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## **BOXALL BATTLES**

### **PHASE 3 - POST FIRST LAWYER-TO-LAWYER DISCUSSION**

### **PREPARATION FOR SECOND CLIENT MEETING**

#### **Information for Dianne Nelson's Lawyer**

You contacted BoxAll's corporate counsel who put you in touch with the lawyer representing Keith Nelson in this matter.

Acting on your advice, Dianne Nelson helped her mother to obtain separate counsel – the lawyer who had originally put together her and her husband's wills and the Nelson Family Trust documents. You have spoken to him and agreed that you will keep him informed of any developments, particularly if these might negatively impact his client's interests. As you understand it, the mother just wants peace; she wants her children to be treated fairly, even though she seems to agree with Dianne's assessment of her brother. While there may be a looming competency issue, according to her lawyer, she seems lucid in the moment, just forgetful.

When you were able to speak with Keith Nelson's lawyer, you both agreed that it would be good to see if your clients could resolve their disputes amicably, without filing formal legal actions.

You explained that, without seeing any financial documents, your client was angry and concerned when she learned from her mother that Keith had attempted to manipulate her into leaving him  $\frac{3}{4}$  of her 4% of BoxAll – 3% - instead of splitting it equally between them upon her death. According to Dianne, Keith had to know their mother is 88 and not entirely lucid. Diane explained that while their mother hasn't been formally diagnosed with Alzheimer's, anyone who spends time with her can tell that she's not really with it. She's pretty good with stories about "the olden days," but can't remember what happened yesterday, let alone a few hours ago. Perhaps to cover her own cognitive decline, she's highly suggestible – happy to agree with what people tell her.

You also explained that your client was suspicious about Keith's financial management practices at BoxAll and wanted to examine literally all BoxAll's financial books and records. While everyone in the family would qualify as wealthy, she wonders whether Keith hasn't been stocking away more than he was entitled to over the years. Apparently, summary financial statements were handed out at the shareholder's annual dinner meeting, but she hadn't kept them or focused on the details at the time.

Within a week after that conversation with Keith Nelson's lawyer, he sent you all of the BoxAll summary financial statements from the last ten years. These show BoxAll revenues and expenses, including executive salaries and any loans extended to BoxAll, as well as interest paid on loans. You reviewed them with an accountant with whom you often consult in this type of situation. Your review revealed that Keith had made a \$3 million loan to BoxAll 5 years ago, from his own funds, with interest at 8%. Since then, as reflected in the financials, BoxAll has paid Keith interest and principal of approximately \$300,000 per year (\$240,000 of this was all interest the first year, and then the company started paying down the principal too.) That seemed out-of-line, given that everyone knows commercially available interest rates at that time were much lower, in 4-5% range.

You communicated your concerns about the loan in a brief follow-up email to Keith Nelson's attorney, asking what he knew about it and whether his client had any explanation, or any explanation for his efforts to influence the mother to change her will.

Yesterday, you heard back from Keith's attorney on the topic of the loan and the 4% BoxAll allocation issue. Regarding the loan, he explained that, according to Keith: it's true that when the loan was made, banks were *advertising* commercially interest rates were in the 4-5% range. It was a teaser. He's not sure what business could actually get a loan at those rates – maybe Procter & Gamble. BoxAll was no P&G. The company's overall financials weren't great at the time; that's why they needed a loan. BoxAll's banker said they wouldn't lend at a lower rate than 10% without personal guarantees and mortgages on the homes of BoxAll shareholders. Keith believes he explained this at the annual dinner meeting, and none of them (including Keith) were willing to provide personal guarantees or mortgages. So, Keith decided to loan the company from his own money at an interest rate lower than the bank had quoted them.

Regarding the 4% BoxAll allocation, Keith wanted you and his sister to know that he wasn't trying to cheat her out of any money by asking their mother to have her will allocate 3% of BoxAll to him and 1% to Dianne. He insists that he explicitly told their mother that any difference in monetary value should be made up with other assets – property or cash reserves. He was worried that a 50/50 split would mean unresolvable future conflict that would diminish BoxAll's value and thus harm both of their financial interests. Their mother seemed to understand and agreed that conflict would continue to tear the family apart. Based on what's happening, Keith now assumes that she didn't really understand or, more likely, that she forgot and never conveyed it to Dianne. Keith is fully committed to carrying out his fathers' intent: that both siblings share equally in the financial value of BoxAll and his other holdings.

In light of this information, you sent an email to Dianne reporting that the document review revealed that Keith had made a \$3 million loan to BoxAll 5 years ago, from his own funds, with interest at 8%. Since then, as reflected in the financials, BoxAll has paid Keith interest and principal of approximately \$300,000 per year (\$240,000 of this was all interest the first year, and then the company started paying down the principal too.)

Your email also briefly reported on your communications with Keith's lawyer about this loan and the BoxAll % allocation. You explained that, according to the lawyer, Keith believes he explained the circumstances at the annual dinner meeting and would be willing to provide more complete information about the reasons for his loan. Regarding his request that their mother allocate 3% of BoxAll to him and 1% to Dianne, Keith insists that he just wanted to avoid future conflict and not to cheat her financially. He claims he explained that to their mother and wanted her to provide for offsetting any difference in value.

Of course, in your email to Dianne, you had to ask: "Did you know anything about this loan, or do you remember discussing or approving it?" "Did you ever hear anything from your mother about Keith wanting to even up the financial impact? You suggested a meeting to discuss the information you had learned in more detail and to consider next steps. Prepare for that meeting.