

**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	§

REPORT OF P. KEITH STAUBUS

TO THE HONORABLE ANNE ASHBY:

I am submitting this expert report on behalf of attorneys Nicholas Abaza, Jorge Borunda, Michael Trevino, and their respective law offices. They will be collectively referred to herein as “the Lawyers.” This report will address claims being made by the Lawyers arising out of their employment agreements with Respondents’ Richard Allison, Jr., and Caroline Allison, hereinafter collectively referred to as “the Clients.” This report will also address certain counterclaims of the Clients as well as the reports submitted by R. Kevin Spencer and Sarah Patel Pacheco on behalf of the Clients.

SUMMARY OF OPINIONS

Following my analysis of the Richard Allison Trust and all Amendments and Restatements thereof, the pleadings, orders, and other materials on file in the Trust Contest in the Collin County Probate Court, the Mediated Settlement Agreement, the Consent Agreement signed by the grandchildren and other settlement documents executed, the deposition transcripts, and exhibits, the pleadings and docket sheet from the pending Trust Modification Action, and the transcripts and exhibits from the Arbitration, and other related information noted in this report, my opinions, based upon my knowledge, training, education and experience are as follows:

1. The Lawyers gave the Clients proper advice as to the pursuit, conduct, and settlement of the Trust Dispute and Will Contest in the Probate Court.
2. The Mediated Settlement Agreement accomplished the Clients’ goal, giving them unlimited access to all principal and income from the Family Trust with the exception of \$1,000,000 set aside for their childrens’ educational expenses until age 25.

3. The Modification and Amendment to Allison Family Trust executed by Robin Allison, and by Richard Jr. and Caroline while represented by attorney Jeff Crouch, approved by David Jackson Wilburn (the Guardian Ad Litem for the minor contingent beneficiary of the Trust), and consented to by the three adult grandchildren who were contingent remainder beneficiaries of the Trust, were considered by all parties to be sufficient as a family settlement to effectuate the MSA.
4. The Petition for Modification of Trust Instrument pending in the Collin County Probate Court should be amended to be consistent with the terms of the MSA and the Modification and Amendments signed by all parties, rather than to frustrate it, judicially modifying the Family Trust to confirm the Clients' unlimited discretion to distribute all but \$1,000,000 of the Family Trust, and modifying the Trust as to any other Trust term raised as a concern in the Clients' expert reports. This is a straightforward matter that can be quickly and inexpensively accomplished in the Probate Court of Collin County.
5. The legal effect of the MSA is that the Clients recovered a minimum of approximately \$9,000,000 held in the Family Trust, to which they have unlimited access, plus \$1,000,000 for the education of their children (with any unused amount reverting to them).
6. The MSA was vastly superior to the Clients' best day in court, with the Clients recovering approximately one-half of the value of the Richard Allison Trust under the MSA as opposed to one-third on their best day in court.
7. It is only the deliberate, orchestrated, and feigned attempt to cast the Mediated Settlement Agreement as a failure by Caroline and Richard, in an apparent attempt to avoid paying the contingent fee, that has perpetuated this controversy.
8. The Petition for Modification of Trust Instrument filed by Sarah Pacheco, Esq., on behalf of Caroline and Richard Jr. does not seek to amend the Trust "in accordance with the terms set forth herein," as required by the MSA, although it could easily be drafted to do so.
9. The only legitimate explanation for Clients filing a pleading asking the court to restrict their ability to make distributions from the Family Trust to themselves, rather than to enforce the pure discretionary standard agreed to in the MSA and consented to by the remainder beneficiaries, is the Clients' transparent effort to avoid paying the Lawyers their contingent fee by creating an argument that they did not recover anything. This is precisely the argument which they have made in this arbitration proceeding.
10. There is no impediment to completing the judicial modification to effectuate the true intention of the MSA. An agreed judgment modifying trust, containing the provisions contained in the Modification and Amendment agreement, and addressing any other concerns which the Clients have, could be submitted to the Court in an agreed order, and in my experience, would likely be signed within 30 days.
11. The Lawyers satisfied the standard of care in their representation of the Clients.

QUALIFICATIONS AND PERSONAL INFORMATION

The opinions expressed herein are based on my education and experience, which includes 40 continuous years of estate and trust litigation, with over 30 years of that experience gained while practicing in an estate litigation boutique practice. I am the managing partner for Staubus & Randall, L.L.P. My practice has included numerous will and trust contests in statutory probate courts in North Texas both on an hourly and contingent fee basis. I am also uniquely qualified to assess counsel for the proponent of the will that was being contested, Michael J. Collins, having practiced with him at Smith, Underwood, Carmichael and Floyd from 1983 through 1992. My scholarly writing includes a paper presented at the Advanced Estate Planning and Probate Course of the State Bar of Texas on will contests, entitled “*Undue Influence and Lack of Capacity: How Much Evidence Is Enough?*”, which is a detailed review and analysis of evidence utilized in all will contests decided on the merits in the State of Texas directly from the appellate opinions for the past 50 years. This paper has now been updated for presentation to the Dallas Probate American Inns of Court to provide a 60-year survey of the effectiveness of particular types of evidence in will contests. I have handled numerous will and trust contests, as well as trust modifications over the course of my career. Finally, I have significant experience in litigating estate and trust matters in front of the Honorable Weldon Copeland in the Statutory Probate Court of Collin County, Texas spanning over the past three decades.

I earned a Bachelor of Arts degree from Ottawa University summa cum laude in 1980, and a doctor of juris prudence from Southern Methodist University in 1983.

I was selected to serve as the chairman of the Probate, Trust and Estate section of the Dallas Bar Association, have served as a guardianship mentor to other attorneys in the Dallas Bar Association volunteer attorney program, and have spoken on probate, guardianship and trust issues for the State Bar of Texas, Dallas Bar Association, and other local Texas bar associations. I also assisted in revising the Dallas Bar Probate Section’s forms manual for attorneys.

The opinions provided herein are based on my knowledge, training, education, experience, and expertise.

MATERIALS REVIEWED

Prior to forming my opinions in this matter, I reviewed the following materials:

- The Richard Allison Trust (05/26/89)
- First Amendment to Richard Allison Trust (03/26/11)
- Second Amendment to Richard Allison Trust (06/03/11)
- Richard Allison Trust as Amended and Restated (04/11/13)
- Last Will and Testament of Richard Gerard Allison (04/11/13)
- Mediated Settlement Agreement
- Modification and Amendment to the Richard Allison Trust – Allison Family Trust (12/15/21)
- Modification and Amendment to the Richard Allison Trust – Allison Marital Trust (12/15/21)

- Pleadings, Orders, file materials and docket sheet for Wills/Trust Contest; PB1-1332-2019 in the Collin County Probate Court
- All pleadings filed in this arbitration proceeding
- All documents prepared to effectuate the Mediated Settlement Agreement
- Oral deposition transcript and exhibits to Nicholas Abaza deposition
- Oral deposition transcript and exhibits to Jorge Borunda deposition
- Oral deposition transcript and exhibits to Michael Trevino deposition
- Oral deposition transcript and exhibits to Caroline Allison deposition
- Oral deposition transcript and exhibits to Richard Gerard Allison deposition
- Petition for Modification of Trust Instrument, in Court's docket sheet for PB1-1041-2023 filed July 5, 2023
- Arbitration transcripts and exhibits
- Report, Statement, and Declaration of Sarah Patel Pacheco
- Expert Report of R. Kevin Spencer

ALLISON FAMILY HISTORY

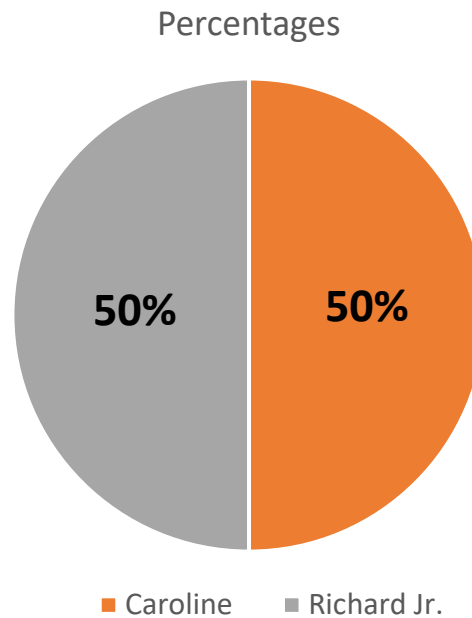
Richard Gerard Allison ("Richard Sr.") was the settlor of the Richard Allison Trust and the testator of a Last Will and Testament, each of which were at issue in a will and trust contest filed in the Collin County Probate Court. Richard Sr. had two children from his first marriage: Caroline Allison ("Caroline") and her brother, Richard Gerard Allison, Jr. ("Richard Jr."). Following his divorce, Richard Sr., married Robin Alice Allison ("Robin") in August 1992. After 25 years of marriage to Robin, Richard Sr. died on April 14, 2017 at the age of 76. Robin was 63 years of age at the time of Richard Sr.'s death.

HISTORY OF ALLISON ESTATE PLAN

a. 1989 Richard Allison Trust –

- i. Prior to Richard Sr.'s marriage to Robin, Richard Sr., executed the Richard Allison Trust on May 26, 1989.
- ii. The relevant provisions of the 1989 Trust can be summarized as follows:
 1. Decedent had full access, control and discretion while living
 2. Trust fully revocable while Decedent was alive
 3. Decedent was Grantor and Trustee
 4. Richard Jr. and Caroline were the remainder beneficiaries after Decedent's death; and
 5. After Decedent's death and once they reached the age of 35, Richard Jr. and Caroline were to receive all the trust's principal and interest outright

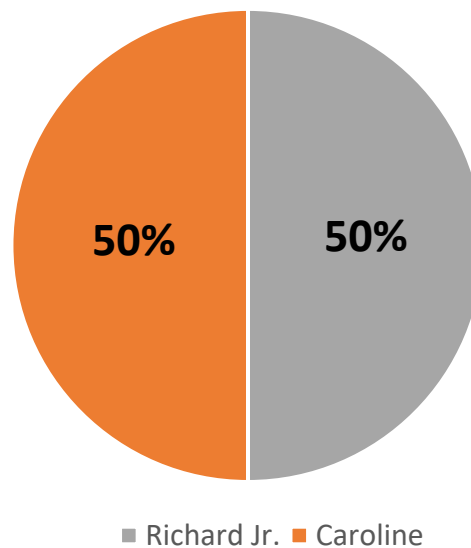
- iii. The ultimate ownership of the Trust immediately upon Richard Sr.'s death in percentages was as follows:



b. First Trust Amendment: 03/26/11

- i. Almost 20 years into Richard Sr.'s marriage to Robin, Richard Sr., amended the 1989 Trust as follows:
 - 1. Order of Trustees Amended:
 - a. Richard Sr.
 - b. Richard Sr.'s sister
 - c. Robin
 - d. Caroline
- ii. Richard Jr. and Caroline were maintained as the sole remainder beneficiaries immediately upon Richard Sr.'s death:

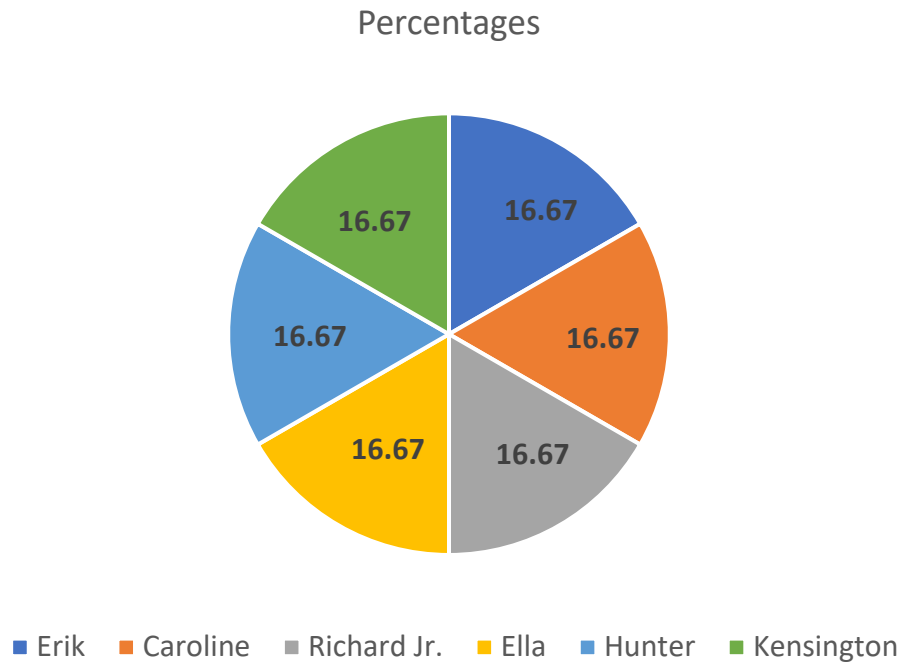
Percentages



c. Second Trust Amendment: 06/03/11

- i. Approximately three months after the First Amendment, Richard Sr. executed a Second Amendment to the 1989 Trust as follows:
 1. Order of Trustees remained the same
 2. All household furnishings and vehicles to Robin upon Richard Sr.'s death
 3. After Decedent's death, Robin was also to receive all of Richard Sr.'s jewelry and clothing acquired during their marriage
 4. The 41st Street Limited Partnership was to go to Robin after Richard Sr.'s death (valued in excess of \$1,000,000)
 5. Richard Sr.'s children and grandchildren were now the remainder beneficiaries after Richard Sr.'s death; and
 6. Erik, Ella, Hunter, Kensington (grandchildren) and, Richard Jr. and Caroline would each receive equal shares upon Richard Sr.'s death

The ultimate ownership of the Trust at Richard Sr.'s death, **after distributing the 41st Street Limited Partnership and other assets from the Trust to Robin as referenced above**, was as follows:



d. 2013 Amended and Restated Richard Allison Trust –

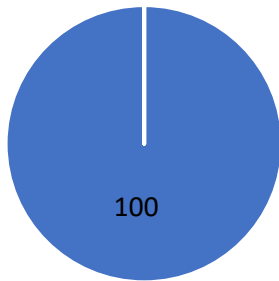
- i. Richard Sr. and Robin Allison engaged well-known Dallas estate planning attorney, Gloria A. Hammond of the estate planning firm of Smith & Hammond, P.C., to prepare a completely amended and restated trust, along with a pour-over will which transferred any of Richard Sr.'s property remaining outside of the 2013 Trust into the 2013 Trust. The relevant provisions of the 2013 Trust are summarized as follows:
 1. Co-settlors and Co-Trustees – Richard Sr. and Robin
 2. Upon Richard Sr.'s death, Robin became sole Trustee, and divided the Trust into three separate Sub-Trusts:

Surviving Grantor's Trust Art. III	Allison Family Trust Art. V	Marital Trusts Art. IV
Sole Beneficiary: Robin Distributions: "in such amounts as surviving Grantor directs"	Primary Beneficiary: Robin "SHALL" distribute principal and income ○ HEMS Standard	Sole Beneficiary: Robin • "SHALL" distribute all income • "SHALL" distribute principal for health, comfort, maintenance and support
	Permissive Beneficiaries: - Richard Sr.'s children and grandchildren: ○ "MAY" distribute principal and income ○ HEMS Standard ○ Robin's discretion	
• Termination – at Robin's death Distribute to Descendants' Exempt and Non-Exempt Trusts (Article VII and VIII)*	• Termination – at Robin's Death Distribute to Descendants' Exempt and Non-Exempt Trusts (Article VII and VIII)	• Termination – at Robin's death Distribute to Descendants' Exempt and Non-Exempt Trusts (Article VII and VIII)
* Article X, B – Robin has complete power to revoke this Trust and, according to Mike Collins, did so.		

In summary, at Richard Sr.'s death, the Trust was divided into three Sub-Trusts characterized as follows:

Surviving Grantor's Trust

Percentages During
Robin's Lifetime

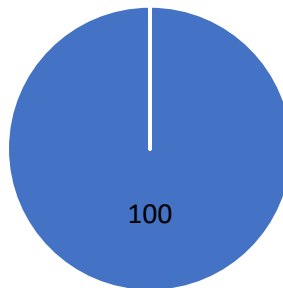


■ Robin

- Trustee is Robin
- Principal and Income to Robin
- Revocable
- Descendants receive whatever is left after Robin's death, if anything

Marital Trust

Percentages During
Robin's Lifetime

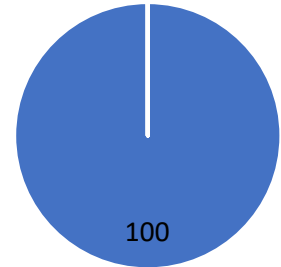


■ Robin

- Trustee is Robin
- All income to Robin
- Principal to Robin in her discretion
- Descendants receive whatever is left after Robin's death, if anything

Family Trust

Percentages During
Robin's Lifetime



■ Robin ■ Caroline ■ Richard Jr.
■ Erik ■ Ella ■ Hunter
■ Kensington

- Trustee is Robin
- SHALL distribute principal and income to Robin in her discretion
- MAY distribute principal and income to descendants in Robin's discretion
- Descendants receive whatever is left after Robin's death, if anything

DEATH OF RICHARD SR.

Richard Sr. died at the age of 76 years on April 14, 2017, after approximately 25 years of marriage to Robin Alice Allison, his surviving spouse. Robin, as the named independent executor pursuant to his Last Will and Testament, filed her application to probate the April 11, 2013 Will in the Probate Court of Collin County, Texas.

Immediately upon Richard Sr.'s death, pursuant to the terms of the 2013 Trust, Robin became the successor trustee with control over the assets of the three Sub-Trusts, including the Surviving Grantor's Trust (Article III), Allison Family Trust (Article V) and the Marital Trust (Article VI).

Unhappy with the existence of the 2013 Amended and Restated Trust which gave the benefit of the bulk of Richard Sr.'s assets to his 63 year-old second wife Robin, convinced that Robin had forced an incapacitated Richard Sr. to execute such Trust, unhappy with Robin's administration of the assets in the Trust and her lack of transparency, and upset with Robin's denial of requests for distributions from the Family Trust for payment of Richard Jr.'s children's educational expenses, and a distribution requested for Caroline's daughter Kensington, Richard Jr., and Caroline sought to hire the Lawyers to "bust the trust." "So let's focus on busting the phony trust. It's a phony. And so is she." (Lawyers' Exhibit 318).

ROBIN'S DISCRETION UNDER 2013 TRUST

As reflected above, as the Trustee of the three sub-trusts, Robin had significant discretion to distribute principal and income from the Trust to herself.

As further reflected above, Richard Jr. and Caroline were only eligible to receive permissive discretionary distributions under one of the three sub-trusts -- the Family Trust. Robin was given permissive discretion as sole Trustee of the Family Trust (Article V) to make decisions as to distributions requested by Richard Jr. and Caroline and their children. This discretionary distribution standard was expressed in Article V.B. as follows:

"... In addition, the Trustee, in the Trustee's discretion, may distribute to any one or more of the Grantor's descendants (other than a Special Needs Beneficiary) such amounts of the income and principal of the trust created by this Article 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."

The distribution language expressed above gave Robin significant latitude to decide whether or not to make distributions to Caroline and Richard Jr. and, if so, when and how much.

Caroline expressed her belief in an email to Mr. Borunda prior to filing suit that "The worst thing for all of us is that she told me outright that there is unlikely to be much of anything left of my dad's \$15M estate." (Lawyers' Exhibit 61).

Filing suit to force distributions was certainly no guarantee of success. Texas law is clear that "where the trust instrument is unambiguous and expresses the intentions of the Settlor, the Trustee's powers are confirmed by the instrument and neither the Court nor the trustee can add or take away such power." *Beaty v. Bales*, 677 S.W.2d 750, 754 (Tex. App. – San Antonio 1984, writ ref'd n.r.e.). Further, "the Court may not substitute its discretion for that of the trustee and may interfere with the trustee's discretionary powers only in the case of fraud, misconduct, or clear abuse of discretion." *Beaty v. Bales*, *id.* at 754; *Coffee v. William Marsh Rice Univ.*, 408 S.W.2d 269, 284 (Tex. Civ. App. – Houston 1966, writ ref'd n.r.e.). In interpreting and applying the trust's distribution language, "the Court's primary objective in construing a will or trust is to determine the intent of the maker." *Hurby v. Moody Nat'l Bank of Galveston*, 98 S.W.3d 307, 310 (Tex. App. – Houston [1st Dist.] 2003, no pet.). Robin was the Co-Maker of the 2013 trust, meaning that her

intention as to the level of discretion which she held as the Trustee of the Trusts would be the Court's primary objective.

The Trust further contained an exculpatory clause (Article XI.F.) which provided as follows:

“ F. Reliance on Legal Opinion. In acting or declining to act, each Trustee may rely upon the written opinion of a competent attorney, any facts stated in any instrument in writing and believed true, or any other evidence deemed sufficient. Each Trustee shall be saved harmless from liability for any action taken, or for the failure to take any action, if done in good faith and without gross negligence.”

This protection would reduce the chances of recovering damages against Robin as Trustee for alleged breaches as Trustee to the extent that she relied upon the advice of her attorney, Michael Collins.

A further disincentive to continuing to sue Robin as Trustee was Article XI.A.(5) of the 2013 Trust, which gave Robin the power to hire an attorney to represent her as Trustee, and to pay these attorneys' fees out of the Trust, meaning that ultimately Caroline and Richard Jr. were bearing the cost of those fees out of the Trust residue. While the Lawyers did include claims against Robin for breach of fiduciary duty and removal of Robin as Trustee in their pleadings, relying solely on these claims (as has now been suggested by the Clients) was not only contrary to the Clients' stated goals, but there were also significant obstacles as described above to being successful on these claims.

Based upon Robin's relatively young age of 63 years at the time of Richard Sr.'s death, and the significant discretion under the terms of the Trusts which Robin had to make distributions to herself, there was certainly no guarantee that there would be any significant assets left to distribute to the Trusts for the benefit of Richard Jr. and Caroline at Robin's death -- which could be decades away. Further, the Clients expressed substantial concern that Robin was "running the properties into the ground," a reference to the real properties which constitute a large part of the assets of the Trust, creating further risk to the Clients, and that there would be nothing left in the Trust at the time of Robin's death.

PROBATE COURT LITIGATION

Robin Allison filed an application to probate Richard Sr.'s April 11, 2013 Will in the Probate Court of Collin County, Texas in Cause No. PB1-1332-2019 on July 22, 2019, represented by attorney Michael J. Collins.

Caroline and Richard, represented by the Lawyers, filed a lawsuit contesting the 2011 Trust Amendments and the 2013 Trust (ultimately consolidated into the will contest proceeding), and, about a month later, filed a companion will contest in the Probate Court of Collin County, Texas. From the docket sheet and pleadings on file in the probate court proceeding, the litigation was hotly contested for almost two years. The litigation was finally resolved by a mediated settlement (after a prior failed mediation) conducted by Collin County mediator Jeff Yates, a well-known 25

year estate and trust litigation attorney in Collin County who has appeared in numerous probate and trust proceedings in Judge Weldon Copeland's court since Judge Copeland took the bench, and who I consider to be one of the premier go-to resources as to Judge Copeland's ruling tendencies on the bench.

It was reasonable for the Lawyers to support the Clients' decision to accept the mediation settlement proposal in this case for multiple reasons, including the following.

1. **The medical records only partially supported Clients' claims** – Among the documents on file with the Court were medical records for Richard Sr. While records from 2014 reflected evidence of some cognitive difficulties dating back to mid-2013, there were no such entries for records from 2013 -- and certainly no records going back to 2011.
2. **Fact witnesses identified by Clients fell short** – Prior to filing the Contest, the Clients had assured the Lawyers that they had multiple fact witnesses who could testify that Richard Sr. had cognitive difficulties going back to 2008. In the process of interviewing these witnesses, the Lawyers discovered that these witnesses did not notice difficulties until 2012. Further discovery in the suit did not reveal any additional witnesses or evidence to support the Clients' legal position.
3. **The no contest clause created risk for the Clients** – Adding to the risk factors to proceeding to trial, there was a no contest clause (also known as an "in terrorem clause") in the decedent's Will and Trust, which provided as follows:

"If any beneficiary of a trust created hereunder in any manner, directly or indirectly, contests the validity of this Trust Agreement or any of its provisions, or institutes or joins in, except as a party defendant, any proceeding to contest the validity of this Trust Agreement or to prevent any provision hereof from being carried out in accordance with the terms hereof, then all benefits provided for such beneficiary and such contesting beneficiary's descendants are revoked and shall pass as if that contesting beneficiary and such contesting beneficiary's descendants had failed to survive the Grantors. The provisions of this Article shall not apply when a contest is brought and maintained in good faith, and just cause exists for bringing the contest. For purposes of enforcing the provisions of this Article, the court in which a contest is brought shall determine if an action was brought and maintained in good faith and if just cause existed. Each benefit conferred herein is made on the condition precedent that the beneficiary receiving such benefit shall accept and agree to all of the provisions of this Trust Agreement or any trust created hereunder, and the provisions of this Article are an essential part of each and every benefit. The Trustee shall be reimbursed for the reasonable costs and expenses, including attorneys' fees, incurred in connection with the defense of any such contest."

Under Texas Trust Code §112.038, as contestants the Clients, in order to avoid forfeiting their interest in the Trust under the No-Contest Clause, would need to obtain a finding from the trier of fact that they brought **and maintained** their contest in good faith and with just cause:

“(a) A provision in a trust that would cause a forfeiture of or void an interest for bringing any court action, including contesting a trust, is enforceable unless in a court action determining whether the forfeiture clause should be enforced, the person who brought the action contrary to the forfeiture clause establishes by a preponderance of the evidence that:

- (1) just cause existed for bringing the action; and
- (2) the action was brought and maintained in good faith.”

Accordingly, once the discovery process in the lawsuit revealed that the available medical evidence and the anticipated testimony of the identified fact witnesses would not support setting aside the 2011 Trust Amendments -- contrary to what the Clients had informed the Lawyers -- it was reasonable for the Lawyers to nonsuit the contest of the 2011 documents in order to avoid the risk of the Clients forfeiting their interest in the Allison Family Trust pursuant to the no contest clause.

4. **Legal effect of partial nonsuit** – This nonsuit left only a contest of the 2013 Will and Trust pending, along with a contest of an IRA beneficiary designation. The legal effect of this was that, even if the Clients had been successful in setting aside the 2013 Will and Trust, the Clients’ interest would be governed by the 2011 Amendments to the 1989 Trust (as referenced on Page 5-6 above). Pursuant to the June 3, 2011, Second Amendment, various assets including all of the 41st Street Limited Partnership would have been distributed to Robin outright from the trust, constituting in excess of \$1,000,000 of the trust value, with the remaining assets of the trust to be split into six shares to be shared among the two Clients and the four grandchildren. Accordingly, the Clients’ best possible result in the contest, based upon the evidence developed during the discovery process, even if the Clients had been able to get over the hurdle of having no medical records for 2013 reflecting Richard Sr.’s incapacity, would have been to recover only one-sixth each (collectively one-third) of the remaining trust under the Second 2011 Amendment. This result is clearly less financially rewarding than what was recovered by the Clients under the terms of the Mediated Settlement Agreement. Stated another way, the MSA was vastly superior to the Clients’ best day in court, with the Clients recovering approximately one-half of the value of the Richard Allison Trust as opposed to one-third on their best day in court.
5. **Long marriage difficult to overcome** – My experience is that the length of Richard Sr.’s marriage to Robin at the time of the 2011 and 2013 estate planning would likely weigh against the Clients’ probability of success in a jury trial, as opposed to a marriage of one to two years at the time the planning was done. This factor would weigh in favor of settling the suit.
6. **The undue influence claim was weak** – There was no “smoking gun” evidence that was established during the discovery process which would have been sufficient to have supported the Clients’ claim that Robin unduly influenced Richard Sr. to execute the 2013 Trust and/or the 2011 Amendments. In order to prove undue influence, a contestant must provide proof by a preponderance of the evidence not only that influence was in fact exerted over Richard Sr. to do new planning favoring Robin, but also the following additional elements:

- a. The effective operation of such influence so as to subvert or overpower the mind of Richard Sr. at the time of the execution of the Trust Amendments; and
- b. The execution of a trust instrument which Richard Sr. would not have executed but for such influence.

Under Texas case law, the mere opportunity to exercise undue influence is not proof that it was exerted. *Miller v. Flyr*, 447 S.W. 2d 195, 202-03 (Tex. Civ. App. – Amarillo 1969, writ ref'd n.r.e.). In addition, Texas courts apply the “equal inference” rule in undue influence cases, which provides that circumstances which are as consistent with an estate planning document being executed free from improper influence as they are with an estate planning document resulting from undue influence cannot be considered as evidence of undue influence. *Mackie v. McKenzie*, 900 S.W. 2d 445, 450 (Tex. App. – Texarkana 1995, writ denied).

Although the Clients were adamant that Robin had unduly influenced Richard Sr. to execute the 2011 Trust Amendments and the 2013 Trust, I am unaware of any strong evidence of the actual exertion of influence by Robin which overpowered Richard Sr.’s mind causing him to execute these documents.

7. **Negatives surrounding Contestants** – According to the Affidavit of Robin attached to Robin’s response to Clients’ Motion for Partial Summary Judgment in the trust contest, Robin’s testimony would have included the following:

“14. During our marriage, my husband and his children had many conflicts. Most of the problems centered on the issue of money. Caroline and Junior asked for money from my husband numerous times. The money issues and their lack of responsibility caused a lot of conflict between my husband and his children. This conflict is exhibited in the correspondence between my husband and his children.”

“15. Jr. was frequently not responsible for his own family, and my husband helped pay for some of the grandchildren’s support for several years. My husband even provided a home for Jr.’s ex-wife and his grandchildren for a period of time in Texas.”

“16. For many years, Caroline and Jr. did not visit my husband in person. Their limited communications over those years were via phone, email and letters. There were frequent requests for money.”

It is my opinion based upon my trial experience that the foregoing testimony would have been a difficult fact to overcome with a jury. It was reasonable for the Lawyers to support the Clients’ decision to accept the mediation settlement proposal in light of the foregoing factors.

THE MEDIATION

The mediation with mediator Jeff Yates reportedly continued past midnight. My personal experience is that almost every probate court mediation lasts late into evening, which I often observe is due to the influence of deeply strained family dynamics and mistrust and entrenched beliefs of “what daddy wanted.” It is reported that, towards the end of the mediation, Michael Collins, counsel for Robin, made a “final offer” which was ultimately accepted by Caroline and Richard in the form of the Mediated Settlement Agreement. It is my personal experience, having practiced with Michael Collins for approximately 10 years at Smith, Underwood, Carmichael & Floyd, and having litigated against him since that time, that an offer represented by Collins to be a “final offer” is just that. I have known Jeff Yates since he was an associate at the probate boutique firm of the Law Offices of Joseph E. Ashmore, Jr., P.C. in 1999, and have been involved in multiple estate litigation matters with him. He is knowledgeable in the field of estate and trust litigation, and I have no doubt that he did his best as an experienced mediator and oversaw the preparation of the Mediated Settlement Agreement in a manner intended to satisfy the Clients’ goals. As discussed below, the Mediated Settlement Agreement entered into at the mediation accomplished Caroline and Richard’s goals. It is only the deliberate, orchestrated, and feigned attempt to cast the Mediated Settlement Agreement as a failure by Caroline and Richard, in an apparent attempt to avoid paying the contingent fee, that has perpetuated this controversy.

MEDIATED SETTLEMENT AGREEMENT

The Mediated Settlement Agreement (“MSA”) signed by Robin, Richard Jr. and Caroline at the conclusion of the April 13, 2021 mediation provided in relevant part as follows:

3.1 Terms of Agreement...

- k. 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.
- m. Caroline and Richard shall be named as Co-Trustees of the Family Trust.
- p. The Family Trust shall be amended as follows:
 - i. **Caroline and Richard shall be named as Co-Trustees** and shall effectuate the transfer 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.¹

- w. 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.

The parties further agreed to fully effectuate the MSA:

5.7 Document Execution. The Parties agree to execute all documents and take all further acts necessary to consummate the agreement contained herein, including any other documents, releases and necessary pleadings, if any, dismissing the lawsuit within 14 days of the court order approving this Agreement.

ACTIONS TO EFFECTUATE MSA

1. **Grandchildren signed consents to MSA** – In May 2021, pursuant to 3.1.s. of the MSA, the three adult grandchildren executed consent agreements consenting to the MSA:

“I have had the opportunity to review it and to have it explained to me to my satisfaction by the attorney of my choosing. I affirm that I understand the Agreement. **I accept and agree to the Agreement's effect on the structure and terms of the Richard Allison Trust, the Allison Family Trust, the Allison Marital Trust, and the Surviving Grantor's Trust, as well as on the Last Will and Testament of Richard Gerard Allison (the "Will") and his Estate (the "Estate").**

It is my wish and intent that the Agreement resolve all disputes, claims, and controversies of any nature by any party regarding the Richard Allison Trust, the Allison Family trust, the Allison Marital Trust, the Surviving Grantor's Trust, the Will, and the Estate. To that end, **I waive and release any and all claims I may have against any and all parties in any capacity regarding the Richard Allison Trust, the Allison Family Trust, the Allison Marital Trust, the Surviving Grantor's Trust, the Will and the Estate.**”

2. **Guardian Ad Litem consented to MSA** – On May 13, 2021, Judge Weldon Copeland appointed well-known and trusted probate attorney, David Jackson Wilburn, II, as Guardian Ad Litem for the one minor contingent beneficiary of the Trust, Kensington White (Caroline's daughter). Mr. Wilburn ultimately reported to the Court that he approved the MSA on behalf of his minor client and voiced no objection to any of the settlement documents.
3. **Court approved MSA** – On June 14, 2021, Judge Copeland entered the Order Approving Mediated Settlement Agreement, making the following relevant findings of fact:

¹ Caroline and Richard Jr. are defined in the first paragraph of the MSA only in their individual capacities.

“The Court finds that the parties to the matters have approved the Mediation Settlement Agreement (“MSA”), and the Additional Interested Parties are Hunter Allison, Erik Allison and Ella Allison, each adult contingent beneficiary to the original Trust (“Adult Contingent Beneficiaries”), and all have signed the *Consent to Agreement of the Mediated Settlement Agreement*. **In addition, the guardian ad litem David Jackson Wilburn, II, appointed by the Court to represent Kensington White, a necessary party and a minor child, has also approved the MSA on her behalf.**”

4. **Parties ordered to execute all documents needed to effectuate the MSA** – The Court’s order further made the following orders:

“IT IS FURTHER ORDERED, that each Party and Necessary Party are hereby ORDERED to execute each and every document needed to effectuate the agreements set forth in the MSA on or before June 30, 2021, and if there is any problem as to a form of any document to be executed, same should be brought to the attention of the Court to resolve the disagreement in order to finalize the MSA.”

THE MSA ACCOMPLISHED THE CLIENTS’ GOALS

The terms of the MSA make clear that the Clients’ goals were accomplished under the MSA:

1. Richard Jr. and Caroline have full control and the right to distribute to themselves at their discretion the approximate \$10,000,000 of assets in the Family Trust, subject only to the \$1,000,000 hold back for their childrens’ educational expenses (which presumably as parents they would want to provide for) under 3.1(p) of the MSA.
 - a. Under 3.1(p)(i) the Clients replaced Robin as the Trustees of the Family Trust, giving them full control of the assets in the Family Trust.
 - b. Under MSA 3.1(p)(iii), the MSA specifically provides that **Caroline and Richard, Jr. “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.” Caroline and Richard Jr. are specifically defined in the opening paragraph of the MSA **in their individual capacity**, making clear that they were to have personal use of all but \$1,000,000 in that Trust.
 - c. Only a tortured reading of 3.1(p)(iii) could support an allegation that the parties intended that Richard Jr. and Caroline would only have the right to make trust distributions subject to the existing HEMS standard. Every trustee has the right to hold trust assets and to make expenditures and distributions from these assets. Reading that language as mere surplusage is nonsensical. The MSA is clear that the

Clients have the right to those assets in their individual capacities, as they are listed in the first paragraph of the MSA only in their individual capacities.

- d. Clients' purported interpretation of 3.1(p)(iii) also leads to an absurd result for an additional reason, which can be seen in the highlighted version below:

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

Clients' argument that the above-referenced portion of the MSA only gives them the right to access the principal and income from the Family Trust in their capacity as co-trustees subject to the HEMS standard does not make sense in the context of the entire sentence. In order to be consistent throughout that paragraph, Clients' reading would mean that they do not have access as trustees to \$1,000,000 in principal set aside for the grandchildren's educational expenses as highlighted above ("with the exception of the \$1,000,000"). If 3.1(p)(iii) only gives Clients the mere right of access to the assets in their capacity as trustees, this reading would mean that as trustees they have no right to access the \$1,000,000 in principal set aside for educational expenses. If the trustees are not able to access the \$1,000,000 to administer and distribute it for the grandchildren's education, then who could?

- e. Under Texas case law, if words used in a settlement agreement can be given a certain or definite legal meaning or interpretation, then it is not ambiguous and the Court must enforce the agreement as a matter of law. See *Toler v. Sanders*, 371 S.W. 3d 477, 483-81 (Tex. App. – Houston [1st Dist.] 2012, no pet.). An unambiguous contract must be enforced as written, examining the entire document and giving terms their plain, ordinary, and generally accepted meanings. *Toler*, *id.* Here, the MSA defines Richard Jr. and Caroline as individuals, and they are granted the express right as individuals to access all but \$1,000,000 of the Trust principal.
- f. This intent of the parties was clearly confirmed in the "Modification and Amendment to the Richard Allison Trust" (Lawyers' Exhibit 275) executed by Richard Jr., Caroline, and Robin, being one of the documents prepared by counsel as specified in MSA paragraph 3.1(w), as well as to satisfy paragraph 5.7 to "consummate the agreement contained herein," amending the Allison Family Trust to effectuate Richard Jr.'s and Caroline's right to distribute to themselves all but \$1,000,000 of the assets of the Trust, providing in paragraph 1.B as follows:

"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."

- g. The language in the MSA, as confirmed in the above-referenced "Modification and Amendment to the Richard Allison Trust," is clearly a modification of the distribution standard from the HEMS standard provided in the 2013 Richard Allison Trust (which required that Trust distributions be necessary for the

beneficiary's "health, education, support and maintenance" and often referred to as a "HEMS" standard) to a pure discretionary standard allowing Richard Jr. and Caroline to distribute **"such amounts as the Beneficiaries, in their discretion, may direct."** "Beneficiaries" is defined in Modification and Amendment as Caroline and Richard Jr. This pure discretionary standard is identical to the distribution standard which the Grantors of the Trust designed for themselves in Article II.A. of the 2013 Trust ("the Trustee shall distribute the income and principal of the Trust to the Grantors in such amounts as the Grantors may direct."). This modification is completely consistent with MSA paragraph 3.1(p)(3) ("the right to access all principal and income from the Family Trust"), which all of the parties to the MSA approved.

- h. Robin's attorney, Michael Collins, has confirmed to me Robin's position that the MSA and the Modification and Amendments to the Richard Allison Trust modified the Trusts, and that Richard Jr. and Caroline have the unfettered right to distribute to themselves all but \$1,000,000 of the principal of the Family Trust.
- i. The argument being made by Caroline and Richard Jr. in this proceeding, to the effect that they are bound to the "HEMS" standard and do not have free access to \$9,000,000 of the approximate \$10,000,000 in the Family Trust was clearly conceived after the Lawyers attempted to collect their contingent fee under their employment agreements. The MSA was signed on April 13, 2021. The Petition for Modification of Trust Instrument, where this new argument was made by the Clients, was not filed in the Collin County Probate Court until more than two years later.

CLIENTS' TRUST MODIFICATION SUIT IS A SHAM

1. **Trust Modification Petition filed** – Well after Caroline and Richard Jr.'s dispute with the Lawyers arose, on July 5, 2023, Caroline and Richard Jr. filed a "Petition for Modification of Trust Instrument" (hereinafter referred to as the "Modification and Amendment") in the Probate Court of Collin County, Texas. As Petitioners, Caroline and Richard Jr. alleged that the "Modification and Amendment to the Richard Allison Trust" executed by Richard Jr., Caroline and Robin did not finalize a settlement in a manner that would have effectuated its terms in a legally enforceable manner
2. **Family Settlement Doctrine** – Texas recognizes the "Family Settlement Doctrine". The Family Settlement Doctrine is applicable generally when there is a disagreement regarding the distribution of an estate and the beneficiaries enter into an agreement to resolve the controversy. *In re Estate of Halbert*, 172 S.W. 3d at 200. Family settlement agreements are favored in law because they tend to put an end to family controversies by way of compromise. *In re Estate of Morris*, 577 S.W. 2d 748, 755 (Tex. Civ. App. – Amarillo 1979, writ ref'd n.r.e.). The Family Settlement Doctrine is also applicable to trusts. *In re Estate of Webb*, 266 S.W. 3d 544 (Tex. App. – Fort Worth 2008, rehearing overruled).

3. **Trust Modification and Amendment document signed by all parties** – The “Modification and Amendment to the Richard Allison Trust” executed by Richard Jr., Caroline and Robin, Individually and as Trustee, was clearly considered by Guardian Ad Litem David Jackson Wilburn, II, Michael J. Collins, and Richard Jr. and Caroline’s new counsel appearing at the hearing on Robin’s Motion for Enforcement and For Sanctions, Jeffrey L. Crouch, (a 28-year practitioner concentrating his practice on probate issues and disputes) to be effective to modify the Trust pursuant to the Mediated Settlement Agreement. No objection was filed or made at any hearing by Mr. Crouch on behalf of Richard Jr. or Caroline, or any other attorney -- nor was any comment made to the court -- that the Modification and Amendment (which was one of the documents that the Court directed the Parties to sign to effectuate the MSA) was ineffective. In fact, a December 7, 2021, email from Mr. Crouch to Mr. Trevino makes clear as the Clients’ new lawyer that he believed the Modification and Amendment to be sufficient:

“My only point is why have 2 separate documents to amend the same Trust Agreement?” (Clients’ Exhibit 236).

The argument that the Modification and Amendments were not effective was not made until well into this arbitration proceeding. Michael Collins has confirmed to me his position on behalf of Robin that the Modification and Amendments alone are sufficient to effectuate the MSA, and that pursuant to the MSA and the Modification and Amendment documents, Richard Jr. and Caroline have unlimited access to all but \$1,000,000 of the principal of the Family Trust.

4. **Agreed Judgment Modifying Trust** – Paragraph 3.5 of the MSA does call for the entry of an agreed judgment confirming the terms of the agreement and amending the Trust “in accordance with the terms set forth herein.” By the time that the Court held the December 7, 2021 hearing on Robin’s Motion for Enforcement and For Sanctions, the Clients had already instructed the Lawyers not to do any further work on the matter. Beginning shortly after the MSA was signed, Clients also sporadically responded to attempts by the Lawyers to discuss or to go over any of the documents needed to effectuate the bargain they agreed to, and were forbidden from preparing further documents once they hired Jeffrey Crouch, their new counsel -- making it impossible for the Lawyers to prepare any Agreed Judgment modifying the Trust or any other documents in connection with the MSA. Mr. Crouch, the Clients’ new attorney, made no effort to do so, apparently agreeing that no further order was necessary. (See his email referenced in paragraph 2 above).
5. **Petition for Modification contrary to MSA** – The Petition for Modification of Trust Instrument filed by Sarah Pacheco, Esq., on behalf of Caroline and Richard Jr. does not seek to amend the Trust “in accordance with the terms set forth herein,” as required by the MSA. Instead, rather than modifying the Trust to provide that the Trustees of the Family Trust “shall distribute the income and principal of the Trust to the beneficiaries (defined as Caroline and Richard Jr.) in such amount as the beneficiaries, in their discretion, may direct,” they purposely only requested that the Court modify the terms to require the distribution standard to be an **ascertainable “HEMS” standard** rather than the **fully discretionary standard** called for by the MSA and confirmed in the Modification and Amendment signed by Robin -- the surviving Grantor of the Trust, Richard Jr. and Caroline.

The only legitimate explanation for Clients' filing a pleading asking a court to restrict their ability to make distributions from the Family Trust to themselves (rather than to enforce the pure discretionary standard agreed to in the MSA and consented to by the remainder beneficiaries) is their transparent effort to avoid paying the Lawyers their contingent fee by fabricating an argument that the Clients "did not recover anything." This is precisely the argument which they have made in this arbitration proceeding.

6. **No attempt to serve Citation on Petition for Modification** – Since the Petition for Modification of Trust Instrument was filed July 5, 2023, the docket sheet reflects that no citation has been requested or issued for service on Robin Allison, designated by Caroline and Richard Jr., as the only other "necessary party." According to Robin's counsel, Michael Collins, no request has been made for Robin to sign a waiver of citation. No effort has been made to actually modify the Trust as per their Petition, which is simply posturing for this arbitration.
7. **No impediments to Judicial Modification of the Trust** – There is no impediment to a court order judicially modifying the Trust in the pending trust modification action in Judge Copeland's Court, Cause No. PB1-1041-2023. Caroline and Richard Jr.'s Petition lists themselves and Robin as the necessary parties. The Petition further states that "pursuant to section 115.011(p) of the Texas Trust Code, Caroline and Richard's descendants are not necessary parties to this action because they are contingent beneficiaries designated as a class." This is a correct statement of the law, meaning that all necessary parties to modify the trust are already parties. The Pacheco report attempts to excuse this complete failure to move forward by stating that "the trust modification proceeding has been complicated because attorney Michael Collins has indicated his view that the grandchildren, who are not all residents of Texas, would be necessary parties to the proceeding." I confirmed directly with Michael Collins that he has never communicated this to anyone. There is no impediment to completing the judicial modification to effectuate the true intention of the MSA. An agreed judgment modifying the trust, containing the provisions contained in the Modification and Amendment agreement, and addressing any other legitimate concerns which the Clients might have, could be submitted to the Court, and in my experience would likely be signed within 30 days.
8. **Trust Code authorizes Judicial Modification of the Trust** – In the Petition for Modification of Trust Instrument, Richard Jr. and Caroline invoked Texas Property (Trust) Code §112.054 as the statutory basis for the modification, which provides as follows:

§ 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.

9. **Expert acknowledges Trust could be modified or terminated under that statute** – Kevin Spencer’s report argues that the Trust should have been judicially terminated, which could only have been accomplished under that same section of the Trust Code referenced above. (Spencer Report, page 18). However, the experts for Richard Jr. and Caroline take the inconsistent position that -- despite the Mediated Settlement Agreement -- the Court was without any power to amend the Trust “in accordance with the terms set forth herein,” which would allow the Clients to access the same funds that Clients would receive if the Trust was terminated.
10. **Judge Copeland’s Court friendly to Family Settlements and trust modifications** – It is a well-known fact among estate litigators in the North Texas area that Judge Copeland, who signed an order ordering the parties to execute every document necessary to effectuate the agreement set forth in the MSA, is a preferred court to have settlement agreements among family members approved and effectuated. It had become a common practice among some members of the probate bar over the past twenty years to file cases seeking trust modifications or to approve and effectuate settlement agreements in Collin County, in Judge Copeland’s Court, even when it was not the proper county of venue, due to his well-earned reputation for making the necessary orders to effectuate settlements between family members, which he highly favors and which he often advocates from the bench. Based upon my experience, and in my opinion, there is no question that Judge Copeland would enter an order judicially modifying the Family Trust to provide for the pure discretionary standard, as agreed in the MSA and as already provided for in the Modification and Amendment document signed by all of the parties. The online records of the Collin County

Probate Court reflect that this is Sarah Pacheco, Esq.'s first trust modification action in Judge Copeland's court.

11. **Example of recent trust modification by Judge Copeland** – As an example of a recent trust modification in Judge Copeland's court pursuant to a Family Settlement Agreement, Cause No. PB1-0902-2020 is publicly available on the county clerk's docket system. In this case, Judge Copeland modified an irrevocable trust providing, among other things, for outright distributions of \$350,000 each to five different beneficiaries from Trust principal (for a total of \$1,750,000.00), despite the fact that the trust provided for distributions to such beneficiaries of income only, and the fact that such Trust was a spendthrift trust. Judge Copeland made a specific finding in the Final Judgment modifying the subject trust "that the modifications proposed in the Petition conformed substantially with the terms of the Family Settlement Agreement", and ordered the Trust modified in accordance with the Family Settlement Agreement. It is further noteworthy that the court-appointed Guardian Ad Litem for the minor and any unknown, unborn, and unascertained contingent beneficiaries was Jeffrey A. Yates, the mediator in this case. This is a clear example of the action which Judge Copeland would take supporting the Clients' Family Settlement Agreement by entering an order judicially modifying the Family Trust to effectuate the MSA and the Modification and Amendments.
12. **Corroboration for Clients' motive to avoid paying the Lawyer's contingent fee** – Lawyers' Exhibit 251 reflects text message exchanges from Caroline to the Lawyers confirming that the Clients "were comfortable with the terms of the settlement" and that her "concern is focused on attorneys fees... but fees must be negotiated before anything further is signed... let's talk about a buyout 100K each. Including my brother. Let's talk about an offer to you guys. I'll pay cash. And before my brother and I sign anything further. It's more than what Collins made." (See, Lawyers Exhibit 251; Arbitration Volume 6, page 1348-1349)

FEE AGREEMENT

Contingent fee agreements are common in estate and trust litigation. A contingent fee of 35% on the corpus of the trust over which the Lawyers obtained unlimited access for Clients is certainly within industry standards and is not unreasonable, unconscionable, or excessive. Contingent fee agreements are especially common in situations where a beneficiary with no access to the trust for the payment of attorneys' fees seeks an alternative way to fund the litigation due to the substantial expense that is incurred in this type of litigation. The Lawyers' Contingent Fee Agreements in this case are standard and met the Lawyers' standard of care to the Clients.

RESPONSE TO ISSUES RAISED BY CLIENTS' EXPERT REPORTS

To the extent not addressed above, the following responses are in reply to certain statements made in the reports of Pacheco and Spencer:

1. "I confirm that Lawyers never sought to amend the live pleadings on behalf of Caroline and Richard Jr. or filed a judgment following the MSA's approval by Judge Copeland."
 - As referenced above, the Clients refused to meet with the Lawyers to discuss any settlement documents and instructed the Lawyers not to take any further actions to effectuate the agreement. The Clients then hired probate attorney Jeffrey Crouch approximately one month prior to the December 7, 2021, hearing on the Motion to Compel. Mr. Crouch had the Clients' sign the Modification and Amendments to the Trust documents, did not amend the pleadings on behalf of the Clients, did not submit a proposed judgment modifying the Trust, and did not voice any objection to the MSA.
 - To the extent Clients believe it is necessary to effectuate the MSA, Clients can amend their pending Petition for Modification to seek the benefit of the bargain they obtained under the MSA -- namely the right to distribute principal and income from the Family Trust to themselves subject to \$1,000,000 education reserve benefiting their children.
 - Given the fact that the parties have already signed the Modification and Amendment to the Family Trust which contains language confirming the Clients' unlimited discretion to withdraw all but the \$1,000,000 holdback from the Family Trust, it would be relatively inexpensive to obtain the entry of an agreed judgment modifying the trust, which in my experience should cost approximately \$3,500 total.
2. Robin has the power to remove and replace Clients as Trustees of the Family Trust and to require accountings.
 - The MSA provides that Robin waived all rights to receive any interest, income and or principal whatsoever from the Family Trust, meaning that she had no further financial interest or standing to complain about the Trustees of that Trust. Robin further expressly agreed to the appointment of Richard Jr. and Caroline as the Co-Trustees in the MSA. To the extent that Clients want to confirm Robin's inability to remove the Trustees and to demand an accounting for assets in which she no longer has any interest, having expressly agreed to Clients' appointment as Co-Trustees in 3.1(p)(i) of the MSA, this can be judicially modified under the existing Trust Modification Action.
3. "There would be no need to "modify" the Trust if in fact the real objective was to grant Caroline and Richard Jr. unrestricted access to the Trust assets. If that was the object, the MSA should have provided for a termination of the Family Trust."
 - This ignores the fact that Robin's final offer at the mediation was that the Family Trust remain in effect, but that Richard Jr. and Caroline would have the right to access all but \$1,000,000 out of the Trust. Any termination of the Trust -- if had that been an actual offer made by Robin at the mediation -- would have been accomplished under the same Trust Code statute that authorizes judicial modification of a trust (Trust Code §112.054, which allows for a trust to be modified **OR** terminated in whole or in part). Modifying the Trust to allow unlimited discretion to distribute all but \$1,000,000 of the Trust

funds, as opposed to terminating the Trust and giving the funds outright to Richard Jr. and Caroline, is of no significant difference.

- The Family Trust had to be maintained in order to administer the \$1,000,000 in educational funds for the grandchildren.
4. “Caroline and Rich received no value by agreeing to the MSA.”
- This allegation is preposterous. The MSA specifically provides that Caroline and Richard Jr. (defined in their individual capacities) “shall have the right to access all principal and income from the Family Trust with the exception \$1,000,000.” The formal Modification and Amendment to the Richard Allison Trust signed by all of the parties specify that Richard Jr. and Caroline in their capacity as Co-Trustees “shall distribute the principal and income of the Trust to the Beneficiaries in such amount as the Beneficiaries, in their discretion, may direct.” To the extent that Clients deem the Modification and Amendment to the Richard Allison Trust to be insufficient to effectuate the MSA, giving them unlimited discretion to distribute the income and principal of the Family Trust to themselves (subject to the \$1,000,000 educational hold back), they can and should amend their Petition for Trust Modification to request that the Family Trust be judicially modified to provide an unascertainable standard for distributions to themselves, rather than the pleading which they filed, which asked the Court to limit their ability to access the funds of the Family Trust with a HEMS standard. This is clearly a deliberate choice made by the Clients in an effort to avoid paying the contingent fee in this case. Neither their prior lawyer, Jeffrey Crouch, nor their current counsel in the Trust Modification action has made any effort to modify the Family Trust to specify, consistent with the MSA, that the Clients have full unlimited discretion to distribute the Family Trust assets to themselves, subject to the \$1,000,000 education holdback as was negotiated, and no service of Citation has even been issued in the trust modification action.
5. “Texas Trust Code §113.029 restricts the beneficiary who is also a Trustee’s rights to grant themselves distributions from the Trust.”
- The cited Trust Code section specifically states that that section doesn’t apply if the Trust expressly indicates that the requirement provided by that sub-section does not apply.
 - Section 2.4 of the MSA makes Texas Trust Code §113.029 inapplicable, stating in relevant part as follows:

2.4. Intent of the Parties. The Parties intend that this Agreement supersede any and all other agreements between the Parties, and they intend that this Agreement supersede any and all rights that any Party may have under case law or statutory law concerning inheritance rights, marital rights, community property rights, partnership rights or any other theory defining or concerning the Trust, including Decedent’s property right and the associated rights.

- To the extent necessary, this obviously can be easily accomplished under the decree modifying the Trust in the pending trust modification action, and this argument is simply given as another attempted impediment to the payment of the contingent fee. The MSA and the order of the Collin County Probate Court require Richard Jr. and Caroline to “take all further acts necessary to consummate the agreement contained herein, including any other documents, releases and necessary pleadings, if any.” (See Paragraph 5.7 of the MSA). What they have done in the Petition for Modification of Trust is the opposite of what the Court ordered.
 - Professor Stanley Johanson’s annotations to the Texas Estates Code §113.029 points out that the purpose of the foregoing section, enacted in 2009, was to avoid an estate tax problem. As Professor Johanson points out, with an estate tax exemption in excess of 11.8 million dollars per person (in 2021) this statute does not serve as useful purpose as it did when the estate tax exemption was at 3.5 million dollars per person at the time that the statute was passed. In any event, to the extent that the Clients believe it is necessary to amend the Trust judicially, their Trust Modification action could include this modification, and must do so under section 5.7 of the MSA and to comply with Judge Copeland’s order.
6. “The spendthrift provision in Article XIII-b of the Trust raises additional issues about the Clients unfettered ability to withdraw monies from Trust.”
 - The Trust is not a spendthrift Trust at this time. Article XIII-c specifically provides that it does not become a spendthrift Trust until the death of the last to die of the Grantors. Grantor Robin Allison is still alive and, accordingly, the Trust is not a spendthrift at this time.
 7. In general, Clients’ arguments that the Lawyers failed to meet their standard of care in the representation of the Clients are completely unfounded. The result in this case achieved by the Lawyers is well within the standard of care, and in my opinion it is a successful result.
 8. Any allegation that the Lawyers were not adequately informed as to the assets at issue and/or that they were not in a position to recommend to the Clients whether or not to accept Robin’s final offer at the mediation in the context of the overall settlement division is unfounded. The settlement that the Clients accepted was, in my opinion based on my experience, within the range of a normal will and trust contest settlement.
 9. I agree with Mr. Spencer’s statement that “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.”
 - Here, the case was settled for close to a 50/50 split of the entire Trust, which is an extremely common split in estate and litigation between a second spouse and children from a prior marriage. The Clients’ settlement certainly meets and satisfies an attorney’s standard of care under the facts and circumstances presented.

10. “When advised at mediation that the signed version of the MSA was the final offer, attorney should have told Rich and Caroline that the document did not provide unbridled discretion to distribute all family trust assets except the \$1,000,000 set aside to themselves.”
- I completely disagree with this analysis. As discussed above, the MSA does provide that Rich and Caroline, defined as individuals, “shall have the right to access all principal and income from the Family Trust with the exception of the \$1,000,000...” This reading is corroborated by the Modification and Amendments signed by Robin, Rich and Caroline.
11. “Rich and Caroline have been required to hire new counsel, Sarah Pacheco, to 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.”
- As discussed above, Clients forbade the attorneys from taking any further actions to effectuate the MSA, which prohibited them from preparing any orders or filing any further petitions. My experience is that the typical Judicial Trust Modification proceeding costs approximately \$3,500.00 and can be accomplished in less than 30 days if all parties waive citation.

I appreciate the opportunity to provide my opinions to the Honorable Arbitrator.

Respectfully submitted,

By: /s/ P. Keith Staubus

P. KEITH STAUBUS

STAUBUS & RANDALL, L.L.P.

State Bar No. 19083800

pks@srllp.com

8401 N. Central Expwy., Ste. 210

Dallas, Texas 75225

Telephone: (214) 691-3411

Telecopier: (214) 691-3454