



BOXALL BATTLES

7- PRE-LATER MEETING & POSSIBLE SETTLEMENT PROCESS

Lawyer for Keith 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 received an email and then a phone call from Dianne's lawyer. As the lawyer explained, Dianne's accountant went back to the BoxAll books and dug behind the "executive compensation" line in the financials. He found that Keith had been awarding himself larger 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 that shouldn't have happened in a bad year. Even in good years, their bonuses were never higher than base salaries. Even after he retired as BoxAll's owner, their father reviewed and approved all executive compensation, including bonuses. Keith never tried to take a bonus higher than his base salary before the father's death. But 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.

According to Dianne's lawyer, even in first year, when Keith said BoxAll was in a tough financial situation, he took a \$600,000 bonus. With a keen eye for the obvious, the lawyer commented that if Keith hadn't taken that 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. The lawyer said he and the accountant would argue that, especially in the first year or so, \$0 bonuses would have been financially prudent, as the company 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, he claims Dianne is entitled to 48% of that \$800,000 – at minimum. An accountant or business expert could say she was owed much more. Moreover, while Keith was awarding himself high-six-figure bonuses, he gave only token bonuses to the rest of the executive team – never more than \$50,000. So, his own outsized bonuses surely didn't benefit BoxAll as incentives for the team.

Dianne's lawyer ended the call by saying: "You're welcome to check the documents yourself, but I'm sure you understand that this strengthens my client's case and her bargaining position."

You immediately contacted Keith, relayed what Dianne's lawyer had said, and asked him about the bonuses.

Keith explained to you:

These have never been hidden and no one ever asked to review them. Yes, I had begun to take somewhat higher bonuses in the last five years than in the past. My regular salary had been \$500,000 for as long as I remember, as was my father's. My father's policy was to keep the base salaries constant but to be generous with bonuses, effectively doubling my compensation (and his, before retirement). Even after my father retired as BoxAll's owner, he reviewed and approved all executive compensation, including bonuses. In one confidential conversation, my father almost apologized for setting it up for Dianne to get equal shares in BoxAll even though I had built BoxAll's value. He affirmed that he approved of my large bonuses as unofficial but entirely fair adjustments to the annual profit share distributions. I remember my father saying: "Your sister hasn't done a day's work in the last 30 years, and you've been at BoxAll every day. If BoxAll's business ever really takes off, you can triple that bonus. She'll still be rich enough."

During that first year after the father's death, Keith took a \$600,000 bonus. Why that year? One of the top executives had left suddenly early in the year; meaning that Keith covered both jobs. Though business was shaky that January, by the end of the year, it looked like his savvy investment of the loan proceeds were going to pay off. He had earned that bonus, especially since he hadn't had a raise for decades. During the next four years, Keith's bonuses were \$600,000, \$650,000, \$700,000, and \$750,000. The other top executives received bonuses in the \$50,000 range. By then, the business was going gangbusters. Keith is sure his father would have approved.

Keith commented: "Isn't it too late to complain now?" He would have told them all of this if anyone had asked. His management practices have been transparent and BoxAll books meticulously kept.

At the end of your conversation with Keith, you recommended another attempt at negotiation to resolve all current disputes and agree on a path forward for him, Dianne, and their mother. You suggested that, after discussing it with opposing counsel, you would be better able to advise him 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 Keith and Dianne (and maybe 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.

Keith's response was: "Whatever works." When you asked what he would absolutely need to see in a final, settle-everything agreement, Keith 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 Keith'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 Keith, and then to negotiate a settlement, either in direct negotiation or mediation.