



BOXALL BATTLES

7- PRE-LATER MEETING & POSSIBLE SETTLEMENT PROCESS

Lawyer for Dianne Nelson

Despite your best efforts, you and opposing counsel were unable to negotiate a resolution of the many conflicts between clients in this case.

Shortly after that failed effort, you learned of more financial shenanigans by Keith. Dianne's accountant had the sound instinct to dig behind the "executive compensation" line in the financials and found that Keith had been awarding himself outlandish bonuses over the five years since your father's death. Keith's regular salary had long been \$500,000 per year. Dianne knew that, when their father was alive and BoxAll had a very good year, he and Keith took personal bonuses as high as their salaries. But never in a bad year, and never more than their base salaries. Even after he retired, as BoxAll's owner, their father reviewed and approved all executive compensation, including bonuses. Sure enough, as soon as the father passed away, when BoxAll shares went into the Trust, Keith began taking annual bonuses much larger than \$500,000 – on top of that salary. Because Keith had become the Successor Trustee, he just approved them for himself.

Even that first year, when Keith claims BoxAll was in a tough financial situation, he took a \$600,000 bonus. (If he hadn't taken the bonus, the company wouldn't have needed to borrow so much.) During the next four years, he took bonuses of \$600,000, \$650,000, \$700,000, and \$750,000. That is a total of \$800,000 (\$100,000 + \$100,000 + \$150,000 + \$200,000 + \$250,000) more than the father ever permitted. Especially in the first year or so, it's arguable that \$0 bonuses were financially prudent, as the company's hadn't yet reaped profits from its new patents and large contracts. That \$800,000 would have come off the top of the shared profits. So, your client is entitled to 48% of that \$800,000 – at minimum. An accountant or business expert could say she is owed much more. They would not be bound by the father's bonus practices. In those years, Keith gave only token bonuses to the rest of the executive team – never more than \$50,000. He can't credibly argue that his own outsized bonuses functioned as incentives for the team and thus benefitted BoxAll.

After you learned this information, you informed Dianne. You also contacted Keith's attorney and let him know what the accountant had found. "You're welcome to check the documents yourself," you said, "but I'm sure you understand that this strengthens my client's case and her bargaining position.

When you spoke with Dianne, you recommended another attempt at negotiation to resolve all current disputes and agree on a path forward for and Keith. You suggested that, after discussing it with opposing counsel, you will be better able to advise her about as whether to go directly to mediation or to attempt to negotiate directly first. The direct negotiations could be just lawyer-to-lawyer, with client authority, or Dianne and Keith (and their mother) could participate. You explained that in mediation, a neutral seeks to facilitate



agreement. The mediator would likely insist on the parties being there, though you could be in separate caucus rooms all or most of the time.

Dianne's response was: "Whatever works." When you asked what she would absolutely need to see in a final, settle-everything agreement, Dianne asked for some time to think about it. "Of course," you said, and you set up a meeting to discuss next steps as well as a careful review of Dianne's interests and objectives in an overall settlement, to include resolution of past claims as well as plans for dividing the Trust properties.

Prepare to meet with Dianne, and then to negotiate a settlement, either in direct negotiation or mediation.