



Supreme Court of the State of New York  
County of NEW YORK

11101964

Index No.  
Date purchased

Plaintiff(s) designate(s)  
New York  
County as the place of trial.

The basis of the venue is  
Plaintiff's place of  
residence

**Summons**

Plaintiff(s) reside(s) at  
186 West 80th St.  
New York, NY  
County of New York

DR. TARA ALLMEN, as Executor of the  
ESTATE OF RENEE ALLMEN, and  
TRUSTEE of the ALLMEN CHARITABLE LEAD TRUST,

Plaintiff(s)

against

FOX ROTHSCHILD LLP, GARY S. MORIWAKI, ESQ.,  
ABBE G. SHAPIRO, ESQ., and DAMIANOS MARKOU, ESQ.,

Defendant(s)

To the above named Defendant(s)

You are hereby summoned to answer the complaint in this action and to serve a copy of your answer, or, if the complaint is not served with this summons, to serve a notice of appearance, on the Plaintiff's Attorney(s) within 20 days after the service of this summons, exclusive of the day of service (or within 30 days after the service is complete if this summons is not personally delivered to you within the State of New York); and in case of your failure to appear or answer, judgment will be taken against you by default for the relief demanded in the complaint.

Frankfurt Kurnit Klein & Selz, P.C.  
Attorney(s) for Plaintiff

Dated, New York, New York  
February 16, 2011

Defendant's address:

100 Park Avenue  
Suite 1500  
New York, NY 10017

Office and Post Office Address

By: Jessie F. Beeber

Jessie F. Beeber  
488 Madison Avenue, 10th Fl.  
New York, New York 10022  
(212) 980-0120

**FILED**

FEB 16 2011

**NEW YORK  
COUNTY CLERK'S OFFICE**

**AFFIDAVIT OF SERVICE**

STATE OF NEW YORK, COUNTY OF  
party herein, is over 18 years of age and resides at  
That on \_\_\_\_\_ at \_\_\_\_\_ M., at  
deponent served the within summons, \_\_\_\_\_ on \_\_\_\_\_ defendant,

SS: The undersigned, being duly sworn, deposes and says; deponent is not a

- INDIVIDUAL  by delivering a true copy of each to said defendant personally; deponent knew the person so served to be the person described as said defendant therein.
- 1.
- CORPORATION a \_\_\_\_\_ corporation, by delivering thereat a true copy of each to personally, deponent knew said corporation so served to be the corporation described in said summons as said defendant and knew said individual to be \_\_\_\_\_ thereof.
- 2.
- SUITABLE AGE PERSON by delivering thereat a true copy of each to \_\_\_\_\_ a person of suitable age and discretion. Said premises is defendant's—actual place of business—dwelling place—usual place of abode—within the state.
- 3.
- AFFIXING TO DOOR, ETC. by affixing a true copy of each to the door of said premises, which is defendant's—actual place of business—dwelling place—usual place of abode—within the state. Deponent was unable, with due diligence to find defendant or a person of suitable age and discretion thereat, having called there
- 4.

MAILING TO RESIDENCE USE WITH 3 OR 4  
5A.  Within 20 days of such delivery or affixing, deponent enclosed a copy of same in a postpaid envelope properly addressed to defendant at defendant's last known residence, at \_\_\_\_\_ and deposited said envelope in an official depository under the exclusive care and custody of the U.S. Postal Service within New York State.

MAILING TO BUSINESS USE WITH 3 OR 4  
5B.  Within 20 days of such delivery or affixing, deponent enclosed a copy of same in a first class postpaid envelope properly addressed to defendant at defendant's actual place of business, at \_\_\_\_\_ in an official depository under the exclusive care and custody of the U.S. Postal Service within New York State. The envelope bore the legend "Personal and Confidential" and did not indicate on the outside thereof, by return address or otherwise, that the communication was from an attorney or concerned an action against the defendant.

- DESCRIPTION USE WITH 1, 2, OR 3
- |                                 |                                      |                                      |                                     |                                       |                                    |   |
|---------------------------------|--------------------------------------|--------------------------------------|-------------------------------------|---------------------------------------|------------------------------------|---|
| <input type="checkbox"/> Male   | <input type="checkbox"/> White Skin  | <input type="checkbox"/> Black Hair  | <input type="checkbox"/> White Hair | <input type="checkbox"/> 14-20 Yrs.   | <input type="checkbox"/> Under 5'  | <input type="checkbox"/> Under 100 Lbs. |
| <input type="checkbox"/> Female | <input type="checkbox"/> Black Skin  | <input type="checkbox"/> Brown Hair  | <input type="checkbox"/> Balding    | <input type="checkbox"/> 21-35 Yrs.   | <input type="checkbox"/> 5'0"-5'3" | <input type="checkbox"/> 100-130 Lbs.   |
|                                 | <input type="checkbox"/> Yellow Skin | <input type="checkbox"/> Blonde Hair | <input type="checkbox"/> Mustache   | <input type="checkbox"/> 36-50 Yrs.   | <input type="checkbox"/> 5'4"-5'8" | <input type="checkbox"/> 131-160 Lbs.   |
|                                 | <input type="checkbox"/> Brown Skin  | <input type="checkbox"/> Gray Hair   | <input type="checkbox"/> Beard      | <input type="checkbox"/> 51-65 Yrs.   | <input type="checkbox"/> 5'9"-6'0" | <input type="checkbox"/> 161-200 Lbs.   |
|                                 | <input type="checkbox"/> Red Skin    | <input type="checkbox"/> Red Hair    | <input type="checkbox"/> Glasses    | <input type="checkbox"/> Over 65 Yrs. | <input type="checkbox"/> Over 6'   | <input type="checkbox"/> Over 200 Lbs.  |

Other identifying features:

Sworn to before me on

Print name beneath signature. ....

LICENSE NO. ....

Index No.  
Supreme Court of the State of New York  
County of New York

Dr. Tara Allmen, as Executor of the Estate of Renee Allmen, and Trustee of the Allmen Charitable Lead Trust,

Plaintiff(s)

against

Fox Rothschild LLP, Gary S. Moriwaki, Esq.,  
Abbe G. Shapiro, Esq. and Damianos Markou, Esq.,

Defendant(s)

**Summons**  
ACTION NOT BASED UPON A  
CONSUMER CREDIT TRANSACTION

Frankfurt Kurnit Klein & Selz, P.C.  
Attorney(s) for Plaintiff(s)

Office, Post Office Address and Tel. No.  
488 Madison Avenue, 10th Fl.  
New York, NY 10022  
(212) 980-0120

SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF NEW YORK

-----X  
DR. TARA ALLMEN, as Executor of the :  
ESTATE OF RENEE ALLMEN, and :  
TRUSTEE of the ALLMEN CHARITABLE :  
LEAD TRUST, : Index No.  
:  
Plaintiff, :  
:  
-against- : **VERIFIED COMPLAINT**  
:  
FOX ROTHSCHILD LLP, GARY S. :  
MORIWAKI, ESQ., ABBE G. SHAPIRO, :  
ESQ. and DAMIANOS MARKOU, ESQ., :  
:  
Defendants. :  
:  
-----X

Plaintiff, Dr. Tara Allmen, in her capacity as the Executor of the Estate of Renee Allmen (hereinafter referred to as the “Decedent” or “Mrs. Allmen”) and in her capacity as the Trustee of the Allmen Charitable Trust (the “CLT”), created under Article Second of the Will of Renee Allmen dated July 27, 2005 (the “Will”), by and through her attorneys, Frankfurt Kurnit Klein & Selz, P.C., for her complaint against the defendants Fox Rothschild LLP (“Fox Rothschild”), Gary S. Moriwaki, Esq. (“Moriwaki”), Abbe G. Shapiro, Esq. (“Shapiro”) and Damianos Markou (“Markou”) (Fox Rothschild, Moriwaki, Shapiro and Markou collectively referred to herein as “Defendants”), alleges as follows:

**NATURE OF THIS ACTION**

1. This is an action for legal malpractice and excessive billing. As detailed below, despite holding themselves out as experienced trusts and estates attorneys, Defendants mishandled the administration of the Estate of Renee Allmen (the “Estate”) in

numerous respects, causing hundreds of thousands of dollars in damages. Despite the poor quality of the services they rendered, Defendants billed the Estate over \$300,000 in legal fees, an excessive and unjustified amount, which unbelievably included time spent discussing and reviewing the very claims of legal malpractice that are the subject of this Complaint.

2. Defendants claimed to be paying attention to the administration of this Estate, and they should have been, considering that the Decedent's gross estate was in excess of \$10,000,000. While Defendants billed the Estate liberally, they apparently spent precious little time focusing on important administration matters, as evidenced by the fact that they missed obvious issues, with disastrous consequences for the Estate.

3. Among other things, after Renee Allmen's death, and at the outset of Defendants' representation of the Estate, Defendants failed to perform any sort of analysis to determine whether there were sufficient assets in the Decedent's residuary estate to cover debts, expenses and taxes without chipping away at the assets Mrs. Allmen had specifically bequeathed to the CLT. Defendants also characterized certain accounts belonging to Mrs. Allmen (valued at approximately \$1,400,000) as joint accounts that passed outside of the Will, without performing any investigation (beyond, admittedly, only "spot checks" of account statements) into the nature of those accounts. The consequence of Defendants' failures was that those accounts were not treated by the Internal Revenue Service (the "IRS") as assets available to pay debts, expenses and taxes of the Estate, and as a result the Estate was assessed over \$450,000 in taxes that it should not have had to pay.

4. In a similar vein, Defendants made the obvious error of deducting on Schedule K of the Estate's Federal estate tax return (the "Federal Return") the gift taxes

payable on gifts made within three years of the Decedent's death, while neglecting to include as an asset those very same gift taxes on Schedule G of the Federal Return, although Defendants admitted that "[t]hey should have been." As a result of this error, the IRS assessed a \$17,000 negligence penalty against the Estate.

5. But Defendants' errors did not end there. Again because Defendants admit that they only performed haphazard "spot checks" of Mrs. Allmen's account statements to look for "significant gifts," they failed to notice that, during her life, Mrs. Allmen was paying the premiums on insurance policies on her life that were owned by her daughter, Dr. Allmen. As a result, although Defendants disclosed on the Federal Return the death benefits that Dr. Allmen received from these policies, they did not report the premium payments as gifts. It was only after the Estate was audited by the IRS (the "Audit") that Defendants went back and reviewed the account statements and noticed these payments and other gifts, which collectively totaled almost \$1,000,000.

6. Through their sloppiness and inattention, Defendants also considerably delayed the Audit, which resulted in increased legal fees for the Estate. Among other things, the Estate had to pay approximately \$100,000 in new attorneys' and accountants' fees to rectify mistakes Defendants made.

7. Finally, Defendant Moriwaki also made serious errors in work he performed for Dr. Allmen in her individual capacity. Moriwaki drafted for Dr. Allmen a trust to own an insurance policy on her life, a typical vehicle for estate planning. However, he made a glaring error – he had Dr. Allmen serve as the trustee of her own life insurance trust. Because Dr. Allmen provided the funds to the trust for maintaining the policy in question, her serving as trustee would cause the proceeds of the life insurance policy to be included in her taxable estate, causing significant estate taxes to be assessed.

After discovery of Moriwaki's flagrant mistake, Dr. Allmen was able to resign as trustee of her own life insurance trust, which hopefully will avoid the damage caused to her. However, if she dies within three years of the date that she resigned as trustee, Moriwaki's error may cause unnecessary taxes to be paid.

8. Despite all of these issues, Defendants had no qualms about charging (and overcharging) the Estate for their legal services. In all, Defendants charged over \$300,000 in legal fees, approximately \$100,000 of which were billed after they were told to stop working on the Estate.

9. In sum, Plaintiff seeks damages of over \$575,000, plus the return of a portion of the approximately \$150,000 it paid Fox Rothschild for its substandard and sloppy work in administering the Estate, and a declaration that it does not owe the remaining \$150,000 in fees Fox Rothschild has charged.

### PARTIES

10. Dr. Allmen is the daughter and sole distributee of Renee Allmen, who died on June 15, 2006. The Will was admitted to probate by the Surrogate's Court for the State of New York, New York County (the "Surrogate's Court") on or about July 17, 2006, and Letters Testamentary were thereupon issued to Dr. Allmen as Executor.

11. Dr. Allmen is also the Trustee of the CLT, which is a trust that provides annual distributions for twenty years following Mrs. Allmen's death to a charitable foundation known as the Allmen Foundation. Upon the expiration of the twenty year term, the then principal of the CLT is to be distributed to Dr. Allmen, who is the remainder beneficiary of the CLT.

12. Upon information and belief, Defendant Moriwaki is, and at all relevant times was, an attorney duly licensed to practice law in the State of New York. Upon

information and belief, prior to January of 2007, Moriwaki was a partner at the law firm Young Moriwaki & Greenfader LLP (“YMG”). Upon information and belief, in or about January of 2007, YMG merged with Fox Rothschild, and Moriwaki became a partner at Fox Rothschild, with a business address of 100 Park Avenue, Suite 1500, New York, NY 10017.

13. Upon information and belief, Defendant Shapiro is, and at all relevant times was, an attorney duly licensed to practice law in the State of New York. Upon information and belief, Shapiro is a partner at Fox Rothschild, with a business address of 100 Park Avenue, Suite 1500, New York, NY 10017.

14. Upon information and belief, Defendant Markou is, and at all relevant times was, an attorney duly licensed to practice law in the State of New York. Upon information and belief, Markou is a partner at Fox Rothschild, with a business address of 100 Park Avenue, Suite 1500, New York, NY 10017.

15. Upon information and belief, Fox Rothschild is, and at all relevant times was, a Pennsylvania limited liability partnership engaged in the practice of law, with an office for the practice of law at 100 Park Avenue, Suite 1500, New York, NY 10017.

16. Upon information and belief, at the time of the YMG/Fox Rothschild merger, Fox Rothschild assumed the known and unknown liabilities of YMG and its partners.

#### **JURISDICTION AND VENUE**

17. This Court has subject matter jurisdiction over this action pursuant to CPLR § 301. This Court has personal jurisdiction over Defendants pursuant to CPLR § 301.

18. Venue is proper in this County pursuant to CPLR § 503(a) because Plaintiff resides in the County of New York.

### FACTS

#### **The Defendants Prepare and File the Estate Tax Returns without Properly Reviewing Mrs. Allmen's Finances and Account Statements**

19. YMG and Moriwaki formulated Mrs. Allmen's final estate plan and drafted the Will.

20. On or about June 27, 2006, twelve days after her mother's death, Dr. Allmen retained YMG to represent her as the Executor of the Estate. Dr. Allmen is a medical doctor (specializing in Obstetrics and Gynecology) with no training or experience in law, finance, banking or tax preparation.

21. Moriwaki represented to Dr. Allmen that he and YMG possessed the skills and experience necessary to provide Dr. Allmen with legal advice regarding the administration of the Estate.

22. In a long and detailed retainer agreement dated June 27, 2006 (the "Retainer Agreement"), YMG and Moriwaki promised, among other things, to:

- a. "[a]ssist [Dr. Allmen] in preparing *a complete inventory of all assets of any kind or nature which are subject to probate, and any non-probate assets such as life insurance, retirement benefits, and other assets;*"
- b. "[a]ssist [Dr. Allmen] in conducting *a thorough search* for all debts, obligations and contingent liabilities of the Estate *in order to determine the financial condition of the Estate* and advise you regarding other actions which must be taken by you to secure, reinvest, or protect the

assets and provide for the discharge of liabilities, including estate and/or income taxes;”

- c. “[c]oordinate the marshalling, collection, transfer, liquidation and distribution of Estate assets, *including the review of all relevant Estate financial records* and the preparation of all correspondence to banks, brokerage houses . . . and other financial institutions . . . for the purposes of preparing the Estate tax returns;” and
- d. “[p]repare all Estate tax returns . . . [and] [a]dvice you regarding the payment of all Estate taxes *and the source of the funds* to be used for payment.”

Retainer Agreement, ¶¶ 1(a), (b), (d), (g) & (h) (emphasis added).

23. On the basis of the Retainer Agreement and her conversations with Moriwaki regarding his skill and expertise, Dr. Allmen believed that Moriwaki and his law firm would properly review and marshal the assets of the Estate, identify and properly discharge the Estate’s liabilities, and prepare and file accurate Estate tax returns. Dr. Allmen was wrong.

24. Moriwaki was the attorney primarily responsible for preparing the Federal Return and the New York State estate tax return (the “State Return”) (the Federal Return and State Return collectively referred to herein as the “Tax Returns”) for the Estate.

25. On or about September 17, 2007, approximately nine months after YMG merged with Fox Rothschild and Moriwaki became a partner of Fox Rothschild, Fox Rothschild filed the Tax Returns. Shapiro and Markou both reviewed the Federal Return before it was filed.

26. From the date the Estate retained Moriwaki and YMG, to the date the Federal Return was filed by Fox Rothschild, the Estate was billed over \$100,000 in legal fees.

27. However, even with all of that time billed to the Estate, and contrary to the provisions of the Retainer Agreement, upon information and belief no one at YMG or Fox Rothschild ever prepared an analysis of the proposed distribution of the Estate's assets and satisfaction of the Estate's liabilities, i.e. the "financial condition" of the Estate, as referred to in the Retainer Agreement, before preparing or filing the Federal Return.

28. In addition, at the time of her death, Mrs. Allmen maintained over twenty different brokerage and bank accounts at various financial institutions that listed both her name and Dr. Allmen's name as the account holders (the "Accounts"). At the time of Mrs. Allmen's death, the Accounts were valued at approximately \$1,400,000.

29. Upon information and belief, after Mrs. Allmen's death, and before the Tax Returns were filed, Fox Rothschild obtained numerous account statements for each of the Accounts, dating back to at least 2002 (the "Account Statements").

30. Upon information and belief, the only review of the Account Statements that anyone at YMG or Fox Rothschild ever did before filing the Federal Return was "spot checks" in an attempt to discover whether Mrs. Allmen had made "significant gifts" during her lifetime.

31. Upon information and belief, no one at YMG or Fox Rothschild ever reviewed the Account Statements, prior to the filing of the Tax Returns, to determine whether the Accounts were held as "joint tenants with right of survivorship ("JTWROS")" or whether instead they were "convenience accounts."

32. No one at YMG or Fox Rothschild ever elicited from Dr. Allmen the factual information required to determine whether the Accounts were JTWROS accounts or convenience accounts before filing the Tax Returns.

**The Defendants List the Accounts on the Wrong Schedule of the Federal Return**

33. Despite not having reviewed the Account Statements, or obtained from Dr. Allmen the necessary information regarding the nature of the Accounts, Moriwaki prepared, Shapiro and Markou reviewed, and Defendants filed a Federal Return that listed all of the Accounts on Schedule E of the Federal Return, which is titled “Jointly Owned Property.”

34. JTWROS accounts are reported on Schedule E, but convenience accounts are not. The significance of reporting an asset on Schedule E is that the asset is not treated as passing under the decedent’s will, and therefore cannot be considered part of the residuary estate (the estate assets remaining after specific bequests and legacies have been satisfied) that would otherwise be available to pay debts, expenses and taxes. In the Will, as drafted by Moriwaki, the tax clause directed the Executors to pay from the residuary estate (which would not include JTWROS assets) estate taxes attributable to all property included in the Decedent’s “taxable estate” (which would include JTWROS assets). The unfortunate result of that formulation is that the residuary estate was saddled with the burden of paying estate taxes on assets that it did not own.

35. If the Defendants had properly reviewed the Account Statements, and/or properly consulted with Dr. Allmen, they would have realized that all, or at the very least many, of the Accounts were convenience accounts, not JTWROS accounts, that should not have been reported on Schedule E.

36. Among other things, before filing the Federal Return, Defendants should have determined that:

- a. Dr. Allmen was not the source of any of the funds used to open any of the Accounts;
- b. Dr. Allmen never made any withdrawals from any of the Accounts, and in fact Mrs. Allmen wrote checks to Dr. Allmen from the Accounts;
- c. with a few limited exceptions, all of the Account Statements were mailed to Mrs. Allmen, not Dr. Allmen;
- d. Dr. Allmen used some of the Accounts, at Mrs. Allmen's direction, to pay for items and expenses on Mrs. Allmen's behalf when Mrs. Allmen was too ill to do so; and
- e. Dr. Allmen never believed that any of the funds in the Accounts belonged to her during Mrs. Allmen's lifetime, and instead believed that all of the money in those Accounts belonged to her mother, Mrs. Allmen.

37. Had Defendants obtained and evaluated the information listed in paragraph 36 above, they would and should have realized that many, if not all, of the Accounts were convenience accounts, and they would not have reported the Accounts on Schedule E of the Federal Return. While this would have prevented the Accounts from passing directly to Dr. Allmen, and would instead have caused the Accounts to pass as part of the residuary estate, the money in those Accounts would have been applied to the payment of debts, expenses and taxes, and the overall estate tax liability would have been reduced by at least \$450,000. Moreover, the CLT (the remainder of which Dr. Allmen

receives upon expiration of the twenty year term) would have been funded with a significantly higher sum of money.

38. Dr. Allmen in fact used the assets in the Accounts to satisfy debts, expenses and taxes of the Estate, in effect treating the Accounts as what they truly were -- convenience accounts that were part of the residuary estate.

### **Defendants Fail to Include Certain Gift Taxes on the Federal Return**

39. Defendants made yet another error with respect to the Federal Return when they did not account for the payment of certain gift taxes by the Estate.

40. Schedule K of a federal estate tax return (titled "Debts of the Decedent, and Mortgages and Liens") is supposed to list all of the debts of a decedent, as well as the amount the estate claims as a deduction based on those debts. Schedule G of a federal estate tax return (titled "Transfers During Decedent's Life") is supposed to list "[g]ift tax paid or payable by the decedent or the estate for all gifts made by the decedent . . . within 3 years before the decedent's death."

41. Moriwaki prepared, and upon information and belief both Shapiro and Markou reviewed, and Defendants filed Schedule K of the Federal Return. Schedule K clearly listed as a debt the Federal and New York State gift taxes, interest and penalties thereon that the Estate had paid on certain gifts made by the Decedent in 2005 and 2006. The total amount of the claimed deduction based on the payment of these taxes, interest and penalties was \$264,653.

42. Although the gifts referenced in paragraph 41 above clearly were made within three years before Mrs. Allmen's death (she died in 2006), Defendants unjustifiably neglected to list the gift tax, interest and penalties paid of \$264,653 on Schedule G of the Federal Return.

43. Defendants have admitted to this error. When asked why these gift taxes, interest and penalties were not listed on Schedule G of the Federal Return, Defendant Shapiro responded in writing that “[t]hey should have been.”

44. As a result of this error, the IRS assessed a negligence penalty of approximately \$17,000 against the Estate (the “Schedule G Penalty”).

#### **The Defendants Mishandle the IRS Audit of the Estate**

45. In or about June of 2008, the IRS selected the Estate for audit. Defendants undertook to represent the Estate in connection with the Audit.

46. Upon information and belief, Moriwaki, Shapiro and Markou were all responsible for handling the Audit.

47. The Audit unearthed many problematic issues that Defendants should have identified and addressed before the Federal Return was filed.

48. Among other things, the IRS questioned whether Mrs. Allmen had paid the premiums on insurance policies taken out on her life, despite Dr. Allmen’s ownership of the policies, and whether those payments should have been reported as gifts, which they were not.

49. Moriwaki ultimately submitted an affirmation made under penalty of perjury to the IRS, in which he admitted that the Defendants had conducted only “spot checks” of the Account Statements before filing the Federal Return, and therefore did not catch the fact that Mrs. Allmen had paid the life insurance premiums on Dr. Allmen’s behalf, thereby making taxable gifts.

50. In the end, the premium payments and other gifts that Defendants failed to identify before filing the Federal Return amounted to nearly \$1,000,000. The Estate only narrowly avoided having to pay a negligence penalty far in excess of the Schedule G

Penalty because it was able to demonstrate that Dr. Allmen had relied on the advice of professionals (namely Defendants) in connection with the failure to identify these payments and gifts.

51. The Audit also revealed that the federal income tax returns filed by Mrs. Allmen in the three years prior to her death contained bank accounts and other financial accounts that were not listed on the Federal Return. Defendants offered no explanation to Dr. Allmen or to the IRS as to why they had not discovered those accounts before the Federal Return was filed, and with reasonable diligence Defendants should have discovered those accounts.

52. Finally, it was the IRS, not Defendants, that recognized the impact of Defendants' failure to conduct a financial analysis of the Estate and to run interrelated computations before filing the Federal Return. Because the Accounts were listed on Schedule E, the approximately \$1,400,000 they held was treated by the IRS as passing outside of the Will, and therefore not available as part of the residuary estate to pay the debts, expenses and taxes of the Estate. Instead, the IRS concluded that a portion of the estate taxes had to be charged against assets specifically bequeathed to the CLT. When estate taxes are paid out of a charitable bequest, the amount of the charitable deduction that would otherwise be allowed is reduced by the amount of taxes payable. *See* I.R.C. 2055(c); Treas. Reg. 20.2055-3(a). This leads to what is called a "circular" or interrelated computation, because the reduction in the charitable deduction in turn increases the estate taxes payable, which again reduces the charitable deduction and again increases the taxes payable, and so on. The result is an increase in the overall amount of estate taxes payable. This unfortunate result is often referred to in the estate planning

community as a “snowball.” In the end, the IRS determined that this “snowball” effect increased the Estate’s tax liability by approximately \$450,000.

53. It is clear from the Federal Return that Defendants did not in any way consider the impact that placing the Accounts on Schedule E would have on the Estate, because no interrelated computations (such as those performed by the IRS) were done. Defendants did absolutely no analysis of the interplay between the structure of Mrs. Allmen’s Will and the assets and liabilities of the Estate before the Federal Return was filed, though they should have, and reasonable attorneys would have.

54. In fact, in the midst of the Audit, Defendants admitted in writing that the Accounts should *not* have been listed on Schedule E at the time the Federal Return was filed. Specifically, on or about December 16, 2009, Shapiro wrote regarding a meeting with the IRS that “[t]he fact that the estate had insufficient funds to cover the taxes, administration expenses and debts still remains a major problem. It clearly would affect the calculation of the charitable deduction taken on the [Federal Return] with respect to the [CLT]. I tried to argue that *the joint bank accounts should really have been reported on Schedule B since [Dr. Allmen] never used any of the funds in these accounts and suggested that we make this adjustment. True convenience accounts would have been added to the probate estate.* Not a very positive response to this.” (emphasis added).

55. The Audit was also plagued with delays and inefficiencies caused by the Defendants. The IRS had to ask Defendants numerous times for the documents it needed to complete the Audit. At times, Defendants were completely unresponsive to the IRS’s requests. This lack of care and attention by Defendants to the affairs of the Estate prolonged the Audit and resulted in, among other things, increased legal bills to the Estate.

56. The Estate ultimately had to hire new lawyers and accountants to complete its representation in connection with the Audit, and to rectify mistakes the Defendants made, at a cost of approximately \$100,000.

**The Defendants Bill the Estate Inappropriate and Excessive Fees**

57. As alleged above, just in the time period between Mrs. Allmen's death and the filing of the Tax Returns, which were inaccurate and sloppily prepared, the Estate was billed, and paid, over \$100,000 in legal fees.

58. The commencement of the Audit, and the revelation of numerous matters that Defendants should have investigated before the Tax Returns were filed, in no way slowed down the billings to the Estate. In fact, the bills began mounting at an even faster pace.

59. Among the improper billing practices Defendants engaged in, Moriwaki in particular routinely used the disfavored billing practice of "block billing," meaning that he billed large amounts of time to the Estate with only the most cursory explanation of the tasks being performed. Indeed, Moriwaki frequently entered only the word "706" as a description of his services, for small or large blocks of time, presumably as a reference to services related to the Federal Return (which was submitted on IRS Form 706).

60. Defendants also did not issue bills that accurately reflected the amount of time billed in any particular month. Bills issued in a particular month routinely contained time entries from that month, plus time entries from past months that had not appeared on prior bills. As a result, it was difficult, if not impossible, for Dr. Allmen to accurately assess how much the Estate was being billed for work performed in any given month. The subsequent addition of billable time from previous months also suggests that Defendants were not maintaining contemporaneous records of time billed to the Estate,

but instead were recreating and entering their time long after the work was purportedly done, an inappropriate billing practice.

61. In or about January of 2010, Defendants were asked to stop working on the Estate until further notice. Defendants continued to render bills to the Estate for months after they were told to cease their work, amounting to additional charges of about \$100,000. Incredibly, these unauthorized charges even included time that Moriwaki spent in a meeting with the Estate's new counsel, the purpose of which was to explain to him the mistakes he had made in the administration of the Estate.

62. Indeed, if all of the legal fees and disbursements charged by Defendants are added up, the Estate was billed over \$300,000. This is an excessive amount, particularly in light of the inefficiencies, sloppiness and mistakes that the Audit exposed.

#### **Defendants' Errors with Respect to Dr. Allmen's Estate Planning**

63. In or about the Fall of 2006, before she knew of the grave errors Defendants committed with respect to their representation of the Estate, Dr. Allmen retained Moriwaki and YMG to assist her with her own estate planning. Moriwaki recommended that an irrevocable trust be created to own an insurance policy on Dr. Allmen's life (the "Life Insurance Trust"), a typical vehicle for estate planning.

64. Upon information and belief, Moriwaki drafted the trust agreement that created the Life Insurance Trust (the "Trust Agreement"). On or about October 6, 2006, relying on Moriwaki's advice, Dr. Allmen executed the Trust Agreement. In an obvious deviation from the standard of care, Moriwaki had the Trust Agreement provide for Dr. Allmen to act as both grantor and trustee of her own Life Insurance Trust. This was a significant error. Because Dr. Allmen would be providing the consideration for paying the premiums for the policy owned by the Life Insurance Trust (through gifts to the Life

Insurance Trust), her designation as trustee would cause the proceeds of the policy owned by the Life Insurance Trust to be included in her taxable estate, causing significant estate taxes to be paid and negating the estate planning purpose of the Life Insurance Trust.

65. In or about January of 2009, Dr. Allmen resigned as trustee of the Life Insurance Trust. As long as Dr. Allmen does not die within three years of the date she resigned as trustee, she should not suffer any damage as a result of Moriwaki's error.

### **The Tolling Agreement**

66. On or about October 2, 2009, Dr. Allmen, Moriwaki and Fox Rothschild entered into a tolling agreement (the "Tolling Agreement"), which provided that the statute of limitations on any claim Dr. Allmen or the Estate might have, which had not expired as of October 2, 2009, was tolled to and including February 1, 2012.

67. The Tolling Agreement further provided, among other things, that any claim brought between October 2, 2009 and February 1, 2012 would be treated for purposes of any statutes of limitation as though it had been brought on October 2, 2009.

### **FIRST CAUSE OF ACTION FOR LEGAL MALPRACTICE**

68. Plaintiff repeats and realleges each allegation of Paragraphs 1 through 67 above as if fully set forth herein.

69. Defendants failed to exercise the degree of care, skill, diligence and knowledge commonly exercised by a reasonable lawyer under the circumstances, in that (among other things) Defendants:

- a. failed to conduct a financial analysis of the assets, debts, expenses and tax liabilities of the Estate prior to filing the Tax Returns;

- b. failed to review and analyze the Account Statements, beyond admitted “spot checks” prior to filing the Tax Returns;
- c. erroneously listed the Accounts on Schedule E of the Federal Return;
- d. failed to include gift taxes paid by the Estate for gifts made within three years of Mrs. Allmen’s death on Schedule G of the Federal Return;
- e. failed to recognize that Mrs. Allmen had paid the premiums for life insurance policies on her life that were owned by Dr. Allmen;
- f. failed to report certain accounts and gifts in the Federal Return;
- g. mishandled the Audit of the Estate, including by delaying the submission of documents and information to the IRS; and
- h. engaged in excessive and unauthorized billing of the Estate.

70. As a direct and proximate result of Defendants’ conduct, Plaintiff has been damaged in an amount to be proven at trial, but not less than \$575,000, including but not limited to:

- a. unnecessary tax liability in the amount of at least \$450,000;
- b. additional attorney and accountant fees in the amount of at least \$100,000; and
- c. an IRS penalty in the amount of \$17,000.

71. In addition, Plaintiff was damaged, and seeks restitution of some portion of the approximately \$150,000 in legal fees and costs charged by Defendants to perform these negligent services.

**SECOND CAUSE OF ACTION  
FOR EXCESSIVE AND UNAUTHORIZED FEES**

72. Plaintiff repeats and realleges each allegation of Paragraphs 1 through 71 above as if fully set forth herein.

73. As attorneys, at all times relevant herein Defendants owed a fiduciary duty to the Estate, including the duty to charge a reasonable and lawful fee, to avoid excessive, duplicative, unlawful and unauthorized billing, and to communicate accurately the basis for any fees charged to the Estate.

74. Defendants breached that duty by, among other things, charging the Estate excessive fees, block billing, and billing the Estate for unauthorized charges.

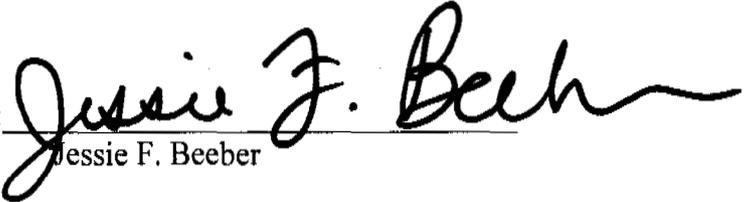
75. As a result, the Estate is entitled to restitution of fees paid to Defendants in the amount of not less than \$150,000, and a declaration that the Estate has no obligation to pay Defendants' unpaid fees in the amount of approximately \$150,000.

**DEMAND FOR RELIEF**

WHEREFORE, Plaintiff demands damages in an amount to be determined at trial, but believed to be no less than \$575,000 plus interest at the maximum allowable rate, and a declaration that Plaintiff is not liable for the amount of approximately \$150,000, which Defendants claim is owed to them in unpaid fees, and all such other and further relief as the Court deems just and proper.

Dated: New York, New York  
February 16, 2011

FRANKFURT KURNIT KLEIN & SELZ, P.C.

By:   
Jessie F. Beeber

488 Madison Avenue, 10th Floor  
New York, New York 10022  
Tel.: (212) 980-0120  
Fax: (212) 593-9175

*Attorneys for Plaintiff Dr. Tara Allmen, as Executor  
of the Estate of Renee Allmen and Trustee of the  
Allmen Charitable Lead Trust*

**VERIFICATION**

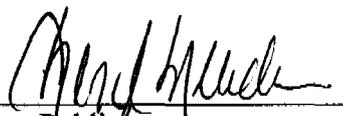
STATE OF NEW YORK    )  
  )ss.:  
COUNTY OF NEW YORK )

DR. TARA ALLMEN, being duly sworn, deposes and says:

I am the Executor of the Estate of Renee Allmen and the Trustee of the Allmen Charitable Lead Trust, the Plaintiff in the within action. I have read the foregoing Verified Complaint and it is true to my knowledge, as stated therein, except as to matters therein stated to be alleged upon information and belief and as to those matters I believe them to be true.

 <sup>MD</sup>  
\_\_\_\_\_  
DR. TARA ALLMEN

Sworn to before me this  
16<sup>th</sup> day of February, 2011.

  
\_\_\_\_\_  
Notary Public

CHERYL MEADOWS  
Notary Public, State of New York  
Qualified in New York County  
No. 01ME822566  
My Commission Expires 9/26/14

PLEASE take notice that the within is a (*certified*) true copy of a duly entered in the office of the clerk of the within named court on

SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF NEW YORK

Dated,

Yours, etc.

Frankfurt Kurnit Klein & Selz, P.C.  
A Professional Corporation

Attorneys for

Office and Post Office Address  
488 Madison Avenue  
New York, New York 10022

DR. TARA ALLMEN, as Executor of the ESTATE OF RENEE ALLMEN, and TRUSTEE of the ALLMEN CHARITABLE LEAD TRUST,

Plaintiff

-against-

FOX ROTHSCHILD LLP, GARY S. MORIWAKI, ESQ., ABBE G. SHAPIRO, ESQ. and DAMIANOS MARKKOUS, ESQ.,

Defendants.

To

Attorney(s) for

NOTICE OF SETTLEMENT

PLEASE take notice that an order

of which the within is a true copy will be presented for settlement to the Hon.

one of the judges of the within named Court, at

on

at

Dated,

M.

Yours, etc.

Frankfurt Kurnit Klein & Selz, P.C.  
A Professional Corporation

Attorneys for

Office and Post Office Address  
488 Madison Avenue  
New York, New York 10022

To

Attorney(s) for

DR. TARA ALLMEN, as Executor of the ESTATE OF RENEE ALLMEN, and TRUSTEE of the ALLMEN CHARITABLE LEAD TRUST,

Plaintiff

-against-

FOX ROTHSCHILD LLP, GARY S. MORIWAKI, ESQ., ABBE G. SHAPIRO, ESQ. and DAMIANOS MARKKOUS, ESQ.,

Defendants.

To

Attorney(s) for

VERIFIED COMPLAINT

Signature (Rule 130-1.1-a)

Print name beneath

Frankfurt Kurnit Klein & Selz, P.C.  
A Professional Corporation  
Attorneys for Plaintiff

Office and Post Office Address, Telephone  
488 Madison Avenue  
New York, New York 10022  
(212) 980-0120

To

Attorney(s) for

Service of a copy of the within is hereby admitted.  
Dated,

Attorney(s) for