

STATE OF CALIFORNIA
Division of Workers' Compensation
Workers' Compensation Appeals Board

Case No. ADJ2137779

ANTONIO ENRIQUEZ,

Applicant,

vs.

WILLIES PAINTING;
SCIF INSURED GLENDALE;

Defendants.

**FINDINGS OF FACT AND ORDER
RE ATTORNEY FEE DIVISION
ISSUES; OPINION ON DECISION**

FINDINGS OF FACT

1. The attorneys' fees in this case of \$1,335,000 now being withheld by SCIF are properly and equitably paid as follows:
 - a) \$1,182,357 to Asvar, Odjaghian and Associates (AOA)
 - b) \$152,643 to Shandler & Associates.
2. The AOA billing log identified as Exhibit Y is properly admitted in evidence.
3. Any failure to provide documents on the part of Asvar, Odjaghian and Associates does not require that any type of formal adverse inference be taken against them.
4. The lien of Shandler & Associates dated 10/14/18 is not meritorious.

ORDER

1. It is ordered that SCIF shall forthwith pay attorneys' fees to Asvar, Odjaghian and Associates and to Shandler & Associates in the amounts set forth in the above findings of fact.
2. The lien of Shandler & Associates dated 10/14/18 is DENIED.
3. Exhibit Y herein is hereby admitted in evidence.

IT IS SO ORDERED.



Daniel A. Dobrin
Workers' Compensation Judge

OPINION ON DECISION

A. INTRODUCTION

The within litigation arose from an exceptionally hard-fought and at many times bitter battle among counsel over the manner of distribution of an attorney's fee of \$1.335 million being withheld by the defendant in this matter, SCIF, from the proceeds of an \$8.9 million compromise and release approved on 1/24/12 at the request of AOA, the second set of attorneys herein.

Trial proceedings concluded 1/29/19. The parties then filed post-trial briefs this judge duly considered. Subsequently, I vacated submission to get a computation from DEU of the present value of a theoretical 100% PD award in this case so I would have a better idea of the value of PD in this case as opposed to the value of the future and past uncompensated medical care portion of the settlement rather than simply leaving this to guesswork.

Based on my receipt and service of the DEU present value computations, admitted as Exhibit Z herein, the matter was resubmitted without objection on 4/11/19 based on the prior record plus the DEU present value computations. I agreed as part of the resubmission that I would review any trial briefs filed within 10 days thereafter that pertained solely to the DEU rating information. Only fee claimant Shandler has filed such additional briefing in a timely fashion therefore I am going ahead and issuing the decision herein with due consideration of this briefing.

The competing entities were Asvar, Odjaghian and Associates, which handled the matter from 9/30/09 until the case was settled via structured C&R on 1/24/12 (and continued to provide significant services thereafter) and Shandler & Associates, who filed the case on 5/20/04 and functioned as attorneys of record until they were substituted out on 9/30/09. (This judge is aware that AOA is in a sense an umbrella organization for the various corporations and entities that existed during the time the case was primarily handled by attorney Chris Asvar but, as explained previously in the litigation, sees no problem with this in light of the stipulations of everyone in the AOA "camp" that no entity related to AOA is claiming a fee in the case other than AOA itself. (See Minutes, 12/14/15, p. 2, lines 22-25.)

The matter went through 14 days of trial with testimony on each date. Eight witnesses testified during this period of time, which spanned almost three years and two months from the first trial date to the last date. The first trial date itself followed several years of highly litigious and at times acrimonious pretrial discovery.

This judge is convinced that trial would have gone on significantly longer had I not taken a number of unusual steps, including imposition of time deadlines on questioning, subject to the option of an offer of proof regarding any expected testimony that might still remain, as well as an in limine ruling issued on 9/6/17 which limited the witnesses and subject matters both sides could present subject to a future showing of good cause to the contrary.

As for the legal criteria to be applied to the fee dispute, these are well known to the parties and are well-summarized in 8 CCR 10775, which itself is based on a long line of cases starting

with *Bentley v. IAC*, 11 CCC 204. Rule 10775 reads in relevant part as follows: “In establishing a reasonable attorney's fee, the workers' compensation judge or arbitrator shall consider the (a) responsibility assumed by the attorney, (b) care exercised in representing the applicant, (c) time involved, (d) results obtained.” In my review of the case law on attorneys' fee and fee division issues, these four criteria come up repeatedly and serve as an obvious road map to the proper determination of this dispute.

Hence, I will discuss each of these four criteria in sequence as they apply to the services or lack of same of each competing firm *on behalf of the applicant in the above captioned case*. I will then discuss the contentions raised in the trial briefs I invited to the extent I have deemed it reasonable and appropriate to discuss these in the course of my decision. Finally, I will provide a fee breakdown for each side and an explanation of how I reached this figure. I will also deal with the lien issue which the Shandler firm raised late in the trial proceedings, and the evidentiary challenge to AOA's statement of services (Exh. Y).

It should be noted that I am solely concerned with the services rendered on behalf of applicant Antonio Enriquez in connection with his fall injury. Just as I was not concerned at trial with other cases the law firms in question handled, I am not basing my decision on events solely related to the fee dispute itself or any of the other collateral litigation that the \$1.335 million “MacGuffin” in this case generated.

I would also like to say this: The fee award I have issued does reach the arguably counter-intuitive conclusion that the firm that handled the case over a much shorter period of elapsed time should get a significantly higher fee than the firm that handled it during 70% of the time the case was open. In supporting this conclusion, I admit I have been critical at times, perhaps harshly, of the first firm's services. I have done this as part of my job of objectively evaluating the evidence and providing support for the conclusions I have reached. The Shandler firm, which bears the brunt of the criticism in this document, has a long history of representing and assisting injured workers. I have seen this firm do fine advocacy at trial and at other times on behalf of injured workers in other cases. It is unfortunate that, in my view, its activities on behalf of the injured worker herein do not present the firm in its best light. In stating my opinions and reaching my conclusions, I mean no malice or disrespect to this organization.

B. RESPONSIBILITY ASSUMED BY THE ATTORNEY

Here I am compelled to conclude there was a significant contrast between the responsibility assumed by AOA and by Shandler and Associates. AOA took an “A to Z” approach to the case and rendered an extraordinarily wide range of services, including but not limited to multiple in-person meetings and his father, the latter both before and after he was appointed as guardian; multiple instances of attendance at in-person meetings at the Centre for Neuro Skills (CNS), which was and is (at least as of the time of the applicant's testimony) primarily responsible for the applicant's medical care; arrangements for agreed medical examiners and an exceptionally thorough and well-prepared cross-examination of AME Richman; conferences with his partner in the law firm to assure the best possible representation; arrangements to appoint a guardian ad litem early on in the representation of the case; thorough review of a multitude of records, including five volumes of records from CNS alone; arrangements for neurological testing to buttress the neurological claim; a personal meeting with treating

neurologist Dr. Aminian; involvement in the transfer of the applicant's residence from unsuitable accommodations with his father to an assisted living home on Martha Street; preparation for a life care plan and very persistent and prolonged negotiations leading to what was arguably a record WCAB settlement at the time it was concluded in 2012.

What was particularly impressive to this judge were the extraordinary steps taken to assure that a mentally compromised individual endowed with an extraordinarily large sum of money would shepherd these resources in a responsible and gainful way. AOA not only made sure that the money would go to a responsible guardian rather than an individual credibly described by witness Asvar as incapable of responsibly handling even \$20.00; AOA took the additional labor-intensive and time-consuming step of appointing a conservator to carefully manage an income stream of \$24,329.50 which the applicant is receiving as part of his settlement in addition to substantial up-front payments which were sufficient to enable the applicant to stop paying rent and buy a house he was happy with in the neighborhood where he was living. While there are significant fees associated with a conservatorship, the conservatorship appears to have been effective in insuring that the claimant enjoys a significantly superior lifestyle than might have been expected from a PD award of \$170 per week (the amount one might reasonably expect after a deduction for attorney's fees) subject, of course, to SAWW increases.

I have presided over a number of large settlements in the past and while structured settlements in high dollar cases are not unusual, often the money allocated for treatment and indemnity is simply left to an individual with limited resources and no demonstrable ability to carefully account for Medicare Set-Asides, responsibly set aside sums for treatment, etc. This case is a refreshing exception and I believe the efforts along those lines are a subject for commendation, not criticism.

The contrast in assumption of responsibility on the part of Shandler and Associates begins with the initial opening of the file. A preponderance of evidence leads me to conclude that *at no point* in the handling of Antonio Enriquez's case did an in-person or even a telephone meeting take place with either Mr. or Mrs. Shandler, the only two attorneys regularly associated with the firm. The applicant's father, Nicanor Enriquez testified at trial that "his only contacts were with Rosie, not with Ms. Shandler . . ." (Minutes, 7/28/16, p. 3, line 22.) "Rosie," it appears to this judge, was a clerical employee with no known expertise in workers' compensation law, one among a few individuals that Ms. Shandler herself referred to at trial as "the girls."

Nicanor testified specifically that he never met with Mr. Shandler in connection with Antonio's case. He also stated that Antonio's initial interview, as with all other contacts, was with "Rosie." (Id. at pp. 8-9), who Nicanor credibly described as a "secretary." According to Nicanor, the Shandler firm's most significant effort to reach out to him and his son came when said firm sent a process server to his door to subpoena him to a post-settlement appearance on the attorney's fee issue. (Id. at p. 6, lines 14-21.)

Ms. Shandler testified that she did not recognize the signatory of Antonio's application for adjudication on behalf of the Shandler firm. (Minutes, 9/18/17, p. 12, line 5.) Antonio Enriquez likewise testified at trial. (Impressively, this severely brain-damaged individual testified entirely, and competently, in English, notwithstanding having migrated

from Mexico as a young adult with approximately a 9th grade education there. (See Exh. 5, p. 5; Minutes, 2/26/17, p. 12, line 10.)) He likewise testified that his contacts with the Shandler firm consisted of going to “Rosie” or “Antonia.” Neither individual had any demonstrable expertise in the field of workers’ compensation law. He never met with Mr. Shandler. (Minutes, 2/28/17, p. 6.) He never met with Ms. Shandler. (Id. at p. 9, line 25; see Antonio Enriquez’s deposition, 3/8/13, p. 27, line 24 [witness states to Ms. Shandler, “I told you. I don’t remember ever having seen you, never.”])

Although some of Antonio’s trial and deposition testimony clearly did not jibe with other known facts, particularly about doctors he had seen and facilities he had been to, I did consider that Antonio and Nicanor, in Shandler’s own words, had “nothing to prove, nothing to gain and no vested monetary interest.” (See Opposition to Petition to Depose Shandler, 1/8/14, p. 3, line 8.) Moreover, Antonio’s testimony is corroborated by that of Ms. Shandler who testified that, during nearly five years of representation of a severely brain-damaged applicant, had no specific recollection of having met with him either for the initial interview or at any other time. (Minutes, 9/19/17, p. 6, line 7; 12/18/17, p. 4, line 8.) Ms. Shandler seemingly changed this testimony later to say she “definitely would speak to the Enriquez’s through an assistant who spoke Spanish” (7/31/18, p. 9, line 22) but this was not found credible for reasons explained above.

As for Mr. Shandler, he never testified at trial and, as per the “paper trail” placed in evidence, never prepared or signed a single document that I am aware of other than a typewritten signature on a one page letter advising SCIF and Willies’ Painting (but not the client) that he would be taking over the case as of the date of Ms. Shandler’s State Bar suspension. (Exh. 151.) Ms. Shandler stated at one point that she “could not speak for what her husband did in the case.” (Minutes, 9/19/17, p. 7, lines 21-22.) Ms. Shandler stated at another point that he was a “handling attorney” or perhaps even a “primary handling attorney” on the case but what this handling consisted of was never made clear. (Id. at p. 8, line 14 –p. 9, line 6.)

I do note that Nicanor, in a recorded statement taken prior to the settlement, mentioned a meeting with Garret Shandler but I believe he had this confused with a meeting at the outset of his own prior case through the Shandler firm. (Exh. 69, p. 15; see Minutes, 7/28/16, p. 8, line 19- p. 9, line 3.) Even assuming *arguendo* that Mr. Shandler attended the initial meeting, the file contains no notes from this meeting, Mr. Shandler never appeared in court to confirm this and provided no explanation as to the lack of inquiry into a third party case in a matter that appeared to involve a failed scaffold.

I have considered that there was finally an in-person meeting scheduled with the applicant and his father at the applicant’s attorney’s office that was to take place on 10/5/09, some five years and four months after the Shandler firm began its representation of the applicant. The meeting never happened due to a sub-out several days earlier. Ms. Shandler, prior to that time, made an offer for the client to meet her while she was at the WCAB, presumably on other business, but Antonio and his father demurred. (Minutes, 9/19/17, p. 9, lines 12-16.) For an applicant who suffered from multiple personality disorder and was described, at least in terms of his prior progress as someone who was “socially phobic,” and “didn’t want to be around a lot of people as far as groups.” (See Exh. 22, p. 5-119) it is hard to see how such a meeting at the

busy climes of the Board would have been helpful. Overall, I consider these efforts to be too little and too late to impress me with the degree of responsibility and care shown in communicating with the client.

At trial, witness Shandler made much of the firm's "open door policy" but it was reasonably clear that for the Enriquezes, who credibly attested to multiple visits to the Shandler office, sometimes at the expense of taxi fares, this open door only led to clerical help of unknown legal credentials.

Thus the long and the short of it is that during five years of handling of a matter that, per Shandler, was "destined to be a high value case" (See Shandler Trial Brief, 2/28/19, p. 1) no individual from the firm with any clear credentials or expertise in workers' compensation law *ever* met with the applicant or his father and future guardian. This exercise of responsibility, or lack thereof, stands in sharp contrast with that of AOA in which billing records, testimony of both Asvar and the disinterested clients and other documents clearly show multiple meetings both in person and by telephone and far greater access to an actual attorney by the clients.

The Shandler firm also did not feel it was part of their responsibility to attend meetings at CNS where the applicant received the bulk of their medical care, leaving the applicant and his father regularly on their own to face off with the SCIF representative who regularly attended these meetings. Interestingly, Shandler is actually critical of AOA for attending these meetings, calling these actions on the part of AOA "highly irregular" and arguing, in essence, that an experienced workers' compensation attorney wouldn't bother to do this. (Shandler Trial Brief, 2/28/19, p. 9.)

I further note that the Shandler firm did not see as part of their responsibility a duty to inform their client of what arguably was a "significant development relating to the representation," as per Rules of Professional Conduct rule 1.4(a)(3), namely, attorney Jaclyn Shandler's suspension from the practice of law during Antonio's representation, from 7/14/06 to 9/12/06, not long after the applicant was psychiatrically hospitalized from 5/16/06 to 5/22/06. While I accept as true Ms. Shandler's statement at trial that she was not required as a condition of her suspension or probation to notify her clients as to this, it hardly speaks to a great degree of responsibility that the English language letter in the file alluding to the fact that Garrett Shandler was handling the case and not Jaclyn Shandler was notably sent to the Board and copied to SCIF but was not copied to the applicant. (Exh. 151.) Both the applicant and his father testified that they were not advised of this change in representation or change in State Bar status. (Antonio Enriquez Deposition, 3/8/13, p. 83; Minutes, 7/28/16, p. 10, lines 13-16.)

Although Ms. Shandler defended this change in representation as insignificant, suggesting that Garrett Shandler was handling the case all along, (Minutes, 7/31/18, pp. 8-9), I have not found any credible evidence that Garrett Shandler, did any substantial work on the case.

While it is also true that AOA apparently did not advise the applicant or his father that the Asvar-related firms were in the process of dissolution around the time Antonio's case settled, this did not impact the continuity of representation by the individual who clearly was in charge of the case from the date of the substitution forward, Chris Asvar. Accordingly, I do not see this as something that directly related to the applicant's representation in any greatly significant

way. . I also note that Nicanor presumably was aware of some friction in the partnership when he signed a declaration, presumably at Asvar's request, on 3/23/12 attesting to minimal handling of the case by Ms. Odjaghian. (Exh. 67.) Nicanor voiced no complaint about this state of affairs at the fee trial that I am aware of.

As AOA's counsel highlighted at trial, Shandler's disclosure statement and its actions or lack thereof upon opening the file also raise questions about the degree of responsibility assumed. Although an attorney, upon signing up a client, is legally required to use a disclosure form "promulgated by the administrative director" (LC sec. 4906(e)), the unusual disclosure form used by Shandler in this case contains a number of provisions I am not able to find in at least the current form promulgated by the Administrative Director. (See website: <https://www.dir.ca.gov/dwc/forms.html>)

The disclosure statement, found at page 020 of Exhibit 83, specifies that the Shandler firm only represented the claimant for "normal issues" absent a separate written agreement. The agreement delineates that "Shandler & Associates does NOT represent me for any Petitions for Reconsideration, Writs of Mandate, Petitions for Removal, Petition for Benefits against the Subsequent Injuries Fund, or any Third Party Liability Case" The agreement, written entirely in English for the benefit of the then Spanish-speaking client, also stipulated that "This Disclosure Statement is null and void if the case is not venued or continued to be venued in Los Angeles." The agreement provided that "Any disputes regarding Shandler & Associates representation of you shall be submitted to binding arbitration which arbitrator will be selected by Shandler & Associates"

While I express no opinion on the legality of the document, its sedulous effort to reduce Shandler's responsibility to the bare minimum hardly speak in favor of the degree of responsibility assumed by Shandler and Associates in handling of this case.

In this regard, the overall handling and posture of the Shandler firm toward any potential third party liability is of particular concern to this judge in light of the known facts in this case. Although Mr. Antonio Enriquez's fall accident is described in a variety of ways, and the applicant's own memory of the event was clouded, there is reason to believe the injury occurred because the applicant placed a ladder on a defectively built scaffold which pulled or tipped or fell away from the building, causing the applicant to fall approximately 20 feet. (See e.g. Exh. 4, p. 53; Exh. 10, p. 2; Exh. 20, p. 3.) Although this raises an obvious concern with regard to possible negligence on the part of the company or individuals who built the arguably defective scaffold, nothing is mentioned anywhere in connection with a possible third party case with the exception of a disclaimer of any responsibility for this in the disclosure statement quoted above.

Ms. Shandler was cross-examined about this state of affairs at trial and her response, at best was disappointing. She said it was not clear if the scaffold "pulled away under its own weight or due to the weight of the ladder" (as if the weight of a hand-carried ladder could cause a scaffold to collapse). She was asked what steps she took to investigate a third party case and responded in essence, as per my summary, "[W]hy would we investigate if we are not going to take the case?" (Minutes, 12/18/17, p. 6, line 19.) It appeared to this judge that the Shandler

firm deferred to its opponent, SCIF, to evaluate the applicant's third party remedies while the tort statute was still viable, stating, per the summary, "She believes there was no third-party case here, or SCIF would have gone after it . . ." (Id. at p. 8, line 7.)

Although the legal file from Shandler's office consisted mainly of form letters any clerical employee could generate, as well as a handful of handwritten scribbles, I would agree that this firm was not completely bereft of activity during the time that it handled the case. The billing records from the Shandler office do show that some responsibility was assumed in referring the applicant to an initial treater, coordinating the doctors' referrals to experts in other specialties and in some but not all instances, forwarding of some relevant records. I do note a billing notation that the doctors should prepare a P&S report, if applicable, prior to the 12/31/04 deadline to qualify for the generally more generous 1997 rating schedule, however, this was arguably a missed opportunity as the lone report of a pre-2005 evaluation from Dr. Gromis of 12/22/04 was not served until 2/23/15, thus weakening the "old schedule" argument under *Biller v. WCAB*, 71 CCC 513.

At trial on the fee issue, the Shandler firm pointed to its efforts to get checks to the applicant when there was a mix-up on the part of SCIF in issuing these. While such efforts should not and have not gone unrewarded by the Shandler firm's six figure recovery herein, this is obviously something that could be handled by any clerical employee and required no legal expertise. For his part, the disinterested applicant testified that he looked to his nurse case manager at CNS rather than the Shandler firm when there was a problem getting checks. (Minutes, 2/28/17, p. 6, lines 23-25.)

Witness Jaclyn Shandler also attested to efforts to encourage the applicant to stick with treatment through CNS despite his complaints about this. These assertions do receive some corroboration in the Shandler billing records. The disinterested applicant was quizzed about this at a rather embattled deposition; the gist of his answers was that he repeatedly went to the Shandler office for guidance of one form or another and received none that was helpful to him, stating at one point, "If I made that complaint [about excessive therapy], I didn't receive help at that time from any attorney." (A. Enriquez deposition, 3/8/13, p. 9, line 19.) The Shandler billing records do document a number of communications, with clerical personnel as best I can tell, about various aspects of his treatment with CNS, but give no indication that any active effort was exerted to encourage him to stay there, though it's possible this occurred. In any event, it seems incongruous that applicant would be actively encouraged to continue with one track of treatment through CNS while, as discussed below, the claimant was put on a separate track of care through well-known worker's compensation "applicant's doctors" whose care at times conflicted with that guided through CNS.

I have also considered that both sides seem to be equally culpable in failing to investigate the applicant's earnings and benefit rate, an increase of which might certainly have helped the pre-settlement chronically financially strapped claimant. While there is limited earnings information in the vast file, I do see that the applicant told Dr. Gromis in the latter's 6/28/05 report (Exh. 26, p. 3) that he worked as a painter 40 to 48 hours a week. I am unable to find any information regarding the applicant's claimed hourly rate. Thus, the consequences of any failure to investigate earnings are unclear, as the minimum wage at the time was \$6.75 per hour

which, at 40 hours per week would have led to a *lower* benefit rate of \$180 per week. If there was a tactical reason for not inquiring into wages this is not specified anywhere in the record.

Overall, I consider this failure to inquire as to wages to be a “wash” for both sides as neither side appeared to do more than the other along these lines and there may have been valid tactical reasons for forswearing such an inquiry.

Viewed as a whole, I agree with AOA’s counsel that there was a significant difference in the responsibility assumed by AOA in their handling of Antonio Enriquez’s claim and that assumed by Shandler and Associates. I have duly considered this in determining an equitable distribution of the withheld attorney’s fees.

C. CARE EXERCISED IN REPRESENTING THE APPLICANT

To a large degree, “responsibility” and “care” overlap one another, such that the same criteria that lead me to believe there was a significant disparity in the “responsibility” department also leads me to believe there was a significant disparity in the “care” department. I cite as examples the tremendous care taken by AOA in arranging the guardianship, explaining the terms of the settlement to the guardian on record with a court reporter present, going through the complex steps of setting up a conservatorship, meticulously making sure that the AMEs were in receipt of all the necessary information, deposing multiple individuals involved in the applicant’s care in addition to the neurological AME, staying in close personal contact with the applicant and his guardian father and taking some limited steps to facilitate his change in residence, coordinating negotiations among himself, various representatives at SCIF and structured settlement specialist Steve Chapman, the time-consuming and detailed record reviews which were amply reflected in the cross-examination of Dr. Richman and elsewhere; the attendance at CNS conferences and the follow-up to secure a detailed neuropsychiatric examination after an arguably unfavorable report from AME Richman all speak to a great deal of care and responsibility on the part of AOA. Though I would freely admit that my interactions with both sides in this lengthy fee dispute were vexing at times, I nevertheless believe that AOA lead attorney Asvar took a deep personal interest in the welfare and well-being of his client, Antonio Enriquez.

Though I suppose it is possible to ascribe extraordinary care on the part of a law firm which never held a face-to-face attorney-client meeting during over five years of representation I do not find this persuasive in the present case. As with AOA, the level of care demonstrated with regard to investigating a third party claim while the statute was still viable; keeping the client informed of changes of representation; and representing the applicant during face-to-face meetings with insurance company representatives also do not speak favorably as to the degree of care exercised by the Shandler firm.

Of particular concern to this judge was the treatment offered through the Shandler firm’s chosen experts, and the state of the forensic medical record over five years into the case at the time the Shandler firm was substituted out.

What we have is a rather skimpy series of reports obtained at the Shandler firm’s request, mainly from experts habitually used by injured workers in represented cases whose name alone

carried little weight or credibility. I cannot think of a single time that I have seen Doctors Curtis, Regev, Gromis, or Mashoof as an AME. As for Dr. Curtis, I cannot recall seeing him report for anyone other than applicants and, out of scores or hundreds of reports, I cannot recall seeing a single report from him in connection with anyone that walked into his office in which Dr. Curtis did *not* opine that the subject had an industrially caused and disabling mental illness. Yet it was Ms. Shandler's questionable assumption that Dr. Curtis's opinion of total disability would carry the day, that an AME referral would be a mistake, and that, presumably, a judge was destined to buy into Dr. Curtis's opinion notwithstanding that of any QME SCIF might have chosen.

While I do not exclude this possibility, this type of outcome seems like anything but a foregone conclusion. In reviewing the history of Dr. Curtis's involvement in this case, I note that he first ostensibly assumed control of psychiatric treatment on 1/25/07. (See Exh. 20.) Although the file shows at that least *nineteen* prior detailed reports about the applicant from CNS were prepared prior to this visit, Dr. Curtis's record review shows that none of these were forwarded to him, nor were records of the applicant's seven day psychiatric hospitalization in May 2016. As a result Dr. Curtis had only a sketchy idea of the applicant's prior care history, stating, for example, that he was hospitalized in December rather than May 2016. Dr. Curtis did pick up on the fact that the applicant was already under an intense medication regimen from Dr. Walter Jacobson but absent any coordination with this expert, prescribed Lexapro on his own. (Whether or not this was a factor, CNS residential manager Karla Markarian testified that the applicant suffered an overdose while under Dr. Curtis's care. (Exh. 70, pp. 11-12.)

In his report of 3/27/07, (Exh. 16) about two months later, Dr. Curtis could not even correctly identify the name of the facility, Centre for Neuro Skills, which had been providing and coordinating intensive treatment and therapy for the applicant for the past two and one half years. Dr. Curtis noted in this report that, per the applicant's father, the applicant's "condition seems to be progressively worsening." In this report, Dr. Curtis in essence terminated his treatment of the applicant in favor of that provided by CNS, determining, perhaps wisely, that this would be the best option "to simplify matters." As I read this report, Dr. Curtis did not want to perpetuate a situation where the left hand did not know what the right hand was doing. As Dr. Curtis pointed out in this report, "there should also be a study of the records from the [sic] Neuroskills Center."

Dr. Curtis did review a handful of CNS and other records over a year and a half after his initial evaluation, on 8/11/08. (Exh. 11.) By that time, as best I can tell, he had long since stopped acting as applicant's treater in any meaningful sense. Even then, he received only a smattering of documents in comparison to the long paper trail that existed of the applicant's psychiatric care through CNS in a variety of specialties.

While again I do not preclude that Dr. Curtis's reporting, when considered with other facts, could have supported a 100% award, wholesale reliance on an expert not known for credibility who barely treated the applicant and belatedly reviewed only a fraction of the available records does not, in my view, speak to a great deal of care.

Indeed, my overall impression from reviewing the treater reports prepared under the auspices of the Shandler firm in comparison to those coming from CNS is that the two “camps” were working at cross purposes with no meaningful effort to coordinate care that I could discern. The applicant treated for ongoing eye symptoms on a bimonthly basis through a Dr. Garbus under the auspices of CNS; the Shandler firm, instead of following up with Dr. Garbus, sent him to Dr. Richlin (who found no PD) and sent none of Dr. Garbus’s records. (See Exh. 32; e.g. Exh. 50, p. 4.) Antonio was prescribed a battery of exercises and other similar therapy through CNS and also prescribed physical therapy and chiropractic care through Dr. Gromis; he complained to the secretaries at the Shandler office, perhaps justifiably, that he was getting too much therapy.

What stands out in reviewing the reports generated through the Shandler firm is the paucity of record review, together with the various expert’s generally unmet requests for records and/or notation of a lack of any records to review. (See, e.g., Exh. 16, p. 2 [“Neuroskills Center” records requested by Dr. Curtis]; Exh. 23, p. 1 [Neurologist Dr. Regev notes that so-called “Center for Neuro Skills and Care” records “are not available to me”]; Exh. 24, p. 2-210, [Dr. Regev states, “I would like to obtain the recent medical records,”]; Exh. 25 p. 4 [Dr. Regev asks the patient to call him with the name of the hospital “so I can obtain the medical records”]; Exh. 27, p. 5, [no records to review in connection with Dr. Gromis’s P&S evaluation]; Exh. 30, p. 5, [no medical records reviewed in connection with Dr. Gromis’s initial evaluation]; Exh. 32 [as noted above, records of contemporaneous ophthalmological treatment not reviewed by ophthalmologist referred by Shandler]; Exh. 33 [no reference to any record review by treating otolaryngologist].)

While AOA did not get reports in as many specialties as the Shandler firm, they were meticulous in making sure that the AMEs who were critical to the resolution of the case received a complete set of records. Here again, the degree of care employed in the representation of Mr. Enriquez strongly favors allocation of fees to AOA as opposed to the Shandler firm.

D. TIME INVOLVED

Information-gathering on this issue was hampered somewhat by the fact that applicant’s firms, unlike defense firms, are typically paid based on a percentage of their recovery rather than attorney time spent and therefore do not always track their time in detail. While each side submitted time logs which were carefully reviewed by this judge, each side also admitted that to some degree these were compiled retrospectively based on existing records or recollections. Nevertheless, taking all of the information into account and evaluating the work product and the likely amount of time put into it, my overall conclusion based on the evidence is that the actual amount of skilled attorney time devoted by AOA greatly exceeded that spent by the Shandler firm.

Given the lack of any attorney meetings with the client the almost complete lack of any paper trail other than form letters, the lack of coordination of attorney referred treatment with existing care and other matters discussed above, my overall sense is that the Shandler firm largely delegated handling of the case to a secretarial staff with no demonstrable expertise in workers’ compensation law. While the Shandler billing includes time spent on record review, I

am compelled to question just who was reviewing these records where, as discussed above, there was no meaningful coordination of care and a paucity of record reviews by treating doctors. Much in contrast to the subsequent fee litigation, there is hardly a single document I can find in the Shandler file that is anything other than a form document or a slightly reworked form document.

The lone witness from Shandler & Associates, Jaclyn Shandler, was vague about any personal recollection of any activities she personally carried out on behalf of Mr. Enriquez. There was some testimony about the complaints the applicant was having with treatment through CNS, but the gist of this was that these were referred to the “girls” (as Ms. Shandler called them) at the office as a sounding board. There may have been some intermittent communication of the applicant’s concerns between the secretarial staff and the attorneys, but little evidence of hands-on involvement of any attorney short of allegedly encouraging the secretaries to encourage the applicant to stick with the SCIF-provided program at CNS. Ms. Shandler averred that they would send the applicant out for “second opinions from other doctors to see whether the protocol from CNS was correct,” (Minutes, 9/19/17, p. 7, line 23) but the Shandler-referred doctors had little access to CNS records as discussed above and I saw no signs of such an analysis in any of the Shandler-generated reports, or signs of any request for such analysis in any Shandler-prepared letters. To the extent the Shandler secretaries did “hold” Antonio and Nicanor’s “hand,” to use Ms. Shandler’s words, (Id. at line 23) this may have been commendable and was duly considered in the six figure fee awarded to the Shandler firm but is hardly deserving of an outsized recovery.

Given the lack of attention as repeatedly complained of by disinterested witnesses Nicanor and Antonio Enriquez, the lack of coordination of care, the lack of effort put into getting informed medical reports and the lack of specific recollections of attorney involvement by Ms. Shandler, and the lack of evidence of any involvement by Mr. Shandler or any other attorney associated with the firm, it would truly surprise me if even 40 hours of actual attorney time, implying the equivalent of a solid work week of attorney labor, was devoted to Antonio Enriquez’s case. Assuming this many hours were spent, which I am compelled to question, this works out to nearly \$4,000 per hour, which amply awards the Shandler firm’s actual attorney services and amply covers any associated overhead cost represented by the more substantive services provided by support staff.

While the Shandler billing log was, by admission, vague as to who performed what services and the qualifications of that individual, the AOA log identifies each service as having been performed by one of three attorneys, primarily lead attorney Chris Asvar. I believe Ms. Odjaghian was credible in describing the firm’s approach to its traumatic brain injury (TBI) cases as very hands on, in which legal counsel would even place routine follow up calls that could be handled by a secretarial staff. While obviously a secretarial service is not deserving of higher compensation when performed by an attorney, I do get the impression that a great deal of actual attorney time went into the handling of Mr. Enriquez’s case and the arguably record settlement in which it culminated. As discussed above, AOA engaged in a myriad of activities requiring attorney expertise which will not be again itemized at this time. I note that not only was Dr. Richman deposed, three lay witnesses from CNS were deposed in support of the applicant’s claim not only of 100% disability but severe and ongoing medical needs.

I also note the voluminous post-settlement conservator records, and the fact that the applicant's conservator was changed due to dissatisfaction with the initial conservator. Some of this post-settlement time is itemized and it is reasonable to conclude there were significant demands on the settling attorneys' time even after the C&R took place. I do not think I am required to exclude post-settlement reasonable and necessary services to the applicant from my consideration, otherwise this would simply discourage attorneys from entering into potentially high-maintenance structured settlements with conservatorships. [See *Maghuyop v. Hull's Walnut Creek Chapel*, 2015 Cal.Wrk.Comp.P.D. LEXIS 565 [need for post-award services properly considered in fee dispute].)

The AOA log of time spent claims 287.3 hours which I am not sure I completely accept at face value given that it is admittedly a post-event estimate but not something I consider out of the ballpark in terms of actual attorney time. I do *not* see a basis for including any time devoted to a separate workers' compensation case for Nicanor Enriquez. While I understand AOA's argument that these services were helpful to Antonio, they simply do not represent actual services in Antonio's case. However, even assuming 220 hours were actually spent on attorney services, this does not translate to an hourly rate that is very substantially higher than that accorded to Ms. Shandler if we use an outsized estimate for the Shandler firm of 40 hours of attorney work.

To the extent there is a disparity, I think this can be amply justified by the quality of the work done and the relative degree of satisfaction with the efforts expended which were expressed by the disinterested applicant and the disinterested guardian. In equitably awarding fees, I believe a valid consideration is to encourage competent, careful, attentive and high quality work which reflects favorably on the practice of workers' compensation law. The duration with which the case is held is not the most important factor. Nor is the sheer number of hours devoted is not the only factor or even the most important factor. (See *Rillon v. K-Mart*, 2011 Cal.Wrk.Comp.P.D. LEXIS 396.) In awarding fees as discussed below, I believe I have duly and properly considered both the quantity and quality of work in accordance with the *Bentley* criteria.

E. RESULTS OBTAINED

In the words of disinterested applicant Antonio Enriquez, "everything changed," once AOA took over handling of the case. (Minutes, 2/28/17, p. 9, line 6.) At the fee trial, both Enriquezes expressed significantly greater satisfaction with their overall situation after AOA took over the case even before the C&R went through. Obviously, the applicant's problems were not behind him once AOA took over (if they were, there would be no basis for an \$8.9 million settlement) but both Enriquezes clearly appreciated the greater access they had to actual attorneys and the representation they received at many CNS meetings where a SCIF representative was also present.

The dollar amount of the \$8.9 million settlement speaks for itself. Shandler now questions this amount as inadequate and I have set forth my response to this concern in the section below. However, putting aside this significant question which I have addressed below, it strikes me that a settlement of this sum on behalf of an individual with a normal brain MRI, a paucity of

neurological findings as per AME Richman, and an ability to acquire fluency in the English language (based on some classroom education he received before his injury but primarily after his injury) and appear at trial as a very presentable and fairly articulate (in his non-native language) individual strikes me as a notable achievement in advocacy. Moreover, the settlement was provided to him not just as a lump sum dumped on a disabled person ill-equipped to handle it but rather through a carefully worked out plan involving some money for a structure, other sums which enabled the applicant and his guardian to buy a house free and clear and some devoted to necessary conservatorship services to see to it that the money was handled responsibly. I am hard put to attribute any of this outcome to the efforts of Shandler & Associates.

As of the time AOA took over, there was no movement towards settlement initiated by the Shandler office that I could discern save some language in various form letters soliciting a settlement demand. All aspects of the structured settlement, from obtaining meaningful medical reports that could be relied on to achieve a favorable outcome to presenting necessary evidence of the applicant's lifetime treatment needs to the actual negotiation process to the formulation of the structure, arrangements for a conservator, and preparation and approval of the complex C&R documents were handled by AOA.

Both the applicant and his father and guardian testified at trial to a great deal of satisfaction with the outcome achieved by AOA. When the applicant testified on 2/28/17, over five years after the settlement, he related that in addition to receiving ongoing care at CNS and owning a house free of rent or mortgage, he personally received \$1650 each month for "food, groceries, dog food, books, clothing shoes and parking at school." He described himself as going to school full time at Pasadena City College, taking classes in math, writing skills and chemistry. He described himself as "financially comfortable," stating he "got a new house so he can 'live good,'" that he "is happy with his living arrangements," and does volunteer work. He stated that "Mr. Asvar has helped him to a better life." (See generally Minutes, 2/28/17, pp. 9-11.) Conservatorship records showed, for example, that the applicant received significant dental work out of the settlement sums, something that would never have happened through workers' compensation even with a 100% award. (See Exh. 77, p. 3-083.) Asvar, in my view, credibly described the applicant as "thriving" post-settlement. (Minutes, 4/7/16, p. 10, line 20.)

By contrast, during the period of handling by Shandler and Associates, the claimant was receiving roughly \$867 per month to cover *all* of his needs, not just food and clothing. He was living in a trailer behind his father's house and engaging in behaviors that kept his still-working father from sleeping. (See Minutes, 2/28/17, p. 11; Exh. 71, pp. 36-37, Exh. 72, pp. 5-119 – 5-120.) Witness Shandler, I believe naively, described the applicant as "progressing well" during her representation, notwithstanding a psychiatric hospitalization and a description of him on 10/6/06 as "threatening to kill people" and hearing "voices tell him to hurt people . . ." (Exh. 3.) CNS and other records are laden with references to the applicant's financial stress. I accept Shandler's characterization that his progress had peaks and valleys, and that he was not without difficulties during AOA's representation as well. Nevertheless, given the great deal of dissatisfaction with Shandler's representation expressed by the disinterested client and his father, I am hard put to see just what this firm did to achieve favorable results for the claimant.

In awarding fees as discussed below, I have duly considered the issue of home health care and the contribution of each set of attorneys toward any element of the recovery based on this. One thing that stands out regarding Shandler's handling is that while brief treater Dr. Curtis indicated in his 3/27/07 report that "twenty four hour care is needed," no steps were taken to secure home care services for the applicant right up until the sub-out on 9/30/09. However, these comments in Dr. Curtis's report did at least allow AOA, upon taking over the case, to argue for home care reimbursement in their 11/13/09 letter (Exh. 99.) Still, I am not sure how much weight the cursory comments of an individual who had a brief and failed course of treatment with the applicant would carry in connection with any trial on home health care. Dr. Regev also stated in passing that he agreed that home care was needed. (Exh. 21.)

However, Mr. Asvar testified credibly that there wasn't enough in the file to lead to a "serious conversation about homecare" when the sub-out occurred. (Minutes, 2/8/16, p. 9, line 23.) It is quite evident that the bulk of the workup on this issue was carried out by AOA, in particular with regard to the opinions of AME Marusak on this issue (see Exh. 4, p. 78) and those of the three CNS deponents that the applicant was greatly dependent on his father to meet his day-to-day needs.

As for the continuing indemnity and medical treatment the applicant received, I do not see evidence that any efforts on the part of the Shandler of firm led to the treatment the applicant received through CNS or the weekly payments he received from SCIF. The additional treatment he obtained through Shandler-retained experts, as discussed above, was not recalled by the applicant at trial and as discussed above was arguably more a hindrance than a help. (See, e.g., Exh. 71, pp. 19-21 [CNS clinical case manager Hilda Rivera describes referral to Dr. Curtis as "unfortunate . . ." and notes that it made it difficult to get the applicant back into treatment with CNS treater Dr. Jacobson].)

While at the time the Shandler firm substituted out the applicant was in fact entitled to medical treatment, which entitlement formed the primary basis of his settlement, the situation is akin to that of the hypothetical admitted death case referred to in Policy and Procedural Manual section 1.140, paragraph 3 in which compensability is not shown to be the results of the attorney's efforts and in which only a nominal fee is properly awarded. The results I am assessing are based on *results brought about by attorney work actually done*, not just the fortuity of a severely disabled individual receiving intensive care and ongoing payments at the insurance carrier's behest.

I have considered that the Shandler firm did get reports in a variety of specialties, thus perhaps closing off some "blind alleys" AOA might have otherwise gone down and allowing them to focus on the critical referrals to the two AMEs AOA used. I have also considered that while AOA was properly skeptical of the strength of the forensic record at the time they took over the case, it did at least allow them to argue ab initio in favor of a 100% award. It is in part for these reasons that I have awarded the Shandler firm a six figure recovery, as well as a significant portion of that element of the C&R attributable to the PD value. However, for the most part I am not seeing how any actual attorney work done by the Shandler firm played a significant role in the ultimate resolution of this case.

F. CONTENTIONS IN SHANDLER'S 2/28/19 TRIAL BRIEF

Before issuing this decision, I have carefully reviewed the post-trial briefs, including the post-trial briefing by the Shandler firm whose main focus seems to be criticism of one form or another of AOA attorneys and AOA's efforts, as well as questioning of their integrity and credibility.

Shandler's 2/28/19 post-trial brief is well-written, generously supported by citations and in most instances to this judge, not convincing. While perhaps over 100 contentions are raised, I do not believe that each and every one of them are worthy of comment, particularly when they deal with matters other than the actual attorney services provided to Antonio Enriquez. However, I have made a reasonable effort to address Shandler's key concerns and positions as set forth below.

1. Adequacy of Settlement Negotiated by AOA

While Shandler asserts in their trial brief that SCIF's initial, "out of the box" settlement proposal was \$7.25 million, I do not agree that this is accurate. It is true that this was the initial proposal by SCIF structured settlement expert Chuck Doidge, however it is clear from Asvar's credible testimony that AOA only got to Doidge after several months of navigating through lower-level SCIF employees and going up the ladder (Minutes, 4/7/16, p. 6, lines 15-23.) It is not clear to this judge that, had the applicant been solely relying on skimpy reports from de facto nontreaters proffered by Shandler, the case would ever have gotten as far as Mr. Doidge.

Shandler makes some interesting points about the adequacy of the settlement but they are ultimately not convincing to this judge. It is not as though the matter was poised for a huge recovery upon takeover by AOA and that the settlement represented a blown opportunity. SCIF made it clear in its correspondence that \$8.9 million was the maximum it would go.

The short answer to any adequacy concerns is the testimony of satisfied customers Antonio and Nicanor Enriquez in their depositions and at trial. Indeed, perhaps the most serious problem the Shandler firm has faced in the fee dispute is that the testimony of the recipients of the services, namely the applicant and his guardian, strongly supports the AOA theory of the case and discredits the Shandler theory of the case. I accord these individuals a great deal of credibility because, unlike the attorney witnesses at the trial, they have no stake in the outcome that I can discern. The Shandler firm now asserts in their trial brief these witnesses were "unduly influenced" or the victims of "manipulative" behavior but I have discerned no credible evidence of this in the massive record. One of Shandler's more fanciful assertions is that AOA sought to control the Enriquez's testimony by deliberately delaying the resolution of Nicanor's separate claim against an uninsured employer and UEBTF. Certainly, if Nicanor was dissatisfied with Mr. Asvar's services in that case, he had every opportunity to substitute him out just as the Shandler firm was substituted out by his son.

While I agree that the C&R, from an actuarial standpoint, was not sufficient to sustain the exact same monthly treatment costs that were being incurred at the time of settlement for the rest of the applicant's lifetime, I do not believe that this is the only valid consideration. Asvar

credibly testified that at the time of the C&R the applicant had planned to move out of the Martha Street residence where he was staying, particularly where an income stream of over \$23,000 tax free per month would enable more commodious living arrangements than a small trailer or a one bedroom unit shared with his sleep-deprived father where he was staying before the transfer to the Martha Street house. (See, e.g., Exh. 70, pp. 33-35.)

Ms. Odjaghian testified that it was common in traumatic brain injury cases to negotiate treatment facility costs downward after a compromise and release. This was in fact borne out in the present case, in which the costs for services from CNS went from approximately \$31,000 per month as per the SCIF printout to approximately \$13,000 per month as per conservator Boehmer's records. (See Exh. 77, p. 3-081.) This notwithstanding Shandler's assertion that such an outcome was impossible because of discount pricing extended to insurance carriers. Indeed, CNS costs in 2010 held steady at \$13,278 per month, suggesting that the high costs during the applicant's stay at the Martha Street house were basically a temporary aberration. That counsel capitalized on this during settlement negotiations was arguably an act of advocacy, but not one in my view that justifies a windfall in Shandler's favor.

In their 4/26/19 supplemental trial brief, Shandler again raises concern about the adequacy of the settlement, urging that less than \$8,000 a month was left out of the settlement to cover CNS medical costs. This assertion is not supported conservator records showing that the \$24,329.51 paid tax-free every month was sufficient to support monthly CNS costs in excess of \$13,000.00 (see Exh. 75, p. 3-133); by trial testimony from Antonio that he continued to treat at CNS at his own expense and was still financially comfortable; and by testimony from CNS case manager Hilda Rivera that his then-present course of care, while not as intensive as was taking place earlier, was "very beneficial" to the applicant. (See generally, Minutes, 5/19/16, pp. 15-16.)

While AOA did express concerns to SCIF about settlement adequacy and future treatment costs in the course of its negotiations, the Shandler firm should know, as experienced practitioners, that it is not possible to achieve a settlement without demonstrating on some level that it is in the opponent's interest. I do not regard the inevitable sort of verbiage used by AOA in settlement correspondence as an admission of the inadequacy of the final outcome.

One important point I think Shandler fails to consider is that while Antonio had enjoyed extraordinary generosity from SCIF throughout the time the case was active, that was no guarantee of the same treatment for the rest of Antonio's life. The C&R predated by approximately one year the institution of utilization review (UR), which very possibly would not have taken a kindly view of the inpatient and home care needs of a former housepainter who had somehow acquired fluency in English and was now studying math and chemistry at a community college. With regard to home care, MTUS guidelines now require that the individual in question be "homebound," which Antonio might have a difficult time proving. (See MTUS Chronic Pain Guidelines, 7/28/16, pp. 89-90.) Also, ongoing, indefinite treatment at a facility such as CNS might be a luxury hard to come by in the utilization review era. (See, e.g., 84 CCC 163 [TBI patient with "severely impaired" gross motor coordination and "severely impaired" visual perceptual skills given only 14 days in an inpatient independent living program, increased to only 30 days on IMR].)

Instead of having to deal with the uncertainties of UR, Antonio now has a steady, lifetime income stream of over \$24,000 tax free, in addition to owning his own home free and clear. While I do not question that his expenses are significant, I am not convinced that he is worse off than if he was receiving a fee-reduced sum of about \$736 per month plus SAWW increases (assuming a 100% award was forthcoming based on skimpy forensic reporting by what were in essence nontreaters) and fending for himself while subjecting his treatment entitlement to the vagaries of utilization review.

While I have considered that, with time, the value of a fixed monthly payment will decrease relative to medical and other costs, I still am not persuaded that the settlement was so inadequate that it justifies an increased fee to the Shandler firm. While there is admittedly some chance of insufficiency of the structured payout in future years, I believe there is a far greater chance that the structure sum significantly exceeds the value of what the applicant might reasonably obtain in medical services in the Utilization Review era.

Shandler is also critical of the fact that there were some cash flow issues immediately after the settlement was finalized which required AOA to ask for an advance against the structure funds. However, AOA witness Odjaghian credibly testified that this was common in structured settlement cases and that appropriate arrangements were made to resolve this problem with an advance. (Minutes, 1/29/19, p. 8, lines 7-12.)

2. Appointment of Nicanor Enriquez as Guardian ad Litem

Throughout trial and at several points in their trial brief, the Shandler firm maintains that the appointment of Antonio Enriquez's father as his guardian ad litem, rather than being a prudent step in protecting Antonio's interests, was a disaster for Antonio and was perhaps done for venal or dishonest reasons. This assertion is likewise found unpersuasive by this judge. Common sense would suggest that if this assertion were true, it would find some support in Antonio's testimony but none was forthcoming. The applicant testified that he was generally aware of his father's guardianship status and what it meant, and that he was apprised of the settlement process. If there were complaints on his part about this arrangement, it did not come out during fairly lengthy cross-examination at trial or at a lengthy deposition.

The simple fact is that AOA decided to get a guardian appointed because the applicant had a demonstrated track record, as part of his TBI, of not being able to responsibly handle money. (See, e.g., Exh. 71, pp. 22-23; Exh. 70, pp. 36-37; Minutes, 2/9/16, p. 4, lines 9-16; Exh. 4, p. 75 [AME Marusak comments, "He certainly cannot work or manage his money."] Dr. Jacobson, who actually treated the applicant on an ongoing basis, stated in his 8/18/06 report during Shandler's representation, "recommend steps be taken toward 3rd party conservatorship to help patient manage his finances." (Exh. 22, p. 3.) No such steps were ever taken by the Shandler firm.

It stands to reason that an individual who could not responsibly handle \$20 was in no position to navigate a multimillion dollar settlement on his own. It is interesting that Ms. Shandler, who as best I can tell never met the applicant except as an adversary, has now come to the conclusion that the guardianship was somehow damaging to the applicant's self-esteem or

otherwise harmful to his well-being. No medical evidence has been presented to support this psychiatric diagnosis.

Where a guardianship is called for in workers' compensation matters, in my experience, the role is typically assumed by a family member such as a child, parent, sibling or spouse. This is the first case I can recall in which this arrangement is somehow portrayed as tainted by an impermissible conflict of interest. Though the Shandler firm makes much of the cost of the conservatorship, I am not seeing how it would have been to the applicant's benefit to share his \$200 weekly stipend with a paid, nonfamily guardian. If the applicant felt he was being abused or otherwise being taken advantage of by his father, I would think that some evidence of this would have emerged during extended questioning of both at deposition and at trial.

3. Use of AMEs by AOA

Mr. Asvar outlined his strategy at the time of the attorney fee trial, which was to get (presumably credible) reports in neurology, psychiatry and neuropsychiatry. (Minutes, 2/8/16, p. 11, line 17.) The plan was followed and ultimately led to an \$8.9 million settlement. Yet it is urged by the Shandler firm that the plan was a disaster and somehow should lead to a reduction in fees payable to AOA in favor of additional fees paid to Shandler.

In particular, AOA is taken to task for referring the matter to a neurological AME, Dr. Lawrence Richman, who came back with a relatively low WPI report. At the time, the neurological record consisted mainly of some thin reports from Dr. Regev, which contained a "moderate" PTSD "old schedule" rating of 50% in a case where the "old schedule" was unlikely to apply. (See *Biller v. WCAB*, 71 CCC 513.) There was also, of course, the 2/10/09 report of Dr. Vibhay Prasad which set forth a very substantial 83% WPI. (Exh. 137.) However, Dr. Prasad as best I can tell was a doctor referred through CNS and the Shandler firm played no discernible role in procuring this report. Indeed, I see no reference to review of this report in the Shandler billing records.

Given the much lower 26% WPI found by AME Richman, one could certainly question the decision to go to him in the exercise of 20/20 hindsight. However, I do not see how the decision was unreasonable at the time, or somehow deserving of an AOA fee reduction inuring to the benefit of the Shandler firm. In my experience, Dr. Richman is widely used as an AME by a wide variety of well-established applicant's and defense firms. There was nothing I could see that would prevent SCIF from using Dr. Richman as a QME and then arguing, perhaps successfully, that the reporting of Dr. Regev was not credible and arguably not ratable and the findings of Dr. Prasad were outliers in comparison with the better known and highly regarded Dr. Richman.

AOA, to its credit, carried out a thorough and well-researched cross-examination of Dr. Richman, even if it was not particularly successful in changing his mind. In my view, the low rating from Dr. Richman simply underscores that a 100% award and/or outsized C&R settlement were by no means assured to the English-learning, community college-attending applicant with a normal brain MRI. As Asvar urged in his 1/24/12 fee declaration, "The worst injury one could receive as a worker was the mild traumatic brain injury. . . . The injuries are complex and hidden. The treatment is nuanced and uncertain."

Notwithstanding the unfavorable outcome of the referral to Dr. Richman, the referral to AME Marusak in psychiatry strongly supported a 100% award and the applicant clearly cannot get a higher award than this. Thus the overall strategy of using credible and well-informed AMEs rather than relying on unknown treaters, non-treaters, unratable reports and reports only minimally supported by record review ultimately proved successful, despite some bumps in the road along the way.

4. Settlement of Retroactive Home Care

Shandler asserts that AOA, in resolving the retroactive home care claim for \$200,000.00, both underplayed its hand by settling this issue at a fraction of its stated value and overplayed its hand by collecting sums on behalf of an individual, Nicanor Enriquez, who had been either working full time or out on temporary total disability throughout the time period in issue. Both assertions cannot be correct.

As for the first contention, SCIF could obviously raise valid arguments against the full value of the home care claim based not only on Nicanor's employment and disability status, but on the fact that much of the applicant's day-to-day care was provided by CNS. As to the latter, it was not AOA's job to raise defenses to home care claims on behalf of SCIF. Nicanor clearly rendered assistance to Antonio on an ongoing basis and I have not been persuaded that the claims were made venally or in bad faith or that these claims somehow justify a windfall in favor of the Shandler firm. Given the many defenses that could be raised against home care liability and the arguable lack of a written basis for this prior to Dr. Curtis's 3/27/07 report, I believe the \$200,000 payable to Nicanor is simply the result of arms-length negotiation.

I would agree that having Nicanor serve both as guardian ad litem and as a payee for home care services does raise some potential conflicts of interest. However, this type of situation, where a guardian provides care for the incompetent client, is far from unheard of and in my view does not require the appointment of separate counsel in every case. Given the relatively modest settlement of the retroactive home care, I see no indication that this was the result of overreaching or taking advantage of the applicant. At trial, the applicant testified that he participated in the settlement of the case and that he attended multiple meetings about the settlement. (Minutes, 2/27/17, p. 12, lines 1-4.) He stated at his deposition that he had reviewed the settlement papers. (Antonio Depo, 3/8/13, p. 21.) I see nothing about the resolution of this issue that justifies a reduction of fees to AOA to the benefit of the Shandler firm, which took no steps to actually procure home health care for the applicant that I can discern.

5. Sub-in by AOA; Involvement, If Any of CNS in the Representation Process

At trial and at deposition both Antonio and Nicanor Enriquez gave a consistent account that they were referred to AOA by a patient Antonio met at CNS who, presumably, spoke favorably of Mr. Asvar's services. While there were not a lot of highly specific recollections of exactly how or when the change of representation took place, I have not been shown that this was a prerequisite for collecting a fee for one's attorney services in the case. The lone witness from

the Shandler firm, for its part, professed little or no personal knowledge of that firm's initial interview with the applicant.

It is also reasonable to assume that more than one conversation or meeting took place before the sub-in paperwork was actually signed. One normally does not take a step such as this based on a single discussion.

It does appear that a CNS employee, Karla Markarian, signed off as having reviewed with the applicant the 9/30/09 legal services agreement between Mr. Asvar's firm and the applicant. (Exh. 100, p. 3-003.) As best I can tell from AOA's billing records, the initial in-person interview and preparation of the sub-out papers did take place at the CNS premises. When asked about her signature on this agreement at trial, Ms. Markarian testified that she would ordinarily translate "whatever [Antonio] brought in." (Minutes, 2/28/17, p. 13.) While the "optics" of a treatment provider unwittingly injecting themselves into a contentious fee dispute may not look appealing, it was reasonably clear from Ms. Markarian's deposition and trial testimony that she sought to create a trustful relationship with the generally untrusting applicant, and could certainly facilitate this by doing small favors.

Shandler also urges that if the applicant needed a guardian, any activity geared toward subbing him in as a client constituted undue influence. The applicant testified to no such undue influence at trial. In any event, this line of argument places the applicant in an untenable Catch-22. If he is incompetent and not receiving guardianship services, he is then stuck with whatever attorney fails to appoint a guardian for him on the grounds that any change in representation would be due to undue influence. I am satisfied that the change of representation came about because of mutual dissatisfactions by the applicant and his involved father in their ability to communicate with the Shandler firm's attorneys and that the sub-in to Mr. Asvar's firm contained no impropriety that would somehow justify an increase in Shandler's fee.

While it may be that Mr. Asvar met with the applicant at times at CNS, in addition to his own office, I believe this was for the simple reason that this was convenient for the applicant and this was where the applicant spent most of Mr. Asvar's working hours. That Mr. Asvar's contacts with CNS patients may have led to some lucrative referrals does not suggest any real impropriety to me, any more than other attorneys receive referrals through contacts with union members or church members. As with the sub-in, I see no evidence of improper involvement by CNS or any of its employees in the representation process, particularly none that would justify a fee windfall to the Shandler firm.

6. Subtraction of PDAs from the Settlement

Shandler argues that it was somehow incompetence on the part of AOA to allow for a deduction for PDAs received in the case, and that for whatever reason this justifies an increased fee to the Shandler firm.

I have a difficult time with this argument. While there are some exceptions for "new money" settlements, PDAs are typically credited in nearly all workers' compensation settlement. By a

matter of days, this was a post 4/19/04 injury with a 104 week TTD maximum. TD was in fact terminated pursuant to SCIF's letter dated 3/9/07 (Exh. 84), somewhat after the 104 week deadline to the applicant's benefit. All the subsequent payments were PDAs properly credited against any settlement. I am reasonably confident that had the Shandler firm settled the case by C&R or stipulations, they would not have waived fees on prior PDAs and would have also included these as part of the settlement amount.

Shandler notes in their 4/26/19 supplemental brief that the DEU computation of PD value based on a 3/27/07 PD start date based on Dr. Curtis's report of that date differs somewhat from the C&R computation. The difference is basically minimal would appear to be mainly accounted for by the fact that the C&R apparently used a 3/1/07 PD start date based on SCIF's 3/9/07 letter terminating PDAs as of that date. (Exh. 84.) Since this was a post-4/19/04 injury SCIF would have arguably been within its rights to argue for a TD termination date of around 5/1/06, 104 weeks after the date of injury, so I do not consider the resolution of the PDA issue in the C&R as unreasonable or a sign of weakness on the part of AOA.

7. Alleged Delegation of Work to Others by AOA

The Shandler firm urges that AOA's fees should be reduced and Shandler's fees increased because AOA delegated much of the work to be done, including but not limited to delegation of settlement negotiations to structured settlement specialist Steve Chapman. Even if this were true, it is unexplained why the result of this delegation should be an increase in attorney's fees to Shandler & Associates.

A preponderance of evidence shows that Chapman was actively involved in the negotiation process. There also is little doubt in my mind that Chapman earned a commission, possibly a significant commission, off the structured settlement. However, I do not see how AOA's decision to work in tandem with an experienced structure broker was somehow a disservice to Mr. Enriquez or justifies a higher fee for the Shandler firm. As I have stated earlier, the decision to enter into a complex structure process rather than simply dump a huge settlement in the lap of an individual who had trouble handling \$20 bespeaks of a laudable degree of care in the case and is worthy of credit to the settling firm, not condemnation. To in effect punish AOA for arranging a structure (which almost always involves a commission payment) and accepting the assistance of the structure broker would in my view simply discourage attorneys from going through the time consuming structure process which in my experience, is nearly always to the benefit of the injured worker.

8. Residency of Applicant at Martha Street House

Much is made in the Shandler briefing and at trial of the fact that the applicant, for a period from approximately May 2011 until 3/30/12 lived at what as best I can tell was a residence converted into an assisted living home on Martha Street, presumably somewhere in the Los Angeles area. (See Exh. 77, p. 3-100.) This was done under the auspices of CNS and at the recommendation of CNS staff. Mr. Asvar explained this by stating that he worked to change the applicant's living situation because "applicant was suffering at home and living in a shed or container or something like that in difficult circumstances. The applicant and his father were, 'going crazy' dealing with the living arrangement. It took the witness quite a bit of time to

alert the insurance company that it was unfeasible for two human beings to live in this type of situation” (Minutes, 4/7/16, p. 5, lines 16-19.) Mr. Asvar further explained that they were not as concerned with maintaining the cost of inpatient care at the Martha Street house after the settlement because then “the applicant would have enough money coming in that he could live more comfortably.” (Id. at p. 10, lines 13-19.)

This version of events is largely corroborated by the testimony of the applicant, who said he went to the Martha Street house to “live better,” (Minutes, 2/29/17, p. 11, lines 23-25, and by that of CNS case manager Hilda Rivera. Ms. Rivera did testify that the move to the Martha Street house was prompted in part by behavioral issues Antonio was having at the time. However, it was also done because at the time the applicant “was a burden to his father” who at the time was “had health issues of his own.” She specifically stated the placement was “wasn’t because the applicant was getting worse but because Nicanor couldn’t deal with both his own care and Antonio’s care.” Ms. Rivera further stated that as of the time of her testimony in 2016, the applicant was being rehabilitated through “community based activities” supervised by CNN which were felt to be more appropriate at the time and “actually . . . very beneficial to Antonio.” (See generally, Minutes, 5/19/16, pp. 15-16.)

The allegations that the placement on Martha Street was due to a dramatic deterioration in Antonio’s condition due to AOA’s incompetent work finds no support in the record. I believe this placement was seen at the time as the best option for a severely disabled claimant trying valiantly to cover all his needs on \$867 a month. As with criticism of the use of a structure broker, the obtaining of a guardian, the arrangements for the conservator, the employment of AMEs and a myriad of other activities, Shandler’s argument has a “no good deed should go unpunished” quality which with all due respect is unconvincing to this judge.

9. AOA Attendance at CNS Meetings

As mentioned above, Shandler argues that any attendance by AOA at planning meetings at CNS was “highly irregular,” and that, in essence, an experienced workers’ compensation attorney would know not to bother with this. (Shandler 2/28/19 Trial Brief, p. 5.) However, Asvar explained that the “case called for close monitoring and paying close attention to the client and the client’s needs,” and also provided “invaluable” information that he was able to use in his representation. (See Minutes, 5/19/16 p. 6, lines 17-20; Minutes, 2/10/16, p. 6.)

Both Enriquezes made it clear that they felt Asvar’s attendance at CNS case meetings was helpful and much desired by them in contrast to the Shandler firm’s failure to attend this meeting.

Shandler also argues that Asvar’s record of attendance at these meetings was overstated. AOA billing records do show meetings with the applicant and CNS staff on 11/11/09, 3/22/10, 8/25/10, 12/6/10, 12/8/11 and 1/17/12, and 2/17/12 (after the settlement) as well as a telephone conference with a CNS and SCIF representative on 11/3/11. This documentation of seven in-person meetings and one telephone conference closely tracks Asvar’s testimony that he went to CNS “seven or eight times.” (Minutes, 2/8/16, p. 12, line 10.)

I am not of the opinion that the billing entries regarding these meetings were manufactured or made out of whole cloth. Also, both Enriquezes corroborated Mr. Asvar’s attendance at case

conferences; CNS witness Hilda Rivera testified that Mr. Asvar attended “multiple meetings.” (Minutes, 5/13/16, p. 13, line 16.) While I agree that Mr. Asvar may not have religiously attended every monthly meetings, or that CNS religiously held such meetings every month, I have little doubt he attended numerous meetings, bespeaking of a high level of care and responsibility in the case as discussed above.

10. Home Purchase

Shandler argues that because Antonio agreed that finding a suitable home within a limited budget was a “battle,” the C&R sums were insufficient to purchase a house. The simple fact is that a house was in fact purchased in Antonio’s name, as best I can tell, for \$310,000 in approximately August, 2014. (See Exh. 75; Minutes 2/28/17 p. 9, line 15; p. 11, lines 9-12.)

The applicant described himself as “liv[ing] good” in this new residence. The purchase price was drawn from additional sums Antonio received over and above his monthly tax free stipend of \$24,329.51 for life. Shandler asserts that the applicant “could not find an affordable home comparable” to his pre-settlement housing. This is directly contradicted by applicant’s own testimony that “he thinks he has better living arrangements than before” and is happy with these arrangements. (Ibid.) Buying a home in Southern California is seldom not a “battle” for anyone but the bottom line is the applicant was able to purchase a home he was happy with out of the settlement sums, and still retain a monthly tax free cash stream of over \$24,000.

11. Status of AOA

Shandler makes various assertions that AOA, for which “Icon Law Group” was a dba, is somehow disqualified from appearing as a party to the case or representing the applicant. Essentially the same assertions were made in a 34 page removal petition on 12/6/14 and removal was denied by the Appeals Board. I am satisfied that a waiver of any fee by any affiliated person or entity other than AOA is sufficient to protect Shandler’s interest and accomplish substantial justice in this case.

Shandler also makes a very technical argument that AOA’s apparent failure to register with the State Bar as a legal corporation requires that any money otherwise due to them should instead go to the unincorporated entity known as Shandler & Associates. This contention was raised and rejected by this judge at trial on 4/24/18, at which time I pointed out that *Olson v. Cohen*, 106 Cal.App.4th 1209 held that this registration requirement was not a prerequisite to proceeding in a fee dispute or retaining any fees that the corporation had earned for its services.

12. Credibility of AOA Attorneys

Shandler notes contradictions as between testifying AOA attorneys Asvar and Odjaghian, particularly regarding the amount of work done in this case by attorney Tina Odjaghian. It does appear that these two attorneys became involved in a tawdry dispute in the wake of the breakup of their law partnership at approximately the time the applicant’s case settled. There are various declarations and other documents from Asvar, Nicanor Enriquez (who was evidently enlisted to back up Asvar’s version of events) and Odjaghian which run the gamut from stating Odjaghian had absolutely no role in the case whatsoever to stating that she had a modest but significant role in the case and the outcome.

Part of the discrepancies in Nicanor's declaration may be explained by the fact that much of the assistance Ms. Odjaghian laid claim to came in the form of "brainstorming" meetings with Mr. Asvar that obviously would not have been observed by the Enriquezes. Nevertheless, it is difficult to reconcile many of the entirely conflicting declarations and documents as all being entirely truthful.

In situations such as this, I take guidance from CACI civil jury instructions, particularly instruction 107 which reads in part, "if you decide that a witness did not tell the truth about something important, you may choose not to believe anything that witness said. On the other hand, if you think the witness did not tell the truth about some things but told the truth about others, you may accept the part you think is true and ignore the rest."

Here I question just how important it is whether Ms. Odjaghian had a modest but actual role in the case or whether she truly did no work whatsoever. While the conflicts in the testimony about her role do give me some concern about the credibility of those involved, it does not cause me to doubt that AOA successfully negotiated an \$8.9 million settlement, that AMEs were obtained, conservatorships and structures set up, that disinterested clients testified to a high degree of satisfaction with AOA's work, etc. In short, nothing about the extreme and contradictory statements made in the partnership dispute leads me to fundamentally change my view of the facts as I see them, or decide that the contradictory statements made in this dispute should inure to Shandler & Associates' financial betterment.

13. Failure to Take the Case to Trial

During the period of time in 2011 and 2012 that settlement was negotiated, the applicant had already been found P & S by AME Marusak with permanent total disability. Trial could have led to the risk that total disability would not be established "in accordance with the fact" under stringent Labor Code standards. At best, it would have led to a fee-reduced monthly stipend of around \$737 (with SAWW increases) plus a general finding of a need for further care in a system soon to come under the domain of UR. That AOA set their sights higher obtained for the applicant what he credibly described as a better life, as well as a monthly income well over twenty times as high is not a reason in my view to cut AOA's fee to the benefit of Shandler & Associates.

In their 4/26/19 supplemental trial brief at page 2, the Shandler firm urges that, rather than necessarily taking the case to trial, had the Shandler firm not been substituted out, they would have negotiated an even better settlement than was negotiated by AOA. Based on a track record in this case of minimal medical workup by known "applicant's doctors," and little or no investigation or activity beyond this type of assertion impresses me as speculative and I am not in a position to award fees based on speculation. At page 3 of the same brief, Shandler apparently urges the applicant, who suffered from multiple personalities and was severely impaired in his ability to handle money according to multiple sources, would have been better off with a huge lump sum settlement. I have mentioned elsewhere why I believe the carefully constructed structured settlement with the assistance of a guardian and conservator were

clearly in the applicant's best interest and I am hardly persuaded that not giving Antonio a huge sum to spend on his own was a missed opportunity by AOA.

14. Discovery Sanctions Sought by Shandler

Shandler urges various adverse inferences and discovery sanctions for various claimed instances of misconduct over the course of seven years of litigation over the fee issue.

As for events prior to the start of trial, both sides assured this judge that discovery was closed at the time of the pretrial conference. Indeed Shandler, in opposition to a proposal to appoint a discovery master to be paid for by the competing parties, explicitly stated that its discovery was done as of 10/16/14 and urged that discovery be closed to all sides. (See Shandler Objection to Notice of Intent to Appoint Discovery Referee, 10/16/14, p. 17, line 10.) If evidentiary sanctions were sought for pretrial conduct, this should have been pursued prior to the closure of discovery.

While Nicanor Enriquez did testify that he had discarded his diary shortly before his deposition, he was found basically credible by this judge with no persuasive motive to lie about the services he received. The question of excluding AOA's billing log for failure to produce certain documents is taken up separately, in which I conclude that said billing log is nevertheless admissible.

In short, I do not find merit to the arguments at page 25 of Shandler's 2/28/19 trial brief, lines 1-9.

15. Explanation of the Settlement to Nicanor and Antonio Enriquez

In its 4/26/19 supplemental trial brief and elsewhere, the Shandler firm takes AOA to task for not adequately explaining the terms of the settlement to Antonio and Nicanor. However, it appears from the 11/8/11 recorded statement of Nicanor Enriquez that Nicanor agreed on record that an earlier rejected structured settlement proposal had been explained to him in great detail. (Exh. 69, pp. 5-11.) Both Nicanor and Antonio, who this judge regarded as disinterested and largely credible, confirmed at trial that they felt they were properly informed and properly advised as to the terms of the settlement. (Minutes, 7/28/16, p. 5, lines 1-4; Id. at p. 10, lines 6-10; Minutes, 2/28/17, p. 10, lines 1-8.) Thus I do not believe a preponderance of evidence supports Shandler's assertion that "The applicant and his GAL were further unaware of the actual terms of the Compromise and Release . . . and the consequences thereof." (4/26/19 Trial Brief, p. 2.)

16. Shandler's Assertions re Services by Shandler & Associates

Out of a 25 page trial brief, well over 20 pages are largely devoted to a critique of AOA's performance, with approximately 3 ½ pages devoted to Shandler's own legal services .

I do not agree that a forensic record compiled by this form of skimpy medical reports with minimal record reviews by “treating” doctors who, by and large, were not in charge of treatment represented a “methodical” or “considered” approach to the case.

It is true that the applicant received continued treatment from CNS and continued indemnity (at \$200 per week) throughout Shandler’s representation. In this regard the applicant was quite fortunate. However, it has not been shown that any of these events arose from legal services or legal advocacy asserted by the Shandler firm.

I have particular difficulty accepting the assertion that “Shandler expended a lot of effort in educating and encouraging Antonio and Nicanor so they would not quit the CNS program.” (Shandler Trial Brief, 2/29/19, p. 22, line 17.) The weight of the evidence is that no attorney from the Shandler firm ever met face to face (or for that matter by telephone) with either Enriquez in the course of handling Antonio’s case.

I also find little support for the assertion that Shandler obtained second opinions from doctors in multiple specialties about the propriety of CNS treatment. Drs. Richlin and Freed never reviewed any CNS records as far as I can see. None of these doctors ever provided any “methodical” or “considered” critique of CNS care as in most instances they were lucky to get a handful of records from this organization. I see no letters from Shandler in the record requesting such second opinions.

To his credit, Dr. Curtis did defer to CNS after double-prescribing the applicant with Lexapro after his first visit. However, CNS case manager Hilda Rivera regarded Dr. Curtis’s period of care as an unfavorable development, stating that it made it difficult for the applicant to get back on track with his treatment with Dr. Jacobson. (Exh. 71, pp. 19-21.)

Shandler’s assertions of Antonio’s gradual improvement as a result of Shandler’s care and advocacy is also not persuasive. It is evident that even as of the CNS employee depositions carried out by AOA, well after Shandler’s representation ended, that the applicant was still struggling with anti-social behavior and multiple personality disorders. Even assuming there was some improvement, it has not been shown that this was related to any care or advocacy exercised by the Shandler firm. The gist of Nicanor and Antonio’s testimony was that their continued failed efforts to communicate with any attorneys from that firm only brought them frustration. Antonio did testify that things finally changed for the better, but only after he changed attorneys.

17. Other Claims re AOA and Shandler Representation

Many of the arguments raised in the course of the Shandler trial brief had to do with the conduct of AOA or its attorneys in the post-settlement fee dispute or other collateral litigation. Part of my job as a judge is to put aside facts that do not bear on the issue at hand and focus on those that do. Therefore, my focus is exclusively on the services performed on behalf of Antonio Enriquez and not on other matters.

I am also not particularly concerned with the resumes of the various attorneys or their litigation history. All of the testifying attorneys are admitted to the bar and work largely and exclusively in the field of workers compensation law. Accordingly, my concern is what the attorneys did in this case, not what they have done in other cases.

G. COMPUTATION OF ATTORNEY'S FEES

1. Case Law re Fee Split Disputes

I am aware that various fee division formulas exist based largely on time periods of representation, with various percentage premiums that seem to vary from case to case for opening and/or closing the case. These type of formulas do make sense in many routine cases, particularly where, as in *Jimenez v. Mattco Forge*, 2017 Cal. Wrk.Comp. P.D. LEXIS 34, "everyone involved did substantial work." However, even in the Jimenez case, the formula was not strictly followed where there was a disparity in the amount of attorney work done by the various firms. Likewise, in *Alvarez v. Yoons Fashion*, 2016 Cal.Wrk.Comp.P.D. LEXIS 223, a variant of the same type of formula was used in which the attorneys were rewarded in part for the elapsed time during which they handled the case, but this formula was also refigured to account for the "procrastination" exercised by one of the firms. It has been stated by a Board panel that "the time involved in . . . representation of the applicant, is not the only or even most heavily-weighted factor." (*Rillon v. K-Mart*, supra, 2011 Cal.Wrk.Comp.P.D. LEXIS 396.)

The judge in *Alvarez* made the interesting analogy that given the groundwork done by the first firm, he services of the second and final firm to handle the case were "akin to walking up to the batter's box to hit a T-Ball, already placed on the 'T'." With all due respect the closest similar analogy I can draw in this case is that when the second firm took over the case, the ball was lying out in the field somewhere.

One case I found quite interesting is *Wright v. City of Huntington Beach*, 2017 Cal.Wrk.Comp.P.D. LEXIS 465. In *Wright*, the first handling firm obtained a stipulated award of 40% permanent disability with an award of future medical care. Some years later, this firm was substituted out and a second and then a third firm negotiated a C&R for \$200,000, apparently in the form of new money. The first firm argued that since it had obtained future medical treatment for the applicant, it was entitled to some share of the subsequent firm's successful efforts to cash out this right. The Board disagreed and awarded none of the C&R attorney fees to the first firm, holding that said first firm had done no work to bring about the C&R. The *Wright* case, like Policy and Procedural Manual sec. 1.140, rejects the notion that an attorney has a proprietary right to the outcome of a case by virtue of having handled it and independently of any work actually done, or that the attorney should collect a large fee for work not done in a big case to make up for all the small cases they have had to handle.

Obviously, there is no “one size fits all” approach to equitably awarding attorney’s fees. Having carefully considered the *Bentley* factors, I have decided that the fairest way to allocate fees is to assess the value of the various components of applicant’s settlement, determine the relative contribution of each firm to this portion of the outcome, and award fees accordingly. In keeping with prior custom and practice, I have also added what I think is a reasonable premium for opening the case, particularly when this was handled as a largely clerical function and no apparent plan was in place for protecting the applicant’s third party rights while the tort statutes were still viable. I believe this is reasonable and in accord with the limited case law that pertains to attorney fee division disputes which I have discussed above.

2. Fees for Opening the File

There is no doubt that the Shandler firm did open the file and get an application on file which it later amended to include the psyche. It would make sense in many cases to award compensation for this based on a percentage of the recovery where opening the case represented a significant percentage of the total amount of work done. However the opening of the case in this matter with little or no attorney involvement and little or no planning for any third party action in connection with the scaffold failure clearly does not meet this description. I believe the sum of \$5,000 for opening the case, filing the original application and filing the amended application quite amply compensates the Shandler firm for the attorney work done in this regard.

3. PD Component of Settlement

An obvious component of the applicant’s C&R recovery is the value of PD due had the case gone to award. Since this was difficult to compute on my own, I sought the expertise of the DEU to estimate the present value of a 100% PD award based on an indemnity rate of \$200 per week plus any applicable SAWW increases. (Contrary to Shandler’s assertion in their 4/26/19 supplemental trial brief that the PD value does not reflect wage increases, the DEU computations in fact are based on the statutorily mandated SAWW increases at the actual rate for retroactive payments computed and at an assumed wage increase of 3% per year for future increases.)

These computations yielded the sum of \$767,864.81 which I believe is fairly close to what the present value would be at the time the C&R took place, give or take a small amount. The question then becomes what percentage of this award was attributable to the attorney services and advocacy of Shandler & Associates as opposed to AOA.

I believe it is quite generous to attribute 1/3 of the presumed 100% award component of the settlement to the legal services and legal advocacy of Shandler & Associates. The reporting of Dr. Curtis did allow AOA to make a prima facie argument upon taking over the case that the applicant was 100% disabled. However, there were significant problems with Dr. Curtis’s reporting, not to mention his reputation as an “applicant’s doctor” discussed elsewhere herein.

I find Asvar's contention that it was largely necessary to start from scratch to be reasonable and credible.

AOA, through diligence and hard work, was able to obtain AME findings which solidly supported a 100% award. As I have noted elsewhere, I think it would be a mistake to assume this was a "slam dunk" 100% case given the occult nature of traumatic brain injury as noted in Asvar's 1/24/12 petition in support of attorney's fees, the applicant's normal brain MRI and paucity of neurological findings when seen by a neutral expert, not to mention his ability to acquire fluency in English which I believe he did primarily through his post-injury studies.

15% of the PD estimated present value stated above is \$115,179.72. Based on a 1/3 – 2/3 split, I allocate fees for this element of the settlement as \$38,393 for Shandler & Associates and \$76,787 for AOA. (I am rounding all fee amounts being awarded to whole dollars).

4. Retrospective Home Care

The balance of the applicant's recovery is obviously attributable to the value of applicant's entitlement to lifetime medical treatment that the claimant would otherwise be entitled to in the absence of a settlement. I believe this can be broadly divided into three categories: 1) retrospective home care reimbursement for services rendered prior to the date of the settlement; 2) prospective home care services and all other medical treatment costs. I will discuss each of these in sequence.

Given the many defenses SCIF enjoyed to liability for retrospective home care services, which Shandler itself sets forth in their trial brief, I consider the \$200,000 negotiated resolution of this claim to reasonably reflect the value of this claim as discussed above. Here we do have some brief reports provided through Shandler's efforts which at least provide some support for the home health care claim as early as 3/27/07 (as per Dr. Curtis), though it should be kept in mind that at the time the settlement was negotiated, there was no per se requirement of a prior "prescription" for home care that might have made Dr. Curtis's reporting more significant.

As with the finding of 100% PD, the Curtis and Regev reports at least gave AOA a palpable basis to demand home care from the beginning of their representation. However, these conclusory documents are ill supported by any detailed reasoning or detailed record review and were very arguably insufficient to procure actual home care services at a litigated trial for an individual who was anything but homebound. As witness Asvar credibly stated, they did not provide enough material to start a "serious conversation about homecare." Any such materials were ultimately obtained through AOA's efforts. Most prominently this consisted of the AME report of Dr. Marusak which explicitly found a need for such services, (See Exh. 4, p. 75), as well as the depositions of the three CNS witnesses, in which considerable evidence was adduced to establish Nicanor's necessary assistance on behalf of Antonio in connection with Antonio's day-to-day needs. The Shandler firm played no role in the procurement of any of this evidence.

Viewed as a whole and with due consideration of the *Bentley* factors discussed above I think it is reasonable to assign 40% of the value of the retrospective home care recovery of \$200,000 to the medical reporting procured through Shandler's efforts and the balance of 60% to AOA. This is mainly because the Shandler reporting, though flimsy, did arguably put SCIF on notice of the need for home care at a relatively early date in 2007 which did confer some tactical advantage on the applicant's side in arguing this issue. Given that the \$200,000 retrospective home care recovery generated a \$30,000 fee, 40% of this or \$12,000 is properly allocated to Shandler & Associates and 60% or \$18,000 is properly allocated to AOA.

5. Future Home Health Care

The considerations are different in evaluating the respective contribution of each firm to that portion of the settlement that was based on the value of future home health care. I assign a different apportionment of the value of each side's services to this because the early date of Dr. Curtis's home care "prescription" was relatively insignificant in connection with the establishment of a basis for future home care services. As explained above, nearly all of the clearly credible and solid evidence in support of this was generated by the AOA firm. The home care issue, of course was not resolved until the date of settlement, and I give some credence to Asvar's explanation that additional time was needed to work up the evidence for this. Nevertheless it was AOA alone that actually filed a petition to obtain home care services; with the Shandler firm, no discernible steps were taken to obtain home care during a period of over 2 ½ years after Dr. Curtis's 3/27/07 report. AOA alone negotiated the arguably record settlement.

Viewed as a whole and with due consideration of the *Bentley* factors discussed in detail above, I find it reasonable to determine that the Shandler firm was 15% responsible for whatever portion of the settlement was represented by the value of future home care services and 85% of the responsibility and credit lies with AOA.

Exactly what portion of the \$8.9 million settlement is represented by home care services presents an interesting question. In reviewing the limited amount of correspondence regarding settlement negotiations, it does appear that the prospect of such services played a significant role. I note that Shandler itself estimates the potential value of this at \$1.4 million to \$2.8 million. Given Antonio's post settlement activities and the post-settlement implementation of UR and MTUS guidelines covering home care, I think this grossly exceeds the value of what defendant might have had to pay had the case not settled. (Interestingly, the estimate drops to \$1 million in Shandler's 4/26/19 supplemental trial brief.) Be that as it may, I do not find it unreasonable to take a middle figure of \$2.1 million as representing the value of future home care services as a fair component of the \$8.9 million settlement. This component of the settlement would generate a fee of \$315,000. Shandler & Associates' rightful share of this is 15% of this amount, or \$47,250 and AOA's proper share is \$267,750.

6. Other Medical Benefits Resolved Via C&R

After subtracting out PD fees, retrospective home care fees, and prospective home care fees and application opening fees, the remaining amount of fees being withheld by SCIF is \$869,820, which I believe is reasonably considered as the fees flowing from the reasonable value of the remaining medical benefits closed out by the C&R settlement such as CNS services, prescription costs, mileage, etc. The question then becomes what portion of this element of the settlement is properly and equitably paid to AOA and what portion should go to Shandler and Associates.

After carefully considering the totality of the circumstances and the *Bentley* analysis set forth in detail above, it is my considered opinion that \$819,820 of this amount is properly and equitably awarded to AOA and \$50,000 to Shandler & Associates.

My best and most careful analysis of the facts is that the amount of attorney work done by the Shandler firm to bring about the \$8.9 million settlement was somewhere between none and de minimus. Other than some form letters, Shandler never entered into any form of settlement negotiations. Shandler had nothing to do with any of AOA's myriad of activities that led to the settlement. The doctors used by Shandler were merely collateral to actual treatment being guided by the insurance carrier whose representative regularly attended meetings designed to coordinate such care which were unattended by anyone from the Shandler office.

On its facts, this case seems close to the Wright panel decision discussed above, in which a prior attorney who played no role in the subsequent C&R of a case received no fee for the C&R negotiation services. Wright of course is not binding on this case but its reasoning is persuasive to this judge. Wright underscores that attorneys in fee split disputes do not have a proprietary right to the proceeds of any settlement, but rather are awarded payment based purely on the services that they have performed. The weight of the evidence here is that the entire resolution of this case was an "A to Z" project of AOA, who basically had to start from scratch after getting a file consisting of skimpy and ill-informed reports from doctors who were hardly, in a real sense, treating physicians.

I believe the *Bentley* factors which very strongly favor a larger recovery for AOA as opposed to Shandler are also properly considered. Moreover, an important consideration in setting fees, as I see it, is to encourage and reward the services of competent and skilled counsel. (See *Morgan, Beauzy v. WCAB*, 41 CCC 322.) Attorneys who demonstrate a great deal of skill and initiative or take a highly proactive approach to their cases should not be discouraged from handling or accepting matters because they will have to give up a good portion of their fees to their predecessors regardless of the work that was previously done or not done. On the other hand, an attorney who happens to have a high-medical-cost case should not get the message that the quality of their services doesn't matter because they are sure to collect a large fee even if they are substituted out.

As I have noted above, given the amount of actual attorney work that was done by each firm, I do not think there is a gross disparity in the hourly rate provided to each counsel, though it is admittedly quite generous to both. To the extent any AOA rate may be higher than the Shandler rate, I believe this is amply justified by the disparity in *Bentley* factors discussed above.

It is probably not correct to say that the efforts of the Shandler firm contributed nothing to the balance due under the settlement. They did coordinate various medical reports which found a need for further care. However, this was already established by the experts who were acting on behalf of CNS and the insurance carrier. Shandler did render some modest services such as following up on getting checks. Their clerical staff did at least serve as a sounding board for the concerns the applicant and his father had about Antonio's treatment. I note of course, that Shandler is already being compensated separately out of the PD, application opening and home health care elements of the settlement. I believe Shandler's contribution to the applicant having obtained the balance of the settlement sums can best be described as "de minimus," and I believe the \$50,000 figure fairly and reasonably represents compensation for this de minimus work.

7. Summary of Fee Split Computations

To sum up, I am awarding \$152,643 to Shandler and Associates based on the reasonable value of fees attributable to the filing of the application and opening of the case (\$5,000); the PD portion of the settlement (\$38,393); the retrospective home care portion of the settlement (\$12,000); the future home care portion of the settlement (\$47,250) and the reasonable value of other medical treatment rights settled via C&R (\$50,000).

To sum up, I am awarding \$1,182,357 to AOA based on the reasonable value of fees attributable to the PD portion of the settlement (\$76,787); the retrospective home care portion of the settlement (\$18,000); the future home care portion of the settlement (\$267,750) and the reasonable value of other medical treatment rights settled via C&R (\$819,820).

Having exhaustively reviewed the record and carefully considered the *Bentley* factors, I believe that this is a reasonable and equitable division and distribution of fees in this case.

H. ADMSSION OF AOA BILLING LOG

At trial, the AOA billing log was marked for identification rather than actually admitted into evidence based on objections by Shandler that many of the documents referred to in the billing log were not produced to the Shandler firm despite a court order or court orders that this be done. Because the billing log itself was not produced until the MSC, the issue was deemed to be properly raised at trial, even though there was a considerable lapse from receipt of the billing log until the objection was actually raised. Accordingly, the billing log was marked for identification with admissibility to be determined in the course of the decision.

There is a fair amount of backstory regarding this issue which I will summarize as follows.

As Shandler points out in its Objection to Statement of Services dated 4/7/16, the undersigned previously issued a lengthy minute order at an unscheduled hearing on 11/26/12 that provided, among many other provisions, that Asvar was to mail a sworn declaration to Shandler that his office had produced all records in its possession in this case within 10 days. According to Shandler, Asvar never complied with this and I have no reason to question this.

Discovery disputes stormed on for quite some time after that, to the point that the undersigned, on 9/26/14, issued a notice of intent to appoint a special master or discovery referee who would handle any future or unresolved discovery disputes, and whose fees would be paid by the parties to the discovery dispute. On or about 10/16/14, Shandler filed a 36 page opposition to this NOI, stating, among other things, that Shandler's discovery was done and that there was therefore no need to appoint a discovery master. Based on large part on these representations, the undersigned vacated the NOI.

The matter went through several subsequent pretrial hearings, including one before Presiding Judge O'Kane on 7/29/15 in which it was written on the minutes: "Parties to prepare full, detailed itemizations of work performed."

The parties did just that and brought these itemizations to the subsequent pretrial conference on 10/21/15, at which the "five pager" was prepared for trial. (See Minutes, 2/8/16, p. 7, line 13.) The matter went to the first day of trial on 12/14/15, at which time the Shandler service logs and AOA service logs were admitted in evidence as Exhibits X and Y respectively. No objection was raised at that time.

At trial on 2/8/16, Shandler, for the first time, objected to AOA's Exhibit Y on the grounds that it made reference to emails and other documents not produced during the course of pretrial discovery. Based on this, the status of Exhibit Y was downgraded to "marked for identification" and I indicated on the record at page 3 of the minutes that I would decide the issue in the course of the decision, and would also determine whether any adverse inference was proper for failure to produce certain documents. As per page 7 of these minutes, I ordered Asvar and Odjaghian to re-review their records and produce any documents in their possession they did not produce previously. I also ordered Shandler to provide AOA with a list of the missing documents.

On 2/10/16 Shandler served on AOA counsel a list of missing documents as noted below.

On 2/23/16, former AOA attorney Tina Odjaghian prepared a declaration stating she no longer had access to email documents from the Asvar, Odjaghian and Associates email account. (Exh. 143.)

On 2/24/16, the attorney on behalf of AOA in the fee dispute, Mr. Feenberg, sent a letter to Shandler forwarding approximately a dozen emails and several other miscellaneous documents, which I assume were not previously forwarded to Shandler.

At trial on 4/7/16, Shandler filed an "Amended Objection to Statement of Services" in which it was averred that Shandler, on 2/10/16 served on Mr. Feenberg a copy of Exhibit Y with a check mark next to all documents that were not received by Shandler. This document was identified at trial as Applicant's Exhibit 139. According to the "Amended Objection," over 100 documents were missing. It appears that while some of the documents were in fact forwarded on 2/24/16, many others were never provided in the course of the trial.

Both Asvar and Odjaghian gave extensive testimony about the billing log and their recordkeeping practices. Mr. Asvar testified that about 85% of the service log was based on contemporaneous entries and about 15% was constructed retrospectively. He asserted that since AOA and/or its affiliates broke up, he no longer had access to their email address. At trial, Shandler asked a complicated series of questions about emails, websites accounts, etc. which I believe were designed to show that Asvar must have been able to access his old emails. However, Asvar maintained that he had closed the old firm's website and no longer had access to any of the firm's prior emails. (Minutes, 2/8/16, pp. 8-9.)

At trial on 2/9/16, Mr. Asvar again stated that most, but not all of the billing was based on contemporaneous entries but that he was not tracking time closely because there was no impetus to bill for applicant's work. (Minutes, 2/9/16, p. 6.)

Still more questions were asked of Asvar about emails, etc. at trial on 4/7/16. According to Asvar, the dissolution of AOA as an active firm began in 2011 and wound up by around March or April of 2012. He again stated he had no access to emails for AOA, aka Icon Law because the server was turned off. He said he did not think he was obligated to save every email in anticipation of the fee litigation and that he felt he was obligated to produce "the documents he had." He testified to some effort to obtain these emails when this came up as an issue but these were not successful. (Minutes, 4/7/16, pp. 3-4.)

Numerous questions about the same subject matter were posed to witness Odjaghian. She testified that she also helped prepare the time sheet identified as Exhibit Y. Like Mr. Asvar, she stated that some entries corresponded to contemporaneous records and some were done from memory. With regard to emails, she testified, like Asvar, that they lost access to their emails about the time that the firm split up in early 2012, as their server "went down" when they closed their website. According to her, they did save copies of some of their emails and they produced those that they had saved. However, with regard to the lack of access to others, she stated there are "a lot of details regarding partnership dissolution that have to be attended to." With regard to production of the file, she stated, "We produced the entire file when you

asked for it.” According to her, the loss of emails was “really difficult” and did impact her practice. (Minutes, 10/16/18, pp. 6-7.)

Based on the above record, I have not been persuaded that the billing log identified as Exhibit Y should be excluded from evidence or that other formal adverse inferences are justified regarding this document.

I note that while Mr. Asvar was ordered to produce a declaration that all his documents had been produced in late 2012, this was part of a long series of entries in hearing minutes of that date. Obviously, it would have behooved AOA to produce the documents and/or a declaration then but evidently this did not take place. There were a plethora of discovery issues prior to trial and Shandler was certainly free to follow up on the request for a declaration or take the issue up with the discovery master that I proposed appointing. However, Shandler averred in a court pleading in October 2014 that her discovery was done. Largely because of this, I held off on appointing a discovery master. In light of this representation, I consider any claim for discovery sanctions or other actions based on failure to file such a pretrial declaration to be waived.

It is hard to tell exactly when AOA produced the bulk of its file. It *is* notable that a number of documents referred to in the billing records were not provided to Ms. Shandler. As for missing emails, both Asvar and Odjaghian gave credible and consistent testimony that their access to email ended, perhaps unexpectedly, when their firm dissolved and their server was taken out of operation. The fact that other letters noted in largely contemporaneous billing records were not produced is a source of some concern but may be explained in part by delay in turning over the documents during a very long period of pretrial discovery and/or less than perfect record keeping in an unusually massive file.

While I suppose it is possible that AOA simply manufactured or fabricated events to pad their billing, this does not seem likely to this judge. It is clear from the documents submitted that the firm did an enormous amount of work on the case. I have considered that there may be some element of puffery in boasts of such things as 50 conversations with Antonio or up to 20 meetings with him. (See, e.g., Minutes, 2/9/16, p. 5.) However, none of this changes the fundamental facts of the case that this was indeed a “Tale of Two Cities,” as urged by AOA, in terms of the contrasting performance of the two law firms. The fact that some documents were lost or otherwise not produced does not change the testimony of the disinterested applicant or his guardian. While I have considered that not every billing entry is supported by a corresponding document, I have taken this into consideration in giving Exhibit Y its due weight. Ultimately, I have concluded that said document is properly admitted into evidence and that no formal adverse inference is appropriate based on the unproduced documents.

I. LIEN OF SHANDLER & ASSOCIATES

Shandler's 10/26/18 lien claim borders on frivolous. This is simply an attempt to use the WCAB as a collection agency for a prior debt. Lien claims are strictly limited under Labor Code section 4903. The lien in question falls into none of these categories and must be denied.

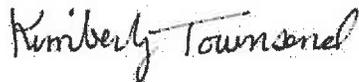
DATED: April 29, 2019

Respectfully submitted,



DANIEL A. DOBRIN
Workers' Compensation Judge

THE WITHIN FINDINGS OF FACT, ORDER AND OPINION ON DECISION WAS SERVED ON THE PARTIES LISTED BELOW ON THE ABOVE DATE, WHICH IS THE DATE OF SAID FINDINGS OF FACT, ORDER AND OPINION ON DECISION. SERVED BY: Kimberly Townsend



SHANDLER ASSOCIATES LOS ANGELES US MAIL
ROSE KLEIN LOS ANGELES US MAIL
SCIF INSURED GLENDALE UNIT A US MAIL

STATE OF CALIFORNIA
Division of Workers' Compensation
Workers' Compensation Appeals Board

04/29/2019

OFFICIAL ADDRESS RECORD

Case Number: ADJ2137779

A KEVIN AMINIAN MD	Lien Claimant - Other, 8920 WILSHIRE BLVD SUITE 548 BEVERLY HILLS CA 90211
ANTONIO ENRIQUEZ	Injured Worker, 507 E 64TH ST LOS ANGELES CA 90003
ASVAR LAW LOS ANGELES	Law Firm, 10940 WILSHIRE BLVD STE 2150 LOS ANGELES CA 90024
ASVAR LAW LOS ANGELES	Lien Claimant - Other, 11900 OLYMPIC BLVD STE 470 LOS ANGELES CA 90064
CASE FUNDING INC	Lien Claimant - Other, 12 E 46TH ST STE 6E NEW YORK NY 10017
CHRISTINA ARANA STUDIO CITY	Lien Claimant - Other, 11420 VENTURA BLVD STUDIO CITY CA 91604, DIEGO@CHRISTINA-ARANA.COM
EDWIN GROMIS MD PC	Lien Claimant - Other, 1122 S ROBERTSON BLVD STE 1 LOS ANGELES CA 90035
ICON LAW LOS ANGELES	Law Firm, 11900 OLYMPIC BLVD STE 470 LOS ANGELES CA 90064
MBC SYSTEMS SANTA ANA	Law Firm, 1809 E DYER RD STE 311 SANTA ANA CA 92705, CORRESPONDENCE@MBCSYSTEMS.ORG
ODJAGHIAN ASSOC WOODLAND HILLS	Law Firm, 20700 VENTURA BLVD STE 203 WOODLAND HILLS CA 91364
PROFESSIONAL LIEN SERVICES COVINA	Lien Claimant - Medical Provider, PO BOX 391 COVINA CA 91723
ROSE KLEIN LOS ANGELES	Law Firm, 801 S GRAND AVE FL 11 LOS ANGELES CA 90017
SCIF INSURED GLENDALE	Claims Administrator, PO BOX 65005 FRESNO CA 93650
SCIF INSURED GLENDALE UNIT A	Law Firm, PO BOX 65005 FRESNO CA 93650

SHANDLER & ASSOCIATES	Lien Claimant, 1605 W OLYMPIC BLVD STE 9084 LOS ANGELES CA 90015
SHANDLER ASSOCIATES LOS ANGELES	Law Firm, 1605 W OLYMPIC BLVD STE 9084 LOS ANGELES CA 90015
SHARON MALCA LANGUAGE SERVICES	Lien Claimant - Other, PO BOX 4759 WEST HILLS CA 91308
SOBOL ORTHOPEDIC MEDICAL GROUP INC	Lien Claimant - Other, 1809 E DYER RD STE 311 SANTA ANA CA 92705
SPM INTERPRETER LOS ANGELES	Lien Claimant - Interpreter, PO BOX 351112 LOS ANGELES CA 90035, MARCELAFONT77@GMAIL.COM
STATE BAR OFFICE OF GENERAL COUNSEL	Lien Claimant, 180 HOWARD ST SAN FRANCISCO CA 94105
WILLIES PAINTING	Employer -16651 Roscoe Blvd, North Hills, CA 91343
WILSHIRE ROXBURY MEDICAL PHARMACY	Lien Claimant - Other, 19528 VENTURA BLVD STE 790 TARZANA CA 91356

Proof of service

I AM OVER THE AGE OF 18, NOT A PARTY TO THIS PROCEEDING, AND AM EMPLOYED BY THE STATE OF CALIFORNIA, DWC, LOS ANGELES DISTRICT OFFICE OF THE WCAB, LOCATED AT 320 W. 4TH STREET, LOS ANGELES, CA 90013.

ON April 30, 2019 I SERVED **FINDINGS OF FACT AND ORDER re: ATTORNEY FEE DIVISION ISSUES; OPINION on DECISION ON THE INTERESTED PARTIES LISTED IN BOLDFACE ABOVE IN SAID CAUSE, BY E-MAIL, FAX, OR BY PLACING A TRUE COPY THERE OF, ENCLOSED IN A SEALED ENVELOPE, WITH POSTAGE FULLY PAID. I DECLARE UNDER PENALTY OF PERJURY UNDER THE LAWS OF THE STATE OF CALIFORNIA THAT THE FOREGOING IS TRUE AND CORRECT.**

Kimberly Townsend

Kimberly Townsend
Secretary for Judge Daniel Dobrin