses will be paid, whether out of pocket by the client, advanced by the attorney to be reimbursed off the top of any Recovery or rolled into the agreed contingency fee percentage. Neither the clients nor the attorneys get to change the rules or move the goalposts during the representation. In such a situation, Texas Courts impose the obligation of clarifying fee agreements upon the attorney, which “is entirely reasonable, both because of [the attorney’s] greater knowledge and experience with respect to fee arrangements and because of the trust [the] client has placed in [the attorney].” *Id.* (citing *Levine*, 40 S.W.3d at 95 (quoting *Cardenas v. Ramsey County*, 322 N.W.2d 191, 194 (Minn. 1982)) (alterations in original)). Texas Disciplinary Rule of Professional Conduct 1.04(d) provides that a contingent fee agreement shall be in writing and shall state the method by which the fee is to be determined. Rule 1.04(d) further provides: “Upon conclusion of a contingent fee matter, the lawyer shall provide the client with a written statement describing the outcome of the matter and, if there is a recovery, showing the remittance to the client and the method of its determination.”

After executing the *MSA* on April 13, 2021, Caroline provided notice she would not reimburse Attorneys for the “work” they did, so Attorneys hired Joseph R. Little to represent them in extracting their fee from their former Clients. On February 2, 2022, Mr. Little sent a letter to Rich demanding he pay his half of the contingency fee Attorneys had “earned.” The Demand Letter conveyed Attorneys knowledge of the requirements of Texas Disciplinary Rule of Professional Conduct 1.04(d):

“The attorneys have been denied access to the documents and other information for them to accurately describe the outcome of this matter and to show how much of your recovery should be remitted to you and the method by which this amount was determined.”

Attorneys were aware they were violating Rule 1.04 when they attempted to extract a fee from Rich but continued to demand money from Rich, guessing and estimating their way to a fee with “back of the envelope” math. The Demand Letter amounts to nothing more than a shakedown, is a callous and clear display of exactly what the Rule is designed to prevent and shows exactly what Attorneys were after during their representation of both Clients: a piece of their inheritances, which Attorneys failed to secure for Clients. Just like the *MSA*, the Demand Letter was shoddily done,

incomplete, faulty, and reflective of Attorneys' ultimate desires to unscrupulously extract a fee from Clients.

The standard of care requires an attorney or law firm to have a written fee contract with a client to recover a contingent fee. Attorneys failed to meet that standard. Attorneys' answers to Interrogatory No. 1, identified that each of the six Claimants seeking damages against Rich as: (i) Nicholas Abaza, (ii) Law Offices of Nicholas Abaza, PC, (iii) Jorge Borunda, (iv) Borunda, PC, (v) Trevino, and (vi) Law Office of Michael A. Trevino, PLLC. *See, Clients' Exhibit 22*. One major problem is that some of those Claimants do not have a written contingency fee contract with Rich or Caroline or both, as required by TDRPC 1.04(f) and TEX. GOV'T CODE §82.065.

Attorneys and their respective law firms, specifically, Abaza, the Law Offices of Nicholas Abaza, P.C., Borunda, Borunda, P.C., Trevino, and the Law Office of Michael Trevino, PLLC³⁴, are attempting to collect their attorneys' fees based on an oral contingent fee agreement they supposedly entered with Rich in direct violation of Texas Disciplinary Rule of Professional Conduct 1.04(d), (f) and TEX. GOV'T. CODE §82.065, require that contingent fee and fee sharing agreements be expressly made *in writing*. Therefore, the attempts of Trevino, the Law Office of Michael A. Trevino, PLLC, Borunda, P.C., and the Law Offices of Nicholas Abaza, P.C., who do not have a written contingent fee or fee sharing agreements with Rich are in direct violation of the rules and are uncollectible. *See Clients' Exhibit 60*. Shockingly, the Law Offices of Nicholas Abaza, P.C. ceased to exist on January 27, 2017, making it factually and legally impossible for the Law Offices of Nicholas Abaza, P.C. to (1) enter into a fee agreement and (2) seek damages as it is attempting to do so in this suit. *See Clients' Exhibit 295*. Yet, Attorneys have not let the absence of a signed, written contingent fee agreement and fee sharing agreement deter them from attempting to collect their purported fees in direct violation of Disciplinary Rule 1.04(d) and TEX. GOV'T. CODE §82.065. Despite not having a fee agreement or fee sharing agreement with Rich, Trevino is demanding thirty percent (30%) of the entire contingent fee. *See Clients' Exhibit 22*.

Furthermore, none of Attorneys have a contingent fee agreement to give them a percentage recovery of assets over which Rich & Caroline became Co-Trustees with distributions limited by a HEMS standard and an inherent inability for them to pledge or promise it by its spendthrift protection. As Borunda testified, it is axiomatic that a person in their individual capacity is not the same person they are in a representative capacity, like a trustee. Likewise, property held individually is separate and distinct from those held in trust, i.e., property owned by the trust. It is undisputed that none of Attorneys have a contingency fee contract with Rich & Caroline in their Co-Trustee capacity, respectfully. It is logically and legally impossible for such a contingency fee agreement to exist on the property "Recovered" because it remains in the Family Trust and Attorneys could not have ever obtained a contingency fee agreement with Rich & Caroline, as Co-Trustees of the Family Trust, because they did not hold those offices until after the settlement.

It belies the standard of care for an attorney to demand a contingent fee based on their own erroneous legal conclusion that Rich & Caroline have unfettered discretion to withdraw all but \$1,000,000.00 from the Family Trust, when that unrestrained ability just does not exist. It would be outside the standard of care to assert a fee interest against property that is not contingent –

³⁴ *See, Clients' Exhibit 22, at Answer to Interrogatory No. 1.*

namely, the \$1,000,000.00 grandkids set aside and the portion of the settlement that involves the creation of a new obligation to serve as a fiduciary in a role that is normally compensated. I have not seen any effort by the lawyers here to lower the fee based on these amounts, which would comport with the standard of care.

The standard of care was violated here because entities that do not have a fee agreement with Rich, or the entities that no longer exist, are making demands for a contingent fee payment without having a written contingent fee contract with the Client or Clients. The proper standard of care was for Attorneys and their respective law firms to have entered a written, signed contingent fee agreement with Rich. The rules are in place to prevent this exact conduct and situation from arising, and this proceeding could have been entirely avoided had Attorneys done the bare minimum and followed the applicable rules and statutes. Now, Attorneys are improperly attempting to enforce an oral contingent fee agreement they and their respective law firms (or at least the ones in existence) supposedly entered with Rich – a complete breach of the standard of care and a violation of the disciplinary rules. *See TEX. DISC. R. PROF'L COND. 1.04(g) ("No attorney shall collect or seek to collect fees or expenses in connection with any such agreement that is not confirmed in that way" except in quantum meruit).*

FAILURE OF CONDITION PRECEDENT TO CONTINGENCY – CLIENTS' RECEIPT OF RECOVERY.

Attorneys compromised their ethical obligations to Clients in favor of their expectancy of getting a sizeable attorneys' fee, so much so they disregarded the effect of the *MSA* on their Clients' rights and ignored their obligation to write a settlement agreement that accomplished Clients' stated goals – to get their inheritance early, i.e., before Robin died. Attorneys were not only wrong about what Rich & Caroline could do after becoming Co-Trustees of the Family Trust (notwithstanding that neither of them wanted that position), but they also erred in drafting the *MSA* to purportedly accomplish what they advised Clients this settlement would do. Attorneys did not adequately advise Clients of the rights or interests they were giving up, the tax benefits of Decedent and Robin's estate planning, primarily transfer and generation skipping tax exempt property for their children, which they were giving up, or the effect the *MSA* terms would have on their settlement expectancy.

Once Attorneys learned of the size of Decedent's Estate and the Trust and learned it might be possible to reach a sizable settlement, it seems they were blinded by dollar signs because the rights and interests of their Clients all but disappeared, ultimately, placing their interests over those of their Clients. The lawsuits filed to get paid a contingency on property never paid to, distributed to, or received by Clients illustrate Attorneys' motivation. The condition precedent to Attorneys – any attorney – receiving a contingency fee is that their clients actually recover property, which never occurred. Now, Attorneys are demanding to be paid millions of dollars in attorneys' fees anyway – presumably out of Rich & Caroline's personal funds, since the Family Trust has no obligation to pay Attorneys and cannot under the spendthrift restricted HEMS distribution standard, which Attorneys, ironically, left in place by Attorneys on Clients' respective share of the settlement proceeds.

ATTORNEYS DID NOT SHOW FAIRNESS OF THE CALCULATION.

Trevino, Borunda, and Abaza filed a *Petition in Intervention* in Collin County on December 7, 2021, and each of them Individually asserted they were entitled to and made an “approximated” demand of \$3.5 million in attorneys’ fees, which, Attorneys contended, is thirty-five percent (35%) of the assets held by Minaki. *See, Clients’ Exhibit 235*, at 3. Attorneys asserted a made-up number in an allegation in a pleading after representing, under TEX. R. CIV. P., Rule 13, that their pleading was filed in “good faith” after investigation of their claim or claims, but it was more. Borunda swore to the contents of *Clients’ Exhibit 235* taking it out of an allegation in a pleading (and judicial immunity) and took it into the realm of making the following sworn statement to the Court by an Attorney under Oath, subject to the penalties of perjury:

“Intervenors incorporate Paragraphs 4-8 as if fully set forth herein. Grounded on the above, Intervenors request that the Court enter a Temporary Restraining Order (“TRO”) and Temporary Injunction (“TI”) order applicable to Contestants, their agents, and all those acting in concert with them. This order should: ...

(b) Require Contestants to **deposit \$3,500,000 (approximate amount of Intervenors’ fee)** of the approximate \$10,000.000 they received into the Registry of the Court. (Emphasis added).

Clients’ Exhibit 235, at 3. Attorneys attempted to “lock-up” \$3,500,000.00 of Clients’ Recovery, via restraining order or injunction or both, apparently, not understanding the settlement and not knowing the exact amount they were owed. However, the fee amount proffered by Attorneys was \$1,557,500.00. *See, Clients’ Exhibit 242*. Attorneys violated the standard of care because Attorneys’ guesstimate was just that – a guess. Both amounts were wrong, and Borunda’s sworn statement was not true, and the other was a misrepresentation by Attorneys to their Client. An officer of the Court not being candid to a tribunal whether under oath or not, is a breach of TEX. R. PROF. CONDUCT, Rule 3.03. Not being forthright to Clients by misrepresentation is a breach of TEX. R. PROF. CONDUCT, Rule 2.01 and a breach of fiduciary duty to their Clients, both a gross breach of the standard of care. It was a fee calculation without a fee computation (division) disclosure memo, i.e., an accounting that is required to be made to a client when dividing up a recovery that is subject to a contingency fee, per TEX. R. PROF. CONDUCT, Rule 1.04(d).

Attorneys went even harder and sent a demand to Rich dated February 2, 2022, asserting that a reduced fee of \$1,557,500.00 was being demanded on behalf of all the lawyers. *Clients’ Exhibit 242*. This again was a standard of conduct violation (breach of fiduciary duty) by making an excessive demand at a time when no accounting had been made. Then on August 17, 2023, the lawyers finally provided a settlement statement after Your Honor ordered them to prepare it. It was a breach of the standard of care to require a court order to get Attorneys to do what the law required them to do twenty or more months earlier according to the Rules of Professional Conduct: provide a full accounting. *See Wade v. Comm’n for Lawyer Discipline*, 961 S.W.2d 366, 375 (Tex. App.—Houston [1st Dist.] 1997) (“The five women hired an attorney to sue appellant to get an accounting of the fees and expenses from their litigation with their former employer. This is legally

sufficient evidence that appellant violated rule 1.14(b).”). In that very tardy settlement statement, Borunda asserted that Rich owed \$1,416,915.68 (down 10% from the “reduced” demand made in February 2022 and down 20% from the “approximated” demand made in December 2021). The exercise educated Attorneys, for the first time, they could not take any percentage of or charge Clients for any of the “Recovery” received by the grandchildren in the relation to the \$1,000,000.00 set aside for them.

It was inconsistent with the standards of care and conduct as involving an excessive calculation for at least the following reasons:

Nothing has been distributed outright to Rich & Caroline in their individual capacities, which is the only capacity in which they are named in this proceeding and the only capacity in which they could arguably be obligated to pay an attorneys’ fee – simply put, a contingent fee percentage applied to ZERO RECOVERY is ZERO. Even if Attorneys could conflate Rich & Caroline, as Co-Trustees, with their Individual capacities, which the law does not allow, there are still problems with the calculation as follows:

- a.) The six claimants have jointly requested a fee and have never offered a breakdown of how much goes to the three individual lawyers and three law firm entities, who also sued and seek a contingent fee on a recovery never received. The lawyer fee contracts do not contain a severability clause.
- b.) Attorneys have made no deduction for the burden and cost of having set up Rich & Caroline with a working obligation to serve as a Trustee (fiduciary) for nearly two decades while Caroline’s daughter matured to the age of 25. The job and tasks involved with Rich & Caroline working as Co-Trustees of the Family Trust and being exposed to fiduciary duties to others, such as the grandchildren, and the liability associated with accepting the office of Trustee has a cost, which in the context of computing a contingency fee, requires a credit or a reduction in the amount against which the contingency fee should be applied to the calculation of the contingency fee. All discrepancies and disputes in computing the contingency fee must be resolved against Attorneys in favor of Clients.
 - i. The credit formulate must be disclosed to Clients and could look something like: An actuarial computation of the future value of the Family Trust for each subsequent year, compounded annually, based upon the life-expectancy of two lives – both, Rich & Caroline.
 - ii. Another consideration: If a corporate trustee had been appointed as Trustee of the Family Trust, it would have charged a fee of 1-3% of the gross value of the assets under management for each year of the Family Trust, presuming principal would never be touched and all undistributed income would be added to principal, with a growth factor over that time, then present valued.
 - iii. As long as the attorney does not take advantage of the client, it may be that a fair and reasonable reduction is negotiated with the Client and, after full disclosure, agreed to in writing.
 - iv. The different methods of computing the reduction are myriad, some reduction must be considered. It was a breach of the standard of care to provide no reduction the Settlement Statement.

Attorneys have the burden of showing fairness of their computation of the contingency fee and fairness of their demand for payment. Because it is their burden, it is Attorneys' obligation to determine the credit (or reduction) for Co-Trustee work and liability exposure and the reduction Attorneys must account for, likewise, reduces the fee amount they could have charged if they had done everything correctly. As fiduciaries, it is Attorneys' burden to have applied the appropriate credit to arrive at an accurate and fair computation of their fee, which they did not do. For these reasons, the fee demand by the lawyers is excessive and outside the standard of care.

FAILURE TO PROVIDE SETTLEMENT STATEMENT & MAKING EXCESSIVE FEE DEMANDS.

The attorney-client relationship is a fiduciary relationship. Once an attorney-client relationship is created, the attorney is the client's fiduciary and owes the client fiduciary duties and obligations throughout their representation. While not required for an hourly representation, attorneys typically prepare a fee agreement detailing the scope of their representation, disclosing their hourly rates and other provisions pertinent to the representation. Because the attorney usually prepares the fee agreement, the attorney is held to have knowledge of its terms and, particularly, the method of charging fees and expenses under the fee agreement, application of offsets, deducting prior payments, etc. When a written contingency fee agreement is entered by attorney and client, the attorney must know or determine how to compute the fee and to what property recovered by the attorney the fee percentage will be applied, the date on which the contingency fee is triggered, and finding the information necessary to prepare an accurate accounting for the client – a memo that outlines, by line-item, computation of the fee. The standard of care requires the attorney to resolve all ambiguities and disputes with the client in favor of the client. The attorney is the one who possesses superior knowledge as the client's fiduciary and is more sophisticated and knowledgeable in the preparation and execution of their own fee agreements.

In this case, the mediation lasted for more than twelve (12) hours and beyond that going late into the night. Attorneys testified the agreement was signed and the mediation ended, after midnight on April 14, 2023;³⁵ Michael Collins, Robin's attorney, said on the video it ended at 2:00 AM.³⁶ It is undisputed the *MSA* was signed in the early morning hours of April 14, 2021 – between midnight and 2:00 AM. According to *Lawyers' Exhibit 194*, the amount in the Minaki account held by the Family Trust was \$9,900,609.50, and the full monthly statement for March 2021 showing the assets and cost basis was provided to Attorneys at the mediation as they negotiated the *MSA*, seemingly providing the then "full picture" of the account.

Not only were Attorneys in possession of the most up-to-date statement for the Minaki account, according to Borunda, but Attorneys also asserted that they were in possession of a plethora of documents detailing the Trust's assets, including financial documents, trust accountings, tax returns, and subpoenaed records from the Trust's accountant.³⁷ Borunda further testified it would be "absolutely false" to assert that Attorneys did not have enough information at the mediation.³⁸

³⁵ Arbitration Transcript – Borunda Testimony (V3 – 261:20-23); Abaza Testimony (V3 – 650:9-20); Trevino Testimony (V4 – 818:23-24; 908:12-16).

³⁶ Arbitration Transcript – Abaza Testimony (V3 – 650:16-20).

³⁷ Arbitration Transcript – Borunda Testimony (V7 – 1534:3-10).

³⁸ Arbitration Transcript – Borunda Testimony (V2 – 239:25-240:5).

He said they had gotten statements, trust accountings, estate planning documents, tax returns and spreadsheets and that they “knew everything that there was in this estate.”³⁹ Abaza testified they had “all necessary information or the opportunity to gain such sufficient information about the Trust and/or any other matter necessary to draft and enter into this agreement.”⁴⁰ If Attorneys had enough information to settle, as they have admitted, then they had enough information to promptly provide Rich & Caroline a settlement statement (accounting) in relation to their fee as required under Texas Disciplinary Rule of Professional Conduct 1.04(d), which would have consisted of, in part, a calculation of their contingency fee due as of the date the *MSA* was signed. At a bare minimum, Attorneys could have and should have promptly provided Rich & Caroline: (i) a detailed estimation of their contingency fee on the settlement Recovery, that would (ii) include an accounting of expenses Attorneys incurred, and (iii) all offsets, credits or reductions on the property or their percentage fee amount, or (iv) the missing data attorneys lacked that prevented them from accurately determining their fee. Attorneys provided none of the information.

Instead, in June 2021, Attorneys submitted, without telling Clients, a proposed *Order* to opposing counsel stating: “a contingency fee of thirty-five percent (35%) of the value of the Family Trust’s assets is a proper, reasonable, and necessary attorneys’ fee incurred in connection with the above-captioned matter.” *See Clients’ Exhibit 193*. Attorneys knew their expected contingency fee, so they attempted to get Michael Collins to agree to allow the Judge Copeland, Judge of the Statutory Probate Court in Collin County, to approve their incorrect and unconscionable fee behind Rich & Caroline’s backs. Even more egregious, Attorneys’ proposed fee percentage was incorrectly excessive in their favor to the detriment of Clients. This behavior, including blatant deception, is a clear and overt violation of the standard of care owed by Attorneys to Rich & Caroline.

It would take Attorneys more than two (2) years after the *MSA* was entered for them to provide Rich & Caroline with a settlement statement Attorneys considered in compliance with Texas Disciplinary Rule of Professional Conduct 1.04(d). *See Clients’ Exhibits 21, 22, 23 (Attorneys’ Answer to Interrogatory No. 4, and Attorneys’ Responses to Requests for Production Nos. 1 and 2)*. Attorneys’ abject failure to promptly provide a settlement statement to Rich & Caroline was an incredibly egregious violation of the standard of care attorneys owe their clients.

SPENDTHRIFT PROTECTION PREVENTS CONTINGENT FEE.

Attorneys’ assertion completely ignores the effect of the spendthrift provisions included in both Trust instruments which prevent him, or any other “creditor,” from enforcing any judgment against the Trusts. The effect of TEX. PROP. CODE §112.035 is that spendthrift trusts are exempt from attachment, execution, garnishment, or other seizure.⁴¹ Spendthrift provisions operate not to protect beneficiaries from their creditors, which is a benefit, but to protect the Settlor’s right to control the terms of their gift. If creditors or people like Attorneys could simply raid a trust to discharge the debts of a trustee or beneficiary, then purpose of the trust would be destroyed and no one would put money in trust again. Attorneys never had a contingency fee agreement with any

³⁹ Arbitration Transcript – Borunda Testimony (V2 – 240:6-241:4).

⁴⁰ Arbitration Transcript – Borunda Testimony (V7 – 1534:3-10).

⁴¹ *Burns v. Miller, Hiersche, Martens*, 948 S.W.2d 317, 322 (Tex. App. 1997) *See, e.g., First Bank Trust v. Goss*, 533 S.W.2d 93, 94-96 (Tex. Civ. App.—Houston [1st Dist.] 1976, no writ) (*spendthrift trust assets exempt from garnishment*).

trustee of the Family Trust, so without creating such an obligation for the Family Trust, Attorneys cannot require it to pay them anything. Demanding Clients pay them contingency fees on property received by the Family Trust (someone other than Clients) is a breach of fiduciary duty and, therefore, a breach of the standard of care.

INCORRECT STATEMENT REGARDING COMPLETION OF OBLIGATIONS.

Mr. Trevino wrote an email to Jeff Crouch on November 30, 2021, that says, “As I mentioned yesterday, we completed Rich & Caroline’s representation in the matter when the court approved the settlement several months ago. We have been assisting Rich & Caroline as a courtesy on the execution of the documents necessary to perform under the settlement. Our understanding is that Caroline terminated us from this secondary assignment to assist her in performing under the settlement, and she has appointed you as new counsel. I believe the proper mechanism to effectuate her change in counsel is a motion to substitute.” *Clients Exhibit 225*. Mr. Trevino somehow figured they had nothing else to do after the *MSA* was approved, which could not be further from the truth. because the *MSA* required the Court and others to approve it, once approved, the *MSA* required additional work to complete the settlement and get property transferred. Attorneys had an obligation to see the *MSA* through and to get the Family Trust modified as stated above. It is not correct to assert that their work was done as Mr. Trevino wrote.

CONCLUSIONS AND OPINIONS.

After signing the *MSA*, neither the Family Trust, nor the statute, allow Rich & Caroline, as Co-Trustees, to distribute to themselves the value of \$9,500,000.00, less the \$1M Set Aside, as expected; in fact, the Family Trust and statute require the opposite. Both Rich & Caroline have also testified they have not received a distribution. *See, Report Exhibit E, Rich Allison Vol 5, at 1141; Caroline Allison, at 1313*. And neither of them can pledge, hypothecate, or encumber their interest in the Family Trust, including promising or contracting to give any attorneys a portion of the property of the Family Trust that owns the settlement proceeds. Viewed through the lens of what Rich & Caroline owned versus what was promised by Attorneys when the litigation began, the property that was promised when negotiating settlement and then post-settlement (amounts Rich & Caroline relied upon in making a deal), and considering the position/office they currently hold as Co-Trustees of the Family Trust, having received a demand for an accounting from Rich’s children through Michael Collins (Robin’s attorneys), and considering the amount Attorneys now want to charge Rich & Caroline for not getting them their inheritance and then suing them for it, the entire litigation and representation by Attorneys was and remains an abject failure.

Ironically, because Attorneys did not do their job competently, did not write the *MSA* accurately and did not get the proper judgment needed to terminate the Family Trust correctly and legally, despite having all parties statutorily necessary to get it, the Family Trust, the HEMS standard, and the spendthrift clause prevent Attorneys from being paid by the Family Trust. The overriding Questions are: Why haven’t Rich & Caroline received what they were told they would get? Why didn’t Attorneys negotiate and paper the deal they told Rich & Caroline would result? Why didn’t Attorneys prepare the correct pleadings and orders to accomplish a judicial modification of the Family Trust? Attorneys testified they were competent in estate and trust law, unfortunately, it appears, they were and are not. Attorneys’ expectation of a large fee caused Attorneys to abandon

their principles and ethics and their knowledge, experience, and obligations as attorneys to Attorneys' worship of the almighty dollar.

Opinions

Based upon my experience in trust and fiduciary law and litigation and my analysis of the facts of this case, the Restated RA Trust, the *MSA*, the Marital Trust and the Family Trust as stated in the above report, my opinions, made under oath (*See, Exhibit C*), are as follows:

Opinion #1: It is my opinion that Attorneys did not give proper and good legal advice to Rich & Caroline in relation to their father's Estate and Trusts.

Opinion #2: It is my opinion that Attorneys did not give correct advice regarding the negotiation and, later, settlement of Rich & Caroline's claims and they did not accurately memorialize the settlement reached.

Opinion #3: It is my opinion that the money was left in trust versus an outright distribution, which means that a HEMS standard restricts Rich & Caroline's ability to withdraw funds from the Allison Family Trust, and the advice that they received that they had absolute discretion to withdraw those monies for their own benefit is incorrect, and it was below the standard of care for lawyers to give this incorrect advice.

Opinion #4: It is my opinion that Attorneys should have known that the purported modifications were ineffectual not only under applicable statutes but under the disclosures provided to the grandchildren beneficiaries.

Opinion #5: It is my opinion that not effectuating an outright distribution but allowing the spendthrift provisions of the 2013 trust to be in place violated the applicable standard of care.

Opinion #6: It is my opinion that Rich & Caroline's appointment as Co-Trustees of the Allison Family Trust violates the Restated Trust Agreement and their appointment as Co-Trustees as a result of the *MSA* violated the applicable standard of care.

Opinion #7: It is my opinion that Attorneys failed to properly advise Rich & Caroline regarding their appointment as Co-Trustees of the Allison Family Trust.

Opinion #8: It is my opinion that the *MSA* is fundamentally flawed and poorly written in numerous ways, does not accomplish the intent of the Parties, and has created ambiguity and uncertainty with respect to many of its terms.

Opinion #9: It is my opinion that Attorneys failed to meet the standard of care with respect to the drafting of the *MSA*, the memorialization of the agreements of the Parties, and consideration and resolution of all issues or potential issues.

Opinion #10: It is my opinion that Attorneys failed to meet the standard of care by ensuring that Robin fully disclaimed her interest and standing in the Allison Family Trust and by not terminating

the Allison Family Trust to accomplish the intended outright distribution of assets of the Allison Family Trust to Rich and Caroline.

Opinion #11: It is my opinion that Attorneys failed to meet the standard of care by not obtaining and providing proper advice, or advising Rich & Caroline to obtain proper advice, regarding tax consequences of the proposed settlement before it was signed, including the loss of the generation-skipping tax, and potential capital gains.

Opinion #12: It is my opinion that Attorneys failed to meet the standard of care by failing to conduct personal net worth discovery of Robin Allison prior to the settlement negotiations.

Opinion #13: It is my opinion that Attorneys failed to meet the standard of care by representing two aligned clients – Rich & Caroline – on separate fee bases that caused them to be unaligned by having an inherent financial and motivational conflict of interest.

Opinion #14: It is my opinion that Attorneys failed to meet the standard of care by not disclosing potential conflicts and obtaining a conflict waiver from both Rich & Caroline.

Opinion #15: It is my opinion that Attorneys breached their fiduciary duties to Rich & Caroline by seeking a contingent fee without a written fee contract.

Opinion #16: It is my opinion that Attorneys breached their fiduciary duties by requesting to be paid a contingency fee on funds that Clients – Rich & Caroline – have not yet received, but, instead, are in trust and subject to the terms of the trust instrument.

Opinion #17: It is my opinion that Attorneys breached their fiduciary duties by attempting to benefit themselves and have the court approve their contingency fee as part of the order approving the MSA without disclosing it to the Rich & Caroline.

Opinion #18: It is my opinion that Attorneys breached their fiduciary duties to Rich & Caroline by failing to provide a settlement statement and making excessive demands.

Opinion #19: It is my opinion that Attorneys breached their fiduciary duties to Rich & Caroline by incorrectly stating to third parties that they had completed all their obligations owed to Richard and Allison as their Clients.

Opinion #20: It is my opinion that Attorneys' violations of the standards of care and conduct was the proximate cause of the Clients' damages as outlined herein.

Additional Disclosures: I reserve the right to alter, amend, or supplement this report and, particularly, if further records or information is provided to me regarding this case.

Sincerely yours,

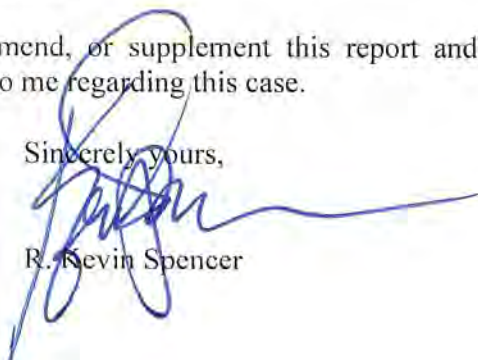

R. Kevin Spencer

Exhibit “A”

Richard Kevin Spencer
SPENCER, JOHNSON, & HARVELL, PLLC
500 N. Akard Street, Suite 2150
Dallas, Texas 75201
(214) 965-9999
(214) 965-9500 - Fax
kevin@dallasprobate.com

EDUCATION:

UNIVERSITY OF SOUTH DAKOTA – SCHOOL OF LAW, Vermillion, SD – Juris Doctorate, 1992
AUSTIN COLLEGE, Sherman, TX – Double Major: B.A. in Business and B.A. in Psychology, 1989
CISTERCIAN PREPARATORY SCHOOL, Irving, TX – High School Diploma – 1985

PROFESSIONAL BACKGROUND:

PRINCIPAL, SPENCER, JOHNSON & HARVELL, PLLC – June 1, 2021 – Present
PRINCIPAL, SPENCER & JOHNSON, PLLC – January 1, 2018 – May 31, 2021
PRINCIPAL, SPENCER LAW, P.C., Dallas, Texas – September 1, 2011 – December 31, 2017
PRINCIPAL, SPENCER & WATERBURY, L.L.P., Dallas, Texas – Sept. 1, 2007 – Aug. 31, 2011
PARTNER, THE HARTNETT LAW FIRM, Dallas, Texas – Jan. 1, 2001 – Aug. 31, 2007
ASSOCIATE, THE HARTNETT LAW FIRM, Dallas, Texas – Aug. 1, 1992 – Dec. 31, 2000

Licensed to practice law by the State Bar of Texas, May 7, 1993

CERTIFICATIONS:

Mediator – Certified – November 2012 to Present
Certified, Guardianships/Attorney Ad Litem

HONORS/RECOGNITIONS:

Martindale-Hubbell – AV Rated, September 2003 – Present
Listed in Bar Register of Preeminent Lawyers – Trusts and Estates Section – 2011 – Present
Texas Super-Lawyer – Estate and Trust Litigation – Texas Monthly Magazine – 2011 – Present
Texas Rising Star (Best Lawyers in Texas Under 40), Texas Monthly – 2004, 2005, 2007
Best Lawyers in Dallas Under 40 – D-Magazine – May 2006

PRACTICE AND BIOGRAPHICAL INFORMATION:

As the Principal and Owner of SPENCER, JOHNSON & HARVELL, PLLC, Kevin practices in litigation and appeals in all Texas Courts with a focus on all aspects of probate, trust, fiduciary and guardianship litigation and estate administration, including will contests, trusts contests, guardianship contests, fiduciary liability, as well as ancillary probate jurisdiction litigation, heirship and paternity-inheritance disputes, post-death common-law spouse disputes, civil litigation and civil appeals, and general litigation.

LAW REVIEW ARTICLES:

LAW REVIEW ARTICLE (PUBLISHED):

TEXAS TECH ESTATE PLANNING & COMMUNITY PROPERTY LAW JOURNAL

Topic: Good Estate Planning Process: A Panacea for Litigation

Cite: 11 TECH EST. PLAN. & COM. PROP. L.J. 137-150 (December 1, 2018).

LAW REVIEW ARTICLE (PUBLISHED):

TEXAS TECH ESTATE PLANNING & COMMUNITY PROPERTY LAW JOURNAL

Topic: Standing and Error Correction in Probate

Cite: 10 TEX. TECH EST. PLAN. & COM. PROP. L. J., 299-350 (June 1, 2018).

SPEECHES & PUBLICATIONS:

AUTHOR/SPEAKER:

1. FIDUCIARY LITIGATION SEMINAR – 2022 – Tarrant County Bar Association – Fort Worth, Texas – September 16, 2022
Topic: Privileged Communication: Protected & Confidential or Not
2. FIDUCIARY LITIGATION SEMINAR – 16th Annual – San Antonio, Texas – December 2, 2021
Topic: Exemplary Damages in Fiduciary Litigation
3. ADVANCED ESTATE PLANNING & PROBATE – 43rd Annual – San Antonio, Texas – June 19, 2019
Topic: Attorney Disqualification – An Ethical Quandary
4. ADVANCED ESTATE PLANNING & PROBATE – 42nd Annual – Dallas, Texas – June 15, 2018
Topic: What Planners Need to Know About Defending the Estate Plan
5. FPA – DFW ANNUAL CONFERENCE – Irving Convention Center – May 17, 2018
Topic: Estate (Planning) Litigation Pointers: A Litigator's Perspective
6. CORPUS CHRISTI ESTATE PLANNING SEMINAR – Corpus Christi, Texas – May 11, 2018
Topic: Estate (Planning) Litigation Pointers: A Litigator's Perspective
7. BOK FINANCIAL – TRUST EDUCATION PROGRAM, Dallas, Texas – March 22, 2018
Topic: Estate (Planning) Litigation Pointers: A Litigator's Perspective
8. KEN STREET LAW SYMPOSIUM AT AUSTIN COLLEGE – Sherman, Texas – Feb. 12, 2018
Topic: Social Media, Millennials and the Vanishing Jury Trial: Issues of the 2018 Trial Lawyer
9. ADVANCED FAMILY LAW COURSE – San Antonio, Texas – August 10, 2017
Topic: Estates Code and Estate Planning Issues Affecting Your Family Law Practice

10. DALLAS BAR ASSOCIATION – FAMILY LAW SECTION – Dallas, Texas – March 8, 2017
Topic: Estate (Planning) Litigation Pointers: A Litigator’s Perspective
11. FIDUCIARY LITIGATION SEMINAR – Houston, Texas – December 1-2, 2016
Topic: It’s Not Over Yet! Resignation, Removal & Successor Fiduciaries
12. DENTON COUNTY PROBATE BAR – Denton, Texas, November 4, 2016
Topic: Estate (Planning) Litigation Pointers: A Litigator’s Perspective
13. AMARILLO AREA PROBATE BAR – Amarillo, Texas, September 23, 2016
Topic: Estate (Planning) Litigation Pointers: A Litigator’s Perspective
14. COLLIN COUNTY PROBATE BAR – McKinney, Texas, April 8, 2016
Topic: Estate (Planning) Litigation Pointers: A Litigator’s Perspective
15. ADVANCED FAMILY LAW COURSE – San Antonio, Texas, August 6-9, 2007
Topic: (Family vs.) Probate Regarding Children – August 8, 2007
16. PROBATE LITIGATION SEMINAR – Fort Worth, Texas – September 17, 2004
Topic: Bill of Review and Error Correction in Probate
17. THE TAFLS TRIAL INSTITUTE – New Orleans, Louisiana – January 15-17, 2004
(Texas Academy of Family Law Specialists)
Topic: Divorce and Trust Litigation: Can you trust the Trust?

AUTHOR:

18. “Probate Issues Affecting Divorce Attorneys and their Clients” – Family Law Forum
Newsletter, Vol. 18, Issue 1, Texas Academy of Family Law Specialists, December 2002

AUTHOR/SPEAKER:

19. ADVANCED FAMILY LAW COURSE – Dallas, August 5-8, 2002
Topic: Probate: Dead or Alive, We will be Splitting the Estate, and Other Cross-Over Issues – August 6, 2002

SPEAKER:

20. HOW TO OFFER & EXCLUDE EVIDENCE SEMINAR – Houston, Texas
Topic: Self-Proving Evidence – February 9, 2001

ASSOCIATIONS/ACTIVITIES:

Texas State Bar – 1993 to present
Dallas Bar Association – 1993 to present
State Bar – Pattern Jury Charge Committee – Probate/Family Law PJC – 2019 to Present
State Bar CLE Planning Committee Member – Advanced Estate Planning Seminar – 2017-2018
State Bar – Pattern Jury Charge Committee – Probate Section – 2020

Committee Member – Dallas Bar Association – Trusts & Estates Section – 2016, 2017, 2018, 2019
- Program Chair – 2018
Texas Trial Lawyers Association – 2013, 2015 & 2016
Dallas Trial Lawyers Association, 2016
Mentor, UNT College of Law – L.A. Bedford Mentor Program– Dallas – 2016, 2017
Member, College of the State Bar of Texas – 2007, 2008
Sustaining Life Fellow, Dallas Association of Young Lawyers (“DAYL”) Foundation
DAYL – Leadership Class – Class of 2002
President, Cistercian Preparatory School Alumni Association, 1998-2002

Exhibit “B”

Exhibit B

Master List of Documents Received

Spiral No 1.		
1. Agreements		
1a	Mediated Settlement Agreement	04-13-2021
1b	Richard Allison Trust – 2013	04-11-2013
1c	Last Will & Testament of Richard Allison	04-11-2013
1d	Marital Agreement	03-17-1994
1e	Pre-Marital Agreement	04-27-1992
2. Expert Designation		
2a	The Lawyers' 2 nd Designation of Expert Witnesses	06-12-2023
2b	The Lawyers' Designation of Expert Witnesses	05-12-2023
2c	Richard Allison & Caroline Allison's Joint Designation of Experts	05-12-2023
2d	Lawyer's Consolidated & Amended Answering Statement	05-01-2023
2e	Richard Allison's Answering Statement & Statement of Claims	12-02-2022
Spiral No. 2		
Asset Descriptions		
1a	Excel of Assets in Play	
1b	Chart of Accounts, PROG #5 [RAA 007348]	
1c	Allison Family Trust Accounting – January 2021[RAA 007737-007757]	01-14-2021
1d	Allison Marital Trust Accounting – January 2021[RAA 007758-007776]	01-14-2021
1e	Whitley Penn Trust Accounting & B. Englehart CV [RAA 007193-007261]	06-01-2020
Factual Descriptions		
2a	Mediation Memorandum	04-12-2021
2b	Email Re: Allison Mediation Memo & Exhibits	04-12-2021
2c	MSJ Declarations	07-17-2020
Fee Contracts		
3a	Exhibit A – Contingency Contracts [CA 000904-000908]	10-16-2020
3b	Allison Retainer – Employment Agreement & POA	06-13-2019
3c	Email Re: Case – Caroline Allison to Nick Abaza	03-28-2019
Underlying Pleadings		
4a	Plaintiff's Original Petition	12-09-2021
4b	Notice of Appearance – Michael Trevino	10-19-2020
4c	Caroline Allison's Objection & Will Contest	08-09-2019
Post Settlement Documents		
5a	Agreement of Limited Partnership of The Lagarto Creek Limited Partnership, as Amended and Restated	
5b	Petition for Modification of Trust Instrument	08-05-2023
5c	Letter from Joseph R. Little to Richard Allison, Jr.	02-02-2022
5d	Email from Rich (rallson@hotmail.com) to Jorge (jorge@borundapc.com) Re: Letter to Fidelity	01-02-2022

5e	Modification & Amendment to the Richard Allison Trust – Article V	12-08-2021
5f	Modification & Amendment to the Richard Allison Trust – Article IV	12-08-2021
5g	Order Granting Motion to Substitute Counsel	12-07-2021
5h	Motion to Substitute Counsel	12-07-2021
5i	Order on Applicant’s Motion for Enforcement and for Sanctions	12-07-2021
5j	Applicant’s Motion for Enforcement and for Sanctions	11-29-2021
5k	Resignation of Trustee of the Allison Family Trust and Appointment of Successor Co-Trustees	06-30-2021
5l	Partnership Interest Transfer Agreement	06-30-2021
5m	Emails between Rich (rallson@hotmail.com), Michael Trevino, Caroline Allison, Nick Abaza, & Jorge Borunda; Re: Scott Robertson’s Zoom Meeting	06-16-2021
5n	Robin Allison’s Motion to Approve Mediated Settlement Agreement	06-03-2021
Allison v. Borunda Pleadings		
6a	The Lawyers’ Consolidated & Amended Answering Statement to the Clients’ Statements of Claims	05-01-2023
6b	The Lawyers’ Amended Statement of Claims	04-03-2023
6c	Caroline Allison’s 2 nd Amended Complaint & First Amended Answering Statement to Counter-Claim	12-07-2022
6d	Respondent/Counter-Claimant Richard Allison’s Answering Statement & Statement of Claims	12-02-2022
6e	Order – Granting Def’s Motion to Compel Arbitration & Stay All Proceedings	05-03-2022
6f	Original Answer of Defendants Michael Trevino & Law Office of Michael A. Trevino, P.L.L.C.	01-10-2022
6g	Original Answer of Defendants Nicholas Abaza & Law Offices of Nicholas Abaza, P.C.	01-10-2022
6h	Original Answer of Defendants Borunda, P.C. & Jorge Borunda	01-03-2022
6i	Plaintiff’s Original Petition	12-09-2021
Fidelity Statement at Settlement		
7a	Fidelity Statement – March 2021	03-31-2021
Monetary Demand		
8a	Email from Joe Little to Mr. Allison (rallson@hotmail.com) – Demand for Payment of Attorneys’ Fees re: In Re Estate of Richard Gerard Allison, Deceased – Exhibits attached	02-02-2022
8b	Exhibit 1 – Letter from Jorge Borunda to Fidelity Investments	12-28-2021
Request for Accounting		
9a	Letter from Michael J. Collins to Caroline Allison and Richard Allison, Jr. regarding client Hunter (“Allie”) Allison request for accounting	04-14-2023
Various Communications		
10a	Email from Caroline Allison to Jorge Borunda; Re: Allison Apartment Offers, Selling is big bargaining chip	10-30-2020
10b	Email from Caroline Allison to Michael Trevino, Nick Abaza, & Jorge Borunda; Re: Allison Apartment Offers, Selling is big bargaining chip	10-30-2020
10c	Email from Rich (rallson@hotmail.com) to Caroline Allison and Michael Trevino; Re: Allison Apartment Offers, Selling is big bargaining chip	10-30-2020
10d	Email from Caroline Allison to Michael Trevino; Re: FW: Cause No. PB1-1332-2019: Estate of Richard Gerard Allison – Possible Mediation Dates	10-28-2020
10e	Email from Caroline Allison to Nick Abaza; Fwd: Send Data from MFP11953655	10-16-2020

10f	Attachment (DOC101620) from Email from Caroline Allison to Nick Abaza; FWD: Send data from MFP11953655	10-16-2020
10g	Email from Caroline Allison to Jorge Borunda, Nick Abaza, and Rich; Re: RGACO, LC Written Consent Form	10-09-2020
10h	Email from Caroline Allison to Nick Abaza; Re: Allison Matter – like kind exchange	08-26-2020
10i	Email from Caroline Allison to mpaisley@ampalaw.com , Nick Abaza, Jorge Borunda, Rich Allison; Subject: Richard G Allison file – under Mr Larry Warburton	08-05-2020
10j	Email from Caroline Allison to Jorge Borunda; Re: Allison: Robin Threatening Witnesses on List	06-26-2020
10k	Email from Caroline Allison to Jorge Borunda; Re: Allison: Mediation and discovery matters	06-23-2020
10l	Email from Caroline Allison to Jorge Borunda; Re: ALLR.001 – Request for Dates	06-04-2020
10m	Email from Caroline Allison to Jorge Borunda; Re: ALLR.001 – Request for Dates	06-04-2020
10n	Email from Caroline Allison to Jorge Borunda; Re: ALLR.001	01-24-2020
10o	Email from Caroline Allison to Rich; Re: Allison Trust Non-compliance from Trustee Robin	01-21-2020
10p	Email from Rich to Nick Abaza, Jorge Borunda, and Caroline Allison; Subject: Allison Trust Non-compliance from Trustee Robin	01-20-2020
10q	Email from Caroline Allison to Jorge Borunda; Re: ALLR.001	01-07-2020
10r	Email from Caroline Allison to Jorge Borunda; Re: Supplemental production	11-19-2019
10s	Email from Caroline Allison to Jorge Borunda; Re: Can you please send the 2011 trust	10-21-2019
10t	Email from Caroline Allison to Jorge Borunda, Rich Allison, and Nick Abaza; Subject: Can you please send the 2011 trust	10-20-2019
10u	Email from Caroline Allison to Jorge Borunda; Re: ALLR.001 – Allison v. Allison	08-08-2019

Spiral No. 3**DEPOSITION TRANSCRIPTS**

A	Nicholas Abaza	10-26-2023
B	Michael Trevino	10-25-2023
C	Jorge Borunda Zaragoza	10-24-2023
D	Richard Gerard Allison	10-12-2023
E	Caroline Allison	11-21-2019

Spiral No. 4

Exhibit No.	Exhibit Description	Date
01 The Trust Agreement		
32	Richard Allison Trust	03-27-2019
33	Borunda Notes on Trust Doc	04-11-2013
02 CPA Damages Expert		
68	Email – J. Borunda to C. Allison & R. Allison – re Allison Matter: 4/15/2020 update	04-15-2020

100	Plaintiff's Motion to Compel, for Removal, and for Sanctions	07-25-2020
108	Plaintiff's 3 rd Combined, Amended, and Supplemented Disclosures	09-15-2020
116	Email – N. Abaza to J. Borunda – Requesting Audit of Assets - Abaza to Borunda	10-16-2020
123	Email – C. Allison to M. Trevino – Want to Know More About Estate	10-28-2020
128	Email – M. Trevino to J. Borunda – re Mediation and Assets	10-30-2020
129	Plaintiff's 3 rd Petition & 3 rd Amended Will Contest	11-01-2020
126	Email – R. Allison to C. Allison, M. Trevino – re Full Audit	10-30-2020
137	Email – M. Trevino to Terry Ann Gomez – Collin's Response to Borunda Email re Mediation	11-12-2020
157	Trevino Mediation Memorandum	04-12-2021
04 Conversion		
37	C. Allison Hourly Fee Engagement Agreement	05-29-2019
40	Richard Allison Contingency Agreement	06-13-2019
59	Email – R. Allison to N. Abaza – Re Restatement of Fee Agreement in Allison Matter	02-25-2020
60	Rich Allison Restated Fee Agreement	
114.A	Email – N. Abaza to C. Allison – Updated Fee Agreement	10-14-2020
114.B	Caroline Contingency Agreement	10-16-2020
121	Email – M. Trevino to Terry Ann Gomez – to Potential Mediators	10-28-2020
122	Email – M. Trevino to N. Abaza, J. Borunda – Mediation	10-28-2020
240	Email – D. Kassab to N. Abaza – Requesting File and Accounting	12-28-2021
Clients' Exhibits		
48	Email – J. Borunda to C. Allison – Re Allison Update	10-11-2019
76	RAA Answer and Counterclaim	06-15-2020
112	Email – J. Borunda to R. Allison – Robin's Effort to Disinherit you, Caroline, and your Respective Children	10-13-2020
Attorneys' Exhibits		
158	Signed Allison Mediated Settlement Agreement	04-13-2021
07 Approval of the Fee via Order		
191	Internal Email – M. Trevino to J. Borunda – Adding Language to MSA about Fee Necessary and Reasonable	06-02-2021
192	A. Motion to Approve with Trevino Changes Redline	06-02-2021
193	B. Order Approving MSA with Trevino Changes	06-02-2021
194	C. Email – M. Trevino to M. Collins – Changes to Motion to Enforce and Order	06-02-2021
195	Email – M. Collins + M. Trevino – Rejecting Trevino Changes to Motion to Approve MSA	06-03-2021
08 Capital Gain Issue		
159	Email – M. Collins to J. Borunda, M. Trevino – re Fidelity Statement	04-14-2021
199	Email – M. Trevino to R. Allison – Re Scott Robertson's Zoom Meeting	06-16-2021
202	Email – M. Trevino to R. Allison, C. Allison – re Taxes	07-30-2021
206	Email – M. Trevino to R. Allison, C. Allison	08-30-2021
208	Email – J. Borunda to C. Allison – September 2021 re Status and Settlement	09-04-2021
09 Grandchildren Consent		
182	Letter from Ella re MSA	05-05-2021
10 Job as Trustee		

243	Letter from M. Collins to C. Allison and R. Allison Jr. – Re Delinquent Accounting	07-21-2023
11 Representation was Concluded		
223	Email – J. Crouch to M. Trevino – re Request to Withdraw	11-30-2021
12 Fee Demand		
237	Letter from D. Kassab to J. Borunda, N. Abaza, M. Trevino – Request for Client File	12-09-2021
240	Email – D. Kassab to N. Abaza – Requesting File and Accounting	12-28-2021
242	J. Little to R. Allison, Jr. – Demand to Richard Allison, Jr.	02-02-2022
244	J. Borunda to R. Allison, Jr, C. Allison – Settlement Statement	08-17-2023
245	J. Little to Respondents’ Counsel – re Settlement Statement	08-17-2023
13 Prejudgment Interest		
18	Lawyers Amended Statement of Claims	04-03-2023
14 Recent ROG Answers		
21	Borunda – Answers to Rich Discovery Requests	09-20-2023
22	Trevino – Answers to Rich Discovery Requests	09-20-2023
23	Abaza – Answers to Rich Discovery Requests	09-20-2023
SUPPLEMENTAL		
5	Borunda LinkedIn Profile	
10	Trevino LinkedIn Profile	
14	Abaza LinkedIn Profile	
17	Nicholas Abaza Yelp	
20	Answers to Caroline Interrogatories	07-14-2023
24	D’s Reply to M Compel Arbitration – Ex. A – Affidavit of Jorge Borunda	05-12-2022
27	Gail Echols Letter – Joe House to Abaza & Borunda	12-04-2015
29	Gail Echols Lawsuit – Plaintiff’s 2 nd Amended Original Petition	02-22-2017
35	Email – J. Borunda to C. Allison – re Case 1761	03-29-2019
42	Email – Abaza to R. Allison – re Challenging Will	07-30-2019
46	Email – C. Allison to Borunda – re Discovery	08-08-2019
49	Email – Abaza to Borunda – Re Allison Subpoena to CPA	10-28-2019
51	Email – Borunda to Collins – re Allison Matter – Moving Forward	12-09-2019
54	Email – C. Allison to Abaza – Abaza Invoice Email	12-16-2019
56	Email – R. Allison to Abaza, Borunda, C. Allison – re Pressure on Discovery	01-21-2020
57	Email – Borunda to R. Allison – Complete Accounting of Trust	01-24-2020
61	Email – Borunda to C. Allison, R. Allison – No Accounting	03-12-2020
62	Verified Application for Temporary Injunction	03-17-2020
69	Email – Borunda to C. Allison – re 2 nd Round of Disc Requests to Caroline	04-28-2020
70	Email – Borunda to Deborah Jordan – Miscalendar	06-18-2020
71	Letter of Engagement – Clayton to Borunda	06-18-2020
73	Email – C. Allison to Borunda – Need Full Set of Financials	06-04-2020
74	Email – Borunda to C. Allison – Mediation	06-05-2020
75	Email – Kathy Bridges to Borunda 00 Worldwide Court Reporters Statement – Past Due Invoices	06-08-2020
77	Email – Borunda to Collins – Allison – Mediation & Discovery Matters	06-17-2020
78	Email – Borunda to C. Allison – Allison – Mediation & Discovery Matters	06-22-2020
79	Email – Borunda to R. Allison – Re ALLR.001 – Request for Dates June 23 rd for Depo	06-23-2020
81	Email – C. Allison to Abaza – June 2020 Billing	06-25-2020

82	Email – R. Allison to Borunda, C. Allison – Re Allison – Robin Threatening Witnesses on List	06-26-2020
83	Email – Borunda to C. Allison – Re My Dad and Belated Mother's Day	06-28-2020
84	Email – C. Allison to Robin Allison – re My Dad and Belated Mother's Day	06-28-2020
86	Email – C. Allison to Abaza – Abaza second Hune 2020 Billing email	06-29-2020
89	Email – Declaration of Caroline Allison – Executed	07-17-2020
90	Email – Borunda to Paul Strug – Borunda Engagement	07-06-2020
91	Email – Borunda to C. Allison – re Engagement Letter – Allison Trust	07-06-2020
92	Email – C. Allison to Borunda – re Engagement Letter – Allison Trust	07-06-2020
93	Email – Strug to Borunda – Initial Observations on Review	07-09-2020
94	Email – Strug to Borunda – Re Allison Matter	07-13-2020
95	Email – Kathy Bridges to Borunda – Worldwide Court Reporters Statement – Past Due Invoices	07-21-2020
96	Borunda to Will Pryor – Confidential Mediation Memorandum with Exhibits	07-22-2020
97	Motion to Strike Expert and to Strike Expert Report – Robert Allison	07-22-2020
98	Plaintiff's 2 nd Combined, Amended, & Supplemental Disclosure & Expert Designation	07-23-2020
99	Plaintiffs' Response to Motion to Strike Expert & Motion for Continuance	07-23-2020
101	2 nd Expert Report of Georgia K. Akers	07-26-2020
102	Expert Report of Dr. Lisa Clayton	07-27-2020
104	Email – C. Allison to Borunda – Re Additional Discovery Requests, Depo scheduling	08-25-2020
107	Email – R. Allison to Borunda – Erik Allison Phone Call 09-13-2020	09-14-2020
111	Email – R. Allison to C. Allison – re Kim Allison Questions Depo	10-07-2020
114.C	Account Statements – 2100	12-23-2020
117	Email – Trevino Joins Party	10-16-2020
119	Letter – Collins to Trevino re Depo Dates	10-19-2020
120	Email – Trevino to Collins, Deborah Jordan, Borunda, Abaza, Terry Gomez – re Mediation and Depositions	10-28-2020
124	Email – C. Allison to Trevino – Allison – Apartment Offers	10-29-2020
125	Email – Trevino to Collins – Mediation	10-30-2020
130	Email – Lexitas to Borunda – re Quote – ITMO Richard Gerard Allison Transcript	11-04-2020
132	Email – Borunda to Lindamood – re Question re Prenup Agreement Revocation	11-10-2020
133	Email – Borunda to Collins – Time Sensitive email	11-10-2020
134	Email – Trevino to Borunda, Collins – Time Sensitive email	11-10-2020
135	Email – Borunda Not Paying Invoices to Experts	11-11-2020
138	Email – Borunda to C. Allison, R. Allison	11-12-2020
139	Email – Trevino to Borunda – re Quote ITMO Richard Gerard Allison Transcripts	11-18-2020
140	Email – Abaza to Borunda – re Questions for Robin	11-30-2020
141	Email – Terry Gomez to Trevino – FW Alice Bump Estate	12-02-2020
142	G Allison Bump Estate Inventory	12-02-2020
143	Email – Re R. Allison to Trevino, C. Allison – re Robin Mother Estate	12-03-2020
144	Email – FW Invoice 33505 from Victory Document Services, Inc.	12-11-2020
145	Email – Terry Gomez to Trevino – FW In the Matter of Estate of Richard Gerard Allison	12-18-2020
Spiral No. 5		
Exhibit No.	Exhibit Description	Date
146	Family Trust Accounting January 2021	01-14-2021
147	Marital Trust Accounting January 2021	01-14-2021

149	Email – Erik Allison to Robin Allison – Fwd December 4, 2020	01-20-2021
150	Email – Trevino to R Allison – re Paisley Records & MSJ on Community Property	03-03-2021
151	Email – Abaza to Borunda – Allison re In re Holcomb Fraud in Inducement	03-08-2021
152	Email – Trevino to Yates – Mediator re Mediation	03-24-2021
154	Letter – Collins to Trevino, Abaza, Borunda – Depo Scheduling – Mediation & Current SO	03-25-2021
155	Email – Bridges to Borunda – Worldwide Court Reporters Statement & Open Invoices	04-01-2021
156	Email – Re Worldwide Court Reporters Statement & Open Invoices	04-07-2021
163	Email – Trevino to Collins – Glad to Get this One Done	04-15-2021
165	Email – Abaza to Borunda, Trevino – Internal Email re Division	04-16-2021
166	Email – Bridges to Borunda – Payment Receipt	04-20-2021
167	Email – Abaza & Borunda – re Consent Agreement Draft	04-20-2021
168	Email – Trevino to Allisons – re Consent Agreement	04-22-2021
173	Letter – Collins to Trevino, Abaza, Borunda – re Cease and Desist	04-26-2021
174	Letter – Collins to Trevino, Abaza, Borunda – re Follow-up to Cease and Desist	04-28-2021
175	Email – Champions Records Status Update in Matter of Richard Gerard Allison	04-29-2021
176	Email – Trevino to Collins – re Status	04-30-2021
177	Letter – Collins to Trevino, Abaza, Borunda – re Communications with Enclosures	04-30-2021
178	Email – re Champion Records – Status Update	05-03-2021
179	Email – Trevino to Collins – re Settlement	05-05-2021
181	Email – Ella Allison to Borunda – Letter from Ella Allison	05-05-2021
183	Email – Borunda to Ella – re Information re Allison Family MSA	05-06-2021
184	Email re Ad Litem	05-07-2021
186	Email – Trevino to Collins – RE ALLR.001 – Guardian Ad Litem	05-10-2021
187	Motion to Appoint Guardian Ad Litem	05-11-2021
188	Email – Fwd – R. Scott Robertson – Briggs & Veselka – CPA	05-18-2021
189	Email – re Motion to Approve Settlement	05-28-2021
190	Email – Willburn to Jordan - Trevino Sign with my Permission Motion to Enter MSA	05-28-2021
205	Text Messages from C. Allison	08-28-2021
210	Email – Trevino to Allisons – re Trust Documents	09-14-2021
215	Email – Borunda to Collins – about New Lawyers	11-03-2021
216	Email – Caroline to Trevino – Request for Client File	11-12-2021
217	Email – Trevino to C. Allison – Allison File	11-13-2021
218	Borunda File Screenshot – Post-mediation Settlement Approval Dropbox	
219	Screenshot of Trevino – After Settlement Doc – Dropbox	
220	Allison Division of Trust Assets	11-24-2021
221	Email – Crouch to Trevino – Estate of Richard Allison	11-29-2021
222	Email – C. Allison to Borunda, Abaza, Trevino, R. Allison – Request to Withdraw as Counsel	11-29-2021
224	Email – R. Allison & Trevino – re New Counsel	11-30-2021
225	Email – Trevino to Crouch – re New Counsel	11-30-2021
226	Email – Collins to Trevino, Crouch – re Trevino Involvement	12-03-2021
227	Email – C. Allison to Trevino – Request to Withdraw as Counsel	12-04-2021
228	Email – Borunda to C. Allison – Request to Withdraw	12-04-2021
229	Email – C. Allison to Borunda – Request to Withdraw	12-06-2021
232	Email – C. Allison to Ken – re Left Strata	12-07-2021
233	Email – Trevino to Crouch, Borunda – re Termination	12-07-2021
234	Email – Email to Clerk – Petition in Intervention	12-07-2021

235	Original Petition in Intervention & application for Temporary Injunction Pending Arbitration	12-07-2021
236	Email – Crouch to Collins – Problems with MSA	12-07-2021
238	Email – Abaza to R. Allison – re Checking in – 2	12-23-2021
239	Email – Kassab to Fidelity	12-28-2021
246	Excel Sheet – Assets in Play	
247	Assets of the Estate of Richard G. Allison	
248	Chart of Accounts	
249	Entity Ownership Chart – updated 04-04-2018	
250	Release & Non-Disparagement Agreement	
251	Richard Allison & Caroline Allison’s Joint Designation of Experts	05-12-2023
252	Abaza Notes – Pacheco 208 TBA Fiduciary Litigation	
253	Tex. Penal Code 36.05 Witness Tampering	
254	Tex. Government Code 82.065	
255	Tex. R. Prof Conduct 1.02	
256	Tex. R. Prof Conduct 1.04	
257	Tex. R. Prof Conduct 1.08	
259	Keck v. National Union Fire Ins. Co.	
260	Davis Law Firm v. Bates – 2014 Tex. App. LEXIS 1582	
261	Letter – Collins to Borunda & Abaza – re Representation	07-22-2019
262	Letter – Collins to Borunda & Abaza – fwd RFD and 1 st RFPs	08-13-2019
263	Email – Yates	04-13-2021
264	Excel Sheet – Attorney Fees Paid to Borunda and Abaza May 2019 – September 2020	
265	Mediation Board Photo	
266	Hood of Car Photo – RICH 000231	
267	Messages – Caroline Allison	03-29-2019 08-16-2019
268	Messages – Abaza & C. Allison	April 2019 July 2019
269	Borunda OA Statements 1 – JPMorgan Chase Bank	Oct – Dec 2020
270	Tax Return – Allison Family Trust	2017
271	Redacted – Emails – Elly Hutchings & C. Allison	04-06-2022
272	Letter from Collins to C. Allison	09-13-2022
273	Gmail – A bill from Pyke & Associates, P.C.	03-01-2022
274	Gmail – Payment submitted for bills	03-07-2022
275	Gmail – Payment submitted for bills 10802 and 10863	05-03-2022
276	Gmail – Payment submitted for bills 11002, 11388, 11510	10-10-2022
277	Gmail – Payment submitted for bill 10298 – Pyke & Associates	12-13-2021
278	Gmail – Payment submitted to Pyke & Associates, P.C.	11-10-2021
279	Email – Jackson Square Communication	10-27-2022
280	Screenshot – Phone numbers	11-08-2023
281	Screenshot – Phone numbers	11-08-2023
282	Screenshot – Phone	11-08-2023
283	September 2022 Communication	09-26-2022
284	Borunda OA Statements 2 – JPMorgan Chase	Jan – July 2021
286	RAA Additional Tax Returns – Forms – 2010, 2017, 2018, 2019	
287	Email – Joe Little to K. Cantrell, D. Kassab, A. Ashby, T. Patten – Request for Emergency Hearing or Status Conference	07-24-2023

Exhibit “C”

AMERICAN ARBITRATION ASSOCIATION

NICHOLAS ABAZA AND JORGE BORUNDA	§	
Claimants / Counter-Respondents	§	
	§	
VS.	§	NO. 01-22-0000-9524
	§	
RICHARD ALLISON	§	
Respondents/Counter-Claimants	§	

CAROLINE ALLISON	§	
Claimant / Respondent	§	
	§	
VS.	§	NO. 02-22-0002-4507
	§	
BORUNDA, P.C., JORGE BORUNDA,	§	
NICHOLAS ABAZA, LAW OFFICES OF	§	
NICHOLAS ABAZA, PC, MICHAEL	§	
TREVINO and LAW OFFICE OF MICHAEL	§	
A. TREVINO, PLLC	§	
Respondents / Counter-Claimants	§	

**AFFIDAVIT OF R. KEVIN SPENCER
IN SUPPORT OF EXPERT REPORT**

STATE OF TEXAS §
 §
COUNTY OF DALLAS §

On this day (as stated below and in the jurat), **R. KEVIN SPENCER**, personally appeared before me, the undersigned Notary Public, and after being duly sworn declared as follows:

1. “My name is R. KEVIN SPENCER and I am over the age of 18, I have never been convicted of a felony and I am fully competent to make this affidavit. I am a licensed attorney in the State of Texas and have been so licensed since May 7, 1993, over 30 years and have been in good-standing from the outset. I obtained my law degree on May 25, 1992 from the University of South Dakota School of Law and began my practice after my admission to the Texas Bar. I am AV rated by Martindale-Hubbell. A more complete description of my background, experience, and professional qualifications are outlined in my *Curriculum Vitae* (“CV”) attached to my Expert Report as ***Exhibit A***. I have spoken on numerous topics relating to litigation as stated in my CV. I have been published in the Continuing Legal Education materials accompanying each speech that are sponsored by the Texas State Bar. I have also been published in the Texas Tech Estate Planning & Community Property Law Journal as follows: (i) Topic: *Good Estate Planning Process: A Panacea for Litigation*, 11 TEX. TECH EST. PLAN. & COM. PROP. L.J. 137-150 (February 2019) and (ii) Topic: *Standing and Error Correction in Probate*, TEX. TECH EST. PLAN. & COM. PROP. L. J., VOL. 10, No. 1 (Summer 2018).

2. My practice is primarily and almost one hundred percent (100%) litigation, the majority of which is in the area of probate, trust and fiduciary litigation. I am familiar with all the requirements of preparing a case for trial and the time it takes to seek discovery, take depositions, send subpoenas, prepare for trial, prepare trial pleadings, prepare trial witness and exhibit lists, to prepare exhibits for trial and the process of a trial, including opening statements, presenting direct testimony, cross-examining witnesses, preparing a jury charge, charge conference and closing arguments, as well as preparing findings of fact and conclusions of law. I have "first-chaired" numerous trials to court and to juries to verdict and have vast experience in dealing with and addressing attorneys' fees, expenses, and cost applications in relation to them. I have also represented clients in multiple appeals that involved every element of the appellate process of requesting a record from the court reporter and the Clerk, motion practice in appellate courts, like seeking extensions and other relief, preparing briefs both as appellant and appellee and making oral arguments to appellate courts. I have first-hand and first-chair knowledge of all that is required to prepare a case for trial, try the case to verdict and to pursue or defend an appeal of that verdict. I am also familiar with what is required to prepare and be ready to successfully mediate a case and all aspects of negotiating and papering settlements inside and outside of mediation. I have attended hundreds of mediations representing clients and prepared hundreds of settlement agreements. I have also served as the mediator for more than 50 cases, 48 of which settled. The majority of cases I have mediated, either on behalf of clients or as the mediator, have involved probate, trust or fiduciary issues, so I have extensive experience and am very familiar with what is required to successfully paper and effectuate settlements involving these issues, including appropriately addressing parties with multiple capacities, involving all interested/necessary parties in the settlement and settlement agreement, obtaining representation for minor, incapacitated or unborn individuals, seeking and obtaining Court approval of the settlement and Court involvement when necessary to accomplish the terms of the settlement.

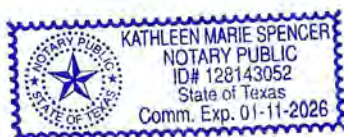
3. My opinions set forth in the Opinions section of my *Expert Report* are based upon the documents I reviewed that are listed in *Exhibit "C"* to my *Expert Report*, the facts recited in my *Expert Report*, and my experience and knowledge of all matters contained therein. I have knowledge of these facts acquired from the documents provided as listed in *Exhibit "C"* to my *Expert Report*.

4. I hereby testify and confirm, under oath, that the opinions numbers 1-20 stated in my *Expert Report* are based upon knowledge and experience and my analysis of the facts and information I have been provided and they are my opinions, are within my personal knowledge and are true and correct."

SIGNED this 20th day of December, 2023.

R. KEVIN SPENCER

SWORN TO AND SUBSCRIBED before me by R. Kevin Spencer, known to me or identity verified, this 20th day of December, 2023.



Kathleen M. Spencer
Notary Public in and for the
State of Texas

Exhibit “D”

AMERICAN ARBITRATION ASSOCIATION

NICHOLAS ABAZA AND)
JORGE BORUNDA)
)
Claimant/Counter-Respondent)
)
vs.) **CASE NO. 01-22-0000-9524**
)
RICHARD ALLISON)
)
Respondent/Counter-Claimant)

CAROLINE ALLISON)
)
Claimant/Respondent)
)
vs.) **CASE NO. 02-22-0002-4507**
)
BORUNDA, P.C., JORGE)
BORUNDA, NICHOLAS ABAZA,)
LAW OFFICES OF NICHOLAS)
ABAZA, PC, MICHAEL TREVINO)
AND LAW OFFICE OF)
MICHAEL A.TREVINO, PLLC)
)
Respondent/Counter-Claimant)

ORAL VIDEOTAPED DEPOSITION

JORGE BORUNDA ZARAGOZA

October 24, 2023

ORAL VIDEOTAPED DEPOSITION OF JORGE BORUNDA ZARAGOZA, produced as a witness at the instance of the Claimant/Respondent and duly sworn, was taken in the above-styled and numbered cause on the 24th day of October, 2023, from 10:04 a.m. to 6:01 p.m., before Terrilyn Paul Crowley, certified shorthand reporter in and for the State of Texas, reported by computerized machine shorthand, at the offices of The Little Law Firm, P.C., 440 Louisiana Street, Suite 900, Houston, Texas, pursuant to the Federal Rules of Civil Procedure and the provisions stated on the record or attached hereto.

Carlisle Reporting
depos@carlislereporting.com

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1 Q. You understand we're here today for your
2 deposition?
3 A. I do.
4 Q. You're familiar with the deposition
5 process, are you not?
6 A. I am.
7 Q. You're here to tell the truth, right?
8 A. Yes.
9 Q. Do you know what perjury is?
10 A. I do.
11 Q. What is perjury?
12 A. Perjury is giving false testimony under
13 oath.
14 Q. Are you familiar with aggravated perjury?
15 A. I am not familiar with aggravated perjury.
16 Q. I'll represent to you that aggravated
17 perjury is lying under oath in an official
18 proceeding. Do you know what an official proceeding
19 is?
20 A. I do.
21 Q. You would agree that although we're here
22 informally in a conference room, it's related to an
23 arbitration proceeding that's pending before the
24 American Arbitration Association. Do you agree with
25 that?

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1 A. I do.
2 Q. Would you classify that as an official
3 proceeding?
4 A. I would.
5 Q. Are you taking any medications today that
6 you know of that will impact your memory?
7 A. No.
8 Q. Or impact your ability to answer my
9 questions today?
10 A. No.
11 Q. And you're familiar with the rules or
12 procedures, so to speak, with regard to a deposition,
13 are you not?
14 A. I am.
15 Q. In fact, let me show you what I've marked
16 as Exhibit No. 1.
17 MR. DAVID KASSAB: And, Joe, just as a
18 preliminary point, we're going to be doing this
19 pursuant to the Texas Rules of Civil Procedure and
20 any applicable Triple A commercial rules, right?
21 MR. LITTLE: I think it's the rules
22 for the Triple A and any applicable Texas Rules of
23 Civil Procedure that have to be folded into the
24 Triple A rules, but, yes.
25 MR. DAVID KASSAB: And I'm going to

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1 likely do the exhibits consecutively because there's
2 a lot of emails that I'm going to be going over with
3 all the lawyers and documents, things like that. So
4 I'm just going to mark as Exhibit 1 without a name to
5 it. So this is Exhibit No. 1 to the depositions.
6 (Exhibit 1 marked)
7 Q. Have you seen a copy of that document
8 before?
9 A. I've drafted the document, so yes.
10 Q. Right. In fact, it's ground rules for a
11 deposition. It's an email entitled "Ground rules for
12 deposition," right?
13 A. Yes.
14 Q. Drafted by Jorge Borunda?
15 A. Correct.
16 Q. This was going to Rich Allison, correct?
17 A. It was going -- it was addressed to Rich
18 Allison. It was copied to Nick Abaza.
19 Q. Can you explain to me what this email is?
20 A. This is an email that I sent to Rich to
21 help him prepare for his deposition in the lawsuit in
22 which we represented him.
23 Q. Is it fair to categorize this as
24 Jorge Borunda's rules for a deposition?
25 A. It's fair to say that these are some

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1 pointers I had for Rich in preparation for his
2 deposition.
3 Q. And the first bullet point is "It's not a
4 conversation. It's the same as testifying in court,
5 and don't get comfortable," right?
6 A. Yes.
7 Q. I take it you're going to employ that rule
8 today, correct?
9 A. I'm going to answer your questions
10 honestly.
11 MR. DAVID KASSAB: Objection,
12 nonresponsive.
13 Q. I take it you're going to employ that rule
14 today. Yes?
15 A. I -- I'm here to answer your questions, and
16 I'll do so.
17 Q. Are you going to get comfortable during the
18 deposition?
19 A. I'm going to try.
20 Q. Okay. So you're going to violate rule
21 No. 1 of Jorge Borunda's ground rules for a
22 deposition, correct?
23 A. If that's the way you want to characterize
24 it, sure.
25 Q. With regard to -- let's see, it's one, two,

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1 three, four, five, the fifth bullet point down, you
2 see that? It says "answer"?
3 A. I do.
4 Q. It says, "Answer honestly and completely
5 but using the fewest words possible. Short answers
6 are best. Less is more."
7 The next bullet point says, "Do not
8 volunteer information that was not called for by the
9 question."
10 Did I read that accurately?
11 A. You read that accurately.
12 Q. And that's how you intend to answer
13 questions today?
14 A. I intend to answer your questions fully and
15 honestly.
16 Q. Are you going to follow this rule?
17 A. I -- maybe. I don't know. We'll see.
18 Q. You also state under the Answer bullet
19 point, "All cases have bad facts." See that?
20 A. I do.
21 Q. And under that you say, "Confront bad
22 facts, admit them with dignity." Do you see that?
23 A. I do.
24 Q. Do you think your case against Caroline and
25 Rich Allison has any bad facts?

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1 A. No case is perfect.
2 Q. Can you tell me what the bad facts are?
3 A. As I sit here, not really, no.
4 Q. So you think your case is perfect?
5 A. No, I don't.
6 Q. Okay. Well, tell me how it's imperfect.
7 A. I'm sure you'll point that out to me as we
8 go forward.
9 Q. Well, sir, I want -- you're here to tell
10 the truth and answer my questions, and I asked you to
11 tell me how you think your case is imperfect.
12 A. I think an imperfection, the one that
13 stands out the most in my mind at least, is that even
14 though it was my understanding and it was all of our
15 understanding that Rich had signed a fee agreement
16 for Michael to participate in his half of the
17 contingency fee, that did not happen. That's
18 problematic.
19 Q. Okay. Anything else?
20 A. That's it.
21 Q. So just -- the only imperfection is the
22 fact that Rich Allison did not sign a contingency fee
23 agreement with Michael Trevino?
24 A. I'm not saying it's the only one. I'm
25 saying it's the only one I can think of as I sit here

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1 at this moment.
2 Q. Fair enough. And why is that an
3 imperfection in your case?
4 A. Because the general understanding of all of
5 the attorneys and the clients was that Michael had
6 joined the team to represent not just Caroline but
7 also Rich and that he had done so based on a
8 contingency fee basis.
9 The contingency fee basis requires it
10 be reduced to writing and signed by the client, and
11 in this case that didn't happen, which is a problem.
12 It's a defect in the process.
13 Q. What happens if the client does not sign
14 off in writing on a contingency fee agreement?
15 A. Then the attorney is -- my understanding is
16 that the attorney is limited to a quantum meruit
17 recovery for his services.
18 Q. And where does the rest of it go?
19 A. Well, since there was no additional
20 contracts signed in this case, there is one contract
21 with Rich, then the 35 percent that he agreed to pay
22 on a contingency fee basis is divided between myself
23 and Nick pursuant to that agreement.
24 Q. So it's your opinion that because you three
25 as lawyers did not comply with the rule of

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1 professional conduct requiring a contingency fee
2 agreement to be in writing, that you guys still get
3 the benefit of the fee and that the fee does not go
4 back to Rich?
5 A. I don't see how any fee goes back to Rich.
6 He signed a contract that Nick and I have a
7 35 percent contingency fee interest in his recovery.
8 There's nothing that makes that contract improper. I
9 don't see any ethical violation.
10 Q. Are you aware of any contract, written
11 contract, that Rich signed with Michael Trevino?
12 A. I am not aware of one.
13 Q. If you turn the page under Mr. Borunda's
14 rules for a deposition email under the bullet point
15 Leading Questions, you see that --
16 A. I do.
17 Q. -- at the top? You state, "They're trying
18 to put words in your mouth." Do you see that?
19 A. I do.
20 Q. Is that something in your experience
21 lawyers often do in depositions is try to put words
22 into witnesses' mouth?
23 A. Some do. Some don't.
24 Q. Do you think Mr. Little was doing that
25 during Caroline and Rich's depositions?

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1 A. I don't believe so.
2 Q. Is that because he's your lawyer?
3 A. No, it's because I don't believe so.
4 Q. And then there's a Documents bullet point.
5 Do you see that?
6 A. Yes.
7 Q. It says -- is that -- can you explain to me
8 what you mean by that section there because I didn't
9 quite understand it.
10 A. The documents?
11 Q. Yes.
12 A. The underlying litigation in which we
13 represented Rich and Caroline was a
14 document-intensive case. There were a variety of
15 communications. There were a variety of emails,
16 et cetera. And I anticipated that at deposition they
17 might be placed in front of them and he would be
18 asked questions about them. What I intended for this
19 to mean was, Rich, read what they give you, make sure
20 you understand it, and answer questions.
21 Q. In this litigation that we're in, this
22 arbitration proceeding, you understand that the
23 arbitrator has entered multiple orders, right?
24 A. That's my general understanding, yes.
25 Q. Do you think it's appropriate to comply

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1 with an arbitrator's order?
2 A. I do.
3 Q. And you, of course, would strive to comply
4 with an arbitrator's order?
5 A. Yes.
6 Q. Let me show you what I've marked as Exhibit
7 No. 2.
8 (Exhibit 2 marked)
9 A. Are we done with Exhibit 1?
10 Q. Yes, sir. Unless you want to keep it to
11 the side in case you want to reference your rules for
12 the deposition.
13 A. No, I'm fine. Thank you.
14 Q. Have you seen this order before?
15 A. I have not.
16 Q. Well, you can see on the back page, it's
17 double-sided. It was signed on October 19th, 2023,
18 right? And this is this arbitration proceeding that
19 we're in today?
20 A. Okay.
21 Q. And if you look at the second paragraph, it
22 says, "It's ordered, adjudged and decreed the request
23 for production of lawyers' financials is granted in
24 part and denied in part. The request for tax returns
25 is denied. The request for financials of law firms

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1 is ordered to be produced as follows. Trevino for
2 the period of August 2020 through July 2021. Other
3 counsel for a period of March '19 through July 2021.
4 Counsel's trust for any statements reflecting
5 depositions and withdrawals" -- I'm sorry, "deposits
6 and withdrawals related to this case."
7 Do you see that?
8 A. I do.
9 Q. It says, "Production shall be by Monday,
10 October 23rd, 2023." Do you see that?
11 A. I see that.
12 Q. And that, of course, was yesterday, right?
13 A. That is my understanding.
14 Q. Okay. Did you comply with this arbitration
15 order?
16 A. I did not.
17 Q. And why is that?
18 A. Because I was not able to procure the
19 requested information timely, and I was aware of a
20 deadline. I didn't recall what the deadline was.
21 Q. Did you ask?
22 A. No. I was preparing for today's
23 deposition.
24 Q. So even though you think it's important to
25 comply with an arbitrator's order, you did not comply

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1 with Exhibit No. 2, right?
2 A. That seems to be the case.
3 Q. What capacity are you sitting here today
4 for your deposition? And do you understand that?
5 A. I do. I'm a party.
6 Q. Are you here on behalf of your law firm?
7 A. I'm here in all capacities.
8 Q. Are you testifying as an expert witness?
9 A. No.
10 Q. Have you been designated as an expert
11 witness?
12 A. I do not believe so.
13 Q. So you're not going to give any expert
14 opinions in this case. Fair?
15 A. I am going to answer whatever questions you
16 ask me.
17 Q. Well, do you plan on giving expert opinions
18 in this case?
19 A. I believe we have expert witnesses to give
20 expert opinions.
21 Q. So is that a no?
22 MR. LITTLE: He's going -- your
23 question is not true. He was designated in part as
24 an expert, so he's going to testify in accordance
25 with the designation that we made. So there are

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1 topics on which he's been designated as an expert.
2 You know. You've got the designations. So he's
3 going to do that.
4 MR. DAVID KASSAB: If you want to
5 instruct him how to answer on a break, Joe, that's
6 fine. Just don't do it during the deposition.
7 Please keep it to objection, form.
8 MR. LITTLE: Yeah.
9 A. I will testify in any capacities in which
10 I've been designated.
11 Q. Now that your lawyer's given you the
12 instruction?
13 A. Well, I think he was protecting his client
14 while you were trying mislead me.
15 Q. This is your lawsuit, right, Mr. Borunda?
16 A. In part.
17 Q. And they were your disclosures of expert
18 witnesses, correct?
19 A. They were the expert disclosures drafted
20 and prepared by my counsel.
21 Q. Did you review them prior to them going
22 out?
23 A. I don't recall whether or not I did.
24 Q. Okay. So as you sat here today, you did
25 not know one way or the other whether or not you are

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1 an expert in this case, correct, until your lawyer,
2 of course, chimed in?
3 A. I did not recall whether or not I had been
4 designated as an expert. I trusted your question.
5 My mistake.
6 Q. So tell me what expert opinions you have,
7 if any, in this case.
8 A. Whatever expert areas I -- whatever areas
9 I've been designated to testify as an expert on, I'll
10 answer questions about that.
11 Q. Do you know what those are?
12 A. Not as I sit here, no.
13 Q. So then, of course, you would not be able
14 to tell me what the basis for those opinions are?
15 A. The basis for any expert testimony is going
16 to be my experience, my education, my knowledge of
17 the underlying law and my -- my knowledge of the
18 facts in this case.
19 Q. Whatever those opinions might be?
20 A. Whatever opinions are asked of me.
21 Q. Okay. And, of course, today you're
22 represented by counsel, right?
23 A. I am.
24 Q. That's Mr. Little, correct?
25 A. Yes.

Page 20

1 Q. Who's paying Mr. Little?
2 A. I am, Nick is, Mr. Trevino is and
3 Mr. Trevino's insurance carriers are as well.
4 Q. How much have you paid Mr. Little?
5 A. I believe it is somewhat north of \$20,000,
6 but that was as of a few weeks ago. Haven't received
7 an invoice since.
8 Q. And that's you personally?
9 A. That is me personally.
10 Q. Okay. Do you know how much your colleagues
11 have paid?
12 A. I do not.
13 Q. Do you know how much the insurance company
14 has paid?
15 A. I do not.
16 Q. And, of course, if we go back to that
17 order, it said the fee statements were required to be
18 produced as well.
19 A. Where are you looking?
20 Q. Well, it might not be in here. I think we
21 had an agreement to provide fee statements. Have you
22 been collecting your fee statements?
23 A. Fee statements from my attorney?
24 Q. Yes.
25 A. Yes.

Page 21

1 Q. And do you know if those were produced in
2 this litigation?
3 A. I don't know.
4 Q. And do you personally maintain malpractice
5 insurance? Because you said it was your colleague's
6 insurance company that was paying.
7 A. It is his company. I do not.
8 Q. And why is that?
9 A. Because I don't think it is -- it is
10 necessary for me to do so.
11 Q. Do you not want to protect your former
12 clients in case you make a mistake?
13 A. I want to protect my former clients by not
14 making a mistake.
15 Q. But everybody makes mistakes; we can agree
16 with that, right?
17 A. Everybody does make mistakes.
18 Q. So if you were to make a mistake, you don't
19 think it's prudent for you to carry malpractice
20 insurance just in case you mess up and your client
21 might want to recover?
22 A. If my client wants to recover, I'll pay
23 whatever needs to be paid in the end.
24 Q. You can satisfy any sort of judgment?
25 A. I'll do it one way or another.

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1 Q. Have you ever given a deposition before,
2 not taken one?
3 A. Have I ever been a witness in a deposition
4 previously?
5 Q. Yes.
6 A. Yes, I have.
7 Q. How many times?
8 A. Twice, I believe.
9 Q. And on what occasions were those?
10 A. One was in a lawsuit my wife and I filed
11 against the seller of our first home that we owned
12 together. And one was in a lawsuit that a former
13 client filed against myself and several others.
14 Q. Is that the Gail Echols case?
15 A. It is.
16 Q. And we'll get into that.
17 So in the first one were you a
18 plaintiff or a defendant?
19 A. Plaintiff.
20 Q. And what were the allegations in that suit?
21 A. That the home seller had known about
22 defects in the property that he concealed and caused
23 us some damage.
24 Q. Okay. And then with regard to the
25 Gail Echols suit, you were a defendant, right?

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1 A. I was.
2 Q. And what was the result of that Gail Echols
3 suit?
4 A. I think the result was that the carrier
5 paid a de minimus settlement based on the nuisance
6 value.
7 Q. What do you mean by de minimus?
8 A. I mean it was a very small amount.
9 Q. Well, small to you might be small to other
10 people because you could pay any sort of judgment.
11 So I want to know -- I want to know what you mean by
12 de minimus. Like, under a hundred thousand, over a
13 hundred thousand?
14 A. I believe it was well below a hundred
15 thousand, and de minimus is small is in relation to
16 the allegations in the case, which were something in
17 the order of \$1.3 million, it was south of -- I think
18 it was maybe \$50,000, but I can't be sure.
19 Q. And when you say carrier, did you have
20 insurance that covered that claim?
21 A. I was part of a law firm that had
22 insurance, yes.
23 Q. Is that your Borunda & Radack firm?
24 A. Yes.
25 Q. And then when you formed to Borunda, P.C.,

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1 you just stopped carrying insurance?
2 A. I -- I abruptly formed my law firm after a
3 disagreement with my former partner, and I did not
4 elect at that time to take on malpractice insurance.
5 Q. When Caroline and Rich Allison retained
6 you, did you disclose to them that you did not have
7 malpractice insurance?
8 A. I don't recall any discussions at all about
9 malpractice insurance.
10 Q. All right. In the Gail Echols case you
11 were deposed?
12 A. I was.
13 Q. And with regard to the other partner that
14 you said you broke up with abruptly, what was that
15 dispute?
16 A. We had a different understanding of where
17 we wanted the firm to go.
18 Q. And what do you mean by that?
19 A. I mean he wanted to merge with another firm
20 and I did not.
21 Q. Okay. Of course, you've taken depositions
22 before?
23 A. I have.
24 Q. How many times?
25 A. A lot.

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1 Q. More than 50?
2 A. Yes.
3 Q. Have you ever been an expert witness in a
4 case on anything other than attorneys' fees?
5 A. No.
6 Q. And when you've been -- have you been an
7 expert witness on issues of attorneys' fees before?
8 A. I have.
9 Q. Okay. And when you've been an expert
10 witness on issues of attorneys' fees, have you ever
11 given testimony other than in an affidavit?
12 A. I don't have a specific recollection of
13 having done so, but I think it's possible that I
14 have.
15 Q. How many times have you given testimony
16 either by affidavit or in live testimony, so to
17 speak, on issues of attorneys' fees?
18 A. Well, like I said, I don't have any
19 specific recollection of having done it in live
20 testimony. But via an affidavit, it has to be -- I
21 don't have a specific number, to be honest. Quite a
22 few.
23 Q. But you're familiar with what's required
24 under the law in order to prove up the reasonableness
25 and the necessity of attorneys' fees, correct?

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1 A. Yes.
2 Q. Do you know if you've been designated to
3 give an expert opinion on that in this case?
4 A. I do not.
5 Q. Tell me everything you did to get ready for
6 this deposition today.
7 A. I visited with my attorney. I and my
8 colleagues visited with our attorney. And I perused
9 some of the correspondence in this case just to
10 refamiliarize myself with the -- sort of the timeline
11 of things. And I think that's it.
12 Q. Did you talk to anyone outside the presence
13 of your attorney in preparation for this deposition?
14 A. I think my colleagues and I spoke about
15 this case.
16 Q. And what did you talk about?
17 A. In general the lack of merit of your
18 clients' allegations.
19 Q. Can you be more specific?
20 MR. LITTLE: No. His conversations
21 with his fellow defendants are privileged, so we're
22 not going to go into his conversations with his
23 fellow parties.
24 Q. Are you following your lawyer's
25 instruction?

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1 A. Yes, I am.
2 Q. You said you reviewed correspondence?
3 A. Yeah, I looked at some of the emails that
4 had been exchanged in this case between myself and
5 Richard and Caroline and sometimes Michael and Nick
6 and opposing counsel.
7 Q. Any particular correspondence that stuck
8 out?
9 A. That stuck out?
10 Q. Yeah, that you found important for you to
11 review.
12 A. I mean, I wish I could have reviewed it all
13 in its entirety, but I mean, just there are --
14 there's a lot. It all seems like it could be
15 important.
16 Q. Okay. No particular -- is there any
17 particular email that you wanted to review prior to
18 this deposition that you remembered that you were
19 able to and went back and reviewed?
20 A. I'm sorry. Could you repeat that?
21 Q. Sure. It was probably a bad question. Is
22 there any particular correspondence that you may have
23 remembered that you knew was out there that you
24 wanted to review prior to this deposition, the
25 subject matter or something like that that you

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1 recalled being an important document for you to
2 review prior to this depo?
3 A. I'm going make sure I understand your
4 question, so I'm going repeat it, and you can tell me
5 if I'm wrong.
6 Q. Fair.
7 A. Are you asking me whether there is a
8 particular email that I wanted to review because I
9 thought it was important but I could not do so?
10 Q. No, that you did.
11 A. I think I looked at some correspondence
12 between Caroline and myself and/or Nick regarding her
13 expressed concerns, difficulties with hourly fees,
14 her repeated expressions of wanting to switch to
15 contingency. Those stand out in my mind some.
16 Q. How about the emails where she says shortly
17 after the settlement that she wanted to back out of
18 it?
19 A. I do recall having looked at that.
20 Q. Okay. How long have you been a lawyer?
21 A. 23 years.
22 Q. And is your practice primarily in Houston?
23 A. Yes.
24 Q. You don't have any office in Dallas County?
25 A. No.

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1 Q. No office in Collin County?
2 A. No.
3 Q. Prior to the underlying case -- and I'm
4 going to refer to the underlying representation of
5 Caroline and Rich Allison as the underlying case so
6 we're on the same page. Prior to the underlying
7 case, had you had any case, any sort of litigation or
8 case in Dallas County?
9 A. I believe so.
10 Q. How about Collin County?
11 A. I don't believe so.
12 Q. And you never had a case in front of
13 Judge Copeland before, right?
14 A. Correct.
15 Q. And Judge Copeland was the judge that
16 presided over the underlying probate litigation,
17 correct?
18 A. Yes.
19 Q. So you practice in personal injury law. Is
20 that correct?
21 A. I have handled -- I've handled a wide
22 variety of different practice areas.
23 Q. Like personal injury litigation, complex
24 commercial litigation and inheritance disputes?
25 A. Yes. Some intellectual property as well

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1 and some bankruptcy-related litigation as well.
2 (Exhibit 3 marked)
3 Q. I'll show you what I've marked as Exhibit
4 No. 3. Have you seen a copy of that before?
5 A. I think so.
6 Q. Is this your LinkedIn résumé, so to speak?
7 A. Looks like my LinkedIn -- I would call it
8 profile rather than résumé. But, yeah, that's what
9 it looks like.
10 Q. Fair enough. And were you responsible for
11 all the information that's contained in here?
12 A. I believe so.
13 Q. And is all of it true and correct, to the
14 best of your knowledge?
15 A. Yes.
16 Q. You say on there in the second paragraph
17 under Summary that you've been fortunate enough to
18 work alongside some of the very best attorneys in the
19 country. See that?
20 A. I have.
21 Q. Anybody specific?
22 A. Well, I'll start off with Scott Lassiter
23 who was the managing partner at Weil, Gotshal &
24 Manges, the Houston office of Weil, Gotshal & Manges.
25 He is an excellent trial lawyer. I also got the

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1 chance to work with a guy named Mike Stenglein, who
2 was also at Weil, a Dave Healey who was a partner in
3 intellectual property. I worked with some folks at
4 Buck Keenan who I considered to be excellent
5 litigators and trial lawyers.
6 From there I recall having worked --
7 the next place I worked was at a law firm that I and
8 some colleagues established, Borunda Hamdani & Simon.
9 Alamdor Hamdani, excellent attorney. Paul Simon,
10 excellent attorney. In fact, I think Alamdor -- I
11 know Alamdor is now the U.S. attorney for the
12 Southern District of Texas.
13 I've just gotten the chance to work
14 with some fine, fine attorneys.
15 Q. Got it. You say in that paragraph, "The
16 best way to represent a client is to aggressively
17 prepare the case for trial and to be ready, willing
18 and able to stand up for one's client in the court."
19 A. Absolutely.
20 Q. And that's what you believe, right?
21 A. Yes.
22 Q. And is that what you did in Caroline and
23 Rich Allison's case?
24 A. Yes.
25 Q. Because it's important?

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1 A. It is.
2 Q. In the following paragraph, you talk about
3 how you've represented individuals in small and
4 midsize businesses and Fortune 100 companies, right?
5 A. Yes.
6 Q. And you say, "Whether the case is one of
7 the biggest bankruptcies in history or a small estate
8 dispute, every client is counting on my best effort,
9 professionalism and candor," right?
10 A. Yes.
11 Q. You go on to say, "I believe that's what
12 every client deserves and what is" -- "and that is
13 what I strive to deliver," right?
14 A. Correct.
15 Q. And, of course, that remains true with how
16 you represented Caroline and Rich Allison, correct?
17 A. Yes.
18 Q. Under Borunda, P.C., the Borunda Law
19 Firm, P.C. managing attorney, you have a summary of
20 kind of what you did there. You see that? It's on
21 the second page.
22 A. I see it under Borunda Law Firm, P.C. Is
23 that what you mean?
24 Q. Yes. And is that -- so is that -- I guess
25 my question to you is: Is that summary, does it

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1 cover Borunda, P.C. or is that talking about what you
2 did at the Borunda Law Firm, P.C.?
3 A. Well, when I input that information, it was
4 specific to Borunda Law Firm, P.C.
5 Q. So when you say "our firm's attorneys,"
6 that was when you were back at the Borunda Law
7 Firm, P.C.?
8 A. Correct.
9 Q. Now, at Borunda, P.C., are there any other
10 lawyers besides you?
11 A. No.
12 Q. And then it says on here a little bit about
13 your education, that you got your JD from the
14 University of Houston Law Center, right?
15 A. Correct.
16 Q. And did you take the Texas Bar Exam,
17 obviously?
18 A. I did.
19 Q. And you passed?
20 A. I did.
21 Q. And did you pass the first time?
22 A. I did.
23 Q. Are you licensed in any other states
24 besides Texas?
25 A. No.

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1 Q. Are you board certified by the Texas Board
2 of Legal Specialization?
3 A. I am not.
4 Q. Have you published any legal publications?
5 A. I collaborated with David Healey at Weil,
6 Gotshal on an intellectual property publication, but
7 I don't recall what -- I recall that it was
8 published. I don't recall if my name was on it or
9 anything like that.
10 Q. Anything in the area of estates and
11 probate?
12 A. No.
13 Q. Have you given any legal seminars?
14 A. No.
15 Q. How many cases have you tried to verdict?
16 A. Tried to verdict, I'd say less than ten.
17 Q. Is that as first or second chair?
18 A. As first chair. As second chair, more than
19 that.
20 Q. More than ten?
21 A. Yes.
22 Q. The types of cases that you've tried as
23 first chair, what types of cases were those?
24 A. There have been personal injury, there have
25 been commercial litigation, and there have been

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1 inheritance disputes.
2 Q. I want to focus on the inheritance
3 disputes. How many of those?
4 A. One.
5 Q. And when was that?
6 A. 2016 maybe.
7 Q. What court was that in?
8 A. Galveston Probate.
9 Q. What was the result of the verdict?
10 A. A unanimous verdict in favor of our clients
11 on capacity and undue influence.
12 Q. Were you awarded a judgment?
13 A. The judgment was to overturn -- or find the
14 will that we challenged invalid.
15 Q. At Borunda, P.C. from -- I guess you formed
16 that 2018?
17 A. Yes.
18 Q. So at Borunda, P.C. how many cases do you
19 usually have on your docket since 2018?
20 A. It fluctuates, but typically between 15 and
21 25.
22 Q. During the time period that you represented
23 Caroline and Rich Allison, about how many cases were
24 on your docket? Same?
25 A. Best I can say is something in that 15 to

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1 25 range.
2 Q. With regard to the cases you've tried as
3 second chair, have any of those been estate or
4 probate matters?
5 A. No.
6 Q. So you've tried one estate or probate
7 matter to verdict, and that was in 2016?
8 A. I'm trying to recall if any of the second
9 chair have been. I'm not having specific
10 recollection, so I'll stick with my previous answer
11 and, yes, on your current question.
12 Q. Those types of cases don't usually go into
13 arbitration or anything like that, right?
14 A. No, not usually.
15 Q. So there's -- are there any arbitration
16 proceedings involving estate or probate that you've
17 been involved with?
18 A. We -- I say "we." I say that because I
19 often collaborate with other attorneys on some of
20 these things. But I am presently involved in one
21 that entailed us fighting an effort to compel it to
22 arbitration because of an arbitration provision in
23 the underlying trust document.
24 Q. So just one case that you're familiar with?
25 A. Right. As you said, these typically don't

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1 involve arbitration.
2 Q. Right. At any of these firms that you've
3 listed or identified on here, have you ever been
4 reprimanded by any of the law firms?
5 A. No.
6 Q. When you say you collaborate with other
7 lawyers, who are you referring to?
8 A. Ever or --
9 Q. Let me narrow it down. At Borunda, P.C.,
10 you know, during the March 2018 time period going
11 forward, who are the lawyers that you usually
12 collaborate with?
13 A. There are several. There's Michael
14 Trevino, Nicholas Abaza, Seth Nichamoff, Jason
15 Norwood, David Brewer, Adam Fomby. That's what I can
16 recall as I sit here.
17 Q. Does it depend on the type of case that
18 you're working on that will dictate who you
19 collaborate with?
20 A. Yes.
21 Q. And if it's an estate or probate matter,
22 who do you collaborate with?
23 A. Some combination of Nick Abaza, Mike
24 Trevino and Seth Nichamoff.
25 Q. And as a lawyer, you understand that you're

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1 obligated to follow the Texas Disciplinary Rules of
2 Professional Conduct. Agreed?
3 A. Agree.
4 Q. And you understand that as an officer of
5 the court and as a citizen in general, you're
6 obligated to follow Texas law. Agreed?
7 A. Yes.
8 Q. And do you agree that if you do not follow
9 Texas law, you should be held accountable?
10 A. Absolutely.
11 Q. And do you believe that if you not follow
12 the Texas Disciplinary Rules of Professional Conduct,
13 that you should be held accountable?
14 A. Yes.
15 Q. And you agree that all lawyers in Texas
16 have an obligation to abide by the Texas Disciplinary
17 Rules of Professional Conduct, right?
18 A. I do.
19 Q. And, of course, you abide by those rules?
20 A. As best I can, yes.
21 Q. Do you agree that those rules outline
22 minimum standards of care for attorneys practicing
23 law in Texas?
24 A. Yes, they're a floor, not a ceiling.
25 Q. And what do you mean by that?

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1 A. I mean, as you said, they are the minimum
2 standards, but you can and should strive to do
3 better.
4 Q. And, of course, you strive to do better
5 than what the rules provide, right?
6 A. I do.
7 Q. And you understand that lawyers owe their
8 clients various fiduciary duties as a matter of
9 law --
10 A. Yes.
11 Q. -- correct?
12 A. Correct.
13 I'm sorry, I don't mean to trip over
14 your question.
15 Q. That's all right. She will tell us if it
16 gets out of control.
17 A. Understood.
18 Q. What are some of the duties you know that a
19 lawyer owes their client?
20 A. Zealous advocacy for disclosure, disclosure
21 of any conflicts of interest, keep them advised of
22 the -- what's going on in their case, open
23 communication, and honesty and trustworthiness with
24 any money that they entrust to you.
25 Q. So with regard to the duty of full

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1 disclosure, that's a duty to disclose all material
2 facts. Agree?
3 A. Yes.
4 Q. And if you make a mistake, you must
5 disclose that to the client. Agree?
6 A. Correct.
7 Q. And you should be held accountable if you
8 fail to comply with that duty. Agree?
9 A. Yes.
10 Q. And you have a duty, of course, to follow
11 the client's instructions, correct?
12 MR. LITTLE: Objection, form.
13 A. I don't know that that's necessarily the
14 case.
15 Q. Explain that.
16 A. So the client gets to decide the goal. The
17 client gets to decide what it is that's being done
18 while you're doing it. The client gets to decide
19 whether to settle.
20 To some degree, the lawyer has
21 discretion in how to go about that, and in particular
22 if the client wants to do something that is improper,
23 the lawyer has no obligation to do so.
24 Q. Okay. So as long as it's not something
25 that's illegal or unethical, would you agree with me

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1 that a lawyer has a duty to follow the client's
2 instructions?
3 A. In some cases. I don't know that that's
4 the case in all cases. You would have to give me a
5 specific example, and I can answer in that regard.
6 Q. But you would at least agree generally
7 that's the rule?
8 MR. LITTLE: Objection, form.
9 A. Again, I'd need to know exactly what it is
10 you're asking.
11 Q. Okay. Can you think of any scenario other
12 than where a client's asking you to do something
13 illegal or unethical where you could not follow the
14 client's instructions?
15 A. If the client is, for instance, asking me
16 to pursue discovery that is abusive or take a line of
17 questioning with a witness for improper purposes, in
18 my mind, I don't believe I have that obligation.
19 Q. Anything else?
20 A. I'm sure we could come up with a million
21 examples.
22 Q. As you sit here today?
23 A. If a client -- let's see. I mean, I can
24 sit here and try to come up with another example if
25 you want me to.

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1 Q. I'm trying to narrow this down a bit. Can
2 we agree then as long as the client does not ask you
3 to do anything illegal, unethical or in violation of
4 the rules, the Texas Rules of Civil Procedure, then
5 you have a duty and an obligation to follow the
6 client's instructions?
7 MR. LITTLE: Objection, form.
8 Q. Generally.
9 A. I think I -- I'll go back to my previous
10 answer.
11 Q. You won't answer it?
12 A. I think I did.
13 Q. I think your answer was, you know, maybe, I
14 don't know.
15 A. I said in certain instances, yes, and in
16 certain instances, no.
17 Q. And one of the certain instances where it
18 would be no, you described that where a client's
19 asking you to violate the rules, Rules of Civil
20 Procedure, by serving abusive or harassing discovery,
21 and you said, I don't have an obligation to do that,
22 right?
23 A. Correct.
24 Q. So -- and that's why I threw the "in
25 violation of the rules" in there to try to get an

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1 agreement of when you have to follow your client's
2 instructions and when you don't generally. If you
3 can't tell me in a general sense when you do and
4 don't have to follow your client's instructions, just
5 tell me.
6 A. I -- in general, I think you -- you and
7 your client should be on the same page. If there
8 comes a point where you and your client have
9 diametrically opposed views, your client is asking
10 you to do something or insisting that you do
11 something that you consider unnecessary or unwise and
12 it's enough of an issue, at that point perhaps you as
13 an attorney need to visit the idea of withdrawing
14 from the case.
15 Q. Because a conflict of interest has been
16 created?
17 A. I don't know that necessarily there's
18 conflict of interest, but there is a difference of
19 opinion that renders the working relationship
20 untenable.
21 Q. And you don't think that's a conflict?
22 A. I don't think that the client's and the
23 lawyer's interests are opposed at that time, no, not
24 necessarily.
25 Q. I think you said that the client has the

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1 ultimate say concerning whether to settle the case?
2 A. Absolutely.
3 Q. Right?
4 A. Yes.
5 Q. Do you think that you can put in your
6 contract that a client cannot settle the case without
7 a lawyer's consent?
8 A. Do I think that I can put in a contract
9 that the client can't settle the case without the
10 lawyer's consent.
11 Q. That the client cannot settle the case
12 without the lawyer's consent.
13 A. Right.
14 Q. In other words, do you think that the
15 client has to get consent from the lawyer to settle
16 the case?
17 A. I don't think a client needs consent from a
18 lawyer to settle a case. I think it is in the
19 context specifically of a contingency fee arrangement
20 improper for the client to try to circumvent the
21 lawyer by settling the case without the knowledge or
22 consultation with his or her lawyer.
23 Q. Do you think it's improper to have a clause
24 in a contingency fee contract that requires the
25 client to obtain the consent of the lawyer prior to

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1 settling the case?
2 MR. LITTLE: Objection, form.
3 A. I think to the extent that the clause is
4 there to ensure that the client does not try to
5 circumvent the lawyer in a contingency fee contract,
6 I don't think that's improper.
7 Q. And, of course, you agree that a lawyer has
8 duty to investigate a client's case?
9 A. Yes.
10 Q. Any caveats to that that you can think of?
11 A. I think you evaluate every case and the
12 necessary steps to properly develop a case on a
13 case-by-case basis.
14 Q. And what does a duty to investigate entail
15 in your mind?
16 A. To gather as much information regarding the
17 underlying facts in dispute as is reasonably feasible
18 to do under the parameters established in the case.
19 For example, if you're involved in a personal injury
20 case where the injury is minor, you don't necessarily
21 want to go and hire the most expensive neurosurgeon
22 in the country to testify in the case.
23 Q. Okay.
24 A. So I guess the answer is: What is prudent
25 or not prudent to do in any given case varies on a

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1 case-by-case basis.
2 Q. And you agree with me that that duty
3 requires oftentimes a lawyer to hire experts to aid
4 in the evaluation, correct?
5 A. It sometimes does, yes.
6 Q. And it requires a lawyer to serve discovery
7 to the other side and obtain documents and
8 information about the claims, correct?
9 A. That's prudent practice, yes.
10 Q. Take depositions?
11 A. Sure.
12 Q. And you agree that a lawyer has a duty of
13 honesty to their client, right?
14 A. Absolutely.
15 Q. Can a lawyer lie just a little bit?
16 A. No.
17 Q. And a lawyer has a duty to place the
18 interests of the client ahead of their own. Do you
19 agree with that?
20 A. Yes.
21 Q. And a lawyer has an obligation to place the
22 interests of the client over the interests of other
23 parties. Do you believe that?
24 A. What other parties are you --
25 Q. Third parties. Like -- so, for example,

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1 another lawyer that you're co-counsel with.
2 A. Sure. The client's interests come first,
3 period.
4 Q. Absolutely. And that obligation exists
5 even if it's not beneficial to the lawyer's financial
6 interests. Do you agree with that?
7 A. Yes.
8 Q. Do you believe you owe any duties to the
9 client upon settling a case in a contingency fee
10 case?
11 A. I think you need to do what you can to
12 ensure that the client obtains whatever it is that
13 you got for them if you settled the case or resolved
14 it at trial.
15 Q. And what would that entail?
16 A. I guess it depends on a case-by-case basis.
17 Q. Do you believe you have an obligation to
18 provide the client an accounting?
19 A. An accounting?
20 Q. Of how the funds are going to be
21 distributed.
22 A. Yes.
23 Q. A settlement statement, so to speak?
24 A. Yes.
25 Q. And when are you required to provide that?

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1 A. I -- I don't think there's a specific
2 deadline, but I think once the amount of the recovery
3 is known and it is in the client's hands, at that
4 point you can do so.
5 Q. And do you think it's appropriate to charge
6 interest to the client if you fail to provide that
7 client an accounting?
8 MR. LITTLE: Objection, form.
9 A. I can imagine that it depends on the reason
10 for the, quote-unquote, failure.
11 Q. Can you think of any circumstance where it
12 would be okay to charge the client interest even
13 though you have not provided the client with an
14 accounting on what they allegedly owe?
15 A. Well, for instance, if the reason why you
16 can't provide an accounting is because the client is
17 withholding information, then there's not much you
18 can do about that.
19 Q. As part of your obligation of honesty and
20 candor towards a client, you would agree with me that
21 when settling a case, you have a duty of full
22 disclosure to the client about the assets that are
23 involved and what the client's going to receive and
24 what the lawyer is going to receive?
25 MR. LITTLE: Objection, form.

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1 Q. Do you agree with that?
2 MR. LITTLE: Objection, form.
3 A. When settling a case, you have a duty to
4 provide the client with full disclosure of everything
5 you know and answer any question the client may have.
6 Q. As part of the duty of disclosure to tell
7 the client everything you know, that would be -- that
8 duty would require you to tell the client, you know,
9 this is the amount that you're going to get, this is
10 the amount that I'm going to get. Do you agree with
11 that?
12 A. I think that at the time of settlement, you
13 have a duty to the client that the client understands
14 that they are going to owe a specific percentage of
15 the recovery. I don't know that at the time of
16 settlement you need to then and there have computed
17 all the costs and expenses and filing fees and have
18 it to the dollar amount to the client. I don't
19 believe so, no.
20 Q. Do you think generally they should know how
21 much they're going to get?
22 A. Yes, I think that's absolutely true.
23 Q. And how much they're going to have to owe
24 their lawyers?
25 A. Yes.

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1 Q. And, of course, they should know what the
2 pot of recovery is, right?
3 A. They should know what they're negotiating
4 and -- yeah. Yes.
5 Q. And they should be explained the
6 alternatives of what could happen if they do not
7 settle, correct?
8 A. Yes.
9 Q. Like their chances at trial, correct?
10 A. Sure. Yes.
11 Q. Do you agree that a lawyer has an
12 obligation -- an obligation to disclose to the client
13 alternatives on courses of action and then it kinds
14 of goes into that, but let me re-ask the question.
15 When explaining to a client a
16 settlement, as part of the obligation to go over the
17 alternatives with them, as part of that duty, do you
18 believe it's incumbent upon the lawyer to disclose to
19 the client the advantages and disadvantages of the
20 settlement?
21 MR. LITTLE: Objection, form.
22 A. Advantages and disadvantages vis-a-vis
23 what?
24 Q. Vis-a-vis, you know, risk of trial,
25 benefits of the settlement, future costs of the

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1 litigation, what they're getting now versus what it
2 could cost them in the future.
3 A. I think it's important and it is a duty of
4 an attorney, and I think it's important for a client
5 to know an honest assessment of the settlement, its
6 terms and its benefits and its potential downfalls.
7 And I think it's -- that goes without saying to me
8 that you should explain to the client what it is that
9 they have as possibilities in front of them if they
10 don't settle.
11 Q. And do you think it's okay for a lawyer to
12 pressure a client into taking a settlement?
13 A. To pressure a client?
14 Q. Yes, sir.
15 A. No. I think it's okay for a lawyer to
16 advise a client on whether they believe the
17 settlement is in their best interest, whether they
18 believe the settlement is a good or a bad offer,
19 reasonable or not reasonable.
20 Q. Are there any other duties that you can
21 think of that you owe a client that we have not gone
22 over?
23 A. I don't recall the ones we've gone over, so
24 I can't answer that question.
25 Q. Of course, you agree that you owe a duty of

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1 diligence to your client, right?
2 A. Sure. I think you have a duty to your
3 client to do your best for them and put the options
4 before your client and let them make a decision.
5 Q. What would the duty of diligence entail in
6 your mind?
7 A. The duty of diligence?
8 Q. Yes, sir.
9 A. It means to take a case, examine it,
10 develop it through discovery, research, do what you
11 can to position the case best for trial, prepare as
12 though you're going to trial, provide the client the
13 information that you receive, try to answer questions
14 that are open to the extent that you're able to do
15 so.
16 Q. And you agree that you have an obligation
17 to comply with the standard of care that would be
18 exercised by a reasonably prudent attorney under the
19 same or similar circumstances, correct?
20 A. Yes.
21 Q. And you have a duty to avoid conflicts. I
22 think you mentioned that.
23 A. Yes.
24 Q. What happens if a conflict arises?
25 A. If a conflict arises, you disclose it to

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1 the client and you let the client -- there are some
2 conflicts that a client can waive, and there I think
3 are conflicts that cannot be waived. I can't think
4 what those are off the top of my head. But, yes, if
5 there's a conflict that develops, you advise the
6 client and let the client make an informed decision.
7 Q. And when providing this advice to the
8 client, do you think it's prudent to put it in
9 writing?
10 A. Yes. Yes, I do.
11 Q. I want to talk a little bit about your
12 relationship with Mr. Abaza and Mr. Trevino. First,
13 how did you come to know Mr. Abaza?
14 A. We were in the same law school section, and
15 we became friends and we've remained friends and
16 colleagues ever since.
17 Q. Did you guys graduate law school together?
18 A. Yes.
19 Q. And have you worked together at the same
20 firm, I believe?
21 A. No. Well, yes. He was of counsel at
22 Borunda Law Firm.
23 Q. When was that?
24 A. I don't recall the specific time frame. I
25 know that the entity that ultimately was named the

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1 Borunda Law Firm, I started working there before he
2 became of counsel. But I don't recall the time
3 frames.
4 Q. 2015 to 2017 sound right?
5 A. For what?
6 Q. For when Mr. Abaza was of counsel to Radack
7 and Borunda.
8 A. That sounds about right.
9 Q. And he identifies himself as senior
10 litigation counsel. Do you know what that means?
11 A. I think it means that he is a very
12 experienced lawyer who helps us when we're dealing
13 with estate litigation.
14 Q. Okay. And then how about Mr. Trevino, how
15 do you come about to know him?
16 A. Mr. Trevino worked at a law firm that was
17 once known as -- I think it was Radack & Carpenter or
18 Carpenter and Radack, then it became Radack &
19 Associates, then it became Radack & Borunda and then
20 it became the Borunda Law Firm. And he was there
21 before I joined that firm, and when I joined that
22 firm, I started working with Michael and we've
23 continued to work off and on ever since together.
24 Q. Can you tell me about how many cases you've
25 worked on together with those two attorneys?

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1 A. Dozens. I couldn't put a real number on
2 it.
3 Q. I take it you have worked with them on
4 contingency fee matters before together?
5 A. Yes.
6 Q. Do you guys have any sort of fee sharing
7 arrangement separate and apart from the
8 attorney-client contract?
9 A. No.
10 Q. Have you been represented by either of
11 those attorneys before?
12 A. I think Michael represented a -- an entity
13 called C. Borunda Holdings at some point, but other
14 than that, I don't believe so.
15 Q. So Michael Trevino represented an entity
16 called C. Borunda Holdings, Inc.?
17 A. Yes.
18 Q. Who are the members of that entity, or
19 holders?
20 A. Myself and my father.
21 Q. And what was that litigation about? I
22 don't want you to get into nitty-gritty details.
23 A. It was -- C. Borunda Holdings, Inc. owned a
24 pecan orchard in Central Texas that became embroiled
25 in litigation with a -- an irrigation district in the

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1 locality out there, and I think at some point Mike
2 came and helped with that litigation.
3 Q. And it's my understanding he argued at the
4 Supreme Court in that litigation on your behalf, or
5 C. Borunda Holdings, Inc.'s behalf?
6 A. I don't recall if he argued there, but he
7 filed briefing there. I don't recall if there was
8 oral argument.
9 Q. Fair enough. Do you know when that
10 representation ended?
11 A. I don't recall as we sit here.
12 Q. And, of course, as a lawyer for C. Borunda
13 Holdings, Inc., Mr. Trevino would have fiduciary
14 obligations to that entity. Would you agree?
15 A. I'm sorry. Yes.
16 Q. And in that litigation, was he taking
17 direction from you or your father?
18 A. From me.
19 Q. So during that representation, Mr. Trevino
20 would owe your entity all the duties that we just
21 talked about?
22 A. Yes.
23 Q. At a point in time you brought Mr. Trevino
24 on to the underlying probate litigation, remember
25 that?

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1 A. I do.
2 Q. Did you disclose to Caroline and Rich
3 Allison that Mr. Trevino had represented an entity in
4 which you were involved?
5 A. I don't believe that ever came up.
6 Q. You're familiar with your website, right?
7 A. Vaguely.
8 Q. Who's responsible for the information on
9 the website?
10 A. For the information, I am.
11 Q. Is everything that you say on your website
12 accurate to the best of your belief?
13 A. As best I recall, yes. I would not lie on
14 my website.
15 Q. Right. You're admitted to the Southern
16 District of Texas?
17 A. The Southern and Western District now.
18 Q. Okay. And the Fifth Circuit Court of
19 Appeals?
20 A. Yes.
21 Q. Do you do appellate work?
22 A. Sometimes.
23 Q. On your website you list breach of
24 fiduciary duty litigation as one of the areas of
25 practice?

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1 A. Yes.
2 Q. Right?
3 What does that type of litigation
4 entail?
5 A. It could be any -- in any variety of
6 contexts from corporate officers owing fiduciary
7 duties to their entities, to trustees, to executors
8 of a will.
9 Q. Have you ever been involved in a
10 malpractice-related claim as counsel?
11 A. As counsel, I don't believe so.
12 Q. Have you ever -- there's a NCID (sic) case,
13 NCID versus -- went up to the Texas Supreme Court
14 about attorney immunity. Do you know what I'm
15 talking about?
16 A. I do. N --
17 Q. Sorry. NFD versus Haynes & Boone.
18 A. Correct.
19 Q. You were counsel on that case, right?
20 A. I was counsel in the arbitration in which
21 those claims were litigated. And at some point
22 during -- after the arbitration while there was
23 additional appellate work to be done, that's when I
24 separated from the Borunda Law Firm, Jeremy Radack,
25 and I believe the work continued under Mike Trevino.

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1 Q. So you weren't involved with the appeal in
2 that case?
3 A. Maybe initially. I can't recall, to be
4 honest with you.
5 Q. Your client in that case, who did you
6 represent?
7 A. God bless.
8 Q. Okay, let me ask you this: Were they
9 asserting claims against lawyers?
10 A. They were.
11 Q. So what type of claims were they asserting
12 against lawyers?
13 A. It was -- it was a fairly complicated deal
14 where the clients had purchased a shoe manufacturer,
15 as I recall. This is vague, but -- my memory's fuzzy
16 on it. And during the course of the purchase, the
17 attorney who had been sort of the focal point of the
18 transaction had withheld certain information and
19 misrepresented certain information from the
20 purchasers.
21 Q. So the lawyer did not represent your
22 client. It was you were suing a transactional
23 attorney who represented somebody else. Is that
24 right?
25 A. And at some point I believe that lawyer did

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1 represent my clients.
2 Q. Okay. So do you remember what type of
3 claims you were asserting against the lawyer?
4 A. I mean, it's been a while, but I think it
5 was breach of fiduciary duty, fraud and -- I think
6 breach of fiduciary duty and fraud. But like I said,
7 it's been a while.
8 Q. I understand.
9 (Exhibit 4 marked)
10 Q. I'll show you what I marked as Exhibit
11 No. 4. This is an excerpt from your website,
12 correct?
13 A. Uh-huh. I'm sorry. Yes.
14 Q. And although this says it's related to
15 complex business disputes, I want to ask you a couple
16 questions about some of the text that's in here.
17 One sentence says, "Jorge has
18 demonstrated record" -- "has a demonstrated record of
19 success handling complex litigation at every level,
20 providing trusted legal guidance and skilled
21 representation in the courtroom."
22 Did I read that accurately?
23 A. You did.
24 Q. And then under Protecting Your Interests,
25 it says, "Jorge will work to protect the personal and

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1 business interests of his clients in any type of
2 complex business dispute, including," and then it
3 gives a couple of examples, right?
4 A. Yes.
5 Q. And then it says, "Jorge is dedicated to
6 standing up for the rights of his clients providing
7 you with the personal attention and skillful
8 representation you need at every stage of your case,"
9 right?
10 A. Yes.
11 Q. Of course, you did that in the underlying
12 representation of Caroline and Rich Allison, correct?
13 A. I believe I did.
14 Q. You believe you did or you did?
15 A. Well, it's the same thing. Yes, the answer
16 is, yes, I did.
17 Q. So I want to talk to you a little bit about
18 the Gail Echols lawsuit. Do you remember that case?
19 A. Vaguely at this point.
20 Q. Do you need a break?
21 A. No. But if anyone else wants one, that's
22 fine with me.
23 Q. You're the boss today.
24 (Exhibit 5 marked)
25 Q. Let me show you what I marked as Exhibit

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1 No. 5. Ignore that Exhibit B sticker at the bottom.
2 Do you recall this letter?
3 A. Not as I sit here, no.
4 Q. We can see that it's on the House Perron &
5 House, PLLC letterhead addressed to you and
6 Mr. Abaza, right?
7 A. I see that.
8 Q. And the Re subject line says, "Negligence,
9 breach of contract and breach of fiduciary duty
10 pertaining to your representation of Gail Echols,"
11 right?
12 A. Yes.
13 Q. If you go to the second paragraph -- and
14 this is from an individual named Joe House. Do you
15 remember who Joe House is?
16 A. I think he was the lawyer representing
17 Ms. Echols in her claims against us. I think.
18 Q. In the second paragraph there on the front
19 page, it says, "Prior to entering into" -- well, the
20 first paragraph talks about how you and Mr. Abaza
21 represented Gail Echols in certain litigation. Do
22 you see that?
23 A. Give me a second, please.
24 Q. Sure.
25 A. (Reviewing). I see that.

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1 Q. And then he states at the last sentence of
2 the first paragraph, "You guided Ms. Echols to agree
3 to settle these two cases in two settlement
4 agreements," and he gives the dates, right?
5 A. It does.
6 Q. And he says, "Prior to entering these
7 agreements," on the next paragraph, "your legal
8 duties required you to independently determine the
9 value of Ms. Echols' inheritance so that she could
10 properly evaluate any settlement proposals."
11 Do you see that?
12 A. I do see that.
13 Q. Do you agree that that was one of your
14 obligations to Ms. Echols in that case?
15 A. Our obligations were to provide as much
16 information as we could so she could make the best
17 decisions she could for herself.
18 Q. I don't know if that answered my question,
19 so I'm going to ask it a little bit differently. Do
20 you agree that your legal duties or obligations to a
21 client in an estate matter where you're trying to
22 advise the client about settling an estate matter and
23 they're going to get a pot of money that comes from
24 the estate requires you to value that estate?
25 MR. LITTLE: Objection, form.

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1 A. I think it requires us to provide the
2 client with as much information as we're able to
3 provide at any given point in time. The client can
4 choose to settle on any terms at any time for any
5 reason. If the client chooses to settle before we
6 finished gathering our information, that's beyond my
7 control.
8 Q. Well, do you think it's appropriate for you
9 to advise a client to settle prior to you gathering
10 more information?
11 MR. LITTLE: Objection, form.
12 A. More information than what?
13 Q. I don't know. You said in your answer that
14 it could be appropriate for a client to settle prior
15 to having all the information at any given point in
16 time.
17 A. I don't think I said that, but I believe it
18 is appropriate for a client to settle whenever the
19 client elects to settle.
20 Q. And do you think it's appropriate for a
21 lawyer to advise a client to enter into a settlement
22 to accept a pot of money without having all the
23 information about what other assets are out there
24 that could be thrown into that pot at a later date?
25 MR. LITTLE: Objection, form.

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1 A. It depends on a wide variety of factors.
2 Q. Okay. Well, here, Mr. House, he's saying
3 that prior to entering into the settlement agreements
4 that you advised Ms. Echols to agree to, your legal
5 duties require you to independently determine the
6 value of Ms. Echols' inheritance so that she could
7 properly evaluate the settlement proposal, right?
8 A. That's what he says, yes.
9 Q. And do you agree with that statement?
10 MR. LITTLE: Objection, form --
11 A. I have already --
12 MR. LITTLE: -- and objection, asked
13 and answered.
14 Okay, you got to let me get my
15 objection out. Okay?
16 Q. If you go to the next page, first full
17 paragraph says, "Prior to convincing Ms. Echols to
18 enter into these settlements, your firm has failed to
19 independently discover and analyze the value of
20 Ms. Echols' inheritance, including the value of these
21 liquid assets in any meaningful way."
22 Do you see that?
23 A. I believe it says illiquid assets, but
24 other than that, you read it correctly.
25 Q. I'm sorry. You are correct.

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1 And then he goes on to say, "As to the
2 illiquid assets, your firms accepted without an
3 adequate independent investigation a represented cash
4 value of these assets in order to motivate Ms. Echols
5 to rapidly and with little expense on your part
6 finalize the settlement."
7 Did I read that accurately?
8 A. You read that accurately.
9 Q. I take it you disagree with that statement?
10 A. Yes.
11 Q. If you go to the third full paragraph.
12 A. Yes.
13 Q. Second to last sentence that starts with,
14 "Your firms failed." Do you see that?
15 A. I do see that.
16 Q. "Your firms failed to perform any such
17 monetization and/or liquidation and paid yourselves
18 in advance for work which you did not perform and of
19 which you were ignorant of even the possibility of
20 performing."
21 Did I read that accurately?
22 A. You did.
23 Q. And you can take another minute to read
24 over the rest of this as far as the allegations go
25 against your firm, but I just want to ask you if you

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1 agree that the allegations being made by Ms. Echols
2 are similar to the allegations that my client is
3 making in this case.
4 A. Can I take a minute to read this?
5 Q. Sure. Yeah.
6 A. (Reviewing) I think they're fairly
7 different, but they have some common elements.
8 Q. What are the common elements?
9 A. There seems to be an allegation here, as I
10 believe there is with respect to your client's
11 claims, that we did not advise them properly with
12 respect to the value of the estate with which -- with
13 respect to which they were negotiating.
14 Q. You would agree with me that one of
15 Ms. Echols' allegations was you didn't value the pot
16 of money, so to speak, prior to advising her to
17 settle?
18 A. That's what the letter says.
19 Q. And that's also what Caroline and Rich
20 Allison are alleging you did in this case, correct?
21 A. I believe so.
22 Q. In that third -- I'm sorry, the last
23 paragraph talks about Mr. Trevino, although the
24 letter's not addressed to him. Was he involved in
25 Ms. Echols' litigation?

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1 A. Which paragraph are you looking at?
2 Q. I'm looking at the last paragraph on the
3 second page.
4 A. I -- yes, he was involved in the Echols'
5 litigation.
6 Q. And then on the last page I'm looking at
7 the second full paragraph, Mr. House says -- you
8 know, he's offering a settlement, making a demand.
9 And he says, "Should this demand be ignored, we will
10 immediately initiate arbitration proceedings on
11 behalf of my client, seek attorneys' fees,
12 et cetera."
13 So my question to you is: Was there
14 an arbitration clause in Ms. Echols' contract with
15 your firm?
16 A. I'd have to look at the contract to answer
17 that question. I don't recall as I sit here.
18 Q. Do you have an arbitration provision in
19 every contract?
20 A. I believe that's generally been the case.
21 Q. Pretty standard?
22 A. On contingency fee contracts it's one of
23 the terms that we include.
24 Q. Of course, you rejected Ms. Echols' demand,
25 right?

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1 A. Per my recollection.
2 Q. And then she initiated litigation, correct?
3 A. Yes.
4 Q. And she sued Mr. Abaza, his firm,
5 Mr. Trevino and Radack and Borunda, correct?
6 A. As I recall.
7 Q. And then y'all settled that litigation,
8 right?
9 A. We -- yeah, we settled it out for
10 de minimis, nuisance value.
11 MR. DAVID KASSAB: Objection,
12 nonresponsive after "yeah."
13 Q. So do you know if Mr. Trevino had ever
14 handled cases in Collin County before the underlying
15 litigation?
16 A. I don't know for a fact one way or the
17 other.
18 Q. Do you know if Mr. Abaza had?
19 A. I don't.
20 Q. Did you ever contemplate getting local
21 counsel to assist you in that representation?
22 A. We did.
23 Q. And why didn't you do that?
24 A. We spoke to people who were familiar with
25 the venue. We got sort of the lay of the land and

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1 were told that there would be no value added by
2 association of additional counsel at that time.
3 Q. Who told you that?
4 A. I can't remember the attorney's name. He's
5 an attorney that practices up in that neck of the
6 woods that Nick is well acquainted with.
7 Q. Did you speak to him or did Nick speak to
8 him?
9 A. Nick spoke to him. And then I believe I
10 spoke to him.
11 Q. Where does he practice?
12 A. In the -- Dallas-Collin County and some of
13 those -- I'm not very familiar with the names of the
14 different places.
15 Q. Is he with a law firm?
16 A. I don't believe so. I think he's a solo
17 practitioner.
18 Q. Do you remember the name of his firm?
19 A. Not as I sit here, no.
20 Q. You would, of course, agree that it would
21 be a good idea to get local counsel who knew the
22 political arena in Collin County if that was going to
23 provide a benefit to Rich and Allison's (sic) case,
24 correct?
25 MR. LITTLE: Objection, form.

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1 A. Could you repeat that?
2 Q. Sure. If it was going to provide a benefit
3 to Rich and Allison's -- Richard and Caroline
4 Allison's case, you would agree that it would be
5 proper to get local counsel?
6 MR. LITTLE: Objection, form.
7 A. Perhaps.
8 Q. Did you ever attempt to try to bring in the
9 local counsel?
10 A. I think we just discussed that, didn't we?
11 Q. Right. But did he decline is what I'm
12 saying?
13 A. I don't think that we ever got to that
14 stage of offering or requesting that he join.
15 Q. Can you tell me how you came to the
16 determination that it would not provide a benefit to
17 Caroline and Rich's case?
18 A. I can't recall as I sit here, no.
19 MR. DAVID KASSAB: We've been going
20 for about an hour and 15, and I got a request from
21 Lance to take a break, so go off the record.
22 THE VIDEOGRAPHER: We are now going
23 off the record. The time is 11:20 a.m.
24 (Recess taken)
25 (Mr. Lance Kassab did not return to

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1 the deposition)
2 THE VIDEOGRAPHER: We are now going
3 back on the record. The time is 11:38 a.m.
4 BY MR. DAVID KASSAB:
5 Q. Mr. Borunda, are you ready to continue your
6 deposition?
7 A. I am.
8 Q. How did the Allison case come to you?
9 A. Through Nick Abaza.
10 Q. Can you tell me a little bit about that?
11 A. Nick had mentioned that he had been
12 approached by Ms. Allison about these issues that she
13 was having with respect to her stepmother and her
14 father's trust and estate and that she was looking
15 for a -- a lawyer to help her with that, asked if I
16 would be interested. And I said I would be
17 interested, and I think we started talking directly
18 with Ms. Allison thereafter and with her brother.
19 Q. And what is your understanding of the
20 issues that she was having with her stepmother when
21 she approached you?
22 A. Well, she was having a lot of issues with
23 her stepmother. Are you speaking specifically about
24 inheritance dispute issues?
25 Q. Yeah, I mean, why was she wanting to hire a

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1 lawyer?
2 A. She and her brother both were -- it's
3 multifaceted. They were unhappy with the manner in
4 which their stepmother was handling or refusing to
5 disclose information. They were unhappy about the
6 fact that their stepmother was not paying for the
7 education of Richard Junior's children. They were --
8 and they were very much of the mind that the trust as
9 they had come to understand it was not what their
10 father had intended.
11 Q. Okay. Did you meet either Caroline or Rich
12 in person before they signed the engagement
13 agreements with your law firm?
14 A. Quite a bit, yes.
15 Q. About how many times?
16 A. I couldn't tell you, but the conversations
17 went on for a period of months. There were lengthy
18 conversations about every aspect of what we
19 understood at the time, the case, the possibilities,
20 the pitfalls, the types of financial arrangements to
21 engage us. All of it. I think we started talking to
22 them maybe three months before they ultimately signed
23 any sort of a contract with us.
24 Q. As part of you investigating the claims?
25 A. Absolutely. Talking to them, getting their

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1 understanding of the facts and whether we had a solid
2 basis to pursue a claim.
3 Q. And in your investigation of the claims
4 before you signed -- or had the clients sign the
5 engagement agreement, did you get the trust
6 documents?
7 A. I believe so, yes.
8 Q. And did you review those?
9 A. Yes.
10 Q. And then you said you -- or you had
11 conversations with Caroline and Rich about how they
12 were going to engage your firm, whether it be hourly
13 or contingency?
14 A. We talked about everything with respect to
15 the case, the meaning of the trust documents, the
16 potential avenues to attack the trust documents
17 and/or ultimately this will, the -- what we perceived
18 as missteps that Robin, the stepmother, had already
19 committed even under the then governing trust
20 document, that third amended, I think it was. And we
21 talked about -- yes, about the different alternatives
22 they had to hire us and pay us, what the terms were
23 of each respective, whether hourly or contingent fee,
24 contract.
25 Q. With regard to the trust documents, will

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1 you classify those as being complicated documents?
2 A. They are -- well, yes, the last one, it is
3 a fairly complex document, yes.
4 Q. What's your understanding of the various
5 trust documents that were at issue?
6 MR. LITTLE: Objection, form.
7 Q. Like how many -- first off, let's start how
8 many were there?
9 A. The trust was established in 1989. It was
10 amended twice in 2011. And it was amended for the
11 final time in 2013. Simultaneous with that amendment
12 was the execution of a will that we also contested.
13 Q. Okay. And did you go over these trust
14 documents with Caroline and Rich at the outset of
15 the -- or even before the representation?
16 A. Per my recollection, we discussed
17 everything about them, yes. Everything we had
18 with -- we had available to us we discussed with
19 Richard and Caroline before they -- before they ever
20 signed any kind of contract.
21 Q. Did you get the impression that Caroline
22 and Rich didn't really understand the trusts?
23 A. Initially they did not have a complete
24 understanding of the 2013 amendment. By the time we
25 were done with our conversations before they signed,

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1 I thought they had a fairly good understanding of it,
2 of the main provisions.
3 Q. When you say before they signed, what do
4 you mean?
5 A. Before they signed their contracts with us.
6 Q. Okay. So you think by the time that they
7 signed their contracts with your firm, they had a
8 good understanding of the trust documents?
9 A. They had a good understanding, not of all
10 the intricacies of the trust documents because there
11 might be some probate practitioners and estate
12 planners that don't understand some of those things.
13 But they understood their rights, their lack of
14 rights, their options, all of that before they signed
15 up, yes.
16 Q. And how do you know that?
17 A. Because we discussed it with them.
18 Q. And they told you they understood?
19 A. They -- the way our conversation went
20 evidenced to me that they understood, the main thing
21 being that they did not have any present right to any
22 sort of -- to compel Robin to make any sort of
23 distributions to them from any trust, that they would
24 only have a right to possess anything from the trusts
25 when Robin passed away, that prior to that, Robin had

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1 discretion about how to -- whether and how to
2 distribute the assets from the family trust, that she
3 had no obligation to distribute anything from the
4 marital trust or the surviving grantors' trust.
5 Q. Didn't you in some of the notes -- first
6 off, we got your files. I've looked through them. I
7 know there was a document drafted that outlines the
8 trusts. Do you recall doing a document that outlines
9 the trusts?
10 A. I believe so, yeah. Vaguely.
11 Q. Do you recall in that document calling it a
12 complicated structure?
13 A. I don't recall, but if that's what it says,
14 that's what it says. And I will -- as we sit here
15 now, it is a -- if you look at the totality of that
16 trust document, it's not a simple trust.
17 Q. It's so complex that you had to map it out,
18 right?
19 A. I had -- I wanted to make sure I understood
20 everything. I mean, I understood it by reading it,
21 but I wanted to make sure I condensed it so that I
22 didn't have to keep rereading it.
23 Q. Is that a yes?
24 A. No. It's what I said.
25 Q. So you don't agree that the trust was so

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1 complex that you had to map it out?
2 A. No, I don't agree.
3 Q. But you mapped it out because you wanted to
4 understand it?
5 A. I mapped it out, as I said, because I
6 didn't want to have to go and reread it every time.
7 I wanted to have a summary of the terms that I was
8 looking at.
9 Q. So that's the only reason why you mapped it
10 out is to have a summary?
11 A. Right. So I -- it's a quick reference
12 guide.
13 Q. Got it. With regards to the discussions
14 that you had with Caroline and Rich early on about
15 the fees, what do you recall about those discussions?
16 A. Well, they were long running discussions.
17 We were asked about both hourly and contingency fee
18 contracts, what their terms were, what they meant.
19 We explained those.
20 We were -- during our conversations
21 Caroline began to express a belief that Robin would
22 settle very quickly after we filed litigation. I
23 explained to her my view that I thought that was
24 unlikely. And the reason I explained that to her is
25 because it was apparent to me or my belief based on

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1 what I heard from Caroline that she was basing her
2 decision to sign an hourly contract on the, I
3 thought, wrongheaded notion that Robin was going to
4 settle very quickly after we simply filed the
5 petition.
6 So we discussed both types of
7 arrangements, the terms, told them that they could
8 sign it, they could go with whatever they preferred,
9 which one over the other.
10 And Caroline at one point asked
11 whether -- if she went on an hourly contract, she
12 could subsequently switch to a contingency fee
13 contract. And I believe Nick told her that she
14 could, but she would have to engage independent -- or
15 separate counsel to advise her with respect to that.
16 Q. That was early on in the -- at the outset
17 of the representation, not when she later switched?
18 A. That was in response to her question before
19 she chose any sort of financial agreement with us
20 whether she could later on switch.
21 Q. Okay. So before she even signed an
22 engagement with your firm, y'all are having these
23 discussions about the -- what type of arrangement,
24 fee arrangement you could have with Caroline. And
25 it's your testimony that Caroline asked -- was it you

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1 or Nick who she asked that if she wanted to switch
2 later on, if she could do that?
3 A. I don't recall whether it was me or Nick.
4 I recall becoming aware of it at that time. I don't
5 know if we were all on a call or in the same room. I
6 don't remember specifically. But I know that
7 Caroline asked whether she could switch later on, and
8 Nick said that she could, but she would have to get
9 independent advice on that.
10 Q. And you as you sit here today, you cannot
11 recall if you were involved in that conversation or
12 if that was just relayed to you by Nick?
13 A. I can't recall one way or the other.
14 Q. And that suggestion about independent
15 counsel, was that made verbally or in writing?
16 A. I believe it was verbal.
17 Q. Okay. And so then the net result of those
18 conversations were that Caroline engaged the firm --
19 I'm sorry, engaged your firm and Nicholas' firm on an
20 hourly arrangement, and Rich engaged your firm and
21 Nick's firm on a contingency fee arrangement,
22 correct?
23 A. Correct.
24 Q. As you sit here today, you cannot recall
25 whether or not you actually heard Caroline ask that

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1 question or whether or not that was just relayed to
2 you by Nick?
3 MR. LITTLE: Objection, asked and
4 answered.
5 A. I can't recall specifically one way or the
6 other.
7 (Exhibit 6 marked)
8 Q. Let me show you what I've marked as Exhibit
9 No. 6. Is that the mapping out of the trusts that
10 you were referring to earlier?
11 A. It might be. I don't recall specifically,
12 but it looks like it, yeah.
13 Q. Have you seen this document before?
14 A. I think so.
15 Q. Do you know who prepared this?
16 A. I would be the person to have prepared
17 this.
18 Q. Keep that in front of you because I may ask
19 you some questions about it as we go through the
20 trusts and it might be beneficial to you.
21 But let me show you this, which I've
22 marked as Exhibit No. 7.
23 (Exhibit 7 marked)
24 Q. It's an email from you to Caroline cc'ing
25 Nick Abaza, correct?

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1 A. It is.
2 Q. And this is before the engagement with your
3 firm, correct?
4 A. I believe so.
5 Q. And then you state, "I have reviewed the
6 trust document, though not in detail. I will if/when
7 you retain us. It is a complicated structure with
8 various triggering events potentially creating
9 different trusts and scenarios."
10 Did I read that accurately?
11 A. You did.
12 Q. So you at least called the document
13 complicated, correct?
14 A. I believe I've repeatedly said it's a
15 complicated document, yes.
16 Q. I was unclear on that, so --
17 A. It's a complicated document.
18 Q. -- that's why I was asking you the
19 question.
20 So it looks like you're replying to an
21 email that Caroline sent you asking whether or not --
22 or actually asking Nick whether you guys had read the
23 trusts and what your legal strategy would be.
24 Agreed?
25 A. That looks to be the case.

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1 Q. Then you're responding about the trust
2 document, and then it looks like in the third
3 paragraph of your email you talk about strategy. Is
4 that correct?
5 A. I think -- yeah, that's what it seems to
6 be, yes.
7 Q. And it states, "Along with the lawsuit, I
8 will send out initial wave of discovery. In
9 particular, in the initial wave we will ask for all
10 trust records, all previous versions of the trust,
11 all testamentary documents of your father and all
12 available financial records and non-probate
13 designations."
14 Did I read that accurately?
15 A. I'm sorry. I spaced out for a second.
16 Q. Sure. So read that -- go ahead and read
17 that second sentence of the third paragraph for me,
18 please.
19 A. Out loud?
20 Q. Yes.
21 A. Second sentence of the third paragraph, "In
22 particular, in the initial wave will ask for all
23 trust records, all previous versions of the trust,
24 all testamentary documents of your father and all
25 available financial records and non-probate

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1 designations."
2 Q. And, of course, all that information would
3 be important to the lawsuit. Agreed?
4 A. Yes.
5 Q. And it looks like in the second paragraph
6 you're talking about the available claims, correct?
7 A. Second paragraph?
8 Q. Yes.
9 A. Just give me a second. (Reviewing) Yes.
10 Q. And was it your understanding that by this
11 time, Robin Allison had still failed to provide an
12 accounting concerning the trust to Caroline?
13 MR. LITTLE: Objection, form.
14 A. Yes.
15 Q. Do you know when Caroline began requesting
16 an accounting from Robin Allison?
17 A. I believe it was in -- it was either early
18 2018 maybe going back as far as late 2017 that she
19 had gotten repeated brushoffs from Robin and her
20 attorney I think eventually.
21 Q. And so what's the requirement timewise for
22 a -- you know, to provide an accounting if you've
23 been requested one?
24 A. I think it's 60 or 90 days. I can't
25 remember.

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1 Q. So it was well overdue by the time she came
2 to you?
3 A. Very much so.
4 Q. So this -- you ultimately -- I believe it
5 was around the May 2019 time frame is when you send
6 the agreement over to Caroline Allison to be retained
7 on an hourly arrangement, correct?
8 A. As best I can recall. I don't know the
9 specific dates off the top of my head, but, yeah,
10 sometime in that time frame.
11 Q. And what's your understanding of the fee
12 arrangement that Caroline was going to have with your
13 firm?
14 A. She was going to pay us on an hourly basis
15 for work that we performed, but she was going to be
16 paying half the standard hourly rate, or half the
17 amounts billed, in other words, and she was also
18 going to be responsible for 50 percent of the costs
19 and the fees of the litigation.
20 Q. So on the invoices that you would send her,
21 was your hourly rate cut in half or were you just
22 dividing the overall fees by two?
23 A. Per my recollection, I think I -- I put the
24 invoices together based on standard rates and then
25 divided the amount due in half. And I think I noted

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1 that somewhere on the invoice, but I'm not -- I can't
2 recall. That was always the agreement, and that's
3 how Caroline paid, half of the amounts on the
4 invoice.
5 Q. Did you have any other -- specific to
6 Caroline Allison any other fee-sharing agreement with
7 Nick Abaza or any other arrangement with Nick Abaza
8 about Caroline Allison's case?
9 A. Fee-sharing arrangement?
10 Q. Yes.
11 A. With respect to the hourly engagement?
12 Q. Yes, just who was going to do what work or
13 bill a --
14 A. No --
15 Q. -- certain way?
16 A. -- it was Nick and myself.
17 Q. So it was just if you did work, you would
18 bill; if Nick did work, he would bill?
19 A. Correct.
20 Q. Did you tell Caroline who would be taking
21 the lead on the case?
22 A. I believe it was discussed and agreed that
23 I would be the lead attorney on the case.
24 Q. As the lead attorney, did you have
25 ultimate -- excuse me, ultimate responsibility for

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1 the case?
2 A. Yes.
3 Q. But, of course, you and Nick shared joint
4 responsibility, correct?
5 A. Correct.
6 Q. How were you paying your half of the
7 expenses? Do you have like an operating account?
8 A. I was paying for them either with my
9 business credit card or out of the operating account,
10 yes.
11 Q. Do you have a line of credit?
12 A. I don't know if I had a line of credit at
13 the time.
14 Q. What was your business credit card limit at
15 the time?
16 A. Between 20 and \$30,000, I think.
17 Q. So if there was an expense that was more
18 than 20 or \$30,000, you would not be able to pay it?
19 A. No. I would pay it with my operating
20 account.
21 Q. How much did you have in your operating
22 account during the time period of the representation
23 on average?
24 A. I can't really answer that. It fluctuated.
25 I don't know as I sit here what that number is.

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1 Q. Can you give me a range of fluctuation?
2 A. Not really.
3 (Exhibit 8 marked)
4 Q. I'll show you what I marked as Exhibit
5 No. 8.
6 A. Are we going to shuffle these off for now?
7 Q. Yeah, you can put them aside for now.
8 That is an email from you to Caroline
9 Allison cc'ing Nick and it looks like attaching the
10 hourly engagement agreement, right?
11 A. Yes.
12 (Exhibit 9 marked)
13 Q. And then Exhibit No. 9 is the hourly
14 engagement agreement, correct?
15 A. It is.
16 Q. You can see in Exhibit 8 the email. You
17 say, "Please see the attached PDF file of the hourly
18 fee agreement. Please review it carefully at your
19 earliest convenience and let me know if you have any
20 questions." Right?
21 A. Yes.
22 Q. Did she have any questions about the
23 engagement agreement?
24 A. Not that I recall after I sent it. She
25 had -- so Caroline's a fairly sophisticated and

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1 educated lady, and she had negotiated with us on the
2 terms of the agreement prior to signing it, in
3 particular with respect to the fees to be charged.
4 We discussed everything with her. And then once
5 those were all agreed and then put into this document
6 and she received it, I don't recall receiving any
7 other questions from her.
8 Q. When you say "negotiated," you can see on,
9 I believe it was Exhibit 7, that March 29, 2019 email
10 from you, if you go on the second page, there was an
11 email from Nick to Caroline that says, "Here is what
12 we propose." Right? And it says "hourly whereby"
13 and then it gives the hourly rates?
14 A. Uh-huh.
15 Q. And then it has a contingency fee below
16 that?
17 A. Yes.
18 Q. So you're proposing one of those two
19 arrangements to her, right?
20 A. Those arrangements were being proposed to
21 her, yes.
22 Q. And then when you say she negotiated the
23 rate, what do you mean by that?
24 A. I mean after she -- after she opted for the
25 hourly contract, she approached us about reducing the

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1 hourly rate because we had a contingency fee interest
2 in Rich's half. And so in her view, she proposed we
3 reduce it by 50 percent. I think that's what we
4 ended up agreeing to, and that's what we did.
5 Q. And do you think that made sense to reduce
6 it by 50 percent?
7 A. Not necessarily.
8 Q. So you think it would have been okay to
9 charge her full hourly rates for the work that you
10 were performing even though you had a contingency fee
11 agreement with her brother?
12 A. I think it would have been proper had we
13 opted to do that, yes.
14 Q. All right.
15 MR. LITTLE: Just so I'm clear, my
16 third page of Exhibit 7 is blank. Is that just the
17 way it kind of came out?
18 MR. DAVID KASSAB: Was that the email?
19 MR. LITTLE: Yeah. I assume it's the
20 way it came out.
21 MR. DAVID KASSAB: That's right.
22 MR. LITTLE: All right.
23 Q. Have you ever had an arrangement with
24 siblings before where one sibling is paying you on
25 the hourly -- on an hourly basis and the other on a

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1 contingency fee?
2 A. I don't recall one way or the other at the
3 moment.
4 Q. How about just in general with joint
5 clients, have you ever had a client pay you by the
6 hour and another client in that same litigation pay
7 you on a contingency fee?
8 A. No. Typically when we represent clients,
9 multiple clients that are all in the same financial
10 arrangement.
11 Q. Did you consult with anybody, an outside
12 ethics attorney or anybody like that, on what may be
13 appropriate in that type of situation?
14 A. I did not. I evaluated the requests she
15 made, and we agreed to it.
16 MR. DAVID KASSAB: Objection,
17 nonresponsive after "I did not."
18 Q. On the -- going to Exhibit 9 which is the
19 contingency fee agreement, under Attorneys' Fees,
20 Paragraph 2.01, are you with me?
21 A. I am.
22 Q. And it lists you, your rate, Nicholas
23 Abaza, his rate, associate attorneys, paralegal and
24 staff, right?
25 A. Right.

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1 Q. Who are the associate attorneys
2 contemplated to be working on her case?
3 A. There were at that time no associate
4 attorneys contemplated to work on her case.
5 Q. How about paralegals?
6 A. At that time there were no other associates
7 or staff of any kind that were contemplated to be
8 working on the case.
9 Q. So when Caroline Allison retained you and
10 Nick's law firm, you guys didn't have any paralegals
11 or anybody else working for you?
12 A. Nick had -- Nick has a, I think,
13 administrative secretary/paralegal that he works
14 with.
15 Q. It wasn't contemplated that she would bill
16 at all on the case?
17 A. I don't -- I didn't have one thought about
18 it one way or the other.
19 Q. Do you know if she billed on the case at
20 all?
21 A. I don't believe so.
22 Q. And Paragraph 2.03, is that the negotiated
23 provision in there about having the rates cut in
24 half?
25 A. Give me a second. (Reviewing) I believe

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1 so.
2 Q. Go to the second page, Paragraph 3.02. You
3 made clear that no settlement will be made without
4 the client's approval, right?
5 A. Right.
6 Q. And this agreement itself does not have an
7 arbitration provision, correct?
8 A. Let me finish going through it real quick.
9 (Reviewing) It does not. No, it does not.
10 Q. And it was signed May 29, 2019, right?
11 A. Correct.
12 Q. All right. So I want to talk with you a
13 little bit about the three trusts and kind of go into
14 the details and your understanding of how they worked
15 and how they operated. There was a surviving
16 grantor's trust, right?
17 A. Correct.
18 Q. There was the marital trust?
19 A. Yes.
20 Q. And there was the family trust?
21 A. Right.
22 Q. Okay. Was Robin supposed to contribute her
23 personal assets to any portion of any one of those
24 trusts after Richard, Sr. died?
25 A. There is no requirement in the document

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1 that I'm aware of to affirmatively require Robin to
2 place any assets in the trust.
3 Q. Are you aware of Robin testifying in her
4 deposition that it was her understanding that the
5 trusts required her separate property and her share
6 of community property to be deposited into the
7 surviving grantor's trust before it was transferred
8 anywhere else?
9 A. I don't recall specifically, but I think
10 there might be some lack of clarity there.
11 Q. In fact, you deposed Robin Allison, right?
12 A. I did.
13 Q. Yeah. And so you don't recall her
14 testifying that way?
15 A. I'm guessing there's a lot of her
16 deposition that I don't recall as I sit here right
17 now.
18 Q. But it's your understanding that that was
19 not a requirement?
20 A. Correct.
21 Q. Do you recall Robin testifying that the
22 property was -- that the property that was going into
23 the surviving grantor's trust and then she decides
24 what to do with it after that?
25 A. I recall Robin saying something about that,

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1 yeah.
2 Q. And that the surviving grantor's trust was
3 to be funded with her separate property and her share
4 of the community property?
5 A. I don't recall what she said in that regard
6 one way or the other. I can talk to you about the
7 terms of the trust if you'd like.
8 Q. But you disagree that that was a
9 requirement of the trust?
10 A. That it was required that she put all her
11 personal property into the surviving grantor's trust?
12 Q. That it was to be funded with her separate
13 property and her share of the community property.
14 A. So the problem there is that the question
15 is not quite right. The way the surviving grantor's
16 trust was -- the way the trust was to work, to the
17 extent that there was separate property in the trust
18 initially before Dr. Allison passed away, any
19 separate property was supposed to be accounted for
20 separately. And upon the passing of one of the
21 grantors, any such separate property was to flow into
22 the surviving grantor's trust to the extent it was in
23 the trust.
24 I see nothing anywhere in the trust
25 document that required transfer of her personal

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1 property, of any kind of separate property into the
2 trust. The provisions that I think you're
3 referencing are to the extent that it had happened,
4 that is how it was going to be handled.
5 Q. So there was this -- there was a marital
6 agreement in '94, right, between Richard Allison, Sr.
7 and Robin Allison?
8 A. I don't recall the date of it, but there
9 was both a prenuptial agreement, as I recall, and
10 then a marital agreement that supplanted it after
11 they got married.
12 Q. And the terms of the marital agreement were
13 that each party keeps their separate property, right?
14 A. I believe so.
15 Q. And that there is no community property?
16 A. Per my recollection.
17 Q. And that income from the separate property
18 remains separate property and earnings are separate?
19 A. If you have the document, it would be
20 easier. I can't remember all the terms of it.
21 Q. I'm testing your memory a little bit, I
22 understand that, but I want to know what you remember
23 about how the trust worked.
24 A. I can summarize it for you. In general
25 terms, as I recall, everybody was -- the estates --

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1 the marital estate was supposed to remain separate
2 property of each party.
3 Q. And then Richard Allison's will provided
4 that he leaves all property to his trust, originally
5 dated 1989 and amended thereafter in 2011, right?
6 A. Right.
7 Q. And then the Richard Allison Trust, the
8 trust becomes recipient of all that property?
9 A. Of such property as was bequeathed in the
10 will, yes.
11 Q. And then with regard to distributions to
12 the various beneficiaries, what did that trust
13 provide?
14 MR. LITTLE: Objection, form.
15 A. The -- before the passing of Dr. Allison or
16 after the passing of Dr. Allison?
17 Q. Let's start with before.
18 A. Before it was, to my recollection --
19 although I'll be better able to answer any questions
20 if I look at the document again. But per my
21 recollection, since you're testing my memory, during
22 the lifetime of Dr. Allison -- let me put it this
23 way. While both grantors was alive, it was a
24 revocable trust that was for their benefit. They
25 could distribute as much of the income and principal

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1 to themselves as they elected to do so. They were
2 also the trustees. Want me to keep --
3 Q. And then -- are you finished?
4 A. Well, I was going to ask you if you want me
5 to talk about what happens after.
6 Q. Yeah, that was going to be my next question
7 was after.
8 A. So -- and this is off memory, so I'll do
9 that caveat. But per my recollection, after
10 Dr. Allison passed -- or after the first of the
11 grantors passed, rather, the trust was going to be
12 divided into three trusts.
13 The first trust was a surviving
14 grantor's trust. The surviving grantor's trust was
15 supposed to receive the surviving grantor's share of
16 community property and whatever of the surviving
17 grantor's separate property was in the trust. That
18 there were also, I believe, various personal items,
19 art, jewelry, china, cars, things of that nature,
20 that were supposed to go into the surviving grantor's
21 trust. The surviving grantor's trust was for the
22 benefit of only the surviving grantor.
23 Should the surviving grantor not touch
24 it or not do anything about it, upon the passing of
25 the surviving grantor, the assets were to flow to I

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1 think the family trust. I'm not sure about that
2 part.
3 In any event, the biggest thing with
4 the surviving grantor's trust was that it was
5 revocable and all the assets in it upon revocation
6 would go to that individual that revoked it.
7 So in this case, Robin had the
8 right -- the unqualified right to simply revoke the
9 surviving grantor's trust and take everything in it.
10 Okay. So that's the surviving grantor's trust.
11 Of the other assets remaining in the
12 trust, they were to be divided, per my recollection,
13 with as much of the assets as could pass tax-free to
14 the family trust, and the balance was to flow into
15 the marital trust.
16 The marital trust was for Robin's
17 benefit, and she as trustee was -- had the authority
18 to distribute to herself -- well, she had -- she was
19 to distribute to herself, as I recall, quarterly all
20 of the income from the trust. And she had the right
21 to invade the corpus of the trust to the extent it
22 was necessary to keep her in the custom into which
23 she was accustomed. And then I think upon her
24 passing, I think it flows into the family trust or --
25 I can't remember what happens upon her passing as I

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1 sit here.
2 Then we go to the family trust. The
3 family trust was again for Robin's benefit. Robin
4 had the discretion as trustee to distribute to
5 herself as much of the income and principal as was
6 necessary when taking into account all other assets
7 available to her to pay for her life fairly
8 liberally, as I recall. There's some language in
9 there about that.
10 Robin also had the discretion to, if
11 she felt like it, but she had no obligation to make
12 distributions to other of the descendants. That
13 would be Richard, Jr., Caroline and their children.
14 And there's some language in there that it was in
15 particular the hope of the grantors that their
16 grandchildren had the opportunity to receive a good
17 education.
18 And then I believe as to the family
19 trust, upon the passing on -- of the last of the
20 grantors, that trust would be distributed, whatever
21 was left in it, if anything, for Caroline and
22 Richard. Something along those lines.
23 Q. And I know it was a memory test, but that's
24 your general understanding as you sit here today
25 about how the trust worked?

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1 A. That's my best recollection as I sit here
2 without having looked at the document.
3 Q. Right. I understand. You know, there was
4 the marital agreement, some contention by Robin that
5 they tore it up?
6 A. That's what they said initially -- or
7 that's what Robin said initially. We pursued the
8 document through discovery and through subpoena. We
9 ended up finding -- I think Mike took the laboring
10 oar on that finding with I think some help from
11 Caroline or Richard, I can't remember who, the
12 drafting attorney of those documents. And we -- so
13 we subpoenaed those. We got those.
14 The problem with the marital
15 agreement, the reason why it wasn't of particular
16 benefit, is because it has a sunset provision, which
17 meant that a few years after it was executed, it
18 became ineffective.
19 Q. Didn't you have some discussions with
20 somebody about whether or not tearing up the marital
21 agreement was valid? I thought I remember looking in
22 the files --
23 A. I think I consulted with a friend of mine
24 who is a family law attorney about whether that would
25 be a valid way to revoke it. And I believe the

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1 answer was no, but I can't recall.
2 Q. Do you agree that Robin was limited on what
3 she could take from the marital trust?
4 A. In some ways, yes.
5 Q. And how was she limited?
6 A. So she had the right -- she was to
7 distribute to herself quarterly all income, and she
8 could invade the corpus of the trust to the extent it
9 was necessary in her discretion as trustee to
10 maintain herself in the custom to which she was
11 accustomed and the way into which she was accustomed
12 fairly liberally.
13 Q. So she can just deplete it outright?
14 A. So when Richard and Caroline came to us,
15 they were convinced, and they voiced this repeatedly
16 before they hired us and during litigation, and we
17 saw correspondence from Robin I think to this effect,
18 that there would ultimately be nothing left for them.
19 Q. And I understand that, that that's what
20 they were afraid of. But legally she could not do
21 that, Robin could not deplete the trust?
22 A. In different circumstances she could.
23 Q. What do you mean by that?
24 A. If she got, for instance, a rare disease
25 that required outstanding medical care that's not

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1 covered by insurance, she could deplete all of it.
2 Q. Sure, I understand that. But under
3 ordinary circumstances, she couldn't just go deplete
4 it all and blow it on something? She couldn't go buy
5 a several million dollar mansion for herself?
6 A. She could continue to live in the fairly
7 comfortable way to which she was accustomed to live,
8 and she could spend as much as of it as required for
9 that.
10 Q. But she had a -- is it a fiduciary
11 obligation that she had? Is that what you would
12 classify it as, to not go out and just blow the money
13 on something that, you know, she's unaccustomed to?
14 A. Right. If she -- for instance, if she was
15 not accustomed for flying on a private jet before the
16 decedent passed away, she was not then entitled to go
17 out and buy a private jet.
18 Q. And she had a fiduciary obligation not to
19 do that?
20 A. Yes.
21 Q. And those fiduciary obligations were to
22 who?
23 A. They were -- well, they were to herself as
24 beneficiary, and they were to the remainder
25 beneficiaries as a class.

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1 Q. Which were who?
2 A. I believe the remainder beneficiaries of
3 the marital trust and the family trust were Caroline
4 and Richard.
5 Q. Do you think it was important to know what
6 Robin's assets were during the underlying litigation?
7 A. I think it would have been maybe
8 interesting information, but there was no claim to
9 Robin's assets.
10 Q. You don't think it was relevant to
11 establishing that she was inappropriately tapping
12 into the principal of the marital trust?
13 A. We didn't see any evidence that she was
14 tapping into the principal of the marital trust.
15 Q. What evidence did you review that would
16 have indicated that one way or another?
17 A. I mean, I think we've produced the file.
18 There's a massive amount of financial information,
19 including partial trust accountings, information we
20 subpoenaed from the trusts' accountant, the estate
21 planning documents, partnership documents for the
22 partnerships that held the underlying assets. We had
23 a very significant amount of financial information
24 upon which to form that judgment.
25 Q. When you say trust accountings, what are

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1 you referring to?
2 A. I'm referring to the trust accountings
3 that -- the partial trust accountings that we managed
4 to compel Robin to produce by going to court and
5 getting them.
6 Q. Which you called incomplete, right?
7 A. I did.
8 Q. You did?
9 A. I did.
10 Q. Yeah. They were incomplete, weren't they?
11 A. As best I can recall, they started shortly
12 after the passing of the decedent and they continued
13 until -- I think the last bit of information we got
14 was -- as far as the accountings themselves, was
15 through January of 2021, I think.
16 One of the positions that we had
17 taken, and we have litigated this in various cases
18 with differing results, is that we were entitled to a
19 trust accounting. Per the code, it's from the period
20 of the last accounting or the inception of the trust,
21 whichever is later. Because they were not able to
22 produce a previous trust accounting, we had taken the
23 position that we wanted a trust accounting from 1989
24 forward. We were not able to get that.
25 We also took some issue with the

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1 accountings that -- the period of time for the
2 accountings which they did produce, and we went to
3 court repeatedly to try to get that addressed.
4 Q. Now, Robin was required to exhaust what was
5 in the marital trust before she could tap into the
6 family trust, correct?
7 A. As I sit here, I don't recall whether she
8 was required to exhaust the principal from the
9 marital trust, the corpus, before she could access
10 the income from the family trust. But in general
11 terms, with that caveat, yes.
12 Q. If it's in your notes, you would agree with
13 me that that's how it worked if you wrote it down
14 that way in the exhibit we were looking at?
15 MR. LITTLE: Show him where you are.
16 Let's take a look. I mean, since that's not part of
17 the memory test, apparently, I mean, at least you're
18 going to let him use some note that he wrote at some
19 point while you sit over there and read.
20 A. What exhibit is this? I found it.
21 Q. It's somewhere on here, and I have it
22 written down, Trustee is to distribute such income
23 and principal as necessary taking into account all
24 other resources available to beneficiary to keep
25 surviving grantor accustomed to standard of living.

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1 MR. LITTLE: I think then you were
2 reading from your notes. Are you looking --
3 MR. DAVID KASSAB: True.
4 MR. LITTLE: -- at Exhibit 6?
5 MR. DAVID KASSAB: I was reading from
6 my notes but pulled it from this.
7 MR. LITTLE: "This" meaning what, 6?
8 THE WITNESS: This is Exhibit 6.
9 MR. DAVID KASSAB: Yes.
10 MR. LITTLE: You're looking at
11 something. I just want to make sure I'm looking at
12 the same thing you are, man. That's all.
13 A. Is there any way that we could look at the
14 trust document itself to have the definitive source,
15 parse this out?
16 Q. I'll tell you what, we'll come back to it
17 whenever we get there.
18 The point I'm trying to get at is that
19 Robin couldn't just strip the assets from these
20 trusts bare. She had fiduciary obligations to
21 maintain them at least to what she was accustomed to
22 so that if she was to pass away, they would go
23 Caroline and Rich?
24 A. So there's several layers there, right?
25 Yes, she has fiduciary duties. There's also the

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1 possibility for her to do a lot of damage and not
2 violate her fiduciary duties.
3 Q. I understand that.
4 A. On top of that, as to the family trust, she
5 actually had discretion to distribute to any of the
6 class of beneficiaries that's named in there, and
7 that includes the grandchildren, whatever she thought
8 was necessary for their health, education,
9 maintenance, support and so on. And in that regard,
10 if Robin decided Erik needs a house, Ella needs to
11 get a PhD in fine art, she could have done that and
12 could have significantly depleted the assets of the
13 trust in that way.
14 Q. But there's also the counterpoint that
15 there was a chance she would not deplete anything?
16 A. In our estimation and in Richard and
17 Caroline's estimation, there wasn't such a chance.
18 Q. Well, I don't want to know about Richard
19 and Caroline's estimation because they're going to
20 testify about their own estimation.
21 A. Sure.
22 Q. But I want to know about Mr. Borunda's
23 estimation. You say that there was not a chance that
24 she would die and leave things to Richard and
25 Caroline?

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1 A. We were guided by the information our
2 clients gave us. Our clients gave us information
3 that they were -- they were convinced, based on how
4 Robin had been doing things, that there would be no
5 assets left for them. We were also guided by Robin's
6 own statements in correspondence that said there was
7 likely to be nothing left at the end of the day.
8 Caroline went to great lengths to tell
9 us about Robin's lack of business sophistication and
10 the manner in which she was degrading the assets of
11 the trust, in particular the marital trust. And upon
12 those being depleted and degraded as they had been
13 because the apartments broke down, there were
14 increasing vacancies and so on and forth, then she
15 would start dipping into the family trust.
16 Q. What correspondence from Robin Allison are
17 you referring to stating there would be nothing left
18 in the trust?
19 A. It was correspondence that Caroline
20 provided to us between herself and Robin where Robin
21 says that there was likely to be nothing left,
22 something to that effect.
23 Q. Emails?
24 A. I believe so.
25 Q. So you didn't provide -- strike that.

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1 You didn't value the fact that
2 Caroline and Rich were remainder beneficiaries in
3 these trusts, you didn't give it any value whatsoever
4 when calculating your contingency fee. Is that
5 correct?
6 MR. LITTLE: Objection, form.
7 A. Did we -- I'm sorry, could you repeat?
8 Q. Yeah, let me rephrase it. So when
9 you're -- and we'll get to the contingency fee
10 contract, but you were only entitled to obtain a
11 contingency fee on basically assets that were in
12 dispute, right?
13 A. Right.
14 Q. So if Caroline and Rich are going to get
15 money coming to them potentially through these trusts
16 should Robin pass away, you didn't provide -- you
17 didn't value that at all in coming up with your
18 contingency fee calculation?
19 A. Well, our contingency fee calculation is
20 based on the totality of the circumstances at the
21 time that we calculated the fee. When we initiated
22 these contests and these trust challenges, as we
23 explained to Richard and Caroline, everything was
24 going to go into dispute, a 100 percent of it. And
25 it did, the reason being Robin chose to invoke the no

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1 contest clause of all the documents.
2 And not only did she choose to invoke
3 it; she pursued it vigorously to the point that she
4 went and hired an expert to try to make it stick to
5 disinherit Caroline, disinherit Rich and their
6 children. Had we not prevailed, there was a risk
7 that Rich and Caroline and their children would
8 receive zero.
9 Q. That was after you initiated litigation
10 that she invoked that, right?
11 A. Yes.
12 Q. Yeah. And you didn't give much credence to
13 that argument, did you?
14 A. I have not been in a case prior to this one
15 where a litigant went out and hired an expert to try
16 to make it stick. And based on what we saw
17 thereafter, Robin was going to do everything within
18 her power to make it stick, yes.
19 Q. That wasn't my question. My question was:
20 You did not give very much credence to Robin's -- to
21 Robin invoking the no contest clause. You didn't
22 think it was a legitimate argument?
23 A. No, I thought there was a legitimate
24 argument. I thought that we had the better of the
25 argument.

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1 Q. Didn't you tell Caroline and Rich not to
2 lose sleep over it?
3 A. That's right, because I thought we had the
4 better of the argument.
5 Q. Yeah, you didn't give it too much weight,
6 did you?
7 A. I didn't say that.
8 MR. LITTLE: Objection, asked and
9 answered.
10 A. I said I thought we had the better of the
11 argument.
12 Q. Isn't that what you told the mediator, that
13 you didn't think it would prevail?
14 A. You do a lot of things in mediation that
15 you don't necessarily a hundred percent believe when
16 you're posturing with respect to the mediator.
17 MR. DAVID KASSAB: Objection,
18 nonresponsive.
19 Q. Do you remember my question?
20 A. No.
21 Q. My question was: Isn't that what you told
22 the mediator, that you didn't think -- that argument,
23 the no contest clause argument, would prevail?
24 A. I don't have the specific recollection of
25 discussing that with him. I wouldn't be surprised if

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1 I did say that.
2 Q. Do you ever have the value of Caroline and
3 Rich's remainder beneficiary rights appraised as they
4 existed prior to litigation?
5 A. I don't even now how you would do that.
6 Q. So is that a no?
7 A. That's an I don't know even now how you
8 would do that.
9 Q. And so I take it that means you never did
10 it, right?
11 A. Yes, that's right. I wouldn't begin to
12 know how to do that. I don't think anybody can.
13 Q. Well, I didn't ask you if you thought
14 anybody could. And you know how these things work.
15 I ask the questions, and you try to give responsive
16 answers. My question was simply: You never did
17 that?
18 A. I have answered your question.
19 Q. Right. And you're not an expert in how to
20 value that, correct?
21 A. I am not.
22 Q. Do you agree that that interest has some
23 value?
24 A. Which interest at what point in time?
25 Q. Well, let's start with before they

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1 initiated litigation. That point in time, the fact
2 that they were remainder beneficiaries, does that
3 have any value?
4 A. Possibly.
5 Q. Have you ever had to have any of your
6 contingency fee cases valued with a banker in your
7 practice?
8 A. I'm sorry?
9 Q. So, for instance, do you have a line of
10 credit now?
11 A. For my law firm?
12 Q. Yes.
13 A. No.
14 Q. Have you ever had one?
15 A. We had a line of credit when I was with --
16 partners with Jeremy.
17 Q. Did y'all do contingency fee work with that
18 firm?
19 A. Yes.
20 Q. And were you involved with, you know, the
21 line of credit or managing that with the bank?
22 A. No.
23 Q. After the lawsuit was filed, do you give
24 that remainder beneficiary any value?
25 A. The only value it would have would be

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1 anything that we were able to monetize for the
2 client.
3 Q. Let me show you --
4 MR. LITTLE: David, just real quickly.
5 I know we haven't been going for that long.
6 MR. DAVID KASSAB: Yeah.
7 MR. LITTLE: Downstairs, if you guys
8 are going to want to take lunch, they kind of cut off
9 at a certain time. I don't want to interrupt you in
10 the middle of something, but if we want to kind of
11 pause briefly and talk about lunch. There is such a
12 thing as too late to have lunch downstairs.
13 MR. DAVID KASSAB: Let's go off the
14 record.
15 THE VIDEOGRAPHER: We are now going
16 off the record. The time is 12:37 p.m.
17 (Lunch recess)
18 THE VIDEOGRAPHER: We are now going
19 back on the record. The time is 1:33 p.m.
20 BY MR. DAVID KASSAB:
21 Q. Mr. Borunda, are you ready to continue your
22 deposition?
23 A. I am.
24 Q. You know, I forgot to ask you about the
25 Echols lawsuit, if you recall an allegation that the

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1 contingency fee agreement between your law firm,
2 Mr. Trevino's law firm and Abaza's law firm was --
3 did not set forth a division between the various
4 firms of what the firms were going to receive or how
5 they were going to share in the contingency fee
6 agreement in compliance with the disciplinary rule.
7 A. I don't recall that allegation, and
8 frankly, it doesn't make sense since we were all a
9 part of the same firm.
10 Q. Okay.
11 (Exhibit 11 marked)
12 Q. I'll show you what I marked as
13 Exhibit No. 11.
14 I already premarked before the break
15 an affidavit that you had given in this case, so I'm
16 skipping one exhibit here.
17 So Exhibit 11 is the second amended
18 petition in the Gail Echols case, and we'll get to
19 Exhibit 10 in just a minute.
20 MR. LITTLE: So we're not going to
21 have a gap in numbering -- at the end we're just
22 going to have a gap in numbering for a few moments?
23 MR. DAVID KASSAB: Yes.
24 MR. LITTLE: Got it.
25 Q. If you turn to Page 4 of this second

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1 amended petition, you'll see the first full paragraph
2 says, "Defendant Abaza then contacted Jorge Borunda
3 and Michael Anthony Trevino of the firm Radack &
4 Borunda, P.C. to enter into a division of fee
5 agreement or arrangement for the division of fees
6 between lawyer who are not in the same firm to
7 simultaneously and jointly represent the plaintiff."
8 Do you see that?
9 A. I see that.
10 Q. Was Mr. Abaza in your same firm at that
11 time?
12 A. I think, although I can't recall to a
13 certainty, Nick maintains his own separate practice,
14 but I think at this time he was also of counsel with
15 Radack & Borunda.
16 Q. You see on the first page they at least
17 sued Nicholas Abaza, Law Offices of Nicholas Abaza,
18 P.C., right?
19 A. They did.
20 Q. And at least there's the allegation that
21 Ms. Echols hired both Radack & Borunda, P.C. and
22 Nicholas Abaza, P.C. on a contingency fee agreement,
23 but there was no division on -- or nothing in writing
24 on how the fee was going to be divided?
25 A. It says that. It also says we somehow took

Page 118 1 130 percent of the recovery. None of it makes sense 2 to me. 3 MR. DAVID KASSAB: Objection, 4 nonresponsive. 5 Q. I understand that. That wasn't my 6 question. My question was simply that the allegation 7 was that you failed to comply with Rule 1.04 8 concerning the division of fees? 9 A. There is that allegation. 10 Q. And, of course, you've admitted that you 11 failed to comply with Rule 1.04 in this litigation by 12 trying to share fees with Mr. Trevino's firm even 13 though he is not on the contingency fee contracts, 14 correct? 15 MR. LITTLE: Objection, form. 16 A. I disagree. 17 Q. How do you disagree? 18 A. I think what I said is that we failed to 19 get Richard a contract that included Mike as a member 20 of the team, and Richard didn't sign that. I don't 21 recall anything about Michael and us coming to some 22 unethical agreement to improperly share fees after 23 the fact. 24 Q. Well, you understand that Michael is suing 25 for a portion of the contingency fee, right?	Page 120 1 Q. Who drafted it? 2 A. I think I did. 3 Q. You think? 4 A. I think. 5 Q. Who else may have drafted it? 6 A. It's possible that my attorney with my 7 participation did some or all of the drafting, but I 8 think I drafted it. 9 Q. Are you talking about Mr. Little? 10 A. Yes. 11 Q. This is an affidavit you gave in the -- 12 this case -- actually, let me clarify -- the case, 13 the lawsuit that Caroline filed against you and your 14 firm, Mr. Abaza and Mr. Trevino and their firms in 15 district court in Harris County, correct? 16 A. I believe so, yes. 17 Q. And everything in this affidavit is true 18 and correct? 19 A. As best I recall. 20 Q. I want to turn your attention to 21 Paragraph 13. 22 A. Okay. 23 Q. It appears to me that you're talking about 24 a point in time where Caroline was telling you she 25 could not keep up with the legal bills and was
Page 119 1 MR. LITTLE: Objection, form. 2 A. I don't know what he's suing for as I sit 3 here. 4 Q. Okay. Do you think it's ethical for 5 Mr. Trevino to obtain a portion of the contingency 6 fee agreement -- I'm sorry, a portion of the 7 contingency fee even though there's no written 8 agreement signed off by Rich allowing him to obtain a 9 portion of that contingency fee? 10 MR. LITTLE: Objection, form. 11 A. I think that Michael wouldn't do anything 12 that violates Rule 1.04. I think he is here for his 13 portion of the contingency fee with Caroline, but 14 you'd have to ask him about what he's suing. That's 15 my understanding. 16 Q. And we will. 17 So you don't think Rule 1.04 was 18 violated in this case? 19 MR. LITTLE: Objection, form. 20 A. I don't think so, no. 21 Q. All right. Now let me show you what I've 22 marked as Exhibit No. 10. 23 (Exhibit 10 marked) 24 Q. Have you seen that affidavit before? 25 A. Yes.	Page 121 1 inquiring about her options. Is that -- 2 A. Let me read it really quickly. 3 Q. Sure. 4 A. (Reviewing) Okay. Could you repeat your 5 question? 6 Q. Yeah. Can you tell me what Paragraph 13 is 7 about? 8 A. I think that is about a meeting that 9 Caroline and I had following the unsuccessful 10 mediation in July of 2020. After that mediation we 11 had a pretty significant hearing where a lot of 12 things were taken up by the court. Many were not 13 resolved. Some were resolved. After that I sent 14 correspondence to Caroline, Rich, Nick kind of 15 summarizing the hearing and then discussing a little 16 bit of the path forward. 17 At some point after that, as I 18 understand it, Caroline reached out to Nick again, I 19 think for the third time, expressing her inability to 20 keep up with the fairly modest legal fees we had been 21 billing her up to that point. I think Nick gave her 22 some sort of accommodations to help her deal with the 23 financial strain, and then he suggested that she call 24 me. As I recall, she texted me, and we arranged to 25 meet and discuss these issues. And we did. I think

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1 that's that meeting.
2 Q. And when did that meeting occur?
3 A. It's in August. I think it might be maybe
4 late August.
5 Q. Was it in person?
6 A. I believe so, yes.
7 Q. Who else was present?
8 A. Just myself and Caroline, as I recall.
9 Q. And you state here that in that meeting
10 Caroline pressed you to give her a quote on what the
11 cost was with going forward getting the case through
12 trial, right?
13 MR. LITTLE: Objection, form.
14 A. Yeah, she was -- she wanted me to tell her
15 how much it was going to cost to take the case the
16 rest of the way.
17 Q. Did you give her an estimate?
18 A. No.
19 Q. Why?
20 A. Because I couldn't give her an estimate.
21 Q. Did you give her any sort of budget on what
22 you thought it might cost?
23 A. No.
24 Q. Did you tell her that Robin was going to
25 fight the case hard?

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1 A. I told her that getting a case through
2 trial, especially a case such as this, was not an
3 inexpensive proposition. I told her that a lot of
4 the costs depended on factors that were beyond my
5 control. That's what I told her.
6 Q. Anything else?
7 A. I'm sure we discussed other things.
8 Q. Do you recall anything else from that
9 conversation as you sit here today?
10 A. I mean, I recall different things. I
11 recall Caroline expressing that it was obvious the
12 case was never going settle, that it was obviously a
13 ploy by Robin to drive up her fees, that the
14 financial burden of the litigation was more than she
15 could bear, that she was considering dropping the
16 case altogether, and asking about the cost of a trial
17 or getting the case through trial. I told her I
18 couldn't predict what that would be but that it would
19 not be inexpensive, because it's not, but that I
20 didn't -- there were too many variables to give her a
21 cost or a range of costs.
22 And it's possible that we talked about
23 tasks left to be done. I did mention to her at the
24 time, as I mentioned I think in some correspondence
25 following that August 4th hearing, that Collins

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1 specifically had left the path -- the door open to
2 subsequent negotiations. So that there was that
3 possibility, but that as things stood right there, we
4 were going to start preparing the case to go to trial
5 because we had a trial setting in the not too distant
6 future.
7 Q. And you didn't give her an estimate as to
8 how much it would cost to get the case prepared to
9 trial?
10 MR. LITTLE: Objection, asked and
11 answered.
12 A. No.
13 Q. With regard to her statements that it's
14 evident Robin is not going to settle, did you agree
15 with that?
16 A. No. I just explained to you, as I
17 explained in email and I explained to Caroline at
18 that meeting, Collins had specifically left the door
19 open to additional negotiations.
20 Q. Did you advise her about her options to get
21 a loan from either a private company, like a personal
22 loan or from a litigation funding company, to pay
23 your hourly fees?
24 A. Did I tell her to go get a loan to pay me?
25 Q. Yeah.

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1 A. No. I offered to help work with her on
2 past due fees, give her additional time to pay,
3 restructure those invoices. She gladly accepted that
4 and thanked me.
5 Q. And then you state in Paragraph 16 that in
6 mid-October of 2020, you state Caroline approached us
7 for the third time regarding her idea of changing to
8 a contingency fee contract, right?
9 A. Yes.
10 Q. So tell me about that.
11 A. So I had given Caroline additional time to
12 pay. I had reduced the payment of the -- the initial
13 payment on past due fees by some amount. I think
14 Caroline made a partial payment at that time. I
15 think it was in September.
16 And after that the calculus changed in
17 Caroline's mind. She came to us. She -- I think she
18 approached Nick first, and Nick said talk to Jorge.
19 Caroline -- and Caroline and I discussed it. At that
20 point it was crystal clear Caroline either couldn't
21 or didn't want to pay on an hourly basis anymore, and
22 she requested to be switched over to contingency. I
23 told her that we could do that but that she should
24 have any change reviewed by independent counsel and
25 that she could ask us any questions that she had as

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1 well and that Nick would be putting together a fee
2 agreement and sending it to her.
3 Q. Is that it? Is that all you recall?
4 A. Unless you have some specific questions,
5 that's all I can think of off the top of my head.
6 Oh, I don't know if it was during that
7 conversation or a subsequent conversation, but once
8 Caroline made the decision to switch from hourly to
9 contingency, I brought up the idea of Michael joining
10 the team for the purpose of preparing the case for
11 trial and to exert additional pressure because of
12 that previously expressed possibility of ongoing
13 negotiations that Collins had expressed, that adding
14 additional pressure might also restart the
15 negotiations.
16 Q. So this meeting that you had in mid-October
17 with Caroline, was it over the phone or in person?
18 A. I think that was telephonic because at some
19 point my 80-year-old mother, who lives in Mexico,
20 fell and shattered her hip and she was going to have
21 surgery and a variety of things, and so I needed to
22 go and be there. So I think that was telephonic.
23 Q. And the issues with your mom, the medical
24 issues and you traveling back and forth, is that one
25 of the other reasons why you brought on Mr. Trevino?

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1 A. That was part of it. But the bulk of it is
2 Mike and I have worked in trial together. We work
3 well together. And we worked previously in working
4 up cases. I thought Mike would be value added and
5 that once Caroline had opted to switch to
6 contingency, it would be no additional cost to her.
7 So it would just be value added with no additional
8 financial burden. And it made sense to me.
9 Q. Was anybody else on that phone call in
10 mid-October?
11 A. I don't believe so.
12 Q. Is that when you allegedly told her to go
13 get another lawyer to look at the fee agreement?
14 MR. LITTLE: Objection, form.
15 A. That's what I told her.
16 Q. Did you put that in writing to her?
17 A. I did not.
18 Q. And, of course, since you're the only one
19 on the phone call with Caroline, nobody else heard
20 you say it?
21 A. Well, Caroline heard me.
22 Q. Other than Caroline?
23 A. No.
24 Q. And I take it you also did not advise her
25 of the pros, cons, advantages or disadvantages of

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1 entering into a new agreement. Is that correct?
2 MR. LITTLE: Objection, form.
3 A. We had gone through that repeatedly with
4 her prior request to switch over, and I didn't feel
5 like beating that dead horse any further. So given
6 that I had already explained to her the ramifications
7 of the switch and she kept bringing it up, I didn't
8 think it was necessary to do so yet again.
9 Q. So is that a correct to --
10 A. It is what I said.
11 Q. Well, you didn't really answer the
12 question.
13 A. Then ask it again.
14 Q. Sure. So I take it that during this phone
15 call that we're talking about in mid-October between
16 you and Caroline Allison, you did not advise her
17 during that phone call about the pros, cons,
18 advantages and disadvantages of a new agreement. Is
19 that correct?
20 MR. LITTLE: Objection, form.
21 A. I did not do so again.
22 MR. DAVID KASSAB: Objection,
23 nonresponsive after "I did not do so."
24 Q. These other times that you're talking about
25 in which you say you advised Caroline Allison of the

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1 pros, cons, advantages and disadvantages of entering
2 into a new agreement with her, when did those occur?
3 A. In March --
4 MR. LITTLE: Objection, form. Are you
5 going back to the beginning?
6 MR. DAVID KASSAB: I want to know what
7 he meant by his last answer that was nonresponsive to
8 my question.
9 MR. LITTLE: Okay. Well, then I just
10 want to be clear whether you want him going back to
11 the beginning of the representation or --
12 MR. DAVID KASSAB: No. Because --
13 Q. So let me clarify. I'm talking about after
14 you already had a fiduciary relationship with
15 Caroline, after the first agreement was entered, tell
16 me all the times after that first agreement was
17 entered that you advised her about the pros, cons,
18 advantages and disadvantages of entering into a new
19 agreement with her.
20 A. So the first time that the issue of her --
21 that she raised the issue of switching to a
22 contingency fee was, I believe, in March of 2020.
23 Q. After she had an agreement with you?
24 A. Yes. Well, let me restate that. She
25 brought up the issue of switching originally before

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1 we even entered into a --
2 Q. I'm not talking about that. I'm talking
3 about after you had a fiduciary relationship with
4 her, those times.
5 A. Once we had -- after Caroline signed the
6 hourly contract, the first time it came up was in
7 March, I think, of 2020. The best I recall.
8 Caroline reached out to -- I don't know if it was me
9 or Nick, and she was -- she was behind on her fees
10 already. And she was expressing to us grave concern
11 about the financial toll of the litigation and her
12 financial outlook for the year because of COVID and
13 things of that nature.
14 She brought up the idea of switching
15 to contingency at that time. I talked to her and I
16 explained to her that given the totality of the
17 circumstances, it seemed to me that rather than give
18 up contingency fee interest in the totality of your
19 recovery at that time, it might be best for her to
20 remain on an hourly basis because mediation was in
21 the foreseeable future. And if she could finish
22 through mediation on an hourly basis, then she would
23 be better off. I thought that was more fair and
24 reasonable to her, especially since I had a retainer.
25 I offered to -- rather than make her

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1 pay me the invoices as they're sent or replenish the
2 retainer as it was depleted, I could work off of the
3 retainer as long as possible, and then we could
4 revisit the issue. And she agreed. She was happy
5 about it, and that's what we did.
6 Q. That conversation in March 2020, was it in
7 person or over the phone?
8 A. I don't recall.
9 Q. Was there anybody else involved in that
10 conversation?
11 A. Nick might have been involved, but I'm not
12 sure.
13 Q. When was the next time?
14 A. I know there was more unhappiness by
15 Caroline about fees in like June or July. I don't
16 think switching to contingency came up at that time.
17 I think the next time she brought it up was in
18 August. And we again discussed everything. She -- I
19 talked to her, and she understood. I mean, Caroline
20 is what you would call a sophisticated client --
21 Q. Hang on. Let's focus on the question. I
22 just simply asked you when that occurred. You said
23 it was August 2020.
24 A. Okay. Just the date range, the time frame?
25 Q. Yeah.

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1 A. August of 2020 sometime.
2 Q. And that's the meeting that you're
3 referring to in Paragraph 13 of your affidavit?
4 A. I believe so, yes.
5 Q. And that's the meeting where you said it
6 was just between you and Caroline?
7 A. Yes.
8 Q. Right?
9 And nobody else was present?
10 A. No.
11 Q. And --
12 A. Or rather, correct, nobody else was
13 present.
14 Q. Got it. And tell me about that
15 conversation specifically on how you advised her on
16 the pros, cons, advantages and disadvantages of
17 entering into a new agreement.
18 A. Well, when she brought up the idea of
19 switching again because of the strain, I told her
20 that, you know, the net effect of switching over
21 would be that she'd be giving up 35 percent of
22 whatever she got at the end of the day.
23 We talked about that vis-a-vis the
24 hourly arrangement that we had, and I offered her the
25 option of remaining on the hourly agreement -- on the

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1 hourly contract that we had and working with her to
2 make the fees more manageable in the immediate
3 future.
4 Q. Is that it?
5 A. I mean, as best I can recall.
6 Q. Did you send her a copy of any proposed
7 contingency fee agreement at either the March 2020
8 meeting or the August 2020 meeting for her to review
9 prior to?
10 A. Both times she accepted the accommodations
11 that we offered to her, and she elected to remain
12 hourly, and so, no.
13 Q. And then was -- when was the next time
14 that -- next opportunity for you to advise her about
15 the pros, cons, advantages and disadvantages of
16 entering into a new agreement?
17 A. The next opportunity?
18 Q. Yeah.
19 A. I mean, every time I talked to her, I had
20 the opportunity to do so.
21 Q. The next meeting that that occurred.
22 A. I don't know that it happened in a meeting.
23 Q. Was it in the October 2020 meeting?
24 A. The next time that the contingency -- that
25 Caroline brought up the idea of switching to

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1 contingency was in October. And by that time, having
2 gone through it at the outset of the litigation and
3 twice before, I didn't see any need to go through
4 things again.
5 Q. Okay. So then at that point you just sent
6 her the contingency fee agreement and you tell her by
7 email. Let me know if you have any questions.
8 Otherwise, sign it and get it back to me.
9 A. No. I said we're going to send you a fee
10 agreement. You should get it reviewed by a separate
11 counsel. Ask us any questions you may have.
12 And then what I'm not certain about is
13 whether the idea of adding Mike to the team came up
14 at that initial conversation or a subsequent
15 conversation. But it came up once Caroline had
16 decided to switch to contingency. And she was
17 first -- I think she -- I think first she wanted to
18 talk to Michael. So all of that happened. I don't
19 know if at that phone call or there was a subsequent
20 meeting or phone call, but all of that that happened
21 before Caroline received the contingency fee contract
22 and -- so there's some lack of clarity there, from my
23 recollection.
24 Q. After you sent her the contract, did you
25 have any discussion with her about the contingency

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1 fee agreement before she signed it?
2 A. I believe that she brought up the issue of
3 a typo and the percentages on the contract. I think
4 in one portion of the contract it said 35 percent and
5 in another it said 40 percent. I think she during
6 her review discovered that. She brought it to our
7 attention, and we corrected it. And then she signed
8 it.
9 Q. Do you recall any other conversations with
10 Caroline about the contingency fee contract after you
11 sent it to her before she signed it?
12 A. She didn't ask me any questions about it,
13 and I don't know whether she asked anybody else any
14 advice.
15 Q. So I take it you never explained to her the
16 implications of the arbitration provision that were
17 contained in the new contingency fee agreement?
18 A. I do not recall discussing the arbitration
19 provision with Caroline at that time.
20 Q. Okay. How about any time?
21 A. When we first were discussing with Rich and
22 Caroline becoming -- representing them in this case,
23 we walked them through the provisions of the
24 contract, the contingency fee contract, including
25 that.

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1 Q. Well, you understand that Caroline's hourly
2 agreement does not have an arbitration provision in
3 it?
4 A. I do.
5 Q. Correct?
6 A. Yes.
7 Q. So were you walking Caroline through the
8 provisions of an agreement that does not apply to
9 her?
10 A. We were walking Caroline and Rich through
11 the provisions of the agreements that were options
12 for them.
13 Q. Okay. And one of the options was the
14 hourly agreement that we looked at earlier, right?
15 A. Yes.
16 Q. And so you walked through the provisions of
17 that agreement?
18 A. I walked through the terms of the
19 agreement, yes.
20 Q. And that one did not have an arbitration
21 provision?
22 MR. LITTLE: Objection, form.
23 A. Correct.
24 Q. And then you're saying that you also walked
25 through the provisions of the contingency fee

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1 agreement with both Caroline and Rich?
2 A. We walked through the terms of everything
3 with both of them.
4 Q. I'm specifically referring to the
5 contingency fee agreement.
6 A. Yes, I just answer your question. We
7 walked through the terms of that with both of them.
8 Q. It was a little unclear as to what you
9 said. When you said "that," I didn't know what you
10 were referring to, so I wanted to make sure we were
11 on the same page.
12 So what specifically do you recall
13 with regard to the advice you gave them concerning
14 the arbitration provision?
15 A. Just explaining what it meant, what it is.
16 Q. I want to know specifically.
17 A. I don't recall specifically.
18 Q. And who else was at that meeting?
19 A. Nick.
20 Q. So it was Nick, you, Caroline and Rich?
21 A. Yes.
22 Q. After you sent Caroline a contingency fee
23 agreement, you had no other conversations with her
24 about the arbitration provision that was contained in
25 the new agreement, correct?

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1 MR. LITTLE: Objection, form and asked
2 and answered.
3 A. Could you repeat that.
4 Q. Yeah. I just want to be clear that
5 regarding the new contingency fee agreement that
6 Caroline signed, that version of it that was sent to
7 her after she had already signed the hourly
8 agreement, you did not have any other conversations
9 with her about the arbitration provision. Is that
10 correct?
11 MR. LITTLE: Same objections.
12 A. I -- I think I've answered the question, so
13 I'll stand on my answer.
14 Q. Well, I don't know what your answer was.
15 A. It should be on the record.
16 Q. Are you not going to answer the question?
17 A. Again?
18 Q. Yes.
19 A. No.
20 Q. All right. Have you seen Rob Hancock's
21 report in this case?
22 A. I believe -- yes, I have, yes.
23 Q. Do you disagree with it?
24 A. Yes.
25 Q. Why?

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1 A. A lot of reasons.
2 Q. Well, give me a few.
3 A. It makes incorrect factual assumptions. It
4 misunderstands the terms of the trust agreement. It
5 makes guesses about things that are not known. It --
6 it's just -- it proposes scenarios that are
7 impossible. It is -- it's just -- it's terrible.
8 Q. Now, in the underlying case, you never
9 retained a financial expert of any sort, correct?
10 A. Correct.
11 Q. You didn't have an accountant who could
12 value the estate, so to speak, correct?
13 A. Had an accountant who could value the
14 estate?
15 Q. Yeah.
16 A. We retained an accountant, I recall, for
17 some other purpose but not -- we did not retain
18 valuation experts for all assets. I think we
19 retained at some point a valuation expert for the
20 apartments, but I can't be sure.
21 Q. Now, you contemplated retaining valuation
22 experts, right?
23 A. We contemplate everything.
24 Q. Well, I'm asking you specifically with
25 regard to valuation experts.

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1 A. I don't recall specifically.
2 (Exhibit 12 marked)
3 Q. I'll show you what I marked as Exhibit
4 No. 12.
5 A. Can I set these aside at this point?
6 Q. Yeah.
7 So this is an email between -- looks
8 like Nick Abaza, you, and the below emails are
9 concerning -- looks like they're from Rich to Nick,
10 correct?
11 A. So this is an email from Nick to me
12 forwarding a previous thread that includes, it looks
13 like, Richard's signed contingency contract.
14 Q. I want to direct your attention to the
15 second page. There's an email from Nick Abaza to
16 Rich dated June 10, 2019 at 6:30 a.m. Are you there?
17 A. I am.
18 Q. It looks like he's explaining kind of the
19 fee, what percent the attorneys' fees would be and
20 the costs associated with case. Do you agree with
21 that?
22 A. I'm sorry, I was reading it. Could you
23 repeat your question?
24 Q. Yeah. It looks like Nick is explaining to
25 Rich the contingency fee and the costs that would be

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1 associated with the litigation?
2 A. That's what it seems to be, yes.
3 Q. And if you go to paragraph that starts with
4 "costs would be." Do you see that?
5 A. Yes.
6 Q. It says, "Costs would be what we have to
7 pay a third party, for example, deposition, records
8 from a third party such as a hospital or banks, court
9 filing fee, experts such as forensic accounting,
10 mediator's fee," end bracket.
11 Do you see that?
12 A. I do.
13 Q. So you agree that at least Nick was
14 contemplating hiring a forensic accounting expert in
15 this case?
16 A. No. I think Nick was giving examples of
17 possible costs.
18 Q. You don't think that a forensic accountant
19 would be a possible cost?
20 A. It would be a possible cost, yes.
21 Q. And is there a reason you didn't hire a
22 forensic accountant?
23 A. Because we didn't get to a point where we
24 thought one was necessary.
25 Q. And why is that?

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1 A. Because we thought we -- we developed an
2 adequate understanding of the estate and the trust,
3 its assets, the values involved. We -- the idea of a
4 forensic accountant, which Richard and Caroline
5 brought up a couple of times, was for the purpose of
6 finding missing assets, assets that might be missing.
7 Based on our review of the totality of the
8 information we gathered, we found nothing that would
9 indicate that there were missing assets.
10 Q. Didn't you constantly complain that Robin
11 Allison was not giving you the financial information
12 that you needed?
13 A. I don't know that I constantly complained
14 about that.
15 Q. You didn't file a motion to compel
16 regarding that?
17 A. We were conducting discovery, yes.
18 Q. That wasn't my question. My question was
19 not were you conducting discovery. My question was:
20 Did you file a motion to compel stating that Robin
21 was not giving you the financial information that you
22 needed?
23 A. Yes.
24 Q. And, in fact, you told the mediator, didn't
25 you, in your mediation memorandum that discovery was

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1 incomplete because you were not being provided the
2 information that you needed?
3 A. I may have said that. I don't recall.
4 Q. Right.
5 (Exhibit 13 marked)
6 Q. I'll show you what I marked as Exhibit
7 No. 13. Have you seen that document before?
8 A. I have.
9 Q. Who drafted this employment agreement?
10 A. I believe Nick did.
11 Q. Who drafted the hourly agreement we looked
12 at earlier?
13 A. I think that was me.
14 Q. Is the hourly agreement a standard type
15 form that you use for your hourly contracts?
16 A. It's a template that I modify to suit a
17 particular case, yeah.
18 Q. In your fee agreements do you have
19 arbitration provisions?
20 A. In contingency contracts and now in hourly
21 contracts I do.
22 Q. Back then did you?
23 A. In contingency fee contracts, I believe so,
24 yes.
25 Q. But not in hourly cases?

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1 A. I don't recall one way or the other.
2 Q. Is there a reason for that?
3 A. None particularly, no.
4 Q. See in the middle of the page the paragraph
5 that says, "Client does not object to the
6 participation of any lawyers attorneys." Do you see
7 that, middle paragraph?
8 A. Yeah, I see that.
9 Q. And "may choose to involve in this action,
10 including Jorge Borunda who is representing his
11 sister, and waives any potential conflict should one
12 arise."
13 A. Right.
14 Q. See that?
15 A. I do.
16 Q. Did you have any discussions with the
17 Allisons, Caroline and Rich, about potential
18 conflicts between them other than what may be
19 contained in these fee agreements?
20 A. As I recall -- I recall some discussion
21 about that, yes.
22 Q. And when did that discussion occur?
23 A. In advance of them signing any contracts
24 with us.
25 Q. So that was before the -- before Caroline

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1 signed her first agreement?
2 A. Yes.
3 Q. And what was the substance of those
4 conversations?
5 A. As I recall, we talked about the
6 possibility that conflicts might develop if one party
7 wanted to, for instance, settle when another did not,
8 and other possible scenarios. But that's the one I
9 can recall. And in those circumstances, absent their
10 agreement to the contrary, we would have a conflict
11 and have to withdraw.
12 Q. Did they ask any specific questions about
13 that?
14 A. I don't recall.
15 Q. At the bottom of the page, there's a
16 paragraph, it looks like it's bolded, Approval
17 Necessary for Settlement. Do you see that provision?
18 A. I do.
19 Q. Than it says, "Attorneys will not settle
20 the claims without client's approval. However, the
21 client will not make a settlement or offer of
22 settlement without the approval of attorneys."
23 Did I read that accurately?
24 A. Yes.
25 Q. Do you believe that's an ethical provision?

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1 A. I think we've already discussed that, and
2 I'll stand on my previous answers.
3 Q. All righty.
4 (Exhibit 14 marked)
5 Q. Let me show you what I've marked as Exhibit
6 No. 14. Take a moment to look at that. Let me know
7 if you've ever read that case before.
8 A. I have not read this case before. Do you
9 want me to read the case?
10 Q. I'll direct your attention to a paragraph.
11 A. Okay.
12 MR. LITTLE: I'm going to tell you to
13 read the case, whether he does or not. So if he's
14 going to ask you about a paragraph, then you get to
15 read the rest.
16 A. All right. I'm going to take a minute to
17 review the case.
18 Q. Well, let me ask you a question. I'm going
19 to ask you about a paragraph. Then you can read the
20 rest, according to your counsel.
21 So look at Page 5 of 6.
22 A. Okay.
23 Q. And I want you to read that paragraph
24 starting with, "We are unpersuaded by Davis's
25 argument." Do you see that paragraph in the middle

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1 of the page?
2 A. I do.
3 Q. Go ahead and read that, and I want to ask
4 you a question about it.
5 A. (Reviewing) Okay.
6 Q. And then I want to bring you to Page 4, and
7 there's the paragraph under subsection A that starts
8 with "Bates and consumers move for summary judgment."
9 Do you see that?
10 A. I see that.
11 Q. I want you to read that one, and then I'm
12 going to ask you questions about both those
13 paragraphs.
14 A. (Reviewing)
15 MR. LITTLE: Well, he's going to ask
16 you to read -- he's going to ask you questions about
17 two paragraphs. I'm telling you to read whole the
18 document.
19 A. I'm going to read -- I need to read this
20 whole thing before I answer any questions about it.
21 MR. LITTLE: You don't get to, like,
22 take a five-page case and ask him one sentence.
23 So...
24 MR. DAVID KASSAB: Raul has to go
25 potty, so we can go off the record.

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1 THE VIDEOGRAPHER: We are now going
2 off the record. The time is 2:15 p.m.
3 (Recess taken)
4 THE VIDEOGRAPHER: We are now going
5 back on the record. The time is 2:23 p.m.
6 BY MR. DAVID KASSAB:
7 Q. Mr. Borunda, have you now had an
8 opportunity to read the entirety of Davis Law Firm
9 versus Bates case that we were talking about?
10 A. Quickly, but, yes.
11 Q. I want to turn to Page 4 with you under
12 subsection A, the summary judgment motions. Do you
13 see that?
14 A. I do.
15 Q. What's your understanding of the Court's
16 holding with regard to that paragraph?
17 A. My understanding of the entirety of the
18 case is that the Court refused to enforce a
19 contingency fee contract because it found that a
20 particular -- for separate grounds. It found that a
21 particular provision prohibiting settlement without
22 an attorney's consent was a violation of the rules
23 and therefore unenforceable.
24 And it also concluded that the
25 contract at issue had been canceled the same day that

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1 it had been signed, no legal services had been
2 performed, and the attorney seeking payment of
3 \$70,000 worth of fees was seeking an unconscionable
4 fee.
5 At the end of the day, the Court
6 assumed without deciding that the provision at
7 question was severable, so it remains possible that
8 that provision is severable, but determined that
9 because the fee nonetheless was unconscionable
10 because it was \$70,000 for no work, that it would not
11 enforce the fee agreement.
12 Q. And I want to focus on the first part of
13 your answer talking about the violation of the rule.
14 What rule was it referring to?
15 A. I think it's set forth as Rule 1.02(a)(2).
16 Q. Which requires an attorney to abide by the
17 client's decision regarding whether to accept a
18 settlement offer, right?
19 A. Correct.
20 Q. And you see on Page 4 they actually quote
21 what the contingency fee contract in that case
22 stated, and it says, "Neither client nor attorney
23 will make a settlement of the claim herein or accept
24 any sum without the consent of the other." Right?
25 A. I'm going to have to find that. Where is

Page 150

1 that?

2 Q. That's at the bottom of the paragraph on

3 Page 4 in the brackets. The sentence says, "Here the

4 contingency fee contract required Tapia to obtain

5 Davis's consent to settle," and then bracket, they

6 quote the language of the fee agreement.

7 A. I see that.

8 Q. And the provision says, "Neither client nor

9 attorney will make a settlement of the claim herein

10 or accept any sum without the consent of the other,"

11 right?

12 A. That is the correct text, yes.

13 Q. The provision in the contingency fee

14 contract that Rich Allison had and later Caroline

15 Allison had between your firm and Mr. Abaza's firm

16 has a provision in it that provides attorneys will

17 not settle the claims without client's approval.

18 However, the client will not make a settlement or

19 offer of settlement without the approval of the

20 attorneys. Right?

21 A. I don't have it in front of me, but I will

22 rely on your reading of it.

23 Q. Well, you can go back to Exhibit No. 13 if

24 you need to look at it.

25 A. Sure. Okay. Which paragraph are we at?

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1 Q. Bottom of Page 1, Approval necessary for

2 settlement.

3 A. Okay.

4 Q. There it tells the client that the client

5 cannot settle their claim without the approval of the

6 attorneys, correct?

7 MR. LITTLE: Objection, form.

8 A. Yes, that says the client will not make a

9 settlement or offer of settlement without the

10 approval of attorneys.

11 Q. And that's exactly the type of provision

12 that the Court in the Davis case found to be

13 unethical, right?

14 MR. LITTLE: Objection, form.

15 A. It defines it to be unenforceable.

16 Q. Well, because it was what?

17 A. Because it's a violation of Texas

18 Disciplinary Rule of Professional conduct 1.02(a)(2).

19 Q. Which would make it unethical, correct?

20 A. It would makes it a violation of the rule.

21 Q. Remember when I asked you earlier in your

22 deposition whether or not you should be held

23 accountable if you violate the rules?

24 A. I do recall that.

25 Q. Do you think you should be held accountable

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1 when your contract violates the rules?

2 MR. LITTLE: Objection, form.

3 A. I believe law should be applied to all of

4 us.

5 Q. Well, that wasn't really my question.

6 A. That's my answer.

7 Q. My question is: Do you think you should be

8 held accountable when your contingency fee contract

9 violates the rules of professional conduct?

10 MR. LITTLE: Objection, form.

11 A. I think the rules and the applicable law

12 should be applied to our contract.

13 Q. Are you not going to answer my question?

14 A. I think I just did.

15 Q. Well, we can disagree.

16 If you turn, staying on Exhibit 13,

17 the contingency fee agreement, I notice that it's

18 only signed by Nick Abaza and Rich Allison. Do you

19 see that?

20 A. Yes.

21 Q. Is there a reason why you didn't sign the

22 agreement?

23 A. Nick was signing on behalf of the both of

24 us.

25 Q. Is that indicated in here somewhere?

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1 A. I believe that looks like -- if you look at

2 the contract, it looks like it was a contract --

3 MR. LITTLE: Right there at the top.

4 A. Right. Between Richard and Nick and then

5 in the contract Richard consented to my participation

6 and association.

7 MR. DAVID KASSAB: Joe, again, you can

8 talk to your client on a break. You don't need to

9 instruct him during the deposition.

10 Q. So it's your testimony that Nick was

11 signing on your behalf?

12 A. Nick was signing -- Nick was signing the

13 fee agreement as a party to the agreement. And in

14 that agreement Richard consented to my association,

15 but the agreement itself, at least at first, seems to

16 indicate that it's an agreement between Richard and

17 Nick.

18 Q. And then you see on Page 5 it has Nick's

19 typed signature and on Page 6 it says, Attorney for

20 Nicholas Abaza, right?

21 A. I see that.

22 Q. There's no signature by you or indication

23 that Nick is signing on behalf you, is there?

24 A. No.

25 Q. Are you familiar with Texas Government Code

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1 Section 82.0651?
2 A. No.
3 (Exhibit 15 marked)
4 Q. I said it was 0651 because I'm so used to
5 dealing with barratry cases, but this is actually
6 82.065. I'll show you that which has been marked as
7 Exhibit No. 15. Just review that subsection A, if
8 you will.
9 A. (Reviewing) Okay.
10 Q. And read it out loud for me.
11 A. "A contingent fee contract for legal
12 services must be in writing and signed by the
13 attorney and client."
14 Q. And we can see with regard to Exhibit
15 No. 13, the contingency fee agreement, it was not
16 signed by you, correct?
17 A. I did not sign it, correct.
18 Q. So you did not comply with Section 82.065.
19 Can we agree on that?
20 A. No.
21 MR. LITTLE: Objection, form.
22 Q. And why is that?
23 A. Because I think it is signed by the
24 attorney entering into the contract, the client and
25 the attorney then to agree to associate me into the

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1 case and to a fee splitting arrangement.
2 Q. So it's your testimony that this is not an
3 agreement between you and Rich Allison. It's an
4 agreement between Nick and Rich Allison and it just
5 authorized Nicholas Abaza to share fees with you?
6 MR. LITTLE: Objection, form.
7 A. I think it's an agreement that Nick and
8 Richard enter into that encompass within its terms
9 bringing me onboard as an attorney to prosecute the
10 case.
11 Q. So you were not a party to this contract?
12 MR. LITTLE: Objection, form.
13 A. I am in some fashion a party or a
14 third-party beneficiary.
15 Q. Well, explain that to me because I don't
16 understand.
17 A. I don't know how to explain it beyond what
18 I just said.
19 Q. Are you a party to the contract?
20 A. I think I am in some fashion a party, yes.
21 Q. And how are you in some fashion a party?
22 A. Because it's contemplated by Nicholas and
23 Richard and myself at the time that I would be part
24 of the legal team that prosecuted the claim. Richard
25 was aware of that. Nick was aware of that. They

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1 signed an agreement that that was going to be the
2 case, and they set forth what I would -- what my
3 percentage of the fee would be.
4 Q. And this contingency fee that you were
5 going to obtain or that Rich was required to pay, it
6 was on any recovery. Is that right?
7 A. It's on whatever the contract says.
8 Q. Can you recall?
9 A. No.
10 Q. Were you going to exclude assets that were
11 already owned by Rick -- I'm sorry, Rich?
12 A. I think Rich -- and I can look at --
13 MR. LITTLE: It's 13, I think.
14 A. I think Rich -- I think there was some
15 discussion before this was signed about Richard
16 not -- or being concerned that we were going to
17 charge a contingency fee if we somehow monetized the
18 assets, the partnership interests that he had at that
19 time. And he handwrote some stuff into the contract
20 about that. And so later on I think we modified it
21 to incorporate his -- his changes or address those
22 concerns.
23 Q. Do you think it's appropriate for a lawyer
24 to take a contingency fee on assets that are already
25 owned by a client?

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1 A. It depends on the circumstances.
2 Q. Give me a circumstance where that would be
3 appropriate.
4 A. If those assets are not accessible and the
5 client wants access in the present and you give them
6 access to those assets that they otherwise would not
7 have access to, I think that is appropriate.
8 Q. Do you give the client any discount for,
9 you know, the -- I guess we talked about this
10 earlier. Eventually they would be able to access the
11 assets, right?
12 A. That's an unknown --
13 MR. LITTLE: Objection, form. Are we
14 talking hypothetically or are we talking Richard and
15 Caroline?
16 MR. DAVID KASSAB: Hypothetically.
17 MR. LITTLE: Same objection.
18 A. What assets are we talking about?
19 Q. So you gave a scenario where if you were
20 able to get the clients immediate access to their
21 assets, that would be one scenario in your mind where
22 it would be appropriate to obtain a contingency fee
23 on?
24 A. Right.
25 Q. Is that right?

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1 A. In general terms, yes.
2 Q. Do you think that the client is deserving
3 in that situation, that scenario, to any discount for
4 the fact that they eventually would be entitled to
5 those assets but, you know, you're just getting them
6 those assets quicker?
7 MR. LITTLE: Objection, form and
8 Objection, asked and answered.
9 A. There you go.
10 Q. You know you can still answer the question.
11 I mean, you know that, right, Mr. Borunda?
12 A. I do. But if I've already answered it,
13 then I've already answered it.
14 Q. I don't recall your answer. Do you recall
15 your answer?
16 A. Not as I sit here, no.
17 Q. Me neither, which is why I'm asking it
18 again. Are you not going to answer the question?
19 A. Tell me the question again.
20 Q. In the scenario that you just gave me where
21 it would be appropriate to collect a fee when you get
22 a client access to their assets earlier, do you think
23 it's appropriate to provide them any sort of discount
24 on that fee because they were already entitled to
25 those assets down the line?

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1 MR. LITTLE: Objection, form.
2 Objection, asked and answered.
3 A. I'm going to go ahead and answer. No. 1,
4 your question assumes facts that are unknown. So
5 that's difficult to answer in that regard. But
6 the -- I guess the answer would be it depends.
7 Depends on factors that are not before me at this
8 time. If you want to shed some light on some of
9 those factors, then we can discuss it.
10 Q. Sure. What efforts did you make to uncover
11 any assets that were owned by the estate?
12 MR. LITTLE: Objection, form.
13 A. To uncover assets that were owned by the
14 estate? What do you mean by estate?
15 Q. Sure. Well, I mean, there was an estate of
16 Richard Allison, Sr., right?
17 A. Yes.
18 Q. Did you ever make -- endeavor to figure out
19 what was in the estate?
20 A. What was -- we endeavored to find out what
21 was in the estate and what was in the trusts.
22 Q. So how did you go about doing that?
23 A. We subpoenaed documents from different
24 parties. We --
25 Q. Who?

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1 A. From -- we subpoenaed documents from
2 Dr. Allison's original estate planning attorney, as I
3 recall. We subpoenaed documents from the accountant
4 for Dr. Allison and the trust. We subpoenaed the
5 estate planning attorneys -- the subsequent estate
6 planning attorney's file. We issued various rounds
7 of interrogatories and requests for production. We
8 sought accountings, we -- of the trust. We went and
9 inspected the books and records of the various
10 partnerships that held the various brokerage
11 investment accounts and apartment complexes.
12 We deposed Robin. We spoke with our
13 clients about what their understanding was of things.
14 There's probably more, but we went to great lengths
15 to uncover all that information.
16 Q. With regard to the estate planning
17 attorneys, who are those?
18 A. I think one of them was Paisley, I think.
19 And I'm not sure if he was estate planning or just
20 general attorney for Dr. Allison. I think he's the
21 individual who drafted the premarital and marital
22 agreement. My understanding, that he had more
23 involvement with Dr. Allison's dealings. And then
24 the subsequent estate planning attorney I think was
25 Gloria Hammond. As I recall, that's her name, but

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1 I'm not sure.
2 Q. Did you actually receive the records from
3 both those attorneys?
4 A. We received records from Mr. Paisley, and
5 we received some of the estate planning file that
6 Gloria Hammond had created. But we did not
7 receive -- we were in the process of procuring
8 responses to the subpoena for the rest of the file to
9 Ms. Hammond.
10 Q. And then the second mediation happened and
11 you told them to hold off?
12 A. We didn't tell them to hold off until -- we
13 didn't tell them to hold off. We went to mediation
14 before that subpoena was answered.
15 Q. Isn't there an email between you and the
16 records company saying, hey, we got these records, do
17 you still want them?
18 A. I don't recall that email.
19 Q. You didn't tell them that, hey, there's a
20 settlement that's being contemplated, so hold off?
21 A. You mean did we email them during
22 mediation?
23 Q. No, after mediation.
24 A. After mediation there was no settlement
25 that was being contemplated. There was a settlement.

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1 Q. Not my words, your words. So I'm just
2 asking you if you recall that email.
3 A. I'm answering your question. After
4 mediation, I obviously wouldn't have said those words
5 because there was no settlement being contemplated.
6 There was a settlement.
7 Q. Okay. And then you said accountant. Which
8 accountant are you referring to?
9 A. Joe Nemec.
10 Q. And you actually obtained those records?
11 A. Yes.
12 Q. And then rogs and requests for production.
13 Those were directed towards Robin, right?
14 A. Yes.
15 Q. And who inspected the books and records
16 that you're referring to?
17 A. Michael did.
18 Q. And they were books and records of the
19 various partnerships?
20 A. Yes.
21 Q. And then you said deposed Robin?
22 A. That was something else. And I think I
23 said we also procured accountings and perpetually
24 fought for more information on the accountings.
25 Q. Because they were insufficient?

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1 A. Because we wanted more information. We
2 thought that we could get -- because we wanted to go
3 further back in time and because we wanted them to
4 actualize through the present.
5 Q. In your mind were they insufficient?
6 A. In what context? Insufficient in what way?
7 Q. To evaluate the case.
8 A. No, I don't think so, not when you use
9 them -- weigh them against the totality of the
10 information we had.
11 Q. And you understand throughout the
12 representation you were receiving multiple requests
13 by Caroline and Rich to uncover what assets were in
14 the estate and the trusts, correct?
15 A. And we were working on that throughout the
16 case, yes.
17 Q. And my question was a little bit different.
18 My question was: You received requests from them for
19 you to do so?
20 A. Yes.
21 Q. And you promised them to file motions to
22 compel when Robin wasn't giving you the information
23 that you wanted, right?
24 A. I think we told them we intended to pursue
25 motions to compel. I don't recall saying I promise

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1 we're going to do a motion to compel, but --
2 Q. Well, you're telling them that you're going
3 to do it?
4 A. That was part of the plan, yes.
5 Q. Did it ultimately come to fruition? Did
6 you file motions to compel?
7 A. As I recall, we did.
8 Q. Do you remember the result? Were you able
9 to get the information you needed?
10 A. Some.
11 Q. And how many motions to compel discovery
12 from Robin did you have to file?
13 A. I know we had a big hearing that dealt in
14 part with a motion to compel in August of 2020. I
15 think there was a follow-up motion with respect -- I
16 think there was a follow-up motion with respect to
17 the trust accounting and/or to compel, but I can't
18 recall specifically.
19 Q. With regard to the trust accounting, what
20 was your argument in that motion to compel?
21 A. Like we discussed previously, I think that
22 one of the things we wanted was to go further back in
23 time with respect to the trust accounting. Robin's
24 accounting picked up sometime shortly after
25 Dr. Allison's death. We wanted to go beyond that.

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1 We wanted to go to a period of time before that.
2 There was also a lag in Robin bringing
3 up to current date the accounting that she had
4 provided, and there was some tug of war basically
5 back and forth between us and the other side with the
6 Court's involvement at different times as to the
7 timing of when she was required to bring that
8 information up to date.
9 Q. With regard to Robin's deposition, did she
10 give you anything regarding the assets that were in
11 the trusts or the estate or her own assets?
12 A. I don't understand your question.
13 Q. Yeah. You said taking her deposition was
14 one way that you were able to uncover the assets that
15 were in the estate?
16 A. It's one of the avenues of inquiry that we
17 pursued, yes.
18 Q. So my question is: Do you recall her
19 giving you any information about those assets and
20 what they were or their existence during that
21 deposition?
22 A. I don't remember.
23 Q. Did you ask for bank statements or
24 financial statements from the trust?
25 A. Yes.

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1 Q. And you obtained all those?
2 A. We obtained a variety of financial
3 documents from the trust. I can't sit here and
4 specify all. I know we had financial statements. We
5 had tax returns. We had income summaries. We had --
6 we had -- I mean, we had a variety of financial
7 documentation.
8 Q. I know there were the accountings, and I
9 know that there were tax returns. I'm talking about
10 bank statements. Any underlying data that would
11 support those summaries.
12 A. Right, and I'm telling you we got such
13 information. I can't remember what all exactly it
14 was, but we did.
15 Q. And if you got it, it would be in the file
16 that was handed over to Caroline?
17 A. We produced our file.
18 Q. So is that a yes?
19 A. Yes.
20 Q. And now, Robin's deposition was the only
21 deposition you took in the underlying case, right?
22 A. We deposed -- the depositions that were
23 taken were Richard, Caroline, I think Richard's
24 ex-wife and Robin. We had scheduled a variety of
25 depositions of other witnesses, including Hammond and

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1 expert witnesses, but those did not come to pass.
2 Q. I'm not focused on what depositions you may
3 have wanted to take. I'm focused on what deposition
4 you actually took.
5 A. And I just told you.
6 Q. So you --
7 MR. LITTLE: I think he may mean you
8 personally -- I may be misunderstanding but...
9 Q. You took Robin's deposition, right?
10 A. Yes.
11 Q. Did you personally, Jorge Borunda, take any
12 of the other depositions?
13 A. No.
14 Q. Do you ask questions in any of the other
15 depositions?
16 A. I did not ask any questions of Richard or
17 Caroline, and I was not present for, I think it's
18 Kim's deposition.
19 Q. Who was present during that deposition?
20 A. Per my recollection, that was
21 Nicholas Abaza.
22 Q. Do you know if he asked any questions?
23 A. Not as I sit here.
24 Q. So there were a total of four depositions
25 taken in the underlying case. Is that right?

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1 A. Prior to the settlement, yes.
2 Q. Was there any depositions taken after the
3 settlement?
4 A. No.
5 Q. When you say things like that, it gets m
6 gears turning, so --
7 A. I apologize.
8 Q. Now, part of the settlement was to -- a
9 portion of it was to place Caroline and Rich as
10 trustees over the trust, correct?
11 MR. LITTLE: Objection, form.
12 A. Say that again.
13 Q. Yeah. Part of the MSA that was ultimately
14 entered in the case, one of the provisions of it is
15 that Caroline and Rich will become trustees over the
16 trust?
17 MR. LITTLE: Objection, form.
18 A. Over which trust?
19 Q. Over the family trust.
20 A. Right. They were to become the trustees of
21 the family trust.
22 Q. And did you have any -- did you provide any
23 explanation to either Rich or Caroline as to what
24 that role might entail?
25 A. Yes.

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1 Q. And tell me about those conversations.
2 A. At mediation we walked them through what
3 the impact of the settlement would be, that they
4 would -- that Robin would step aside as trustee, that
5 she would forfeit all her rights to the family trust,
6 that Rich and Caroline would become co-trustees, that
7 they would have as -- and they would become the
8 beneficiaries, the primary beneficiaries of that
9 trust, other than a million dollar set-aside for
10 their children's education, and that at some point in
11 the future when I think the youngest of them turned
12 25, that they would receive whatever was left over in
13 that educational holdback.
14 But with respect to the balance of the
15 account, they as beneficiaries and trustees would
16 have the right and discretion to distribute any or
17 all of that to themselves without any qualification.
18 Q. And that was told to them during mediation?
19 A. Yes.
20 Q. And who was present during that
21 conversation?
22 A. At various points in time, myself -- and in
23 various combinations, myself, Michael, sometimes
24 Nick, sometimes the mediator, Richard and Caroline.
25 Q. Did you think it was a good idea to make

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1 Richard a trustee?
2 A. I thought it was a good idea to give
3 Richard and Caroline the ability to have access to
4 and distribute to themselves the totality of the
5 trust assets.
6 Q. That wasn't my question. And my question
7 was specifically only to Rich. Did you think it was
8 a good idea to make him a trustee?
9 A. It's -- yes, I didn't see any problem with
10 that.
11 Q. Wasn't there a trust agreement that stated
12 specifically that he was not to be a trustee?
13 A. There was.
14 Q. So making him a trustee over the trust
15 didn't bother you at all?
16 A. No.
17 Q. Did you understand Richard to have a
18 disability?
19 A. No. Specifically Richard and Caroline
20 denied Richard having a disability. I have never
21 understood Richard and I still don't believe Richard
22 to be disabled.
23 Q. Isn't it true that you told --
24 A. I'm sorry, let me clarify. I think he
25 might have a physical disability. I understood your

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1 question to be an intellectual disability.
2 Q. I understand. Isn't it true throughout the
3 litigation you were promoting and Mr. Abaza was
4 promoting challenging the will?
5 A. What do you mean, we were promoting
6 challenging the will?
7 Q. Telling Richard and Caroline that the will
8 is problematic and needed to be challenged.
9 A. I'm sorry, I'm confused by the question.
10 They approached us to challenge the trust and the
11 will. If the trust was removed but the will remained
12 in place, then that effect of the outcome would be
13 the same as if the trust remained in place.
14 Q. You understand that they're not the
15 lawyers, right? They're clients?
16 A. Right. But we weren't promoting anything.
17 Q. You weren't advising them to challenge the
18 will?
19 A. We explained to them the will and the
20 effect of the will. They said that just like the
21 2013 trust amendment, the will was like not
22 indicative of their father's intent, and they wanted
23 to challenge it.
24 Q. And did you say, hey, that's a great idea,
25 we should challenge it?

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1 A. I thought that it was prudent to do so.
2 Q. Did you think it was problematic, the will?
3 A. The will was problematic?
4 Q. Yes, sir.
5 A. What do you mean by problematic?
6 Q. Well, problematic to Caroline and Rich's
7 position.
8 A. Yes.
9 Q. So then to challenge the will, you asked
10 for a handwriting analysis of Richard Allison, Sr.,
11 correct?
12 A. A handwriting analysis?
13 Q. Yeah. You wanted to analyze his various
14 signatures in order to determine whether or not the
15 will was forged?
16 A. I don't recall that being a thing, no.
17 Q. How were you going to challenge it?
18 A. Lack of capacity and undue influence.
19 Q. Isn't -- do you recall emails going back
20 and forth between you and the clients about getting
21 various handwriting samples from --
22 A. To factor into the lack of capacity
23 analysis.
24 Q. So you recall that?
25 A. To the extent -- I believe there was some

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1 discussion about Dr. Allison's signature changing in
2 appearance and looking like that of a weaker, more
3 frail individual over time. And I thought that it
4 would be a good idea for -- possibly a good idea for
5 our capacity expert to see if that somehow factored
6 into her analysis.
7 Q. And did it?
8 A. Not that I can recall, but perhaps.
9 Q. So ultimately you filed a lawsuit against
10 Robin Allison in district court and it gets moved
11 over to the probate court, right?
12 A. Yes.
13 Q. And what allegations did you make against
14 Robin in the probate case?
15 A. In the probate case?
16 Q. Yes.
17 A. That the -- they were multifaceted, I
18 think. It was that the will was invalid because it
19 was the product of undue influence and lack of
20 capacity. The same for the 2013 amendment. The same
21 for the 2013 beneficiary designation change on an
22 IRA. And the same for a 2000 -- or the 2011
23 amendments to the trust. And that Robin had
24 committed fiduciary duty breaches by her conduct in
25 failing to account for the trust. And I don't know

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1 if there were any others.
2 Q. Who drafted the pleadings that were filed
3 in the probate case?
4 A. I did.
5 Q. And you signed off on them?
6 A. Yes.
7 Q. And was every factual contention that you
8 made in those pleadings true and accurate?
9 A. A lot of it turned out not to be after the
10 fact, but we based our pleadings on the information
11 that our clients provided us.
12 Q. What specifically turned out to be
13 inaccurate?
14 A. The thing that most stands out in my mind
15 is Dr. Allison's medical history and the likely
16 posture of the various witnesses in the case.
17 Q. And when you're talking about Dr. Allison's
18 medical history, what do you mean by that?
19 A. Our clients told us that there was a clear
20 history of Dr. Allison's capacity beginning to fail
21 him dating back to 2008, that it was a very clear
22 record of that, that there were witnesses that would
23 support that assertion. And that turned out to be
24 inaccurate, not true.
25 Q. And what did your medical expert that you

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1 hired have to say about the capacity issue? When did
2 she believe it started to decline?
3 A. So our medical expert believed that it --
4 there was good evidence to go back to early 2013,
5 maybe 2012. In my conversations with her, as I
6 recall, it was a reach to go back any further, but
7 she would try.
8 Q. Did you guys contemplate getting a tracing
9 expert?
10 A. A tracing expert?
11 Q. Yeah. I've seen some emails between you
12 and Mr. Abaza talking about how you may need to get a
13 tracing or an accounting on a community property
14 versus separate property.
15 A. That refers to the possibility that we
16 would have to ascertain how to differentiate between
17 separate and community property, and we never got to
18 a point where that would be required.
19 Q. Why?
20 A. Because there wasn't much in the way of --
21 of any assets that were outside the trust.
22 Everything was supposed to pour into the trust and be
23 divided according to the trust. The assets that
24 Robin contended were community property we reviewed,
25 and they were pretty clearly community property.

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1 Q. And did you make that determination before
2 or after the first mediation?
3 A. I don't recall.
4 Q. Why did -- switching subjects over to the
5 restated employment agreement power of attorney that
6 you guys had with Rich, why was it restated?
7 A. So Exhibit 13, if you'll note, that's the
8 original contract. Richard scribbled on to the
9 contract in his own writing some concerns, some
10 notes. I frankly have a hard time reading them, to
11 be honest, but Nick can read them.
12 In any event, the other side had
13 requested production of our contracts with our
14 clients, and I preferred not to share with Robin's
15 attorney anything that Rich thought was of concern.
16 Q. Do you recall giving any advice to Rich
17 prior to him signing off on the restated contingency
18 fee agreement about what was in the restated
19 contingency fee agreement?
20 A. I think Nick's changes to the fee agreement
21 were solely to incorporate the changes that Richard
22 requested, and so I don't recall talking to Richard
23 about it myself.
24 Q. Those would have been discussions between
25 Nicholas Abaza and Rich?

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1 A. I think there's emails about it, but I
2 just -- I didn't talk to Rich about those changes. I
3 just remember saying we can't produce this document
4 with our client's handwritten notes to the other
5 side, let's get a clean copy. And that's what
6 happened.
7 Q. Do you remember when you first were
8 provided an accounting from Robin?
9 A. I don't.
10 Q. When you got the accounting, what did you
11 believe was incomplete about it?
12 A. Well, the --
13 MR. LITTLE: Objection, asked and
14 answered.
15 A. The first thing that comes to mind is the
16 temporal scope of the accounting.
17 Q. Do you recall those accountings stating
18 that Whitley Penn did not conduct any independent
19 review or audit of the financial summaries that were
20 being provided to them by Robin?
21 A. I recall something to that effect, yes.
22 Q. And how they weren't -- they didn't verify
23 the accuracy or the completeness of the underlying
24 data?
25 A. I recall there being something about that,

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1 yes.
2 Q. Did you ever make an independent evaluation
3 of the underlying data after you obtained it from
4 Robin?
5 A. We evaluated the accountings in light of
6 all the other information that we had available to
7 us.
8 Q. And what was your conclusion?
9 A. That the accountings seemed to reflect
10 accurately the activity within the trusts. We didn't
11 necessarily agree with some of the values of the
12 assets because of the discounts or something along
13 those lines. I can't remember specifically.
14 Q. Do you recall any conversations with either
15 Caroline or Rich about how -- them not wanting to
16 mediate the case without having evidence concerning
17 like the financial situation of the trusts or of the
18 estate or Robin not giving them financials or
19 anything like that?
20 A. I'm sorry, could you repeat the question?
21 Q. Do you recall having any conversations with
22 Rich or Caroline about, you know, them needing a full
23 set of financials before they could mediate?
24 A. I recall at different points in time us
25 explaining where we were in the financial picture,

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1 Richard and/or Caroline sometimes insisting there had
2 to be more, we needed to conduct certain activities
3 to their satisfaction. Some conversations about
4 that. And ultimately Richard and Caroline choosing
5 to mediate based on the information we had available.
6 Q. Were you advising them to go forward with
7 mediation?
8 A. I think I advised them that if the other
9 side was willing to negotiate, that it would be
10 imprudent to not negotiate, that we had a good
11 understanding of the assets and the trust and the
12 estate and the values.
13 (Exhibit 16 marked)
14 Q. I'll show you what I've marked as Exhibit
15 No. 16. Take a look at that and let me know what
16 that is.
17 A. (Reviewing).
18 Q. You can just focus on -- well, it's not
19 multi emails, so I think it's just an email from you
20 to Michael Collins, so --
21 A. It is.
22 Q. And there's a Paragraph 2, Robin
23 Supplemental Discovery. Do you see that?
24 A. I do.
25 Q. Can you explain to me what you were trying

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1 to convey to Mr. Collins?
2 A. I was trying to lean on Mr. Collins to
3 provide additional information.
4 Q. About what?
5 A. The trusts and the assets in the estate.
6 Q. Basically, issues with the accountings that
7 they provided?
8 A. Well, let me --
9 Q. Sure.
10 A. (Reviewing).
11 Q. Have you reviewed 2B?
12 A. I'm almost finished with 2B. Okay.
13 Q. Those were complaints that you were
14 relaying to Mr. Collins about the issues with the
15 accountings, correct?
16 A. Yes.
17 Q. And at the very end of that you state, "If
18 your client will not provide a proper accounting for
19 all relevant times, we'll have to take this up with
20 the Court," right?
21 A. Yes.
22 Q. Did you take it up with the Court?
23 A. We did.
24 Q. Those were the motions to compel that we
25 talked about, right?

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1 A. Yes.
2 Q. And were you ever able to obtain proper
3 accountings?
4 A. We were able to expand the time for which
5 Robin accounted for the trust. We were able to
6 address some of the shortcomings. The Court was not
7 inclined to force Robin to answer all of the issues
8 that we raised, so we had to pursue other avenues to
9 procure information. In other words, the Court would
10 not compel Robin to do some of the things that we
11 thought Robin needed to do.
12 Q. Did you ever contemplate going to the next
13 level and appealing the trial court's decision
14 through a mandamus?
15 A. We first decided to pursue other avenues to
16 obtain the information.
17 Q. Did you ever contemplate filing a mandamus
18 to get the information, or were you satisfied that
19 the other avenues provided you with the information?
20 A. We were satisfied at that time with what we
21 had gotten, the progress that we were making. If it
22 ever became apparent we needed to do that, then we
23 would. But I don't think we ever got to that point.
24 Q. So you had no discussions with the
25 clients -- and by the clients I mean Rich and

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1 Caroline -- about a mandamus or appealing the trial
2 judge or something like that?
3 A. I don't recall.
4 Q. On Paragraph 4 you talk about mediation and
5 you state, "As I previously communicated to you, my
6 clients are willing to mediate, but they are not
7 willing to do so without transparency from your
8 client. The accountings are incomplete, inadequate
9 and almost completely devoid of supporting
10 documentation. And we still have not received the
11 medical records your client agreed to provide months
12 ago." Right?
13 A. Right.
14 Q. And you say, "Our agreement to mediate on
15 that" -- "on the date you requested was contingent,
16 and it remains so," correct?
17 A. Yes.
18 Q. But ultimately you went to mediation the
19 first time?
20 A. Ultimately Richard and Caroline decided to
21 mediate.
22 Q. Did you advise them to mediate?
23 A. I don't recall. I think I might have. I
24 might have said, look, let's hear them out, yeah.
25 But I don't recall specifically.

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1 Are we done with 16?
2 Q. Yes, sir.
3 (Exhibit 17 marked)
4 Q. Here's what I marked Exhibit 17. That's a
5 mediation memorandum drafted by you, correct?
6 A. It is.
7 Q. To Will Pryor.
8 A. Yes.
9 Q. He was the mediator for the first
10 mediation, right?
11 A. He was.
12 Q. Are all the statements you make in this
13 letter true and correct?
14 A. This is an exercise in advocacy, so I don't
15 think I lied. I wouldn't -- I don't -- I don't lie.
16 But I may have spun the truth in some instances. I
17 can't remember --
18 THE REPORTER: May have what the
19 truth?
20 A. Spun the truth. Put my spin as an advocate
21 on what it says.
22 Q. If you go to the second page under the
23 paragraph Joint Session, are you there?
24 A. I am.
25 Q. It's third sentence. States, "On top of

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1 that, defendant's counsel has stated that there will
2 be no settlement unless plaintiffs apologize to
3 defendant," right?
4 A. Yeah, I see that.
5 Q. Why even mediate if that's going to be a
6 requirement?
7 A. Well, we discussed it, and we decided to go
8 and see what we could work out.
9 Q. Is that what ultimately ended the mediation
10 because Robin Allison wanted a written apology?
11 A. Robin Allison wanted a bit more than that.
12 She wanted Caroline to apologize, and she also wanted
13 Caroline to file something with the Court admitting,
14 quote-unquote, that everything she had alleged in the
15 pleadings was false.
16 Q. So walk me through that mediation and, you
17 know, when -- how the offers went back and forth,
18 what offers were made.
19 A. There really wasn't much of offers going
20 back and forth. As I recall, we talked about -- I
21 don't know if this happened at the first or the
22 second or both. But at a hearing with Judge
23 Copeland, Judge Copeland being a very unorthodox
24 judge, went off the record and sort of said, hey,
25 look, y'all, there's plenty of assets here to go

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1 around. Why don't y'all go split into thirds and go
2 on your merry way.
3 I brought that to Caroline and
4 Richard's attention when Copeland said that. I said
5 that that was interesting, unusual, that it might
6 somewhat help us position the case for negotiation,
7 that it was unlikely to resolve along those terms,
8 but that it was a decent starting-off point. I think
9 at either -- I think at that mediation we maybe made
10 that as our initial pitch. And I think we got back a
11 flat denial by Collins that the Judge ever said that.
12 And their counter, if you can call it
13 that, was that we might be able to have a
14 conversation involving the apartments, but before we
15 got to that conversation, as a precondition to that
16 conversation, Caroline needed to first agree to the
17 written apology and to the filing with the court of a
18 document saying that everything she said was false.
19 We -- you know, there was no interest
20 in our room in that scenario. We tried to propose
21 alternate terms, like some sort of family therapy,
22 things of that nature. There was no interest.
23 The last thing that came from the
24 other side was, all right, tell you what, this is
25 a -- and this came from the mediator separately --

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1 you tell Rich that he drops his claims and we won't
2 enforce the no contest clause against him, but we're
3 coming for Caroline. And Rich was not interested in
4 that.

5 And as I recall, Caroline, when the
6 idea of there might be some conversation involving
7 the apartments, was not too keen on the idea. She
8 said those apartments are in shambles, they're
9 delapidated, there are all kinds of problems with
10 them, vacancies, not interested. And then on top of
11 that, not interested because nobody was willing to
12 say I apologize and I'm a liar in court.

13 Q. How long did the mediation --

14 MR. LITTLE: When you get to a
15 stopping point, I need to take a break. Doesn't have
16 to be in the next minute or two, so just when you get
17 to a natural point.

18 MR. DAVID KASSAB: Got it.

19 Q. How long did the mediation last?

20 A. I think it was between two and three hours
21 maybe.

22 Q. It was Mr. Abaza and you for Caroline,
23 Rich?

24 A. Right.

25 Q. And then Robin Allison and Michael Collins

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1 are the ones who attended on their side?

2 A. Yes.

3 MR. DAVID KASSAB: Take a break.

4 THE VIDEOGRAPHER: We are now going
5 off the record. The time is 3:16 p.m.
6 (Recess taken)
7 THE VIDEOGRAPHER: We are now going
8 back on the record. The time is 3:35 p.m.
9 BY MR. DAVID KASSAB:

10 Q. Mr. Borunda, are you ready to continue your
11 deposition?

12 A. I am.

13 Q. Before the break we were looking at the
14 July 22nd, 2020 mediation memorandum, which was
15 Exhibit 17. Do you have it in front of you?

16 A. I do.

17 Q. On the second page under the History of
18 Settlement Offers, looks like you kind of state what
19 you had testified earlier about Judge Copeland's
20 suggestion, right?

21 A. Right.

22 Q. And then the amount in controversy under
23 that section you state, "Though discovery is
24 incomplete and Robin, the defendant, has not provided
25 a proper accounting for the trusts and other assets

Page 188

1 at issue, plaintiffs estimate that the amount in
2 controversy is approximately 17.5 million," right?

3 A. Yes.

4 Q. And how did you come up with that
5 estimation?

6 A. Based on the review of the products of
7 discovery and the trust accountings that we had at
8 that time.

9 Q. So even though discovery was incomplete and
10 Robin had failed to provide a proper accounting, you
11 were still willing to go forward with mediation?

12 A. Caroline and Richard were still willing to
13 go forward with mediation. It's their decision.

14 Q. Well, you at least were giving them the
15 advice to go forward with mediation, were you not?

16 MR. LITTLE: Objection, form.

17 A. I said that if they were willing -- if the
18 other side was willing to negotiate, that it would be
19 unwise to not hear them out, and there are a variety
20 of reasons for that.

21 Q. Did you care if the case went to mediation?

22 A. I cared that my clients get a good result.

23 Q. Because it would benefit you, right?

24 A. Because it would benefit my clients.

25 Q. Well, you had a contingency fee interest in

Page 189

1 the case, do you not?

2 A. Yes, I do.

3 Q. And so you would obtain a benefit if there
4 was a settlement and it was a good result, right?

5 A. I want my clients to do as well as I can
6 help them do because that's how I do best under a
7 contingency fee agreement.

8 Q. My question was: It would benefit you if
9 there was a greater recovery, correct?

10 MR. LITTLE: Objection, form.

11 A. I benefit to the same extent as my clients
12 in maximizing their recovery.

13 Q. Are you going to answer my question?

14 A. I have several times.

15 Q. Do you agree that you obtain a greater
16 benefit -- strike that.

17 Do you agree that you obtain a benefit
18 if the settlement is a larger settlement?

19 A. As I've said several times now, the better
20 my clients do, the better I do under a contingency
21 fee agreement.

22 Q. So is that a yes?

23 A. That is what I said.

24 Q. And then you, of course, give a factual
25 background section in the mediation memorandum,

Page 190

1 right?

2 A. Right.

3 Q. And everything's accurate, I assume?

4 A. I haven't read it. I don't think I would

5 lie, but again, I might put an advocate spin on

6 things.

7 Q. And then you give the legal and procedural

8 posture, right?

9 A. Yes.

10 Q. And if you go to -- towards the end of that

11 section, there's a paragraph that starts with "of

12 note." Might be on the following page.

13 A. Yes.

14 Q. It says, "Of note, Judge Weldon Copeland

15 has repeatedly stated his inclination against

16 granting summary judgment indicating that in his

17 experience there is always an issue of fact on mental

18 capacity and undue influence. However, there is no

19 fact question concerning the basis for plaintiffs'

20 motions."

21 Did I read that accurately?

22 A. Yes.

23 Q. And that's a true statement, isn't it?

24 A. Well, that's my statement here. I thought

25 that we had a good basis for our summary judgment

Page 191

1 motions.

2 Q. You offered to provide those motions to the

3 mediator. Did the mediator ever ask for them?

4 A. No.

5 Q. And then you go forward to talk about

6 disputed issues of fact and law, right?

7 A. I do.

8 Q. And then you have a Case Strengths section.

9 Do you see that?

10 A. I do.

11 Q. Is that an accurate recitation of the case

12 strengths as you saw them?

13 A. It is an advocate's posture for mediation.

14 Q. You see under the Multiple Bites at the

15 Apple section?

16 A. Yes.

17 Q. It says, "Plaintiffs can prevail in various

18 ways. Plaintiffs' motion for summary judgment

19 regarding enforcement of the no contest clause

20 against Robin alone could result in a complete loss

21 for Robin."

22 A. Yes.

23 Q. You see that?

24 A. Uh-huh, I do.

25 Q. What was the allegation that you were

Page 192

1 making against Robin with respect to that claim?

2 A. It was a technical argument, but I think it

3 was one that had some merit. And as I recall -- and

4 I'd have to go back and review to make sure, but as I

5 recall, the argument was that Robin was obligated

6 under the terms of the 2013 trust amendment to place

7 certain assets in the surviving grantor's trust.

8 Whatever separate property of hers existed within the

9 trust already, she was obligated to put in the

10 surviving grantor's trust. For example, there were

11 items of personal property that she was supposed to

12 put in the surviving grantor's trust, the jewelry and

13 art and things of that nature that we mentioned

14 earlier. And any community property that was in the

15 trust was supposed to go into the surviving grantor's

16 trust. Per my recollection, she had not done so, or

17 it didn't appear that she had done so.

18 I think the allegation from the other

19 side was that they had just, you know, sort of done

20 it and then revoked it in a day and sent the assets

21 elsewhere. I can't remember if that had been made by

22 that time or not.

23 But it did not appear to us that that

24 requirement had been followed and that had been an

25 indirect challenge, so to speak, to the terms of the

Page 193

1 trust, and in that way, she had triggered the no

2 contest clause.

3 We visit with an expert witness that

4 we hired both for defensive and offensive purposes.

5 I think the expert's name is Judge -- former probate

6 Judge Georgia Akers, I think. And she found our

7 argument novel, interesting and perhaps meritorious,

8 and she was willing to help us with that argument.

9 Q. Did you ever analyze what your chances of

10 success might be with regard to that argument?

11 A. Always.

12 Q. And what would you give it?

13 A. I think that they're not -- there being no

14 case law about that, it being novel, it was kind of

15 an unquantifiable proposition at the time.

16 Q. So mediation failed, the first one, right?

17 A. Spectacularly.

18 Q. Right. And then it's my understanding that

19 there was an issue with regard to experts and the

20 other side calling -- Michael Collins was alleging

21 that you missed a deadline with regard to the

22 experts.

23 A. He tried to make that argument, yes.

24 Q. And you did a response, right?

25 A. Right.

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1 Q. And you verified that response, correct?

2 A. I don't recall.

3 Q. Do you recall stating in the response that

4 you did not understand the draft order to be the

5 final scheduling order, so you didn't calendar the

6 deadline?

7 A. Right, there had never been a scheduling

8 order entered in the case, so there were no

9 deadlines.

10 Q. And what was Michael Collins' argument?

11 A. That there -- that the draft order was the

12 scheduling order, even though it was never signed by

13 the Judge. It was in Word format, and it was never

14 entered as an order. As I recall, that was the

15 argument.

16 Q. Then you moved for a continuance of the

17 deadlines in that motion, right?

18 A. Well, we in -- as in the response, I don't

19 recall. If I did, it would be kind of a plan B, so

20 to speak. What ended up actually happening is we got

21 an actual scheduling order following the August 4th

22 hearing.

23 Q. That -- the response, the motion to strike

24 the experts, that occurred after mediation?

25 A. I think the response was filed in advance

Page 195

1 of mediation, but I'm not sure.

2 Q. And then you filed a motion to compel an

3 accounting and removal of Robin as the trustee?

4 A. Right.

5 Q. You requested to appoint a receiver and

6 filed a motion for sanctions, right?

7 A. All of the above, I think.

8 Q. And in that motion you ask for the

9 appointment of an auditor. Do you remember that?

10 A. I did.

11 Q. Can you explain to me what relief you were

12 requesting from the Court with regard to that?

13 A. Really, that was more of an exercise in

14 applying pressure to Robin.

15 Well, let me back up. I want to make

16 sure I understand your question. What relief I was

17 seeking with what specifically?

18 Q. I mean what did you want the auditor to do?

19 A. I wanted the auditor to make Robin's life

20 miserable.

21 Q. Is that what you were telling the Court?

22 A. No.

23 Q. Well, what did you tell the Court?

24 A. I told the Court that Robin had not

25 provided an accounting to our satisfaction or that we

Page 196

1 thought was a proper accounting in large part because

2 of the periods that were not encompassed by the

3 accounting and that we needed somebody to do what

4 Robin was apparently not willing to do.

5 Q. In fact, you say, "Given Robin's

6 long-running refusal to properly account for the

7 trust at issue as well as considerable assets

8 involved, plaintiffs request the Court to appoint an

9 auditor pursuant to Rule 172." Isn't that right?

10 A. I mean, if that's what it says, that's what

11 it says.

12 Q. I don't want to go through the whole

13 process of introducing this document, so I'm just

14 asking you if you recall that's what you requested.

15 A. I mean, I -- I recall drafting a motion to

16 compel Robin to provide us additional information and

17 seeking additional relief. I don't recall the

18 specifics of it.

19 Q. With regard to the request to appoint an

20 auditor, what was the end result of that?

21 A. We didn't get one.

22 Q. Was that motion ever heard?

23 A. Yes.

24 Q. And the Court denied that request?

25 A. The Court had a very unusual way of doing

Page 197

1 things, trying to -- sometimes trying to avoid

2 rulings altogether, brushing things aside, deferring

3 things. The net result was the Court did not grant

4 us the relief we were seeking. The Court gave Robin

5 some leeway with respect to the accounting issue.

6 The Court limited the times for which Robin had to

7 account, gave her additional time to complete that,

8 and told us that we had other avenues to collect the

9 information that we were seeking.

10 Q. And that's when you pursued those other

11 avenues that we talked about earlier?

12 A. I don't know if it was at that time, prior

13 to that or subsequent to that. But I know at least

14 subsequent to that, one of the things we did was

15 eventually Michael went to review partnership records

16 for the entities that we -- that are part of this --

17 the underlying dispute. We also -- I don't know when

18 we did it, but we subpoenaed the various documents

19 from the various -- like the accountant, things like

20 that.

21 Q. When you were keeping track of time on

22 Caroline's case while she was under the hourly

23 arrangement, how did you do that?

24 A. I maintained a -- well, I had an

25 application on my computer that you can set timers

Page 198

1 on, name them, and then I would transpose that to a
2 spreadsheet and keep track of things that way.
3 Q. Do you think it's appropriate to bill a
4 client for administrative-type work like calling the
5 courthouse or filing documents?
6 A. Do I think it's appropriate to?
7 Q. As an attorney.
8 A. I think it's appropriate to bill a client
9 for the work you do on the client's case.
10 Q. Regardless if it's just administrative-type
11 work?
12 A. Well, I kept track of the tasks that I did.
13 I didn't bill for all the tasks that I did. So, for
14 instance, if there's a time entry that lists a
15 variety of tasks and one of them is, say, call the
16 Court, I would not have added time for, for instance,
17 calling the Court.
18 Q. What about corresponding with the Court?
19 A. To the extent that that is a substantive
20 thing, then, yes, I would bill for that.
21 Q. What do you mean by a substantive thing?
22 A. If it's email correspondence with, for
23 instance, Judge Copeland with respect to varying --
24 whatever issues might be in play, then that would be
25 substantive to me. If it's an email to the court

Page 199

1 coordinator saying, hey, just want to know if we have
2 a hearing on this date, then no.
3 Q. You have an entry on March 31st, 2020 that
4 says, "Collin corresponded with Collin County
5 courthouse resetting hearings." Do you know what
6 that was regarding or if that was substantive in your
7 mind?
8 A. I don't recall.
9 Q. Is there any way for you to figure that out
10 as you sit here today?
11 A. No.
12 Q. How about entries that are follow-up
13 resetting various motions for hearing?
14 A. I don't recall.
15 (Exhibit 18 marked)
16 Q. Let me show you what I've marked as Exhibit
17 No. 18 to your deposition. Looks like that's an
18 email from Mr. Abaza to Caroline Allison dated
19 October 14, 2020, right?
20 A. That's what it says.
21 Q. It says -- the subject line is Updated
22 Agreement, and it looks like there's an attachment of
23 a fee agreement, correct?
24 A. That's what it looks like.
25 Q. And we can see that there's no advice being

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1 provided to Caroline Allison in this email
2 whatsoever, right?
3 A. There is not.
4 (Exhibit 19 marked)
5 Q. Then Exhibit 19 is the employment agreement
6 and power of attorney change to contingency fee
7 agreement, correct, regarding Caroline Allison?
8 A. Yes.
9 Q. Did you draft this agreement?
10 A. No.
11 Q. Do you know who did?
12 A. I assume Nicholas Abaza did.
13 Q. Considering --
14 MR. LITTLE: I just want to note for
15 the record, I don't know that it's an objection,
16 Exhibit 19 is not the contract that was attached to
17 Exhibit 18. So if you're implying that it is, that's
18 not true. So just let me make sure that the record
19 is clear.
20 MR. DAVID KASSAB: Let's see if we can
21 clear this up.
22 Q. Do you recall when this employment
23 agreement, power of attorney change to contingency
24 fee agreement was sent to Caroline?
25 A. No. I'm assuming sometime in the

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1 mid-October time frame.
2 Q. How many versions of the employment
3 agreement and power of attorney change to contingency
4 fee agreement did you send to Caroline?
5 A. I didn't send any fee agreements to
6 Caroline.
7 Q. Do you know how many versions Nick sent?
8 A. I think that he sent the initial version
9 which -- and let me back up on my previous answer. I
10 didn't send any contingency fee agreements to
11 Caroline. I think I might have sent the initial
12 hourly contract.
13 In any event, I think that Nick sent
14 an initial version of the contingency fee contract.
15 Caroline reviewed it, spotted the typos on the
16 percentages, brought those to Nick's attention. Nick
17 corrected that and sent that to Caroline. So I think
18 two versions, but I don't know for a fact.
19 Q. And it was around this same time,
20 mid-October, October 20 -- or October 14th?
21 A. I believe so, but I don't know for a fact.
22 Q. On Exhibit No. 19 I'm looking at the
23 attorneys' fee provision. Are you there?
24 A. The first bolded -- or the first paragraph
25 with a heading?

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1 Q. Yeah, the heading Attorneys' Fees.
2 A. Yes.
3 Q. And it looked to me like the language on
4 this provision was a little bit different than what's
5 on Rich's contingency fee agreement in that it
6 provides that "If the attorneys are successful in
7 recovering any money and/or property and to the
8 extent they're able to defend Caroline Allison's
9 interest in the estate and trust assets along with
10 non-probate assets, they shall receive 35 percent of
11 the amount, bracket, money and property, end bracket,
12 recovered and/or kept that Caroline Allison has an
13 interest in."
14 Did I read that correctly?
15 A. Yes.
16 Q. So this agreement is providing you with a
17 percentage on any property that Caroline already
18 owns?
19 A. On property that -- not that she owns. On
20 anything that Robin is trying to deprive her of or --
21 this is meant to clarify -- not to clarify but --
22 because we had discussed in the initial talks about
23 taking on the case, we talked about the contingency
24 fee scenario, how that fee is calculated. We
25 explained that to the extent we had to defend them

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1 with respect to a no contest clause, that that placed
2 the entirety of the estate, the trust estate in
3 controversy, or the probate estate if we're talking
4 about a will. Places the entire amount in
5 controversy. And so the entire amount is what the
6 fee is calculated on.
7 At the first mediation, it seemed to
8 us based on what happened that Robin was going to do
9 everything she could to enforce that no contest
10 clause against Caroline to the extent that she tried
11 to cut Rich loose and focus her efforts on Caroline
12 alone.
13 So we thought it was -- or I thought,
14 at least, it was -- it was prudent to clarify that.
15 Q. Did you advise Caroline Allison or Rich
16 Allison about the no contest clause prior to filing
17 litigation?
18 A. We discussed the no contest clauses, yes.
19 Q. And what did you tell them about that?
20 A. I told them that these documents had no
21 contest clauses. I told them that oftentimes these
22 get invoked. It is more often than not they are not
23 successful, the no contest clauses. That the -- I
24 think I discussed the standard. You have to have
25 brought and maintained the action in good faith.

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1 There's some equivocation about what brought and
2 maintained means. And I told them that based on the
3 information they were providing, as we felt confident
4 we could overcome the no contest clauses.
5 Q. And it looks like, unlike Rich's agreement,
6 the percentage that you're taking does not exclude
7 any partnership interest that Caroline might already
8 have. Is that right?
9 A. That is not written in this document.
10 Q. So were you intending on taking a fee
11 interest on partnership interests that Caroline
12 already had?
13 A. No, I don't think so. I think we always --
14 or at least I always, my thought process always was
15 to the extent that Caroline and Rich owned
16 individually, already had then and there the
17 ownership interest in partnerships, that was not --
18 and that's not something that could be taken away in
19 this dispute, that that's not something we were going
20 to charge a fee on.
21 There's an argument that those were
22 really locked away in perpetuity and essentially
23 worthless to them because they were subject -- they
24 were minority limited partner interests subject to
25 Robin's whims, essentially, and that if we monetize

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1 those for them, that we achieved value for them. But
2 I never intended to charge a fee on those.
3 Q. So it's similar to their inheritance that
4 they would have got, you know, had they not filed
5 litigation?
6 A. No.
7 Q. So what's the difference between it? I
8 don't understand?
9 A. Difference between what?
10 Q. What you mean by that statement. I mean,
11 really the inheritance, you're claiming a fee over
12 the inheritance that you obtained for Caroline and
13 Rich now, so to speak, instead of them ultimately
14 getting the leftovers should Robin pass away?
15 MR. LITTLE: Like being 30 years
16 later.
17 Q. That's what you're claiming a fee on in
18 this case?
19 A. I think it's entirely distinct. I think
20 that one has absolutely nothing to do with the other.
21 I think I've explained why already multiple times.
22 Q. Well, I'm having a hard time understanding
23 what the difference is between the partnership --
24 you're saying that the partnership interest was
25 arguably locked away for a time period?

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1 A. Right.
2 Q. Right? And you got those for them
3 immediately, Caroline and Rich immediately?
4 A. We essentially monetized those for them, I
5 guess. We -- yeah.
6 Q. And isn't that what you're saying you did
7 with regards to the -- you know, all the other assets
8 that were in the estate?
9 A. No. The ultimate ownership of the
10 partnership interests that they had was never in
11 dispute. The ultimate ownership or right to these
12 assets was. The uncertainties with regard to these
13 assets were subject to -- to an infinite number of
14 variables that the others were not. One is not
15 really comparable at all to the other.
16 Q. I hear what you're saying. I
17 disagree, of course, but...
18 Moving on. You can see at the bottom
19 of the page it has that same unethical provision
20 about approval necessary for settlement. You see
21 that?
22 MR. LITTLE: Objection, form.
23 A. I see the provision that you are
24 referencing.
25 Q. I thought we went over this. You don't

Page 207

1 think it's unethical?
2 A. As I mentioned to you --
3 MR. LITTLE: Objection, form and asked
4 and answered.
5 MR. DAVID KASSAB: Well, not
6 concerning Caroline's agreement.
7 A. As I --
8 MR. LITTLE: You said it was the same.
9 So you didn't mean the same, then you can ask another
10 question. But when you say "the same," then it has
11 been asked and answered. Like, the fact that it's
12 asked and answered is baked into your question. But
13 nevertheless.
14 Q. Is that the same provision that's in Rich's
15 agreement?
16 A. It seems to be the same language.
17 Q. With regard to the credit of attorneys'
18 fees section that we see there, why didn't --
19 A. Where?
20 Q. It's on the first page. Credit of
21 Attorneys Fee heading, "Client will be reimbursement
22 from any settlement or judgment of attorneys' fees
23 she has already paid out."
24 Do you see that? It's on the first
25 page.

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1 A. Yes, I see that.
2 Q. Why didn't you just pay back the attorneys'
3 fees to Caroline that she had already paid you
4 instead of reimbursing those fees to her from any
5 recovery?
6 A. We just -- those are the terms to which we
7 agreed.
8 Q. Well, tell me about the discussions you had
9 with Caroline concerning that.
10 A. Caroline after we walked through the --
11 after we walked through the changes, the terms, all
12 that kind of stuff, she said, well, look, if you will
13 refund me my fees, then I'm happy to go contingency.
14 And we talked about it, and the ultimate agreement
15 was that she would get a credit for the fees that she
16 had already paid from any ultimate resolution.
17 Q. Did you suggest that?
18 A. I guess so. I mean, I don't recall
19 specifically who bought it up.
20 Q. I mean, certainly it would be more
21 beneficial to Caroline if she was paid back those
22 fees immediately, right?
23 A. You would have to ask her that. I mean, I
24 think she would get an immediate benefit at that
25 time, sure.

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1 Q. And it's more beneficial to you, less risk
2 to you if it's just paid out of her recovery at the
3 end of the day. Would you agree with that?
4 A. Less risk?
5 Q. Yes. You didn't have to give back \$70,000
6 that she had already paid to you in that moment. You
7 could wait until there was a recovery, if any.
8 A. Where are you getting \$70,000 from?
9 Q. Whatever the attorneys' fees were. 65?
10 A. No.
11 Q. How much were they?
12 A. They were well less than that. I think the
13 total amount of attorneys' fees billed and paid was
14 in the 30s.
15 Q. She only paid you \$30,000 in attorneys'
16 fees?
17 A. 30-some thousand dollars, maybe 40. I
18 think there were some payments that she made towards
19 experts, towards costs, but attorneys' fees of 60 --
20 no. That's ridiculous.
21 Q. I want to know how much you think the
22 attorneys' fees were. 30,000? Is that what you
23 said?
24 A. I think somewhere -- I don't know that they
25 were 30. I think they were somewhere 30 and 40

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1 maybe. Maybe.
2 Q. So back to my question. It's more
3 beneficial to you if you -- if you only have to pay
4 back those fees in the event of a recovery. Do you
5 agree with that?
6 A. Yeah, I suppose so.
7 Q. And if you go to Page 3, there's the
8 beginning of the arbitration provision. See that?
9 A. Page 3?
10 Q. Yeah.
11 A. Yes, at the bottom.
12 Q. Yep.
13 A. Uh-huh.
14 Q. And your testimony was you only discussed
15 the arbitration provision at the outset of the
16 representation, right?
17 MR. LITTLE: Objection, asked and
18 answered and form.
19 A. I think my testimony is that I only recall
20 having discussed it at the outset. I don't recall
21 one way or the other after that.
22 Q. And with regard to that discussion, did you
23 explain to Caroline and Rich what the commercial
24 arbitration rules with the AAA were?
25 A. No, I did not.

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1 Q. Did you tell them how costly arbitration
2 might be?
3 A. I don't recall.
4 Q. Do you know if Mr. Abaza did?
5 A. I don't know.
6 Q. And you can see on this agreement, it's the
7 same as the previous one with Richard Allison and
8 that it's only signed by Mr. Abaza, correct?
9 A. Yes.
10 Q. But it looks like Mr. Trevino is
11 specifically listed in that contingency fee
12 agreement. So the conversations that you had with
13 Caroline about bringing in Mr. Trevino, that was
14 before this agreement was signed, right?
15 A. Right. As I mentioned earlier, she made
16 the decision, she chose to switch to contingency.
17 And after she made that choice, that's when the idea
18 of Mike coming aboard entered the conversation.
19 Q. Okay. And did Mike have to pay for any of
20 the expenses once he got onboard?
21 A. I think so.
22 Q. What was your arrangement with him with
23 regard to the expenses?
24 A. I can't remember the specifics, to be
25 honest. I think -- I think it was in line with

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1 his -- I think it was in line with his percentage of
2 the fee split.
3 Q. Did you have any written agreement with him
4 regarding those expenses other than the contingency
5 fee agreement?
6 A. I don't think so, but I'm not sure.
7 Q. Do you have a problem paying providers in
8 the underlying case?
9 A. No.
10 Q. Did you ever receive notices that invoices
11 were past due?
12 A. I think I probably did.
13 Q. Did you immediately pay those invoices?
14 A. I don't recall the timing of it.
15 Q. Do you recall invoices being sent to you
16 that were past due for several months and they
17 weren't actually paid until after the second
18 settlement and the MSA was signed?
19 A. I don't recall one way or the other.
20 Q. So explain to me what was done on the case
21 from the mid-October 2020 time frame to the second
22 mediation.
23 A. I don't know --
24 MR. LITTLE: Objection, form.
25 A. I don't know that I can recite for you

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1 everything that was done on the case during that time
2 frame. I can tell you that for some time I took a
3 step back from the day-to-day laboring or -- and
4 interfacing with opposing counsel for a variety of
5 reasons. My mother, as I mentioned earlier. When I
6 got back from that, I immediately contracted a pretty
7 nasty dose of COVID that sidetracked me for a while.
8 Mike and I -- well, Mike was in at
9 that point. He started pushing a variety of issues,
10 including discovery, motions, trying to get
11 depositions lined up. At some point Collins and
12 Robin broached the topic of mediation again, as I
13 recall.
14 Q. That was in November 2021, right?
15 A. I don't recall specifically the time frame.
16 MR. LITTLE: Objection, form.
17 Q. Okay.
18 A. But --
19 MR. LITTLE: You said 2021. I don't
20 think that's what you meant.
21 Q. Sorry. 2020.
22 A. Again, I don't recall the specific time
23 frame. That was a brief discussion, and eventually
24 Richard and Caroline opted not to mediate at that
25 time. We kept developing the case. We had hearings.

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1 We had Robin's deposition.
2 Mike, like I said, went and inspected
3 partnership documents. He kept trying to procure
4 additional information. He ran down, I think,
5 Mr. Paisley and procured the file there. He did a
6 great bit of work. I spoke to Mike on a regular
7 basis to discuss the things that we thought needed to
8 be done, and then Mike went out and did them.
9 Q. Between that time period you took Robin's
10 deposition, right?
11 A. Between what time period?
12 Q. From the October 2020 time period to the
13 second mediation.
14 A. Yes.
15 Q. Did any other depositions occur?
16 A. I think we had scheduled some depositions
17 and the dates did not work out for some reason. I
18 can't recall specifically what.
19 Q. And you say that Richard and Caroline, they
20 did not want to mediate when Michael Collins brought
21 up that suggestion in October or November of 2020?
22 A. I think -- I don't recall specifically. I
23 think, based on the totality of the circumstances at
24 the time, the decision was made not to mediate at the
25 time.

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1 Q. And that was because Caroline and Rich
2 wanted to know, you know, more about the assets,
3 Robin's assets and her estate planning?
4 A. I don't recall specifically why.
5 Q. You don't recall them wanting an audit of
6 all the finances of the trust?
7 A. I recall them making -- saying something
8 about that, yes.
9 Q. With regard to that issue and what you knew
10 about the finances that were in the trust that
11 everybody was fighting over, what had changed in the
12 case between October 2020 and when the second
13 mediation occurred?
14 A. I think we got a good bit more information.
15 I think we got updated information regarding the
16 accounting through I think January of 2021. Mike
17 went out and got -- inspected those partnership
18 records that I had mentioned earlier. We got
19 supplemental information from Collins with respect to
20 various discovery responses.
21 We also got some not so great
22 information in terms of the merits of the case. We,
23 for instance, uncovered some medical records that
24 weren't the best indicated lucidity at a time that we
25 had alleged there wasn't lucidity.

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1 We also were on an ongoing basis
2 engaged in this sort of struggle with Robin and
3 Collins for, for lack of a better term, the hearts
4 and minds of Richard's children. Robin was at all
5 times trying to either intimidate or entice them into
6 testifying unfavorably toward Richard and Caroline
7 and favorably towards her. Kim, Rich's ex-wife, was
8 at all times working to see that that happened.
9 Hunter at some point, I think because of a religious
10 experience of some kind, said you know what, I don't
11 want to even fight about this stuff anymore. Let
12 Robin handle it all.
13 There were a variety of problems that
14 manifested between the first mediation and the second
15 mediation, both in terms of information on the merits
16 of the case and in terms of how things might play out
17 subsequently.
18 We also got additional financial
19 information with respect to the trusts, and I think
20 that there was a lis pendens or injunction, I can't
21 remember which, that we had originally either filed
22 or procured and the Court dissolved. So that also
23 was not favorable.
24 The apartment complexes themselves
25 were liquidated. We knew the price of liquidation.

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1 There's a lot that happened, and I can't recite it
2 all, but there were a lot of things that happened.
3 Q. And eventually you mediate with -- is it
4 Jeff Yates?
5 A. Yes.
6 Q. Then Mr. Trevino sends a mediation
7 memorandum over to Mr. Yates. Are you familiar with
8 that memorandum? Had you reviewed it prior to being
9 sent?
10 A. I'm sure I reviewed it prior to being sent.
11 Q. Looks pretty similar to the one you sent
12 out. Did you just give him the template?
13 A. I don't recall.
14 (Exhibit 20 marked)
15 Q. Let me show you what I marked as Exhibit
16 No. 20. That's the April 12th, 2021 mediation
17 memorandum from Michael Trevino to Jeff Yates,
18 correct?
19 A. That is what it says.
20 Q. And at least the format looks very similar
21 to the one that you sent. Will you agree with that?
22 A. Yes.
23 Q. In fact, if you go to the Amount in
24 Controversy section, it's not numbered page-wise, but
25 looks like it's the third page in.

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1 A. I see it.
2 Q. Looks like it has similar language to the
3 memorandum that you drafted. And then it says,
4 "Though discovery is incomplete and Robin, the
5 defendant, has not provided a proper accounting for
6 the trust and other assets at issue, plaintiffs
7 estimate that the amount in controversy is
8 approximately 17.5 million," right?
9 A. It says that, yes.
10 Q. And you have the other memorandum in front
11 of you. Is it identical language?
12 A. It looks to be the same language.
13 Q. Okay. So by this time, now we're in
14 April 12, 2021, Robin has still failed to provide an
15 adequate accounting for the trusts and other assets
16 at issue, correct?
17 A. By that time Robin had updated the
18 accounting, per my recollection, Robin had updated
19 the accounting through the end of 2020. We had
20 gotten more up-to-date information on the various
21 accounts. We had gotten additional information
22 regarding the partnerships.
23 Q. My question was: By this date, had Robin
24 provided a proper accounting for the trusts and other
25 assets at issue?

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1 A. By that date, Robin had complied with what
2 the Court had told her to do at that time.
3 Q. So then why are you telling the mediator
4 that she hadn't provided a proper accounting?
5 A. In our view, the correct way to account for
6 the trust was to go back to its inception in 1989.
7 Q. Tell me about the day of mediation. How
8 long was it?
9 A. How long was the day of mediation?
10 Q. How long was mediation?
11 A. Mediation was pretty long.
12 Q. How long?
13 A. We started I think at 9:00 in the morning
14 on the 13th, and we concluded I believe sometime
15 after midnight.
16 Q. Did you have a lunch break?
17 A. I don't remember -- I think there was food
18 brought in. I don't recall specifically.
19 Q. Who attended the mediation?
20 A. For our side, it was myself, Nicholas,
21 Michael, Caroline and Richard.
22 Q. Were y'all in the same room?
23 A. We were. For a portion of the mediation or
24 later on in the day, Michael, Nicholas and I let
25 Caroline and Richard have the room to themselves.

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1 Periodically Michael or myself or some combination of
2 us and/or the mediator would go and answer any
3 questions that they had.
4 Q. Did Caroline and Rich leave the mediation
5 at any point in time?
6 A. Towards the latter part of the mediation,
7 they asked if they could take a break and go get some
8 food, and I said that they could, yes.
9 Q. And what time was that at?
10 A. I don't really remember.
11 Q. Was it past 6:00, past 7:00?
12 A. I think it was past 6:00. I can't remember
13 beyond that.
14 Q. And did you have to go retrieve them from
15 wherever they were at?
16 A. I didn't go retrieve anybody from anywhere.
17 They were gone longer that they indicated they would
18 be gone. They had said that they'd be gone for like
19 a half hour, and I think they had been gone north of
20 an hour, well north of an hour. And the mediator was
21 pressing us about their whereabouts. And we were
22 trying to make sure that the other side didn't throw
23 a fit about it. And I think at some point they went
24 to get a Coke or something, and that's all I can
25 remember. I don't remember anybody going to retrieve

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1 them.
2 Q. And eventually you advise Caroline and Rich
3 to settle their case, correct?
4 MR. LITTLE: Objection, form.
5 A. Eventually I told Caroline and Rich that
6 the result encapsulated within the terms of the
7 mediated settlement agreement was a good result,
8 especially when weighed against their options.
9 Q. Tell me what you remember telling them
10 about that.
11 A. About what?
12 Q. About how it was a good result for them
13 when weighed against their other options.
14 A. Well, we had a solid understanding of the
15 estate, the trust, the assets and their values.
16 Based on all information available to us, the
17 settlement agreement represented roughly 50 percent
18 of the value of those various assets. Richard and
19 Caroline would get immediate and unqualified access
20 to the bulk of that amount. They would also have a
21 million dollars to provide amply for their -- for
22 their children's education, which is something that
23 they told us at the outset of the litigation that was
24 a big concern for them. And then whatever they
25 didn't use for that education would eventually revert

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1 to them.
2 We monetized their limited partnership
3 assets interest. We got some concessions from Robin
4 in their children's favor in the form of an interest
5 in a ranch. We got concessions from Robin that the
6 children would be the remainder beneficiaries of the
7 marital trust. We would buy them peace and
8 certainty.
9 And the options other than that were
10 to go to trial. At least that appeared to be, it was
11 either settle or go to trial. The likely -- or the
12 possible -- the range of possible outcomes of trial
13 were everything from not only losing but getting
14 disinherited for themselves and their children under
15 the no contest clauses, losing and remaining
16 essentially trapped and subject to Robin's whims and
17 getting nothing or prevailing. And in the event of
18 their prevailing, getting less than they got under
19 the terms of the mediated settlement agreement, for a
20 variety of reasons.
21 And even if they prevailed, there was
22 likely to be significant ongoing disputes with
23 respect to the result of overturning the 2013
24 amendment, the 2013 will, the IRA designation of 2013
25 as well, I think it was February, and the various

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1 partnership amendments that Dr. Allison had executed
2 following the amendment in 2013.
3 There were numerous cascading negative
4 consequences to overturning all of those documents.
5 And even if you ignore those, at the end of the day,
6 Richard and Caroline would end up with less than they
7 ended up with pursuant to the mediated settlement
8 agreement.
9 Q. So you were a proponent of the settlement?
10 A. I thought it was a favorable result for the
11 clients.
12 (Exhibit 21 marked)
13 Q. Let me show you what I'm marking as Exhibit
14 No. 21. That is a copy of the mediated settlement
15 agreement that was a result of the second mediation,
16 correct?
17 A. Yes.
18 Q. This is not a mediated settlement agreement
19 under any sort of family code, right? Are you
20 familiar with the family code in a mediated
21 settlement agreement under the statutes of the family
22 code that required --
23 A. The family code has no applicability to
24 this.
25 Q. And that was my question. So this mediated

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1 settlement agreement was just the result of the
2 mediation between -- it says Robin Allison and, you
3 know, her as trustee of the various trusts, right,
4 and then Richard Allison and Caroline Allison,
5 correct? Those were the parties to the agreement?
6 A. Yes.
7 Q. Now, this settlement agreement, it was
8 subject to Court approval, correct?
9 A. It was.
10 Q. And what would happen if the Court did not
11 approve it?
12 A. We'd be back with -- we'd be left without
13 settlement, but we didn't judge that to be a
14 particular probability.
15 Q. Well, did you advise Caroline and Rich that
16 if the Court did not approve the settlement, then the
17 settlement would go by the wayside?
18 A. Yes.
19 Q. And when did you provide them with that
20 advice?
21 A. At mediation.
22 Q. Any time after that?
23 A. I don't recall. As I said, we didn't
24 assess that that was a likelihood, given the
25 representations by the Judge that he would do

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1 whatever the parties needed to do to get this thing
2 worked out.
3 Q. So at any time after the mediated
4 settlement agreement was signed, did you tell
5 Caroline and Rich that if the Judge did not approve
6 the settlement agreement, it would be void?
7 A. I don't recall.
8 Q. Was the settlement agreement also
9 contingent on the grandchildren agreeing with it?
10 A. Just for the sake of clarity, the
11 settlement agreement was contingent on the agreement
12 of Richard's children and an ad litem being appointed
13 for Caroline's daughter and the ad litem conducting
14 an independent review and approving of it as well.
15 Q. So if any of them had an issue with the
16 settlement agreement, then it would be void?
17 A. We would have problems. Yes, I -- yeah.
18 Q. Turn to Page 4 for me, please. Under
19 Paragraph Q, there's a discussion about an account
20 owned by Minaki, LP. Do you see that?
21 A. I do.
22 Q. It says, "The balance in the account is at
23 least 9.5 million," right?
24 A. Yes.
25 Q. Did you tell Caroline and Rich that this

Page 226

1 was a cash account?

2 A. Never.

3 Q. Did you have an understanding that it was a

4 cash account?

5 A. Never.

6 Q. Did you have the Minaki, LP statement

7 reflecting the balance of 9.5 million prior to

8 mediation?

9 A. We saw some documentation regarding the

10 value of the assets of the Minaki Limited partnership

11 at mediation. I think it was a little bit stale at

12 that time. That's why we baked in the assurance that

13 it was at least \$9.5 million, in securities largely.

14 We always knew that it was securities that were in

15 the account, stocks.

16 Q. Did you tell --

17 A. Yes.

18 Q. Hang on, let me finish my question. Did

19 you tell Caroline and Rich that it was a security

20 account and not a cash account?

21 A. Yes. Specifically during mediation Rich

22 and Caroline asked us to try to get for them cash

23 instead of this account because they knew that this

24 was not a cash account. We tried to get cash, an all

25 cash offer. It was not forthcoming. This was the

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1 offer that was placed on the table. It was always

2 understood by all parties that there were securities,

3 that there were possible capital gains issues. We

4 talked about step-up in bases at the day of death.

5 We talked about all of that. Everybody.

6 And just to finish the answer, we saw

7 documentation regarding the assets in the trust, both

8 prior to mediation, I think, as I recall, during

9 mediation. And shortly after mediation we got the

10 complete statement from March 31st along with

11 information that the value in the account was

12 actually greater than the value that Caroline and

13 Richard had chosen to settle for to the tune of

14 9.9-some-odd million dollars.

15 Q. I'm not talking about the other assets in

16 the account. I'm talking specifically with regard to

17 that Minaki, LP brokerage account.

18 A. I do not follow. You said --

19 Q. When you said other assets, you said we got

20 information regarding other assets, and I want to

21 focus on this Minaki, LP statement. So you saw --

22 when you say "you," are you talking about you and

23 Mr. Abaza and Mr. Trevino saw the statement at

24 mediation?

25 A. I believe everybody in the room saw some

Page 228

1 documentation regarding the Minaki account. I can't

2 remember precisely --

3 Q. How was it displayed?

4 A. I don't recall specifically. I know that

5 we got some information from the other side at the

6 outset of mediation regarding updated values,

7 balances, all of that for the various accounts. As I

8 recall, we had seen a -- as I recall, we had seen

9 some kind of printout or screenshot of the first page

10 of the Minaki March 31st statement at some point. We

11 subsequently got the entirety of the Minaki

12 statement --

13 Q. I know you got it after mediation. I'm

14 talking about at mediation.

15 A. Right. So at mediation we got something.

16 I don't recall what exactly we saw. We recognized

17 that the value was a little stale because of the

18 passage of a little bit of time, and that's why we

19 baked into the settlement agreement the assurance

20 that there was at least \$9.5 million.

21 Q. So at mediation it could have just been the

22 first page?

23 A. It could have been. I don't specifically

24 recall.

25 Q. Did you provide Caroline and Rich any

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1 advice concerning the non-disparagement clause that's

2 contained in the agreement, tell them what it was?

3 A. Yes, I recall. To be clear, we went

4 through every line of this document with Rich and

5 Caroline multiple times.

6 Q. And then after the MSA was signed, you know

7 that Caroline sent a couple emails to you and

8 Mr. Abaza and Mr. Trevino stating she had -- she

9 wanted to renege on the deal?

10 A. I recall some correspondence to that

11 effect, yes.

12 Q. That was April 15th, right?

13 A. I don't recall the date, but shortly

14 thereafter. Shortly after mediation, yes.

15 (Exhibit 22 marked)

16 Q. Let me show you what I have marked Exhibit

17 No. 22. You've seen that email before, right?

18 A. Yes, I have.

19 Q. You can see that Caroline is sending it to

20 Michael Trevino and you are cc'd on it dated

21 April 15, 2021, right?

22 A. I, Richard and Nick are all cc'd on it.

23 Q. And that's two days after the MSA was

24 signed. Is that right?

25 A. I don't know if it's two or technically

Page 230

1 one. I can't recall specifically, but shortly after.
2 Q. And she says that she has remorse over
3 signing the deal. "I felt like you guys all put us
4 in a pressure cooker. As I kept saying throughout
5 the negotiations, it was not a good deal for my
6 brother and me. You guys were sort of looking out
7 for us but more so focused on yourselves," right?
8 A. That's what she said.
9 Q. So you knew at least two days, maybe one
10 day, after the deal that Caroline had remorse and
11 wanted -- did not want to go forward with it, right?
12 A. I know that she said that. I saw what this
13 email said when she sent it, yes.
14 (Exhibit 23 marked)
15 Q. And then the next day at 8:41 a.m. Caroline
16 sends you another email, and that's what I have
17 marked as the next exhibit. Have you seen a copy of
18 that email before?
19 A. I'm certain I have.
20 Q. Again, she's telling you, Michael Trevino
21 and Mr. Abaza that she wants to rescind the deal,
22 correct?
23 A. She is -- let me see. Yes, she says she
24 wants to rescind.
25 Q. And what did you do to make that happen?

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1 A. To have the agreement rescinded?
2 Q. Yes, sir.
3 A. I didn't take any action at that time.
4 Mike -- we all discussed it. Mike said that he was
5 going to meet with Caroline and Richard to discuss
6 their concerns and see what the best path forward
7 was. And that meeting happened. Following the
8 meeting, Richard and Caroline were fully onboard with
9 the settlement. They cooperated in its effectuation
10 to a point. And so everything seemed to be okay
11 after that.
12 Q. When you say "we discussed it," who are you
13 referring to?
14 A. Michael, Nicholas and I talked about this
15 correspondence, tried to figure out why Caroline was
16 saying these things. It made no sense to us. They
17 were substantively untrue. And we thought that the
18 best course of action was for Michael to have a
19 face-to-face meeting with Richard and Caroline to
20 discuss their concerns and see what needed to be
21 done.
22 Q. Isn't it true that from April 2021 forward
23 they continually objected to the deal and told you
24 that they didn't want to go forward with it?
25 MR. LITTLE: Objection, form.

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1 A. No, it's not.
2 MR. LITTLE: Hang on. We talked at
3 the same time. I know you get it, but I just want to
4 make sure you got the answer and it didn't get lost
5 in my objection.
6 THE REPORTER: The answer was "No,
7 it's not."
8 Q. And, of course, if Caroline wanted to
9 rescind the deal, one of the ways that you could have
10 done that was by having the kids object to it,
11 correct? The grandkids. Richard, his kids, the
12 ad litem, they all could have objected to the
13 settlement, correct?
14 A. They all could have objected, yes. None of
15 them did.
16 Q. I understand that none of them did. But
17 that would have been one way to get the deal
18 rescinded?
19 MR. LITTLE: Objection, form.
20 A. Perhaps. I don't know that it would have
21 been proper to do so. But more importantly -- and
22 frankly, I think it could have been tortious
23 interference. That would have gotten them in a whole
24 other pickle. But more importantly, after they met
25 with Michael, they were happy and excited about the

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1 deal. They helped get an ad litem in place. They
2 helped get the consent agreements from Richard and
3 Richard's children. They were onboard. They did not
4 continuously express that they wanted out. They were
5 onboard.
6 And then after the Court approved the
7 settlement agreement, after all of this was done,
8 then Caroline circled back around and started trying
9 to build these excuses to not pay her attorneys'
10 fees.
11 Q. The Court approved the settlement because
12 you didn't object to the motion to approve, right?
13 A. Right. Because Caroline did not want to
14 object at that time.
15 Q. Well, she's telling you right now in
16 April 16th, 2021 that she wants to rescind.
17 A. Right. And as I explained to you,
18 thereafter she did no -- she did not want to rescind.
19 Q. When did the meeting occur that you're
20 talking about where allegedly Caroline was happy with
21 the settlement?
22 A. I think it was maybe five days after
23 mediation. It was shortly after.
24 Q. So around April 20th, 2021?
25 A. I don't recall the specific date. I wasn't

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1 at the meeting. But it was -- it was fairly shortly
2 after. And from then on, there was no -- no
3 direction, no nothing, no objection to the
4 settlement. There was actually happiness about the
5 settlement, satisfaction with the settlement and
6 assistance in getting the settlement approved by the
7 Court. So no, we did not object because that would
8 have been contrary to what everybody was on the same
9 page about.
10 Q. You played a part in drafting the consent
11 agreements for the -- for Richard's children, didn't
12 you?
13 A. I don't know if that was me that drafted
14 them or Michael that drafted them with input from me,
15 but somebody on our side had input into the consent
16 agreements.
17 Q. And when you say Michael, are you talking
18 about Michael Collins?
19 A. No, I'm talking about Michael Trevino on
20 our side. I'm guessing Michael Collins probably had
21 some input as well.
22 And let me just make this clear.
23 Following mediation, Mike did the bulk of the legwork
24 in getting the settlement agreement approved by the
25 Court. I'm telling you as best I can, but to the

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1 extent there's any disagreement between Michael and I
2 about that, I defer to his recollection on it.
3 Q. What discussions do you recall having with
4 Michael Trevino about the consent form and drafting
5 it?
6 A. I don't recall any specific conversations.
7 (Exhibit 24 marked)
8 Q. Let me show you what I marked as Exhibit
9 No. 24. You've seen a copy of that email chain
10 before, right?
11 A. (Reviewing) Okay.
12 Q. Have you seen a copy of this email before?
13 A. I mean, I'm in the email chain, so I'm
14 assuming yes.
15 Q. And the first email starting at the bottom
16 looks like it's from you dated April 20th, 2021 at
17 4:47 p.m. Says, "It needs to get the job done, but I
18 don't think it should be too long or have a lot of
19 terms and specifications in it, lest it bog the kids
20 down. Thoughts?" Right?
21 A. Yes.
22 Q. And then there's a response, it looks like
23 from Mr. Abaza, that says, "I would agree. Does it
24 match release language in MSA or incorporate it by
25 reference?" Right?

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1 A. That's what it says.
2 Q. And then how do you respond?
3 A. It says, "It does not, but I can change it
4 to track the language -- to track that language. I'm
5 a little worried that that will spook the kids or get
6 the gears in Erik's head turning."
7 Q. What did you mean by that?
8 A. Well, like I mentioned previously, Kim, for
9 reasons that I don't really understand, was at all
10 times working to torpedo anything that might benefit
11 Richard, Caroline and her children. She was trying
12 to sway them over to Robin's side. And it seemed to
13 us that she was doing that for personal gain. It
14 seemed that she had the most sway over Erik of all
15 the children and that Erik was perhaps the least
16 stable of the children. And so we didn't want to do
17 anything that would create any concern on which Kim
18 could capitalize to Richard and Caroline's detriment.
19 Q. What do you mean by "get the gears in
20 Erik's head turning"?
21 A. Everything I just said.
22 Q. If the kids got spooked and didn't sign the
23 consent agreement, then, of course, the settlement
24 would fall through?
25 A. Right.

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1 MR. LITTLE: Objection, form.
2 A. Possibly, yes.
3 Q. And you didn't want that to happen, right?
4 A. Our clients and us by extension did not
5 want to it happen.
6 MR. DAVID KASSAB: Objection,
7 nonresponsive.
8 Q. You, Mr. Jorge Borunda, did not want that
9 to happen?
10 A. I was trying to effectuate the terms of the
11 settlement that my clients chose.
12 (Exhibit 25 marked)
13 Q. Let me show you what I've marked as Exhibit
14 No. 25. Go to the bottom of the page. It looks like
15 there's an email from you to a Kendra Payne over at
16 Champion Records Service, right?
17 A. Yes.
18 Q. And Champion Records Service is the company
19 that you use to obtain your records?
20 A. Yes.
21 Q. And it looks like you're responding to a
22 question that's on the following page from Kendra
23 that says, under Remarks, "4/28 case settled? Smith
24 Hammond has advised that this case has settled.
25 Please confirm settlement or if records are still

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1 needed. Thank you."
2 Do you see that?
3 A. I do.
4 Q. And how do you respond?
5 A. I say, "A settlement is in place but has
6 not been implemented. Could you please place a hold
7 on the requests in this matter. We don't want them
8 canceled until the settlement has been implemented,
9 but we don't want to actively pursue them either."
10 Q. So by that time, April 29, 2021, according
11 to Mr. Jorge Borunda, a settlement had not been
12 implemented, right?
13 A. Right. I think the thing had to be
14 approved by the Court. There needed to be trust
15 modification documents. We needed to get the
16 consents from the kids. It was an ongoing process.
17 Q. And you recall Mr. Collins filing a motion
18 to approve and sending around a draft version of that
19 document to you and Mr. Trevino?
20 A. I vaguely recall that.
21 Q. Do you recall the language that you tried
22 to put in the motion to approve and its order?
23 A. I recall that we had visited with a tax --
24 I don't know if it was a tax attorney or an
25 accountant. He had advised us that there might be a

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1 path towards diminishing any tax consequences on our
2 clients depending on the characterization of the
3 attorneys' fees, that there might be a way to
4 capitalize those somehow and offset them against
5 capital gains or future capital gains. So with that
6 in mind, we tried to build into the motion some
7 language to help further that goal.
8 Q. And what language was that?
9 A. Something along the lines that the
10 attorneys' fees were fair and reasonable or something
11 like that. I can't remember.
12 Q. Did you ever send that draft version of the
13 language that you proposed over to Caroline and Rich
14 for them to look at it?
15 A. No, not that I recall.
16 Q. Did you ever send a motion to approve that
17 Mr. Collins was trying to have entered or filed with
18 the Court and the order that he was trying to have
19 entered, did you send that over to Caroline and Rich?
20 A. I don't remember whether I or Michael did.
21 I don't recall.
22 Q. Did you notify them that that was
23 happening?
24 A. I'm sure they were aware that the
25 settlement agreement was being approved.

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1 Q. My question was a little different. My
2 question was: Did you notify them that that was
3 happening?
4 A. I don't recall talking to them about that.
5 Q. So you do not recall talking to them about
6 the motion to approve that was filed. And you
7 testified earlier that you did not file any objection
8 to that motion to approve, correct?
9 A. I did not file any objection to that
10 motion.
11 Q. And instead you tried to have the order on
12 the motion to approve approve your attorneys' fees as
13 being fair and reasonable?
14 A. For the reasons I stated, yes.
15 Q. Well, it would benefit you if the Court
16 approved your attorneys' fees as being fair and
17 reasonable, don't you think?
18 A. You don't think Court needed to approve our
19 fees.
20 Q. That wasn't my question.
21 A. It wouldn't be of any benefit one way or
22 the other. The Court didn't need to approve our
23 fees. It was designed to benefit Caroline and
24 Richard.
25 Q. Now, you weren't trying add that language

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1 in there so you could later use it against Caroline
2 and Rich as some sort of res judicata argument to any
3 dispute that they might with you over your attorneys'
4 fees, were you?
5 A. At that time I had no inkling that Caroline
6 and Richard were going to try to cheat us out of our
7 fee.
8 Q. Well, you knew that they didn't want to go
9 forward with the settlement?
10 A. No, I did not.
11 MR. LITTLE: Objection, form.
12 A. They expressed a desire to continue with
13 the settlement, and they assisted in getting it
14 implemented and approved.
15 Q. Well, if they testify differently in this
16 proceeding, you would disagree with that?
17 A. That would be untrue testimony.
18 Q. Just like they think your testimony's
19 untrue?
20 A. I don't see how that could be.
21 Q. And, of course, Mr. Collins rejected your
22 request to have the Court approve your attorneys'
23 fees as fair and reasonable, correct?
24 A. Mr. Collins rejected the language.
25 MR. DAVID KASSAB: Let's go off the

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1 record. Take a break.
2 THE VIDEOGRAPHER: We are now going
3 off the record. The time is 4:51 p.m.
4 (Recess taken)
5 THE VIDEOGRAPHER: We are now going
6 back on the record. The time is 5:07 p.m.
7 BY MR. DAVID KASSAB:
8 Q. Mr. Borunda, are you ready to continue your
9 deposition?
10 A. I am.
11 Q. You understand in July of 2021 Caroline was
12 still expressing her concerns about the settlement to
13 you, right?
14 A. I don't agree that she was still
15 expressing. I would say that she is again expressing
16 because there was a period of time between April and
17 July where she was fully onboard with continuing with
18 the settlement.
19 Q. Okay. So then there came a point in July,
20 according to you, that she was expressing to you that
21 she had problems with the settlement?
22 A. I'll say -- I'll qualify my answer this
23 way. I don't recall exactly when she changed her
24 mind again, but she did at some point, and she said
25 something about it. It was well after the settlement

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1 had been approved by the Court.
2 Q. When was the settlement approved by the
3 Court?
4 A. I think that was in either May or June. I
5 can't recall specifically.
6 (Exhibit 26 marked)
7 Q. Let me show you what I've marked as Exhibit
8 No. 26 to your deposition. You can see at the bottom
9 of the first page there's a July 30th, 2021 email
10 from Caroline to you, right?
11 A. Yes.
12 Q. And if you go on to the second page where
13 the substance of the email --
14 MR. LITTLE: Second page? I'm sorry,
15 I -- okay.
16 Q. She indicates to you that she and her
17 brother are still uncomfortable with the tax
18 implications on this and that it's making them both
19 pause as to whether this is something they want to
20 move forward with at all, right?
21 A. Yes, she says that.
22 Q. And then at the end of that paragraph she
23 says, "My brother brought this up in an email a month
24 ago to which there was no response. I have brought
25 this up several times," right?

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1 A. That's what it says.
2 Q. So that would indicate that in June of 2021
3 Rich brought up his concerns about the settlement to
4 you guys. Is that correct?
5 A. I don't recall specifically. I know that
6 we had ongoing conversations about tax issues. We
7 were trying to work with Richard and Caroline to get
8 them set up with a tax attorney and/or a CPA to help
9 us work towards minimizing any tax considerations.
10 We were working to address the concerns that they
11 raised to us, and we let them know as much at all
12 times.
13 Q. And when they raised the concerns to you,
14 at no time did you tell them one of the options was
15 we can try to get out of this settlement by having
16 the kids object or the guardian ad litem not approve
17 it?
18 MR. LITTLE: Objection, form.
19 A. By this point in time, the agreement had
20 been approved by the Court.
21 Q. Well, if Rich's email to you was in June
22 before the approval by the Court, then that would
23 have been an option?
24 MR. LITTLE: Objection, form.
25 A. I don't believe so, no, for a variety of

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1 reasons.
2 THE WITNESS: I'm sorry for tripping
3 over your objection.
4 A. No, I don't think so. I think it would
5 have been wrongful, and I don't think that taking
6 that wrongful action would have at the end of the day
7 torpedoed the agreement. I think baked into the
8 agreement are steps that are to be taken if the
9 grandchildren do object. It doesn't void the
10 agreement. It would, as I recall -- pull it if you
11 want to through it, we can go through it.
12 Q. Wait a minute. Did you just say that it
13 would not void the agreement if the grandchildren
14 objected?
15 A. I think that in the agreement between
16 Caroline and Rich and Robin, it contemplated the
17 possibility that the children might object. And it
18 specified the steps to be taken in that event. And
19 that was -- and I may be wrong about this because I
20 don't have the agreement in front of me. But I
21 think --
22 MR. LITTLE: You actually do.
23 A. Well, we can go through it if you'd like.
24 MR. SUAZO: Objection --
25 A. Do you want to talk about this or --

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1 MR. LITTLE: Well, you can get it in
2 front of you if he wants to talk to you about it, but
3 anyway.
4 A. We can talk about it, or we can just move
5 on. You tell me.
6 Q. Let me ask you a different question.
7 A. Sure.
8 Q. Before the break wasn't it your testimony
9 that if the kids objected, it would void the
10 agreement?
11 A. I think I said that we would have some
12 problems if I agreed with your mischaracterization
13 that it would void the agreement, that was my
14 mistake.
15 Q. Now, after the break you're saying that it
16 would not void the agreement?
17 MR. LITTLE: Objection, form.
18 A. I'm saying -- I testified as I testified.
19 The agreement says what it says regardless of my
20 testimony. I'm trying to give you my best
21 understanding of it. I may have made an error by
22 agreeing with your misinterpretation of the document.
23 MR. DAVID KASSAB: Objection,
24 nonresponsive.
25 Q. And from July until August, Caroline and

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1 Rich -- August of 2021, Caroline and Rich were still
2 expressing their concerns about going forward with
3 the settlement, correct?
4 MR. LITTLE: Objection, asked and
5 answered and form.
6 A. I don't recall specifically. I know that
7 there was a prolonged period of time where they in
8 essence, for lack of a better term, ghosted us.
9 Particularly Caroline became nonresponsive.
10 Q. But you don't remember when that particular
11 time was?
12 A. I don't remember the date ranges, no. I
13 remember that each of us tried repeatedly to reach
14 her without success, and Rich became difficult to
15 reach at different points in time as well.
16 Q. And ultimately Caroline asked you to
17 withdraw, right?
18 A. In November, I think it was, somewhere
19 along that time, yes.
20 Q. She makes like ten requests for you to
21 withdraw?
22 A. I think it was more than that.
23 Q. And why didn't you do it?
24 A. At that point it became abundantly clear
25 that what Caroline was trying to do was to avoid

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1 paying her attorneys' fee, and asking us to withdraw
2 was some sort of ill-advised attempt to build an
3 argument that we had quit before we had earned our
4 fee.
5 Q. So you refused to withdraw?
6 A. We agreed to cooperate with the
7 substitution of the counsel that Caroline had
8 retained. We didn't stand in the way of that.
9 Q. But you refused to file a motion to
10 withdraw. You wanted a substitution?
11 A. Since Caroline already had an attorney that
12 she had retained, we thought the proper mechanism was
13 a motion for substitution.
14 Q. And then the Court permitted that withdraw,
15 signed an order granting motion to substitute on
16 December 7th, 2021, right?
17 MR. LITTLE: Objection, form.
18 A. There was no withdraw. The Court permitted
19 the substitution. We didn't withdraw.
20 Q. So you still represent Caroline today?
21 A. No, we were substituted out, and thereafter
22 Caroline fired us.
23 Q. Well, actually, she fired you --
24 A. She might have fired us in advance of that,
25 yeah.

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1 Q. She fired you before you substituted out,
2 right?
3 A. Perhaps. I can't recall the specific
4 sequence.
5 Q. Did that order of substitution come out
6 before or after the order on applicant's motion for
7 enforcement and for sanctions came out? They're both
8 signed December 7, 2021.
9 A. I don't know.
10 Q. And then, of course, that same day you file
11 your petition in intervention and sue Caroline and
12 Rich, correct?
13 A. You can characterize it as us suing them.
14 We were simply asking to stay the -- freeze the
15 status quo while we got this issue resolved.
16 Q. Do you not consider the petition in
17 intervention that you filed a lawsuit?
18 A. I don't consider it us suing Caroline. I
19 consider it us seeking to maintain the status quo
20 until we resolve the issues between us.
21 Q. Why did you do that rather than compel
22 arbitration?
23 A. Because we were acutely aware that Caroline
24 was going to great lengths to avoid paying her
25 obligations to us, and we felt that in order to

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1 protect ourselves, one of the things we needed to do
2 was try to seek temporary relief while this thing was
3 resolved.
4 Q. And then a few days later you got my letter
5 on December 9, 2021. Do you recall that?
6 A. Vaguely.
7 Q. Where I asked you for Caroline's original
8 file. Remember that?
9 A. I think so, yeah.
10 Q. Did you respond to that letter?
11 A. I don't recall.
12 Q. I also asked you to provide an accounting,
13 correct?
14 A. I think it's in there. I don't remember
15 one way or the other. Happy to look at the letter.
16 Q. I'm trying to avoid us having to introduce
17 another document. I'm asking if you remember me
18 requesting an accounting pursuant to the Texas
19 Disciplinary Rules of Professional Conduct and
20 applicable statutes about the fee that you were
21 claiming and how it was calculated.
22 A. I do not recall what was in the letter
23 specifically, so that's the answer to your question.
24 You asked me if I recall it. My answer is I don't
25 recall.

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1 Q. If I asked you to provide an accounting on
2 December 9th, 2021, is there any reason why you
3 wouldn't have provided me with an accounting?
4 A. A variety of reasons.
5 Q. Tell me what those reasons are.
6 A. We didn't have the information that we
7 needed to calculate that number.
8 Q. So you didn't have the information you
9 needed to calculate how much your fee was prior to
10 you advising Caroline and Rich to settle their case?
11 MR. LITTLE: Objection, form.
12 A. No.
13 Q. So you had that information when you
14 advised them to settle. You just didn't have it
15 later on?
16 MR. LITTLE: Objection, form.
17 A. Because of the -- we had the information
18 with which to negotiate and -- for Caroline and Rich
19 to negotiate and settle. Thereafter, in large part
20 because of your clients' conduct, it took a prolonged
21 period of time to get all of these documents signed.
22 And there might have been some steps that still
23 needed to be completed before Richard and Caroline
24 took possession of the assets.
25 From our perspective, the proper value

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1 on which to calculate the fee at that time, and I
2 understand the arbitrator has made a different
3 determination, but from our perspective, the time for
4 which to fix the fee was the value of the assets on
5 the day they were -- came into Caroline and Richard's
6 possession.
7 Q. Wasn't it your position that your
8 representation ended as soon as you had the
9 settlement agreement signed?
10 A. No. I think my position was that at that
11 time we had earned our right to a contingency fee. I
12 think there was work left to be done, and we were
13 trying our damndest to do that work.
14 Q. Why wouldn't you just calculate the fee at
15 that date?
16 A. I've already answered that question.
17 Q. In fact, you didn't provide an accounting
18 until August 17th, 2023, right?
19 A. I don't recall when I provided the
20 accounting. And it kind of depends on what you mean
21 by accounting. Do you mean a settlement statement?
22 Q. Pursuant to Rule 1.04 and 1.14.
23 A. I don't have those rules memorized. Do you
24 mean a settlement statement?
25 Q. Sure.

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1 A. Okay. Then I don't believe we had provided
2 a settlement statement until sometime in the not too
3 distant past.
4 (Exhibit 27 marked)
5 Q. Let me show you what I've marked as Exhibit
6 No. 27. Is that the settlement statement that you're
7 talking about?
8 A. This looks to be it.
9 Q. That's dated August 17th, 2023, right?
10 A. Yes.
11 MR. DAVID KASSAB: Mr. Borunda, I have
12 more questions for you, but I'm going to reserve
13 those for our arbitration proceeding next month, and
14 I'm going to pass the witness to Raul.
15 EXAMINATION
16 BY MR. SUAZO:
17 Q. Good afternoon, Mr. Borunda. I was going
18 to say good evening. I didn't know. We're kind of
19 in that twilight area here at 5:00.
20 A. Good afternoon.
21 Q. You've been going for quite a while, and
22 I'm going to skip around, so it's going to be a
23 little bit -- we're going to be jumping around.
24 THE REPORTER: If you could speak up,
25 please, so I can hear you.

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1 (Discussion off the record)
2 BY MR. SUAZO:
3 Q. I'm going to cover a couple areas, and
4 let's see if we can kind of get some expeditious
5 questioning going here.
6 A. I'll do my best to keep up.
7 Q. Perfect. So did you ever go out to
8 California to meet Rich --
9 A. No.
10 Q. -- Allison? No.
11 Did, your knowledge, Michael Trevino
12 go out there?
13 A. I think Mike attempted to meet with Rich in
14 California.
15 Q. Do you know whether they actually met?
16 A. I don't believe they did.
17 Q. Do you know, did y'all have a case pending
18 in California or Hawaii at the time that the
19 post-settlement efforts were going on to get consent
20 forms and the like?
21 MR. LITTLE: Objection, form.
22 A. I have never litigated in California or
23 Hawaii.
24 Q. Do you know whether or not Mr. Trevino had
25 a case pending in California or Hawaii at the time

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1 that the post-settlement efforts were going to try to
2 get consent forms?
3 A. I don't know to a certainty. I know that
4 Mike has handled a case in Hawaii. I don't know when
5 that was. So it's possible, but I can't say to a
6 certainty.
7 Q. What about Mr. Abaza, do you know whether
8 he had one going at the same time in California?
9 A. Again, I don't know to a certainty, but I
10 don't think he did.
11 Q. Or Hawaii?
12 A. I don't know if Nick had any involvement in
13 the Hawaii case or not.
14 Q. Do you have -- or at the time all this was
15 going on, the settlement and this litigation, did you
16 have Mr. Trevino or Mr. Abaza's cell phone numbers?
17 MR. LITTLE: Objection, form?
18 A. Yes.
19 Q. Do you have their cell phone numbers today?
20 A. I do.
21 Q. Do you know if they have your cell phone
22 number today?
23 A. I believe they do.
24 Q. Did they have your cell phone number at the
25 time the litigation, this Allison litigation was

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1 going on?
2 A. Yes.
3 Q. Did you guys ever text message each other
4 about anything related to the litigation?
5 A. I don't know. I don't recall specifically.
6 I think most of our communication about cases tends
7 to be either email or phone. I know that I -- that
8 I've gone --
9 Q. Let me jump in because I've only got
10 40 minutes. And I'll let you finish. But I just
11 wanted to know if y'all ever text messaged about this
12 case. I understand there may be email communications
13 or verbal communications.
14 A. Sure. What I was going to say is I know
15 that I went through my phone and provided whatever
16 case-specific text communications I was able to
17 locate.
18 Q. So you actually went through your phone and
19 looked for text messages that you and Mr. Abaza had
20 related to this case.
21 A. To the extent that I was able to do so,
22 yes.
23 Q. And then you also did the same with
24 Mr. Trevino, correct?
25 A. Correct.

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1 Q. And whatever you were able to find, you
2 turned around and produced in this --
3 A. I've given the universe of information that
4 I have with respect to this case.
5 Q. And when did you sit down and look at your
6 phone to see if you could find that information?
7 A. It's been a while. I don't know
8 specifically when, but it's been some time.
9 Q. Was it after you filed this arbitration or
10 beforehand? Or do you remember?
11 A. I don't remember specifically.
12 Q. Were you able to find any text messages
13 between you and Rich or Caroline Allison regarding
14 the litigation?
15 A. I think so.
16 Q. But you weren't able to find any between
17 you and your two co-counsel, as best as you can
18 remember?
19 A. I was able to find -- everything that I was
20 able to find I've provided. I don't recall
21 specifically what all is in there at this point.
22 Q. Do you remember there being any text
23 messages, for example, with Mr. Trevino when he met
24 with Caroline Allison and she then started feeling
25 good about the settlement agreement?

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1 A. I don't recall.
2 Q. But at least as you sit here today, what
3 I'm gathering you say is that you've exercised what
4 you believe is due diligence in gathering up all of
5 the text messages that you and Mr. Abaza and you and
6 Mr. Trevino have regarding the litigation?
7 A. Yes.
8 Q. So let me jump to a different topic area
9 real quick, and I'm going to jump around a little
10 bit.
11 There were some discussion about the
12 fee split initially between you and Mr. Abaza that
13 Mr. Kassab was asking you about earlier. Do you
14 remember generally talking about your fee agreement,
15 your initial fee agreement with Rich Allison?
16 A. I remember some questioning about that.
17 Q. I think in that fee agreement there was a
18 60/40 split with 60 going to you and 40 going to
19 Mr. Abaza. Do you agree with that?
20 MR. LITTLE: Don't guess. It's in
21 there.
22 A. Whatever the document says is what the
23 document says.
24 Q. Basically, Mr. Kassab just handed you a
25 settlement agreement, right?

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1 A. He did.
2 Q. And you performed that settlement
3 statement -- you were involved in putting that
4 together, correct?
5 A. I believe I was.
6 Q. You didn't just schlep that off on to
7 Mr. Little and say you do it. You actually
8 participated in doing it, right?
9 A. I provided some information for it, yes.
10 Q. Right. And that's what August -- we're
11 talking August, so maybe what, two months ago?
12 A. I think so.
13 Q. And so is there a reference in there to
14 what the split is that you can't remember as you sit
15 here today, or did it vary?
16 A. What do you mean did it -- did what vary?
17 Q. Did the split vary at any point in time?
18 A. No. With respect to the fee, there was --
19 in the case of Rich, we have the contract that says
20 what it says, that it's a 35 percent contingency fee
21 with the majority -- the larger share of that coming
22 to me and a smaller share going to Nick.
23 With respect to Caroline, we have a
24 contingency fee agreement that is 35 percent. And
25 per my recollection, subject to that qualification,

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1 that says that we have a split between myself,
2 Michael and Nick where I get 40 percent, Nick gets
3 30 percent and Michael gets 30 percent.
4 Q. Did you verbally negotiate that agreement,
5 or was there -- is there anything in writing to show
6 a negotiation?
7 A. I don't recall. I'm sure we talked about
8 it. I don't know if we had anything in writing. So
9 I don't remember specifically.
10 Q. You don't know whether there's any email
11 dialogue regarding you guys, how y'all would split
12 that fee, as you sit here today?
13 A. I don't know.
14 Q. Is it essentially correct to say that the
15 basic concept of your fee agreement, that you have
16 this percentage fee agreement is that you get
17 35 percent on whatever value you add to the
18 litigation?
19 MR. LITTLE: Objection, form.
20 A. We get 35 percent of whatever we get for
21 our clients.
22 Q. So whatever you get for the clients, at the
23 end of the day, you get 35 percent of it?
24 A. Right.
25 Q. So, in other words, if you -- if they walk

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1 in with a dollar and you get them \$5, you've gotten
2 them \$4, you get 35 percent on \$4, right?
3 MR. LITTLE: Objection, form.
4 A. It depends on whether that dollar is
5 subsequently placed at risk.
6 Q. And if it's subsequently placed at risk,
7 then you get to actually get a percentage of the
8 dollar if they keep it?
9 A. Yes.
10 Q. So for defending the case, I guess?
11 A. Right.
12 Q. So you got a contingent fee on the defense
13 of the case as well as a contingent fee on getting a
14 recovery?
15 MR. LITTLE: Objection, form.
16 A. I guess that's some way to characterize it.
17 Q. If Robin would have died, for example, the
18 day after the contingent fee agreements would have
19 been signed, under your fee agreement, would you have
20 gotten 35 percent if the money would have went down
21 to Caroline and Rich?
22 MR. LITTLE: Objection, form.
23 A. If Robin died the day after they signed?
24 Q. Yes.
25 A. I don't think so.

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1 Q. What makes you say that you don't think so?

2 A. Because their receiving anything would not

3 have been the result of our efforts.

4 Q. So it's only when it's the result of your

5 efforts. If they receive something as a result of

6 your efforts, then you get a 35 percent fee on that?

7 A. I believe so.

8 Q. So backing up then a little bit more.

9 Initially Caroline was on an hourly arrangement,

10 right?

11 A. Yes.

12 Q. And she gave you a deposit. I don't know,

13 it was like 10,000 or \$12,000, somewhere in that

14 neighborhood?

15 A. I think it was twelve five.

16 Q. And you put that into your trust account,

17 correct?

18 A. I did.

19 Q. And do you still have the same trust

20 account, do you bank with the same bank that you had

21 a trust account with today that you did then?

22 A. I do.

23 Q. And so actually going back, you going back

24 and looking at the bank statements, that would be

25 something that would be not difficult for you to do

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1 to determine where that deposit is, right?

2 A. It might be time-consuming but not

3 difficult.

4 Q. Then the same thing with the operating

5 account. You have the same operating account today

6 that you did back then?

7 A. Yes.

8 Q. At some point in time, a new fee agreement

9 was entered into with Caroline, right?

10 A. Yes.

11 Q. Went from hourly to a contingent fee,

12 correct?

13 A. Correct.

14 Q. And then I think you said that Mr. Abaza

15 would draft the document, right? He took the

16 laboring oar on that?

17 A. In this case, yes, that's what happened.

18 Q. And to your knowledge, is the language of

19 that agreement the same as the language of Rich's

20 agreement?

21 MR. LITTLE: The language in

22 Caroline's contingent fee agreement the same as

23 Rich's contingent fee agreement.

24 MR. SUAZO: Right.

25 A. I think it is in most respects the same.

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1 Q. Is the fee calculation the same language

2 for Rich as it is for Caroline under the two

3 contingent fee agreements?

4 A. I think there might be some variation in

5 the language, but the outcome is the same.

6 Q. Do you have a greater fee interest when you

7 use the language that was changed in Caroline or

8 Rich's?

9 A. I think they're the same.

10 Q. So in that respect, at least the outcome,

11 it's your position they're the same?

12 A. Yes.

13 Q. So whatever language that was injected into

14 the document was not designed to create a greater fee

15 interest in Caroline's recovery than it was in

16 Rich's, right?

17 MR. LITTLE: Objection, form.

18 A. No.

19 Q. And did you have any changes to that

20 document when it came around to you?

21 A. I saw the document, I think, once it was

22 signed.

23 Q. Okay. That's the first time you saw it?

24 A. I believe so. I'm not sure, but I believe

25 so.

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1 Q. So you didn't type up -- you don't recall

2 typing up any changes and saying, Mr. Abaza, I don't

3 like this sentence. Will you change this sentence?

4 You don't remember anything like that happening,

5 right?

6 A. I don't recall something like that.

7 Q. As the -- as that contingent fee agreement

8 was getting circulated, the Caroline contingent fee

9 agreement, do you know whether Mr. Trevino was roped

10 in to provide any comments about that document?

11 A. I do not know to a certainty, but I don't

12 believe so. It's possible he was. I don't know

13 categorically one way or the other.

14 Q. Was it you that came one up with the idea

15 of bringing Mr. Trevino in, or was it Mr. Abaza?

16 A. I think it was me.

17 Q. And it was -- your idea was, well, we've

18 worked with him in the past, he's a good lawyer,

19 let's bring him in, put more pressure on the Robin

20 Allison side of things?

21 A. That was a large part of it, but it was

22 also, as I stated, that my mother had had an accident

23 and I was going to be indisposed for some time

24 because of that. So I wanted to make sure that we

25 kept things moving forward, on top of which, yes,

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1 Michael and I have worked extensively in the past.
2 He's a very capable lawyer. And I thought he would
3 be value added.
4 Q. I think we looked at the agreement. It was
5 dated sometime around October of 2021. Does that
6 sound right?
7 A. No. The case settled in April of 2021.
8 Q. So October 2020?
9 A. Correct.
10 Q. And then a couple of months later you
11 deposed Robin, correct?
12 A. I don't remember the timeline for Robin's
13 deposition, but it was after Michael came aboard.
14 Q. Did you take Robin's deposition?
15 A. I did.
16 Q. When -- so the litigation was originally
17 filed, if memory serves me correctly from looking at
18 the documents, sometime around June of 2019. Is that
19 fair?
20 A. I think so.
21 Q. And when after June of 2019 did you feel as
22 if you first had sufficient information to depose
23 Robin Allison?
24 A. My preference when I'm working these cases
25 up is to get as complete understanding as I can of

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1 the background facts. And in this case we had been
2 working pretty hard for a prolonged period of time to
3 get a complete picture of the medical background
4 information. We --
5 Q. So my question was a when question, and I'm
6 asking for a time. So let me try it again here
7 because of the limited time that we have.
8 Was this before or after the first
9 mediation did you feel as if you had sufficient
10 information to depose Robin?
11 A. I think we could have deposed Robin at an
12 earlier point in time, but I thought we were better
13 off deposing her later on.
14 Q. So in terms of at least the information
15 that you had, you felt that prior to the mediation
16 you had ample information to take her deposition, but
17 you wanted to get more information?
18 A. I think that's fair.
19 Q. So we were talking a little bit about being
20 aggressive, and you felt like the team that was
21 working with you on the case was being aggressive
22 during the litigation, right?
23 A. Yes.
24 Q. You got things like bank statements, right?
25 A. Uh-huh.

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1 Q. Is that a yes?
2 A. Sorry. Yes.
3 Q. You had gone over some financial statements
4 prepared by an accounting firm for the trusts, right?
5 I think it was Whitley Penn?
6 A. Correct.
7 Q. You garnered some other accounting
8 documents, right, checking account statements or
9 whatever?
10 A. We got a wide range of financial
11 information from Mr. Nemec, the CPA, that consisted
12 of everything from tax returns to account statements
13 to balance sheets to depreciation schedules. I mean,
14 we got a pretty significant amount of financial
15 information.
16 Q. Right. And you recall getting sufficient
17 information prior to the first mediation at least
18 insofar as it would enable you to go into the first
19 mediation and make intelligent decisions if you
20 needed to make an intelligent decision?
21 A. We knew going into the first mediation that
22 there were some things to follow up on. We also
23 felt -- and I shared this with Caroline and Richard
24 and Rich obviously because I kept them apprised of
25 everything that was going on and everything that

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1 needed to be done. But we felt we had a decent
2 understanding of the assets that we were talking
3 about.
4 Q. At the first medication?
5 A. Right. We wanted more information to gain
6 additional confidence with respect to how those
7 assets had been handled, how the trusts had been
8 handled, things of that nature. Maybe additional
9 information regarding actualized values, things like
10 that.
11 Q. I think you said as time progresses,
12 sometimes the information that you've been given in
13 the past gets a little stale, so you need to update
14 it, right?
15 A. Right.
16 Q. So I think you said during your questioning
17 with Mr. Kassab when Mr. Kassab was questioning you
18 that you didn't see any evidence of missing assets in
19 the accounting you were provided. Did you say that?
20 MR. LITTLE: Objection, form.
21 A. I don't know that I said that. I said that
22 there was --
23 Q. Hang on.
24 MR. SUAZO: Objection, nonresponsive.
25 Q. Did you see any evidence of missing assets

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1 in the accounting that you were provided prior to
2 telling -- prior to the second mediation?
3 MR. LITTLE: Objection, asked and
4 answered.
5 A. I think that with the accountings that we
6 had and the totality of financial information we had,
7 we had high confidence that we knew the assets that
8 we were dealing with, how -- what their value was and
9 that based on that information, the clients could
10 negotiate intelligently.
11 Q. So how did your confidence level vary
12 between the first two mediations?
13 A. We got additional financial information.
14 Q. Did you have like a percentage like -- you
15 said I had a high confidence level. Did you have a
16 low confidence level going into the first mediation?
17 A. No, I didn't have a low confidence level.
18 Q. A medium one?
19 A. I don't know that I could characterize it
20 that way.
21 Q. Well, how come you can characterize the
22 second mediation as having a high confidence level,
23 but you can't characterize your level in terms of
24 something similar to the first mediation?
25 A. I think we had a better understanding. We

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1 had more information at the subsequent mediation. I
2 think that it was a known fact that we shared with
3 our clients at the first mediation that there were --
4 that discovery was an ongoing process and there were
5 questions we were working to answer still.
6 Q. Then throughout the litigation from the
7 inception to the time that it -- let's just say to
8 the time it settled, did you see any evidence of
9 missing assets in the accounting that you were
10 provided?
11 A. Specifically in the accounting did I see
12 evidence of missing --
13 Q. Yeah, in the documents that they gave you,
14 did you see any evidence -- "they" being Robin -- did
15 you see any evidence of missing assets that weren't
16 accounted for?
17 MR. LITTLE: Objection, form and asked
18 and answered.
19 A. I want to make sure I understand your
20 question and I answer it correctly. Are you asking
21 me whether in the trust accountings that Robin
22 provided I saw evidence of missing assets?
23 Q. In anything that they gave to you or that
24 the clients gave to you and your universe of
25 information were you able to say Robin Allison is --

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1 there's evidence of missing assets and so we need to
2 pursue this?
3 MR. LITTLE: Same objections.
4 A. I don't recall seeing anything that made me
5 believe that there were assets that had been
6 absconded with.
7 Q. During the course of the litigation, did
8 you see any evidence of any significant
9 misappropriations by Robin Allison?
10 A. As I sit here, I do not recall seeing
11 anything like that.
12 Q. During the course of the litigation, did
13 you see any evidence of excessive depletion of the
14 trust assets by Robin Allison?
15 MR. LITTLE: Objection, form.
16 A. We saw evidence of mismanagement by Robin
17 that was negatively impacting the trust estate.
18 Q. Did you come to some conclusion as to the
19 value of that depletion?
20 A. I don't recall that we quantified it.
21 Q. Did that deal with the apartments, allowing
22 them to dilapidate?
23 A. That -- that was part of it. It was also
24 the negative impact on the day-to-day operations of
25 the apartment complexes that played a significant

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1 role in that.
2 Q. Were there any significant expenditures
3 like cash outlays that you were able to discover that
4 Robin had sent money someplace and you didn't know
5 what happened to it?
6 A. I don't recall.
7 Q. By the way, have you ever deposed people
8 twice in the same litigation?
9 A. I have.
10 Q. Did Caroline get deposed twice?
11 A. I know they were trying to depose her
12 twice. I don't recall whether that ever came to
13 pass.
14 Q. Was it set up to where they could take her
15 deposition twice?
16 A. We were resisting it. They were demanding
17 it. I don't remember how that shook out.
18 Q. So let me kind of jump to a different
19 topic. Can you tell me whether or not trusts have to
20 file their own tax returns?
21 A. I believe so.
22 Q. So if a person that's a trustee files a
23 personal tax return, does the trust still have to
24 file a tax return even though the trustee has filed
25 one?

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1 A. I believe so.
2 Q. And if a person is a beneficiary of a trust
3 and they file a personal tax return, does the trust
4 still have to file a tax return?
5 A. If the beneficiary files a trust -- a tax
6 return, does the trust have to file --
7 Q. Right.
8 A. I believe so.
9 Q. Is that -- are trusts viewed as
10 different -- a different entity than an individual
11 for purposes of at least tax returns?
12 A. With the qualification that I am not a tax
13 attorney or a tax expert, I believe trusts have to be
14 accounted for separately from an individual's assets.
15 Q. So, for example, do you remember you were
16 trying to -- there was some issues about we ought to
17 get into Robin's assets and I think there was a
18 distinction made. Robin was saying, well, my assets
19 are my own. That's different from the trust assets.
20 Do you remember that kind of coming about?
21 A. I'm not sure I understand your question.
22 Q. Right. Do you know whether or not Caroline
23 and Rich wanted you to get personal assets of Robin
24 Allison?
25 A. They wanted us to get discovery with

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1 respect to Robin's separate property.
2 Q. And do you remember you saying, well,
3 that's maybe kind of a stretch?
4 A. I -- well, that was after we had attempted
5 to do so. We had drawn, as anticipated, objections.
6 The Judge hemmed and hawed at our motions to compel.
7 So -- and in point of fact, the -- Robin's separate
8 property was Robin's separate property. It was not
9 the decedent's estate. It was not the trust estate.
10 So there was a limited argument for pursuing that
11 information.
12 Q. Right. So she was taking the position that
13 trust assets are different than my personal assets,
14 right?
15 MR. LITTLE: Objection, form.
16 A. I don't know that -- I mean, that's just --
17 it just is. Whatever she owned individually that she
18 had not placed in the trust was hers individually.
19 Q. Did you agree or disagree with her
20 characterization that assets held in an individual
21 capacity are different than assets held in a trust
22 capacity?
23 A. I think that's an axiomatic proposition.
24 Q. And likewise, would you agree there's a
25 difference between someone acting in their capacity

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1 as a trustee versus someone acting in their
2 individual capacity?
3 MR. LITTLE: Objection, form.
4 A. Yes.
5 Q. To monetize the fidelity account -- would
6 you agree the Fidelity account was the main asset
7 that was coming over to the family trust side of
8 things in the settlement?
9 A. Yes, I believe so.
10 MR. LITTLE: Objection, form.
11 Q. And would you agree that to monetize the
12 fidelity account, there was going to be a capital
13 gains tax hit the moment it gets monetized?
14 A. If they liquidated the entirety of the
15 account, then there was going to be a capital gains
16 tax implication, which we discussed with them at
17 mediation.
18 Q. So embedded in the 9 1/2 million or
19 9.9 million, whatever it was, there was kind of a
20 burden associated with those moneys, that burden
21 being a capital gains tax hit, right?
22 MR. LITTLE: Objection, form.
23 A. Not necessarily.
24 Q. Were they going to get the money free of a
25 capital gains tax?

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1 A. They could have chosen to handle the assets
2 in a variety of ways that would have mitigated or
3 eliminated any capital gains.
4 Q. Well, but you would have needed to get --
5 you were seeking a fee to get paid in cash, correct?
6 A. Yes.
7 Q. And in order to monetize and pay you cash,
8 isn't -- that concept monetizing, isn't that what
9 triggers the capital gains tax, you sell stock, turn
10 it into cash?
11 A. If they chose to sell assets that had
12 appreciated since the date of death, then, yes. But
13 they could have perhaps, for instance, taken a loan
14 against the assets without incurring any capital
15 gains tax. They could have also chosen to sell
16 assets perhaps that had depreciated. There's a
17 variety of scenarios.
18 Q. Could they have transferred you stock and
19 let you incur the capital gains tax?
20 A. I think the capital gains tax is theirs to
21 pay because they are the ones disposing of the asset.
22 Q. But you get to put your 35 percent fee
23 prior to the capital gains tax being hit, right?
24 MR. LITTLE: Objection, form.
25 A. I -- my fee is calculated on whatever it is

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1 that I recover for my clients.
2 Q. Around that's based upon the language in
3 your fee contract, right?
4 A. Yes.
5 Q. Do you know -- are you familiar with Sarah
6 Pacheco?
7 A. I know of her. I don't know her.
8 Q. Have you ever had a case against her?
9 A. I don't think so.
10 Q. So what do you know of her?
11 A. I know that she is a practitioner in the
12 field of estate litigation, that she is an
13 experienced practitioner in real estate litigation.
14 That's basically it.
15 Q. Do you consider her to be an expert in
16 estate litigation?
17 MR. LITTLE: Objection, form.
18 A. I don't know her expertise one way or the
19 other. Like I said, I know that she's an experienced
20 practitioner.
21 Q. So, in other words, you can't comment one
22 way or the other on her expertise, skill, training,
23 knowledge and experience?
24 A. I cannot.
25 Q. So let's talk about Michael Collins here

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1 for just a second. In your dealings with Michael
2 Collins, did you find him to be an honest and
3 trustworthy opposing counsel?
4 A. I found him to be a very zealous advocate
5 for his client. I do not recall -- with the
6 exception of a disagreement about two specific facts,
7 I don't recall Mr. Collins being otherwise dishonest.
8 Q. So you felt at the end of the day, largely,
9 aside from two facts, that he dealt with you
10 honestly?
11 A. I believe so.
12 Q. And then with regard to those two facts,
13 you felt he was dishonest with you?
14 A. I don't know if he was being dishonest or
15 if he was not remembering accurately or if there had
16 been a breakdown in communications at some point in
17 the intermediary with respect to one of those facts.
18 Q. What were the two facts?
19 A. The first fact is that at a particular
20 hearing with Judge Copeland, Judge Copeland suggested
21 that there were significant assets enough to simply
22 split the trust estate three ways with a third going
23 Robin, a third going to Richard and a third going to
24 Caroline. That was just generalized musing by the
25 Judge. I don't think it struck Mr. Collins too well.

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1 That was my recollection.
2 I communicated that to my clients. I
3 communicated that to mediators. I communicated that
4 to Mike and Nick. Mr. Collins does not agree with
5 that statement. So I don't know if he simply blocked
6 it out, if he doesn't remember it, or if we had
7 different understandings. That's the first fact.
8 Q. What's the second?
9 A. The second fact concerns the first
10 mediation. At the first mediation, Mr. Collins, it
11 is my understanding, has taken the position that
12 Robin offered Caroline and Rich the apartments in
13 settlement of the dispute. That was not the
14 understanding in our room. In our room the
15 understanding was that Robin was -- this is what the
16 mediator told us. Robin was open to a conversation
17 on the apartments, but a precondition to that
18 conversation, wherever that conversation might lead,
19 was that Caroline agree to apologize and to file
20 something in the court admitting that everything she
21 had alleged in her pleadings was a lie.
22 Q. This was at the first mediation, the second
23 fact?
24 A. Correct.
25 Q. And what was --

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1 THE VIDEOGRAPHER: I do want to let
2 counsel know there are ten minutes left in the
3 six hours.
4 MR. SUAZO: Thanks. I'll turn my
5 nine-minute alarm off.
6 (Discussion off the record)
7 Q. So what did -- the apartments, what did
8 they turn out to be liquidated for?
9 A. I think initially they -- Robin was trying
10 to sell them for -- I don't recall precisely, but I
11 think she was trying to sell them for maybe
12 \$5 million. We got in the way of that and --
13 Q. Let me stop you, given my time. All I want
14 is do you remember the amount that they were
15 liquidated for, not what she was trying to sell them
16 for or issues associated with. I'm looking for a
17 number.
18 A. I think ultimately they were sold --
19 without accounting for commissions and such, I think
20 they were sold for \$6 million or in that ballpark.
21 Q. So let me jump on to another topic here.
22 Mediated settlement agreement made Rich and Caroline
23 cotrustees, right?
24 A. Well, the mediated settlement agreement
25 established a framework for them to become trustees.

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1 Q. The mediated settlement agreement didn't do
2 that by itself?
3 A. Correct.
4 Q. There would have to be some modification of
5 the trust thereafter?
6 A. There would have been to be -- for them to
7 become trustees, I don't know that the trust had to
8 be modified. I think that Robin had to resign and
9 Rich and Caroline had to accept their role as
10 trustees.
11 Q. And that was all that had to be done?
12 A. For them to be trustees?
13 Q. Right.
14 A. I believe so.
15 Q. So everything -- as far as you were
16 concerned, when the Court approved the settlement and
17 then all the consent forms were signed, they were
18 free to be trustees?
19 A. I think at that time Rich and Caroline were
20 the trustees.
21 Q. And so 50/50, if Caroline and --
22 A. No. I'm sorry. Let me back up. I think
23 when Rich and Caroline signed the documents that were
24 prepared for them to -- for Robin to resign and them
25 to accept the trusteeship, I don't think that

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1 happened until November.
2 Q. And then at that point in time, it's your
3 position that was sufficient --
4 A. For them --
5 Q. -- to make them trustees?
6 A. For them to be trustees, I believe so.
7 Q. And there wasn't the need for some formal
8 addition to modify the trust?
9 A. Not for that step.
10 Q. So -- and they were 50/50, correct?
11 A. They were.
12 Q. So if they disagree on, for example, a
13 distribution, what is your view on how that 50/50
14 split gets resolved?
15 A. That was for them to resolve.
16 Q. So if, for example, Rich wanted to
17 distribute \$5 million to himself and Caroline said
18 no, what happens? They got to resolve it?
19 A. I think the intent of the settlement
20 agreement was that each one was entitled to withdraw
21 their respective half of the assets.
22 Q. Is that what the mediated settlement
23 agreement said, to your knowledge?
24 A. I don't recall.
25 Q. So -- and then Rich was also a trustee.

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1 And I think we were talking a little bit about
2 disability issues. You said that, well, he had a
3 physical one but not a mental one, right?
4 A. That's my understanding.
5 Q. Do you remember him telling Mr. Collins in
6 his -- did you attend his deposition, by the way, in
7 the underlying case?
8 A. Richard's deposition, yes.
9 Q. Do you remember him telling Mr. Collins
10 that he went to a counselor and he suffered from
11 depression?
12 A. I don't recall that.
13 Q. You don't remember him describing that as a
14 mental disability, his depression?
15 A. I remember --
16 Q. Hang on.
17 MR. SUAZO: Objection, nonresponsive.
18 Q. I just want to know if you --
19 A. I haven't even answered.
20 MR. LITTLE: Look, I know you're
21 nervous but --
22 MR. SUAZO: It's really a yes or no
23 question.
24 MR. LITTLE: -- he gets to answer your
25 questions.

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1 A. Rich had specifically denied having a
2 mental disability in verified discovery responses.
3 Q. But I was talking about his deposition,
4 sir. My question to you was: Do you remember him in
5 his deposition in response to a question asking about
6 whether he had a mental disability, him saying, yes,
7 I have depression? Do you remember that?
8 A. I don't.
9 Q. All right. Did Rich have issues with his
10 ex-wife?
11 A. Rich did have issues with his ex-wife.
12 Q. Was -- did Rich have other family issues
13 involving his kids?
14 A. Rich's family is complicated.
15 Q. Was Rich living in poverty, to your
16 knowledge?
17 A. That's what he's told us.
18 Q. Did you verify that one way or the other?
19 A. I did not go out to check him out.
20 Q. Do you know if Rich has ever served as a
21 trustee before?
22 A. I don't believe he has, but I don't know
23 categorically that's the case.
24 Q. Prior to the day of mediation, did he tell
25 you that he wanted to be the trustee?

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1 A. Prior to the date of mediation?
2 Q. Yeah, the second one where it settled.
3 A. No, I don't recall him saying he wanted to
4 be trustee.
5 Q. Did he tell you that he wanted to be
6 trustee at the mediation, that would be his
7 preference, that he would get a trustee gig out of
8 this deal?
9 A. I don't know that we couched it in terms of
10 what -- that he wanted to be a trustee. I think when
11 we put before him the choice of settling by an
12 exchange for becoming trustee and having the right to
13 distribute the assets to himself, he accepted -- he
14 chose that.
15 Q. Once he was a trustee, he became a
16 fiduciary to the beneficiaries, right?
17 A. Yes.
18 Q. And grandchildren were beneficiaries,
19 right? Or his children, I should say.
20 A. To a limited extent, yes.
21 Q. And Caroline's child was a beneficiary,
22 right?
23 A. To a limited extent, yes.
24 Q. And did you tell him what the obligations
25 would be going forward as a trustee?

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1 A. We talked to him about the fact that he
2 would have obligations with respect to the
3 educational fund and that he would have -- owe
4 obligations to his children, to all the beneficiaries
5 of the educational fund.
6 Q. Did you do that in writing?
7 A. I don't believe so.
8 Q. Have you ever served as a trustee in the
9 context of a -- like a family trust, maybe not on a
10 deed?
11 A. I believe I was a trustee for a limited
12 amount of time.
13 Q. Were you paid when you served as a trustee?
14 A. No.
15 Q. Have you ever litigated against a trustee?
16 A. Individually?
17 Q. Yes.
18 A. No.
19 Q. Have you ever seen where trustees get paid
20 to be trustees?
21 A. Some do.
22 Q. Do you agree that being a trustee requires
23 work to fulfill your duties to beneficiaries?
24 A. Sometimes.
25 Q. And the trustee gig that they got as a

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1 result of the mediated settlement agreement, were
2 they going to get paid for doing the work that was
3 necessary to be a trustee, to your recollection?
4 A. I don't believe they were contemplating
5 taking money from their children, their children's
6 educational fund, to pay themselves.
7 Q. I want to ask another line. You had
8 mentioned that because there wasn't a signed
9 agreement with Mr. Trevino, he was entitled to a
10 quantum meruit value. Were you claiming that the
11 quantum meruit value was to come out of your portion
12 of the fee, or was it to come and be paid from either
13 Rich or Caroline?
14 MR. LITTLE: Objection, form.
15 A. I'm not sure I understand the question.
16 Q. You said that Rich -- that Mr. Trevino had
17 a quantum meruit claim against Rich, I guess because
18 he doesn't have a signed fee agreement, right? Do
19 you remember talking about that?
20 A. I do remember talking about that.
21 Q. So are you saying that Mr. Trevino's
22 quantum meruit claim would come from your portion of
23 the fee or that Rich should have to come out of
24 pocket and pay more?
25 A. I don't know how that shakes out under the

Page 289

1 law, so I can't answer that question.
2 Q. Have you done a quantum meruit value
3 calculation for the value of your time and services
4 from the date of the conversion to Caroline forward?
5 A. No.
6 MR. SUAZO: I think we're probably out
7 of time here. I probably have a couple of seconds,
8 but I like to give a little bit of time back to a
9 witness. So --
10 MR. LITTLE: I think the extent to
11 which you're doing that is extraordinarily limited,
12 but go ahead --
13 MR. SUAZO: But generous nonetheless.
14 MR. LITTLE: Generous to a fault, but
15 you should probably say pass the witness if you're
16 done.
17 MR. SUAZO: That's true. I pass the
18 witness.
19 MR. LITTLE: All right. We'll
20 reserve.
21 THE VIDEOGRAPHER: We're now going off
22 the record. The time is 6:01 p.m. This ends the
23 deposition of Mr. Jorge Borunda.
24 (Proceedings concluded at 6:01 p.m.)
25

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1 CHANGES AND SIGNATURE
2 JORGE BORUNDA ZARAGOZA
3 October 24, 2023
4 PAGE LINE CHANGE REASON
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Page 291

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7
8 I declare under penalty of perjury that the
9 foregoing is true and correct.
10
11
12 JORGE BORUNDA ZARAGOZA
13
14
15 SUBSCRIBED AND SWORN TO BEFORE ME, the
16 undersigned authority, by the witness, JORGE BORUNDA
17 ZARAGOZA, on this the ____ day of _____,
18 _____.
19
20
21 NOTARY PUBLIC IN AND FOR
22 THE STATE OF _____
23
24 My Commission Expires: _____
25

Page 292

1 AMERICAN ARBITRATION ASSOCIATION
2 NICHOLAS ABAZA AND)
3 JORGE BORUNDA)
4 Claimant/Counter-Respondent)
5 vs.) CASE NO. 01-22-0000-9524
6 RICHARD ALLISON)
7 Respondent/Counter-Claimant)
8 CAROLINE ALLISON)
9 Claimant/Respondent)
10 vs.) CASE NO. 02-22-0002-4507
11 BORUNDA, P.C., JORGE)
12 BORUNDA, NICHOLAS ABAZA,)
13 LAW OFFICES OF NICHOLAS)
14 ABAZA, PC, MICHAEL TREVINO)
15 AND LAW OFFICE OF)
16 MICHAEL A.TREVINO, PLLC)
17 Respondent/Counter-Claimant)
18 REPORTER'S CERTIFICATE
19 ORAL VIDEOTAPED DEPOSITION OF JORGE BORUNDA ZARAGOZA
20 October 24, 2023
21 I, Terrilyn Paul Crowley, the undersigned
22 Certified Machine Shorthand Reporter in and for the
23 State of Texas, certify that the facts stated in the
24 foregoing pages are true and correct.
25 I further certify that I am neither attorney or

Page 293

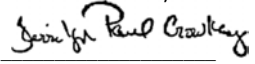
1 counsel for, related to, nor employed by any parties
2 to the action in which this testimony is taken and,
3 further, that I am not a relative or employee of any
4 counsel employed by the parties hereto or financially
5 interested in the action.
6 SUBSCRIBED AND SWORN TO under my hand and seal
7 of office on this day the 3rd of November, 2023.
8
9 
10 Terrilyn Paul Crowley, CSR, RPR
11 Texas CSR 5113
12 Expiration: 4/30/2025
13 CARLISLE REPORTING
14 832 Tulane Street
15 Houston, Texas 77007
16
17
18
19
20
21
22
23
24
25

Exhibit “E”

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 §

READING COPY

CONFIDENTIAL

ORAL AND VIDEOTAPED DEPOSITION OF

RICHARD GERARD ALLISON

OCTOBER 12, 2023

CONFIDENTIAL ORAL AND VIDEOTAPED DEPOSITION of RICHARD GERARD ALLISON, produced as a witness at the instance of the Claimant/Counter Respondents, and duly sworn, was taken in the above-styled and numbered cause on the 12th day of October, 2023, from 10:13 a.m. to 5:02 p.m., before Gail Swisher Patrenella, RMR, CRR, CSR in and for the State of Texas, reported by machine shorthand method, at the offices of Martin, Disiere, Jefferson & Wisdom, L.L.P., 808 Travis, Suite 1100, Houston, Harris County, Texas, pursuant to the Texas Rules of Civil Procedure and the provisions stated on the record.

2

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3

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4

A P P E A R A N C E S

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ALSO PRESENT:

Mr. Nicholas Abaza
Mr. Jorge Borunda
Mr. Michael Trevino
Ms. Caroline Allison

THE COURT REPORTER:

Ms. Gail Swisher Patrenella, RMR, CRR
Texas CSR 3632
Expiration Date: 04/30/2025

5

P R E L I M I N A R Y P R O C E E D I N G S

THE VIDEOGRAPHER: Good morning. Today is Thursday, October 12th, 2023. The time is 10:13 a.m.; and we are now on the record.

THE COURT REPORTER: Any stipulations y'all would like to put on the record before we begin?

MR. SUAZO: No. I think we're probably going to designate this one as confidential. I'm assuming he's going to ask questions that would trigger that; so I'm going to go ahead and designate it as confidential, similar to the prior deposition. Same rules as the prior deposition.

MR. LITTLE: Yes. Just AAA rules; and if there's something that they don't address, then Texas Rules by default.

MR. SUAZO: You got it.

MR. LITTLE: All right. And I assume y'all still want to have the two for one?

MR. KASSAB: Yeah. One objection is good for all.

MR. SUAZO: Yeah. That's totally fine.

THE VIDEOGRAPHER: Mr. Little, are you miked up?

THE COURT REPORTER: Mr. Allison, would you raise your right hand to be sworn, please?

6 1 (Witness complies.) 2 THE COURT REPORTER: Do you solemnly 3 swear the testimony you will give in this cause now 4 pending will be the truth, the whole truth, and 5 nothing but the truth so help you God? 6 THE WITNESS: Truth, whole truth, help 7 me God. 8 THE COURT REPORTER: Thank you. 9 RICHARD GERARD ALLISON, 10 having been first duly sworn, testified as follows: 11 EXAMINATION 12 BY MR. LITTLE: 13 Q. Please tell us your name. 14 A. Richard. 15 Q. What's your full name? 16 A. Richard. 17 Q. What's your last name? 18 A. Allison. 19 Q. What's your middle name? 20 A. G. 21 Q. What does the G stand for? 22 A. Gerard. 23 Q. Spell that for us, please. 24 A. G-E-R-A-R-D. 25 Q. And we talked about it briefly before you	8 1 A. Uh-huh. 2 Q. Is that yes? 3 A. Yes. 4 Q. Okay. Can you think of any other times that 5 you've been deposed through the years, Mr. Allison? 6 A. Sorry. I didn't hear the question. I was 7 coughing. 8 Q. Can you think of any other times that you've 9 been deposed other than the deposition that you gave 10 in the underlying case? 11 A. Yeah. I might have given some other 12 depositions. 13 Q. I know that you're divorced. Did you give a 14 deposition in any kind of divorce proceeding? 15 A. Yeah. That could be possible. 16 Q. What other circumstances could it be 17 possible where you got deposed? 18 A. I'm trying to think. I can't come up with 19 anything right now, but I'll let you know. 20 Q. Just some quick ground rules before we get 21 started in earnest today. You understand that the 22 court reporter is writing down all of my questions and 23 all of your answers, right? 24 A. Yes, sir. 25 Q. All right. It would be easier for the court
7 1 came in. Are you a junior or the second, or is there 2 any designation like that after your name? 3 A. I have no idea. I guess you guys would know 4 better. 5 Q. Mr. Allison, my name is Joe Little. You 6 understand who I am and who I represent in this 7 lawsuit, correct? 8 A. I think so. 9 Q. I represent Mr. Abaza, Mr. Borunda, 10 Mr. Trevino, and their respective law firms. 11 A. Uh-huh. 12 Q. So, with that clarification, are you and I 13 clear about, you know, who I am and who I represent? 14 A. Yeah. 15 Q. Have you ever given a deposition before? 16 A. Yeah. 17 Q. How many times? 18 A. I don't -- I don't think -- I gave a 19 deposition. Yeah. So I don't know how many times I 20 gave a deposition. I know I've given a deposition. 21 Q. Have you -- I know you gave a deposition in 22 the underlying -- 23 A. Uh-huh. 24 Q. -- lawsuit against your stepmother Robin, 25 right?	9 1 reporter if you and I don't interrupt each other, so 2 I'm going to try to let you finish an answer. If 3 you'll do me the same courtesy and try to let me 4 finish my answer [sic], it just helps the court 5 reporter. Fair? 6 A. Yes, sir. 7 Q. If you can answer yes or no rather than 8 uh-huh or huh-uh because uh-huh and huh-uh are hard to 9 spell for the court reporter, and sometimes it's hard 10 to hear those and get those right, so yes and noes 11 would be better. Also fair? 12 A. Yes, sir. 13 Q. If I ask you a question today and you don't 14 understand it, will you ask me to repeat it or 15 rephrase it, please? 16 A. Yes, sir. 17 Q. If I ask a question and you -- and you 18 answer it, I'm going to assume that you heard my 19 question, that you understood my question, and that 20 you're answering it fully and completely. Fair? 21 A. Yes, sir. 22 Q. I understand like -- you may not be feeling 23 well today; so, if you need to take a break at any 24 time, all you have to do is ask me or say something to 25 your lawyer. We'll be happy to take a break at your

10

1 convenience and move forward when you're ready to move
2 forward. Fair?

3 A. Yes, sir.

4 Q. You do understand that you're under oath,
5 and your testimony is subject to the penalties of
6 perjury just like if we were down at a courthouse or
7 in the final arbitration hearing?

8 A. Yes, sir.

9 Q. All right. All right. I think that's
10 probably it for our ground rules.

11 A. Well, I did hear that this is confidential,
12 right?

13 Q. So there is a protective order that the
14 lawyers have agreed on. I certainly don't think we
15 need to go into the details of that now, but the
16 protective order allows any party to designate a
17 document or deposition as confidential, and that has
18 certain consequences under the legal document that the
19 lawyers agreed to, and your lawyer has designated this
20 deposition as confidential, and so it will be treated
21 in accordance with the protective order that Judge
22 Ashby has signed based on the agreement of all the
23 lawyers.

24 A. And what does that mean exactly?

25 Q. Well, I don't have it here in front of me,

11

1 so that may be a question better asked to your lawyer.
2 I'll tell you what I think it generally means is that
3 the transcript won't be provided to anybody who is not
4 either a lawyer or a witness or somebody working on
5 this lawsuit; but, again, that's -- that's a question
6 for you to ask Mr. Suazo --

7 A. Okay.

8 Q. -- not to ask me because obviously, since
9 I'm not your lawyer, I can't give you legal advice or
10 explain legal stuff to you. Fair?

11 A. Yes, sir.

12 Q. All right.

13 (R. Allison Exhibit No. 1 was marked.)

14 Q. (BY MR. LITTLE) I'm showing you what we've
15 marked as Exhibit 1 to your deposition, Mr. Allison.
16 Have you ever seen this document before?

17 A. Which document is it?

18 Q. The document that I put there in front of
19 you. We put a sticker on it that it was -- it's
20 Exhibit No. 1 to your deposition. Have you ever seen
21 this document?

22 A. I don't recognize it, but what is this --
23 what is this document?

24 Q. It's a -- it's a petition that a lawyer has
25 filed on your and your sister's behalf in probate

12

1 court in Collin County. Are you aware that you
2 currently have a pending lawsuit in the probate court
3 of Collin County?

4 MR. KASSAB: Object to form.

5 A. What was that question again? I was looking
6 at this thing.

7 Q. (BY MR. LITTLE) Are you aware that you
8 currently have a lawsuit pending in probate court in
9 Collin County?

10 A. Okay. Yes. Yes, sir.

11 Q. All right. It references in the first
12 paragraph that you and your sister are the
13 petitioners.

14 A. Uh-huh.

15 Q. And then there's a lawyer here at the end,
16 Sarah Pacheco, that says she's the attorneys for
17 petitioners. Did you retain Sarah Pacheco to file
18 this lawsuit on your behalf?

19 A. Yes, sir.

20 Q. Do you have an understanding of what this
21 lawsuit is about?

22 A. I mean, you could probably read the
23 document. I could read through the document and let
24 you know.

25 Q. No. I'm just asking you whether you, as we

13

1 sit here today, have any understanding about what this
2 lawsuit is about.

3 A. Well, I -- my understanding of it is that --
4 that we had a defective deal with our -- this MSA was
5 defective and that we had to -- we have to go back and
6 get it because there's no -- there's no clear --
7 there's no clear award in the MSA is my understanding,
8 so we don't have a clear award and that it could go to
9 anybody; and we tried to look at this thing; and so,
10 if my stepmom contacted and wants to, she could take
11 back everything on here; and so we have to go back and
12 get a modification in order to prevent that.
13 Otherwise, it's basically still hers. That agreement
14 didn't really mean anything. It was all defective is
15 my understanding.

16 Q. Okay. When you say it's your understanding
17 that there wasn't a clear award, help me understand
18 what you mean when you say that.

19 A. Well, I mean, we -- we hired some
20 high-powered attorneys that we thought knew what they
21 were doing; and -- and they didn't understand -- they
22 didn't know nothing about trusts or probates, so they
23 got us into a deal that -- that impacted us and hurt
24 us; and so we're trying to resolve the issue; and so
25 it's just been a big -- you know, it's been a big

14

1 fight. I mean, nothing has been settled on this case.
 2 I mean, we're still dealing with my stepmom. We were
 3 promised a divorce from her and everybody walk away
 4 and not never have to deal with -- deal with them
 5 again and basically go our own ways; and this deal was
 6 not the deal that -- that we were promised; and so we
 7 were lied to and deceived to by our ex-attorneys; and
 8 I mean, I don't think they gave it the attention that
 9 they should have given it because they were busy
 10 jet-setting, going to Hawaii, going to California to
 11 try cases out there when they should have been taking
 12 care of our case; and, I mean, it's just very
 13 frustrating that they can give attention to somebody
 14 else's case and take care of their case; but then they
 15 got us into this really bad deal. They didn't
 16 understand how -- how -- how -- they didn't understand
 17 how this trust worked, and they should have -- they
 18 should have given it the right attention that it
 19 needed to be given, and so that's what Sarah Pacheco
 20 is doing is that she's trying to make this -- make
 21 this right so we are able to accept -- able to get
 22 something out of the deal. Otherwise, my
 23 understanding is my stepmom could claw everything back
 24 and do that; and so, I mean, a lot of the things
 25 during this case is that we weren't able to get any

15

1 information from our stepmother, you know. I mean,
 2 she only plays when it's only benefiting her; and so
 3 it's just been a lot of -- I mean, this has just been
 4 very horrid and dealing with all the stress from this
 5 case. I mean, it's just been a nightmare dealing with
 6 -- I mean, we're not -- it's never ended with our
 7 stepmother; and so we've just had, you know -- I mean
 8 we're not even really in control of, I mean, how the
 9 things are going. I mean, it's just basically this
 10 whole MSA was a sham that we signed; and so that's all
 11 I could see from there.

12 Q. I want to be sure that you and I are
 13 communicating well today. So, in your long answer,
 14 when you say we and us, I assume that you mean you and
 15 your sister, Caroline. Is that -- am I correct?

16 A. Hmm. Yes.

17 Q. You mentioned, I believe, that you and your
 18 sister have been hurt and impacted, I believe were the
 19 two words that you used. Tell me how you and your
 20 sister have been hurt and impacted.

21 A. Been impacted -- I mean, if you've been -- I
 22 mean, like I said, I mean, this thing is just a waste
 23 of life to deal with. I mean, I can never get this
 24 time back. I mean, you know, attorneys could bill a
 25 lot of money for things; and, I mean, they do because,

16

1 you know, you guys wear expensive suits and can charge
 2 a lot of money for it; but, you know, I can't get any
 3 compensation for my time. I mean, this is like -- you
 4 know, it's like I feel like I'm working for them, like
 5 I'm a slave to the attorneys; and, you know, they were
 6 supposed to get me a result; and they promised they --
 7 they made a lot of promises; and they didn't deliver;
 8 and so I was looking for what they made as promises
 9 and delivering them; and that's what I thought that
 10 that's what their duty was is to like work for us, not
 11 work for -- for my stepmom.

12 Q. Any other ways that you can think of where
 13 you and your sister have been hurt or impacted?

14 MR. KASSAB: Object to form.

15 A. Well, I mean, the family dynamics. I was
 16 hoping to get a clean break and not have to deal with
 17 my stepmom on these tax things where she would dump
 18 taxes on me. I mean, I can't even keep a bank account
 19 with how -- how many times I get like I.R.S.
 20 collections. Like my stepmom says she sends me a
 21 check, never sends it to me, and then goes to the
 22 I.R.S. and says that she paid me money that she never
 23 paid me. And, I mean, I told the attorneys that I
 24 wanted that to stop; and then even after this I still
 25 get sent some bill that -- to collections when I was

17

1 assured by my attorneys that, hey, if they did that,
 2 they would go to bat for me. And then after that
 3 agreement was signed, they just were done. You know,
 4 they wanted the MSA; and they were done; and they --
 5 it just didn't seem like any of the terms of the
 6 agreement meant anything. Like, hey, if you're going
 7 to say your word, why don't you keep your word instead
 8 of like making -- making promises and then not being
 9 able to fulfill them? And so I felt cheated and
 10 deceived by that because, I mean -- and then, you
 11 know, looking at, you know, how many things I've had
 12 to deal with my stepmom over the years. She just
 13 used -- she used that trust to control my sister and I
 14 even though she wasn't sending me, you know, funds.
 15 She wasn't doing anything in there, but it was just
 16 like something that was a tax thing where she could
 17 just go and weaponize it and do that, and so now she
 18 still has all the control, and now we've got a duty to
 19 her. So I can't be doing that.

20 I didn't sign up to be a trustee in the
 21 agreement; and I had no idea that this agreement gave
 22 me a bunch of obligations to my stepmom, to other
 23 people. I wasn't looking for that. I was looking for
 24 a cash walkaway and not having to deal with other
 25 people again. I mean, so I was pretty much looking

18

1 for just taking some -- you know, I thought, you know
2 -- I mean, the attorneys told me straight-up that this
3 was a cash deal and that it was going to be a walkaway
4 and that we wouldn't have anything to deal with on
5 there. They said, hey, you're getting cash in your
6 pocket.

7 And, hey, I'm willing to pay -- you
8 know, I'm willing to pay a contingency for that; but I
9 didn't know how many times I got lied to and then
10 finding out in this Hancock report that there was all
11 these errors, you know, like one error after another,
12 all the sloppy work. Things that -- we asked them not
13 to leave a stone unturned -- I mean, at least I wanted
14 to know the full picture because, I mean, I know back
15 when my dad was talking, you know, in the '80s when he
16 put us in this trust, that he said it was worth 30
17 million back then back in -- back in the -- like 1990;
18 and so he said it was worth 30 million; and he told me
19 that, that it was worth 30 million. And then we kept
20 getting all these lowball things, and so I felt that
21 my attorneys withheld information that should have
22 been -- they should have been transparent and open on
23 this information, and instead they wanted to sell us
24 like one product, and they didn't -- they didn't allow
25 us to see what other opportunities were there, and

20

1 to, as you said, when you say your word, keep your
2 word?

3 A. Well, I think if you're a professional and
4 you got like some -- you earn something like a big law
5 license that's allowing you to be hold out in that
6 community like that, then you should be held at a
7 certain standard and, you know, have a certain duty of
8 care to your clients and, you know, exercise some
9 ethics. I mean, you know, I think -- I think that
10 some people, they got to have -- they got to have
11 ethics in order to get a license for a law license;
12 and that's my understanding of the law is that the
13 legal profession has -- has certain ethics and
14 responsibilities to their client that if you're -- if
15 you hire an attorney that you expect the attorney to
16 have this level of ethics that they're going to --
17 they're going to do what they're going to do. They're
18 going to present you offers that -- that they may not
19 like; but -- but it may be good for the client; and
20 they may -- they may make a difference; or, you know,
21 they may like not look out for their -- they're going
22 to put their client's interest above their own
23 interest. Is that -- is that what you were asking?

24 Q. No. Let me repeat my question. Do you
25 think it's important to, as you say -- do you think

19

1 then we did find out through other experts we talked
2 to that, hey, there was this thing. You could have
3 done this.

4 And there was a lot more money on the
5 table that we just walked away from that we were left
6 in the dark; and, I mean, I don't mean to speak bad of
7 them, I mean, because I thought, you know, some were
8 really nice guys; but -- but I thought they were
9 experts; and that's what I was -- that's what I
10 thought I hired was an expert, you know, like a
11 legal -- you know, they're like legal -- legal
12 beagles. You know, they know -- or sharks. I mean, I
13 thought that the sharks were supposed to work for me,
14 not go and turn around and work with my stepmother and
15 do that; and that's what it just seemed like. They
16 would go and side on another side and just like chum
17 in the water and try to take advantage of their
18 clients; and that's what I feel, like I was taken
19 advantage; and I was only looking for an attorney that
20 believed in me and that was going to do what -- what I
21 asked them to do, not -- not -- not look out for their
22 own interests or look out for my stepmom's interest.
23 I thought they were looking out for my stepmom's
24 interest over my interest.

25 Q. (BY MR. LITTLE) Do you think it's important

21

1 it's important when you say your word to keep your
2 word?

3 MR. KASSAB: Object to the form.

4 MR. SUAZO: Objection; form.

5 A. As -- can you rephrase that question?

6 Q. (BY MR. LITTLE) Well, I'm using your
7 phraseology.

8 A. Okay.

9 Q. In your long -- one of your long, long
10 answers, you made a comment about when you say your
11 word, you should keep your word.

12 A. Uh-huh.

13 Q. That may not be the perfect quote, but it
14 was words to that effect.

15 A. Okay.

16 Q. So I'm asking you: Is that something that
17 you think people should do; when you say your word,
18 you keep your word?

19 MR. KASSAB: Object to form.

20 A. I think in the -- in the legal realm of like
21 what my expectations of my intent for my attorneys is
22 that if they said something, they should -- they
23 should do it and, you know, keep -- keep that promise.

24 Q. (BY MR. LITTLE) What about -- I'm sorry.

25 A. And so that's what I was -- that's what I

22

1 was looking for in this deal, that if something was
2 with the agreement that they were going to keep the
3 agreement. Not say like, hey, we're done with this
4 agreement; and it's already been signed and -- right
5 there.

6 Q. Does the same rule apply to you? When you
7 say your word, should you keep your word?

8 MR. SUAZO: Objection; form.

9 A. It depends on the situation.

10 Q. (BY MR. LITTLE) What's a situation in which
11 you could say your word but then not keep your word,
12 and it would be okay?

13 MR. KASSAB: Object to form.

14 A. Okay. Name one situation, you're asking?

15 Q. (BY MR. LITTLE) Yes, sir.

16 A. I mean, some people try to keep a time. You
17 know, you say you'll be here at 0800; and you show up
18 at 0801. I mean, you could always try; but you get
19 traffic. So sometimes that would be like a situation
20 like that.

21 Q. Okay. Other than just being one minute late
22 for a meeting or a date, is there any other situation
23 in which you think it's okay to say your word but then
24 not keep your word?

25 MR. KASSAB: Object to the form.

23

1 MR. SUAZO: Objection; form.

2 A. Hmm. Well, I think on critical things you
3 should do your best, if possible, to keep your word.

4 Q. (BY MR. LITTLE) Do you as Richard Allison
5 do your best to keep your word when you say your word?

6 A. I -- I do my best as I can possible.

7 Q. You mentioned something in one of your long
8 answers about working for the lawyers. Let's talk
9 about work. What do you do for a living?

10 A. What do I do for a living?

11 Q. Yes, sir.

12 A. I mean, does it -- I mean, I'm not -- I'm
13 not working for a living.

14 Q. Do you have a job?

15 A. I mean, I do like -- I mean, I volunteer.

16 Q. Where do you volunteer?

17 A. There's a lot of different places.

18 Q. Name a couple for me.

19 A. Well, I do stuff with Veterans mostly.

20 Q. Do you do anything to earn a paycheck?

21 A. I don't really work for a paycheck.

22 Q. When was the last time you earned any money?

23 A. Hmm. Like getting like a -- on the payroll?

24 Q. Anything. Worked at a grocery store, drove
25 for Uber, mowed a yard, anything in the world you can

24

1 think of to make money. When was the last time you
2 did something to make money?

3 A. Well, I mean, help people out with some
4 things.

5 Q. Like what?

6 A. Just like work on their stuff or....

7 Q. What kind of stuff do you work on?

8 A. I mean, I could fix a computer, work on
9 electronics. I mean, I don't know.

10 Q. When was the last time you earned some money
11 working on somebody's computer or electronics?

12 A. I haven't -- I mean, sometimes I don't -- I
13 mean, I'll work on something. I don't expect to get
14 paid.

15 Q. But my question was: When was the last time
16 that you did get paid to do anything?

17 A. Hmm. I guess I've got to think about that
18 because I'm not sure when.

19 Q. Well, it's, what, close to the middle of
20 October? Have you done anything to earn any money so
21 far in 2023?

22 A. I've been sitting in this conference room
23 for the last few days, so I don't think I could earn
24 money while I'm sitting here. I mean, you guys are
25 racking up the bills.

25

1 Q. Well, but that leaves ten months and a week
2 and an odd number of days before that in 2023. So
3 what about during those ten months and however long?

4 A. Hmm.

5 Q. Have you earned any money in 2023?

6 A. Yeah. I mean --

7 MR. SUAZO: Objection; form.

8 A. -- I'm not expecting to earn any money.

9 Q. (BY MR. LITTLE) But my question was a
10 little bit different. Not whether you were expecting
11 to but whether you had.

12 A. Uh-huh. I mean, I might have got a few
13 dollars helping some people out.

14 Q. What would you have done in 2023 to make a
15 few dollars helping someone out?

16 A. Well, I mean, doing some -- some handiwork
17 or working on, you know, something. I don't know.

18 Q. Tell us how much money you've earned so far
19 in 2023 at various jobs or whatever it is that you
20 might do to help people out or fix things to make a
21 living.

22 A. I mean, I don't -- I don't keep track of
23 that.

24 Q. Do you think you've made a thousand dollars
25 yet this year?

26

1 A. No.
 2 Q. Where do you live?
 3 A. I live in a place.
 4 Q. What's the place?
 5 A. I live out of state.
 6 Q. Well, do you live in a house? Do you live
 7 in an apartment? Do you not have a house or an
 8 apartment?
 9 A. Yeah. I live in a room.
 10 Q. Where is that room located?
 11 A. Oh, it's in a -- it's in California.
 12 Q. Is it an apartment that you have?
 13 A. No.
 14 Q. Do you just live with a buddy?
 15 A. Well, I got a friend.
 16 Q. But I guess I was kind of trying to
 17 understand where it is that you live.
 18 A. Uh-huh.
 19 Q. So help me out. Usually I don't get a lot
 20 of pushback when I ask somebody what they do for a
 21 living or when I ask them where they live --
 22 A. Okay.
 23 Q. -- so I'm not sure -- I'm just trying to
 24 understand, Mr. Allison.
 25 A. Well, I just like to keep that confidential

28

1 Q. Is the room in something that you might call
 2 a homeless shelter?
 3 A. I mean, it's next to one.
 4 Q. Well, I mean, you say you've got a room. I
 5 mean, do you -- do you live in a building; or do you
 6 just kind of live on the streets?
 7 A. Well, I live in a building.
 8 Q. You do live in a building?
 9 A. Yes.
 10 Q. Okay. Is it like a big, abandoned, vacant
 11 building; or how is it? Tell me more about your room
 12 and the other men or women who live around you. I'm
 13 just trying to understand.
 14 A. Well, I mean, I just live in a transient
 15 area.
 16 Q. So do you just live in a building in a small
 17 room with a bunch of other people who don't really
 18 have a house or an apartment or something like that to
 19 go home to?
 20 A. I mean, I really don't want to talk about
 21 my -- my home situation. It's rather embarrassing,
 22 and I'm embarrassed about it. So I really don't want
 23 to talk about what I'm embarrassed about, and that's
 24 what it seems like you're bringing is that you're
 25 trying to talk about something that because I live --

27

1 to make sure that it's not getting passed to my --
 2 I've had problems with harassment and other things;
 3 and that's why I was doing this -- this lawsuit was to
 4 get a clean break from certain people out of my life
 5 so I wouldn't have to deal with them. I just like to
 6 keep -- live alone and be left alone, not be messed
 7 with by people.
 8 Q. Okay. Well, I'm not -- I won't ask you for
 9 your address necessarily, although this is
 10 confidential. So just tell me about the room. Tell
 11 me where you live, Mr. Allison.
 12 A. Yeah. Okay. I'll tell you. I sleep --
 13 I've slept on a couch for 12 years. So, if you want
 14 to know about that, I could use a new couch. I mean,
 15 the couch has holes in it that I've been living on;
 16 but it's the only thing I could sleep on is a couch;
 17 and -- and I can't -- you know, I can't -- I don't --
 18 don't have enough space for a bed, you know, what they
 19 give me. I mean, it's like you're in a place. So, I
 20 mean, I don't want to -- I just like to stay away from
 21 people.
 22 Q. Is the room where you sleep on a couch, is
 23 it in kind of like a halfway house?
 24 A. I don't know what you mean by a halfway
 25 house.

29

1 I live less than what you have and that it's going --
 2 you guys are trying to shame me on it.
 3 Q. I'm not trying to embarrass you. I'm not
 4 trying to shame you. Like I said, I usually don't get
 5 pushback from people when I ask them their job or
 6 where they live.
 7 A. Uh-huh.
 8 Q. I'm trying to understand. If you could just
 9 kind of get me to the end of the road, then we could
 10 move on to the next topic.
 11 A. Okay.
 12 Q. But I feel like just personally you're kind
 13 of being a little bit evasive and trying to keep
 14 information from me.
 15 A. Uh-huh.
 16 Q. And that's why I keep following up. So
 17 maybe if you could just lay out the answer for me in a
 18 confidential deposition, you and I can move on to the
 19 next topic.
 20 MR. SUAZO: And let me object to the
 21 sidebar and the form.
 22 I mean, is it fair to say that you're a
 23 disabled --
 24 MR. LITTLE: No, no. I don't want you
 25 answering for him.

30

1 MR. SUAZO: I know. I'm not.
 2 MR. LITTLE: We're not going to have
 3 speaking objections and answers. I'm not deposing you
 4 unless you want to get sworn in.
 5 MR. SUAZO: Okay. I'll pull back.
 6 MR. LITTLE: I'm not fussing. I just --
 7 it's a simple question, but I would like to deal with
 8 the witness in my way. If you feel like you've got to
 9 object, you certainly have the right to --
 10 MR. SUAZO: You've got it.
 11 MR. LITTLE: -- pursuant to the Rules.
 12 MR. SUAZO: I saw your questioning to
 13 him of get me to a finish line, and I was trying to
 14 interloop to do that, but I'm going to step back
 15 because you want to do it.
 16 MR. LITTLE: I do.
 17 MR. SUAZO: That's fair.
 18 MR. LITTLE: All right.
 19 Q. (BY MR. LITTLE) So just help -- get me to
 20 the finish line, Mr. Allison, because we've really got
 21 other things that we need to talk about today.
 22 A. Uh-huh.
 23 Q. I have no desire to spend time on this topic
 24 with you, I can assure you.
 25 A. Uh-huh.

31

1 Q. So can you just kind of lay it out there for
 2 me and just tell me what's going on, and then we'll
 3 move on?
 4 MR. SUAZO: Objection; form.
 5 Other than what you've already explained
 6 to him.
 7 A. Okay. What was the question?
 8 Q. (BY MR. LITTLE) I'm just trying to
 9 understand. You've talked about a room. You've
 10 talked about sleeping on a couch. You've told me that
 11 it's in a building. I've asked you if it's a home or
 12 an apartment complex or if you live with a buddy; and
 13 rather than have me fish in all these different
 14 places, if you'll just tell me where you live and tell
 15 me where this room is and the couch that you sleep on,
 16 then I'll know. Then we can move on.
 17 A. Uh-huh. Okay. I didn't -- I didn't
 18 understand the question. What's the question again?
 19 Q. Tell me where you live.
 20 A. I mean, what do you mean by tell? I mean,
 21 are you saying my address because you said first you
 22 weren't going to ask me for my address. Now you're
 23 saying tell me where you live. So I don't -- I don't
 24 understand the question you're asking.
 25 Q. I'm not asking for your address. I'm just

32

1 trying to understand where it is that you live,
 2 Mr. Allison.
 3 A. Oh, describe?
 4 Q. Yes, sir.
 5 A. Okay.
 6 Q. I mean, I'm not asking for you to say the
 7 same thing over and over again. I'm just trying to
 8 figure out what your living situation is.
 9 A. Okay. I live in San Diego, so....
 10 Q. In a -- be more specific.
 11 A. Okay. An old building.
 12 Q. What's in the old building? Is it an
 13 apartment building?
 14 A. I mean, they've got -- they've got units and
 15 converted rooms.
 16 Q. So do you have your own unit?
 17 A. I don't have my own.
 18 Q. How many other people stay in your unit?
 19 A. Well, I mean, right now there's one more;
 20 and they're going to be putting some other people.
 21 Q. You don't -- you're not in jail, are you,
 22 like incarcerated somehow when you talk about unit?
 23 A. Why are you saying I'm in jail? I'm here.
 24 Q. Yeah. No. I'm just -- I'm just not --
 25 MR. LITTLE: Strike that.

33

1 Q. (BY MR. LITTLE) So tell me about this unit
 2 where one other person sleeps.
 3 A. I mean, that's what they call them.
 4 Q. Who is they?
 5 A. I guess the building people.
 6 Q. Do you pay to sleep in this unit?
 7 A. I give them some of my money.
 8 Q. How much do you have to pay to sleep there?
 9 A. I would rather not say.
 10 Q. Well, do you pay by the month?
 11 A. I have an agreement with them on some
 12 things.
 13 Q. Tell me about your agreement.
 14 MR. KASSAB: Object to form.
 15 MR. SUAZO: Let's --
 16 I think you've answered enough.
 17 Let's move on to something more germane.
 18 I mean, we've spent a lot of time on this; and I think
 19 he's given you a good description. He lives in a home
 20 with some units, and there's somebody living there
 21 with him, and he doesn't make money. He doesn't have
 22 a job. I mean, I think we're --
 23 MR. LITTLE: Okay.
 24 MR. SUAZO: -- kind of beating the horse
 25 here.

34

1 MR. LITTLE: Okay.
 2 MR. SUAZO: You know, what's your --
 3 what's your rental agreement?
 4 MR. LITTLE: It's a speaking objection,
 5 so --
 6 MR. SUAZO: What's your rental
 7 agreement?
 8 MR. LITTLE: I'm going to -- my last
 9 question stands. If you're going to instruct him not
 10 to answer --
 11 MR. SUAZO: Yeah. I'll instruct you not
 12 to answer.
 13 THE WITNESS: All right.
 14 Q. (BY MR. LITTLE) Are you going to follow
 15 your lawyer's advice and not answer my last question?
 16 A. Yes.
 17 Q. All right. Is there anything else that
 18 you're willing to share with us about your living
 19 conditions or your living situation other than what
 20 you've already told us?
 21 MR. KASSAB: Object to form.
 22 A. I mean, I keep -- I care about my -- I need
 23 to protect myself and stay safe and don't need it
 24 being divulged out to other people that will put my
 25 life in danger or put me at risk.

35

1 Q. (BY MR. LITTLE) Do you think if people knew
 2 where you lived that your life would be in danger?
 3 A. Yes.
 4 Q. There was talk -- you sat through your
 5 sister Caroline's deposition yesterday, right?
 6 A. As much as I could.
 7 Q. Okay. There was talk yesterday about an
 8 e-mail where you have an FBI file. Do you have an FBI
 9 file, Mr. Allison?
 10 A. Do you have the document?
 11 MR. SUAZO: Objection; form.
 12 Q. (BY MR. LITTLE) No. I just remember there
 13 was something about you having an FBI file. Do you
 14 have an FBI file?
 15 A. Everybody in this room has an FBI file.
 16 Q. Do you know what's in your FBI file?
 17 MR. SUAZO: Objection; form.
 18 A. No, because they're holding it back from me.
 19 Q. (BY MR. LITTLE) Have you asked the FBI to
 20 give you the form that they -- the file that they have
 21 on you?
 22 A. I can't -- I can't answer that.
 23 Q. Is the reason why you feel like your life
 24 would be in jeopardy if your living situation was
 25 disclosed -- does it have anything to do with your FBI

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1 file?
 2 MR. SUAZO: Objection; form. I don't
 3 understand --
 4 MR. LITTLE: That's all. Objection;
 5 form is all you're getting.
 6 MR. SUAZO: I don't understand --
 7 MR. LITTLE: So it's a yes or a no
 8 question.
 9 MR. SUAZO: No, no, because I can
 10 interject when it becomes harassing; and I don't see
 11 how the existence or nonexistence of an FBI file is
 12 relevant to a fee dispute here.
 13 MR. LITTLE: Okay. We'll --
 14 MR. SUAZO: So I'm going to instruct you
 15 not to answer beyond all of the information that
 16 you've already provided.
 17 Q. (BY MR. LITTLE) You asked me if I had a
 18 document, Mr. Allison.
 19 (R. Allison Exhibit No. 2 was marked.)
 20 Q. (BY MR. LITTLE) I'm showing you what we
 21 have marked as Exhibit 2 to your deposition. I
 22 believe that it was marked yesterday as Exhibit 16 to
 23 Ms. Allison's deposition, but I'm not entirely sure.
 24 MR. SUAZO: I recognize the thumb at the
 25 top.

37

1 Q. (BY MR. LITTLE) Exhibit 2 to your
 2 deposition is a string of text messages involving you
 3 and your sister, Caroline; and it looks like also
 4 Mr. Abaza. Do you see that?
 5 (Phone interruption.)
 6 A. Where is that on here? I don't see that.
 7 THE WITNESS: Is somebody calling? Is
 8 that -- who are they calling?
 9 MR. SUAZO: Maybe we can unplug this
 10 thing.
 11 MR. KASSAB: I think it's this right
 12 here that's going off. He's going to unplug it.
 13 Q. (BY MR. LITTLE) The only reason I held up
 14 my hand, Mr. Allison, is because I didn't know if that
 15 was some kind of speakerphone or something that was
 16 about to answer or go off where somebody might be able
 17 to hear our conversation.
 18 A. Uh-huh.
 19 Q. So we're good now.
 20 A. All right.
 21 Q. So, up in the top left corner, it says
 22 Messages - Caroline Allison & Rich Allison & Nick
 23 Abaza. Do you see that?
 24 A. Yes, sir; I do.
 25 Q. It starts off with a text message from you

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1 which is a big yellow thumbs-up. Do you see that?

2 A. Yes, sir.

3 Q. And then there are -- the next box is a text

4 message from you that was sent at September 21st of

5 2020 at 4:03 a.m. Do you see that?

6 A. Yes, sir.

7 Q. Do you have a cell phone that you can send

8 and receive text messages on?

9 A. Yes, sir; I do.

10 Q. Can you tell whether this might be a series

11 of text messages that came from your phone, or do you

12 not know one way or the other?

13 A. I mean, I don't -- I'm no expert on

14 determining this; but it may have came.

15 Q. All right. It says Robin called Marilyn;

16 and Marilyn, I understand, is your ex-mother-in-law?

17 A. Yes, sir.

18 Q. So you have three children with your ex-wife

19 Kim, true?

20 A. Yes, sir.

21 Q. And Marilyn is Kim's mom?

22 A. Yes, sir.

23 Q. Do you want --

24 A. I got water right here.

25 Q. Okay. Do you remember sending this text

39

1 message that we're looking at in Exhibit 2 to your

2 deposition?

3 A. Yes, sir.

4 Q. Why had you -- so had you reached out to

5 Marilyn to get information from her about a

6 conversation that she had with your stepmother Robin?

7 A. No, sir. She reaches out to me usually.

8 Q. Did Marilyn call you and mention to you that

9 she had had a conversation with your stepmother Robin,

10 and she told you about that conversation?

11 A. Yes, sir.

12 Q. Okay. Your text message indicates that

13 Robin said she offered Caroline all the buildings in

14 March, and Caroline refused.

15 Did I read that correctly?

16 A. Yes, sir.

17 Q. Then it says the buildings are falling apart

18 and not worth fixing, and Robin will not loan any

19 money to fix them up.

20 Did I read that correctly?

21 A. Yes, sir.

22 Q. Is that statement true? Did you understand

23 that the buildings were falling apart and not worth

24 fixing back in September of 2020?

25 MR. SUAZO: Objection; form.

40

1 A. I mean, there was a lot of information being

2 withheld; and -- and I think, with this text message,

3 this was information that was coming from -- from my

4 stepmother complaining that through her attorney,

5 Collins, that offers were being made and that somehow

6 I didn't -- I didn't hear about this. So this was

7 something that I was passing on to my sister to find

8 out if she knew about it because -- and then

9 apparently my sister didn't know anything about it

10 either; and so we found out that a lot of things that

11 Robin was making offers through her attorney to our

12 attorneys and it wasn't getting to us; and then, when

13 I would ask our attorneys, it wasn't -- they didn't

14 seem to know about it.

15 Q. (BY MR. LITTLE) Actually what happened is

16 that no such offer was ever made, and Mr. Trevino and

17 Mr. Borunda both at different times explained to you

18 that there was no offer made at mediation. Isn't that

19 actually what happened?

20 MR. KASSAB: Object to form.

21 MR. SUAZO: Objection; form.

22 A. No, sir. That's not my understanding.

23 Q. (BY MR. LITTLE) Well, the sentence that I'm

24 asking about, the buildings are falling apart and not

25 worth fixing, is that your personal opinion; or are

41

1 you relaying information that you received from

2 somebody else?

3 MR. SUAZO: Objection; form.

4 A. Sir, I'm just relaying that information,

5 what I got from my ex-mother-in-law.

6 Q. (BY MR. LITTLE) Okay.

7 A. And just letting people know I was trying to

8 do this open communication. That's why I put Nick on

9 there and my sister, so I could find out that, hey,

10 everybody is on the same books. We're all trying to

11 work together here and come up with a solution; and so

12 that's what -- that's my thing was is just like, okay,

13 I've got information from my ex-mother-in-law. She

14 volunteered some information saying it was like a back

15 channel and that Robin was trying to make a deal, give

16 us these apartments; and then we weren't hearing

17 anything on it; and then at the time we were trying

18 to -- we wanted to get the apartments. You know, I

19 mean, if they're falling apart, they're real estate;

20 and obviously somebody -- you can fix them or -- you

21 know, her thing is she doesn't like to fix things.

22 So, if something is not 100 percent perfect, she's

23 going -- she doesn't -- she doesn't want to handle

24 that kind of stuff. She doesn't like to get her --

25 her nails dirty.

42

1 MR. LITTLE: Objection; nonresponsive.
 2 Q. (BY MR. LITTLE) The next sentence says
 3 Robin further said she has all the dirt on the kids
 4 and myself and thinks we are unworthy of anything.
 5 Did I read that correctly?
 6 A. Sir, that's her personal opinion. I'm just
 7 relaying the information.
 8 Q. I understand, but I did read the text
 9 correctly, true?
 10 A. Yes, sir. I mean, that's her personal
 11 opinion for Robin.
 12 Q. The next sentence says she tried to help,
 13 but we are incompetent and will waste any money in our
 14 hands.
 15 Did I read that correctly?
 16 A. Sir, that's Robin's opinion; and I'm just
 17 relaying the message.
 18 Q. I understand. We're going to come back and
 19 talk to it.
 20 A. Okay.
 21 Q. I promise you.
 22 A. All right.
 23 Q. For right now I'm just asking if I read it
 24 correctly.
 25 A. Okay.

43

1 Q. So, if you'll just answer with a yes or no,
 2 we'll move unimaginably faster.
 3 A. Okay.
 4 Q. Okay?
 5 A. Okay.
 6 Q. All right. So did I read that sentence
 7 correctly?
 8 A. Which -- can you read that back again?
 9 Q. Yes, sir.
 10 A. I got distracted.
 11 Q. No worries. Now that you kind of -- now
 12 that you kind of understand, I'll back up a couple of
 13 sentences.
 14 A. Okay.
 15 Q. And my only question for right now is
 16 whether I'm reading these correctly. All right?
 17 A. All right.
 18 Q. All right. Robin further said she has all
 19 the dirt on the kids and myself and thinks we are
 20 unworthy of anything.
 21 Did I read that correctly?
 22 MR. SUAZO: Objection; form, asked and
 23 answered.
 24 A. Yes.
 25 Q. (BY MR. LITTLE) She tried to help, but we

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1 are incompetent and will waste any money in our hands.
 2 Did I read that sentence correctly?
 3 A. Yes.
 4 Q. Marilyn asked her about splitting and
 5 settling the case, and Robin was not interested.
 6 Did I read that correctly?
 7 A. Yes.
 8 Q. She felt there is a lot of bad things she
 9 can use in court to make us unworthy of the trust.
 10 Did I read that correctly?
 11 A. Yes.
 12 Q. Then there's another box with a second text;
 13 and it says -- and, again, for right now I'm just
 14 asking you if I read these correctly; and then we'll
 15 come back to them. Okay?
 16 Basically Robin wants to use the court
 17 trial to drag us through the mud.
 18 Did I read that correctly?
 19 A. Yes.
 20 Q. Hunter is at a critical time of needing to
 21 complete Ph.D. program, and Robin is going to play
 22 psychological games with Hunter and cause a lot of
 23 embarrassment.
 24 Did I read that correctly?
 25 A. Yes.

45

1 Q. She is threatening to destroy us, and Kim
 2 handed a lot of damaging evidence.
 3 Did I read that correctly?
 4 A. Yes.
 5 Q. And then the last sentence is apparently she
 6 obtained my FBI file.
 7 Did I read that correctly?
 8 A. Yes.
 9 Q. All right. So it seems to me that in
 10 these -- in these text messages, you are talking to
 11 your sister and Mr. Abaza about, among other things,
 12 the prospects of working out a settlement with Robin.
 13 Would you agree or disagree?
 14 MR. SUAZO: Objection; form.
 15 A. I mean, I'm not sure -- I don't have the
 16 time line to understand your question.
 17 Q. (BY MR. LITTLE) This text message was sent,
 18 as we talked about earlier, on September 21, 2020, at
 19 4:03 a.m. So that's our time line.
 20 MR. KASSAB: Objection; form.
 21 MR. SUAZO: Object to form.
 22 A. Can you say the question again?
 23 Q. (BY MR. LITTLE) Yes, sir. In these text
 24 messages, are you communicating with one of your
 25 lawyers, Mr. Abaza, and your sister about the topic of

46

1 your stepmother Robin potentially agreeing to a
2 settlement?

3 **A. Sir, it looks like in the text that there's**
4 **a settlement discussed.**

5 Q. All right. And then Marilyn -- it says your
6 ex-mother-in-law asked Robin about settling the case;
7 and I guess what Marilyn told you was, quote, Robin
8 was not interested, close quote.

9 Is that true?

10 MR. SUAZO: Objection; form.

11 Q. (BY MR. LITTLE) These are Marilyn's words
12 to you that you're repeating to the group in this
13 text.

14 **A. Sir, I'm sure you know about women. Most**
15 **women just say what they feel, not say what they mean**
16 **factually.**

17 Q. Well, I understand that you may not be able
18 to know whether Robin meant what she said; but at
19 least the representation that Marilyn made to you was
20 that Robin in September of 2020 was at least allegedly
21 not interested in a settlement with you and Caroline.
22 Is that what was relayed to you?

23 **A. I mean, that -- sir, that's like in the**
24 **moment. I mean, she was telling people or posturing**
25 **people; but she may have been feeling that in the**

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1 **moment; but, you know, other days she could want to**
2 **just settle the case. I mean, she's angry about**
3 **something; and then the next day she's like back on**
4 **there. I wasn't talking. I don't talk to Robin. I**
5 **mean, my attorneys were talking -- talking with**
6 **Collins; and, you know, when you got this thing where**
7 **you're not -- nobody is communicating, then -- then**
8 **that's the issue you run into is that -- that you**
9 **don't know what the other side is saying; and then, if**
10 **she's having a conversation, she knows that**
11 **conversation is going to get to me; and that's why she**
12 **talked to -- to my ex-mother-in-law, so that, I guess,**
13 **that -- that information could get passed.**

14 Q. Can you help me understand how your ex-wife
15 could obtain a copy of your FBI file, but you have
16 apparently been unable to obtain your FBI file?

17 MR. SUAZO: Objection; form.

18 To the extent you know.

19 **A. I'm -- I'm sure you know how to do it.**

20 Q. (BY MR. LITTLE) Well, I don't know that I
21 would be sure of that; but my question to you is
22 different. My question was: Do you know or
23 understand how your ex-wife Kim could obtain your FBI
24 file when you personally have not been able to obtain
25 your own FBI file?

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1 MR. SUAZO: Objection; form.

2 **A. Sir, I mean, my ex-wife thinks that -- I**
3 **mean, she -- she's come up with a lot of crazy stories**
4 **over the years and thinks that I'm some -- some -- she**
5 **just thinks a lot of --**

6 MR. SUAZO: Listen. The question is:
7 Do you know how she got --

8 MR. LITTLE: Raul, you don't let me
9 interrupt answers.

10 **A. Just ask the question. What was the**
11 **question?**

12 MR. SUAZO: Well, you've already
13 objected nonresponsive; and we're already an hour in;
14 and we're like getting -- I'm trying to expedite this.

15 MR. LITTLE: But you don't --

16 MR. SUAZO: So listen -- listen to his
17 question.

18 THE WITNESS: Yes, sir.

19 MR. SUAZO: And if you want to go ahead
20 and finish your answer.

21 THE WITNESS: Okay.

22 MR. LITTLE: Raul, you and I are going
23 to be respectful to each other; but don't interrupt a
24 witness' answer. You know that you can't do that, so
25 I'm just asking you to comply with the Rules.

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1 MR. SUAZO: Okay.

2 MR. LITTLE: That's all I'm doing.

3 MR. SUAZO: All right, Joe.

4 MR. LITTLE: So we'll leave it there.

5 MR. SUAZO: Okay. But, listen, you need
6 to stop --

7 MR. LITTLE: I'm going to ask him my
8 question --

9 MR. SUAZO: No, no, no. Hang on a
10 second. You started a dialogue with me, so now I'm
11 going to respond. I'm noticing -- we've already
12 objected to the line of inquiry, and we instructed him
13 not to answer, but you think you can come back and
14 start giving him some more information and start going
15 into the same line --

16 MR. LITTLE: You objected as relevance.

17 MR. SUAZO: Hang on. You just
18 interrupted me. You just told me not to interrupt
19 someone; and now you just interrupted me, Joe. So
20 let's just be mindful of what you're telling people to
21 do and follow your own rules. So ask your question.

22 Answer the question that he asks. He's
23 asked you to answer his questions. He's objected as
24 nonresponsive before. So, when he asks a question,
25 answer his question. There you go.

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1 Q. (BY MR. LITTLE) That would be helpful. My
2 question -- I think for the third time -- is simple.
3 Do you know or understand how your ex-wife Kim could
4 obtain your FBI file when you apparently have not been
5 able to obtain your own file from the FBI?

6 MR. KASSAB: Object to sidebar. Object
7 to form.

8 A. No, sir. I have no idea.

9 Q. (BY MR. LITTLE) Your lawyer made a comment
10 earlier that your FBI file might be irrelevant. I
11 disagree. Is there something in your FBI file that
12 you didn't want to come out that would have made you
13 want to settle your lawsuit with Robin as opposed to
14 take it to trial?

15 MR. SUAZO: Objection; form.

16 A. Sir, I have no idea what's in my FBI file.
17 My ex-wife has talked about it for years.

18 Q. (BY MR. LITTLE) When Robin says that
19 allegedly, quote, she has all the dirt on the kids and
20 myself, close quote, what dirt is there on you that
21 Robin might think that she has?

22 MR. SUAZO: Objection; form.

23 A. Sir, I have no idea.

24 Q. (BY MR. LITTLE) Fair. Were you concerned
25 when you wrote this e-mail in September of 2020 that

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1 Q. Yes, sir.

2 A. I see it.

3 Q. Would you agree with me that when your
4 sister uses the word she in that sentence, she's
5 referring to your stepmother Robin?

6 MR. SUAZO: Objection; form.

7 A. Sir, I'm not going to speak on that issue
8 because I had to sign some agreement so I'm not going
9 to say anything, speak any bad on my stepmom.

10 Q. (BY MR. LITTLE) No. I'm not asking you to
11 violate the non-disparagement agreement. I'm just
12 asking you if you would agree that the she in your
13 sister's text is referring to Robin, and obviously
14 this text message was written by your sister before
15 the non-disparagement agreement was in place. So
16 there's no risk that your sister would have been
17 violating any kind of agreement by writing this text.

18 MR. SUAZO: Objection; form.

19 A. And your question is, sir?

20 Q. (BY MR. LITTLE) Do you agree with me if I
21 assume that when Caroline says she is quite evil, she
22 means Robin is quite evil?

23 MR. KASSAB: Object to form.

24 MR. SUAZO: Objection; form.

25 And if you think you're going to be

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1 if your lawsuit against Robin went to trial that
2 negative information about you and/or your children
3 was going to be brought up in that trial?

4 MR. KASSAB: Object to form.

5 A. Sir, can you restate that question where I
6 can understand it?

7 Q. (BY MR. LITTLE) Yes, sir.

8 A. Because that's kind of confusing to me.

9 Q. I'll certainly try. When you wrote this
10 text message back in September of 2020, were you
11 concerned that if your lawsuit against your stepmother
12 Robin went to trial that negative information about
13 you and/or your children would come out at the trial?

14 MR. KASSAB: Object to form.

15 A. No. I think it's -- people -- I'm not too
16 concerned about it.

17 Q. (BY MR. LITTLE) Okay.

18 A. Maybe it would be embarrassing to my kids;
19 but, you know, maybe they got some things they're
20 embarrassed about; but, you know, who doesn't?
21 Everybody has got something. No family is perfect.

22 Q. There's an e-mail from your sister that says
23 she, meaning Robin, is quite evil. Do you see the
24 sentence she is quite evil?

25 A. Are you referring to the text?

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1 violating a non-disparagement clause by answering it,
2 then address that accordingly.

3 A. I mean, it's already on the paper, so you
4 can take it as-is. I can't really answer it without
5 getting myself into trouble.

6 Q. (BY MR. LITTLE) You and your -- you were
7 aware back in September of 2020 and perhaps earlier
8 that Robin was having conversations with your ex-wife
9 Kim, right? You knew that?

10 MR. SUAZO: Objection; form.

11 A. I have no proof that they were having
12 conversations, sir; but they may have. I don't know.

13 Q. (BY MR. LITTLE) Well, you were concerned
14 about it because you expressed a concern to your
15 lawyers that Robin was trying to get your ex-wife
16 and/or your children to testify against you in a
17 trial; and you and your sister were kind of fighting
18 that back and trying to keep that from happening. You
19 do remember that, don't you?

20 MR. KASSAB: Object to form.

21 MR. SUAZO: Objection; form.

22 A. Yeah. It may have been discussed.

23 Q. (BY MR. LITTLE) All right. Why don't we go
24 ahead and take a break? We'll come back in just a few
25 minutes after you've had a break.

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1 THE VIDEOGRAPHER: Off the record,
 2 11:21.
 3 (Break at 11:21 a.m. to 11:41 a.m.)
 4 (R. Allison Exhibit No. 3 was marked.)
 5 THE VIDEOGRAPHER: We're back on the
 6 record at 11:41.
 7 Q. (BY MR. LITTLE) Mr. Allison, are you
 8 rested, comfortable, and ready to go forward?
 9 A. Yes, sir.
 10 Q. All right. I'm showing you what we've
 11 marked as Exhibit 3 to your deposition. At the top of
 12 the page is an e-mail from you to Mr. Borunda with a
 13 copy to Mr. Abaza. The e-mail is dated Sunday,
 14 January 2, 2022. Do you see that?
 15 A. Yes, sir.
 16 Q. And I guess you address your message to
 17 Jorge. For right now I'm just asking you if I read
 18 these sentences correctly; and then, like before,
 19 we'll come back to discuss the substance of it. Okay?
 20 Is that good with you?
 21 A. Yes, sir.
 22 Q. Okay. Jorge, yes, not so good holidays.
 23 The issue is that there is a legal hold preventing me
 24 from gaining access to the account.
 25 Did I read that correctly?

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1 A. Yes, sir.
 2 Q. Fidelity advised they have to err on the
 3 side of caution to protect account, and Robin is the
 4 only authorized person.
 5 Did I read that correctly?
 6 A. Yes, sir.
 7 Q. All right. And you understand that we're
 8 talking about the Fidelity brokerage account for
 9 Minaki Limited Partnership that had somewhere around 9
 10 or 10 or \$11 million in it, right?
 11 A. Yes, sir.
 12 Q. All right. Mr. Allison, when you wrote this
 13 e-mail on January 2, 2022, did you believe that it was
 14 true?
 15 A. Yes, sir.
 16 Q. You know now that by January 2, 2022, your
 17 sister had transferred all the money out of the
 18 Fidelity account and put it into a Schwab account such
 19 that there was like \$3.52 or something like that left
 20 in the Fidelity account. You know that now, right?
 21 MR. KASSAB: Object to form.
 22 A. What's the question, sir?
 23 Q. (BY MR. LITTLE) I understand that when you
 24 wrote this e-mail back in January of 2022, you
 25 believed that it was true. However, you know now that

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1 this e-mail is not true, don't you?
 2 MR. SUAZO: Objection; form.
 3 A. Getting stuff out of Fidelity? What's your
 4 question?
 5 Q. (BY MR. LITTLE) You know now that your
 6 statements in this January 2, 2022, e-mail are not
 7 true, don't you?
 8 MR. SUAZO: Objection; form.
 9 MR. KASSAB: Object to form.
 10 A. I mean, I'm not -- I'm not sure what you
 11 mean by that, sir. It says it in the e-mail.
 12 Q. (BY MR. LITTLE) You know now that in
 13 December of 2021 your sister took the cash and the
 14 assets in the Fidelity account that you're talking
 15 about and moved those assets to a Schwab account. You
 16 know that that happened, don't you, Mr. Allison?
 17 MR. SUAZO: Objection; form.
 18 A. I -- I can't remember exactly what was going
 19 on back at that time.
 20 Q. (BY MR. LITTLE) Okay. As you sit here
 21 today, do you know one way or the other whether your
 22 sister transferred the assets from the Fidelity
 23 account to a Schwab account in December of 2021?
 24 MR. KASSAB: Object to form.
 25 A. I -- I don't know that, sir.

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1 Q. (BY MR. LITTLE) Did you personally do
 2 anything to transfer the assets in the Fidelity
 3 account to that Schwab account?
 4 A. Sir, we never had access to this Fidelity
 5 account.
 6 Q. Well, tell me what you mean by that.
 7 A. Robin per the agreement was supposed to
 8 cooperate and turn over -- turn over -- cooperate with
 9 us and turn over the account, and she just didn't
 10 cooperate. I went over to that Fidelity office like
 11 many times trying to see what was going on, and then
 12 they would call her up on the phone and just wasn't
 13 getting the cooperation from her. And we had some guy
 14 from Fidelity saying, well, if she's not -- it's up to
 15 her to turn over the account.
 16 Q. Do you know what today's date is?
 17 A. What's -- can you ask the question again?
 18 Q. Do you know what today's date is?
 19 A. I don't know what today's -- I mean, what
 20 are you asking?
 21 Q. I'm asking if you know the date today.
 22 A. I can look at it.
 23 Q. Yeah. Today is October the 12th, I think,
 24 of 2023. Does that sound about right to you?
 25 A. Yes, sir.

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1 Q. Do you know whether there are any assets in
2 the Fidelity account for Minaki as of today, October
3 12, 2023?

4 MR. SUAZO: Objection; form.

5 A. I don't -- I don't know, sir.

6 Q. (BY MR. LITTLE) Do you know one way or the
7 other whether there are assets for the Minaki Limited
8 Partnership that are currently in a Schwab account as
9 of today, October 12, 2023?

10 A. You have the statements.

11 Q. I'm asking what you know. You're right. I
12 have the statements. I'm asking -- I'm not asking
13 about a statement, though. I'm asking about your
14 knowledge.

15 A. I mean, I don't -- for me, I don't -- I
16 mean, I don't look at that stuff; but....

17 Q. Were you listening to the part of your
18 sister's deposition yesterday where we talked about
19 her transferring the assets from the Fidelity account
20 to a Schwab account as of -- I think it was December
21 27, 2021?

22 MR. KASSAB: Object to form.

23 A. I -- I mean, I might have been around. I
24 don't recall it.

25 Q. (BY MR. LITTLE) Did your sister ever tell

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1 approximately \$10.8 million in assets out of a Minaki
2 Fidelity account into a Minaki Schwab account? Did
3 she ever tell you that? Yes or no.

4 MR. KASSAB: Object to form.

5 A. I don't recall.

6 Q. (BY MR. LITTLE) I know you probably didn't
7 hear every single word of your sister's deposition
8 yesterday, but do you remember the part of her
9 deposition where she and I talked about the
10 6-million-dollar loan that was made from the Minaki
11 Schwab account to an entity called Jet Lending?

12 A. Yeah, I don't recall that.

13 Q. As you sit here today on October 12, 2023,
14 do you know whether \$6 million from the Minaki Schwab
15 account was loaned to an entity called Jet Lending,
16 LLC?

17 A. Can you state that question again?

18 Q. Yes, sir. And I'm intending this question
19 to be a yes-or-no question.

20 A. All right.

21 Q. So, as you listen to it, see if you think
22 that you think that you can answer it yes or no
23 because I'm trying to ask it in a way that you can.
24 As you sit here on October the 12th of
25 2023, do you know that in early January 2022

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1 you that she took approximately \$10.8 million in
2 assets and transferred them from the Minaki Fidelity
3 account into a Minaki Schwab account?

4 MR. KASSAB: Object to form.

5 A. I mean, are you -- are you asking me is --
6 who are you asking?

7 Q. (BY MR. LITTLE) Let these sirens pass by
8 because I'm not sure --

9 MR. SUAZO: We don't have double-pane
10 windows like you probably have at the Lyric Centre.

11 Q. (BY MR. LITTLE) Yes. I'm asking you this
12 question: Did your sister Caroline ever tell you that
13 she transferred approximately \$10.8 million in assets
14 out of the Minaki Fidelity account into a Minaki
15 Schwab account?

16 MR. KASSAB: Object to form.

17 A. I mean, it sounds like a trust issue.

18 Q. (BY MR. LITTLE) Well, it could be. It's
19 also a yes-or-no question. So see if you can hear my
20 question --

21 A. Okay.

22 Q. -- and answer it with a yes or a no.

23 A. All right.

24 Q. Did your sister Caroline ever tell you that
25 somewhere around December 27, 2020, she transferred

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1 \$6 million was taken out of the Minaki Schwab account
2 and loaned to an entity called Jet Lending, LLC?

3 MR. SUAZO: Objection; form.

4 A. Hmm. I'm not sure on the dates; but is that
5 a date back in 2023, you said?

6 Q. (BY MR. LITTLE) No, sir. The transfer was
7 made in early January of 2022.

8 A. Of 2022?

9 MR. SUAZO: Same objection.

10 Q. (BY MR. LITTLE) Yes, sir.

11 A. Yeah, I don't know.

12 Q. I didn't hear your answer.

13 A. I don't know.

14 Q. Okay. As you sit here today on October 12,
15 2023, what can you tell me about the money that was
16 transferred from the Fidelity account for Minaki into
17 the Schwab account for Minaki? Tell me what you know
18 about what happened to that money.

19 MR. KASSAB: Object to form.

20 A. Sir, I was coughing, so I didn't get all --
21 that was a really long, complex answer for me to
22 hear -- or question.

23 Q. (BY MR. LITTLE) Let me -- let me try to
24 break it down or --

25 A. All right.

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1 Q. We'll let -- try to let the coughing cease.
 2 A. I'm all loaded up on cough medicine, so I'm
 3 taking a lot of cough medicine.
 4 Q. Well, since you put that out there, let me
 5 ask this question just to be sure we're on the same
 6 page. Are you taking any medication today that would
 7 affect your ability to understand my questions and to
 8 answer my questions honestly?
 9 A. No.
 10 Q. Do you know whether the Minaki Limited
 11 Partnership has a brokerage account at Schwab?
 12 A. Yes.
 13 Q. Do you know how much money is in that
 14 account as of today, October 12, 2023?
 15 A. I don't know.
 16 Q. Do you have any idea? I certainly wouldn't
 17 expect you to know the answer to the exact dollar and
 18 cent.
 19 A. Yeah. I don't know.
 20 Q. Do you know whether it's \$500 or \$500,000 or
 21 \$5 million?
 22 MR. KASSAB: Object to form.
 23 A. Yeah. I could ask, but I don't know. I
 24 have no idea. Don't care.
 25 Q. (BY MR. LITTLE) So -- what was the last

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1 MR. SUAZO: Objection; asked and
 2 answered.
 3 A. I mean, I've -- I mean, I don't -- I don't
 4 recall back then, so....
 5 Q. (BY MR. LITTLE) So you don't recall when
 6 you found out that that transaction had happened?
 7 MR. KASSAB: Object to form.
 8 A. I don't know.
 9 Q. (BY MR. LITTLE) Are you a co-trustee of The
 10 Allison Family Trust?
 11 MR. SUAZO: Objection; form.
 12 A. Sir, apparently, I mean, after this case, I
 13 got appointed a trustee. There was no qualifications.
 14 I mean, you know, some guy like me, a disabled Veteran
 15 and putting, you know -- that lives in a homeless
 16 community got put in charge of a trust; but I -- I
 17 didn't sign up to be part of that; but, yeah, I guess
 18 I got put as a co-trustee under threat of going to
 19 jail, you know, contempt of court or whatever crap
 20 they were trying to throw on me to do this thing. So
 21 I didn't want -- I didn't want to be a trustee. I
 22 never asked to be signed up to be one, and apparently
 23 I'm not a good enough trustee or whatever it was, but
 24 nobody trained me to be a co-trustee.
 25 Q. (BY MR. LITTLE) You mentioned being a

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1 part?
 2 A. I said I have no idea, and I don't care.
 3 Q. There was a transaction listed on one of the
 4 Minaki Schwab account statements where \$6 million was
 5 transferred out of that account and loaned to an
 6 entity called Jet Lending, LLC. Do you know anything
 7 about that at all, Mr. Allison?
 8 MR. SUAZO: Objection; form.
 9 A. Can you restate the question?
 10 Q. (BY MR. LITTLE) Yes, sir. Do you know
 11 anything about the 6-million-dollar loan that Minaki
 12 made to an entity called Jet Lending, Inc.?
 13 A. Yeah. I mean, that's some trust deal we
 14 were -- I think we were advised to do that.
 15 Q. Who advised you to do that?
 16 A. We got a trust attorney; and we got -- we
 17 had -- we were required to do some diversification
 18 thing because they said that the account -- how it was
 19 held was in risky things; and, you know, you've got to
 20 diversify.
 21 Q. Did your sister tell you that she took
 22 \$6 million out of the Minaki Schwab account and loaned
 23 it to Jet Lending, LLC, back in January of 2022?
 24 MR. SUAZO: Objection; form.
 25 MR. KASSAB: Object to the form.

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1 Veteran. You were dishonorably discharged from your
 2 military service, true?
 3 A. Sir, you can insult me like that?
 4 Q. It's not an insult. It's a question.
 5 A. I mean, I don't know where you get your
 6 information on that. Is there a document?
 7 Q. No. I just asked you: Were you
 8 dishonorably discharged?
 9 A. Sir, that is false; and that's insulting,
 10 too.
 11 Q. So were you honorably discharged?
 12 A. Yes, sir; I was.
 13 Q. Okay. You mentioned that you are, if I
 14 heard you correctly, a co-trustee of The Allison
 15 Family Trust. Who are the beneficiaries of that
 16 trust?
 17 MR. SUAZO: Objection; form.
 18 A. Sir, I mean, that's why we got Sarah
 19 Pacheco; and we're in court trying to handle this
 20 thing. I mean, my stepmom is the beneficiary of it.
 21 I mean, as far as my understanding is, it's her trust.
 22 She wrote herself in it. That's why we were in court
 23 trying to get this thing, and it looked like we got --
 24 we got played. You know, we got tricked. I mean, her
 25 attorney outmaneuvered our attorneys and got us in

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1 some agreement that should have never been -- been
2 done.
3 Q. (BY MR. LITTLE) Do you have an
4 understanding as to whether your sister Caroline is a
5 co-trustee of the trust with you?
6 A. Say your question again, sir.
7 Q. Do you have any understanding as to whether
8 your sister is a co-trustee of The Allison Family
9 Trust with you?
10 A. Sir, I don't really understand what a
11 co-trustee is. I mean....
12 Q. Has your sister ever offered to take some
13 money out of the trust and get it to you so that you
14 can move out of a homeless shelter?
15 I know you're looking at your phone. Do
16 you need to take a break to check a message?
17 A. I've got -- I've got to take a break, sir;
18 but I'll continue with what you've got.
19 Q. Well, I am titled to get an answer to my
20 question --
21 MR. SUAZO: Finish the line. Finish the
22 line.
23 Q. (BY MR. LITTLE) -- and then we'll let you
24 take a break if you've got something on your phone
25 that you need to attend to. Totally fair.

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1 So I'm not taking any money out of a trust that's not
2 mine.
3 Q. So my question was a little bit different.
4 It was: Has your sister ever offered to get some
5 money out of that trust and get it to you so that you
6 could maybe get an apartment or something? Is your
7 answer to that question no?
8 A. No.
9 Q. I know this is -- I know what you mean, but
10 the record is not going to be clear. So, yes, I am
11 correct that your answer to that question is no?
12 A. Uh-huh.
13 MR. SUAZO: Objection to form.
14 Q. (BY MR. LITTLE) True?
15 A. Okay. Can you say that question again?
16 Q. Yeah. I'm going to ask you the question yes
17 or no --
18 A. Okay.
19 Q. -- and then that way you can just say yes or
20 no, and there won't be any mistake on the record or
21 any conceivable misunderstanding.
22 MR. SUAZO: Go ahead and ask it.
23 Q. (BY MR. LITTLE) So yes or no. Has your
24 sister ever offered to take some money out of the
25 trust and get it to you so that, for example, you

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1 A. Okay.
2 Q. Has your sister ever offered to take some
3 money out of the trust and get it to you so that you
4 could, for example, move out of this homeless shelter
5 that you mentioned and maybe get your own apartment or
6 something?
7 MR. KASSAB: Object to form.
8 A. Sir, I was instructed by the trust attorney
9 Sarah Pacheco that we couldn't make any personal
10 distributions to ourselves from this trust because the
11 money is not ours. It's not my money. It belongs to
12 the trust. So it's not my personal money to be taking
13 out of this trust. They made it clear to me that it's
14 not my money, and that's how I'm treating it. It's
15 not my money.
16 Q. (BY MR. LITTLE) Who made that clear to you?
17 A. Well, I mean, I wish I would have been told
18 all this stuff back when that MSA agreement; but my
19 attorneys didn't understand the agreement to tell us
20 like what that agreement meant to us. They told us
21 what they thought it meant; and then I find out from
22 other experts like this -- like Crouch. He told us
23 like, hey, this is not our personal money. It doesn't
24 belong to us. It belongs to the family trust and that
25 we can't personally take any money out of that trust.

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1 could move out of this homeless shelter and get you an
2 apartment or something like that?
3 A. No, sir.
4 Q. Okay. You had something on your phone, and
5 you said you needed to take a break, and I told you I
6 would respect that.
7 A. All right. Thank you, sir.
8 Q. So we're going to do that.
9 A. Thank you, sir.
10 THE VIDEOGRAPHER: Off the record at
11 12:06.
12 (Lunch break at 12:06 p.m. to 12:54
13 p.m.)
14 (Ms. Allison exits the deposition.)
15 THE VIDEOGRAPHER: We're back on the
16 record at 12:54.
17 Q. (BY MR. LITTLE) Mr. Allison, are you rested
18 and at least relatively comfortable and ready to move
19 forward with your deposition?
20 A. Yes, sir, as best I can.
21 Q. I would like to start off talking about when
22 you first became aware of Mr. Abaza and Mr. Borunda
23 and were considering the possibility of hiring them to
24 pursue litigation against your stepmother Robin.
25 Okay?

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1 A. Yes, sir.
 2 Q. Do you generally remember the time frame
 3 when you began to consider pursuing litigation against
 4 your stepmother?
 5 A. I recall some of it.
 6 Q. Well, so, as I recall, your dad died in
 7 April of 2017, correct?
 8 A. Yes, sir.
 9 Q. And then there was maybe a period of a
 10 couple of years where people were just kind of waiting
 11 and seeing and not necessarily talking about going
 12 down the legal road. Is that generally fair?
 13 A. What do you mean by that, sir?
 14 Q. That there was a couple of years after your
 15 dad died before you and Caroline considered the
 16 possibility of pursuing litigation against your
 17 stepmother Robin.
 18 A. Can you say that question again?
 19 Q. Sure. Let me try to put some dates on it.
 20 Your dad died in April of 2017, and it's my
 21 understanding that there weren't conversations about
 22 you and your sister hiring lawyers and suing your
 23 stepmother Robin until maybe somewhere around March of
 24 2019 which was almost a couple of years later. Am I
 25 right on the time frame, or do you remember it

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1 A. Hmm. So most of the conversations were with
 2 third -- third parties that -- it was basically third
 3 parties, not directly with me.
 4 Q. Who were the third parties? Just if you can
 5 kind of shorten the -- just kind of give me the
 6 answer, and that way maybe I can avoid having to ask a
 7 number of questions to try to get the story.
 8 A. Oh, okay. Well, I mean, like my -- my
 9 ex-mother-in-law, my ex-wife. They were more
 10 interested in getting money, I guess, out of that
 11 thing than I was.
 12 Q. Do you recall having conversations with
 13 Robin or whether there were conversations involving
 14 third parties about whether Robin was or was not doing
 15 a good job of managing assets like the apartment
 16 complexes?
 17 A. Yes, sir. I heard some conversations like
 18 that.
 19 Q. Okay. Did you have concerns about Robin,
 20 you know, running things into the ground, if you
 21 wanted to put it that way?
 22 A. Well, I mean, according to my dad, she was
 23 an amazing businesswoman; and I -- I really don't want
 24 to be saying that comment because I don't want to be
 25 in violation of anything.

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1 differently?
 2 A. I mean, that could be a possibility.
 3 Q. During the first couple of years after your
 4 dad died, did you have any direct communication with
 5 Robin?
 6 A. Yes.
 7 Q. On what topics?
 8 A. What do you mean?
 9 Q. What did you and Robin talk about?
 10 A. I didn't -- I mean, I didn't have much to
 11 say. She said some things, and I really don't recall
 12 what -- what we discussed.
 13 Q. Was there ever a request from you that Robin
 14 give you money from your dad's estate?
 15 MR. SUAZO: Objection; form.
 16 A. Can you say the question again?
 17 Q. (BY MR. LITTLE) Sure. During the first
 18 year or two after your dad died, did you ever ask
 19 Robin for money?
 20 A. I don't recall doing.
 21 Q. I think there were some communications about
 22 whether Robin was going to provide money to your
 23 children for their educations. Do you remember
 24 talking to your stepmother about that in the first
 25 couple of years after your dad passed?

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1 Q. Well, and, again, it's not going to violate
 2 anything for you to tell me your thoughts from 2017 or
 3 2018 or 2019 before the non-disparagement agreement
 4 was signed. As we've talked about, this is
 5 confidential anyway.
 6 A. Uh-huh. Yeah, I just don't know if that
 7 applies or how that thing applies on there. So it's a
 8 little bit confusing to me; but, you know, I get
 9 accused of stuff all the time that I violate
 10 something; and I don't want to be stepping into
 11 something.
 12 Q. All right. Well, let's address it this way
 13 hypothetically. Hypothetically, if you had some
 14 concerns about Robin running things into the ground,
 15 just to use that phrase, would you feel like you
 16 couldn't say that in the deposition today because you
 17 might be accused of running afoul of some
 18 non-disparagement agreement? I'm just saying
 19 hypothetically if you thought that.
 20 A. I mean, it is a concern when somebody is
 21 wasting money. I mean, I don't like wasting stuff. I
 22 mean, I don't like it when somebody doesn't -- wastes
 23 food and all that. So, I mean, that does bother me
 24 that somebody is going to waste something when they
 25 could have been a little bit more responsible with it.

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1 Q. Did you understand that when your dad died,
2 Robin was put in charge of the money in your dad's
3 estate and had discretion as to whether she passed
4 some of that money out to you or to Caroline or to the
5 grandkids for things like educational expenses?

6 MR. SUAZO: Objection; form.

7 A. Can you say that question again?

8 Q. (BY MR. LITTLE) Yes, sir.

9 A. It's like a lot of words.

10 Q. And I'm trying to ask it in a way that's a
11 yes-or-no question.

12 A. Uh-huh. Okay.

13 Q. Maybe I'm succeeding, and maybe I'm not, but
14 I'm trying to make it a yes or a no. Okay?

15 A. All right.

16 Q. Did you understand after your dad died that
17 he had left Robin kind of in charge of the money, so
18 to speak, where it was her discretion or her choice
19 whether to give money to you or to Caroline or to the
20 grandkids for things like educational expenses?

21 A. Didn't make sense to me that he would leave
22 her in charge of something like that because he just
23 wasn't that type of person. He liked to keep things
24 separate and always made that clear with us.

25 Q. I understand that you may have disagreed

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1 documents that were left behind left Robin in charge
2 of the money, so to speak; and whether she gave any of
3 that money to you or your sister or the grandkids was
4 just up to her choice or her discretion?

5 MR. SUAZO: Objection; form.

6 A. Yeah. I don't know. I mean, I'm no legal
7 expert on -- on that type of thing to determine that
8 that is the issue. So I really can't answer that
9 question.

10 Q. (BY MR. LITTLE) Do you remember
11 conversations early on with Mr. Abaza and Mr. Borunda
12 to that effect that the paperwork that your dad had
13 left behind left Robin in charge of the money, so to
14 speak; but you disagreed with that and took issue with
15 that and ultimately were willing to pursue a
16 lawsuit --

17 A. Uh-huh.

18 Q. -- because you didn't think that that's what
19 your dad really would have wanted?

20 MR. SUAZO: Objection; form.

21 A. Yeah. It might have been a discussion at
22 the time. I'm really not sure.

23 Q. (BY MR. LITTLE) If you look back through
24 the documents of yours and your sister's lawsuit
25 against Robin, that was really the point of the

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1 with it or thought that he was influenced to do that;
2 but you did understand that, at least according to the
3 documents, that was the situation, that Robin was in
4 charge of the money; and whether she did or did not
5 share it with you or your sister or the grandkids was
6 up to her choice, her discretion?

7 MR. KASSAB: Objection; form.

8 Objection; asked and answered.

9 MR. SUAZO: Objection.

10 A. Can you rephrase that question?

11 Q. (BY MR. LITTLE) Sure. And, again, I'm just
12 looking for a yes or a no. I asked it to you before,
13 and you said that you didn't think your dad would want
14 to have done it that way, or it didn't make sense to
15 you that your dad did it that way. I totally
16 understand what you're saying. Okay?

17 A. Uh-huh.

18 Q. My question to you is different. Regardless
19 of whether you think that your dad was improperly
20 influenced to do it -- because I understand you may
21 have believed that. Okay?

22 A. Uh-huh.

23 Q. Regardless of that, you did understand when
24 your dad died that the documents that were left
25 behind, whether they were enforceable or not, the

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1 lawsuit against Robin, right? You understood that
2 your dad signed documents that gave Robin discretion
3 over the money?

4 A. Uh-huh.

5 Q. You and Caroline thought that that was
6 inappropriate and thought that that's not what your
7 dad really wanted to do and that Robin had
8 inappropriately influenced him. That was the whole
9 point of the lawsuit, right?

10 MR. SUAZO: Objection; form.

11 A. I think you mentioned some type of document?
12 Is there a document you can show me that has it on
13 there?

14 Q. (BY MR. LITTLE) No, not that I have. I'm
15 talking about the will and the trust document. Okay?
16 Those are the documents that I'm talking about.

17 A. Oh.

18 Q. So let me rephrase my question with that
19 kind of explanation. All right?

20 A. Uh-huh.

21 Q. So, to lay the groundwork, you understand
22 when I say -- if I use the term documents, I'm talking
23 about the will that your dad left and the trust
24 document that your dad left. Okay?

25 A. Yes, sir.

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1 Q. All right. The point of the lawsuit that
2 you and Caroline filed against your stepmother Robin
3 was that the documents, the will and the trust, gave
4 Robin discretion and control over your dad's money;
5 and you thought that was inappropriate. That was the
6 point of the lawsuit, right?

7 MR. SUAZO: Objection; form.

8 A. Yes, sir. I thought there was some -- I
9 thought it didn't seem like him to do something like
10 that or leave control. I mean, he had his, you know,
11 sister up in Canada, you know. He told us that she
12 was the trustee, and then Robin ended up being that
13 trustee, and he always kept things separate from
14 Robin, and he said he was always going to do that.

15 Q. (BY MR. LITTLE) And then, once you realize
16 after your dad -- after your dad has passed and you
17 and Caroline have a chance to read and understand the
18 documents, you understand that the documents are very
19 different than what you thought your dad would have
20 wanted and what your dad told you that he wanted,
21 true?

22 MR. SUAZO: Objection; form.

23 A. Yes, sir. I think the intent had been
24 changed from what he intended.

25 Q. (BY MR. LITTLE) By Robin?

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1 Q. Let me see if I can make it simpler. Give
2 me just one second.

3 A. Okay. Thank you.

4 Q. Let me see if this will help short-circuit
5 this, or maybe that's not exactly the right way to say
6 things.

7 MR. SUAZO: I think I got it.

8 (R. Allison Exhibit No. 4 was marked.)

9 Q. (BY MR. LITTLE) I'm showing you what we
10 marked as Exhibit 4 to your deposition. That is a
11 copy of the contract that you signed to retain
12 Mr. Abaza and/or Mr. Borunda to represent you. Do you
13 recognize this document?

14 A. Let me take a look at it, sir.

15 Q. Sure. I think your autograph maybe on the
16 last page which at the bottom -- or, I guess, it's the
17 next-to-last page which at the bottom says Caroline
18 Allison_000064.

19 A. Yes, sir. I see my signature.

20 Q. And is it your handwriting on this document
21 that's kind of made some notes in the margin, X'd out
22 a couple of things here and there? Is that your
23 handwriting?

24 A. Yes, sir. It looks like my handwriting. I
25 mean, are you talking about excluding already owned

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1 A. Yes, sir.

2 Q. You and Mr. Borunda and Mr. Abaza had
3 discussions about the terms of the contract that you
4 were going to sign to retain them to pursue this
5 lawsuit, right?

6 A. Do you have the paper?

7 Q. Again, I'm not talking about paper. I know
8 you saw your sister do that yesterday, but it's really
9 not applying to these questions.

10 A. Yes, sir.

11 MR. KASSAB: Object to the sidebar.

12 Q. (BY MR. LITTLE) You and Mr. Abaza and
13 Mr. Borunda had conversations about the contract that
14 you were going to sign to retain them to be your
15 lawyers and to pursue this lawsuit against Robin for
16 her inappropriate influence and all the things that
17 you were alleging in the lawsuit, right?

18 MR. SUAZO: Objection; form.

19 A. Sir, on the will and trust document?

20 Q. (BY MR. LITTLE) No, sir. I'm talking about
21 the contract that you signed to hire Mr. Abaza and
22 Mr. Borunda as your lawyers.

23 A. Sir, I mean, it just seemed like things got
24 changed. I don't know. I mean, it's just really
25 confusing to me.

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1 interest in the partnerships? Is that the one?

2 Q. It's a touch hard to read on these copies,
3 but yes. I'm talking about that and the other
4 handwriting. So what I was asking you earlier was
5 this: Before you signed this contract on June the
6 13th --

7 A. Let me see.

8 Q. -- 2019, did you talk about it with either
9 Mr. Abaza and Mr. Borunda?

10 A. Yes, sir. I'm thinking I might have had
11 conversations with them on it.

12 Q. Okay. I think there could have been some
13 e-mails back and forth where you indicated that you
14 had questions and that y'all had phone conversations
15 where they addressed your questions.

16 A. Uh-huh.

17 Q. Does that sound right to you?

18 A. It sure sounds reasonable.

19 Q. Okay. Then -- well, let's try it this way.

20 (R. Allison Exhibit No. 5 was marked.)

21 Q. (BY MR. LITTLE) I'm showing you what we've
22 marked as Exhibit No. 5 to your deposition; and while
23 you look at it, I'll tell you what I think it is; and
24 then you can look at it within that context; and maybe
25 it will help us move more quickly. I think that this

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1 is a later version of the contract that you signed.
2 After Mr. Abaza or Mr. Borunda incorporated those
3 handwritten changes on Exhibit 4, they typed your
4 changes into the contract and sent it back to you; and
5 you signed it again; and that's what we have as
6 Exhibit 5. Does that sound right to you?

7 A. Can you restate that again? I was looking
8 down for a second.

9 Q. Well -- and, I mean, really it's testimony
10 that's going to have to come from you in the form of
11 an answer rather than me in the form of a question;
12 but I understand this to be a second version of the
13 contract that you signed. Is that your understanding
14 as well?

15 A. I mean, I was confused why I had to do it.
16 Nobody explained it to me. They just told me that if
17 I didn't sign it, they weren't going to work with me
18 anymore. I got a call from Nick Abaza, and he told me
19 if I didn't re-sign it and that there was nothing
20 different in it. So I just went and signed it.

21 Q. And you specifically recall that
22 conversation with Mr. Abaza?

23 A. I remember a phone call with him.

24 Q. Do you remember him saying what you just
25 said in your answer?

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1 A. Yeah. That's what I thought, I mean, that
2 he wasn't going to work with me no more if I didn't do
3 it; but I thought that was like a year after or
4 something like he had me right in the middle of
5 something; and I don't recall exactly.

6 Q. And so, if Mr. Abaza said that to you,
7 rather than pushing back on some kind of threatening
8 language like that, you just went ahead and signed it
9 and sent it back to him?

10 A. Well, I mean, if you're going to have a --
11 lose an attorney, if an attorney wants to quit on a
12 case, it's better to -- you know, it's better to have
13 somebody instead of getting messed with with Collins.
14 I mean, Collins, he's a really powerful attorney. We
15 had our attorneys to try and protect us.

16 Q. So you felt like Mr. Abaza threatened to
17 quit; and because you felt like you couldn't afford to
18 be without a lawyer, you went ahead and let him
19 threaten you and signed this agreement?

20 (R. Allison Exhibit No. 6 was marked.)

21 A. Hmm. I guess. They're attorneys. They
22 know everything. I mean, they're more powerful -- I
23 mean, an attorney can do a lot of things to people.

24 Q. (BY MR. LITTLE) I'm going to show you what
25 we marked as Exhibit 6 to your deposition. It is a

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1 February 18, 2020, e-mail from Nick Abaza to you. Do
2 you see that?

3 A. Yes, sir.

4 Q. Okay. And for these next few questions, I'm
5 just asking if I'm reading the e-mail correctly.
6 We'll come back and talk about the substance, but for
7 right now I'm just asking if I'm reading the words on
8 the page correctly. Okay?

9 A. Okay.

10 Q. All right. The e-mail from Mr. Abaza to
11 you, which is copied to Mr. Borunda, says,
12 Mr. Allison, herein is restatement of our fee
13 agreement to incorporate your handwritten portions.
14 Please review and execute. If anything else needs to
15 be changed, please let me know so we can edit so that
16 we all have a clean copy.

17 Did I read that correctly?

18 A. Yes, sir.

19 Q. The next paragraph says I deleted Medicare
20 issues. I also deleted language on page 1 in
21 paragraph 4 that is no longer relevant as we
22 determined your case does have merit. I highlighted
23 and italicized the restated language. Chiefly, it was
24 language about excluding your current ownership
25 interest in the family partnership. With that said,

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1 we are also pursuing claims for any funds you may be
2 owed from those interests that would be subject to the
3 agreement.

4 Did I read the words in the e-mail
5 correctly?

6 A. Yes, sir.

7 Q. All right. So, at least in this e-mail, I
8 don't see any kind of threatening language to you. I
9 see a letter from your lawyer explaining what the
10 document is and telling you that if you want to make
11 additional changes, you can make the additional
12 changes. Am I missing something?

13 MR. SUAZO: Objection; form.

14 A. I mean, only you can determine what you're
15 missing.

16 Q. (BY MR. LITTLE) Well, no. I'm asking you.

17 A. I guess -- I mean, the e-mail is here. I
18 see it.

19 Q. Okay. So the e-mail is not consistent with
20 some threat that Mr. Abaza was going to quit on you if
21 you didn't sign this document, is it?

22 MR. KASSAB: Object to form.

23 A. Hmm. I mean, it's a different thing. I
24 mean, yeah, I don't -- I mean, I don't recall too much
25 on there.

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1 (R. Allison Exhibit No. 7 was marked.)
 2 Q. (BY MR. LITTLE) I'm showing you what we
 3 marked as Exhibit 7. In the middle of the page is
 4 your response to the e-mail that we marked as
 5 Paragraph [sic] 6. It's from a couple days later on
 6 February 20 of 2020; and you say -- and, again, I'm
 7 just asking if I read this correctly; and then we'll
 8 come back to the substance later. It says, Nick, is
 9 this the same contract I need to print out and sign?
 10 I can get it back to you by Tuesday. Will that work?
 11 Rich.

12 Did I read that correctly?

13 A. Yes, sir.

14 Q. Okay. And then, at the top of the page,
 15 Mr. Abaza responds copying Mr. Borunda, and he said
 16 it's revised restatement of the same agreement that
 17 incorporates your edits.

18 Did I read that correctly?

19 A. Was that from the previous exhibit that
 20 you're talking about?

21 Q. The top of page [sic] 7.

22 A. Page --

23 Q. Your e-mail to -- excuse me. I said page 7.
 24 It's Exhibit 7. So let me back up because I said the
 25 wrong word.

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1 MR. KASSAB: Object to form.

2 Q. (BY MR. LITTLE) Can you and I agree on
 3 that?

4 A. Yeah. I mean, we can agree, you know, most
 5 of it.

6 Q. Okay. What part of it can we not agree on?

7 A. I mean, I -- it just -- I get a little bit
 8 confused when -- I mean, it's been a while, so just
 9 trying to get my memory jogged up.

10 Q. Fair enough.

11 A. So....

12 Q. And if you take Exhibit 5 and look on the
 13 last page which at the bottom says CA000908. It
 14 should be page 5 of 5. There's a box up at the top
 15 with some handwriting in it. Do you see that?

16 A. Yes, sir.

17 Q. Is that your handwriting?

18 A. Yes, sir.

19 Q. And is that your autograph next to the X?

20 A. Yes.

21 Q. Okay.

22 (R. Allison Exhibit No. 8 was marked.)

23 Q. (BY MR. LITTLE) And I didn't see that I had
 24 this one, but I'll go ahead and show you Exhibit 8
 25 because that may make it even clearer. Exhibit 8 is a

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1 You see your e-mail that I read in the
 2 middle of Exhibit 7, right?

3 A. Uh-huh.

4 Q. Yes?

5 A. Okay.

6 Q. And then now I'm moving up to the top of
 7 Exhibit 7.

8 A. Oh, okay.

9 Q. And that's a response from Mr. Abaza to you
 10 that says it's revised restatement of the same
 11 agreement that incorporates your edits.

12 Did I read that correctly?

13 A. Okay.

14 Q. And, again, my question was just simply if I
 15 read that correctly.

16 A. Yes, sir.

17 Q. Okay. Now that you've seen Exhibits 6 and
 18 7, does it help refresh your memory that Exhibit 5 was
 19 a second version of the contract that you signed
 20 during -- in which your lawyers made a few changes
 21 including adding what was written out in your
 22 handwriting and typing it into the agreement just so
 23 that it was a little nicer and maybe more legible or
 24 whatever?

25 A. Uh-huh.

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1 February 25, 2020, e-mail from you back to
 2 Mr. Abaza --

3 A. Uh-huh.

4 Q. -- and Mr. Borunda that says, Nick, attached
 5 signed agreement. Please let me know if you need
 6 anything else. Rich.

7 Did I read that correctly?

8 A. Yes, sir.

9 Q. Okay. So now that I've seen the e-mail
 10 traffic back and forth I don't see anything
 11 particularly threatening or controversial about this.
 12 I just see that they sent you an amended agreement --

13 A. Uh-huh.

14 Q. -- kind of explained the changes. You had a
 15 couple of e-mails back and forth, and then you signed
 16 it. Do you think that's a fair characterization?

17 MR. SUAZO: Objection; form.

18 A. I mean, yeah. I mean, a few e-mails came
 19 back.

20 Q. (BY MR. LITTLE) Okay. In Exhibit 6
 21 Mr. Abaza said if anything else needs to be changed,
 22 please let me know.

23 A. Hmm.

24 Q. After you read over the contract and signed
 25 it again, did you -- do you remember saying anything

90

1 about anything that needed to be changed?

2 **A. I don't recall at this time.**

3 **Q. Okay. There's certainly nothing in the**

4 **e-mails that I've seen. Do you remember anything**

5 **about phone conversations back and forth where you**

6 **asked for additional changes or some additions or**

7 **deletions or anything like that? Do you remember that**

8 **happening in phone conversations?**

9 **A. Yeah, I don't recall.**

10 **Q. Okay. Fair enough. The agreement that we**

11 **marked as Exhibit 5 -- do you have that in front of**

12 **you -- this contract that you signed in, it looks**

13 **like, late February of 2020? Are you with me on**

14 **Exhibit 5?**

15 **A. Yes, sir.**

16 **Q. And just to make sure, if you go to the last**

17 **page, that's where we talked about your signature in**

18 **the little box at the top of the page, right?**

19 **A. Yes, sir. I see my signature.**

20 **Q. Okay. So you're not testifying that**

21 **somebody tricked you into signing this agreement or**

22 **made some kind of misrepresentation or committed fraud**

23 **to get you to sign this contract, are you?**

24 **A. It's got my signature on it.**

25 **Q. Did you read it before you signed it?**

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1 **A. I usually just listen to what they tell me.**

2 **Q. Well, but --**

3 **A. My attorneys told me like, hey, they're**

4 **supposed to be looking out for my interests and had my**

5 **back. So, I mean, I looked at things initially; and**

6 **then he told me, well, they made a few changes on**

7 **there. I just haven't had a chance to -- I guess I**

8 **never really thought to go back and look at the**

9 **original contract and what I wrote was actually in**

10 **there; but, I mean, I trusted -- trusted them; so I**

11 **took their word and signed it.**

12 **Q. And do you have any information as you sit**

13 **here in October of 2023 that there's something**

14 **different in that contract other than what we've seen**

15 **in the e-mails back and forth and what you may have**

16 **talked about on the phone with Mr. Abaza or**

17 **Mr. Borunda?**

18 **A. Not that I can think of.**

19 **Q. All right. So I want to move ahead to the**

20 **first mediation of your lawsuit and your sister's**

21 **lawsuit against Robin. That, I think, happened in**

22 **July of 2020. Do you -- do you remember the mediation**

23 **that I'm talking about? This is one where I think you**

24 **appeared by Zoom, not the one that you came to in**

25 **person.**

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1 **A. You said a Zoom mediation?**

2 **Q. Yes, sir.**

3 **A. Okay.**

4 **Q. The first mediation of the case, my**

5 **understanding is that your sister was present with the**

6 **lawyers; but you, I guess, were out in California and**

7 **were either on Zoom or some kind of -- participated**

8 **remotely, if you want to say it that way.**

9 **A. Uh-huh. Yes, sir. I mean, I was on some**

10 **Zoom thing and didn't seem like anything went on. I**

11 **didn't -- it didn't seem like nothing went on during**

12 **that. When I was on there, I couldn't see what was**

13 **going on; and so I was just confused. You know, I**

14 **didn't hear any offers, nothing.**

15 **Q. As a matter of fact, you had connection**

16 **problems. So you kept getting kind of cut out and**

17 **having to rejoin and then try to get back in and then**

18 **get cut off again. Do you remember that?**

19 **A. I don't recall that, sir.**

20 **Q. Okay. Fair enough. Let's move ahead to the**

21 **second mediation that you did attend in person in**

22 **Dallas. Right? That was in April of 2021. Obviously**

23 **you remember that one, right?**

24 **A. Yes, sir.**

25 **Q. Okay. Tell me what you remember about the**

93

1 April 2021 mediation which, I think, was in Dallas.

2 **A. I think so.**

3 **Q. Okay.**

4 **A. I don't know where the place was, so --**

5 **Q. Oh, no. I'm not asking you for the address**

6 **in Dallas. I just -- my understanding was it happened**

7 **in the city of Dallas. Right?**

8 **A. Possibly.**

9 **Q. Okay. Tell me what you remember of the**

10 **mediation that you attended personally in Dallas.**

11 **MR. SUAZO: Objection; form.**

12 **A. I mean, from what I recall, a lot of**

13 **nothing. It didn't go on for like -- like almost it**

14 **seemed like the whole day nothing went on; and, you**

15 **know, we were just sitting in some crowded room with a**

16 **bunch of people in a small room and just felt crowded**

17 **out and isolated. That's all I recall on the first**

18 **part of the day, and then -- then I just didn't want**

19 **to be there anymore.**

20 **Q. (BY MR. LITTLE) How were you feeling**

21 **crowded out and isolated at the same time because**

22 **those seem, to me, to be kind of different?**

23 **A. Well, I mean, it just didn't seem like --**

24 **like nothing was going on; and I don't like being in**

25 **someplace that -- it just was a small room.**

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1 Q. Who all was in the room with you?

2 A. I mean, I guess the attorneys. They were
3 taking turns being in the room; and then they were
4 talking to some other guy, this mediator guy over
5 there.

6 Q. Were there times where just you and Caroline
7 were in the room alone, the two of y'all?

8 A. I don't recall. I think -- I think we
9 always had people with us in the room.

10 Q. Do you remember that at some point in the
11 late afternoon or early evening you and Caroline left,
12 just the two of y'all, to go get dinner somewhere
13 together?

14 A. Yes. I guess as soon as -- I wanted to get
15 out of there; and they kept -- I think they left for a
16 few seconds; and then, as soon as they left, I was
17 like I don't see anybody here. Let's just go --

18 Q. I'm sorry. When you say they left, who are
19 you talking about?

20 A. The attorneys.

21 Q. Okay. All right.

22 A. Because that other guy, the mediator guy,
23 like they said we were court ordered to be there by a
24 judge; and -- and yeah. I was already done for the
25 day. I couldn't -- I couldn't do anything anymore.

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1 Q. So, I guess, my question was: Do you
2 remember that you and Caroline left by yourselves to
3 go eat dinner?

4 A. Yeah. I mean, nobody is bringing any food
5 over there. So, I mean, I was like expecting food to
6 be brought; and, man, I was hungry; and no -- nothing
7 to drink; and I was ready to go eat.

8 Q. All right.

9 A. I mean, if they're -- if nobody is going to
10 bring food and they expect me to be there and then I'm
11 getting told I violated some court order for walking
12 out of the place, I mean, that's what it just seemed
13 like to me is like, hey, I just wanted to get
14 something and, you know, go -- go outside someplace
15 because that place was stuffy, you know. Being stuck
16 in some lawyer's office all day, I would rather be
17 going someplace else, so went and left. I was done
18 for the day. I mean, I was pretty much done.

19 Q. Now, when you say somebody told you that you
20 were violating a court order, who told you that?

21 A. Well, I mean, Nick came and tracked us down
22 and told us we were in trouble; and we had to go back
23 to the office; and that mediator told us -- he told us
24 we were -- that he would tell Judge Copeland that we
25 didn't comply with the order; we left without

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1 permission; and -- and so I thought we were in big
2 trouble. You know, they didn't let us know that there
3 was any other -- so, I mean, you know, we were in
4 trouble when we came back. I mean, we came back when
5 he told us to come back; but, I mean, I didn't even
6 want to be there. I was already done. I told them I
7 was done.

8 Q. What else do you remember about the
9 mediation after you got back from dinner? And, I
10 guess, other than about -- I'm not asking you to
11 repeat what you've already said; but other than that,
12 is there anything else that you remember?

13 A. I mean, like I said, I already went to
14 dinner. My -- my sister already got out a -- you
15 know, we -- we had already drank a few glasses of
16 wine; and I was already like out. So I don't
17 really -- can you ask the question again?

18 Q. I just asked you if you remembered anything
19 else from that evening.

20 A. I mean, it was already late at night. It
21 seemed like it was after 10:00 or something. I mean,
22 it had already been a long day, so....

23 Q. Well, so, are you -- are you claiming that
24 you went out at dinner with your sister and got drunk?
25

MR. KASSAB: Object to form.

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1 A. I'm not saying I was drunk. I just said I
2 had some drinks.

3 Q. (BY MR. LITTLE) I mean, it will be in the
4 record; and you said what you said.

5 A. Yeah.

6 Q. My memory of what you said is that you had a
7 few glasses of wine, but maybe I'm -- maybe I'm
8 misremembering.

9 A. Yeah. I had some glasses of wine.

10 Q. Okay. Well, and so I'm saying: Are you
11 saying that by the time you got back to the mediation,
12 you were impaired in some way?

13 A. I mean --

MR. SUAZO: Objection; form.

15 A. I mean, I can't determine if I was impaired
16 or not. I just wasn't -- wasn't there mentally to
17 really think of like what was there. I couldn't
18 handle -- I already said I was at my handling point.
19 I mean, they already know I'm disabled. I'm limited
20 on -- I mean, I could do a certain thing for -- I'm
21 good for a number of hours; and then after that I'm
22 just too worn out to do anymore; and I told them I
23 didn't feel up for it -- for things and just didn't
24 have the energy anymore. I was already out of energy.

25 Q. (BY MR. LITTLE) That's the second time or

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1 maybe more that you've mentioned the term that you're
2 disabled. How are you disabled? What's your
3 disability?

4 A. Hmm. I'm not necessarily a doctor.

5 Q. Well, you're the one that used the word,
6 so...

7 A. Okay. Well, I mean, I get fatigued real
8 easy. So, I mean, I -- I don't know. I mean, you're
9 the lawyer, so I don't know. I got some physical
10 issues that I've got to deal with that I've got to
11 live with. I can't get a good night's sleep.
12 Sometimes, I mean, it just is a, you know, struggle to
13 do things.

14 Q. Your physical issues related to back pain?

15 A. Well, I mean, I deal with my back. I mean,
16 it's been a constant issue.

17 Q. Well, again, you're the one who used the
18 word disabled; so I'm just following up on what you
19 said and trying to understand what you mean when you
20 say that you're disabled. So that's all I'm looking
21 for --

22 A. Yes, sir.

23 Q. -- is what you mean when you use the word
24 disabled.

25 A. Yes, sir. I get fatigued. If that's what

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1 A. Oh, okay. Yeah. It just seemed like it was
2 the mediator and the attorneys. The mediator was very
3 adamant that we had to be there; and he kept referring
4 to the Judge, you know, that the Judge had ordered us
5 to be there, so we've got to be there. We're not free
6 to go.

7 So it felt like -- so, to me, it felt
8 like, you know, I'm under arrest being there; and so I
9 didn't feel comfortable being at that place; and then
10 I'm already worn out from being over there; and I was
11 just waiting for the day to get done. I mean, they
12 already ran out of the -- they didn't have anymore
13 drinks to be over there. There's no drinks. There's
14 nothing like really, you know, staying over there. I
15 mean, man, I just felt like that guy basically
16 was like -- he had poverty rations there. So, you
17 know, even the -- even the Salvation Army has better
18 snacks than that place.

19 Q. When you say that guy, you mean the
20 mediator?

21 A. Yeah, the mediator, yeah, the mediator.

22 Q. And, again, I'm not fussing in any way. I
23 just want to make sure I'm understanding like if you
24 just say he or she or they or something like that.

25 A. Okay.

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1 you're saying, yeah, fatigued --

2 Q. All right.

3 A. -- tired easily; and I just need more
4 recovery time.

5 Q. And when you say in your deposition that
6 you're disabled, that's what you mean, that you get
7 fatigued easily; and you take more time to recover?

8 A. Yes, sir. So I don't want to be sitting at
9 something all day and not getting any -- any relief;
10 and I asked them like, hey, can I go; and it just
11 seemed like we were just stuck in some room in
12 uncomfortable chairs and not -- not anything else out
13 there. I mean, they were like cheap-ass chairs in
14 there that were uncomfortable; and it was just hurting
15 my back; and I can't -- I couldn't be sitting around
16 someplace; and I told them; but they said, hey, you've
17 got to be here. I mean, this is some court-ordered
18 thing; and we've got to be there; and I wanted to get
19 out. I didn't like the sitting there, and I was
20 hoping like we could just go back, and they kept
21 telling us we weren't allowed to leave.

22 Q. And when you say they, who do you mean?
23 Because sometimes you've talked about the mediator and
24 sometimes you've talked about the lawyers, and I just
25 want to be sure I'm understanding you.

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1 Q. Right?

2 A. Yes, sir.

3 Q. Okay. So the lawyers mentioned to you that
4 -- I mean, you weren't in prison. If you wanted to
5 leave and go to sleep or whatever that, you know, at
6 least at some point in the evening, you were free to
7 do that, right? You remember the lawyers telling you
8 that?

9 MR. SUAZO: Objection; form.

10 A. I don't recall --

11 MR. SUAZO: Go ahead. You can answer.

12 A. Sir, I don't -- I don't recall them bringing
13 up that we were free to go. I mean, it sound like the
14 mediator said we had to be there during that time and
15 that we had to be present because my -- my stepmother
16 had been there; and if we walked out, it would look
17 really bad on us and reflect bad on us to the Court.

18 Q. (BY MR. LITTLE) Was that something earlier
19 in the day?

20 A. I mean, I think it was like some of the
21 things; and then, when we got to slip out, that's when
22 we left, you know. So we didn't -- you know, when I
23 tried to leave, it just seemed like, hey, there's
24 people watching you going to the rest room making sure
25 you don't leave the building. I mean, you know, so it

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1 just seemed like we were there; and we had to do a
2 negotiation; and I -- I -- I mean, I just was already
3 tired out. I couldn't do anything anymore. I was
4 done.

5 Q. You were -- I'm sorry.

6 A. I said I was done there a lot earlier. I
7 checked out. My head checked out hours -- way hours
8 before that thing had done. I mean, I just wasn't
9 able to do that much.

10 Q. Hours before what thing was done?

11 A. I mean, earlier in the day is what I mean.

12 Q. What conversations do you remember with the
13 lawyers about the terms of the agreement that were
14 being proposed for your approval or for your
15 disapproval?

16 MR. KASSAB: Objection; form.

17 MR. SUAZO: Objection -- yeah.

18 A. I mean, yeah, it didn't seem like -- it
19 seemed like it all happened like fourth quarter.
20 There wasn't really much discussed. We didn't -- we
21 came in. I thought we were going to come in with a
22 plan before we show up there; and then they're talking
23 about things back and forth and telling us they were
24 really excited about some deal they had; and they kept
25 saying, hey, we're -- they were really -- I mean, you

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1 about my stepmom on things, you know, but just not --
2 it doesn't seem like really -- if you break it up in
3 quarters, it seemed like a lot of things went in
4 fourth quarter. Like not much activity and then --
5 then the whole plays were made like when it was
6 already nighttime past 9:00 o'clock; and like, to me,
7 that's -- I don't like -- I mean, that's why I was
8 saying that I didn't want to do the deal; but, you
9 know, I heard about -- then I think that mediator came
10 in and started talking about some other cases that he
11 had been involved with with some -- I think he was
12 talking about some hooker or prostitute woman is what
13 I recall on there, that he dealt with this prostitute
14 that married a rich guy; and the prostitute -- the
15 prostitute inherited this estate; and then they kept
16 talking about that and bringing up all these like
17 allegories of like why our case isn't -- isn't that
18 great if it went to trial. And they kept bringing up
19 things like that; and I think we kept asking them on
20 the -- if that was everything that was there; and then
21 -- and then there was like, you know, some stuff on --
22 I.R.S. stuff mentioned.

23 Q. What do you remember about I.R.S. stuff
24 being mentioned?

25 A. Well, Jorge said that if Robin lied on

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1 know, I kind of lost track. What was the question
2 again?

3 Q. (BY MR. LITTLE) Just asking about what
4 conversations you recall with the lawyers about the
5 deal that was -- or the proposal that was eventually
6 presented for you to either approve or disapprove.

7 A. Uh-huh.

8 Q. So I think you and I were still on track
9 with each other.

10 A. Okay. Yes, sir. I mean, it just seemed
11 like most of the day there wasn't much activity going
12 on; and -- and, I mean, we had discussions. I mean,
13 you know, Jorge was talking about his like family
14 property, you know, how it was taken from his mom and
15 that his brother -- you know, that his mom's brothers.
16 So we listened to all that. I mean, like it's a
17 really sad story what happened to Jorge's mom and how
18 her brothers stole the land, you know, from them --
19 you know, from his mother and, you know, that they had
20 to deal with a lot of adversity to deal with it; and
21 so just listened to a lot of different things, not
22 really anything -- we didn't really discuss anything
23 about -- I don't recall discussing anything about --
24 about this deal.

25 We talked -- I think we may have talked

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1 the -- lied in the final return that Robin would be in
2 trouble with the I.R.S. and that the I.R.S. would go
3 after Robin for lying about the estate. So that's why
4 he -- he said that there was nothing else left out of
5 the estate. So he's like going I guarantee you 100
6 percent that nothing was left out of the estate
7 because if Robin failed to disclose, she'll be in
8 trouble with the I.R.S.; and so that whatever is here
9 is here; and that's why we're doing this agreement is
10 what I recall from that.

11 Q. That all of the assets in your dad's estate
12 had been disclosed. Is that what you're talking
13 about?

14 MR. SUAZO: Objection; form.

15 A. I mean, that's what -- we were under the
16 impression that still there was assets being withheld
17 that never got included brought to the thing; and then
18 he kept referring back to us on this I.R.S. filing
19 that -- that all the assets would have been disclosed
20 because Robin wouldn't have any reason to lie to the
21 I.R.S.; or else she would be in trouble with the
22 I.R.S. if that happened; and that's what -- that's
23 what their belief was; and then they said that they
24 guaranteed that we're making the best deal that we
25 could make at that time.

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1 Q. (BY MR. LITTLE) Well, did you have any
2 reason to believe that Robin was actually going to
3 offer you some kind of better deal that wasn't
4 disclosed; or did you believe that, you know, if you
5 wanted to reach an agreement and settle the case that
6 day that whatever offer was on the table was the best
7 offer that you were going to get at the mediation?

8 MR. KASSAB: Object to form.

9 MR. SUAZO: Objection.

10 A. Sir, this is the offer that Robin -- the
11 deal that we have is exactly what Robin wanted.

12 Q. (BY MR. LITTLE) What makes you say that?

13 A. It's her deal that her attorney put on the
14 table, and then we weren't allowed to -- we tried to
15 like counter or bring up some things, and it didn't
16 seem like nobody was interested in entertaining that.
17 I mean, I -- I had concerns; and I said about all
18 those taxes and stuff like that. You know, I
19 thought -- and I had personal items that my dad had in
20 his possession that they basically made it a part of
21 the trust; and I thought that was ridiculous that I
22 wouldn't even see it. It would go to my kids
23 directly.

24 Q. Well, let me ask you about that. Tell me
25 about those personal items.

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1 A. I mean, I had items that were supposed to be
2 handed to me that came from my grandfather that my dad
3 was holding in self-keeping when I went in the
4 military; and then he said they would give it back;
5 and then Robin used them as like hostage points and --

6 Q. What are we talking about specifically?

7 A. I mean, I had -- I had my, you know, I had
8 some of my rifles when I was a kid. So rifles
9 basically even -- even the ones I paid with my own
10 money. I mean, that's what's so ridiculous about it
11 is that I paid my own money for a lot of those guns;
12 and then they get held where they're going to be going
13 to my kid in like 20 years or 30 years; and I thought
14 that was just -- you know, when it was my -- you know,
15 my things that I paid for years ago; and then they
16 treated it like it was the trust property when it was
17 just basically in -- held in keeping and --

18 Q. Well, when you say 20 or 30 years, were you
19 talking about until Robin died?

20 A. Yes.

21 Q. Okay.

22 A. I mean --

23 Q. I'm sorry. I didn't mean to -- if I
24 interrupted you, I didn't mean to.

25 A. Okay.

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1 Q. I kind of sensed a pause; and I asked
2 another question; but if I snuck in my question before
3 you were finished with your answer, please finish.

4 A. Okay. Well, I mean, I just like look at it
5 like okay. Well, you're going to have it where
6 something is going to be sitting around; and I may not
7 be around. I may not be around in six months. I
8 don't know how my health takes me, so -- I mean, I
9 just live day by day; so -- but I was just like saying
10 that these were items that were my personal items that
11 became part of that trust and then trying to bring --
12 you know, my attorneys, they seemed to be more
13 interested in that -- what we thought at that time was
14 in that money market account -- or what was that
15 account called?

16 Q. The Fidelity account.

17 A. Oh, Fidelity, yeah.

18 Q. Yes, sir.

19 A. Fidelity. And so we thought that was --
20 they kept talking -- they were really eager on that
21 account. They just kept saying, hey, well, what about
22 that money market account? You know, that's cash in
23 your pocket. You know, you could really use the cash.
24 You could buy a new truck and all that and, you know,
25 don't you want to have a new truck or a new car. And

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1 so they were really eager on that account; and I just
2 wasn't -- I just thought -- I was like, you know,
3 something with Robin, it's going to be a trap.

4 And so I just felt like, hey, the thing
5 sounds too good to be true. If she's offering us
6 something, there has to be something on the back end
7 that is not good about it. And so I was like -- I was
8 a little bit eerie on trying to take a big deal
9 because I'm like, I mean, why is she offering such a
10 big account when there's already this apartment money
11 that was already -- came out of the sale? And so that
12 was my concern right there is I thought -- I felt like
13 we were talking into a trap; and they just kept --
14 they were really excited about bringing up the money
15 market; and, I mean, I just wanted some personal items
16 back. I didn't -- I could give a damn about the
17 money; but, you know, I mean I had things that were
18 just basically held hostage for years; and I had these
19 gold coins from my grandfather that my dad was
20 holding; and, you know, I had some coins from when my
21 grandfather was a boy. You know, those were important
22 to him; and he -- he passed them on to me; and that
23 was something that my dad was a little bit jealous of;
24 and that it went into my dad's collection and not --
25 you know, not part of my -- you know, it didn't get

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1 passed on to me.

2 I mean, so that's the -- so there was
3 some items; and I think my sister had some items that
4 she wanted; and then I don't think Robin ever -- she
5 was supposed to turn over some items. I don't -- I
6 don't know if she ever turned over anything. I think
7 she just basically like after this deal, she didn't
8 cooperate at all; and I just thought, hey, this whole
9 MSA is a bunch of bullshit because -- oh, excuse my
10 language. I forgot I was on the record. Yeah. So I
11 thought -- I just thought it was just like bullshit;
12 and it was just like -- you know, then we get this
13 agreement, just -- you know, we just got substandard
14 work for what we were expecting on here. And I
15 thought we would get a better deal out of this and not
16 leave anything -- I mean, there's just a lot of things
17 that were just left on the table that I wanted to get
18 out there and aired out and know more about Robin's --
19 like where she put that money in that third trust.
20 And now I'm finding out from that Hancock report that,
21 hey, there was just a lot of things left out. It just
22 was sloppy work; and -- you know, and then just items
23 that we could have got at that time; and now we can't
24 get them.

25 I guess we'll find out on this current

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1 mean, the one -- I mean, my -- you know, they had
2 that -- I mean, I -- I think I already had discussions
3 with my ex-attorneys on that. I mean, that bear rug
4 was the one I had and then the rifle that my dad shot
5 the bear; and so that was a pretty big thing like when
6 I was a little kid. My dad shot this bear that tried
7 to attack my sister and I when we were little; and he
8 turned it into a rug; and so -- and we would always go
9 hunting; and, yeah, I liked doing that when I was a
10 kid; and so those were, you know, some of the things
11 that I really thought back on that connected me to
12 him. Otherwise, I didn't really have much of a --
13 much with him, you know, when I was -- you know, when
14 Robin came in the picture, we just basically
15 couldn't -- we couldn't get a word in with Robin. She
16 just was always creating some problem to make it
17 difficult to have us even have a conversation.

18 Q. All right. Let's kind of focus on these
19 items because that was the question where we were. So
20 you had talked about the rifles. You talked about the
21 gold coins. Now you've added the bear rug. So what
22 were the other items that were on your mind at
23 mediation that, you know, were important to you or
24 that you knew about that you maybe at least wanted to
25 be on the table for discussion?

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1 thing because we've got the pending litigation with --
2 with Robin on here; but, I mean, you know, that judge
3 did say that we signed a document; and I didn't --
4 yeah. Just kind of messed up what we did.

5 Q. Okay. That was kind of a long answer,
6 right?

7 A. Yeah.

8 Q. So let me go back and follow up on some
9 things. So you mentioned personal items that you were
10 aware of, and you mentioned some rifles, right?

11 A. Uh-huh.

12 Q. True?

13 A. Yes, sir.

14 Q. All right. And then you mentioned the gold
15 coins, right?

16 A. Yes, sir.

17 Q. Okay. So what other things besides the
18 rifles and the gold coins were you thinking about at
19 mediation that you kind of wanted to be on the table
20 that maybe were never put on the table?

21 A. I mean, it just seemed like on there at
22 mediation, I think, we made requests; and it just kept
23 coming back to that -- that cash account. I mean,
24 yeah, I wanted some of them -- those items and to get
25 them back because, I mean, they had value to me. I

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1 A. Well, I mean, the main things that I
2 wanted -- I mean, I was just basically thinking of my
3 kids first; and I wanted to make sure that they had --
4 they were getting some things from them. I mean, it
5 just was -- I mean, I didn't like how that trust had
6 stuff that were -- like even like my kids' items were
7 in the trust, you know. So things that my dad bought
8 them. Like he bought them some bows and did some
9 things; and then they end up as a trust item; and so
10 they were their items that he bought for them; and
11 then they end up in the trust; and then can't be given
12 until, you know, Robin passed. So I'm not sure -- I
13 mean, that was like the thing. So I called -- I
14 wanted to call them and talk to my kids about some of
15 those -- about getting some of those items; and I
16 think they all got shot -- to me, it seemed like they
17 all got shot down.

18 And then they kept saying, hey, how
19 about this cash account? Why don't you take that?
20 Don't worry about the other things because the other
21 things you're not going to see because they're written
22 in the trust, and they can't be given until -- until
23 Robin -- until Robin dies.

24 Q. Was that always a concern of yours, that
25 whatever your dad had left behind, whether it was

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1 money or whether it was rifles or whether it was gold
2 coins or whether it was a bear rug or whatever, that
3 you could never get access to any of those things
4 until Robin died under the documents that your dad
5 left?

6 MR. SUAZO: Objection; form.

7 A. I mean, you know, some of these items, I
8 mean, I was like mainly asking for my kids. I wasn't
9 demanding personally, you know; but I did ask items
10 for my -- my kids. And, yeah, I wasn't going to push
11 for myself on there.

12 Q. (BY MR. LITTLE) As I recall, what you said
13 earlier was that mainly you were concerned about some
14 of these items. You weren't really so worried about
15 the money because you thought the money part of it was
16 too good to be true anyway. Is that true?

17 MR. SUAZO: Objection; form.

18 A. I mean, I thought the items were more than
19 what the money. They meant something to me.

20 Q. (BY MR. LITTLE) What you and I might call
21 sentimental value, true?

22 A. Sure. But I don't want -- I mean, if some
23 bloodsucker wants a bunch of money, I mean, they can
24 have it. I mean, I'm just not -- I mean, I just
25 wanted some items from my dad. I mean, I'm okay how I

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1 and I felt that that was a really big thing. He says
2 do you -- he's like going -- he's like going if we
3 walk out of this room and you guys have this really
4 awesome deal that was presented to you and you guys
5 are just going to walk out, he's -- he's like saying,
6 well, do you think I'm going to go and protect you
7 when your kids are going to -- each of your kids are
8 going to testify against you?

9 Q. Well, how would your kids end up testifying
10 against you? Tell me about how that was going to
11 work.

12 A. Because --

13 MR. KASSAB: Objection to form.

14 MR. SUAZO: Objection to form.

15 A. Say the question again.

16 Q. (BY MR. LITTLE) Yeah. You just talked
17 about he wasn't going to protect you when your kids
18 testified against you, and I wanted to follow up
19 because I don't understand what you're saying. I
20 don't mean to be --

21 A. Okay.

22 Q. I'm just trying to understand.

23 A. Well, from my understanding is that if I
24 walked away from this deal that was presented, that --
25 that my family would look bad. They would say, well,

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1 live, so....

2 Q. Any other items that you can remember
3 specifically being interested in other than what we've
4 talked about already?

5 A. I mean, I guess I could bring it back to you
6 if I think of it.

7 Q. Totally fair. If -- and we can just have
8 that agreement. If you and I talk for another 30 or
9 45 minutes or something like that and in the middle of
10 one of my questions you think of that, then we can
11 just throw out our rule about trying not to interrupt
12 each other. You can throw it out there even if I'm in
13 the middle of a question. Fair?

14 A. Yes, sir.

15 Q. All right. So -- so you talked about the
16 personal items. You talked about the money part of
17 things which you thought was too good to be true. You
18 talked about whatever else. At the end of the day,
19 nobody ever told you that you had to sign a piece of
20 paper at this mediation. Is that true?

21 MR. SUAZO: Objection; form.

22 A. My attorneys told me I needed to sign.

23 Q. (BY MR. LITTLE) Tell me about that.

24 A. Well, I mean, Jorge -- I think Jorge said if
25 I don't sign, my kids are going to turn against me;

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1 hey, you were offered this really good deal with this
2 cash just to walk out of the room; and, you know, you
3 wouldn't be -- you know, you're just getting cash in
4 your pocket to go and that why -- why put us through a
5 whole court trial; and -- and then, you know, end up
6 not getting nothing in court; and so that was the
7 thing I was thinking. So he was telling me that,
8 well, my kids will -- will testify against me in court
9 because I should, you know -- if I didn't sign the
10 deal; and so I felt like -- I felt really ashamed
11 that -- you know, so if I -- if I was going to go and,
12 you know, do the thing, you know, like walk out; and
13 so he's like saying, well, hey, you have a really
14 great opportunity. This is the best opportunity
15 you're ever going to get with this money; and, I mean,
16 you're getting cash in your pocket; and then your kids
17 are going to be getting -- getting a deal, too; and
18 now you're going to do it where Robin is going to keep
19 everything. I mean, I don't know if that was the
20 exact words that were said; but that's kind of like
21 what I was getting out of it, that he said my kids
22 will testify against me; and they're going to be on
23 Robin's side in the court. So I don't want to have my
24 own kids against me and saying that, hey, I was given
25 an opportunity; and then I was not smart enough to

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1 sign the paperwork.

2 Q. You were already concerned about your kids
3 being against you, and that goes back to the text
4 messages that we talked about and your understanding
5 that Robin was trying to go back through back channels
6 or whatever and talk to your kids directly to get them
7 to testify against you and Robin at trial, right?

8 MR. SUAZO: Objection; form.

9 A. Yes, sir. She was working on -- she's
10 always done the divide and conquer game and knows how
11 to play it a lot better than I can.

12 Q. (BY MR. LITTLE) What, if anything, did you
13 and Caroline try to do with your back channels to cut
14 that short or to make sure that your kids might be
15 more inclined to stay on your side as opposed to going
16 over to Robin's side?

17 A. Sir, I mean, I've really -- you know, since
18 I've lost most of my things, I don't really have
19 anything to offer my kids; and that was kind of the
20 thing that -- that I remember Jorge saying like, hey,
21 don't you want to take care of your kids and have this
22 money to help them out when you can do it? But
23 thinking about that question is -- is communicated
24 with them. You know, I was straightforward. I mean,
25 I don't want to -- people to know; but I was like

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1 That was a big, you know, strong point with me was
2 trying to keep my kids because it's like a really
3 fragile thing. I got to deal with -- I mean, I've got
4 kids that just -- you know, we've dealt with this
5 high-conflict family dynamic for years, you know,
6 where, you know, my ex tries to like -- you know, her
7 whole thing is like calling me constantly and telling
8 me to -- like why don't you go kill yourself? I mean,
9 it's just been a whole thing or like trying to get me
10 arrested constantly.

11 And then she just started doing that
12 against my kids; and so, like, as soon as my kids got
13 old enough, she starts bullying them and doing the
14 same things that she did to me years back and then
15 driving them to suicide; and so I've had my kids --
16 like all my kids have like been -- almost committed
17 suicide. I've had to like stop a lot of these things,
18 and -- and there's just a lot of this conflict, and I
19 just had to retreat, and I couldn't do anything
20 anymore and just had to like not do anything for
21 years. And -- and, I mean, you know, people that
22 don't -- that aren't in this position, they don't
23 understand it, you know, because you can't see it; and
24 then I've had to be in some support groups on it, you
25 know, with other people that are in these

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1 letting everyone know that we have this dispute; and
2 we want to get it settled and behind us. I mean, I
3 don't like -- I don't like conflict at all. I don't
4 like to be dealing with a lot of these issues; and, I
5 mean, it just drains the life out of you; and I don't
6 know -- I mean, some people, they can -- like they're
7 like vampires. They thrive on this stuff; and I don't
8 like any of this stuff; and I mean, if some
9 bloodsucker wants to suck the life out of you, I mean,
10 I just want to enjoy what time I got left on this
11 planet and, you know, not -- not have conflict every
12 time; and that's kind of been with my family. It's
13 just been high conflict and stress; and that's why I
14 just like to get away from things and be -- you know,
15 be away from people.

16 Q. Was the fact that you don't like conflict a
17 part of the reason why you agreed to the mediated
18 settlement agreement because it did allow you an
19 opportunity to have finality as opposed to not only
20 dragging yourself but also maybe having kids involved
21 or whoever else might have been involved in some trial
22 with Robin?

23 A. Sir, I mean -- I mean, a lot of the things I
24 don't -- you know, I mean, I don't want to have my
25 kids, you know, fight against me and deal with that.

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1 high-conflict things; and, you know, nobody wants to
2 deal with it; and it's like I don't even like to talk
3 about right now, I mean, because it's embarrassing and
4 just constant fighting; and it just never ends.

5 And then it's just like you just have
6 somebody that you can't tell them like, hey, you know,
7 you're driving your family over the edge; or, you
8 know, it's like I have my younger son like -- you
9 know, my ex tells him like, hey, why don't you -- she
10 even gives them -- she even gives them drugs to
11 overdose them and tells them like take these drugs;
12 and then he's like in the hospital and gets
13 hospitalized over a drug overdose; and she even came
14 to a place -- I mean, it's just like even recently.
15 She will bring them the drugs and bring them to the
16 State; and then -- and then like try to save them and
17 say, oh, see, I saved you; and then you owe me.

18 And it's just like this is a constant
19 thing that, you know, I don't like to see my kids go
20 through this; and it's just been a constant --
21 constant fight, you know, with my ex-wife and her --
22 just never ends. You know, it's just like -- I don't
23 like it where other people use all this stuff. I
24 mean, yeah. It's out there. I put it out there. I
25 told everybody about it; but, you know, when other

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1 people -- and I guess, when you're saying a normal
2 person sees this, they just think you guys are a bunch
3 of nutjobs; and they don't understand what we go
4 through on a daily basis; and that's why I just like
5 to, you know, be left alone. I don't --

6 I kind of lost track on the question
7 now. I'm sorry.

8 Q. Today is not a day that we have to really go
9 down deep into it; but there has been a lot of
10 conflict between you and your children through the
11 years, hasn't there, Mr. Allison?

12 A. What do you define on conflict? Like
13 between me and them or --

14 Q. Yes.

15 A. I mean, not -- I mean, I wouldn't say -- I
16 mean, there's been a lot of expectations that I
17 haven't been able to perform, you know, because of my
18 situation and -- but I don't think that that's
19 necessarily -- that's been placed on me by -- like my,
20 you know, stepmom or my ex-wife would say like, hey,
21 your dad should be doing this for you; and why hasn't
22 he done that for you?

23 But I'm like, well, look, I had -- I
24 made it where my kids' college was paid for, you know.
25 I helped -- helped them get the -- you know, the

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1 Veterans benefits. So they could have done all that
2 stuff; and I was willing to do that; but then my --
3 you know, you would have some other person come in and
4 question saying, well, why are you having to go to a
5 state school versus a private school?

6 And those things were not conflicts. I
7 just told my kids that, hey, if you want to get the
8 benefits, you got to go -- you got to -- I'll do the
9 paperwork for you to get it processed; but I'm not
10 going -- you got to show up to school and take the
11 classes; and that's what I felt like, you know, I
12 could do as a person. I didn't want to -- I didn't
13 have very much else to offer.

14 If that's a conflict or not but I -- I
15 don't -- I mean, I don't have any -- I mean, I had
16 issues with them growing up. Like when they were
17 younger kids, they would just do things; but I mean,
18 as adults, they kind of don't -- they don't give me
19 the -- the thing they're not doing is my daughter --
20 they won't talk to her mom. They figured out like,
21 hey, their mom is the conflict; and -- but I guess I
22 was labeled as the person being the problem.

23 Q. You mentioned at least one of your kids
24 having an issue with addiction. Which one of your
25 kids is that?

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1 A. That's Erik.

2 Q. Okay. Has it ever been suggested to you
3 by -- well, let me back up.

4 There was something going on in this
5 case -- maybe it was when we were trying to schedule
6 your deposition, but there's been a time recently
7 where Erik has been in some kind of treatment
8 facility. I don't want to use the wrong word, so
9 correct me if that's not the right terminology.

10 A. Well, he was hospitalized for cardiac
11 arrest; and he does things. I mean, it's like I don't
12 know how much longer he has to live. I mean, it just
13 seems like -- every day it just seems like he's going
14 to do something to himself if he doesn't get -- and
15 it's just all this stuff; and I think, you know, his
16 mom -- his mom seems more interested in getting this
17 money and -- you know, from this case than anybody
18 else, I mean, in that she's bringing it up asking him
19 to ask me for money; and he doesn't talk to me about
20 asking for money; but he just told me like, hey, his
21 mom asked him to ask me; and then he's asking money;
22 and then I'm getting constant things from her. She
23 went and filed a -- she went and had a real estate
24 agent contact me to buy a house for her; and, I mean,
25 she just goes and does stuff like that. And they went

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1 and applied for things, and then they went and bought
2 a car. I mean, you know, so there's things like that
3 where she goes and does -- does things and like tried
4 to like apply for -- for a loan to buy a house, you
5 know, with her boyfriend; and then they shut it down,
6 you know. So then I got contacted by a place that
7 they did it; and then his mom -- my son contacted me
8 and said, well, why did you stop my mom from buying
9 the house? And, you know, it's just stuff like that
10 that she would use him to get things; and then the
11 next thing he's overdosed and in the hospital; and
12 then -- and I just don't know how much longer he has.

13 I mean, I've just been dealing with
14 these things for years; and I don't -- I mean, I tried
15 to help them; but, I mean, it's -- I mean, I don't
16 know how to help somebody like that; but I just wanted
17 him to stay at the treatment facilities and get -- let
18 them do the treatment; but then his mom would show up
19 at the place and start threatening the people that
20 work at the place that she's going to have them fired
21 and get -- calling the cops on them constantly saying
22 that they're holding him against -- prisoner; and it's
23 just -- it's just a total mess.

24 And so he's trying to -- you know, we
25 tried to get him put in a place. I like worked with

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1 one of my friends that -- you know, that I have like
2 in the Veterans group; and, you know, we tried to get
3 him in some of these facilities. And then, the next
4 thing, my ex is tracking -- tracking him down and then
5 trying to get him out of the facility, like breaking
6 him out of the facility instead of letting him finish
7 the treatment; and I mean, it's just embarrassing to
8 go through it. I mean. It's already the fifth -- I
9 mean, the fifth -- I've lost track of how many
10 treatment facility he's been in. I mean, he was in
11 some facility; and she came a hundred -- drove 130
12 miles to the facility and started calling -- you know,
13 calling them frauds and just like doing all this stuff
14 trying to get him thrown out; and then they just throw
15 him out of the place; and then he's back on drugs
16 again; and it just seems like she enables that type of
17 behavior; and then she wants me to like go and pay the
18 bills. So I get a lot of collection bills from a lot
19 of places that -- that I didn't even know that were in
20 there. I mean, I guess they -- they want me to pay
21 the bills on something that I had no idea that was on
22 there; and I usually just find out after the fact that
23 I tried to get him help; and then the places I tried
24 to help him at, I just feel like I get burned by these
25 -- you ask -- you ask some family -- you ask a friend

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1 to help; and then they -- they -- they say, well, they
2 got medical board -- they got a complaint against --
3 the State complaint. Your ex called the State and
4 called all these -- called law enforcement multiple
5 times.
6 I mean, that's what she did to me years
7 back and just like totally destroyed me and just kept
8 doing this stuff; and nobody tells her to stop; and I
9 mean, I was just dealing with this stuff for years.
10 MR. SUAZO: Hey, Joe, when you get to a
11 good line, let's take a break.
12 MR. LITTLE: Sure.
13 MR. SUAZO: We've been going about an
14 hour and a half.
15 MR. LITTLE: Let me wind up a couple of
16 things, but we'll get there quick.
17 Q. (BY MR. LITTLE) Getting these what you call
18 collection bills or collection letters or whatever the
19 words that you used were, is that one reason why the
20 money part of the lawsuit against your stepmother
21 Robin wasn't as important to you because you felt like
22 if you ever had a pot of money out of that lawsuit
23 that you would just have a bunch of bill collectors
24 and stuff like that trying to take it from you? Was
25 that ever a concern for you, or no?

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1 MR. SUAZO: Objection; form.
2 A. I never gave a thought about that.
3 Q. (BY MR. LITTLE) Okay. You mentioned the
4 treatment facilities that Erik has been in and out of.
5 As a trustee of the trust, have you ever considered
6 the possibility of getting some money out of the trust
7 and maybe getting it to some of these treatment
8 facilities or one of these treatment facilities so
9 that maybe Erik could get some help?
10 A. Well, me personally have thought about that;
11 but, I mean, like, as a trustee, I don't -- I mean, I
12 feel like this whole thing is in the air with -- you
13 know, with -- I mean, I don't -- I don't want Robin to
14 come back and sue me. I mean, it just seems like any
15 decision -- I never asked to be a trustee; and I'm
16 getting -- I feel paralyzed on this thing. I can't --
17 no decision I make is going to be a good decision; and
18 if I go and try to take care of my kid to save him
19 that -- you know, I know what Robin's point is; and
20 she already made it clear to me. She's passed it on
21 to other family members; and I got the message loud
22 and clear that what she expects from my son, like what
23 she told my older son that, hey, you won't -- you
24 won't -- you won't -- you know, she had these bets
25 with my dad. I guess I could put it like this: It's

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1 like, oh, I bet Hunter is not going to last a year
2 past 18. Well, she makes a bet with me or like with
3 my dad like, hey, is Richard going to live until his
4 40th birthday?
5 I mean, she just has like this really
6 negative attitude; and her thing is like why waste
7 money on there; and, you know, she's like one of these
8 types like where, hey, if an animal gets sick, put it
9 to sleep; and so that's kind of her attitude.
10 Q. Let me ask you this and then let's take a
11 break because your lawyer needs to attend to
12 something, and it's just time to take a break anyway.
13 A. All right.
14 Q. But I want to try to wrap one last thing up.
15 Has anyone ever suggested to you somehow that it would
16 be inappropriate to take money out of the trust and
17 get it to Erik or to a treatment facility to try to
18 help save him? Has anybody ever suggested to you that
19 that's somehow not appropriate --
20 MR. SUAZO: Objection; form.
21 Q. (BY MR. LITTLE) -- or not possible? It
22 just seems like you would want to do that.
23 MR. SUAZO: Objection; form.
24 A. I mean, to me, I haven't really given much
25 thought. I mean, it's not -- like I said, it's the

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1 trust money; and I don't want to go back and get in
2 something. I mean, we're already in some dispute with
3 Robin; and if she claws things back, I mean, it's
4 already -- she's going to claw everything back and
5 get -- you know, she'll go after us for damages; and
6 so I don't want to make a bad decision; and I just
7 look at like, hey, I think the -- there's -- you know,
8 I think like California should -- the State should
9 take over those things; and I mean, I'm not -- I mean,
10 he's already gotten help by -- you know, like, I mean,
11 he's already hit every like top clinic or whatever you
12 call it out there, you know. He's been in all these
13 treatment places; but he just hasn't -- like I said,
14 there's an interference issue and --

15 Q. (BY MR. LITTLE) An interference issue
16 coming from who?

17 A. From my -- my ex-wife.

18 Q. Got it. Okay. All right. Well, let's take
19 the break that is appropriate and that your lawyer
20 requested, and we'll come back.

21 A. All right.

22 THE VIDEOGRAPHER: Off the record at
23 2:29.

24 (Break at 2:29 p.m. to 2:48 p.m.)

25 (R. Allison Exhibit No. 9 was marked.)

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1 anything along those lines that you recall?

2 A. I recall him talking about different cases
3 and throwing that stuff around; and I mean, everybody,
4 my -- I mean, I think people -- it seemed like people
5 were -- I mean, my attorneys were really excited about
6 the deal; and I don't know. I just didn't -- it
7 didn't feel right to me.

8 Q. Something the mediator said about comparing
9 this deal with what could happen if you went forward
10 at trial, something like that?

11 A. Yes.

12 Q. Okay. Your lawyers also talked about
13 comparing the deal as it was offered to maybe you
14 would do better at trial, and maybe you would do worse
15 at trial and conversations like those. You remember
16 those, right?

17 MR. SUAZO: Objection; form.

18 A. Yes, sir. I remember some of those things,
19 but I still wanted to get the accounting and see what
20 the full picture was. I didn't feel like being at
21 that -- that -- that MSA thing that we had a full
22 picture or a full accounting of everything; and that's
23 kind of my thing is I wanted to see that -- you know,
24 what had -- what was -- you know, what did Robin steal
25 or move over to another thing there and -- yeah. And

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1 THE VIDEOGRAPHER: We're back on the
2 record at 2:48.

3 Q. (BY MR. LITTLE) Mr. Allison, I want to pick
4 back up. We had been kind of discussing the
5 mediation, and I think specifically maybe what you
6 referred to as the fourth quarter in terms of what
7 happened --

8 A. Uh-huh.

9 Q. -- later in the evening after you and
10 Caroline came back from your dinner. So let's pick
11 back up there. Okay? Just to kind of give context to
12 our conversation, that's where my questions are coming
13 from. Okay?

14 A. Yes, sir.

15 Q. Are we on the same page?

16 A. Yes, sir.

17 Q. Okay. At some point do you recall that the
18 mediator even came into the room and told you and
19 Caroline that he thought that the final proposal that
20 was made by your stepmother Robin was a good deal?

21 A. I don't recall the mediator calling it a
22 good deal.

23 Q. Do you recall the mediator voicing any
24 thoughts at all about it, bad deal, medium deal,
25 something that you should consider? Did he say

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1 I just wasn't getting that picture of the accounting
2 of like what was there; and that's what was kind of
3 like bothering me.

4 MR. LITTLE: Object to the answer after
5 some of those things as nonresponsive.

6 Q. (BY MR. LITTLE) At the end of the day,
7 Mr. Allison, you had a choice to sign the mediated
8 settlement agreement or not; and you chose to sign,
9 true?

10 MR. KASSAB: Object to form.

11 MR. SUAZO: Objection.

12 A. I didn't feel I had a choice.

13 Q. (BY MR. LITTLE) Why did you feel like you
14 did not have a choice? Because of your kids and all
15 the things you talked about before?

16 A. I mean, if I didn't sign it, I would get
17 nothing. I mean, that's basically what I thought was
18 going to happen if I didn't sign it.

19 Q. That certainly could have happened if you
20 had taken that case to trial, couldn't it?

21 A. They said it would be a -- my attorney said
22 it would be a bad day if it went to trial and --

23 Q. You certainly understand that could have
24 been true, right?

25 MR. KASSAB: Object to form.

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1 A. I mean, it's always a toss-up going to
2 trial.
3 Q. (BY MR. LITTLE) I'm going to show you what
4 I've marked as Exhibit 9 to your deposition. That is
5 the mediated settlement agreement that you signed at
6 mediation. If you'll turn to the last page, the very
7 last page, which I think is 12 of 12, it says Caroline
8 Allison_000557 at the bottom.
9 A. Okay.
10 Q. Are you with me on the same page, sir?
11 A. Yes, sir.
12 Q. Okay. That's your autograph on the last
13 page of the mediated settlement agreement, right?
14 A. Yes, sir.
15 Q. Okay. Anything else about the conversations
16 that you had with your lawyers at mediation about the
17 final proposal made by Robin or signing off on this
18 mediated settlement agreement that you and I haven't
19 already talked about? I certainly don't want to
20 repeat what we've already been over.
21 A. Hmm. I was looking down. Can you say that
22 question again?
23 Q. Yes, sir. I'm sorry. I didn't mean to talk
24 while you were reading. I didn't --
25 A. Yeah. I just saw this thing, and I never --

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1 for you. It says Richard Allison, Jr. Is that not an
2 appropriate way to refer to you?
3 A. I mean, I don't -- I don't use Jr.
4 Q. Okay.
5 A. He's -- my dad is not around, and I've never
6 used it.
7 Q. Okay. But even if sometimes you don't add
8 the Jr. to your name, that's your autograph right
9 above the line that says Richard Allison, Jr., right?
10 A. It is.
11 Q. Okay. And the language that caused you
12 pause is, you know, about an inch above the place
13 where you signed your name. It says in bold and in
14 all capital letters read, understood, approved, and
15 agreed as to form, content, and substance. That's the
16 language that you're talking about that you were
17 reading when I asked my previous question?
18 A. Yes, sir.
19 Q. Okay. All right. So I think -- and I don't
20 know. We're going to have to go back and let me read
21 over my court reporter's shoulder because I asked a
22 question while you were reading, and you didn't hear
23 it, and I frankly don't remember what it was.
24 A. Yes, sir.
25 (Mr. Little reviews court reporter's

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1 I just saw something I didn't see before on here.
2 Q. What's that?
3 A. I mean, the read, understood, approved,
4 agreed form, I mean, I never -- I mean, I just
5 listened to what my attorneys told me was the
6 agreement; and I didn't read it. I didn't understand
7 it, and it was kind of like this thing. I don't
8 recall this line being on the paper when I signed it,
9 so I don't recall this. I'm a little bit confused at
10 this thing. Was -- it seems like it was added after
11 because I don't -- I wouldn't have -- well, I mean, I
12 don't know. Maybe I was tired, but I --
13 Q. So -- I'm sorry. I thought you were done.
14 A. Yeah. I mean, I'm thinking I was tired. I
15 don't recall this read, understood, approved, agreed
16 line by the signature block. I thought it was like
17 another signature block.
18 Q. Okay. So the text that we're talking about,
19 there's a signature block for Robin, correct? That's
20 at the top, right?
21 A. Yes, sir.
22 Q. And then in the middle is a signature for
23 your sister Caroline, right?
24 A. Yes, sir.
25 Q. And then at the bottom is a signature line

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1 computer screen.)
2 Q. (BY MR. LITTLE) Okay. I think a fair
3 paraphrase of my question that I asked while you were
4 reading is this: Is there anything else about the
5 conversations that you had with your lawyers or the
6 mediator at this mediation that you can recall that we
7 haven't already talked about? I certainly don't want
8 us to repeat the things that you've already said, but
9 I want to make sure that you get an opportunity to say
10 everything that you remember. So is there anything
11 else out there that you and I haven't already talked
12 about?
13 A. I mean, I just didn't -- I wasn't explained
14 the mediation process clearly enough that this was a
15 final process. I thought it was a working process.
16 Q. Okay. Well, I'm not really looking for
17 criticisms --
18 A. Oh, okay.
19 Q. -- what wasn't said. I was actually looking
20 for the words that were said.
21 A. Oh, were said?
22 Q. Yes, sir.
23 A. Okay.
24 Q. So -- and maybe I asked a poor question, so
25 let me try again. Are there any other conversations

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1 that you recall either between you and the lawyers or
2 between you and the mediator that were said during the
3 mediation that you and I haven't already talked about?
4 Again, I'm not asking you to repeat what you've
5 already told me because we've talked a lot about it.

6 A. Uh-huh.

7 Q. I just want to know if there's anything else
8 before I move on.

9 A. Not that I can think of right now.

10 Q. Okay. You had made a comment earlier -- and
11 I think you may have said it twice at different
12 times -- something along the lines of you didn't want
13 to do something or you didn't want to say something
14 because you didn't want Robin clawing money back or
15 clawing something back. Has someone told you that
16 Robin could have the right to come back and claw money
17 back out of the trust?

18 A. Yes, sir.

19 Q. Who has told you that?

20 A. Robin's communicated it to my
21 ex-mother-in-law that she intends to take back -- that
22 she's got her provisions and that, you know, she's a
23 grantor and that it would be a matter of time before
24 she goes and asks for things back; and we do have an
25 issue with that and....

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1 Q. And so that's something that you've heard
2 that Robin has supposedly said and has been repeated
3 to you by other people?

4 A. Yes, sir.

5 Q. Okay.

6 A. That she intends to take the trust back and
7 she doesn't think that we're competent to be trustees.
8 I mean, I don't even -- I mean, I'm not no expert on
9 trust stuff. So, I mean, if she claws it back, she
10 can claw it back. I mean, it's -- she acts like it's
11 all her money anyway.

12 Q. How does she do that?

13 A. I mean, she took over my dad's thing and
14 assumed him. I mean, I suspected that she was talking
15 in e-mails to -- to me for years like pretending to be
16 my dad and doing things like that where I couldn't
17 talk to my dad on the phone; and then I would get an
18 e-mail back from my dad; and then, you know, I would
19 think a lot of the communications were her; and she
20 went and destroyed the computer to hide the evidence.
21 We never got any of that. I mean, I just wanted to
22 get that accounting to find out what happened.

23 Q. Have you ever heard either directly from
24 Robin or through any third-party source that actually
25 what Robin has said is that one of your children has

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1 asked Caroline to provide an accounting of where the
2 money in the trust has gone, and Caroline has refused
3 to do that, and so Caroline and potentially you could
4 be removed as trustees because of the failure to
5 explain to your children what's going on with that
6 money? Have you heard anything like that?

7 MR. KASSAB: Object to form.

8 A. Yes, sir. I was contacted by Collins' firm.

9 Q. (BY MR. LITTLE) Tell me about that.

10 A. And I received a letter demanding a trust
11 accounting --

12 Q. Okay.

13 A. -- and passed it on to the trust attorney to
14 take care of the thing; and, you know, then I did
15 speak with my son on the issue and said that I'd tried
16 to get something back. I don't know what to do. I
17 need to hand it to somebody that can do that, and I
18 don't really know how to provide that type of thing.
19 So it's not like I'm refusing; but, you know, my
20 stepmom turned it around and said that I'm refusing
21 and like called -- even called Collins and told them I
22 was trying to work with that request; and, you know,
23 Collins basically was hostile and says he's going to
24 sign up all my kids against me. I mean, I --

25 Q. When you say your son, are you talking about

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1 Erik?

2 A. No. I'm talking about Hunter.

3 Q. Okay. Was Hunter the one that had asked for
4 the accounting, or was it somebody else, or do you
5 even know?

6 A. Sir, I spoke with Hunter; and Hunter didn't
7 even know about the accounting letter being requested;
8 and when Hunter contacted Collins' firm, Hunter came
9 back and told me that Hunter hired Collins to set up a
10 company for that Oakwood or -- okay. What was the
11 name of the property? This other property award
12 that's been another mess of a joke that Robin gave to
13 the kids that cost -- you know, it's like raw land or
14 some farmland and --

15 Q. Is that Jackson Square?

16 A. Oh, Jackson Square, yes, sir. Jackson
17 Square and that Collins said he was going to -- he
18 needed \$5,000 to set up a corporation and do this
19 thing so this Jackson Square could be incorporated;
20 and then Hunter said that he wasn't aware of the
21 demand letter for the accounting; and then -- and when
22 I brought it up to Hunter, Hunter checked, got back
23 and said, well, that's not what I asked Collins to do;
24 and then Hunter was upset that he got a 5,000-dollar
25 lawyer bill from the Collins firm saying that they did

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1 all these conversations; and it was like kind of the
2 typical thing.

3 This Jordana Debra --

4 Q. All right. Well, maybe -- maybe that's
5 probably something that we can save for another day.

6 A. Oh, okay.

7 Q. Right?

8 A. Yes, sir.

9 Q. Because I want to try to keep us focused on
10 the question and answer as best I can.

11 A. Yes, sir.

12 Q. A couple of other questions before we move
13 to the aftermath of the mediation or the -- yeah.
14 Have you ever had conversations -- and I'll ask first
15 about your sister. Have you ever had any
16 conversations with your sister about what would happen
17 to your various interests in the trust or property
18 when you die? In other words, like whether Caroline
19 should be your beneficiary? Have y'all ever had any
20 conversations along those lines?

21 A. Sir, are you asking about the trust?

22 Q. I'm just asking if you and Caroline have
23 ever had any conversations about what would happen to
24 your property or your interests if you were to pass
25 away.

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1 A. I mean, for my situation or --

2 Q. Yes, sir.

3 A. For my personal goods like my car or --

4 Q. Whatever it is that you got, what would
5 happen to it when you die?

6 A. I mean, I don't know if anybody would want
7 an old truck. So -- I mean, I got that. I got some
8 clothes and some military stuff.

9 Q. Well, whatever it is, I'm just trying to
10 figure out whether there was -- you said there were
11 conversations with your sister.

12 A. Uh-huh.

13 Q. So maybe the best way to ask it is for you
14 to tell me about those conversations.

15 A. Well, we had some discussions and -- but
16 hasn't really -- I haven't really done anything about
17 it.

18 Q. Well, I guess I'm trying to figure out those
19 discussions. So rather if you can give me the
20 complete answer, then I won't have to kind of break it
21 up --

22 A. Oh, yes, sir.

23 Q. -- and ask like 20 follow-up questions; and
24 maybe you and I can work together to be efficient,
25 right, with the questions and the answers?

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1 A. I mean, yeah. We discussed some issues.

2 Q. Was the gist of those discussions that if
3 you die, you want your stuff to go to your kids?

4 MR. SUAZO: Objection; form.

5 A. I mean, this whole trust thing, I don't
6 understand it; and like I said, it's -- I think it's
7 like it just wasn't -- wasn't carefully planned out.
8 I mean, this thing just seems like a big mess to me to
9 be --

10 Q. (BY MR. LITTLE) Well, I understand all
11 that; but my question was simply: Have you ever
12 talked to Caroline about what happens when you die?

13 A. Yes, sir. I've talked about it.

14 Q. Okay. Tell me about those conversations
15 between you and your sister about what happens when
16 you die.

17 A. Well, I mean, that I ain't got no plan.

18 Q. Did Caroline tell you that she wanted to be
19 your beneficiary or that you should leave things to
20 her?

21 A. No, sir.

22 Q. Did -- was there any conversation about
23 whether you would choose instead to leave whatever you
24 might have when you pass on to your children as
25 opposed to Caroline?

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1 A. Yes, sir.

2 Q. Okay. So tell me about those discussions
3 with your sister.

4 A. Yes, sir. We had some discussions about, I
5 guess, estate planning because I don't know -- I mean,
6 I'm not in the best of health, so -- but, yeah, if
7 anything happens, you know, I mean, I got -- as long
8 as I get put at the Veterans cemetery, I mean, things
9 like that, that's what I told her.

10 Q. Okay. Anything else about those
11 conversations that you recall?

12 A. No.

13 Q. Okay.

14 A. I mean, that's about it.

15 Q. Okay. You -- we talked about the contract
16 that you signed which is Exhibit No. 5. Was there
17 ever another contract that you signed with one or more
18 of the lawyers after the February of 2020 contract
19 that we talked about? Remember, there was e-mails
20 back and forth. Was there ever a third one that you
21 signed?

22 A. I don't recall a third one.

23 Q. Okay. I think there was something sent to
24 you when Mr. Trevino came into the case; and I haven't
25 been clear about, No. 1, I guess, whether that ever

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1 happened and, No., 2, if it did happen, whether you
 2 ever autographed that version of the contract or
 3 whether you did not.
 4 MR. KASSAB: Object to the form.
 5 A. **Hmm. I mean, I don't recall a contract**
 6 **adding him on there.**
 7 Q. (BY MR. LITTLE) Okay.
 8 A. **I thought he worked for my sister.**
 9 Q. Did you ever have conversations with
 10 Mr. Trevino in which you told him things about the
 11 case because you understood that they would be secret
 12 between the two of y'all because he was your attorney
 13 as opposed to just telling him something that he could
 14 go tell anybody in the universe about?
 15 A. **I mean, he was my sister's attorney, so....**
 16 Q. Was there ever a time where you viewed
 17 Mr. Trevino as your attorney?
 18 A. **He said he was helping -- you know, he was**
 19 **extending me as a courtesy; and he made it clear to**
 20 **me, I mean, because he would come out to California**
 21 **and was working on some cases; and so he had a lot of**
 22 **different probate cases that he was doing in**
 23 **California; and so he would drop in and --**
 24 Q. We'll talk about when he came out there to
 25 see you.

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1 Mr. Trevino, right?
 2 A. **Yes, sir. He's more approachable to talk.**
 3 Q. Okay. And throughout all of those
 4 conversations -- I want to make sure if you're really
 5 going to say this. Through all of the conversations
 6 that you had with Mr. Trevino and all the e-mails that
 7 the two of y'all sent back and forth to each other, is
 8 it actually your testimony that Mr. Trevino was never
 9 your lawyer?
 10 MR. SUAZO: Objection; form.
 11 A. **Is there a document you're referring to,**
 12 **sir?**
 13 Q. (BY MR. LITTLE) No, sir.
 14 A. **Because you mentioned some e-mail.**
 15 Q. Oh, there's, I think, a lot of e-mails
 16 between you and Mr. Trevino.
 17 A. **Okay. Okay.**
 18 Q. I'm not referring to any document in
 19 particular. Again, I know you kind of saw that
 20 yesterday with your sister.
 21 A. **Yes, sir.**
 22 Q. My question is different, so let me see if I
 23 can ask it in a little bit different way that will
 24 help us communicate better. Okay?
 25 MR. KASSAB: Object to the sidebar.

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1 A. **Okay.**
 2 Q. I promise we're going to get there.
 3 A. **Okay.**
 4 Q. Probably not too long.
 5 A. **Oh, okay.**
 6 Q. I'm hoping not too long.
 7 A. **Yes, sir.**
 8 Q. But my question was: Along the way from,
 9 say, October of 2020 forward, did you -- did you ever
 10 consider Mr. Trevino to be part of your legal team?
 11 A. **No, sir. I didn't -- I didn't -- I don't --**
 12 **I think he was -- I mean, he's part of the team; but,**
 13 **you know, he was extended to me as a courtesy is what**
 14 **they told me.**
 15 Q. Well, who is they?
 16 A. **My -- Jorge.**
 17 Q. Okay. So your testimony would be that
 18 Mr. -- Mr. Trevino only worked for your sister but
 19 that, I guess, Mr. Borunda would allow Mr. Trevino to
 20 be extended to you as a courtesy?
 21 MR. SUAZO: Objection; form.
 22 A. **Can you say the question again, sir?**
 23 Q. (BY MR. LITTLE) Yeah. I'm just trying to
 24 understand because there's a lot of e-mails and
 25 conversations that went back and forth between you and

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1 Q. (BY MR. LITTLE) Fair?
 2 A. **Yes, sir.**
 3 Q. All right. So fresh start.
 4 A. **Okay.**
 5 Q. My understanding is there were a lot of
 6 e-mails back and forth between you and Mr. Trevino. I
 7 think there were a lot of conversations between you
 8 and Mr. Trevino, and I just want to be sure that I
 9 understand your testimony. Are you telling me that in
 10 spite of all those e-mails and all those
 11 conversations, all the text messages back and forth
 12 between you and Mr. Trevino, are you saying that you
 13 never considered him to be your lawyer?
 14 A. **I mean, it was made clear to me that they**
 15 **told me, you know, that he worked for my sister.**
 16 Q. Okay. And just to be sure that I understand
 17 your testimony and to be sure that the record is
 18 perfectly clear, when you say they told you that, tell
 19 me who they is.
 20 A. **Jorge.**
 21 Q. Anybody other than Jorge?
 22 A. **I mean, maybe Nick might have said it.**
 23 Q. Okay.
 24 A. **And --**
 25 Q. All right. But that was made crystal clear

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1 to you that Mr. Trevino absolutely, positively never
2 worked for you?

3 MR. SUAZO: Objection; form.

4 A. I mean, I don't know what to say different.
5 I mean, I knew that he was -- he said it was as a
6 courtesy.

7 Q. (BY MR. LITTLE) And when you say he said
8 that, who is he?

9 A. Mike.

10 Q. Okay. That's what I thought. I just want
11 to make sure that -- you're using pronouns. I want to
12 make sure I understand the actual person that they
13 actually match up with. Fair?

14 A. Yes, sir.

15 Q. Okay. So the contract that you signed in
16 February of 2020, that's a contingent-fee contract,
17 true?

18 A. I -- I guess.

19 Q. All right. And the idea was that you would
20 not be paying the lawyers on an hourly basis, that at
21 the end of the day the lawyers would receive a
22 percentage of your recovery. Is that your basic
23 understanding?

24 A. Yes, sir.

25 Q. All right. Now that contract that you

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1 A. Can you state the question again?

2 Q. (BY MR. LITTLE) Yes, sir. So I'm asking
3 you which of two perspectives you have, right? And so
4 there are choices, and I'm asking you whether your
5 perspective is more along the lines of Choice A or
6 whether your perspective is along the lines of Choice
7 B. Okay?

8 A. Uh-huh.

9 Q. Yes?

10 A. Yes, sir.

11 Q. Okay. So, with that framework, here's my
12 question: Is your claim in this lawsuit that you owe
13 your lawyers some money for the work that they did on
14 your case; you just owe them less than what they think
15 they should get? Or are you saying that at the end of
16 the lawsuit, you think that Judge Ashby should order
17 the lawyers to take their money and give their money
18 to you?

19 MR. SUAZO: Objection; form.

20 MR. KASSAB: Object to the form.

21 A. I don't know. We're -- I mean, I got made a
22 trustee of something. I didn't get any money in my
23 pocket personally. So how do you say that? I didn't
24 get to walk away with the cash like I was promised or
25 a divorce from my stepmom. I'm still dealing with

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1 signed in February of 2020, are you claiming that that
2 contract is enforceable or that it's unenforceable for
3 some reason?

4 MR. KASSAB: Object to form.

5 A. I'm really not sure. I'm not no legal
6 expert on there. You can ask -- ask one of them
7 attorney expert we got on it.

8 Q. (BY MR. LITTLE) Okay. So you would
9 consider whether your contingent-fee contract from
10 early 2020, whether that's enforceable or not, that's
11 a lawyer question, not a Richard Allison question,
12 fair?

13 A. I think fair enough.

14 Q. Well, I mean, it's not my words. I wanted
15 to know if those are your words.

16 A. Yeah. I mean, I did say that.

17 Q. Okay. All right. I want to make sure I
18 understand this part of how you see the claims going
19 back and forth in this arbitration proceeding. Is
20 your perspective that at the end of the day you owe
21 the lawyers some money for the work that they did on
22 your case; you just owe them less than what they think
23 they should get? Or are you saying at the end of the
24 day the lawyers owe you money?

25 MR. KASSAB: Object to form.

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1 this thing years later. The case is still pending
2 with my stepmom. I really can't see -- I mean, the
3 case has like been picked up by other attorneys now.
4 It's at Sarah -- Sarah -- what's -- Sarah Pacheco is
5 handling the case. I mean, for all I know, hey, I
6 could end up with diddly.

7 Q. (BY MR. LITTLE) Okay.

8 MR. LITTLE: Object as nonresponsive.

9 Q. (BY MR. LITTLE) Do you have an opinion as
10 to whether at the end of the day your goal in this
11 lawsuit is to pay your moneys -- pay your lawyers some
12 money, just less than they might want or whether your
13 goal is more to receive money? Between those two
14 choices, do you have a perspective one way or the
15 other?

16 MR. KASSAB: Object to form.

17 A. I mean -- I mean, I'm sure they're really
18 hungry, so -- but are you -- can you ask the question
19 again?

20 Q. (BY MR. LITTLE) Yes, sir. I'm just trying
21 to figure out -- maybe one way to describe it would be
22 the flow of the money, right? I'm trying to get your
23 perspective on whether you think the end result of the
24 arbitration proceeding should be that you pay the
25 lawyers some money for their services, less than they

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1 want, but something; or, on the other hand, whether
2 you think that the lawyers should be giving you money;
3 and the money flows from them to you. I'm just trying
4 to understand which of those two perspectives you
5 have.

6 MR. SUAZO: Objection; form.

7 A. Hmm. I mean, I got that -- I looked at that
8 Hancock report and saw the thing in there; and, man,
9 it's just like I would have rather had everything --
10 get that full accounting and not leave anything
11 unturned. It just felt like we did an agreement; and
12 I thought like when you're high-powered and
13 knowledgeable, you know, super attorneys, you should
14 understand how the law works; but, I mean -- you know,
15 I mean, I know that for damages -- yeah, I mean, I
16 would just like look at that.

17 Q. (BY MR. LITTLE) Maybe I can ask it in a
18 slightly different way and ask a shorter question --

19 A. Uh-huh.

20 Q. -- and improve our communication.

21 A. Yes, sir.

22 Q. Do you think that the lawyers are entitled
23 to be paid anything for the work that they did on
24 yours and Caroline's case against your stepmother
25 Robin?

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1 double negative. So, yes, you agree with me that your
2 answer to my question is no? It maybe would be best
3 if you just say I agree or I disagree because that's
4 easier to understand later rather than yes or no. Do
5 you see where I'm going?

6 A. Okay. All right. Agree.

7 Q. Now after the mediation I think there were a
8 couple of texts from Caroline to one of the lawyers
9 about some questions or concerns that she had about
10 the mediated settlement agreement a day or two or
11 three after mediation. Do you -- you're aware of
12 that, right?

13 A. Which texts are you referring to, sir?

14 Q. There were a couple of texts that we talked
15 about with Caroline yesterday in her deposition, I
16 think, where one or two or three days after the
17 mediation she expressed some concerns or misgivings or
18 whatever the word might be.

19 A. Yes, sir.

20 Q. All right. You remember that?

21 A. I recall that.

22 Q. Okay. And then we talked about the fact
23 that you and your sister met Mr. Trevino for dinner
24 at -- I think it was a sushi restaurant, right?

25 A. Yes, sir.

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1 MR. KASSAB: Object to form.

2 MR. SUAZO: Objection; form.

3 A. On the case that -- to be paid on this case
4 for a recovery at this time or in the future?

5 Q. (BY MR. LITTLE) I'm asking you if you think
6 that your lawyers deserve to be paid for the work that
7 they did for you on the lawsuit against your
8 stepmother Caroline [sic].

9 MR. SUAZO: Objection; form.

10 A. I mean, I feel after -- I mean, they gave
11 away my money from the apartments. I mean, that money
12 was -- I never received any of that money. I got \$4.
13 I mean, if they call that a recovery, I mean, I'll
14 split that; and if they want the \$4 that they put on
15 there instead of giving us what we would have got, I
16 mean, it's just like, I mean, you know, they gave away
17 hundreds of thousands of dollars for \$4. I mean, it
18 just doesn't make sense. I don't think like somebody
19 that's like a professional should -- I mean, if I --
20 if I was sitting in their shoes, I wouldn't be asking
21 my client for anything, if you put it that way.

22 Q. (BY MR. LITTLE) Okay. So does that mean
23 that the answer to my question is just no?

24 A. No.

25 Q. And, again, we had this earlier with the

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1 Q. Okay. Between leaving the mediation and
2 meeting Mr. Trevino for dinner the following Friday
3 night, did you have any conversations with any of the
4 lawyers?

5 A. About the case or --

6 Q. Yes, sir.

7 A. I don't think we even discussed the case at
8 dinner.

9 Q. Well, I'm talking about before dinner.
10 We'll get to dinner in a minute.

11 A. Oh, okay.

12 Q. But from the time that you left the
13 mediation until, let's just say, right as you're
14 walking in the door of the restaurant to meet
15 Mr. Trevino, during that time period, did you have any
16 conversations with any of the lawyers?

17 A. I may have, but I'm not sure.

18 Q. Okay. And I assume if you don't remember
19 whether you had any conversations with them, you
20 wouldn't remember what was said. Fair?

21 A. I mean, I was hoping that we would come with
22 the solution. I mean, I was like just when we finally
23 saw that thing was like a stockbrokerage account, man,
24 I just was like -- thought it was like a cash account;
25 and then we find out it's a stock account. Man, I was

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1 just like going -- yeah, I wasn't interested in no
2 stocks. I thought we got tricked; and then they were
3 going to make it right, you know, that Robin pulled
4 one on us; and -- and they were going to make it
5 right; but then they kept telling us, hey, it's still
6 a great deal. It's still a great deal, and I'm like
7 but it's stocks --

8 Q. Okay. I understand all those things, but my
9 question was just whether you talked to any of the
10 lawyers during the time period between Tuesday night
11 or super early on Wednesday morning and Friday night.
12 And you said no, you didn't remember any
13 conversations. And then my follow-up question --

14 MR. SUAZO: Hang on. I think he said
15 something different. He said he may have.

16 MR. LITTLE: Okay.

17 Q. (BY MR. LITTLE) Well, then -- well, you
18 said whatever you said; and I was following up because
19 I thought you said something along the lines of I
20 don't remember or I'm not sure; and if that's what you
21 said, then my follow-up question was if you don't
22 remember or if you're not sure, then I guess you don't
23 remember what was said. I guess the record will speak
24 for itself, and maybe I misheard the answer.

25 So let's just circle back. Am I

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1 that conversation, please, sir, at dinner.

2 A. Hmm. I think we just talked about -- I
3 mean, a lot of it was Mike talking, talking about his
4 family, baseball. Yeah. We didn't really discuss
5 business.

6 Q. Didn't discuss anything about the case or
7 the settlement agreement at all?

8 A. I mean, I think he just brought some
9 document and then was going to do a follow-up with us
10 to figure out this whole mess; and, you know, I think
11 he was going to try to explore some options for us to
12 make it right because they didn't know -- they
13 didn't -- I don't -- you know, they didn't see what
14 was in this account. We just were given a number, and
15 nobody was shown what was actually in the account. We
16 didn't get any type of statements of what -- what the
17 trust had except for this old book -- or this old
18 thing that Robin did back in -- date of death and
19 stuff.

20 So we didn't really have any of those
21 like discussions of what -- how the thing would settle
22 or what was going to happen. It just seemed like it
23 was pretty open ended, and we were just going to work
24 on the things and try to get a good solution going.

25 Q. And that was what you took out of the

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1 understanding you correctly when you say you don't
2 remember having any conversations with any of the
3 lawyers from the time you left mediation until the
4 time that you walked in the restaurant to have dinner
5 with Mr. Trevino?

6 MR. SUAZO: Objection; form.

7 A. Sir, I mean, I believe there may have been
8 some conversations. Like we had some phone calls --

9 Q. (BY MR. LITTLE) Okay.

10 A. -- about this thing because I was -- I was
11 in shock the next day when we actually saw the --
12 that -- what was that bank again?

13 Q. Fidelity.

14 A. Fidelity. Yeah. That that was a
15 stockbrokerage account, not a money market account.
16 So I was -- I was upset.

17 Q. All right. So then you and your sister --
18 did you and your sister drive together to the dinner
19 at the sushi restaurant to meet Mr. Trevino, or did
20 y'all get there separately?

21 A. Now, sir, I don't have a car in Texas.

22 Q. Okay. So you and your sister arrived at the
23 restaurant together to have dinner with Mr. Trevino?

24 A. Yes, sir.

25 Q. All right. Tell me what you remember about

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1 conversation at the restaurant?

2 A. I mean, that's what I thought was going to
3 happen. People were -- I thought my attorneys are
4 going to work for me and make things right. You know,
5 a bad situation happened; and they were just as
6 surprised that -- that they got -- you know, I mean, I
7 felt bamboozled by this whole thing. I mean, I was
8 totally bamboozled. We thought we were getting cash
9 to walk away; and then, you know, I could go my way;
10 my sister could go her way and wouldn't have to talk
11 to anybody again. We wouldn't have to deal with
12 Robin, and then we're -- and then we get some account,
13 and then nobody mentioned that there was a trust. We
14 didn't even find out about that until Mr. Crouch told
15 us that this whole thing is still a trust. You can't
16 take any of the money. You've got to follow the
17 provisions of the trust. So, I mean, at that time --
18 at that time we were just trying to figure out how to
19 -- how to get money out of the stockbrokerage account
20 and find out like -- because we were thinking like,
21 hey, it's going to be a lot of taxes and -- you know,
22 millions of taxes. And then they were talking about
23 using the taxes as the fee -- the attorneys' fee would
24 be offsetted by the taxes, so it would be like a wash.
25 So either one would be -- the taxes would -- would be

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1 no more than what the fee was and that Robin -- they
2 were going to get Robin because there was some
3 cooperation thing in the trust so that we wouldn't get
4 this double whammy with taxes and paying a fee at the
5 same time.

6 And that's what my sister was really
7 upset about was that, hey, we were never disclosed
8 that we were getting a loaded account with a bunch of
9 taxes; and that's why I felt like that was too good to
10 be true; and then that cash market management account
11 turned into a thing. I think that's what we were --
12 they were going to work on it; and that's what I
13 thought was happening after we left the meeting, that
14 they were going to come to a solution.

15 Q. So you're saying now that you think even the
16 lawyers were bamboozled --

17 A. Yeah.

18 Q. -- because you think that the lawyers --

19 A. Oh, definitely bamboozled, sir.

20 Q. Okay. So the lawyers, as you understand it,
21 thought at mediation that there was a Fidelity account
22 that somebody had just put \$9.5 million in cash in;
23 and then, when the lawyers saw the statement, they
24 realized after the mediation for the first time that
25 it was actually stocks and mutual funds in the

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1 they were working on; and then they said they couldn't
2 work out a deal with Robin.

3 Q. Okay. So maybe the lawyers didn't use the
4 term bamboozled, but the lawyers made it very clear to
5 you from their communications to you that they had
6 just totally misunderstood the nature of this Fidelity
7 account at mediation and didn't figure out the truth
8 until after mediation. Is that your testimony?

9 MR. SUAZO: Objection; form.

10 A. Sir, I think -- I think that's -- I don't
11 think -- I thought they -- I don't think they knew
12 that it was a -- I don't -- they didn't know that it
13 was a stock -- to me, they didn't know that it was a
14 stockbrokerage account.

15 Q. (BY MR. LITTLE) Well, and I'm trying to
16 figure that out. So my question is a yes-or-no
17 question.

18 A. Okay.

19 Q. If you kind of listen to it, you really can
20 answer it with a yes or a no.

21 A. Okay.

22 Q. Did these lawyers or any of them tell you
23 that they had misunderstood at mediation and thought
24 that this was a cash account and only discovered after
25 the mediation that it was actually a brokerage

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1 account; and they didn't know that before. Is that
2 your -- is that what you're saying?

3 A. Yes, sir.

4 MR. KASSAB: Object to form.

5 A. Yes, sir. During the mediation, we were
6 told that this was a cash management account; and so
7 they felt as surprised as we were getting this
8 statement in that they had no idea that that was a
9 stockbrokerage account; and so I think they were --
10 they got outplayed by Collins and Robin and that the
11 thing was on there. And so we just felt really
12 bamboozled, and they were just as victim as we were on
13 here not going in there. So I thought the whole thing
14 was going to be undone or get -- you know, get
15 something back from the judge that, hey, this is
16 not -- this is not a decent agreement.

17 Q. (BY MR. LITTLE) And the lawyers just
18 straight-up admitted that to you, that they just got
19 bamboozled?

20 A. No. They -- they said that they thought it
21 was still a workable deal and that we could do
22 something with the taxes and not -- the money from the
23 -- that you would pay in taxes would be no more than
24 what the fee -- the fee would be, you know. So, if
25 you got to liquidate any money, that's what I thought

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1 account? Is that something that these lawyers
2 actually said to you? Yes or no.

3 MR. SUAZO: Objection; form.

4 A. Well, it seemed like it was still spinned to
5 me as a positive.

6 Q. (BY MR. LITTLE) Well, it's a yes or no. I
7 mean --

8 A. Okay.

9 Q. There's a difference between the lawyers
10 actually saying those words to you and then you just
11 listening to what the lawyers said and thinking that
12 it was spinned or interpreting it in your own way.
13 Right?

14 A. Uh-huh.

15 Q. So that's what I'm trying to figure out. So
16 did the lawyers actually just straight-up admit to you
17 that they absolutely did not understand at mediation
18 that this Fidelity account was a brokerage account?
19 Did they actually say those words that they didn't
20 figure it out until later, or is that just kind of
21 your interpretation of what they said?

22 A. All right. So they -- they put in -- I
23 think it was -- I'm trying to recall right now. So I
24 think it was more of something where they didn't --
25 they didn't admit to me that it was a bad thing. They

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1 kept telling me that this is still a really good deal,
2 that I should take -- you know, that the deal was
3 still good; and that's what they kept reassuring me,
4 that it was still a good deal.

5 And I just said, hey, I don't like -- I
6 wasn't looking for stocks. I was looking -- you know,
7 if I was getting a cash payout, that's what I was
8 expecting; and then it was just like a bait and
9 switch; and they kept not wanting to -- they kept
10 saying, no, this is still a good deal. We can work
11 with this.

12 Q. Maybe it will help if I ask the question a
13 different way.

14 A. Okay.

15 Q. I'm relatively certain that when we get to
16 arbitration, the lawyers are going to testify under
17 oath that they knew all along at mediation that the
18 Fidelity account was a brokerage account. Okay? So
19 let's just -- if that happens, did the lawyers ever
20 tell you anything different?

21 MR. SUAZO: Objection; form.

22 A. Sir, we were -- we were told it was a cash
23 management account; and that's what -- that's what
24 kept emphasizing to us, that this was a cash
25 management account. I wouldn't have even signed the

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1 So far have I read the e-mail correctly?

2 A. Yes, sir.

3 Q. Okay. Basically the consent agreements are
4 to make sure the kids are aware of the settlement and
5 are fine with everything. They have until May 13,
6 2021, to sign the consents. Please let me know if you
7 think there will be any issues or if you have any
8 questions.

9 Did I read that correctly?

10 A. Yes, sir.

11 Q. All right. Do you remember receiving this
12 e-mail and getting the consent forms for your three
13 children to sign?

14 A. Hmm. I mean, it was a while ago, so
15 possibly.

16 Q. All right. Do you remember whether you
17 passed those forms on to your children or whether you
18 asked Mr. Trevino to do that himself directly?

19 A. I don't recall.

20 Q. Okay. Do you remember that at some point
21 all three of your children got those signed forms back
22 to you?

23 A. I mean, I'm not really sure what happened.
24 It's a blur.

25 (R. Allison Exhibit No. 11 was marked.)

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1 deal if I was getting a stockbrokerage account. I
2 would have zero interest in it, and I thought like I
3 don't like dealing with stocks. I don't want to deal
4 with any of that -- that type of hassle; and -- and I
5 thought I was getting cash, not stocks.

6 (R. Allison Exhibit No. 10 was marked.)

7 MR. LITTLE: Objection; nonresponsive.

8 Q. (BY MR. LITTLE) Mr. Allison, I'm showing
9 you what we marked as Exhibit 10 to your deposition.
10 It's an e-mail from Mr. Trevino to you and Caroline.
11 For purposes of these questions, the same agreement
12 that we've had before. We'll talk about the substance
13 of it, but first I'm just going to ask you if I'm
14 reading this correctly so that the record is clear.
15 Okay? So these first questions are just did I read
16 this correctly, and I'm looking for a yes or no based
17 on whether you think I read it correctly. Okay?
18 Fair?

19 A. Yes, sir.

20 Q. Okay. Rich and Caroline, we have drafted
21 the consent agreements for Hunter, Erik, and Ella.
22 The consent agreements are attached to this e-mail
23 along with the signed settlement agreement. Please
24 let me know if you would like me to contact them
25 directly or if you think it is better coming from you.

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1 Q. (BY MR. LITTLE) I'm showing you what we've
2 marked as Exhibit No. 11 to your deposition which I
3 believe may have been attached to Caroline's
4 deposition yesterday as 21. So let's start in the
5 middle. There's an e-mail dated Monday, May 3, 2021,
6 from Hunter to you. On the subject line it says
7 notarized form.

8 A. Uh-huh.

9 Q. Do you see that?

10 A. Yes, sir.

11 Q. Okay. It says, hi, Daddy: Here is that
12 form that you requested. Hugs, Hunty.

13 Did I read that correctly?

14 A. Yes, sir.

15 Q. All right. So does that help refresh your
16 recollection as to whether you sent the forms to your
17 three children directly as opposed to having
18 Mr. Trevino do it himself?

19 A. Yes, sir.

20 Q. Okay. And then in response there's an
21 e-mail from you to Mr. Trevino and to your sister and
22 to Mr. Borunda dated May 5, 2021. Do you see that?

23 A. Yes, sir.

24 Q. Okay. And it says attached is Hunter's
25 signed doc. Erik and Ella are going to consult an

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1 attorney before signing. Rich.
 2 Did I read that correctly?
 3 A. Yes, sir.
 4 Q. Okay. So there's nothing in your e-mail to
 5 Mr. Trevino where it says, hey, Hunter said that I
 6 requested that he sign this form; but that's not
 7 really true.
 8 A. Uh-huh.
 9 Q. I don't see anything like that in this
 10 e-mail, do you?
 11 A. No, sir.
 12 Q. All right. Do you -- what made you write in
 13 this e-mail that your other two children, Erik and
 14 Ella, are going to consult an attorney before they
 15 sign the consent form?
 16 A. I mean, that's what I was told by -- I spoke
 17 with my daughter; and she had some concerns; and she
 18 was trying to find an attorney; but I don't think she
 19 found an attorney. She just went and signed it
 20 because we said, hey, if we don't sign this thing, we
 21 could get in trouble.
 22 Q. Why did you tell somebody that?
 23 A. Well, because -- because it was a court
 24 order.
 25 Q. What court order? What did the court order

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1 MR. LITTLE: Which I believe was 22 from
 2 yesterday.
 3 Q. (BY MR. LITTLE) Do you recognize this as
 4 the document that, according to your e-mail, you asked
 5 your son -- that you asked Hunter to sign?
 6 A. Possibly.
 7 Q. All right. Do you recognize Hunter's
 8 signature there maybe two thirds or so of the way down
 9 the page on Exhibit 12?
 10 A. Yes, sir.
 11 Q. All right.
 12 (R. Allison Exhibit No. 13 was marked.)
 13 Q. (BY MR. LITTLE) I'm showing you what we're
 14 marking as Exhibit 13 to your deposition.
 15 MR. LITTLE: Which I believe may have
 16 been 23 yesterday.
 17 Q. (BY MR. LITTLE) This is a Thursday, May 13,
 18 2021, e-mail from you to Mr. Borunda and Mr. Trevino.
 19 Do you see that?
 20 A. Yes, sir.
 21 Q. And it says here is Ella's signed agreement.
 22 Please let me know if you need anything else. Rich.
 23 Did I read that correctly?
 24 A. Yes, sir.
 25 Q. All right.

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1 say?
 2 A. That we had to get this stuff done.
 3 Q. There was a time frame for your children to
 4 agree or not agree --
 5 A. Uh-huh.
 6 Q. -- to the settlement; and if they agreed
 7 within a certain time, one thing was going to happen;
 8 and then, if they didn't agree within that time,
 9 another thing was going to happen.
 10 A. Uh-huh.
 11 Q. Do you remember that?
 12 A. Not -- not particularly.
 13 Q. Okay. So it's absolutely false to say that
 14 there was a court order requiring your children to
 15 sign these documents. The order said your children
 16 can sign these documents or not. If they're going to
 17 sign them, they have to do it by a certain deadline.
 18 A. Okay.
 19 Q. Do you understand the difference?
 20 MR. SUAZO: Objection; form.
 21 A. Not really.
 22 Q. (BY MR. LITTLE) Okay.
 23 (R. Allison Exhibit No. 12 was marked.)
 24 Q. (BY MR. LITTLE) I'm going to show you what
 25 we marked as Exhibit 12 to your deposition.

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1 (R. Allison Exhibit No. 14 was marked.)
 2 Q. (BY MR. LITTLE) And I'm showing you what
 3 we're marking as Exhibit 14 to your deposition.
 4 MR. LITTLE: Which, again, I believe may
 5 have been 24 from yesterday;
 6 Q. (BY MR. LITTLE) Do you recognize this as
 7 the signed consent agreement of your daughter Ella
 8 that would have been attached to your e-mail which we
 9 marked as Exhibit 13?
 10 A. Yes, sir.
 11 Q. Do you recognize your daughter's signature
 12 where it says agreed to by Ella Allison maybe two
 13 thirds or three quarters of the way down the page?
 14 A. Yes, sir.
 15 Q. Okay.
 16 (R. Allison Exhibit No. 15 was marked.)
 17 Q. (BY MR. LITTLE) Lastly I'm showing you what
 18 we marked as Exhibit 15 to your deposition which I
 19 believe may have.
 20 MR. LITTLE: Which I believe may have
 21 been 25 from yesterday.
 22 Q. (BY MR. LITTLE) Do you recognize that as
 23 the consent form that was signed by your son Erik?
 24 A. Sir, what are you asking on this one?
 25 Q. Just if you recognize Exhibit 15 as the

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1 consent form that was signed by your son Erik.

2 **A. It doesn't look like his signature. He's**
3 **got a different signature.**

4 **Q.** Do you remember getting this document back
5 from your son Erik and then passing it along to
6 Mr. Trevino and/or Mr. Borunda?

7 **A. I had some questions with my son on this**
8 **one; and my son -- you know, he brought up some things**
9 **to me about that he was still waiting for an attorney,**
10 **and this thing got -- and -- yeah. It just -- I can't**
11 **really say that that's his signature on there.**

12 **Q.** Do you remember receiving this document in
13 an e-mail and then in turn e-mailing it to Mr. Abaza
14 or Mr. Borunda or Mr. Trevino?

15 **A. Yeah. I don't recall on here specifically.**
16 **I would need to see the document.**

17 **Q.** You don't remember one way or the other?

18 **A. No.**

19 **Q.** Okay.

20 **A. I just remember there was some issues about**
21 **this one.**

22 **Q.** All right. And tell me, again, what the
23 issues were as best you can recall.

24 **A. Well, my son claims he -- he didn't consent.**

25 **Q.** Erik says that he didn't consent?

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1 100 percent certain you did not forge your son's name
2 on Exhibit No. 15, correct?

3 **A. No, sir.**

4 **Q.** It is correct that you did not forge his
5 name, right?

6 **A. I did not.**

7 **Q.** After you returned the three signed consents
8 from your children -- well, let me ask you this: Did
9 you remember conversations along the way that because
10 your children were adults, they could either choose to
11 consent or not consent on their own; but because
12 Caroline's daughter was still a minor, she obviously
13 couldn't sign off on a legal document? Do you recall
14 conversations like that after the mediated settlement
15 agreement?

16 **A. No, sir. I wasn't involved in that**
17 **conversation.**

18 **Q.** Okay. Do you remember any conversations
19 along the lines of because Caroline's daughter was a
20 minor, there had to be another lawyer who was brought
21 in to represent the interests of Caroline's daughter
22 and come to an independent decision on Kensington's
23 behalf as to whether the mediated settlement agreement
24 was or was not in her best interests? Do you remember
25 anything along those lines?

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1 **A. Yes, sir.**

2 **Q.** And when did he tell you that?

3 **A. He told me -- he went and told people that I**
4 **went and forged his signature.**

5 **Q.** Your son Erik told people that you forged
6 his signature?

7 **A. Yes. He made an accusation that I forged**
8 **his signature and that he didn't consent to the**
9 **agreement.**

10 **Q.** Who did Erik make that accusation to?

11 **A. He made it to some family members.**

12 **Q.** Who specifically?

13 **A. His mother. Probably his grandma.**

14 **Q.** Grandma Marilyn?

15 **A. Yeah. Grandma Marilyn.**

16 **Q.** Anybody else?

17 **A. I mean, probably brought it up to Robin. I**
18 **don't know. But, yeah, it doesn't look like his**
19 **signature.**

20 **Q.** Well, let me just ask you straight-up.
21 Mr. Allison, did you forge your son's signature on
22 that document?

23 **A. No, sir.**

24 **Q.** Okay. And you don't -- you don't have any
25 qualifications to that or any uncertainty about that.

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1 **A. Hmm. I mean, I think the attorneys had**
2 **conversations with my sister; but I wasn't included.**

3 **Q.** Okay. So you're generally familiar that
4 that process happened, but you don't recall being
5 personally involved in the conversations?

6 **A. I wasn't even aware of that process that**
7 **you're mentioning right now. They just -- I mean,**
8 **basically I was getting contacted for the process with**
9 **my kids that, hey, if I don't comply with it, you**
10 **know, there's going to be repercussions. So I don't**
11 **want -- I don't want to create problems; and my**
12 **attorneys are directing me what to do, telling me what**
13 **to do.**

14 **Q.** Well, that's certainly -- that testimony
15 certainly conflicts with the documents that we have
16 marked in your deposition, right? You agree with me
17 that testimony is inconsistent with the actual
18 documents?

19 MR. SUAZO: Objection; form.

20 **A. What's inconsistent?**

21 **Q.** (BY MR. LITTLE) Well, let's go back to 10.
22 Okay. 10 is the e-mail from Mr. Trevino to you and
23 Caroline where he attaches the three consent forms.
24 Do you remember where we are here?

25 **A. Hmm. Okay.**

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1 Q. Okay. And the last sentence says, please
2 let me know if you think there will be any issues or
3 if you have any questions.

4 Did I read that correctly?

5 A. Yes, sir. I mean, people put that as a
6 courtesy usually.

7 Q. Right. So I haven't seen any e-mails where
8 you had any questions.

9 A. Uh-huh.

10 Q. Are there some that you say are out there
11 that I've never seen?

12 A. Hmm. Not that I'm aware of. I can't recall
13 right now.

14 Q. Okay. And I haven't seen anything -- any
15 e-mails where you say you think there will be any
16 issues. Are there some e-mails like that out there
17 that I haven't seen?

18 MR. SUAZO: Objection; form.

19 A. I don't know.

20 Q. (BY MR. LITTLE) Okay. So, when you say,
21 oh, Mr. Trevino told me that I had to get this signed
22 or there would be repercussions, that's inconsistent
23 with Exhibit 10 where Mr. Trevino just says, hey,
24 look, let me know if you think there's going to be any
25 issues or if you have any questions. You see the

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1 Q. (BY MR. LITTLE) So, if you think that
2 there's any way that you can reconcile your testimony
3 with Exhibit 10, I want you to help me understand what
4 that testimony is --

5 MR. SUAZO: Objection; form.

6 Q. (BY MR. LITTLE) -- because I do want to
7 hear it if you think there's some way to reconcile
8 that.

9 MR. SUAZO: Objection; form, misleading.

10 MR. KASSAB: I can help you, Joe.

11 MR. LITTLE: I would enjoy taking your
12 deposition --

13 MR. KASSAB: I know you would.

14 MR. LITTLE: -- but another day.

15 MR. KASSAB: Maybe.

16 MR. LITTLE: Perhaps.

17 A. I mean, I don't know.

18 Q. (BY MR. LITTLE) Okay. Now, after you
19 returned these agreements to Mr. Trevino, do you
20 recall that one or more of the lawyers were trying to
21 get in touch with you and frankly Caroline as well;
22 but you and Caroline were not responding? Do you
23 remember a period of time where there was some
24 attempts at communications from the lawyers that you
25 didn't respond to?

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1 inconsistency there, right?

2 MR. SUAZO: Objection; form.

3 A. It seems like your opinion, sir.

4 Q. (BY MR. LITTLE) Well, do you -- do you --
5 I'm asking for your opinion. Do you think your
6 testimony is consistent with Exhibit 10 or
7 inconsistent?

8 MR. SUAZO: Objection; form.

9 A. I don't know.

10 Q. (BY MR. LITTLE) Well, is there anything
11 about your testimony that is consistent with Exhibit
12 10? And if there is, I would like for you to tell me
13 how it's consistent.

14 MR. SUAZO: Objection; form.

15 A. It sounds like some legal analyst --
16 analysis you want me to give; and I mean, I can't -- I
17 can't tell on that.

18 Q. (BY MR. LITTLE) No. There's no legal
19 analysis. You're representing that somehow
20 Mr. Trevino or somebody told you that you had to get
21 these agreements signed or there would be
22 repercussions, and that testimony is just false. It's
23 just not true.

24 MR. KASSAB: Object to form.

25 MR. SUAZO: Objection; form.

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1 A. I recall something like that.

2 Q. Okay. Was that true? Were you receiving
3 communications from one or more of the lawyers and
4 then just kind of deciding not to respond?

5 MR. SUAZO: Objection; form.

6 A. I was frustrated my questions weren't being
7 answered and that -- that the things that they said
8 they were going to do weren't getting done.

9 Q. (BY MR. LITTLE) Well, if the lawyers are
10 reaching out to you trying to communicate with you and
11 you're ignoring them, how can you say that they're not
12 answering your questions? I don't understand.

13 MR. SUAZO: Objection; form.

14 MR. KASSAB: Object to the sidebar.

15 A. They kept talking about how great this deal
16 is and -- and all they -- that's all they could talk
17 about is how excited they are about the deal. They
18 were more excited about it than me or my sister were.
19 I mean, they were just so eager and didn't want to
20 change anything. They just said, hey, it's going to
21 go like this and not -- not listening to what I had to
22 say. I felt like I wasn't being listened to; and so
23 how many times can you tell somebody like, hey, I
24 don't like this deal; and, you know, what's going on?
25 Are you guys going to make it right? And then they're

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1 not -- they're not doing it. They're just, oh, it's a
2 great deal. They're -- you know, they just kept
3 saying how excited they are for us on this deal; and
4 it just was not -- it was not the deal that I wanted,
5 my sister wanted; and we were -- I was working with
6 them because I don't want a deal where you have the
7 attorney quits on you; and then you're back to square
8 one again; and I wanted to get something; but they
9 just kept talking about how great the deal was. And
10 we already told them like, hey, we didn't like stocks.
11 Are we going to try to renegotiate this thing?

12 Q. (BY MR. LITTLE) Okay. I think my question
13 was different.

14 A. Oh.

15 Q. You're telling me about communications that
16 you received from the lawyers. I'm kind of asking
17 about the other way.

18 A. Uh-huh.

19 Q. I'm asking about communications from you to
20 the lawyers. So let me try to repeat my question, and
21 maybe we'll communicate better this time. So my
22 question is: Were there times where you received
23 communications from the lawyers in these months after
24 the settlement agreement was signed and approved by
25 the Court where you got the communications from the

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1 had told them that you were unavailable?

2 MR. SUAZO: Objection; form.

3 A. I mean, there is some family things going
4 on, too. I mean, I had some issues I was trying to
5 handle. So I don't -- I mean, I may have been --
6 dropped the ball on some things. I don't -- I don't
7 know what I could say. I mean --

8 Q. (BY MR. LITTLE) All I'm asking for is the
9 truth; and the truth is what you know, Mr. Allison.
10 There were communications from your lawyers during
11 this time period where you didn't respond, true?

12 MR. SUAZO: Objection; form.

13 A. I don't recall, sir.

14 Q. (BY MR. LITTLE) Okay. There were also
15 times where you received communications from your
16 lawyers, and you actually were dishonest with your
17 lawyers because you told them you were in one place
18 when in truth you were really in a different place.

19 MR. SUAZO: Object --

20 Q. (BY MR. LITTLE) You will admit to that,
21 right?

22 MR. SUAZO: Objection; form.

23 MR. KASSAB: Object; form.

24 A. Which place was that, sir?

25 Q. (BY MR. LITTLE) I don't remember

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1 lawyers, but you didn't respond to the communications?
2 In other words, you left them undelivered, you know,
3 if we want to say it that way in social media.

4 MR. SUAZO: Objection; form.

5 A. So there may have been a time where I was
6 unavailable, and I let them know. I mean, that's all
7 I could say. I was going -- I had something planned
8 and told them like, hey, I'm going to be in a place
9 where I may not have communication; and then it would
10 seem like people would want to reach out to me when
11 that happens, you know.

12 And so other times they were busy
13 chasing down all these cases. They were in California
14 for multiple probate cases out in California. So they
15 were around; but, you know, they were busy at the time
16 I was trying to get ahold of them; and then, when I
17 said I'm not going to be available, then they were
18 saying I wasn't being responsive.

19 I don't -- it just doesn't make sense.
20 I told them I was going to be gone during this time
21 and unavailable, and I wasn't going to be able to get
22 back until I got back from a certain -- certain date.

23 Q. (BY MR. LITTLE) So the only time that you
24 remember not responding to your lawyers'
25 communications were when you were on your retreat and

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1 specifically, but you remember what I'm talking about.
2 You talked about the contempt charges that Mr. Collins
3 was talking about, and part of that whole process was
4 the lawyers had reached out to you. You had told them
5 you were in a particular place, and the problem was --
6 I think you and Caroline or one of you posted
7 something on Facebook where you were maybe at the
8 Jackson Square property or at some property which is
9 not where you told the lawyers you were. So do you
10 remember that?

11 MR. KASSAB: Object to form.

12 A. Facebook? You're saying I posted something
13 on Facebook?

14 Q. (BY MR. LITTLE) Maybe it was Caroline. My
15 question started off more simply. So let's go back to
16 the simpler question, and maybe you and I can work it
17 out with the simpler question.

18 You do remember that there were times
19 where the lawyers reached out to you trying to
20 communicate with you. You told them that you were
21 somewhere, and it was later discovered that you had
22 been dishonest with your lawyers because you weren't
23 where you told them that you were. You were actually
24 somewhere else. You do remember that, don't you,
25 Mr. Allison?

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1 MR. KASSAB: Object to the form.

2 A. Sir, that's a very vague question. I mean,
3 if you could give me some specific dates, I can help
4 you with that; but I don't -- I can't really say that
5 I was honest or dishonest because I don't know which
6 thing you're referring to.

7 Q. (BY MR. LITTLE) Well, I'm talking
8 specifically about the fall of 2021 where you were
9 dishonest with your lawyers because you told them you
10 were in one place; and you were actually in a
11 different place; and Mr. Collins busted you because he
12 found some picture of you in a place other than where
13 you said you were. Now you remember that, right?

14 MR. KASSAB: Object to form.

15 A. I remember a discussion being brought up on
16 there, but they -- it was -- that was completely false
17 because they were claiming that I was in Texas, and my
18 stepmom -- or my ex-mother-in-law -- or my stepmother
19 wanted to get a restraining order, and I wasn't even
20 in the state of Texas. So, I mean, I was in another
21 state. I wasn't in Texas.

22 Q. (BY MR. LITTLE) So you do remember at least
23 one circumstance where --

24 A. I remember that; but, I mean, I wasn't -- I
25 mean, if you're telling me Collins accused me of being

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1 near my -- stalking my stepmother, that wasn't true.
2 That was a lie.

3 Q. I don't think it was the stalking part. I
4 think it was another part where you had told your
5 lawyers that you were in one place. Your lawyers
6 passed that information along to Mr. Collins, and then
7 Mr. Collins busted you because there was a picture of
8 you somewhere else. I don't think it had to do with
9 you stalking your mother-in-law. I think it just had
10 to do with you saying that you were one place when in
11 truth you were in a different place. Do you remember
12 that?

13 MR. KASSAB: Object to form.

14 A. Sir, I think we already had the discussion;
15 and it wasn't -- that wasn't true. If you're going to
16 say I was in Texas at the time, I wasn't in Texas when
17 that happened; and I think in the fall I wasn't near
18 that Dallas area where they said. I had a
19 conversation with my -- with Marilyn and talked with
20 her on that, that Robin thought I was by her house and
21 trying to -- you know, and that's what they were
22 having some fear of, that I was coming -- I was coming
23 to her house; and I never came by her house.

24 Q. (BY MR. LITTLE) Right. I remember the
25 stalking accusations, and I know you deny them, but

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1 that's an apple and an orange. I'm talking about
2 something different than that.

3 A. Okay. Can you explain what you're talking
4 about, sir?

5 Q. Yes. Let me see if I can simplify it
6 because, to me, I think I would hear this question and
7 think that it was a yes or no.

8 MR. SUAZO: Well, if you had a document,
9 it would make it a lot easier. No offense or
10 criticism.

11 A. If you have a document, I would like to -- I
12 asked them for the proof; and I never got it. I said
13 if you want to say like where you saw me at or what
14 you think you got, I would like to see it; and I was
15 never provided that by Collins' office; and, you know
16 -- and you know, I mean, it would have saved some
17 things like when you're going to make up something.

18 Q. (BY MR. LITTLE) Well, so I guess my simple
19 question would be this: Did you ever tell your
20 lawyers -- as you were going through the process of
21 determining whether you were going to sign off on the
22 final settlement documents, was there ever a time
23 where you were in one particular location; and you
24 were dishonest with your lawyers and told them that
25 you were somewhere else? I mean, is that true; or is

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1 that false?

2 A. That's false, sir.

3 Q. Okay. All right. I'm going to try to skip
4 through a few things, so just bear with me for a
5 moment.

6 A. Okay.

7 MR. SUAZO: Do you want to take a break?

8 MR. LITTLE: Sure. Sure.

9 THE VIDEOGRAPHER: Off the record, 4:12.
10 (Break at 4:12 p.m. to 4:28 p.m.)

11 (R. Allison Exhibit No. 16 was marked.)

12 THE VIDEOGRAPHER: We're back on the
13 record at 4:28.

14 Q. (BY MR. LITTLE) Mr. Allison, are you
15 rested, comfortable, and ready to move forward as we
16 approach the end here?

17 A. Yes, sir.

18 Q. All right. Both you and your lawyer
19 suggested it might be helpful if you had a document,
20 so I found the document for you. I'm showing it to
21 you. I marked it as Exhibit 16. That's Applicant's
22 Motion for Enforcement and for Sanctions. Do you see
23 that at the top of the page?

24 A. Yes, sir.

25 Q. And then, if you go with me to page 2, in

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1 paragraph 10 -- one, two, three, four, five -- six
2 lines down, it makes reference to the fact that you
3 told Mr. Trevino that you were going back to
4 California on a certain date; but yet he had a picture
5 of you in Pottsboro, Texas, on the same day; and then
6 if you go back towards the back of the document and --

7 **A. Sir, I'm sorry. I lost where you are.**

8 **Q. Okay. Paragraph 10 --**

9 **A. Okay.**

10 **Q. -- on page 2.**

11 **A. Yes, sir.**

12 **Q. I was paraphrasing trying to move quickly**
13 **through this rather than reading; but it says in**
14 **paragraph 10 Mr. Trevino was told by you that you**
15 **would be returning on October 21, 2021, to California,**
16 **yet Mr. Collins says that he had a picture of you with**
17 **your sister in Pottsboro that day. And if you look**
18 **towards the back, Exhibit G, there's a picture that**
19 **appears to be maybe something that your sister posted**
20 **on Facebook or Instagram or something. I don't know.**
21 **So this is what I was talking about. Does this ring a**
22 **bell with you?**

23 **A. Let me see the picture.**

24 **Q. I think it's Exhibit G --**

25 **A. G.**

192

1 **A. I mean -- I mean, this was like from**
2 **months -- months back or like back in April or**
3 **something.**

4 **Q. Okay. And you understand that -- I mean,**
5 **the document that I showed you as Exhibit 16, that was**
6 **something that was filed by Mr. Collins, right? You**
7 **understand that?**

8 **A. Yes, sir.**

9 **Q. Okay. All right. I don't know that we need**
10 **to dwell there. You just asked me for a document and**
11 **asked me for a date --**

12 **A. Okay.**

13 **Q. -- and asked me for a location, so that's**
14 **what I think I was thinking of. Fair?**

15 **A. Yes, sir.**

16 **Q. All right. So, as we approach the end of**
17 **2021, by this time the Court has ordered you and your**
18 **sister to sign some documents related to the**
19 **settlement; and you guys have not done that; and**
20 **there's discussion between Caroline and the lawyers**
21 **about her firing them. Do you -- remember, we talked**
22 **about it yesterday in the deposition? You generally**
23 **recall those events?**

24 **A. Yes, sir. Are you talking about that when**
25 **she lost trust and confidence in her attorneys? Is**

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1 **Q. -- as in your middle name. So this is what**
2 **I was talking about. Does this ring a bell to you at**
3 **all?**

4 **A. I mean, this is hilarious because the date**
5 **on there -- I mean, I think this was probably eight**
6 **months after the fact or six months. I don't know.**

7 **Q. Well, I would like to try to compress this**
8 **if we can.**

9 **A. Uh-huh.**

10 **Q. So now that you have the time frame down and**
11 **now that you have the specific accusation from**
12 **Mr. Collins down, was there a time in October of 2021**
13 **where you told Mr. Trevino that you were going to be**
14 **in California; but instead you were really here in**
15 **Texas with your sister in Pottsboro based on the**
16 **picture that's attached as Exhibit G?**

17 **MR. KASSAB: Object to form.**

18 **A. Sir, the picture was taken at a different**
19 **time --**

20 **Q. (BY MR. LITTLE) Okay.**

21 **A. -- not the time that it states on here. It**
22 **wasn't the exact same day that the picture was taken.**

23 **Q. So the picture was taken one day, and would**
24 **be posted on a different day. Would that be your**
25 **recollection or your understanding?**

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1 **that the --**

2 **Q. Those are the messages back and forth. It**
3 **looks like, I guess, Caroline was paying money to**
4 **Mr. Crouch no later than November 10 of 2021. Were**
5 **you involved in any way in hiring Mr. Crouch in late**
6 **2021, or was that something that only your sister did?**

7 **A. I think there was a discussion on it, sir,**
8 **because of this contempt thing that we could go to**
9 **jail and that we needed to get some representation on**
10 **this thing; and our attorneys were saying that**
11 **everything after that point was another issue. They**
12 **didn't want to -- they said they already finished**
13 **their case when the agreement was signed, so this was**
14 **something separate. And I don't think they really**
15 **wanted -- they were calling things -- that everything**
16 **was additional costs, so I didn't want to talk and run**
17 **up a bill; and I felt like -- I mean, I didn't want to**
18 **lose an attorney; but yeah. I just didn't -- I didn't**
19 **understand this stuff.**

20 **Q. Even as -- in late 2021, isn't it true that**
21 **you were still having conversations with Mr. Trevino**
22 **about the fact that you were going to pay your legal**
23 **fees; and do you remember those conversations that you**
24 **had with Mr. Trevino?**

25 **MR. SUAZO: Objection; form.**

194

1 A. I mean, there probably was some discussions
2 on it; but I don't --

3 Q. (BY MR. LITTLE) What was your perspective
4 at this point? I mean, you obviously knew that
5 Caroline had gone in a different direction, right; and
6 Caroline was not going to pay the lawyers? You were
7 well aware of that, right?

8 MR. SUAZO: Objection; form.

9 A. I mean, I -- I don't know. I mean, it was
10 just setting in that I was getting the feeling like I
11 had got screwed; and -- and I just didn't know what to
12 do. I felt -- I felt lost, and I felt like I didn't
13 have -- I didn't have people watching my back.

14 Q. (BY MR. LITTLE) So those feelings started
15 here in November and December of 2021? Because,
16 again, my understanding is you were having
17 conversations with Mr. Trevino along the lines of, you
18 know, look, I'm still going to pay my fees; but if
19 you've got a different recollection, I want to
20 understand.

21 MR. SUAZO: Objection; form.

22 A. Sir, I mean, I had -- just was like -- felt
23 like I didn't know what to do on this case and just
24 didn't feel like people were giving me the guidance I
25 needed.

195

1 Q. (BY MR. LITTLE) When was the last time you
2 remember having a conversation with Mr. Trevino in
3 which you indicated to him that you were still willing
4 to pay your attorney's fee?

5 A. I mean, I think there was some things out
6 there that -- I mean, he kept asking me constantly
7 about getting paid; and, I mean, I thought the courts
8 take care of all that stuff. You know, they're going
9 to get the brokerage account and....

10 Q. My question was just a little bit more
11 narrow which I think would be answered with a date;
12 and that is, when is the last time that you remember
13 having a conversation with Mr. Trevino in which you
14 indicated to him that there was at least some
15 willingness on your part still to pay your contingent
16 attorney's fee?

17 A. Yes, sir.

18 MR. SUAZO: Objection; form.

19 A. I'm sure there's a document out there that
20 states that, isn't it?

21 Q. (BY MR. LITTLE) I'm not sure that there is.
22 That's why I'm asking for -- you know, I -- a
23 conversation is something that I consider to be on the
24 telephone.

25 A. Uh-huh.

196

1 Q. So I'm not sure of the date of the last text
2 message in that regard or e-mail. I was asking you
3 specifically about a conversation.

4 A. Yes, sir. I mean, I think at that time I
5 probably checked out on this thing and just thought
6 like, you know, I pretty much was over this deal; and
7 they kept -- and the attorneys seemed more interested
8 in the deal than me. So I just don't -- I don't
9 really recall exactly what -- what was said; but I
10 know like, hey, that was pretty much the biggest theme
11 was they were asking for money. Their job was done;
12 and, you know, they wanted to get paid; but they
13 didn't seem to care about the -- that we were in
14 trouble on contempt.

15 Q. Well, you recall that Mr. Trevino and
16 Mr. Borunda both specifically were exchanging e-mails
17 with you about whether you had terminated their
18 representation or whether you wanted them to appear at
19 the hearing in which the contempt and these other
20 issues were going to be discussed. You remember that,
21 right?

22 A. Yes.

23 Q. So the attorneys were willing to come and
24 represent you. Caroline was saying that the lawyers
25 had been fired. The lawyers asked you for

197

1 clarification; and you weren't sure at first; and then
2 later you said, hey, look, I want Mr. Crouch to handle
3 this last hearing for me.

4 Do you recall that?

5 A. Yes, sir; I recall that.

6 Q. And as a matter of fact, you specifically
7 said that it was not a termination, that you just
8 wanted Mr. Crouch to handle this hearing. Do you
9 remember that as well?

10 A. Yes, sir.

11 Q. Okay. So, then, at this hearing which I
12 think took place on December 7th, you were represented
13 at the hearing by Mr. Crouch; but Mr. Trevino did not
14 appear; Mr. Borunda did not appear; and Mr. Abaza did
15 not appear because you specifically told them not to,
16 true?

17 A. Yes, sir.

18 Q. And then at that hearing the Judge signed an
19 order, and he did order you and Caroline to pay some
20 of Robin's attorney's fees. You remember that?

21 A. I -- I -- sir, I may have not been present
22 at that thing. So I know that there was some -- I
23 heard some things after it, but I know that there was
24 some orders that came out.

25 Q. Okay. Do you recall that part of the order

198

1 was ordering you and Caroline to pay -- I think it was
2 somewhere around \$11,000 in Robin's attorney's fees?

3 A. Yes, sir.

4 Q. All right. And then you remember that
5 another part of that order was that you and Caroline
6 were ordered to sign the documents that Mr. Crouch had
7 approved. Do you remember that was part of the order
8 as well?

9 MR. KASSAB: Object to form.

10 A. Can you reask that question?

11 Q. (BY MR. LITTLE) Sure. In addition to the
12 monetary sanctions, the Court also entered an order, I
13 guess, maybe fining you and Caroline -- I think it was
14 \$1,000 a day until you signed the settlement
15 documents. Do you remember that?

16 A. Not particularly.

17 Q. Okay. I think I can help us out with a
18 document there in just a second.

19 A. Okay.

20 Q. Now, in the lead-up to this hearing on
21 November 7, did you have any conversations with
22 Mr. Crouch about the documents that he was reviewing
23 on Caroline's behalf and possibly on your behalf as
24 well?

25 A. Yes, sir. I listened to what he said.

200

1 You know, this is the best agreement you're going to
2 get. Why are you upset?

3 And, you know, they weren't listening to
4 what we had to say. So it just gets to the point
5 where you can't say anything. When somebody thinks
6 that the agreement is great, they don't want to change
7 it. They -- I mean, the big thing with me was that
8 disparagement thing. I thought it was mutual for
9 everybody; and, you know -- and I was big that it
10 would be applied to everybody, not be one-sided;
11 and --

12 Q. Who do you think the non-disparagement
13 agreement did not apply to?

14 A. It doesn't apply to Robin. I mean, she
15 disparages me constantly and --

16 Q. So you think that the non-disparagement
17 agreement prevents you from saying bad things but
18 doesn't prevent Robin from saying bad things; and
19 it's, therefore, one-sided?

20 A. Yeah. I was told, I think --

21 Q. Who told you that?

22 A. Either Jorge or Mike. I don't recall
23 exactly, but they just told -- they confirmed and told
24 me that it was a one-sided agreement, and so then that
25 really got me down.

199

1 Q. Okay. What did he say?

2 A. I mean, he said he wouldn't have had
3 somebody sign that if he were the attorney -- you
4 know, if he was our attorney on this case, he would
5 have never had us sign that mediated settlement
6 agreement.

7 Q. Did he say why?

8 A. I mean, you're going to hear it from -- from
9 Sarah Pacheco. You're probably going to hear it from
10 him of why. I mean, he can tell you himself.

11 Q. Well, not right here and not right now. So
12 that's why I'm asking you.

13 A. Uh-huh. I mean, he just said that there was
14 a lots of improper, unethical things done that should
15 have been disclosed to us before we signed it and made
16 clear to us what -- what we were signing on the
17 document and that alls he can do is just carry out
18 what -- you know, just try to remedy some of the
19 damage or handle it; but he just said like it was
20 already too late. We couldn't do anything; and, you
21 know, if our attorneys weren't listening to us and we,
22 you know, weren't getting the things that we wanted in
23 the agreement -- and I think that's all we were trying
24 to do was get things in the agreement. And alls I
25 would hear is like, hey, this is a great agreement.

201

1 Q. Did you ever read any part of that
2 non-disparagement language?

3 A. I -- I mean, I looked at it; but I didn't
4 understand it.

5 Q. Okay. So, when it said words like the
6 parties, did you somehow believe that only you and
7 Caroline were prevented from saying bad things; and
8 Robin was not prevented from saying bad things?

9 MR. KASSAB: Object to form.

10 A. I mean, that's my understanding.

11 Q. (BY MR. LITTLE) Okay. And I just want to
12 make sure I understand. You're saying that
13 Mr. Trevino and Mr. Borunda specifically told you that
14 the non-disparagement agreement was one-sided and
15 applied to you and to Caroline but did not apply to
16 Robin? You're saying that you heard those words from
17 Mr. Trevino and Mr. Borunda?

18 A. That's what -- from what I recall.

19 Q. Okay. I told you that we would clear, you
20 know, one last thing up with a document --

21 A. Okay.

22 Q. -- so I want to be sure I keep my word.

23 A. Yes, sir.

24 (R. Allison Exhibit No. 17 was marked.)

25 Q. (BY MR. LITTLE) I'm showing you what we

202

1 marked as Exhibit 17. That's the order that I was
2 talking about. If you -- first of all, let's start on
3 page 2; and you can just check the date with me. It's
4 signed December 7 of 2021, correct? The date line is
5 right above the signature line where it said Judge
6 Presiding.

7 A. Yes, sir.

8 Q. You see the December 7th that I'm talking
9 about?

10 A. Yes, sir.

11 Q. And so, then, if we go back to the first
12 page -- I said that I thought it was about \$11,000 --
13 the amount that you and Caroline were sanctioned was
14 actually \$10,947.67. Do you see that?

15 A. I'm looking for it.

16 Q. Page 1.

17 A. Oh.

18 Q. It's in handwriting maybe two thirds of the
19 way down.

20 A. Yes, sir.

21 Q. \$10,947.67.

22 A. Yes, sir.

23 Q. And then right underneath that it says it's
24 further ordered that each contestant -- meaning you
25 and your sister -- are sanctioned \$1,000 per day if

204

1 Q. Well, I should frame my question
2 differently. When I said participate in the hearing,
3 I guess I meant, you know, by Zoom or on the telephone
4 or something like that.

5 A. Uh-huh.

6 Q. I don't think anybody was there at the
7 courthouse at the same time. Maybe they were.

8 So just to be sure we're communicating
9 well, you did not participate by phone or Zoom or
10 anything like that in the December 7, 2021, hearing
11 that resulted in the order that we've marked as
12 Exhibit 17, true?

13 A. Could be -- it's possible.

14 Q. Okay. Well, do you remember participating
15 or not?

16 A. No.

17 Q. You don't?

18 A. No, sir.

19 Q. Okay. Even after December 7th, when the
20 Judge signed this order, you continued to have some
21 communication with the lawyers about whether you were
22 willing to pay their contingent fee.

23 A. Yes, sir.

24 Q. Do you recall that?

25 A. (Witness nods head.)

203

1 the documents are not executed and returned to counsel
2 for Robin, the applicant, as set forth in the next
3 paragraph. Do you see that?

4 A. Yes, sir.

5 Q. Okay. So were you -- this hearing took
6 place either on Zoom or YouTube TV or something like
7 that. It was recorded. Have you seen the recording
8 of that hearing?

9 A. No, sir.

10 Q. Okay. I'm not sure whether you could
11 participate by audio and not be on the camera. Did
12 you participate in that hearing in any way?

13 A. Not that I'm aware of, sir.

14 Q. Okay. So I'm pretty -- I've seen it, so I
15 didn't see your face at the hearing; but I didn't know
16 if there was a way that, you know, you could have
17 maybe been on the phone or something like and heard
18 what was going on or listened to it on the Internet;
19 and it just wouldn't be obvious that you were there.
20 So -- but as far as you recall, you weren't at the
21 hearing on December 7th?

22 A. I was in California, sir; and I --

23 Q. Okay.

24 A. I mean, it's like thousands of miles away;
25 so it's not like I really --

205

1 Q. Tell me what you recall about those
2 conversations where even after the hearing you
3 indicated that you might still be on board in paying
4 the fee.

5 A. Yes, sir. I was waiting for my -- my -- to
6 get paid out; and, you know, they said as soon as we
7 sign those documents that Robin was going to turn over
8 that account; and -- and, you know, we were going to
9 be getting that money; and then we find out that we
10 weren't going to be getting any money.

11 Q. Well, and then maybe we end where we began
12 because where we began was a few days after the
13 Judge -- well, let me back up.

14 After the Judge signed the order on
15 December 7th, you and Caroline did sign the documents
16 that Mr. Crouch had either drafted or approved the
17 next day, right? You signed them on December 8th?

18 MR. KASSAB: Object to form.

19 A. Yes, sir. An attorney told us we had to do
20 it, or we're going to be facing all these court -- the
21 Court is going to fine us to death, so you've got to
22 do what the attorney is telling you to do.

23 Q. (BY MR. LITTLE) So you and Caroline both
24 signed most of the documents on December 8th. I think
25 there was one document maybe that was signed a few

206

1 days after the 8th. Do you remember that?
 2 **A. I mean, this was all -- it's all a blur; but**
 3 **I probably signed another document; but I'm not --**
 4 **don't recall every single thing I did.**

5 Q. Most of the documents that you signed you
 6 signed the day after this order on December the 8th,
 7 true?

8 **A. It looks like it.**

9 Q. Okay. And then it was, what, maybe 19 or so
 10 days later on December 27th when Caroline transferred
 11 the assets out of the Fidelity account into the Schwab
 12 account. That's kind of where we -- close to where we
 13 started this morning, right?

14 MR. KASSAB: Object to form.

15 **A. I mean, I'm not aware of what -- I mean,**
 16 **what exactly was going on at the time or if those**
 17 **things were going on but....**

18 Q. (BY MR. LITTLE) No. I understand you
 19 didn't know at the time, but now you understand that
 20 it was that late December time frame when the money
 21 was transferred out of the Fidelity account and into
 22 the Schwab account, right?

23 MR. KASSAB: Object to the form.

24 **A. I don't -- say the question again.**

25 Q. (BY MR. LITTLE) Sure. You understand now

208

1 MR. SUAZO: Let me just see.

2 (R. Allison Exhibit No. 18 was marked.)

3 Q. (BY MR. LITTLE) All right, Mr. Allison.

4 I'm showing you what we've marked as 18 to your
 5 deposition which I believe was marked yesterday as
 6 Exhibit 1 to Caroline's deposition.

7 Well, actually let me have that back
 8 because that's March. Let's see.

9 MR. LITTLE: December is either going to
 10 be 2 or 3.

11 MR. SUAZO: Your question is whether or
 12 not, based upon the records, the transfer from
 13 Fidelity to -- the Fidelity account to Schwab happened
 14 in December of 2021?

15 MR. LITTLE: That's it.

16 MR. SUAZO: That's the question based
 17 upon the document that has been shown which seems to
 18 indicate that that was the case.

19 THE WITNESS: I thought I answered that
 20 before.

21 MR. SUAZO: No. And I think he's
 22 just -- maybe you have, but he's just trying to get
 23 you to confirm by recollection --

24 THE WITNESS: Oh. Okay.

25 MR. SUAZO: -- based upon a document.

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1 that late December of 2021 was when all but \$3.52 of
 2 the assets in the Fidelity account was transferred out
 3 of that account and then into the new Schwab account,
 4 right?

5 **A. I mean, I was not told what was in the**
 6 **Fidelity account or what balance was going on. That**
 7 **day I showed up at Fidelity multiple times and --**

8 Q. Okay. Let's not -- let's not get bogged
 9 down right here at the end about \$3.52 as opposed to
 10 some other number. So let me take that out of the
 11 question and see if we can avoid, you know, a
 12 misunderstanding or a miscommunication.

13 Although I understand you didn't know at
 14 the time that it happened, but now you know that late
 15 December of 2021 was when the assets in the Fidelity
 16 account or at least almost all of them were
 17 transferred out of the Fidelity account and into the
 18 new Schwab account, right?

19 **A. Sir, I don't -- I don't know what dates were**
 20 **when or how. I don't know.**

21 Q. All right. Well, we can clarify.

22 MR. LITTLE: Do you want to give me one
 23 from yesterday?

24 MR. SUAZO: I may have written on it.

25 MR. LITTLE: Okay.

209

1 MR. LITTLE: So 3 is the magic document.

2 MR. KASSAB: So did you not mark the
 3 other one?

4 MR. LITTLE: No.

5 MR. KASSAB: Did you take the sticker
 6 off of it?

7 MR. LITTLE: Yes.

8 MR. KASSAB: Okay. So this one is
 9 actually --

10 MR. LITTLE: Yeah. I put the sticker on
 11 May, so -- and I'll clarify on the record so we're
 12 not --

13 MR. SUAZO: This is the one, right? It
 14 starts with that number, and then it has that
 15 (indicating).

16 MR. LITTLE: Yeah. I think it's --

17 MR. KASSAB: Exhibit 3 from Caroline's.

18 MR. SUAZO: I think it's this one
 19 (indicating).

20 MR. LITTLE: Yeah.

21 (R. Allison Exhibit No. 18 was
 22 re-marked.)

23 Q. (BY MR. LITTLE) All right. Mr. Allison, I
 24 am showing you what we marked as Exhibit 18 to your
 25 deposition which was actually marked as Exhibit 3 to

210

1 your sister's deposition yesterday. Do you see that
2 that's a December 1 to December 31, 2021, investment
3 report for the Fidelity account?

4 A. Yes, sir.

5 Q. All right. And on page 1 it says that the
6 beginning account value on December 1st was 10,437,000
7 and change. Do you see where I'm talking about?

8 A. Yes, sir.

9 Q. Okay. And then, by the end of December, it
10 reflects that the money remaining in the Fidelity
11 account is \$3.52. Do you see that?

12 A. Yes, sir.

13 Q. Okay. And then, if you go to -- it looks
14 like it starts on page 4 of 10. Maybe about halfway
15 down it says securities transferred out (indicating).
16 Do you see that?

17 A. Okay. I'm looking.

18 MR. SUAZO: He's showing it to you right
19 here (indicating.)

20 THE WITNESS: Oh, okay.

21 Q. (BY MR. LITTLE) So, on page 4 of 10,
22 somewhere around the middle under activity --

23 A. Okay.

24 Q. -- it says securities transferred out.

25 A. Yes, sir.

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1 A. I mean, that's what it looks like on here,
2 sir.

3 Q. Okay. So that's the last thing that I
4 wanted to confirm. So, just to get the question on
5 the record, 19 or so days after you signed the
6 settlement documents on December 8th, according to the
7 exhibit that's there in front of you, the assets in
8 the Fidelity account were transferred into the Schwab
9 account on December 27, 2021, right?

10 A. I mean, that's what the document looks like.

11 Q. Okay. Mr. Allison, I appreciate your time.
12 We'll meet again at the hearing. I'll have additional
13 questions for you there; but for today, I appreciate
14 your time and your courtesy.

15 A. Okay. Thank you, sir.

16 Q. Yes, sir.

17 MR. LITTLE: Pass the witness.

18 MR. SUAZO: We'll reserve.

19 And I think -- I think we said
20 designated confidential at the beginning.

21 MR. KASSAB: We did, and we'll reserve.

22 THE VIDEOGRAPHER: All right. We're off
23 the record at 5:02.

24 (Deposition concluded at 5:02 p.m.)

25

211

1 Q. Do you see that?

2 A. Yes, sir.

3 Q. And then there's a list of transactions; and
4 then we go to the next page; and on page 5 of 10, it's
5 got more activity. Do you see those?

6 A. Yes, sir.

7 Q. All right. And on those pages, it indicates
8 that the assets in the Fidelity account were
9 transferred out of the Fidelity account and into the
10 new Schwab account on December 7, 2021. Do you see
11 that?

12 A. It's a little bit hard. I can't see what --
13 is it the same one or --

14 MR. SUAZO: What page are you?

15 MR. LITTLE: 4 and 5.

16 A. There's 4.

17 Q. (BY MR. LITTLE) So all of the
18 transactions --

19 MR. SUAZO: There's the total.

20 Q. (BY MR. LITTLE) -- on pages 4 and 5
21 indicate that all the transfers of assets out of that
22 account happened on the same day; and that day is
23 December 27, 2021, right?

24 A. Uh-huh.

25 Q. Yes?

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1 CHANGES AND SIGNATURE OF RICHARD GERARD ALLISON
2 TAKEN OCTOBER 12, 2023

3 PAGE LINE CHANGE REASON

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5 **READING COPY**
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I, RICHARD GERARD ALLISON, have read the foregoing deposition and hereby affix my signature that same is true and correct, except as noted above.

READING COPY

RICHARD GERARD ALLISON

THE STATE OF _____
COUNTY OF _____

Before me, _____, on this day personally appeared RICHARD GERARD ALLISON, known to me (or proved to me under oath or through _____)(description of identity card or other document) to be the person whose name is subscribed to the foregoing instrument and acknowledged to me that they executed the same for the purposes and consideration therein expressed.

Given under my hand and seal of office this _____ day of _____, _____.

READING COPY

NOTARY PUBLIC IN AND FOR
THE STATE OF _____

My Commission Expires _____

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Respondent/Counter-Claimant Caroline Allison:
- 00:00;

Mr. Raul Suazo, Attorney for
Respondent/Counter-Claimant Richard Allison - 00:00;

Mr. Joseph R. Little, Attorney for
Claimants/Counter Respondents - 05:08;

That pursuant to information given to the deposition officer at the time said testimony was taken, the following includes counsel for all parties of record:

Mr. David Eric Kassab, Attorney for
Respondent/Counter-Claimant Caroline Allison;
Mr. Raul Suazo, Attorney for
Respondent/Counter-Claimant Richard Allison;
Mr. Joseph R. Little, Attorney for
Claimants/Counter Respondents.

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

Further certification requirements pursuant to Rule 203 of TRCP will be certified to after they have occurred.

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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 §

CONFIDENTIAL
REPORTER'S CERTIFICATION
ORAL AND VIDEOTAPED DEPOSITION OF
RICHARD GERARD ALLISON
OCTOBER 12, 2023

I, Gail Swisher Patrenella, RMR, CRR, CSR, in and for the State of Texas, hereby certify to the following:

That the witness, RICHARD GERARD ALLISON, was duly sworn by the officer and that the transcript of the oral deposition is a true record of the testimony given by the witness;

That the amount of time used by each party at the deposition is as follows:

Mr. David Eric Kassab, Attorney for

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Certified to by me this 16th day of
October, 2023.

READING COPY

Gail Swisher Patrenella, RMR, CRR, Texas CSR 3632
Expiration Date: 04/30/2025
MONARCH REPORTING, INC.

Firm Registration No. 314
Expiration Date: 05/31/2025

1280 Blue Heron Street
Hitchcock, Texas 77563
(832) 618-1234

Gail Swisher Patrenella
Notary Public in and for the State of Texas
My Commission Expires: 10/27/2027

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FURTHER CERTIFICATION BY COURT REPORTING FIRM
CONFIDENTIAL ORAL AND VIDEOTAPED DEPOSITION OF
RICHARD GERARD ALLISON
OCTOBER 12, 2023

I, Gail Swisher Patrenella, principal/officer of
registered Court Reporting Firm No. 314, certify to
the following:

That the deposition transcript along with the
original changes and signature pages was submitted on
October 16, 2023, to the attorney for the witness for
examination, signature, and return to me by
November 6, 2023;

That the original deposition changes and signature
pages **READING COPY** to the deposition officer
on

If returned, the attached changes and signature
page contains any changes and the reasons therefor;

If returned, the original deposition was delivered
to Mr. Joseph R. Little, Attorney for
Claimants/Counter Respondents, Custodial Attorney;

That \$_____ is the deposition officer's
charges to Mr. Joseph R. Little, Attorney for
Claimants/Counter Respondents, TBA No. 00784483,
for preparing the original deposition transcript and

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any copies of exhibits;

That the deposition was delivered in accordance
with Rule 203.3, and that a copy of this certificate
was served on all parties shown herein on _____,
2023 and filed with the Clerk.

Certified to by me this ____ day of
_____, 2023.

READING COPY

Gail Swisher Patrenella, RMR, CRR, Texas CSR 3632
Expiration Date: 04/30/2025
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Firm Registration No. 314
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Gail Swisher Patrenella
Notary Public in and for the State of Texas
My Commission Expires: 10/27/2027