

BIGLAW REDEFINED

The Trial Plan: Designing A Case Roadmap Backwards from Appeal to Case Inception

Brian E. Mason

Christina M. Carroll

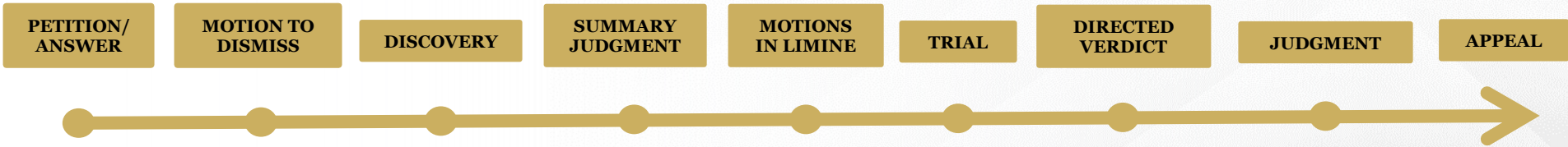
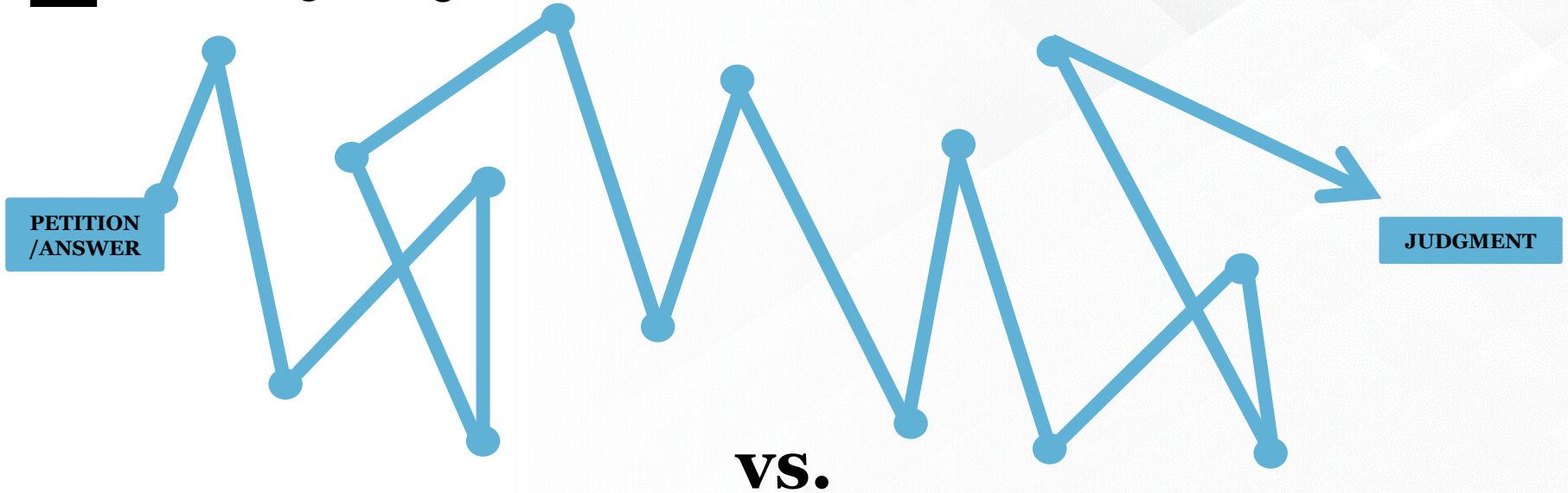
CAUSE OF ACTION	ELEMENTS	LAW	JURY QUESTION, DEFINITION, INSTRUCTION	EVIDENCE	PREDICATE
I.					

CAUSE OF ACTION	ELEMENTS	LAW	JURY QUESTION, DEFINITION, INSTRUCTION	EVIDENCE	PREDICATE
II.					

Poured out...







Creating the Trial Plan

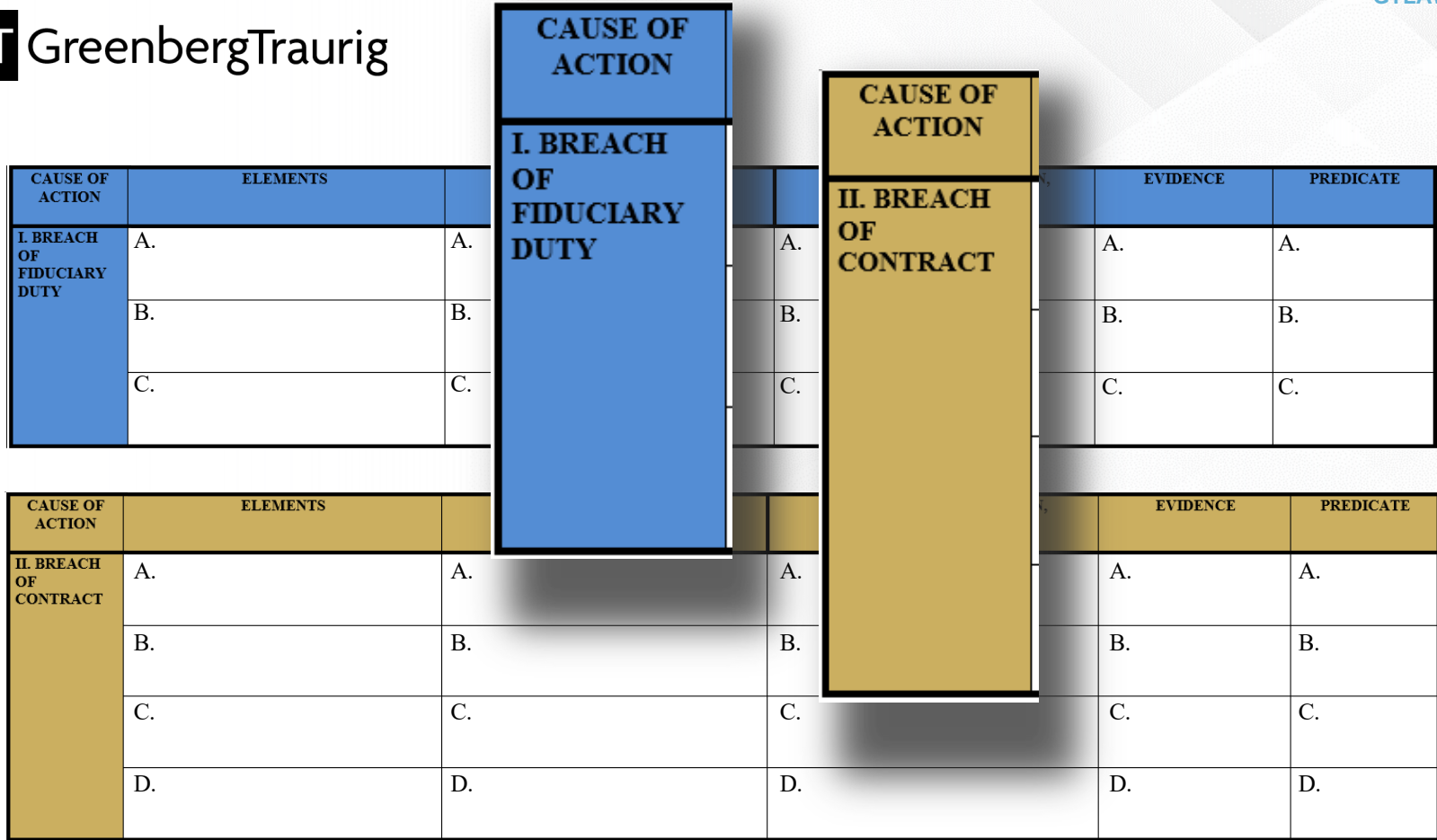
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I.					

CAUSE OF ACTION	ELEMENTS	LAW	JURY QUESTION, DEFINITION, INSTRUCTION	EVIDENCE	PREDICATE
II.					

CAUSE OF ACTION	ELEMENTS	LAW	JURY QUESTION, DEFINITION,	EVIDENCE	PREDICATE
I.	A.	A.	A.	A.	A.
	B.	B.	B.	B.	B.
	C.	C.	C.	C.	C.

CAUSE OF ACTION	ELEMENTS	LAW	JURY QUESTION, DEFINITION, INSTRUCTION	EVIDENCE	PREDICATE
II.	A.	A.	A.	A.	A.
	B.	B.	B.	B.	B.
	C.	C.	C.	C.	C.
	D.	D.	D.	D.	D.

Drafting the Legal Section



CAUSE OF ACTION	ELEMENTS	LAW	JURY QUESTION, DEFINITION, INSTRUCTION	EVIDENCE	PREDICATE
I. BREACH OF FIDUCIARY DUTY	A. Existence of a fiduciary relationship				
	B. Defendant breached				
	C. Injury to Plaintiff or benefit to Defendant				

CAUSE OF ACTION	ELEMENTS	LAW	JURY QUESTION, DEFINITION, INSTRUCTION	EVIDENCE	PREDICATE
II. BREACH OF CONTRACT	A. A valid contract				
	B. Plaintiff performed or tendered performance				
	C. Defendant breached the contract				
	D. Plaintiff was damaged as a result of the breach				

CAUSE OF ACTION	ELEMENTS
I. BREACH OF FIDUCIARY DUTY	A. Existence of a fiduciary relationship
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CAUSE OF ACTION	ELEMENTS
II. BREACH OF CONTRACT	A. A valid contract
	B. Plaintiff performed or tendered performance
	C. Defendant breached the contract
	D. Plaintiff was damaged as a result of the breach

Plaintiff



Defendant

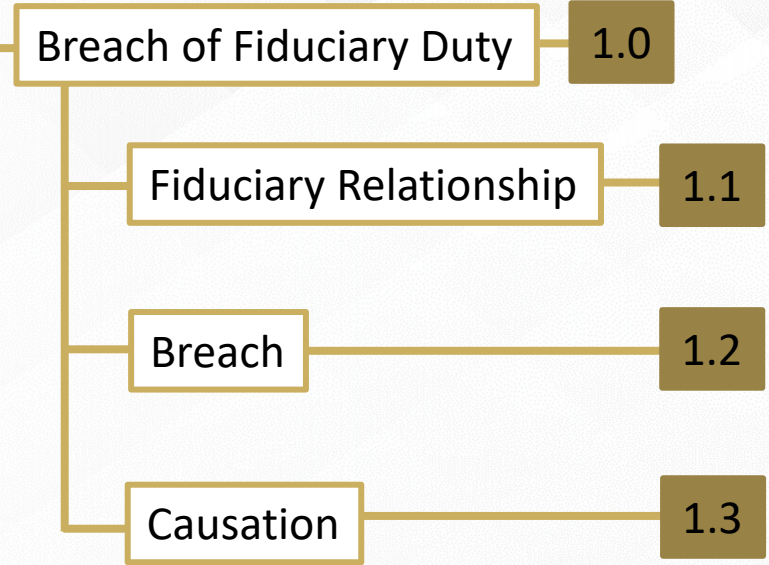


CAUSE OF ACTION	ELEMENTS	LAW	JURY QUESTION, DEFINITION, INSTRUCTION	EVIDENCE	PREDICATE
II. BREACH OF CONTRACT	A. A valid contract	A. The required elements of a breach of contract claim are (1) a valid contract... 1776 Energy Partners, LLC v. Marathon Oil EF, LLC, No. 04-20-00304-CV, at *16 (Tex. App.—San Antonio Mar. 29, 2023).			
	B. Plaintiff performed or tendered performance	B.			

CAUSE OF ACTION	ELEMENTS	LAW	JURY QUESTION, DEFINITION, INSTRUCTION	EVIDENCE	PREDICATE
I. BREACH OF FIDUCIARY DUTY	A. Existence of a fiduciary relationship	A. The elements of a claim for breach of fiduciary duty are: (1) the existence of a fiduciary relationship between the plaintiff and defendants... In re Huron, No. 04-22-00219-CV, at *7 (Tex. App.—San Antonio Feb. 15, 2023).			
	B. Defendant breached	B. The elements of a claim for breach of fiduciary duty are: ... (2) the defendant’s breach of the fiduciary duties arising from that relationship... In re Huron, No. 04-22-00219-CV, at *7 (Tex. App.—San Antonio Feb. 15, 2023).			
	C. Injury to Plaintiff or benefit to Defendant	C. The elements of a claim for breach of fiduciary duty are: ... (3) injury to the plaintiff, or benefit to the defendant, resulting from that breach. In re Huron, No. 04-22-00219-CV, at *7 (Tex. App.—San Antonio Feb. 15, 2023).			

Managing the Evidence

CAUSE OF ACTION	ELEMENTS	LAW
I. BREACH OF FIDUCIARY DUTY	A. Existence of a fiduciary relationship	A. The elements of a claim for breach of fiduciary duty are: (1) the existence of a fiduciary relationship between the plaintiff and defendants... In re Huron, No. 04-22-00219-CV, at *7 (Tex. App.—San Antonio Feb. 15, 2023).
	B. Defendant breached	B. The elements of a claim for breach of fiduciary duty are: ... (2) the defendant’s breach of the fiduciary duties arising from that relationship... In re Huron, No. 04-22-00219-CV, at *7 (Tex. App.—San Antonio Feb. 15, 2023).
	C. Injury to Plaintiff or benefit to Defendant	C. The elements of a claim for breach of fiduciary duty are: ... (3) injury to the plaintiff, or benefit to the defendant, resulting from that breach. In re Huron, No. 04-22-00219-CV, at *7 (Tex. App.—San Antonio Feb. 15, 2023).



CAUSE OF ACTION	ELEMENTS	LAW
	C. Injury to Plaintiff or benefit to Defendant	C. The elements of a claim for breach of fiduciary duty are: ... (3) injury to the plaintiff, or benefit to the defendant, resulting from that breach. <i>In re Huron, No. 04-22-00219-CV, at *7 (Tex. App.—San Antonio Feb. 15, 2023).</i>
	1. Foreseeability	1. The two elements of proximate cause are foreseeability and cause in fact. Foreseeability means that the actor, as a person of ordinary intelligence, should have anticipated the dangers that his negligent act created for others. <i>Hodges v. First Texas Title Co., LLC, 11-13-00209-CV, at *4 (Tex. App.—Eastland Aug. 31, 2015).</i>
	2. Cause-in-fact	2. Cause in fact means that the act or omission was a substantial factor in bringing about the injury, and without which harm would not have occurred. <i>Hodges v. First Texas Title Co., LLC, 11-13-00209-CV, at *4 (Tex. App.—Eastland Aug. 31, 2015).</i>

Causation

1.3

Proximate Cause - Foreseeability

1.3.1

Proximate Cause - Cause in fact

1.3.2

AFFIRMATIVE CLAIMS

- 1.0 Breach of FD
 - 1.1 Fiduciary relationship
 - 1.1.1 Director / officer
 - 1.2 Breach of duty
 - 1.2.1 Obedience
 - 1.2.2 Care
 - 1.2.3 Loyalty
 - 1.2.4 Interested transaction
 - 1.2.5 Usurpation of corporate opportunity
 - 1.3 Causation
 - 1.3.1 Injury to P
 - 1.3.2 Benefit to D
 - 1.4 Damages
 - 1.4.1 Economic
 - 1.4.1.1 Out of pocket
 - 1.4.1.2 Lost profits
 - 1.4.1.3 Lost business value
 - 1.4.2 Equitable
 - 1.4.2.1 Constructive trust
 - 1.4.2.2 Fee forfeiture
 - 1.4.2.3 Disgorgement
- 2.0 Knowing Participation in Breach of FD
 - 2.1 Fiduciary relationship
 - 2.2 D knew of fiduciary relationship
 - 2.3 D aware participating in breach
- 3.0 Fraud
 - 3.1 Material misrepresentation
 - 3.1.1 False statement of fact
 - 3.1.2 False statement of opinion
 - 3.1.3 False promise of future performance
 - 3.1.4 False representation by conduct
 - 3.2 Knew false or made recklessly
 - 3.2.1 Knowledge of falsity
 - 3.2.2 Reckless as to falsity
 - 3.3 Intent to induce P to act
 - 3.4 P acted in reliance
 - 3.4.1 Actual reliance
 - 3.4.2 Justifiable reliance
 - 3.5 Damages
 - 3.5.1 Economic
 - 3.5.1.1 Out of pocket
 - 3.5.1.2 Benefit of bargain
- 4.0 Civil Conspiracy
 - 4.1 Combination of two or more persons

- 4.2 Unlawful purpose/lawful purpose by unlawful means
 - 4.2.1 Unlawful purpose

AFFIRMATIVE DEFENSES

- City/Authority
- Breach
- Full knowledge of act or transaction at time
- rationally approved
- is
- utations/Laches
- Responsibility
- Third Party

AFFIRMATIVE CLAIMS

- 1.0 Breach of FD
 - 1.1 Fiduciary relationship
 - 1.1.1 Director / officer
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 - 1.4.2.3 Disgorgement

Applying Issue Codes to the Evidence

Q. How long have you been a managing partner or on the board of directors for Carroll, Inc.?

A. From the inception.

Q. Roughly what year was that?

A. I think 2010.

Fiduciary Relationship

1.1

Q. Why did you decide to resign from Carroll, Inc.?

A. Because of cash flow. I needed more money to help pay the bills.

Q. Any other reasons?

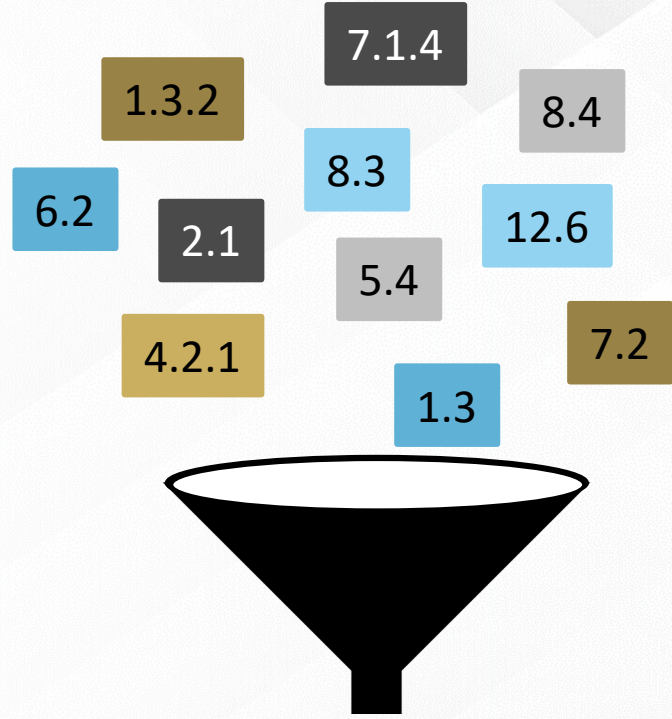
A. Yes, issues with the CEO.

Proximate Cause
- Cause in fact

1.3.2

GT GreenbergTraurig

All Evidence



Causation Evidence



Lopez, Alex – 2/21/2020

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- 5 A. Yes.
 6 Q. And he is the director for Carroll, Inc.?
 7 A. Correct.
 8 Q. All right. When did you learn Chris Mason
 9 was a director for Carroll, Inc.?
 10 A. I knew it when he joined in 2010.

1.1 Existence of
 fiduciary relationship

2.2 D knew of fiduciary
 relationship

Lopez, Alex – 2/21/2020

Page 101

- 24 Q. Do you recognize this document?
 25 A. Yes.
 102:1 Q. Please identify the document for the jury.
 2 A. It's the bylaws for Carroll, Inc.
 3 Q. Have you read these before today?
 4 A. Oh, yes. We're required to read them
 5 every year.
 6 Q. Turning to page 18, section 4.3, it reads
 7 "Officers and directors owe a fiduciary duty
 8 to the Company, which duty includes the duty
 9 to disclose when transactions with the
 10 Company will benefit the officer or director
 11 individually." Did I read that correctly?
 12 A. Yes.
 13 Q. Would you agree that you understood Chris
 14 Mason, as an officer, had a duty to disclose
 15 any transaction with the Company that may
 16 benefit him personally?
 17 A. Well, I guess so.

2.2 D knew of fiduciary
 relationship

Populating the Evidence Column

Q. How long have you been a managing partner or on the board of directors for Carroll, Inc.?

A. From the inception.

Q. Roughly what year was that?

A. I think 2010.

Fiduciary Relationship

1.1

EVIDENCE

A.

1. Mason testified that he acted as a director of Carroll, Inc. since 2010.
[\[Mason Dep. 58:24-59:4\]](#)
[\[CODE 1.1\]](#)

CAUSE OF ACTION	ELEMENTS	LAW	JURY QUESTION, DEFINITION, INSTRUCTION	EVIDENCE	PREDICATE
I. BREACH OF FIDUCIARY DUTY	A. Existence of a fiduciary relationship	A. The elements of a claim for breach of fiduciary duty are: (1) the existence of a fiduciary relationship between the plaintiff and defendants... In re Huron, No. 04-22-00219-CV, at *7 (Tex. App.—San Antonio Feb. 15, 2023) .		A. 1. Mason testified that he acted as a director of Carroll, Inc. since 2010. [Mason Dep. 58:24-59:4] [CODE 1.1] 2. Mason was listed as a director on the Carroll, Inc. website and bylaws. [MASON00275-283]	

Satisfying the Predicates

CAUSE OF ACTION	ELEMENTS	LAW	EVIDENCE	PREDICATE
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Crafting the Jury Questions & Proof

CAUSE OF ACTION	ELEMENTS	LAW	JURY QUESTION, DEFINITION, INSTRUCTION	EVIDENCE	PREDICATE
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	B. Defendant breached	<p>B.</p> <p>The elements of a claim for breach of fiduciary duty are: ... (2) the defendant's breach of the fiduciary duties arising from that relationship... In re Huron, No. 04-22-00219-CV, at *7 (Tex. App.—San Antonio Feb. 15, 2023).</p>	<p>B.</p> <p>Chris Mason breached his fiduciary duty to Carroll, Inc.</p> <p>Did Chris Mason breach his fiduciary duty to Carroll, Inc.?</p>	<p>B.</p> <p>1. Mason did not disclose Carroll, Inc.'s transaction with his personal business. [Mason Dep. 99:2-10, Mason admitting he did not disclose the transaction] [CODE 1.2.3, 1.2.4]</p>	<p>B.</p> <p>1. Deposition of Chris Mason [Mason Dep. 99:2-10]</p> <ul style="list-style-type: none"> TRE 801(e)(3) not hearsay because statement made in deposition in same proceeding TRE 801(e)(2) not hearsay because opposing party statement TRE 401 relevant
	C. Injury to Plaintiff or benefit to Defendant	<p>C.</p> <p>The elements of a claim for breach of fiduciary duty are: ... (3) injury to the plaintiff, or benefit to the defendant, resulting from that breach. In re Huron, No. 04-22-00219-CV, at *7 (Tex. App.—San Antonio Feb. 15, 2023).</p>	<p>C.</p> <p>Chris Mason's breach proximately caused injury to Carroll, Inc.</p> <p>Did the breach in Question No. 2 proximately cause injury to Carroll, Inc. or result in benefit to Chris Mason?</p>	<p>C.</p> <p>Carroll, Inc. paid more than industry standard and could have saved \$1.2 million. [Expert Dep. 76:12-78:4] [CODE 1.4.1.1]</p>	<p>C.</p> <p>Expert testimony [Expert Dep. 76:12-78:4]</p> <ul style="list-style-type: none"> TRE 702 industry expert will assist trier of fact

Cost

Knowledge

Settlement

Discovery

Trial

BENEFITS OF THE
TRIAL PLAN

Procedural
Hurdles

Case
Evaluation

Expert
Issues

Summary
Judgment

Training

**Questions?
Need a template?**

Email us!

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