

1 STATE OF MINNESOTA DISTRICT COURT
2 COUNTY OF CARVER FIRST JUDICIAL DISTRICT

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4 In Re the Estate of:

5 Prince Rogers Nelson, Deceased. File No. 10-PR-16-46

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MOTION HEARING

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9 The above-entitled matter came on for hearing
10 before the Honorable Kevin W. Eide, Judge of District Court,
11 on January 21, 2022, at the Carver County Justice Center, in
12 the City of Chaska, County of Carver, State of Minnesota.

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APPEARANCES

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Mark Berg, Esq., and Kennedy Barnes, Esq.,
appeared on behalf of White Wiggins & Barnes.

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Eric Magnuson, Esq., appeared on behalf of Primary
Wave Music IP Fund 1, LP.

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Joe Cassioppi, Esq., appeared on behalf of
Comerica Bank & Trust N.A.

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Brian Jorde, Esq., appeared on behalf of the
Estate of Alfred Jackson.

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1 PROCEEDINGS:

2 THE COURT: On the record in the Matter of
3 the Estate of Prince Rogers Nelson. Court File is
4 10-PR-1646. We're here today, we were scheduled for
5 two hearings regarding attorney lien claims. One of
6 them was involving the Cozen O'Connor claim, and my
7 understanding is that that has been resolved, the
8 parties -- or, the parties are trying to finalize a
9 resolution and that that would not be heard today. Is
10 there anyone on the Zoom hearing that is appearing in
11 that matter? All right. And then we have a second
12 lien claim, and can I ask the parties to note your
13 appearance, though who is appearing on the party
14 that's trying to enforce the lien?

15 MR. BERG: Marc Berg, M-A-R-C, B-E-R-G. I
16 am local counsel for White Wiggins Barnes. Also on is
17 Kennedy Barnes. Kennedy, if you want to note your
18 appearance.

19 MR. BARNES: Sure. I'm Kennedy Barnes, here
20 on behalf of White Wiggins & Barnes, the applicant.

21 THE COURT: Okay. Mr. Berg, I had
22 difficulty hearing you. Seemed like you're a bit
23 muted. I don't know if you can get closer to the
24 microphone or what might help.

25 MR. BERG: Yeah. I apologize, Your Honor.

1 Is this better?

2 THE COURT: A little bit.

3 MR. BERG: Okay. Yeah. How's this?

4 THE COURT: Okay.

5 MR. BERG: All right.

6 THE COURT: And who's appearing on behalf of
7 Primary Wave?

8 MR. MAGNUSON: Helps if I unmute. Your
9 Honor, Eric Magnuson on behalf of Primary Wave. My
10 partner Matt Frerichs is here, but in an observer
11 capacity. I am counsel of record on this matter.

12 THE COURT: Okay. And Mr. Cassioppi, would
13 you note your appearance on behalf of the estate and
14 anyone that's appearing with you.

15 MR. CASSIOPPI: Good afternoon, Your Honor.
16 Joe Cassioppi on behalf of Comerica in its capacity as
17 personal representative.

18 MR. MAGNUSON: Your Honor, I think we also
19 have Brian Jorde here, who is the court-appointed --
20 not quite sure the term in Missouri, but he is in
21 charge of the estate down there.

22 THE COURT: On behalf of the Alfred Jackson
23 --

24 MR. MAGNUSON: The Alfred Jackson estate,
25 Your Honor.

1 THE COURT: All right. And I will note the
2 appearances of Johnny Nelson Jr., Sharon Nelson,
3 Charles Spicer, and L. Londell McMillan as other
4 interested parties connected with the estate. Is
5 there anyone else that I have failed to mention? All
6 right. Well, I see that Justice Gilbert is with us
7 today, court-appointed mediator and moderator. All
8 right. And Mr. Berg, you'll be arguing on behalf of
9 White Wiggins & Barnes; is that correct?

10 MR. BERG: No, Your Honor. Kennedy Barnes
11 is going to be arguing.

12 THE COURT: Okay. Then Mr. Barnes, I'll let
13 you proceed, but -- my computer just slid off of
14 another computer. I have kind of a threshold question
15 that I'd direct you to, to start out with. I have
16 read everything. I think that both sides have done an
17 excellent job of briefing, and you don't need to
18 repeat things that were already in your memorandums,
19 but it's argued by Primary Wave that there is no
20 longer an enforceable debt because Mr. Jackson is no
21 longer living, and any effort to try to enforce the
22 debt against the estate has been denied for, whether
23 it was a technical reason or a substantive reason, in
24 any event, there is no longer a legally-enforceable
25 debt against the estate. So that's one question. If

1 your answer is that you agree with that, then the
2 second question raised is, if there is no
3 legally-enforceable debt, can you enforce a lien? Go
4 ahead, Mr. Barnes.

5 MR. BARNES: Thank you, Your Honor. May it
6 please the Court, I'll just jump right into the
7 question of debt. But I think that I have to kind of
8 give -- just reiterate the purpose of Section 481.13
9 and the cases that have interpreted it. This question
10 of debt, and I think they've even kind of
11 characterized it in their final final reply as a
12 breach of contract, actually belies the wording of the
13 statute as intended by the legislature.

14 The purpose of the attorney lien, of course,
15 Your Honor, is to prevent the party, the client, from
16 running away, whether it's through settlement, some
17 judgment, whatever, running away from paying for the
18 work that was provided in this action. In this case,
19 it is a lien against the distribution in the Prince
20 estate. There have been a myriad cases that I cited
21 to, Your Honor, that say, despite a judgment, despite
22 any kind of foreign determination, that despite a sale
23 of assets, that the lien is not extinguished until it
24 is satisfied, and they have cited to no cases
25 whatsoever, Your Honor, that trump that law. I cited

1 and spent considerable time talking about not just the
2 purpose of the lien, but how Section 481.13 preempts
3 the common law.

4 Now, the argument that they're making, Your
5 Honor, at its core, is a common law defense to our
6 attempt to get paid. They're saying -- by using these
7 words, forfeiture, by using these words, you know, it
8 is extinguished by what happened in Missouri, they're
9 saying that Missouri law or some common law principle
10 that allows them to enforce Missouri law or any
11 foreign law is, takes precedent over the Minnesota
12 statute. But the legislature was very clear, and the
13 case law interpreting Section 481.13 is very clear.
14 481.13 preempts any issue related to a lien in
15 Minnesota courts.

16 If you look at the cases that we cite, we
17 mention the City of Oronoco case that establishes that
18 proposition, a lien which is created, Your Honor, when
19 you do the work under an engagement, so the lien was
20 created long ago, it is perfected and enforced
21 pursuant to the statute.

22 THE COURT: Could you spell Oronoco for my
23 reporter.

24 MR. BARNES: Sure. O-R-O-N-O-C-O. I think
25 that's correct. Yes, that's right. O-R-O-N-O-C-O.

1 It's City of Oronoco versus Fitzpatrick Real Estate,
2 LLC, and that wasn't -- that case looked at the
3 statutory language and interpreted the statute. The
4 language in the statute, Your Honor, is very
5 straightforward, and this notion that the statute
6 preempts any common law defenses, any foreign
7 judgment, there are cases that says even when a party
8 got a judgment going the other way, it was still
9 enforceable in the proceeding in which fees were
10 incurred.

11 I cite to the Schroeder, Sigfried, Ryan, and
12 Vidas case. It's a Minnesota Supreme Court case,
13 1980, that says that although the charging -- the
14 attorney's charging lien existed at common law and in
15 equity, which is the type of arguments that they're
16 raising, it is now wholly governed by statute.
17 Village of New Brighton versus Jamison, another
18 Minnesota Supreme Court case, 1979. It says the
19 statute, quote, "preempted the field of law regarding
20 attorney's liens and substituted statutory procedures
21 for those of common law and equity." Again, an
22 estoppel argument is a common law defense, and the
23 statute does not recognize that.

24 They had two opportunities to point to a
25 case or a provision in the statute that says a foreign

1 judgment -- and we can talk a little bit about --
2 because you characterize that, I think fairly, as a
3 technical. What happened in New York was, they
4 nullified the claim because it was not signed by a
5 Missouri lawyer. I think that that was wrong. They
6 claim that that's final. I don't know that --
7 certainly, the opportunity to appeal has neither
8 ripened nor expired in this situation, but aside from
9 what happened in Missouri or what could happen in
10 Missouri, it has no bearing and no impact on the lien
11 that was statutorily created when we were engaged and
12 did the work, nor does it impact the specific
13 provisions that say how you perfect that lien and what
14 the court needs to do when it's addressing an
15 application for the lien. So that is the argument on
16 preemption, and they've not done anything other than
17 cite to Missouri law for overcoming that.

18 If you look at the specific provisions of
19 the Minnesota attorney's lien statutes, again,
20 governed by Section 481.13, there are actually two
21 subdivisions. Subdivision 1 sets forth the general
22 provisions, Subdivision 2 provides the process for
23 perfecting the lien, and Subdivision 3, which is not
24 really relevant, talks about statute of limitations,
25 circumstances that don't exist here. Subdivision

1 1(a), Your Honor, establishes the lien. The relevant
2 portion says that an attorney has a lien for
3 compensation from the time he provides services in an
4 action upon the interest of the attorney's client in
5 any money or property involved in or affected by the
6 action or proceedings which attorney was employed from
7 the commencement of that work and as against third
8 parties from the time that the filing of the notice is
9 done as provided in Subsection (d) (a).

10 Now, the provision that talks about -- the
11 relevant portion talks about the lien attaches to the
12 interests of any money. Primary Wave has not even
13 attempted to deal with that. We're talking about
14 collecting money from the fees. This is not against
15 the Jackson estate; this is against Alfred Jackson's
16 interest, which has not been adjudicated in the Prince
17 estate, and we're saying that, before a cash
18 distribution is made, that that lien needs to be
19 satisfied. And again, the statute is very clear.
20 Subsection 2 deals with the perfection of the lien,
21 Your Honor. The relevant section, which is cited by
22 Primary Wave, is Subsection 2(b) and it says, "The
23 notice of the lien must be filed in the same manner as
24 provided by law for the filing of a security
25 interest."

1 Now, Primary Wave has borrowed language from
2 Subsection (d) (a), which involves perfecting a lien on
3 a client's interest in real estate as opposed to money
4 or property. And it's important to note that
5 Subsection (a) there has 149 more words than
6 Subsection (b), the provision that applies to us. And
7 if you look at the language of Subsection (a), it's
8 talking about, you've got to file security interests,
9 you've got to file UCC statements. I don't think it
10 referenced UCC, but it describes what we would know as
11 a UCC statement filing filed with the county. It
12 talks about all of that stuff, right? The provision
13 that deals with non-real-estate issues doesn't say any
14 of that.

15 And so the bottom line, Your Honor -- and I
16 hope that I've addressed this. I'm happy to stop if
17 you have a question. I've got a lot more on different
18 topics, but -- or, on similar topics. But the bottom
19 line here is that this is a lien against the
20 distribution attributable to Alfred Jackson. That
21 distribution has not been made, it still exists for
22 attorney's fees compensation -- which is how the
23 statute describes it. It does not describe it as a
24 debt, it describes it as compensation for the work
25 that was done, and that compensation became subject to

1 lien. The lien was created statutorily when the work
2 was done. At this point, what we're doing is
3 perfecting that by giving notice to all parties,
4 including Primary Wave, personal representative, and
5 the Court, that the fee should be paid before
6 distribution. So this notion that there is no debt,
7 there still is a right to compensation under the
8 statute. There's nothing in the statute that
9 describes it as a debt. It talks about a right to
10 compensation.

11 Now, we know that this is correct, we have
12 confidence that this is correct, because the Minnesota
13 legislature could have said, similar to how they
14 defined how you perfect an interest in real estate,
15 they could have written in exceptions, circumstances
16 where a judgment -- I'm sorry. Where a lien is
17 extinguished other than by satisfaction. They could
18 have written in provisions that required additional
19 notice requirements. They could have written in
20 conditions that protected foreign judgments or
21 judgments of other courts that have an impact on the
22 assets that are being sought. They did none of those
23 things. The language is quite straightforward and
24 quite clear that the lien attaches to money or
25 property affected by the work that was done and is not

1 extinguished until satisfied.

2 I think it's also instructive, Your Honor.
3 So 481.13 deals generally with attorney's liens.
4 There is another provision that also references that
5 general statute that relates specifically, Your Honor,
6 to probate proceedings, and that is Minnesota Statute
7 Section 525.491, and I'll just read that. It says
8 specifically, "When an attorney of law has been
9 retained to appear for any heir or devisee, such
10 attorney may perfect the lien upon the client's
11 interest in the case for compensation for such
12 services as may have been rendered respecting such
13 interest, by serving upon the personal
14 representative," which was done, "before distribution
15 is made," which is done, "a notice of intent to claim
16 a lien for agreed compensation or reasonable value of
17 services." And it specifically states, Your Honor,
18 "The perfecting of such lien, as herein provided" --
19 served the notice before distribution -- "shall have
20 the same effect as the perfecting of a lien as
21 provided in Section 481.13, and such lien may be
22 enforced in the amount thereupon determined in a
23 manner therein provided." So again, there is no
24 exception that allows for these common law elements,
25 these common law defenses and assertions, such as

1 estoppel, which is what they're claiming, forfeiture,
2 which is what they're claiming, or the precedent of a
3 foreign judgment over the statute. None of that is
4 here. The statute is straightforward. The lien is
5 created until it's satisfied, and you perfect it by
6 filing notice before distribution. So I see no basis,
7 Your Honor, for any legal support in Minnesota that
8 the debt is extinguished or that is not debt or that
9 there's no longer a right to a compensation.

10 THE COURT: Okay. And you can continue with
11 whatever other arguments you wish to make.

12 MR. BARNES: Okay. Thank you, Your Honor.
13 Obviously, the point of the -- if you look at the
14 legislative intent and the case laws that have
15 interpreted 481, it's quite simple. It is to prevent
16 the client from running away without paying for the
17 benefits provided by the attorney, and that's exactly
18 what's happening here.

19 The Court may remember that my firm was
20 actually terminated right as Primary Wave had entered,
21 behind our backs, into a contract for Alfred to sell
22 his interest. We were representing Alfred at the
23 time. Arguably, there could be a lien against
24 whatever amounts were involved there, because our
25 contract allows for that. We're simply looking for

1 the hourly time that we spent here, but we were pushed
2 out of representing Alfred specifically so that
3 Primary Wave could move forward with the acquisition,
4 and the Court may recall even the circumstances behind
5 how that came together were untoward. We -- that's
6 exactly the type of circumstance that the statute and
7 the case law interpreting the statutes was intended to
8 prevent. You can't have a client go behind the back
9 of the lawyer, make a deal, accept the benefits of
10 that deal without paying for the attorney's work that
11 was involved in the same proceeding, and that's what
12 they're trying to do here, Your Honor, and they're
13 doing so based on Missouri law that has no application
14 here.

15 There's an argument that they've made with
16 respect to notice. I've got two things, notice and
17 this party distinction. They say, well, you know,
18 Primary Wave is a third party, almost like an innocent
19 third party, which, it's anything but that, that we
20 shouldn't have to be impacted by your attorney lien
21 since we did this deal long before you filed the lien.
22 Well, it's I think it's disingenuous for them to argue
23 that they had no notice of it, because I believe --
24 and I don't have the transcripts on this -- but from
25 what I recall, and I could be wrong, but what I

1 remember is that their attorneys were -- not Mr.
2 Magnuson, but their attorneys were on the hearing call
3 in Missouri, and so they knew that White Wiggins
4 Barnes was asserting a claim -- in that situation, it
5 was a claim, not a lien, but a claim, for fees. That
6 was more like a -- it wasn't a breach of contract, it
7 was a claim. It's not a breach of contract. He died.
8 He doesn't pay us. But it was a claim that is often
9 presented in -- always, almost always, presented in a
10 probate matter.

11 For technical reasons, which I don't think
12 they got right, but, you know, it is what it is, that
13 claim was nullified and thrown out. It does not
14 relinquish, it does not -- the fact that Primary Wave
15 was able to consummate a final deal with Alfred before
16 he died does not impact the fact that Alfred still
17 owed money and that a lien was still valid as to any
18 distribution in Minnesota. But the case law -- and
19 you can look at Williams versus Dow Chemical, and also
20 City of Oronoco talks about what a third party is in
21 conjunction with this, and it says that notice of a
22 lien is enforceable as to third parties, assuming that
23 Primary Wave is a third party here, it's enforceable
24 as to third party so long as it's filed prior to
25 distribution. I don't think there's any dispute here

1 that the distribution in the Prince estate has not yet
2 been made. So that's the issue on -- and I'll address
3 any -- I'll rebut anything that Primary Wave wants to
4 offer in response to this.

5 The bottom line here, if you look at the
6 Williams v. Dow Chemical case -- which is a leading
7 case. It's based on an older version of the statute,
8 but it's a leading case, it clearly states, Your
9 Honor, that the attorney lien is not extinguished
10 until satisfied. It concluded that the lien, once
11 formed, formed by doing the work, is not extinguished
12 until its satisfied, and entry of judgment on the
13 underlying cause of action has no effect on the lien's
14 validity.

15 So I think all the case law points in one
16 direction. The statute is very clear and
17 straightforward that whatever happened in Missouri
18 does not effect the lien. Take, for example, if the
19 claim was not nullified in Missouri, but there wasn't
20 enough money to satisfy our bill. We would still have
21 an opportunity to seek the rest -- whatever we didn't
22 get, to seek the rest of it in an attorney lien in
23 Minnesota. The statute does not prevent that. We
24 were compensated for some of the work that was
25 provided that benefited the estate, a very small piece

1 of it. That didn't impact our ability to seek a lien
2 for the remainder. And so I just don't think that
3 there've been any authority offered to the court that
4 changes the clear language of the statute, the
5 preemptive language of the statute, and all of the
6 case law that says the lien is there until it's
7 settled or extinguished, being paid and satisfied. So
8 I conclude with that, Your Honor.

9 THE COURT: Okay. Thank you very much, Mr.
10 Barnes. Mr. Magnuson.

11 MR. MAGNUSON: Thank you, Your Honor. As a
12 preliminary matter, there is absolutely no support in
13 this record or anywhere in this case for the claim
14 that my client had anything do with the White firm
15 being discharged. That's not an issue that they
16 raised before, and we categorically deny it. It's
17 immaterial, but I had to respond to that. They had a
18 chance to be paid every penny that they were
19 rightfully entitled to be paid by simply filing a
20 timely claim in the Missouri probate. There was
21 plenty of money there; they simply didn't do it. And
22 the value of their claim is now zero.

23 Missouri law is absolutely clear, when you
24 have an estate, if someone has a claim against the
25 decedent for unpaid contract, which is what this is,

1 they have to file a claim. And the Missouri statute
2 we quoted in our reply at the second and third page
3 says, if you don't bring the claim, it is forever
4 barred. It's zero.

5 Now, counsel talked a lot about the Williams
6 case, and we cited that, as well. Williams stands for
7 the unremarkable proposition that a lien doesn't
8 create the debt. A lien is a remedy to ensure payment
9 of the debt, but as we've cited dozens of cases that
10 they don't even respond to, if there's no debt,
11 there's nothing for the lien to protect, and that's
12 the essence of our argument. They didn't bring a
13 claim in the forum where it would have been
14 adjudicated and they would have been paid. They now
15 don't have a claim. They can't bring it anywhere.
16 There is no breach of contract claim that they can sue
17 out anywhere. It's not an estoppel claim on our part,
18 it's that the value of the claim is zero. Now, that
19 should end the discussion. The lien is security for a
20 debt, but it doesn't create the debt, and the Williams
21 case says that.

22 You don't need to get into the perfection
23 issue if you decide the case on that basis. But it's
24 a second reason why they don't get a lien here.
25 Counsel has called your attention to 525.491. It's

1 the statute that specifically talks about perfection
2 of liens in cases where the services are rendered in a
3 probate. You know, 481 talks about cause of action
4 liens. If I sue somebody on behalf of a client for a
5 tort and I get a fund of money for my client to
6 recover, that's a cause of action lien. As we showed
7 when we made the motion to be treated as an interested
8 person in this estate, an expectancy interest in an
9 estate is an item of personal property.

10 481.13 talks about the difference between a
11 cause of action lien and a lien on personal property.
12 It treats a lien on personal property differently, and
13 it treats it exactly in the same way that the
14 legislature prescribed in 525.491. It says if you
15 want a lien for the work you did on an expectancy
16 interest in an estate, you have to file a notice of
17 intent to claim the lien, and that will have the same
18 effect as perfecting it under 481.13.

19 It is absolutely undisputed in this case
20 that they didn't file their notice of intent to claim
21 a lien until after the Alfred Jackson estate interest
22 in the Prince estate, whatever it was, was
23 transferred. The Alfred Jackson estate has no
24 interest whatsoever in the Prince estate anymore.
25 They won't get a distribution. There'll be no

1 distribution, and there is no property to which the
2 lien could attach.

3 Now, they didn't do what Cozen, for example,
4 did. And you've considered other lien, attorney lien,
5 issues in this probate, Your Honor, and I've looked at
6 some of those orders, and in every case, the lawyers
7 seeking the lien perfected it. They filed the notice
8 of intent to claim a lien. Most of them filed UCC
9 financing statements like Cozen did. When Primary
10 Wave bought the Alfred Jackson interest, they did a
11 lien search and they found the Cozen lien and they
12 escrowed the money, which is why that case isn't in
13 front of you today, there was a fund of money set
14 aside to take care of the lien. When we do a lien
15 search and we don't see a lien from White Wiggins &
16 Barnes, we didn't escrow for it.

17 The whole point of 525.491 is to protect
18 clients like mine from an asserted lien that hasn't
19 been perfected. The lien is not the debt; the lien is
20 a remedy that protects the ability to collect the
21 debt. If you can't collect the debt, you don't have a
22 lien. And in any event, the lien doesn't attach to
23 property that has been transferred before the lien is
24 perfected.

25 Now, the last issue that we raise was one of

1 jurisdiction, and I don't think you really need to go
2 there. They're basically asking you to be the forum
3 to adjudicate their claim against the estate of Alfred
4 Jackson for unpaid fees. That's a Missouri probate
5 claim. That is not a claim in the Prince estate.
6 With respect, I don't think that you could entertain
7 it here if you wanted to, but it's inappropriate to
8 ask you to do so. Their claim is a simple breach of
9 contract claim. They did work for a lawyer -- or, I'm
10 sorry. They did work for a client, the client didn't
11 pay, that's a breach of contract. Under Minnesota
12 law, you have to bring a lawsuit to collect. It's a
13 jury trial. It's not part of the estate
14 administration.

15 So our position is, Your Honor, that you do
16 have jurisdiction to impose a lien if the law allows
17 it, but the law doesn't allow it for two reasons.
18 Number 1, there's no debt for the lien to protect, and
19 Number 2, they didn't perfect their lien before the
20 interest to which they seek to attach it was
21 transferred out of estate. You should dismiss their
22 lien, Your Honor, and deny any request for relief.
23 Thank you.

24 MR. BARNES: Your Honor, if I may respond.

25 THE COURT: Go ahead, Mr. Barnes.

1 MR. BARNES: So again, you know, we're
2 trying to transfer -- he's slipping in words that are
3 not in the statute. There's nothing in the statute
4 that says the lien has to be done before any assets
5 are transferred. If you look at 525.491, we agree
6 that this is the statute, a part of the statute
7 specific to probate matters, that applies here. And
8 the language says "when an attorney at law has been
9 retained to appear for any heir, the attorney may
10 perfect a lien upon the client's interest in the
11 estate" -- that's the estate that the work was done --
12 "for compensation for services that were rendered."
13 And it says "the perfecting of such a lien" -- the
14 lien for services that were performed in the estate
15 that you're seeking to attach the lien to -- "when the
16 perfection of such a lien as herein provided shall
17 have the same effect as perfecting of the lien as
18 provided under 481.13, and such lien may be enforced
19 in the amount thereupon determined in a manner therein
20 provided," and that gets to the whole summary
21 disposition.

22 Your Honor, you dealt with attorney's liens
23 in the Prince matter. You probably had attorney's
24 liens in other matters. This is not something that's
25 unique. The notion that a client may run out and

1 monetize or otherwise transfer moneys or an interest
2 in a lawsuit, whether that's a factoring situation or
3 a settlement behind the back of the lawyer, that stuff
4 happens all the time, and this statute protects
5 against that. You do not have to go outside of the
6 plain language of the statute that the legislature
7 says wholly controls the situation to make a decision
8 that this lien should be established and enforced.

9 Your Honor, they talk about -- they use this
10 other word about, it's the debt, the debt is zero,
11 because of what allegedly happened and what supposedly
12 happened in Kansas City. I don't agree. I think it
13 was nullified, but they're making -- they're
14 compensating or -- they're taking the word "debt,"
15 inserting that into the statute, when the contract --
16 the statute says an attorney has a lien for
17 compensation whether the agreement for compensation is
18 express or implied, and it says "upon the interest of
19 the client, the attorney's client, in any money or
20 property involved or affected by the estate." So, you
21 know, the lien was created by doing the work, Your
22 Honor. We cited that pretty extensively in the first
23 letter we sent that was incorporated into the brief.
24 The lien was created by doing the work and having a
25 contract to do the work. That's undisputed. The

1 perfection of the lien simply has to provide notice
2 prior to distribution. That's clearly what 525.491
3 says, and it's in the client's interest in any money
4 or property coming from the Prince estate.

5 Now, it's kind of bizarre to me that Primary
6 would take the position that, where Alfred Jackson no
7 longer has anything coming from the Prince estate. If
8 that were true, Your Honor, they would not be sitting
9 here. Of course he has a distribution that is
10 expected from the Prince estate, and that's what the
11 lien attaches to. Before you get that distribution,
12 whatever it is, whether it's money, other intellectual
13 property, whatever it is, before you get that money,
14 the attorney's fees that Alfred incurred for services
15 provided in this case in the Prince estate have to be
16 satisfied. The lien was statutorily created, and the
17 statute provides how you perfect it and get paid, and
18 we've done that. We provided notice prior to
19 distribution in accordance with 525.491.

20 Again, there is no requirement with respect
21 to this sort of lien for any UCC filings. All of that
22 would relate to Subsection (d) (2) (a), and it's got,
23 like I said, 149 more words, most of which is devoted
24 to perfecting a lien by filing documents outside of
25 the court proceedings so that third parties will know.

1 That's not our situation here, Your Honor. So I think
2 the court -- I think Minnesota legislature and the
3 courts that have looked at this issue have made it
4 clear that it is the Minnesota statute and the
5 Minnesota statute alone that should guide the court's
6 decision here and that the statute provides a lien is
7 created when you do the work, and to perfect it, you
8 simply file notice prior to distribution, which was
9 done. And so we think that this is an easy issue.
10 Thank you, Your Honor.

11 THE COURT: Mr. Magnuson, your last word.

12 MR. MAGNUSON: Thank you. Your Honor, the
13 Alfred Jackson estate will receive no distribution
14 from the Prince estate. A lien doesn't create the
15 debt, it secures the debt. 525.491 says that in
16 probate proceedings like this, when they file their
17 notice of intent to claim a lien, which they did after
18 the Jackson transaction was completed, it shall have
19 the same effect as perfecting a lien as provided in
20 481.13. In City of Oronoco, the Minnesota Supreme
21 Court said that UCC principles about notice, filing,
22 perfecting the lien govern, and that's what this
23 statute is intended to convey. They didn't file the
24 claim on time in Missouri. Their claim is zero. They
25 didn't perfect their claim in time in this estate,

1 there's nothing to attach to, their request should be
2 denied. Thank you.

3 MR. BARNES: Your Honor, may I briefly
4 reply?

5 THE COURT: You've had two tries, plus the
6 memorandums. I think we can stop now. Mr. Jorde --
7 well, for all of the other folks here, I've assumed
8 that this is a dog fight between the firm and Primary
9 Wave. Mr. Jorde, is there anything that you think the
10 court needs to know from the Alfred Jackson estate?

11 MR. JORDE: Your Honor, just briefly that
12 Mr. Barnes' arguments maybe have been sound if Alfred
13 Jackson hadn't died. But the world changed when he
14 died, and all assets, liabilities, had to be
15 adjudicated within his estate, which took over any
16 interest he owned in anything, if anything, and any
17 debts he had, and that's why all liens needed to be
18 properly filed and adjudicated in Missouri like they
19 were for other individuals that had helped Mr. Jackson
20 during his life. So when Mr. Barnes talks about
21 Alfred Jackson's interest, as Mr. Magnuson said, he
22 has no interest. He died, his estate took over, and
23 everything related to any interest he would have had
24 or did have or debts he would have had, had to be
25 perfected, adjudicated within Missouri, where his

1 probate estate was open. So the moment he died, all
2 of Mr. Barnes' arguments that he's made are a nullity,
3 and unfortunately they have no claim, and this court
4 is not the forum or the venue for adjudicating such
5 alleged lien. Thank you.

6 THE COURT: Okay. And I'm presuming that
7 the other parties, the estate and any heirs or
8 interested parties, don't have any standing to make an
9 argument in this matter. If you disagree, would you
10 let me know now.

11 MR. JORDE: I do not disagree.

12 THE COURT: I'm asking the other parties.
13 Mr. Cassioppi on behalf of the estate, some of the
14 heirs or other interested parties. Okay. And
15 Mr. Barnes, having shut you down once, now that
16 Mr. Jorde has spoken, I will give you a chance to
17 respond to his comment. I guess I'm opening the door.

18 MR. BARNES: Thank you, Your Honor, and I
19 appreciate the opportunity to respond to Mr. Jorde.
20 It's an interesting proposition that, you know, party
21 dies and so the claim or any interest or any potential
22 lien disappears and has to be dealt with in the
23 decedent's probate matter, when the Minnesota statute
24 is talking about a lien for services in the case that
25 the lawyers provided services on behalf of their

1 client, and the lien attaches to an interest, whatever
2 that interest is. I do not buy this whole notion that
3 there's no distribution attributable to Mr. Jackson.

4 Mr. Jorde cited no cases, but if you just
5 look at the statute -- again, this is a
6 statutory-driven inquiry. If you look at Section
7 524.1-201, it defines important -- there's no
8 definition of distribution that's cited, that's
9 referenced, before distribution is made in 525.491,
10 but distribution is not transferred. It says
11 distributee -- distributee, I suppose I should say, is
12 defined in 524.1-201. Distributee means "any person
13 who has received or who will receive property on a
14 decedent from the decedent's personal representative
15 other than a creditor or purchaser."

16 They expect to be a distributee by virtue of
17 what's coming to Mr. Jackson. And the reference to
18 the lien having to be filed prior to, before
19 distribution is made, Your Honor, only makes sense.
20 525.491 is specific to the probate. Distribution has
21 to mean distribution of the assets, and distributee is
22 defined as the person who will receive or who had
23 received property from a decedent, in this case the
24 Prince estate. This is the same statute, general
25 definition that defines "heirs," in 28, "the persons,

1 including surviving spouse, who are entitled under the
2 statues to receive the property," and it defines
3 Primary Wave's position at Section 33, interested
4 parties. That's what they are. Interested person,
5 sorry, includes heir devisees, beneficiaries, et
6 cetera.

7 So distribution does not mean transfer.
8 524.491 does not say "before a transfer is made" or
9 "before assets are sold" or "before assets are no
10 longer there," it says "before distribution is made."
11 And, again, I take you back to the situation. It
12 didn't happen, but it could have happened, and the law
13 needs to apply to every scenario. If we filed a claim
14 that had been accepted in the Jackson estate, but
15 there wasn't enough money, or any money, to pay the
16 attorney's fees, that's not the end of the equation.
17 We still have the opportunity under Minnesota statutes
18 to seek a lien in this case for the work that was done
19 in this case, and that's what we're asking to do, Your
20 Honor. We think the statutes and the cases
21 interpreting the statute are very clear, and this
22 shouldn't be a hard call.

23 THE COURT: Mr. Barnes, to go back to my
24 initial question, you tried to differentiate between a
25 debt or a right to compensation.

1 MR. BARNES: Yeah.

2 THE COURT: And in your example that you
3 just gave me, there would still be a debt, or there
4 would be a right to compensation, it just would not be
5 unsatisfied. The argument by Mr. Magnuson is, there
6 is no debt. And I guess the final question I'll ask
7 you, is there a right to compensation if no legal
8 proceeding could be commenced against Mr. Jackson or
9 his estate?

10 MR. BARNES: There is, Your Honor, because
11 the statute talks about the interest that that person
12 would have. That person or their beneficiary can
13 sell, they can do whatever they want. It talks about
14 the interest in the particular lawsuit where the
15 services are provided, and that's what's being
16 attached, that's what's being --

17 THE COURT: And how much is that lien for?

18 MR. BARNES: It's --

19 THE COURT: I'm not looking for a dollar
20 amount, I'm looking for, what is the basis for that
21 claim?

22 MR. BARNES: The basis for that claim are
23 the services that were provided as defined by 481.13
24 Subdivision 1.

25 THE COURT: So what you're saying is, the

1 basis for the claim is for the services provided, not
2 for what the client owes?

3 MR. BARNES: For the services that were
4 provided, obviously, you know, the client would owe
5 that, but --

6 THE COURT: Well, in this case, would you
7 agree that client owes nothing?

8 MR. BARNES: No, Your Honor. I agree that
9 the client's estate, at least as of today, prior to an
10 appeal, owes nothing based on that court's ruling.
11 The client's estate -- but this is not -- we're not
12 seeking a lien against the Alfred Jackson estate,
13 we're seeking a lien against the Prince estate for the
14 work that was done in the Prince estate. The statute
15 that we're applying only relates, from our
16 perspective, to what was done in the Prince estate.

17 THE COURT: Okay.

18 MR. BARNES: And that's a compensation for
19 services. That's what the statute describes. It
20 doesn't say debt. They're entitled to a lien for
21 compensation for services.

22 THE COURT: Okay. And I don't mean to say
23 that I've decided anything. I like to ask the hard
24 questions and give you a chance to answer so that I
25 can learn more from you. So thank you.

1 MR. BARNES: Thank you.

2 THE COURT: All right. Mr. Magnuson, I
3 guess you got one more shot.

4 MR. MAGNUSON: It's always tough to give a
5 lawyer one more shot, because he's going to repeat
6 himself, and I'm going to try to avoid that, but I'll
7 keep it really short. The lien is security. It isn't
8 the debt. The statute creates a lien so there's a
9 source to pay whatever adjudicated debt there is. He
10 just admitted the Alfred Jackson estate doesn't owe
11 anything. There's nothing that the lien can satisfy.
12 Thank you.

13 THE COURT: All right. Then thank you all
14 for your appearances today. I hope you have a good
15 weekend. For those of you in Minnesota, stay warm.

16 MR. MAGNUSON: Thank you.

17 THE COURT: It's kind of tough to do right
18 now. All right. Thank you. We're in recess.

19 (Proceedings concluded.)
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STATE OF MINNESOTA)

) **REPORTER'S CERTIFICATE**

COUNTY OF CARVER)

I, **Thomas D. Piltoff**, do
hereby certify that the foregoing transcript,
consisting of the preceding 32 pages, is a true and
complete transcript of the proceedings held on January
21, 2022.

Dated: April 22, 2022

/s/Thomas D. Piltoff
Thomas D. Piltoff
Official Court Reporter
604 East 4th Street
Chaska, Minnesota 55318
(952) 361-1441