

IN THE SUPREME COURT OF THE STATE OF NEVADA

EDGEWORTH FAMILY TRUST; AND
AMERICAN GRATING, LLC

Appellants/Cross-Respondents,

vs.

DANIEL S. SIMON; AND THE LAW
OFFICE OF DANIEL S. SIMON, A
PROFESSIONAL CORPORATION,

Respondents/Cross-Appellants.

NO. 77678

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EDGEWORTH FAMILY TRUST; AND
AMERICAN GRATING, LLC,

Appellants

vs.

DANIEL S. SIMON; AND THE LAW
OFFICE OF DANIEL S. SIMON, A
PROFESSIONAL CORPORATION

Respondents.

NO. 78176

THE LAW OFFICE OF DANIEL
S. SIMON,

Petitioner

vs.

THE EIGHTH JUDICIAL DISTRICT
COURT OF THE STATE OF NEVADA,
IN AND FOR THE COUNTY OF CLARK;
AND THE HONORABLE TIERRA
DANIELLE JONES, DISTRICT JUDGE,

Respondents,
and

NO. 79821

EDGEWORTH FAMILY TRUST; AND
AMERICAN GRATING, LLC,

Real Parties in Interest.

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BRIEF AND OPENING BRIEF APPENDIX**

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1 Q December?

2 A Yes.

3 Q And December of 2016 is the first time you saw a bill with the
4 number 550 on it. It's the first bill you saw, correct?

5 A Yes. Correct.

6 Q Seven months after he started representing you?

7 A Correct.

8 Q And can we agree that that bill did not contain all of Mr.
9 Simon's time?

10 A I think it was pretty generous.

11 Q I don't understand that answer, sir.

12 A I think it encompassed all his time and there was blocks that
13 looked generous, the amount of time.

14 THE COURT: What do you mean by generous, sir?

15 THE WITNESS: I mean, like sometimes a lawyer will write a
16 letter and say it took them two hours, where I could pound it out on
17 typewriter in 15 minutes. The two hours seems generous. It seems
18 aggressive.

19 THE COURT: So, when you say generous, you mean
20 generous in like he's exaggerating the time, you thought?

21 THE WITNESS: Well, it's typical on lawyer's bills, they bill in
22 their favor. They bill blocks, and it's a generous amount of time.

23 THE COURT: So, you're saying the amount was more than
24 the work he did?

25 THE WITNESS: I'm not contesting that at all. He -- I was just

1 asking -- answering his question. He said did I --

2 THE COURT: Right. But I don't know what you mean --

3 THE WITNESS: Oh.

4 THE COURT: -- by generous. I don't know what you're -- I
5 mean, are you saying that the amount that you paid was more than the
6 work that was done?

7 THE WITNESS: I think the number of hours on the bill was
8 generous. It's fair. It's a fair amount --

9 MR. VANNAH: She doesn't understand --

10 THE WITNESS: -- to do the work that was done.

11 MR. VANNAH: -- what you mean by generous.

12 THE COURT: Yeah. Is it fair or --

13 MR. VANNAH: Is he being charitable to you --

14 THE WITNESS: It's fair.

15 THE COURT: -- generous?

16 MR. VANNAH: -- that he doesn't --

17 THE WITNESS: It was not charitable in my favor. It was
18 likely on the -- skewing on the side towards Mr. Simon's favor for the
19 hours --

20 THE COURT: Okay.

21 THE WITNESS: -- but I'm not contesting that.

22 THE COURT: No. I understand that, but when you say that --

23 THE WITNESS: Oh, I'm sorry.

24 THE COURT: -- I need to understand exactly what you're
25 saying. And then you turn around and say fair. I don't know which one

1 you mean. Okay, Mr. Christensen. Sorry, I was just --

2 MR. CHRISTIANSEN: That's okay, Your Honor.

3 THE COURT: -- for the Court's clarification.

4 MR. CHRISTIANSEN: I didn't understand, either.

5 THE COURT: Okay.

6 MR. CHRISTIANSEN: So that's why I asked.

7 BY MR. CHRISTIANSEN:

8 Q I -- in the Mark Katz email --

9 A Uh-huh.

10 Q -- you're talking about starting to borrow money. Is that as I
11 understand it, Mr. Edgeworth?

12 A Correct.

13 Q You say you want to do it by Friday, 350,000 plus however
14 much I need to pay legal fees during the insurance company's delays.

15 A Correct.

16 Q You didn't know how much you were going to have to pay?

17 A No idea.

18 Q You didn't write a rate, correct?

19 A A rate of interest?

20 Q A rate of hours, per hour what you were going to pay?

21 A Oh, no.

22 Q And insurance company delays, that reflects again sort of
23 this state of in flux the case was in. Simon's trying to get insurance
24 companies to step in and do the right thing. They don't, so he's gotta
25 sue. Then he sort of tells you, hey, maybe the lawyers will get involved,

1 and they'll get their insurance companies to do the right thing. That's
2 what you meant when you said insurance company delays?

3 A No. At this point, he hadn't sued. At that point --

4 Q No.

5 A -- insure --

6 Q I'm aware of this. This was before he filed suit, but --

7 A Correct. Yes.

8 Q -- it just -- this just reflects the relationship is in flux, correct?

9 A Yeah. Represents that the insurance companies just aren't
10 paying. They're delaying the payment of the claim --

11 Q Got it.

12 A -- that inevitably, they'll have to pay.

13 Q Well, not inevitably. If you prevail on the lawsuit, they have
14 to pay. Insurance companies -- I bet you I can even get Mr. Vannah to
15 agree they don't pay most of the time, unless he makes them.

16 MR. VANNAH: No, I -- Your Honor, would you -- I don't want
17 you to think I'm rude. I just want to go to the bathroom. I didn't want to
18 interrupt anything.

19 THE COURT: Okay.

20 MR. CHRISTIANSEN: Is -- this maybe is a good time?

21 THE COURT: This is a good time, Mr. Vannah. I'm glad you
22 brought that up. We sometimes get caught up in not doing it. All right.
23 So, we'll be at recess about 15 minutes.

24 MR. GREENE: Thank you, Your Honor.

25 THE COURT: So, we'll come back at a quarter to.

1 MR. VANNAH: Thank you, Your Honor.

2 [Recess at 2:36 p.m., recommencing at 2:47 p.m.]

3 THE COURT: A-738444, Edgeworth Family Trust; American
4 Grating v. Daniel Simon, doing business as Simon Law.

5 Mr. Christiansen, you may resume.

6 MR. CHRISTIANSEN: Thank you, Your Honor.

7 BY MR. CHRISTIANSEN:

8 Q Mr. Edgeworth, I want to direct your attention back to the
9 affidavit you signed February the 2nd of this year. And it was signed and
10 attached as an exhibit to briefs dealing with the attorney's lien that Mr.
11 Simon filed in your Edgeworth v. Viking case; does that sound familiar to
12 you?

13 A The attorney's briefs, whoa. That's --

14 Q It was attached to something Mr. Vannah and Mr. Greene
15 filed on your behalf --

16 A Okay.

17 Q -- arguing -- we've argued about a bunch of different things,
18 but relative to the lien.

19 A Okay.

20 Q Make sense?

21 A Okay.

22 Q All right. So, I can make sure I show you Mr. Greene's 16,
23 the day, sir, is the 2nd of February, this is the one you and I were talking
24 about; is that right?

25 A It's the 2nd of February, correct, yes.

1 Q But this is the one we started talking about, we had a back
2 and forth, relative to fall and summer; do you remember that?

3 A Okay, yes.

4 Q Okay. I just want to point you back to that same paragraph,
5 because I neglected to finish reading it with you.

6 A Okay.

7 Q Paragraph 11 says: Please understand that I was incredibly
8 involved in this litigation in every respect.

9 A Where are you at? Oh, at the top.

10 Q You see --

11 A I see, yeah, yeah.

12 Q Here, let me do my --

13 A I found it.

14 Q You've got it now?

15 A Yes.

16 Q Okay. Regrettably it was and has been my life for nearly 22
17 months. Did I read that correctly?

18 A Correct.

19 Q Mr. Vannah said this morning that you tend to micro-manage
20 things; is that an accurate statement?

21 A I don't think so. I think I'm pretty easy-going. I guess so, I
22 get involved --

23 Q All right. And --

24 A -- with certain things.

25 Q That type of interaction or micro-managing that was

1 something that you went through with Mr. Simon in the time he was
2 your lawyer?

3 A Correct.

4 Q Taking up a big chunk of his time, right?

5 A Of my time?

6 Q And his. Both. You said -- I mean, if it occupied your life it
7 had to occupy Mr. Simon's, if he's interacting as a micro-manager, right?

8 A To a lesser extent, because I'm summarizing all of the
9 discovery documents, so he doesn't have to read them.

10 Q I understand you're summarizing them, but you don't
11 understand what they mean legally?

12 A Correct.

13 Q All right.

14 A Correct.

15 Q So he had to make that analysis, fair?

16 A Correct.

17 Q Okay. And what you go on to say, if I just keep reading: As
18 discovering the underlying litigation neared its conclusion in the late fall
19 of 2017, after the value of the case blossomed from one of property
20 damage of approximately 500 grand, to one of significant and additional
21 value -- do -- I think that's a typo -- due to the conduct of one of the
22 Defendants.

23 Did I read that correct --

24 A Correct.

25 Q -- so far? All right. So, let's -- when was the discovery cut-

1 off, Mr. Edgeworth?

2 A I can't remember. I thought Your Honor extended it. I think
3 it was like November 2nd or --

4 Q Okay. So --

5 A Maybe it was October. Maybe we should look in the record,
6 then we'll know.

7 Q As discovery in the underlying litigation neared its
8 conclusion in the fall of 2017. Discovery didn't end until mid-November,
9 that's not --

10 MR. VANNAH: Yes, it is.

11 BY MR. CHRISTIANSEN:

12 Q Isn't that right?

13 A Pardon me?

14 Q The fall, is that, in your view the fall?

15 MR. VANNAH: My goodness, it's the calendar fall.

16 MR. CHRISTIANSEN: I'm just asking --

17 MR. VANNAH: Winter is December 21st, Your Honor. Why
18 are we going into this?

19 MR. CHRISTIANSEN: Well, they don't want me to read the
20 rest of it, Judge, I get it, but we're going to finish.

21 BY MR. CHRISTIANSEN:

22 Q Do you see where it says: Value due to the conduct of one of
23 the Defendants. There's a typo in there that says, do, D-O, instead of D-
24 U-E?

25 THE COURT: And where is this, Mr. Christiansen?

1 THE WITNESS: Between 7 and 8.

2 THE COURT: Okay.

3 THE WITNESS: Yeah, I see it.

4 MR. CHRISTIANSEN: There's my finger, Judge. I'm sorry.

5 THE COURT: Okay.

6 BY MR. CHRISTIANSEN:

7 Q Due to the conduct of one of the Defendants. And then I
8 want to be real clear, Mr. Edgeworth --

9 A Uh-huh.

10 Q -- and after a significant sum of money was offered to
11 Plaintiffs from Defendants, Simon became determined to get more, so he
12 started asking me to modify our contract?

13 A Correct.

14 Q Thereafter, I sent an email labeled 'contingency. Did I read
15 that right?

16 A Correct.

17 Q Your email labeled contingency is August 22nd of 2017?

18 A Correct.

19 Q And as you told the Court there wasn't one dollar on the
20 table to settle this case with you, when you wrote that email?

21 A Correct.

22 Q So this affidavit that says, after a significant sum of money
23 was offered to Plaintiffs from Defendants, that's materially false, correct?

24 A Incorrect.

25 Q Sir, at the time you wrote the contingency email -- don't look

1 at your lawyers for answers, sir, please.

2 A I'm not looking at my lawyers, sir, and I don't like the
3 implication.

4 Q When you wrote the email, in this affidavit you say: After a
5 significant sum of money was offered to Plaintiffs from Defendants. Tell
6 the Judge the day you wrote the email how much money had been
7 offered from the Defense?

8 A Can I explain?

9 Q No. Answer the question. Tell the Judge --

10 THE COURT: Sir, we just need you to answer the question.

11 THE WITNESS: You asked me to tell the Judge --

12 BY MR. CHRISTIANSEN:

13 Q How much money had been offered, the day, August 22nd,
14 2017, when you wrote contingency fee email?

15 A Zero.

16 Q So the statement that we just read: After a significant sum of
17 money was offered to the Plaintiffs from the Defendants, is false. When
18 you wrote -- and you claim that's what caused you to write the
19 contingency fee email. That's what the paragraph says, sir, correct?

20 A No. There are four events listed here, sir. They all occurred
21 at different times. One of them occurred, May 3rd.

22 Q Mr. Edgeworth, this is called cross. I'm asking you questions
23 that call for a yes or no answer, and I'm entitled to a yes or no answer.
24 Okay?

25 A Okay.

1 THE COURT: Okay. Mr. Christiansen, he's not going to agree
2 with you about whether or not -- I mean, his version of events is that that
3 email is not false, so you will be free to argue your version of events --

4 MR. CHRISTIANSEN: All right.

5 THE COURT: -- in your argument.

6 MR. CHRISTIANSEN: Good enough, Judge.

7 BY MR. CHRISTIANSEN:

8 Q Sorry, I jumped ahead. I want to go back with you to the
9 initial portion of Mr. Simon doing you a favor. In August of 2016 --

10 MR. CHRISTIANSEN: Mr. Greene, Exhibit 80, 3, 4, 5 and 6.

11 BY MR. CHRISTIANSEN:

12 Q -- you wrote Mr. Simon an email that says, August the 15th:
13 So far I've paid 201,000 in repairs, with many more bills coming. Here is
14 a list I have paid, and a list of other costs that have not yet been paid.
15 Not been paid yet, I apologize. If I was to pay the American Grating
16 invoices for Mark and my time during the cleanup I would need to
17 borrow more money.

18 Did I read that correctly?

19 A Correct.

20 Q You and Mark, Mark works for American Grating?

21 A Yes.

22 Q Is he the person you borrowed some of the money from?

23 A No.

24 Q Okay. And you and Mark were billing American Grating for
25 your time, or keeping a tally, I guess?

1 A Keeping a tally only during the cleanup of the damage cost.

2 Q And then you attach a spreadsheet, and this is the first of --
3 we're going to see a bunch of them, but I think you're familiar with your
4 own spreadsheets?

5 A Yes.

6 Q Let me un-staple it, so -- it says: Bills and payments from
7 water damage after sprinkler had erupted?

8 A Correct.

9 Q Did I read that correct? Okay. This is attached to an August
10 the 15th email.

11 A Correct.

12 Q Does that appear accurate? Okay. And of the monies you've
13 expended there's nothing for attorney's fees, correct?

14 A Correct.

15 Q In fact, you write in the email, and I've highlighted it, is you
16 don't know what the lawyer bill is going to be, right?

17 A I hadn't received a bill then. No, that's correct.

18 Q It says, do not know. That's a quote, correct?

19 A Correct.

20 Q And you authored this?

21 A Correct.

22 Q August 15th, three months after this favor began, you still
23 don't know what the bill's going to be?

24 A Correct.

25 THE COURT: What Exhibit is that, Mr. Christiansen?

1 MR. CHRISTIANSEN: Exhibit 80, Bate stamp 3425 through
2 26, Your Honor.

3 BY MR. CHRISTIANSEN:

4 Q Do you see a line item anywhere on this, for stigma damage,
5 or loss of value to your house, because it flooded?

6 A No. I put that on after this.

7 Q So you didn't know what stigma damage was at the time you
8 authored this?

9 A Yes, I did.

10 Q You just didn't include it?

11 A Correct.

12 Q Okay. And that calculation of damages is something, as a
13 meticulous, my word not yours, client, very hands-on, that you routinely
14 did, you always did the damage calculation that got sent in the 16.1?

15 A I didn't know it was getting sent in, but later in the case I
16 found out.

17 Q Okay. Those are your spreadsheets, right, Mr. Edgeworth?

18 A They were --

19 Q Okay.

20 A -- correct. I had no idea they were being submitted to the
21 Court.

22 MR. CHRISTIANSEN: Okay. And just by way of easy
23 example, Exhibit 39, Greene -- I'm sorry, 79, I misspoke.

24 BY MR. CHRISTIANSEN:

25 Q Is the November 18, 2016, early case conference, witness and

1 exhibit list, and I just showed you that to show you the date. So, this is
2 mid-November, and then I want to focus your attention on another one
3 of those spreadsheets. Is that your spreadsheet?

4 A Yes, definitely.

5 Q Can you read that, or do you need me to blow it up?

6 A I can see it.

7 Q Okay.

8 A It's a little blurry, but I think we can work with it.

9 Q All right. And can we agree that there's no line item for
10 expenses for attorney's fees?

11 A Correct. I still hadn't received the bill yet.

12 Q There's line items from the interest payments, as you told
13 Her Honor you were going to have to make?

14 A Correct.

15 Q Again, to your friend and to your mother-in-law?

16 A Correct.

17 Q And no cost for attorney's fees?

18 A I hadn't received a bill yet. I couldn't put it in yet.

19 Q No hard costs for money fronted by attorneys, correct?

20 A I had no bill.

21 Q No hourly rate, correct?

22 A Correct.

23 Q And then, things to be determined: Reduction of house
24 value. This is the first time that line item makes its way to your
25 spreadsheet?

1 A Yes. Well, maybe not the first. I don't know how many
2 iterations of this sheet I made. Probably hundreds, as bills came in.

3 Q Okay. And so, as of November you had yet to receive a bill,
4 correct?

5 A From Mr. Simon, correct.

6 Q That's what I meant. I apologize for not being complete.

7 A Sorry. I just wanted to put it in context, because we were
8 talking about a sheet --

9 Q True, thank you.

10 A -- where I was putting bills on as they came in.

11 Q You answered me technically correct, so I appreciate that.
12 You had not asked for a bill either, correct?

13 A I don't think so, I don't know, though.

14 Q As you told me the case was sort of in flux, things were
15 changing. You hadn't signed a fee agreement, correct?

16 A I believe we were talking about a very small series of dates
17 between August 28th and June 10th, when you were using in flux, and
18 stuff, but --

19 Q Had you signed a fee agreement by November, the day we
20 just were talking about?

21 A No.

22 Q Had you been billed a dollar?

23 A No.

24 Q Had you paid any costs?

25 A No.

1 Q Had you located any experts?

2 A Pardon me?

3 Q Had you located any experts?

4 A No.

5 Q Because that reduction of house value, right, that came to be
6 a big line item in your damages, fair?

7 A Fair.

8 Q And who was it that got you an expert to testify to a
9 reduction in house value?

10 A Danny Simon.

11 Q Who was the expert?

12 A His brother-in-law.

13 Q And does he live here in Las Vegas?

14 A I do not know.

15 Q Who was it that found the book that Mr. Olivas [phonetic]
16 relied upon to opine about loss of value?

17 A Danny Simon.

18 Q Danny Simon?

19 A Correct.

20 Q And that was a million and a half dollar line item for you,
21 correct?

22 A Correct.

23 Q And at least as of November it hadn't been determined yet,
24 of '16, what I just showed you?

25 A Correct.

1 Q And you told the Court, and there was -- the Judge and I
2 didn't understand. This is the first bill on this, this would be number 8,
3 that Mr. Simon sent you. Is that what brought -- here, I'll go to the last
4 page, that will probably help you. Does that look -- sorry, Mister --

5 A Okay, yeah.

6 Q -- that's all I get.

7 A That's right.

8 Q Does that appear about right?

9 A Yes, I seen it.

10 Q And the time entries go through 12/2 of '16?

11 A Correct. Although the -- could you flip it back for half a
12 second?

13 Q It does. The timeframe says 11/11 of '16.

14 A We can only see --

15 THE COURT: We can only see your hand.

16 THE WITNESS: -- your hand, sir.

17 BY MR. CHRISTIANSEN:

18 Q Oh, I'm sorry. The time?

19 A Okay, yeah. I thought, yeah, it's a typo or whatever, I guess.

20 Q Yeah. So, what the last line says it's through 11/11 of '16, but
21 that's not even reflected by, if you just look at the last entry, there's
22 entries up through the first part of December, correct?

23 A Correct.

24 Q And this was the generous bill, that was your descriptive
25 term?

1 A Yes.

2 THE COURT: What exhibit is this, Mr. Christiansen?

3 MR. CHRISTIANSEN: 8.

4 THE COURT: 8.

5 BY MR. CHRISTIANSEN:

6 Q He'd been representing you for seven-ish months?

7 A Correct.

8 Q And you thought this bill was generous, in his favor?

9 A Correct.

10 Q Are there like dates for your initial meeting? You and I recall
11 that it was 5/28 on a Saturday --

12 A Yes --

13 Q -- in the bill?

14 A -- it was 5/28.

15 Q No. I meant, is it in the bill? Is there a date next to entry?

16 A There should be, but there's not.

17 Q But on -- there's no dates --

18 A Yeah.

19 Q -- down to witnesses and exhibit lists, correct?

20 A Correct.

21 Q Mr. Simon made this bill at your request, correct?

22 A I don't know. I probably asked for a bill at some point.

23 Q Right. You wanted a bill, just like you wanted the promissory
24 notes, so that you could claim damages in excess of your property
25 damage of around 500,000, right?

1 A I don't follow you, I'm sorry?

2 Q Sure. You understand under the Lange contract that you
3 were entitled to go back against Lange for amounts you paid an attorney
4 to enforce a warranty Lange refused to enforce?

5 A Yes. Mr. Simon said I'd get all my legal costs back, correct.

6 Q So you wanted bills so you could present those bills, so that
7 you could ultimately try to recover for those bills, correct?

8 A Well, I understand now. Yeah, correct.

9 Q Okay. All right. All right.

10 A Yes. You know, I wanted my money back.

11 Q Good. And what you agreed in your affidavits to pay Mr.
12 Simon for, and you were very careful when you authored those, wasn't
13 for all of his time, but for all of what he wrote down, correct?

14 A Pardon me? I don't see the difference.

15 Q You don't see the difference?

16 A No.

17 Q I mean, if I pull a bunch of these emails, you, Mr. Edgeworth,
18 wanted to be paid 150 bucks, you told me, for all of your time during the
19 remediation?

20 A Yeah. Well, I supervised the remediation. Yes, I did.

21 Q That's all of your time, correct? Not just portions of it?

22 A Yes. But I wrote it all down.

23 Q All right. And so, Mr. Simon, what you agreed to pay him
24 was for what he wrote down, as opposed to what he spent?

25 A It should be the same thing, I don't get --

1 Q Right --

2 A -- your meaning, like --

3 Q Unless you're doing a favor for your friend, right?

4 A He stopped doing a favor, it's on the bill. He actually billed
5 for -- the favor duration is on that bill too.

6 Q Okay.

7 A So --

8 Q And you didn't want to pay Mr. Marquis, I think it was Craig
9 Marquis?

10 A Craig Marquis, yeah. The guy --

11 Q I'm sorry, I didn't mean to interrupt you.

12 A He's the person who first told me about the stigma damage.

13 Q He wanted like a large retainer; correct, 50 grand?

14 A I think he wanted 50 grand, yeah.

15 Q You didn't want to pay that?

16 A That's not why I didn't hire him.

17 Q You wanted your friend to do you a favor?

18 A That's not why I didn't hire Mr. Marquis.

19 Q Did Mr. Marquis present you with a fee agreement?

20 A No. We had a consultation, and I never hired him, because
21 of certain things he said in the consultation.

22 MR. CHRISTIANSEN: John, Exhibit 79.

23 MR. VANNAH: Thank you.

24 MR. CHRISTIANSEN: This is Exhibit 79, Your Honor. Bate
25 Stamps 1381 through 1390.

1 BY MR. CHRISTIANSEN:

2 Q Did you get, and it's -- you and I just left off, Mr. Edgeworth,
3 in mid-November, right, about seven-ish months from the time you first
4 talked to Mr. Simon?

5 A I think it was 12/2, and you said that, yeah. The bill says 11 --
6 mid-November, on the back, but then you pointed at a 12/2 entry --

7 Q That's right.

8 A -- so, I don't know. I don't know where we left off.

9 Q In the computation of damages from mid-November there
10 were no attorney's fees, correct?

11 A Correct.

12 Q There's a subsequent computation of damages done in
13 March. Is that right? Do you remember that? I'll just show you, it's
14 Exhibit 79, March 5th, 2017.

15 A Okay.

16 Q Supplement to the ECC. And see if you can tell Her Honor if
17 that's another one of your spreadsheets?

18 A Yes, it is.

19 Q And now you're listing what you asked Mr. Simon to
20 accumulate for you, his bill?

21 A Yes.

22 Q And you call it for lawyer and lab expenses?

23 A Yes. I think that's all that was on the bill.

24 Q That was because Mr. Simon fronted some costs for labs or
25 being used to do certain things?

1 A I don't know if he fronted them or not. I don't know the
2 timing of when Mr. Simon paid the invoice versus when I paid Mr.
3 Simon. So, yes, he paid a lab, and I reimbursed him. I don't know if it
4 was fronted or not.

5 Q You never deposited a retainer --

6 A No.

7 Q -- to be used to pay experts for?

8 A No.

9 Q And that's what is typically done in hourly billable lawyers,
10 correct?

11 A It depends.

12 Q All right.

13 THE COURT: And, sir, you said you know that -- you
14 reimbursed Mr. Simon, so that's taking the assumption that you believed
15 he had already paid the money, and you were paying him back. Is that
16 what reimburse means to you?

17 THE WITNESS: No. Like sometimes, you know, if billed this
18 timeline, which I don't know when the lab -- let's say the lab sent him a
19 bill on December 1st, and he gave me a bill, I paid all my bills very
20 quickly. So --

21 THE COURT: Right. But you just said you reimbursed him,
22 what does that mean --

23 THE WITNESS: Oh.

24 THE COURT: -- to you, because to me --

25 THE WITNESS: Yeah.

1 THE COURT: -- reimburse means somebody paid for --

2 THE WITNESS: Pay it again.

3 THE COURT: -- something, and I pay them back.

4 THE WITNESS: Yeah.

5 THE COURT: But does that mean something different?

6 THE WITNESS: I paid him the amount he asked for, for costs.

7 Whether it was a reimbursement, because he had already paid the costs,
8 or whether he waited and paid it --

9 THE COURT: You don't know.

10 THE WITNESS: -- I'm not sure of. Because I --

11 THE COURT: Okay.

12 THE WITNESS: -- don't have the --

13 THE COURT: Mr. Christiansen.

14 THE WITNESS: You've only given me --

15 THE COURT: It's okay, sir.

16 THE WITNESS: Yeah.

17 THE COURT: There's no question pending --

18 THE WITNESS: Okay.

19 THE COURT: -- you've answered.

20 THE WITNESS: Sorry.

21 BY MR. CHRISTIANSEN:

22 Q I want to go down -- now this is dated March the 6th. After
23 the December bill that you and I talked about, the one that has the two
24 different dates, the typo --

25 A Yeah.

1 Q -- did you get a bill in January?

2 A No, I don't think so.

3 Q February?

4 A No.

5 Q March?

6 A I'm sorry, sir, I don't know when the next bill came, so --

7 Q Well, I'm pretty sure you can deduce it, since your line item
8 only includes the bill from December, that as of March the 5th you'd not
9 seen another bill?

10 A That's fair. If I received a bill I would put it into the
11 spreadsheet.

12 Q So by this point Danny -- Mr. Simon has been representing
13 you for just shy of ten months, end of May through early March?

14 A Correct.

15 Q And you got one bill?

16 A Correct.

17 Q No associate time, ever?

18 A I think that's correct.

19 Q I can show you. Do you think there's any time for an
20 associate on Danny's initial bill?

21 A I didn't say that. I said, I think you are correct.

22 Q All right. Well, let's look together.

23 MR. CHRISTIANSEN: This is Exhibit 8, Your Honor.

24 THE COURT: 8?

25 MR. CHRISTIANSEN: 8.

1 THE COURT: Okay.

2 BY MR. CHRISTIANSEN:

3 Q This is Mr. Simon's 12 of '16 bill. Do you see any time for an
4 associate on this bill, Mr. Edgeworth?

5 A I don't think so, no.

6 Q Okay. And for your second computation of damages, I think
7 this will confirm what you already told me you recalled, for a value
8 appraisal, there's some expense for \$5,000?

9 A Yes.

10 Q And that was to John Olivas?

11 A I believe so.

12 Q Mr. Simon's brother-in-law?

13 A Correct.

14 Q Who created a loss of value, or stigma damage report that
15 ended up being a line item of a million-five and change, for your house?

16 A Correct. Or maybe it was a million. I'm not sure; one or the
17 other, yeah.

18 Q All right. On your calculation, sir, just by -- this is March, so
19 we're on the same day, the 5th, 2017.

20 THE COURT: I think it's the 6th, Mr. Christiansen.

21 MR. CHRISTIANSEN: You're right, Judge.

22 THE COURT: Okay.

23 MR. CHRISTIANSEN: March the 6th --

24 THE COURT: Just so we have the record.

25 MR. CHRISTIANSEN: -- 2017. I apologize, Your Honor.

1 BY MR. CHRISTIANSEN:

2 Q And I just go back to your line item, do you see the entry for
3 lawyer expenses?

4 A Yes.

5 Q It says, through December 1 of 2016?

6 A Correct.

7 Q Does that help refresh your recollection that you wouldn't
8 have received any additional ones, or you would have put them in here?

9 A Yeah, I said that. Like these are pretty accurate, whenever I
10 got an invoice I would then, almost immediately --

11 Q And --

12 A -- if I was at work.

13 Q -- the total, Mr. Edgeworth, between what you paid and what
14 you expected to pay is \$1,019,400, and I think that says \$37.23?

15 A Yes.

16 Q And not paid or invoiced yet. Did I miss it, or is there -- there
17 are no line item for attorney's fees?

18 A There's no line item.

19 Q So there's nothing reflecting any work done between
20 December and March, when you prepared this, that would indicate to
21 anybody what you were paying Mr. Simon for whatever he was doing,
22 right?

23 A I was only sending this to Mr. Simon.

24 Q That's not what I said.

25 A Okay.

1 Q There's nothing on this document that you created that
2 reflects what you were compensating Danny Simon for, during the
3 months from December, when you got the first bill, through March,
4 when you prepared this?

5 A No.

6 Q No, there is not? It's not on the document, correct?

7 A I do not see it on the document. No, it's not there.

8 Q And, sir, that day was March the 6th, and the next day --

9 MR. CHRISTIANSEN: This 87, John.

10 BY MR. CHRISTIANSEN:

11 Q -- you, through your lawyer, sent an offer of judgment to
12 Lange Plumbing for a \$1 million, correct?

13 A Correct.

14 Q All right. So, if I went back and showed you your
15 spreadsheet, the value you had determined for past and future damages
16 was just a little bit more to the million. You authorized Mr. Simon to
17 offer Lange, the plumber that installed the sprinklers, to pay you \$1
18 million to settle the entire case?

19 A Correct.

20 Q And you knew, because Mr. Simon explained it to you, that if
21 Lange were to accept that offer of judgment, they would have made you
22 give your claim against Viking to Lange as part of the settlement, right?

23 A I'm sorry?

24 Q Sure. You had a claim against Lange?

25 A Lange Plumbing, yeah. They --

1 Q Yeah --

2 A -- installed it. Yeah, yeah.

3 Q -- Lange Plumbing, because Lange had failed to go enforce
4 the warranty as it was required under your contract?

5 A Correct.

6 Q You knew if Lange would accept this offer of judgment for a
7 million bucks, you sent in early March, that it would want from you, in
8 exchange for the million, that ability to go after Viking for the money it
9 paid you, right?

10 A No. I'm not sure I understand that right now. So, if I sign
11 this, then --

12 Q Let me make it easy for you. You knew that if this offer was
13 accepted, your case, in its entirety, was over, for you, Brian Edgeworth?

14 A I guess so.

15 Q Okay. And the value you had assigned -- the total value to
16 your property damage claim, that you sent an offer of judgment for was
17 a million bucks, right?

18 A Correct.

19 Q And I want to make sure I accurately state that as -- let me
20 check with you, Mr. Edgeworth, March the 7th of 2017, correct?

21 A Correct.

22 Q Your case settled November, between November 10th and
23 15th, the sort of essential terms of the settlement were agreed for \$6
24 million against Viking, correct?

25 A Correct.

1 Q And what's that, six -- no, eight months, my math's not too
2 good. Eight months, your property damage claim increased \$5 million,
3 by your own assessment, right?

4 A I don't think the property value ever -- that the property
5 damage claim grew.

6 Q Right.

7 A But the amount they paid for it, I totally agree, it grew.

8 Q Five million bucks?

9 A Yes.

10 Q Is it reasonable to the lawyer work that Danny Simon did?

11 A As a result of something they wanted to settle for, Viking,
12 correct.

13 Q And do you agree when you hired Mr. Simon there was zero
14 discussion of a punitive aspect to the claim?

15 A Well, there was a discussion when he talked about why he
16 was going to bill me 550. He said, you know, you're only going to get
17 your damage costs back in this case, so it doesn't make sense to do it on
18 any kind of contingency, because, you know, your damage is your
19 damage, so you can't give away 40 percent of your damage.

20 Q Right. That's to get reimbursed from Lange, Mr. Edgeworth,
21 do you see the difference?

22 A No. I really didn't understand your last line of questioning
23 about it.

24 Q Okay.

25 A The whole -- like the million dollar thing I was told was we

1 had to sign and put it to make sure I get my legal fees back.

2 Q So an offer of judgment. So that if you later beat that --

3 A Yeah. I'd get my --

4 Q -- in a verdict --

5 A -- legal money back.

6 Q -- you could go back and try to get your money, right?

7 A Yeah. And get all my legal fees paid for.

8 Q And that was something that Lange's contract contemplated
9 if you -- if it, the plumbing company, failed to prosecute a warranty claim
10 on your behalf, and you had to go pay somebody to do it, right?

11 A Yes.

12 Q All right. That offer of judgment did not reflect a loss of
13 value for stigma, or decreased value to your house, right? Because you
14 just paid five grand to have somebody do the analysis of it, you didn't
15 have a report yet?

16 A I don't know when I got the report, but it didn't -- I agree with
17 you, it didn't reflect that.

18 Q You thereafter in June --

19 MR. CHRISTIANSEN: John, Exhibit 80, Bate Stamp 2784.

20 BY MR. CHRISTIANSEN:

21 Q On June of 2017, do an additional calculation of damage that
22 you sent to Mr. Simon; is that fair?

23 A Yes.

24 Q And your email says, If John accepts this logic, and then
25 (which I think is, it is backed by that book and the case study) the claim

1 becomes more reasonable.

2 Did I read that correctly?

3 A Yes.

4 Q That's the book that Mr. Simon found?

5 A He has a book by Randall Bell, talking about property
6 damage and what happens --

7 THE COURT: Okay. Sir, is that the book that Mr. Simon
8 found?

9 THE WITNESS: Yes, sorry.

10 BY MR. CHRISTIANSEN:

11 Q And John's brother-in-law?

12 A Correct.

13 Q My other question, I'll just continue to read, Mr. Edgeworth,
14 my other question is, quote: "Can I change the billing rate I charged for
15 me, and Mark supervising the repairs, now, that I have seen how you are
16 willing to pay their experts that have less education and experience than
17 either Mark or I?"

18 A Yes.

19 Q Did I read that correctly?

20 A Yes.

21 Q You wanted to change your rate?

22 A Yes.

23 Q Gotcha. And then you go down and list out legal and repairs,
24 900,000. Repairs still to be made, 300,000, and the first time you've got a
25 stigma value of about a million bucks, it's actually exactly a million,

1 correct?

2 A Correct.

3 Q And you add that to additional legal and lab. Does it say
4 additional legal and lab, the rate at which you'll pay that?

5 A No, it does not.

6 Q Okay, 2.4 million, right?

7 A Correct.

8 Q And then you go down and you say, and this is the first time
9 it's contained in any writing in this case; and then hopefully we can
10 convince them to award punitive, to further push the two to settle, but it
11 is far above our generous settlement offer that they refused.

12 Did I read that correctly?

13 A Correct.

14 Q This is the first time you're discussing punitives, correct?

15 A It's the first time I put in an email?

16 Q Is that right?

17 A Not technically.

18 Q Show me the email that it talks about punitives, before the
19 statement?

20 A Well, we're not having a discussion, I put it in an email.

21 Q Okay.

22 A So it's the first time I mention it, you mean?

23 Q Yes.

24 A Likely.

25 Q Okay. So up until June of 2000 -- I want to get that date

1 exactly right, June 9th of 2017, you never had any discussion about Mr.
2 Simon pursuing a punitive claim on your behalf, fair?

3 A Well, we discussed what Craig Marquis had told me.

4 Q Sir, you just told me it was the first time you ever discussed
5 it in that email. You just got done telling me that.

6 A I believe I said, probably the first time I put punitive in an
7 email.

8 Q All right. And that was June of '17, right?

9 A Yes.

10 Q Simon had been your lawyer for 13 months?

11 A Correct.

12 Q And you'd still not seen a bill from an associate, right?

13 A In June?

14 Q Yeah.

15 A I'm not sure.

16 Q You had two bills in 13 months, totaling about 70 grand,
17 right?

18 A Likely.

19 Q But you were paying him in his favor, that's your version,
20 right?

21 A No, I said one of his bills -- I'm not supposed to answer; is
22 that right?

23 THE COURT: Yeah, you are.

24 THE WITNESS: Just say, yes, no? No. What I stated was, I
25 thought he billed generously in his favor for some of the block times in

1 his first bill.

2 THE COURT: And when you say first bill this is the bill that
3 came out of December?

4 THE WITNESS: December, correct --

5 THE COURT: Okay.

6 THE WITNESS: -- was the first one.

7 BY MR. CHRISTIANSEN:

8 Q And can we agree that between March, when you sent the
9 offer of judgment in June, when you authored this last email to Mr.
10 Simon, that the value of your claim as a result of his locating an expert,
11 and finding a book for the expert to rely on had more than doubled?

12 A Correct.

13 Q And then, historically, let's see if you can recall, sometime in
14 June there was a bunch of litigation over a protective order that Viking
15 wanted in place before it was going to produce a bunch of documents
16 about sprinkler activations, right?

17 A If you say so, yes.

18 Q Prior to that June date Danny Simon, not Brian Edgeworth,
19 took the deposition of the binding, managing speaking agent, the
20 30(b)(6) witness for Viking, correct?

21 A May 3rd, correct.

22 Q And in that deposition, Danny Simon, not Brian Edgeworth,
23 secured testimony about how many activations Viking knew of?

24 A Correct.

25 Q And the data dump that came in the summer was obtained in

1 the litigation, correct?

2 A Correct.

3 Q And then provided to you by Ashley, Ms. Ferrel, this nice
4 lady sitting right here, in a Dropbox?

5 A Correct.

6 Q And the documents contained in that Dropbox, or in those
7 dated dumps, where in excess, would it be fair to say, of 60,000 pages?

8 A No.

9 Q How many pages, in your opinion?

10 A My best guess would be -- unique pages, 25.

11 Q I don't know what unique pages are. Just tell me --

12 THE COURT: Sir, how many pages were in the document?

13 THE WITNESS: Probably 55,000, duplicates --

14 THE COURT: Okay, 55,000 pages?

15 THE WITNESS: Yeah. But --

16 THE COURT: Okay.

17 THE WITNESS: -- a lot were dups.

18 BY MR. CHRISTIANSEN:

19 Q In August, Mr. Simon gives you a couple -- or gives you
20 another bill; is that right?

21 A Correct.

22 Q Now the third bill in 15, 16 months?

23 A Correct.

24 MR. CHRISTIANSEN: And that's Exhibit 26, Your Honor. I'm

25 sorry --

1 THE COURT: Okay.

2 MR. CHRISTIANSEN: -- Mr. Greene, Exhibit 26.

3 BY MR. CHRISTIANSEN:

4 Q And what Mr. Simon says, it's for your review, let's discuss,
5 plan how you may want to move forward, thanks. Correct?

6 A Correct.

7 Q And just in time, this comes after your email to Mr. Simon,
8 talking about going for punitives, right?

9 A Yes.

10 Q And no word in time, during when you wrote your email nor
11 here, is any punitive work or the terms supporting agreed upon. You
12 never come to terms about what he's going to do for punitives, correct?

13 A Correct.

14 Q And you're asking Mr. Simon some questions in July of '17,
15 about needing to rebut things. Fair?

16 A Correct.

17 Q And remember when I asked you earlier, Mr. Edgeworth,
18 about your decision to, I think you called it a prudent one to borrow
19 money, did I used the right term?

20 A Yeah. It's prudent.

21 Q And I knew this was coming, this is the -- you know, when
22 you say to Simon, hey, I have -- and I'm paraphrasing -- I have money -- I
23 had funding -- other ways to fund, I just chose to do it the way I chose to
24 do it?

25 A Huh.

1 Q A fair statement? And Danny answers your legal questions,
2 we already have, and that is rebut this?

3 A Okay.

4 Q Yes? And he tells you, you have to wait for their expert
5 reports?

6 A Yes.

7 Q Because you don't know in the legal context if you need to
8 rebut things, you're asking your lawyer, and he's answering it?

9 A Correct.

10 Q And then in time, 21 days after, Mr. Simon says, here's your
11 third bill, let's talk about how you might want to move forward, you may
12 want to move forward, you then write the contingency email, correct?

13 A Correct.

14 Q And if I read your affidavits correctly, the contingency email
15 comes after Simon gives you his third bill you and he travel to San
16 Diego. There's discussion in an airport, I think Mr. Vannah said you
17 might have had a beer or something, how to -- relative to how to move
18 forward?

19 A Correct.

20 Q All right. And prior to that you'd had no agreement about
21 punitive damages, correct?

22 A Correct.

23 Q And you actually say that in this email; do you not? We
24 never really had a structured discussion about how this might be done.

25 Did I read that correctly?

1 A Correct.

2 Q And that is how Mr. Simon might be fairly compensated for
3 pursuing a case that had blossomed, to use your term, into one of 55,000
4 pages in a document on it, correct?

5 A I don't agree with what your statement was, no.

6 Q I just -- did you use the term blossomed?

7 A No, I -- please rephrase it. Repeat your question, please --

8 Q Sure.

9 A -- and I'll try to --

10 Q In your affidavit, sir, did you say the case blossomed, which
11 caused you to write this email after a significant sum of money above
12 the 500,000 had been offered by one of the Defendants?

13 A Correct.

14 Q And when you wrote this email not one dollar had been
15 offered by the Defendants?

16 A Correct.

17 THE COURT: Which exhibit is this email, Mr. Christiansen?

18 MR. CHRISTIANSEN: Exhibit 27, Your Honor, Bate stamp

19 399. I'm sorry, Mr. Greene, I neglected to tell you that.

20 BY MR. CHRISTIANSEN:

21 Q And so we're thorough, what you say in here is, I am more
22 than happy to keep paying hourly, but if we're going to go for punitive
23 we should probably explore a hybrid of hourly on the claim, and then
24 some other structure that incents both of us to win -- I think that means
25 and go after the appeal that these scumbags will file, et cetera.

1 Did I read that correctly?

2 A Yes, you did.

3 Q And then -- so just from the first two sentences, as of August
4 22nd, 2017, you never had a structured discussion about going after
5 punitives, correct?

6 A Correct.

7 Q No terms had been reached, correct?

8 A Correct.

9 Q Then you go on to say, obviously, that could not have been
10 done earlier, since -- I think again that's just a typo -- who would have
11 thought this case would meet the hurdle of punitives at the start?

12 Did I read that correctly?

13 A Correct.

14 Q So, in addition to saying this is your first, or this is a stab at a
15 constructive discussion about punitives, you concede from that
16 sentence, that way back in May of 2016, at the outset of the litigation
17 there was no way to contemplate the case being punitive in nature?

18 A Correct.

19 Q So no terms could have been reached?

20 A Correct.

21 Q Then you go down to say, I could also swing hourly for the
22 whole case (unless if I'm off what this is going cost). I would likely
23 borrow another 450,000 from Margaret, in 250 and 200 increments, and
24 then either I could use one of the house sales for cash, or if things get
25 really bad I still have a couple million in Bitcoin I could sell.

1 Did I read that accurately, sir?

2 A Yes, you did.

3 Q Doubt we will get Kinsale, that's one of the insurance
4 companies --

5 A That's Lange's insurance.

6 Q Thank you. To settle for enough to really finance this. Did I
7 read that correctly?

8 A Correct.

9 Q So in other words, that's you saying, I doubt we can get the
10 insurance companies to settle for enough to finance me [Brian], going
11 and borrowing more money to keep paying for this case hourly?

12 A Incorrect.

13 Q I would have to pay the first 750,000 or so back to Collin and
14 Margaret, and why would Kinsale sell it for 1 MM, when their exposure is
15 only 1 MM. 1 MM means a million, I assume?

16 A Yes, it is.

17 Q Did I read that all correctly?

18 A Correct.

19 Q And this is the email you wrote after the case had blossomed
20 and one of the Defendants had offered a considerable sum of money,
21 right?

22 A This is not written after the case had -- or after the
23 Defendants had offered a considerable sum of money.

24 Q That's what you wrote in your affidavit, so I'm just asking
25 you, is that your testimony?

1 A That's not what I wrote in my affidavit.

2 Q All right.

3 A It's commas, beside each of those four events.

4 Q Do you know what a register of actions is, sir?

5 A No.

6 Q That's like all of us can look on it and see what was done in a
7 case and --

8 A Oh, I know what it is then, yeah --

9 MR. CHRISTIANSEN: It's Exhibit 63, Mr. Greene.

10 THE WITNESS: -- I have that link, yeah.

11 BY MR. CHRISTIANSEN:

12 Q And in your case, do you know how many entries are in the
13 register of actions?

14 A A lot.

15 Q Who made all those entries? Whose work culminated in
16 those entries, yours or Danny Simon's?

17 A Danny Simon filed them.

18 Q Danny Simon's works, what took this case in March for a
19 million bucks, that you were willing to settle the whole thing for, to
20 November in six, fair?

21 A His filings in court?

22 Q This case turned from a property damage claim to a punitive
23 damage case, correct?

24 A I don't think we ever got a punitive damage case, no. There
25 was potential, though.

1 Q Do you think Zurich paid 11, 12 times your property damage,
2 because there's some like emotional distress attached to property
3 damage?

4 A Zurich didn't pay 11 or 12 times my property damage, sir?

5 Q Zurich paid 6 million, right?

6 A Zurich paid \$6 million, correct.

7 Q And your estimation of your property damage, all these
8 documents I've been showing you, is about 500 grand, before you start
9 adding in interest and things of that nature?

10 A Correct.

11 Q Right. You know, I know you're not a lawyer, that there's no
12 emotional distress claim attaching to a property damage case, correct?

13 A Correct.

14 Q All right. And so, the difference between your hard costs and
15 what you got reflects Danny Simon changing the nature of the claim,
16 correct?

17 A I guess we disagree on why the parties settled, because my
18 answer would be incorrect.

19 Q Okay. Well, we're going to have a lawyer from one of the
20 parties come tell us why they settled. But they settled when there was a
21 pending motion to strike their answer, correct?

22 A Correct.

23 Q They settled after Her Honor excluded one of their experts,
24 because Danny Simon wrote a motion to exclude it, correct?

25 A Correct.

1 Q And they settled because there was a real risk their insured,
2 Viking, would be hit with a punitive damage award, which is non-
3 insurable, correct?

4 A I don't know that that's correct.

5 Q What don't you know was correct?

6 A You just said -- you said they settled because their insured
7 was going to -- I don't know that that's correct. That's not my opinion on
8 why they settled at all.

9 Q All right. One day after, just one day after your contingency
10 email, I've got it somewhere, you did another email to Mr. Simon, with
11 the spreadsheet of your view of the value of your case; do you
12 remember that?

13 MR. CHRISTIANSEN: That's exhibit, Mr. Greene, 28, Bate
14 stamp 400.

15 BY MR. CHRISTIANSEN:

16 Q August 23rd, Brian Edgeworth to Danny Simon?

17 A Yes.

18 Q Did this email, like two-thirds of these other emails, is after-
19 hours; is that right, Mr. Edgeworth?

20 A I don't know if they're two-thirds after hours or not.

21 Q Did you write emails at all times of the day or night to Danny
22 Simon?

23 A Yes. I would write emails at all times --

24 Q Did you call --

25 A -- day and night.

1 Q -- on a cell phone on all times day and night?

2 A Not all times, but, yes, after --

3 Q Weekends?

4 A -- business hours, definitely.

5 Q And what you say here is, we may be past the point of no
6 return. What you mean by that is this case might have to go to trial,
7 right?

8 A I don't know that that's what I meant, but --

9 Q The costs have added up so high I doubt they'll settle
10 anyway -- I doubt they settle anyway, I apologize. This does not even
11 include upgraded -- updated --

12 A Updated.

13 Q -- legal and experts, any of my time wasted, et cetera. I
14 already owe Collin and Margaret over 85,000 now -- 850,000 now?

15 A Correct.

16 Q So you don't, at the time you author this, have a bill, or even
17 an understanding of what the updated legal and expert fees are, correct?

18 A It's on the sheet, sir.

19 Q This does not even include updated, legal and experts. Okay.
20 This is written August 23rd, the last legal cost you've got is July 31st.
21 So, my question is -- the answer is, yes, you don't update to the day of
22 the --

23 A Oh 31 to 23, correct.

24 Q And here you value your case, the one that you valued to a
25 million bucks in March, at 3 million bucks, 3,078,000, right?

1 A I would agree if you use a different term than value. My
2 damages, or costs at that point were this.

3 Q Right. And the biggest line item is the million-five stigma
4 damage, Danny's book and brother-in-law found you, right?

5 A Correct.

6 Q Then you're pestering Mr. Simon during this time to give you
7 -- pester is pejorative, I don't mean it that way, you're being proactive
8 with Mr. Simon to give you bills during this timeframe, right?

9 A Yes, I was.

10 Q Because you knew that you could add the bills to your
11 damages, and potentially recover those bills under the contract claim
12 against Lange, right?

13 A That's not the reason I was being aggressive, but I agree with
14 part of your statement, just not the first half of your question, that that
15 was the reason I was being aggressive, asking for bills.

16 Q Reflective of that is the August 29, 2017 email from -- it looks
17 like you must have sent it. It says, your office still not has cashed
18 \$170,000 check. And that's in like the subject line. And then Mr. Simon
19 answers you back, I've been too busy with the Edgeworth case, fair?

20 A Correct.

21 Q You had your first mediation scheduled in this case October
22 the 10th; is that right?

23 A I think it's the 20th, sir.

24 Q October the 20th?

25 A I think so. I could be wrong.

1 Q I think it's the 10th. If it's not the 10th Mr. Greene can correct
2 me when I get done.

3 A The second one was November 10th?

4 Q That's accurate?

5 A Yes.

6 Q Okay. So, in anticipation of your first mediation had there
7 been any monies offered, leading up to the mediation by any of the
8 Defendants?

9 A No, I don't think so.

10 Q And going up to your first mediation you wrote Mr. Simon an
11 email that talked about -- I'll just -- settlement tolerance for mediation.

12 MR. CHRISTIANSEN: Sorry, John, that's Exhibit 34.

13 THE COURT: Did you say 34, Mr. Christiansen?

14 MR. CHRISTIANSEN: It is. I can't read the little tiny numbers
15 for the Bate stamp -- 408, Bate stamp 408.

16 THE CLERK: 406.

17 MR. CHRISTIANSEN: 406, sorry.

18 BY MR. CHRISTIANSEN:

19 Q Is this --

20 MR. CHRISTIANSEN: -- and it's 407, too, John.

21 BY MR. CHRISTIANSEN:

22 Q Look like one of your spreadsheets, sir?

23 A Yeah. Simon asked for this to be made, correct?

24 Q This is leading into mediation number one?

25 A Correct.

1 Q And you have sort of three columns, what's non-negotiable,
2 in your view?

3 A Correct.

4 Q All right. And what's negotiable, or I think you say, limited
5 tolerance for negotiation?

6 A Correct.

7 Q All right. Like the stigma damage, that's negotiable?

8 A Limited tolerance for negotiation, correct.

9 Q Trapped capital interest. That's a line item I've not seen
10 before in any of your calculations. Is that something you created?

11 A Craig Marquis told us that we could claim that.

12 Q But you figured how much it was?

13 A Correct. Yes, I did.

14 Q And this is the first time it makes its way into one of your line
15 items of damages?

16 A Correct. Or maybe not, but I'd have to look at all the
17 spreadsheets that were made.

18 Q Prejudgment interest?

19 A Correct.

20 Q Well, what do you think you get 268,000 for in prejudgment
21 interest?

22 A Well, if you prevail in a case -- if you prevail at the end of
23 court you'll get judgment on -- you'll get judgment -- interest on the
24 judgment amount --

25 Q Judgment exceeding --

1 A -- for the amount that --

2 Q -- half of your \$500,000 property claim?

3 A What judgment? You're confusing me with the question.

4 Q Sure. Your property claim you told me is a \$500,000
5 property claim, and you think you're going to get 270 grand in interest?

6 A If it's just simple math, sir. It says the assumptions over
7 here, and then you just take the number, and it's just math from it.

8 Q See the first bill, it says legal bills? The first line, sorry.

9 A Yes.

10 Q That 518,000, that's not all attorney's fees, right; that's fees
11 and costs lumped together?

12 A I think so.

13 Q And then do you see your comment out there to the right?

14 A Likely more comment.

15 Q So you authored this, you had no idea what was coming?

16 A Correct.

17 Q And you had no structured discussions with Danny about
18 pursuing a punitive claim, correct?

19 A You asked two questions. Correct, I had no idea how many
20 more hourly bills would be coming, and correct, we still hadn't had a
21 structured conversation about how to convert into a punitive agreement,
22 correct.

23 Q And the total -- I'm sorry, Mr. Edgeworth, I didn't ask you one
24 I had. The total of your damages with the negotiable and non-negotiable
25 items is just under 3.8 million?

1 A Other than the line items that are --

2 THE COURT: Under the line items what?

3 THE WITNESS: And the two on the side which may, or may
4 not be able to be claimed, yes. See the two I said -- they destroyed the
5 building reputation and, you know, nothing in here for the -- all the
6 thousands of hours that have been wasted, so, yes.

7 BY MR. CHRISTIANSEN:

8 Q And at the very bottom here you write, I'm more interested in
9 what we could get Kinsale to pay and still have a claim large enough
10 against Viking. That's what you wanted to get -- Kinsale is, as you were
11 told, is the Lange Plumbing insurance company?

12 A Insurance carrier.

13 Q So you wanted to get at Kinsale and try to settle them first?

14 A Correct. The same with that email you put up three or four
15 ago, it's roughly saying the same thing. Let's get Kinsale to settle,
16 because it's in their interest for me to pursue the claim against Viking;
17 and they're not doing it at all. And then we use that money so that I
18 don't have to take more loans. They're the weaker link of the two in the
19 negotiation.

20 Q Right. You saw that from a business standpoint?

21 A Yes.

22 Q All right. It turns out you were wrong, right?

23 A Correct.

24 Q Mr. Simon was right, you were wrong?

25 A Mr. Simon didn't rebut that.

1 Q You wanted to go hard at Lange. Lange gave you, pursuant
2 to advice by a different --

3 A This is --

4 Q -- office?

5 A -- not a mediation, a one-day mediation --

6 THE COURT: Okay, sir. You have to let him finish --

7 THE WITNESS: Oh, sorry. I'm sorry.

8 THE COURT: -- asking the question. Only one of you can
9 talk --

10 THE WITNESS: I'm sorry --

11 THE COURT: -- at a time.

12 THE WITNESS: -- I haven't done this.

13 THE COURT: Okay. You need to let him finish. I told him the
14 same thing earlier. It applies to you too. Mr. Christiansen?

15 MR. CHRISTIANSEN: Thank you, Your Honor.

16 BY MR. CHRISTIANSEN:

17 Q All right. How much did -- was offered at the October -- I
18 think it's October 10, if you're right, it's October 20th -- what was offered
19 at that mediation?

20 A I think very little. I think Viking -- I don't even remember. I
21 think Lange said 25 grand. I'm not sure if Viking said anything, or -- I
22 don't remember.

23 Q Okay. So nominal?

24 A Nominal, that's one, correct.

25 Q All right. Do you know what happened from a lawyer

1 standpoint, and a courtroom standpoint, between October and
2 November, at the second mediation?

3 A Do I know --

4 Q Do you know what Danny did, or his office did?

5 A I know some of the things they did, yes.

6 Q And when you went to the November mediation, the case as
7 it pertained to Viking resolved, right?

8 A Yeah. A week later, the mediation -- the mediator settlement
9 you mean?

10 Q Yeah.

11 A Yes.

12 Q So we're clear on the mediator settlement -- let's just back
13 up, we'll get you the -- in this case you provided an affidavit --

14 MR. CHRISTIANSEN: -- John, I 'm not sure which one, this is
15 your group, it's in your list; 9, I think.

16 [Parties confer]

17 THE CLERK: Exhibit 9.

18 BY MR. CHRISTIANSEN:

19 Q You wrote an affidavit dated July 25th, 2017, and it's one of
20 the exhibits I'm sure Mr. Greene will talk to you about. Do you
21 remember authoring that?

22 A Yes.

23 MR. GREENE: Hey, Pete, that's not an affidavit, that's an
24 email.

25 MR. CHRISTIANSEN: I apologize, an email.

1 BY MR. CHRISTIANSEN:

2 Q Just chronologically, that's all I want to question you about
3 now, is what you wrote, it looks like items you were able to locate, or
4 you thought were of some importance, and you wanted Danny and his
5 office to look at, correct?

6 A Correct. I was passing on information.

7 Q Right. And that information came to you 15 days earlier from
8 Ashley Ferrel, who sent you a Dropbox link, from the data doc?

9 A No, sir.

10 Q No?

11 A The email actually tells where that information would come
12 from.

13 Q All right. Well, just help me this way --

14 A Okay.

15 Q -- Ashley's email is dated --

16 A Okay.

17 Q -- 15 days earlier than your email?

18 A Correct.

19 Q In Ms. Ferrel's email she provides a Dropbox link --

20 A Correct.

21 Q -- to the data dump that Viking, in the summer of 2017 finally
22 gave up after a protective order was litigated in the litigation?

23 A Yeah. I think the data dump that they referenced, could
24 come a little later when you dump like seven or 8,000, but the first two or
25 3,000 were in the --

1 Q And this is in Exhibit 80, as well. This is that same day,
2 Danny tells Ashley to send to the experts and to Brian, the Dropbox link,
3 and Ashley says to Danny, holy crap two words, punitive damages.

4 Did I read that correctly?

5 A You read it correctly, yes.

6 Q And at the mediation in November, the one that was
7 successful getting you \$6 million for your property damage claim, do
8 you remember having a disagreement with Mr. Simon about what the
9 mediator's proposal should be?

10 A I believe that was the next day or after, yes.

11 Q Right. You wanted the mediator to propose \$5 million, right?

12 A Correct.

13 Q Danny said, no, let's make him force -- propose 6?

14 A Correct.

15 Q And the case settled for 6?

16 A Correct.

17 Q So between Danny's brother, the mediator's proposal, he
18 made you two and a half million bucks, right?

19 A Not true. I wanted the 5 million for a different reason, but --

20 Q You wanted 5 more than 6; is that your testimony?

21 A No, it's not my testimony.

22 Q All right.

23 A I said I wanted the 5 in the agreement for a very specific
24 reason.

25 Q For example, you had all kinds of ideas in this case, and

1 before the first mediation you wrote, let's go hard at Lange, right out the
2 gate and ignore Viking. Lange doesn't settle until after Viking pays you 6
3 million, right?

4 A Correct.

5 Q Then after the November 10th mediation --

6 MR. CHRISTIANSEN: -- Exhibit 36, Mr. Greene, Bate 409.

7 BY MR. CHRISTIANSEN:

8 Q Danny said, I want authority to tell the mediator to propose 6.
9 You said he should have proposed 5, but you agreed he could do 6, and
10 then Viking paid 6?

11 A No. The mediator -- this is the day after that -- the mediator
12 put the 6 down. The arguments was over how long the two parties got
13 to respond to him. There was something on the docket that made the
14 date, it shouldn't be two weeks or whatever, it should be November 15th.
15 They discussed that. We left, and I'm like I wish you would have
16 proposed 5, to see if they'd bite, and then this is -- I agree, he should
17 have proposed 5.

18 Q But Mr. Simon got you 6, based on his expertise?

19 A The settlement was offered at 6, correct.

20 Q And that was Danny's suggestion --

21 A It was Floyd --

22 Q -- not yours?

23 A -- Hill, actually. There's a mediator guy --

24 Q Yeah. I know all about the mediators. You wanted 5, Danny
25 told him 6, he proposed 6, and they accepted 6; all true?

1 A I didn't want 5, I wanted 5 in the proposal, that's correct.

2 Q All right. Now, let's fast forward, I'm going to leave some of
3 this here, and try to get you through the timeline, Mr. Edgeworth, before
4 the end of today. And your last estimate was October the 5th, and your
5 case was worth, in your view, \$3,764,000 and change. The case settles,
6 on or near November the 10th, right, within about a week?

7 A About, yeah.

8 Q Like when I say settle so I'm being technical with you, the
9 figure was agreed to? The mediator's proposal was accepted?

10 A November 15th.

11 Q And after that you went to Mr. Simon's office and had a
12 meeting. On the day he had court he had to come see Judge Jones, and
13 do some things in your case?

14 A Yeah. He texted me.

15 Q And you brought your wife?

16 A Correct. Well, I didn't bring her, she came.

17 Q Well, your wife was in attendance with you?

18 A Correct, yes.

19 Q And this is the meeting that you felt threatened?

20 A Definitely.

21 Q Intimidated?

22 A Definitely.

23 Q Blackmailed?

24 A Definitely.

25 Q Extorted?

1 A Definitely.

2 Q How big are you?

3 A 6' 4".

4 Q How much do you weigh?

5 A Two-eighty.

6 Q Danny goes about a buck-forty soaking wet, maybe with
7 nickels in his pocket. He was extorting and blackmailing you?

8 A Definitely.

9 Q He threatened to beat you up?

10 A I didn't say that.

11 Q Because you write a letter, an email to him saying, you
12 threatened me, why did you treat me like that?

13 A No.

14 Q Did you tell him in the meeting, you're threatening us, stop it,
15 you're scaring me?

16 A I didn't say I was scared, sir.

17 Q And at the meeting Danny is trying to come to terms with
18 what you told me had never been -- terms have never been come to,
19 which is the value of his services for a punitive damage award, correct?

20 A I'm not really sure what he was trying to do. He kept saying,
21 I want this, I want that. He said, very many things, but he never defined
22 them all.

23 Q All right.

24 A It was a very unstructured conversation.

25 Q And you told the Court that he tried to force you to sign

1 something, but you don't have it?

2 A He didn't give us anything to leave with, that's correct.

3 Q All right. The next thing we have in writing, Mr. Edgeworth,
4 is an email from you, November 21, 2017.

5 THE COURT: What exhibit is this, Mr. Christiansen?

6 MR. CHRISTIANSEN: 39, Your Honor. Bate stamp 413, Mr.
7 Greene, I'm sorry.

8 BY MR. CHRISTIANSEN:

9 Q Did I get those dates right, Mr. Edgeworth?

10 A I'm sorry?

11 Q November 21st --

12 A November 21st, 2017, it says.

13 Q Right. And as of November 21st, 2017, you got legal bills,
14 counsel, experts, et cetera, for 501,000, right, and change, I'm sorry?

15 A Correct.

16 Q And then you agree that there are legal bills not billed yet?

17 A Correct.

18 Q That's left open?

19 A Correct.

20 Q So as of November 21st, 2017, you know you own Danny
21 Simon money?

22 A Well, actually as of the date of his last bill.

23 Q When you wrote this email you knew you owed Danny
24 money?

25 A Correct.

1 Q And when you sue him and claim that your bills have been
2 paid in full, that's not accurate, correct?

3 A The bills were paid in full.

4 Q Not if you still owe him money, Mr. Edgeworth, they're not.

5 A The bill hasn't been presented. Every bill that's been
6 presented was paid in full.

7 Q All right. We'll talk about how you approach that, Mr.
8 Edgeworth, but let's just look at what -- your case has been settled
9 against Viking for 6 million bucks, correct?

10 A Correct.

11 Q And you're trying to tell Mr. Simon in this email, what you
12 think the true hard cost value of your case is, correct?

13 A No. I'm responding to a request from Mr. Simon.

14 Q And his request is for you to do just that, tell him what you
15 think your case was really worth?

16 A Correct.

17 Q And you think your case was really worth \$3.827 million?

18 A No. And I've destroyed a construction business, Brian's time
19 over the last two years, there's a whole bunch of other worth to me. I'm
20 giving --

21 Q Tell me what --

22 A -- him a list he specifically asked for, on the telephone, when
23 he called me.

24 Q Okay. I'm with you.

25 A Okay.

1 Q All right. Tell the Judge the total you put in that bottom box,
2 just read it to her?

3 A 3.827147 spot 96.

4 Q Okay. Tell the Judge what , five or six days before, Mr.
5 Simon was successful in settling your case for?

6 A Six million dollars.

7 Q So you agree with Mr. Vannah's assessment, that as a result
8 of Mr. Simon's work on the punitive aspect of your case you were
9 overpaid, right? Paid more than whole, correct?

10 A Correct. They paid me more than.

11 Q In response to the October 5th -- I'm sorry, the November -- I
12 think that was 21st email from you, where the 3.827 million total, Mr.
13 Simon answered you back in a letter, right? He wrote you a letter?

14 A The email you just had right there?

15 Q Yes, sir.

16 A No.

17 Q He didn't write --

18 A He wrote that because I demanded, on a phone call, four
19 days later. I demanded he start putting something down in writing,
20 because I couldn't understand what he was saying. His discussions were
21 so unstructured, I just wanted something structured, to even understand
22 what he was saying. And I said, I will not talk about this anymore, this
23 bonus, until you give me something that I can sit down, and Angela and
24 I can see. And then the amount came on the 27th.

25 Q Sir, just out of curiosity, bonus is term, right? Mr. Simon

1 never called it a bonus. That's an Edgeworth term, fair?

2 A It's a -- yeah, a bonus.

3 Q Okay. I'm not being pejorative in nature, I'm saying that that
4 is a term you are using, and has never been used by Daniel Simon, as it
5 pertains to his fee, fair?

6 A In the November 17th meeting, he kept saying additional
7 payment . I know --

8 THE COURT: Sir, has he ever used the word bonus?

9 THE WITNESS: No.

10 THE COURT: Okay. The answer is, no. Mr. Christiansen.

11 MR. CHRISTIANSEN: Thanks.

12 BY MR. CHRISTIANSEN:

13 Q Your email again, just so we can do it chronologically, is
14 November 21 --

15 A Correct.

16 Q -- '17? Thereafter, just chronologically, November 27, Mr.
17 Simon writes you the letter that he writes you --

18 A Correct.

19 Q -- correct? And what you do next -- and at the time he writes
20 you the letter, because you and I just looked at it in your November 21st,
21 you know you owe him money?

22 A Correct.

23 Q All right. And what you do, when you get the letter, isn't
24 work out what you owe him, you go hire a new lawyer, correct? You
25 went and hired Mr. Vannah's firm, Vannah & Vannah, the 29th of

1 November --

2 A Correct.

3 Q -- correct? And you did that, and you took the position that
4 you didn't want to pay him because you didn't have a contract, right?

5 A We've always had a contract. I never took that position.

6 Q And deciding to not pay people money that you owe money
7 to is not a unique thing, situated for Mr. Simon, just in this litigation,
8 correct?

9 A No.

10 Q Because Exhibit 24 --

11 MR. CHRISTIANSEN: Bate stamp 396, Mr. Greene.

12 BY MR. CHRISTIANSEN:

13 Q -- was an email from April 18th of 2017, where you tell Mr.
14 Simon you don't want to pay one of the contractors or subs his work,
15 because he doesn't have a contract, right?

16 A That's not what I said.

17 Q We have no contract, and you don't want to pay him, right?
18 I'll give him what the Court allows, that's what you wrote. Fair?

19 A That's what it says, it's not the meaning.

20 THE COURT: What exhibit is that, Mr. Christiansen?

21 MR. CHRISTIANSEN: Exhibit 24, Your Honor. Bates 396.

22 THE COURT: Okay.

23 BY MR. CHRISTIANSEN:

24 Q And the letter from Mr. Simon, Mr. Edgeworth. You just told
25 me --

1 MR. CHRISTIANSEN: -- and I'm sorry, I want to make sure
2 you -- Exhibit 40, Mr. Greene.

3 BY MR. CHRISTIANSEN:

4 Q The November 27 from Mr. Simon, you just told the Court
5 you demanded he write you, put something in writing, correct?

6 A Correct.

7 Q So why in three different affidavits did you tell the Judge, in
8 an effort to not honor attorney's fee, or an attorney's lien, that you were
9 stunned to get the letter from Mr. Simon?

10 A Because of the contents of the letter.

11 Q That's not what you said. You said you were stunned to get
12 the letter that you ordered him to write, right?

13 A I think you're taking it out of context.

14 Q Did you use the word stunned as it pertains to the letter you
15 ordered him to send you?

16 A Yes.

17 Q So you demand something, your lawyer does it, and in an
18 effort to not pay him money you owe him, you write an affidavit saying
19 you were stunned to receive it?

20 A No.

21 Q Can we agree, sir, that a significant, and the majority of the
22 \$6 million that Viking was willing to pay, was based on the potential
23 award for punitive damages?

24 A I don't believe so.

25 Q Well, let's see, let's just see if we can do the math, the time

1 right. In March you were willing to take a million. By November when
2 you took 6, the only thing that happens, Danny Simon has done a bunch
3 of work. There's a real risk their answer, the Viking answer was going to
4 get stricken by Her Honor. She had excluded their expert, and there was
5 a punitive aspect of the case that had never been contemplated before
6 by yourself; is that fair?

7 A By what date do you feel I've never contemplated there was
8 punitive aspect?

9 Q By all the dates where you wrote in emails, you never talked
10 about it, or thought about it?

11 A It doesn't mean I didn't think that Viking was going to settle
12 for a substantial amount of money.

13 Q What line item were they going to put the substantial amount
14 of money in, sir?

15 A They didn't put it in a line item, sir.

16 Q How many \$6 million cases have you settled in your career?

17 A None.

18 Q Zero?

19 A Zero.

20 Q And is the offer for 6 million at the mediation, the time that
21 you're referencing in your affidavit that I've shown you over and over,
22 that only thereafter Mr. Simon wanted a bonus; to use your words?

23 A Can you make it clearer. I don't --

24 Q No. Did you not understand the question?

25 A Exactly. I don't --

1 Q Okay.

2 A -- get what you mean.

3 Q Did you understand the question?

4 A No, I did not.

5 MR. CHRISTIANSEN: Judge, could we maybe have a short
6 break, so I can try to organize, and maybe short circuit some of the
7 remainder of my stuff --

8 THE COURT: Okay.

9 MR. CHRISTIANSEN: -- and conclude by the day's end.

10 THE COURT: Okay.

11 MR. CHRISTIANSEN: If it's okay.

12 THE COURT: Okay. So, we'll take like ten minutes, Mr.
13 Greene.

14 MR. CHRISTIANSEN: Thank you, Your Honor.

15 THE COURT: Okay. And, Mr. Greene, if he's a little early, it's
16 up to you, or would you be more comfortable just waiting and starting
17 your examination of him tomorrow?

18 MR. GREENE: Sure, that would be great.

19 THE COURT: Okay. Because I don't want you guys to ask
20 him a couple of questions, and then have to go take the night. So even if
21 Mr. Christiansen finishes a little early if everybody's okay --

22 MR. GREENE: That makes sense.

23 THE COURT: -- we'll just be done --

24 MR. GREENE: That's fine.

25 THE COURT: -- and then you start tomorrow?

1 MR. GREENE: Makes sense, sure.

2 MR. CHRISTIANSEN: Totally fine with me, Judge.

3 THE COURT: Okay. So, we'll take about ten . . .

4 [Recess at 3:25 p.m., recommencing at 4:11 p.m.]

5 MR. CHRISTIANSEN: Judge, a scheduling issue. I want to
6 talk out of turn, because Mr. Christensen and Mr. Vannah were talking. I
7 don't think I'll finish with Mr. Edgeworth today, and we have a witness
8 here, Mr. Drummond, that's noticed and probably everybody knows
9 about him. I was hoping to maybe -- he has a settlement conference
10 tomorrow, and we can't get him back, maybe get him on and off, and
11 then I'll conclude with Mr. Edgeworth tomorrow?.

12 MR. VANNAH: I don't mind doing that.

13 THE COURT: Okay. It's totally up to you guys, I don't care
14 what order we call the witnesses in.

15 MR. CHRISTIANSEN: I appreciate it, Mr. Vannah.

16 MR. VANNAH: Sure, no.

17 THE COURT: I promise I'm paying attention on everybody,
18 so, it's --

19 MR. VANNAH: No, no. It makes sense, I mean, that works
20 out for everybody.

21 THE COURT: Okay.

22 MR. CHRISTIANSEN: Thank you, Mr. Vannah.

23 THE COURT: Okay. So, Mr. Edgeworth --

24 MR. VANNAH: Am I going to have time to cross-examine
25 him --

1 THE COURT: -- you may be excused --

2 MR. VANNAH: -- if I need to?

3 THE COURT: -- and then we'll recall your tomorrow, okay.

4 [Counsel confer]

5 THE WITNESS: For first thing in the morning?

6 THE COURT: No, I have a calendar, so we're not even
7 starting until 11:00.

8 Okay. So, we'll put Mr. Drummond on.

9 MR. CHRISTIANSEN: Yes, please, Your Honor.

10 THE COURT: Okay.

11 MR. CHRISTIANSEN: And I'll try to get my junk out of Mr.
12 Christensen's way.

13 THE COURT: Okay. We're back on the record in A-738444,
14 Edgeworth Family Trust v. Lange Plumbing and also, A-767242,
15 Edgeworth Family Trust v. Daniel Simon.

16 Good afternoon, Mr. Drummond, if you could raise your right hand.

17 CRAIG WILLIAM DRUMMOND, PLAINTIFFS' WITNESS, SWORN

18 THE CLERK: Please be seated, stating your full name,
19 spelling your first and last name for the record.

20 THE WITNESS: Craig William Drummond, C-R-A-I-G D-R-U-
21 M-M-O-N-D.

22 THE COURT: Okay. Mr. Christensen, your witness.

23 MR. CHRISTENSEN: Thank you, Your Honor.

24 DIRECT EXAMINATION

25 BY MR. CHRISTENSEN:

1 Q Mr. Drummond, what do you do for a living?

2 A I'm an attorney.

3 Q Where are you licensed?

4 A I am licensed in Nevada, Missouri, 9th Circuit, and the U.S.
5 Supreme Court.

6 Q How long have you been a licensed attorney in any
7 jurisdiction?

8 A Since 2004 in Missouri.

9 Q Can you give us the thumbnail sketch of your work
10 experience?

11 A Sure. I served in the U.S. Army JAG Corps. I was a Federal
12 Military Prosecutor; I was a defense counsel. I was an advisor on ethics
13 issues, I was an advisor on Federal tort claims. In 2009, my last duty
14 assignment was here. I passed the Nevada bar, and in 2010 set up my
15 own shop under Mr. Simon.

16 THE COURT: Did you say under Mr. Simon?

17 THE WITNESS: Under Mr. Simon, yeah.

18 THE COURT: Okay.

19 BY MR. CHRISTENSEN:

20 Q So --

21 THE COURT: And that's in 2010?

22 THE WITNESS: In 2010.

23 BY MR. CHRISTENSEN:

24 Q Could you explain that business relationship? Were you
25 physically in his office?

1 A I was. I operated under his office. I was allowed to set up
2 my own PC, but I operated under his office.

3 Q Okay. What kind of work did you do when you first started
4 with Mr. Simon's firm in 2010?

5 A I was doing about 20 percent military cases, and then I was
6 learning personal injury law. So, I was 80 percent doing personal injury
7 cases, mainly his cases, and that's how I began learning that on the -- on
8 the civilian side.

9 Q What kind of military work were you doing?

10 A Court marshals at Nellis, Irwin, government investigations
11 regarding contractors. There's a lot of cool stuff going on in Southern
12 Nevada, and I still had a security clearance, so I was able to do stuff like
13 that, that I can't really talk about. But that's -- it was about -- it was about
14 ten percent, that's what I knew, and it was a way to make some money,
15 and then the rest of it was injury cases.

16 Q That was after discharge?

17 A That was after discharge, yes.

18 Q Okay. So, there's certain cases that, when appropriate, the
19 JAG Corps are going out and contract with an outside lawyer?

20 A No. A service member has a -- you have a right to a military
21 member, if you're under investigation, or you're charged, or you can
22 actually retain a civilian attorney. And so, here there's Nellis, there's Fort
23 Irwin, and some other stuff. So, when those individuals, either
24 government contractors or members of the military get charged with a
25 crime, or are under investigation, a lot of them, normally senior folks,

1 they'd rather have a more senior attorney.

2 Q I understand.

3 A And so, they'll hire guys like me, or there are some folks who
4 nationally practice.

5 Q How'd you bill on those cases?

6 A On all of my military cases it's all a flat fee on those. On the
7 injury cases it's under a contingency agreement. And then I get a little
8 bit of hourly cases on court-appointed cases. I had about three court-
9 appointed cases that year, and for those cases I would -- I would
10 handwrite my own notes, and that kind of thing.

11 Q Okay. When you were working with Mr. Simon in 2010 on
12 the court-appointment cases that you billed hourly, how did that go?

13 A I would write down my time on a notepad, and I would keep
14 it. There was no billing program in his office. The office, 100 percent
15 was not set up to bill, the phones weren't set up to bill. So, on my time
16 for those two or three cases it was all me keeping that on a notepad, and
17 I think then maybe I went to an Excel spreadsheet, but it was -- it was my
18 own program, there was not a program there.

19 Q Did he have any support staff that were timekeepers --

20 A None.

21 Q -- that you could utilize?

22 A None.

23 Q No.

24 A I would do all of the billing myself. In fact, on the military
25 cases, or the few court appointed cases, I was the only person who

1 worked on those. His staff, every member of his staff. Now, certainly, if I
2 needed something copied, it would be copied, or something of that
3 nature, but the whole office was built around doing personal injury
4 cases, and that was all done on a contingency.

5 Q How long did you work, I guess I'll call it under Mr. Simon's
6 flag?

7 A I worked under him, directly, for about a year, and then
8 branched out and left, and went to a different building and started hiring
9 my own staff and building my own practice, and that was around 2000 --
10 early 2011.

11 Q Where's your office currently?

12 A It is now back at Mr. Simon's building, at 810 South Casino
13 Center. It was for about six years, at 228 South 4th Street, and I moved
14 back just about two years ago.

15 Q Okay. Now, you moved back into the building. Do you have
16 a separate office, or are you like back to being part of his office?

17 A No. We have -- the way the building is set up is there's three
18 wings. There's one wing where actually Mr. Christiansen is, there's one
19 wing which is Mr. Simon's office, and then there's another wing, which
20 is my firm, the Drummond Law Firm. They are all separated by doors.
21 They actually -- each one can lock from each other. So, while it's the
22 same building, it's -- the areas are separate.

23 Q Are you familiar with the contingency fees generally charged
24 in heavily litigated cases?

25 A Yes, I am.

1 Q And what is it.

2 MR. VANNAH: Excuse me, Your Honor. I mean, this is an
3 expert witness, he's not been designated as an expert witness, or -- were
4 you seriously making him an expert here, without telling us?

5 MR. CHRISTENSEN: I don't think that's --

6 MR. VANNAH: That's an expert question, what are generally
7 the charges in the area.

8 MR. CHRISTENSEN: That's a percipient witness question,
9 Your Honor.

10 MR. VANNAH: I don't think so, that's an expert question.

11 BY MR. CHRISTENSEN:

12 Q Let me ask a couple of foundational questions.

13 THE COURT: Okay, please do.

14 MR. VANNAH: They're 40 percent, by the way, we all know
15 what they are.

16 THE COURT: Well, we all do, but --

17 MR. CHRISTENSEN: I'll move on then.

18 MR. VANNAH: All right. Well, we'll agree with that.

19 MR. CHRISTENSEN: Because that's --

20 MR. VANNAH: Normally, I continue to be --

21 MR. CHRISTENSEN: We agree.

22 MR. VANNAH: -- in agreement that for--

23 MR. CHRISTENSEN: We'll move on.

24 MR. VANNAH: -- a heavy litigated case it's 40 percent.

25 MR. CHRISTENSEN: See, we can find common ground.

1 MR. VANNAH: I thought everybody knew that.

2 THE COURT: I like it. Okay.

3 MR. CHRISTENSEN: All right.

4 THE COURT: Okay.

5 MR. VANNAH: All right.

6 THE COURT: So, Mr. Vannah agreed to 40 percent --

7 MR. CHRISTENSEN: Okay.

8 THE COURT: -- so we can move on.

9 MR. VANNAH: Good.

10 BY MR. CHRISTENSEN:

11 Q You described the difficulties that you had with billing when
12 you worked with Mr. Simon. During that period of time have you ever
13 seen Mr. Simon work an hourly case?

14 A To my knowledge, and to my personal knowledge the
15 answer is, no. I never saw him have any hourly case when I was there,
16 and in my relationship, personally and professionally with him, I was not
17 aware of any case that he was billing hourly on.

18 Q Were you back in his building as a renter in 2017?

19 A I was.

20 Q Are you familiar with the Edgeworth case?

21 A I am.

22 Q How are you familiar with the Edgeworth case?

23 A My practice is fortunately growing, and because of that,
24 when we get certain types of cases at certain levels, I'll call it large cases,
25 sometimes I would branch out and bring in other counsel as co-counsel,

1 someone who's more experienced. And I have brought in Mr. Simon on
2 a number of cases throughout the years.

3 And I recall specifically two cases. There was a case that I had, last
4 name Diaz, that was occurring around the early 2017 time frame, and I
5 brought Mr. Simon in as my co-counsel. It was an extremely
6 complicated case, involving a lot of factual disputed issues, numbers of
7 experts. And we had to actually move discovery multiple times, because
8 he was busy with the Edgeworth case, and he and his staff made it very
9 clear that they were working very hard on that Edgeworth case.

10 And, in fact, there was another case, last name of Henderson. It
11 was actually this Department, Your Honor, where I was trying to bring
12 Mr. Simon in, in 2017, and because of the Edgeworth case he did not
13 want to take it on, because he didn't feel that he would have the time or
14 resources to help me with it. And so, it wasn't actually until recently, in
15 this year, that I brought him in on the case, where he helped us get the
16 case resolved.

17 Q You mentioned bringing in other attorneys. Do other
18 attorneys ever bring you in on files?

19 A Yes. I feel fortunate to have had quite a bit of trial
20 experience, and there are a number of law firms here in town that we
21 have tried their cases. Some of them where that's all public, it's all on
22 Odyssey. Gabe Martinez, I tried cases for him. I had tried cases for
23 Aubrey Goldberg, who's a former State Bar President. I've tried cases
24 for Josh Tomsheck, who's a litigator here in town, for Mike Sanft, who's
25 a litigator here in town, for Gabe Grasso. All those individuals I have

1 been brought in to specifically try cases for them on a co-counsel
2 relationship.

3 Q What attorneys have you brought in, on large cases?

4 A Only two.

5 Q And who are those?

6 A Daniel Simon, or P. Christiansen.

7 Q Why do you bring in Mr. Simon on a case?

8 A One, he started out as not only a friend, he started out as a
9 mentor, and teaching me the right way to do personal injury cases. The
10 right way to build up a case, get the right experts. Actually, litigate the
11 cases, read the discovery, prepare for depositions, and I have seen him
12 over the years change cases. He changes the dynamic of the case, and
13 that's not something that always a small firm like mine can see.

14 Sometimes we can't see through those weeds to change that
15 dynamic. And I feel fortunate that he's a friend. I feel fortunate that our
16 offices work well together, and I feel fortunate that he has been very
17 successful in the cases I brought him in. Changing the dynamic, which
18 also changes the value, which also then directly changes the return for
19 the client.

20 Q It sounds like you've worked in a lot of different jurisdictions?

21 A I have.

22 Q What's your opinion of Mr. Simon's ability?

23 A I would consider him a top one percent trial lawyer. I have
24 dealt with military attorneys. I have dealt with civilian attorneys. I've
25 dealt with regular government attorneys. I am on the Federal CJA panel

1 here for the Federal Southern District, where we deal with the select
2 attorneys who can do criminal defense. Most of us who do some
3 criminal defense also do injury cases.

4 I'm on the Clark County Court appointed panel here, for court-
5 appointed work, all the way to murder. I deal with a lot of attorneys on a
6 day-to-day basis. I'm in court every single day -- well, I shouldn't say --
7 most days I am in Court, and I would say he's a top one percent lawyer.

8 Q Other than seeing and hearing that Edgeworth was going on,
9 do you have any particular knowledge about the case?

10 A Not really. Other than I know that it was taking up a lot of his
11 office's time, and it was very clear that that was going on. And I will go
12 over to his office to say hi to him, to say hi to his associates, to say hi to
13 his staff. My office does too. If somebody needs a binder, somebody
14 will walk over. It's a very cordial working relationship.

15 And that case was the one case that we would hear, as far as
16 what's Danny doing, what case is he working on, what experts is he
17 talking about; it was the Edgeworth case. As far as any other details I
18 really don't know.

19 Q Okay. Thank you, Mr. Jones.

20 A Thank you, sir.

21 THE COURT: Cross?

22 MR. VANNAH: Yes.

23 CROSS-EXAMINATION

24 BY MR. VANNAH:

25 Q How are you, Mr. Jones?

1 A Good, sir.

2 Q I think we can agree on one thing, Mr. Simon is a good
3 lawyer, right?

4 A Yes.

5 Q He does a good job, right?

6 A Yes.

7 Q Enjoys a nice reputation?

8 A I think he's earned it, yes.

9 Q Okay. So, let's talk about contingency cases. What's the
10 largest case that you settled with Mr. Simon, where he helped you?

11 A It settled confidentially.

12 Q Is it over a million dollars?

13 A Well over.

14 Q Okay. And did you have a contingency fee agreement with a
15 client on that case?

16 A We did.

17 Q In writing?

18 A We did.

19 Q Are you required to do that?

20 A If you're asking me to give you my expert opinion on Rule
21 1.5, is that what you're asking about?

22 Q Let me just tell you, 1.5 says, quote/unquote, "that you
23 cannot do a contingency fee agreement with a client unless it is in
24 writing;" isn't that correct?

25 A Well, here's what I can tell you, because I want to answer

1 your question. You deserve --

2 Q Let me just ask you to give --

3 A -- the answer. I want to give it to you.

4 Q I like the yes or no stuff. So, let me just -- if you can answer
5 yes or no, we'll start with that. You've read Rule 1.5 right?

6 A I have.

7 Q And doesn't it specifically say that you cannot have a
8 contingency fee agreement with a client unless the agreement is in
9 writing?

10 A I believe there's two parts to that rule, since you're asking me
11 about that rule. There's one part which talks about a prior relationship
12 with a client, and then there is a part that talks about a contingency fee
13 agreement. I can --

14 Q Let me read the rule to you, how's that?

15 A Okay.

16 Q And then we'll go.

17 A Okay.

18 Q I don't mean to -- I don't memorize these rules, either, so I'll
19 be fair to you. Here's the rule, I'll read it to you. Rule 1.5(c), okay. A fee
20 may be contingent on the outcome of the matter for which the service is
21 rendered, except in a matter in which a contingent fee is prohibited by
22 paragraph (d) or the law.

23 Okay? For example, you can't have a contingency fee in a divorce
24 case, but you can have a contingency fee, right? You agree, that the bar
25 allows that?

1 A The bar does allow you to have a contingency fee --

2 Q All right.

3 A -- 1.5(b).

4 Q Let me read the rest of it now, there's the part I want to focus
5 on.

6 A Oh, okay.

7 Q We all know you can do a contingency fee. we all know 40
8 percent's reasonably typical for heavily litigated matters, right?

9 A You're reading 1.5(c), correct?

10 Q I haven't read it yet, but I'm about to read it to you, here it is.

11 A I thought you just did?

12 Q I haven't finished it. Okay. Here's the part that -- yeah, we --
13 well, I think we can --

14 A I don't want to --

15 Q -- agree on 1.5. You can have a contingency fee, certainly on
16 a case like the Edgeworth case, they certainly could have entered into a
17 contingency fee, agreed?

18 A I'm not here to give an expert opinion about the contingency
19 fee in this case. I have not reviewed documents in this case. I'm just
20 being honest with you.

21 Q Okay.

22 A If you want me to look at it, I know --

23 Q Let me just -- you're the one who brought up contingency
24 fees and let me just read this to you. It says, quote, I'm reading this.

25 A Uh-huh.

1 Q "A contingent fee agreement shall be in writing, signed by
2 the client, and shall state in bold-face type, that is at least as large as the
3 largest type used in the contingent fee agreement."

4 Okay. So, you see that a contingent fee agreement has to be in
5 writing, and it has to be signed by the client to be a contingency fee,
6 agreed?

7 A You may want to look at 1.5(b). Can you read that to me?

8 Q 1.5(b)?

9 A Correct.

10 Q Sure, I will. 1.5(b) says:

11 The scope of the representation, and the basis or rate of the
12 fee, and expenses for which the client will be responsible,
13 shall be communicated to the client preferably in writing,
14 before or within a reasonable time after commencing their
15 representation, except when the lawyer shall charge a
16 regularly represented client on the same basis or rate.

17 Okay?

18 A Yes.

19 Q The more specific rule on contingency fee is (c), which says --

20 A No. I think you read the rules together. I read all the rules
21 together. I don't discount --

22 Q So, is it your opinion you can have a contingency fee that's
23 not in writing, signed by the client and be valid?

24 A Hang on, wait a minute. If you could have a contingency
25 fee --

1 Q Is it your opinion --

2 A -- signed by the client --

3 Q -- that you can have --

4 A -- it would be right.

5 Q -- a contingency fee that is not in writing and not signed by
6 the client, and have it be valid?

7 A I am not prepared to give you an expert opinion on Nevada
8 law on that, because I believe you would need to read those rules; (b)
9 and (c) in conjunction, as well as with the case law.

10 Q How many --

11 A I was not prepared to give an expert opinion on that issue.

12 Q That's fine. So, how many times have you represented a
13 client in a personal injury matter on a contingency fee agreement that
14 was not in writing?

15 A I have not.

16 Q Okay. Now, Mr. Simon's been your mentor, which is
17 allottable. Did he teach you that? Did he teach you, if you're going to do
18 a contingency fee you better put it in writing?

19 A Well, I was practicing law for many years before I dealt --

20 Q My question, did he ever tell you that?

21 A I don't recall if Mr. Simon and I have had a discussion as far
22 as what should be in a contingency fee agreement or not. I do not recall
23 if we've had that discussion.

24 Q Okay. Were you aware there is no written contingency fee in
25 this case?

1 A I'm not aware of all of the details in this case, as I --

2 Q One question. Are you aware as to whether or not there's a
3 contingency fee in writing, in the Edgeworth case, in your discussions
4 with Mr. Simon?

5 A I'm aware there are emails.

6 Q My question --

7 A I'm am not aware of what you're defining as a contingency
8 fee, or not defining as a contingency fee. I'm just being honest with you.
9 I did not review documents in preparation for this testimony. I'm not a
10 percipient witness to documents in this case.

11 Q But you talked to Mr. Simon about this case?

12 A Not in detail, no.

13 Q Well, you've talked to Mr. Simon's attorneys. You didn't just
14 show up here today, right?

15 A I have briefly talked to Mr. Christiansen for about three
16 minutes, probably even less than that out there. I was simply asked my
17 knowledge of the billing software, which there was none.

18 Q Okay.

19 A I was asked my knowledge of, did it take up a lot of his
20 office's time, which the answer is, absolutely. Did it affect his ability to
21 earn income when it would have been brought in on large cases with my
22 office, during 2017, absolutely. Those things I have personal knowledge
23 about, and that's what I am a hundred percent solid and able to give you
24 that good honest testimony to those things.

25 Other things would cause me to speculate, or to talk about

1 documents I have not reviewed, or defining a contract which I've not
2 recently read the case law on.

3 Q So, what you're to tell us, all we can get out of this, is Mr.
4 Simon is a good lawyer.

5 A He's an excellent lawyer.

6 Q And he was busy working the Edgeworth case?

7 A He's an excellent lawyer. He was working on the Edgeworth
8 case, and that did take away from him earning money, significant
9 money, by coming in and working on cases with my office, and I would
10 imagine other attorneys as well.

11 Q Are you aware that he's billed nearly a million dollars on this
12 case?

13 A Don't know what the bills are in this case.

14 Q How many cases have billed, nearly a million dollars in
15 hourly billing?

16 A In hourly billing?

17 Q Yes.

18 A None, on an hourly bill, because I don't --

19 Q What's the most you've ever billed any case on an hourly
20 billing? Ever, in your history of mankind --

21 A Well --

22 Q -- hourly?

23 A And I'll try to answer that.

24 Q Okay.

25 A I don't bill any cases hourly, except court-appointed cases.

1 Q How much have you ever -- what's the most you've ever
2 billed on an hourly case ever?

3 A I -- \$100,000, probably close to that, is the honest answer.
4 But all the private clients that we do on the criminal cases I do those on a
5 flat fee, because also my office really isn't set up to do hourly billing
6 either.

7 Q Okay. Now I appreciate you coming today. Thank you, Mr.
8 Drummond.

9 A Thank you, sir.

10 Q Good luck with your settlement conference tomorrow.

11 A Thank you.

12 MR. VANNAH: Thank you, Your Honor.

13 THE COURT: Thank you. Any further questions, Mr.
14 Christensen?

15 MR. CHRISTENSEN: No, Your Honor.

16 THE COURT: Okay. This witness may be excused. Thank
17 you very much, Mr. Drummond --

18 THE WITNESS: Thank you, Your Honor.

19 THE COURT: -- for your testimony here today. And we did
20 take Mr. Drummond out of order, but it is 4:30, so if you guys are okay,
21 we'll just recess, and we'll put Mr. Edgeworth back up tomorrow.

22 I have a civil calendar at 9:30, but we should be done by 11:00, so we'll
23 start tomorrow at 11:00.

24 MR. VANNAH: That'll be fine, Your Honor.

25 THE COURT: Okay.

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MR. CHRISTENSEN: Thank you, Your Honor.

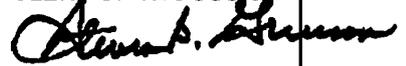
THE COURT: See you guys tomorrow.

[Proceedings concluded at 4:33 p.m.]

ATTEST: I do hereby certify that I have truly and correctly transcribed the audio-visual recording of the proceeding in the above entitled case to the best of my ability.



Maukele Transcribers, LLC
Jessica B. Cahill, Transcriber, CER/CET-708



1 RTRAN

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DISTRICT COURT

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CLARK COUNTY, NEVADA

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EDGEWORTH FAMILY TRUST;
AMERICAN GRATING, LLC,

CASE#: A-16-738444-C

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Plaintiffs,

DEPT. X

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vs.

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LANGE PLUMBING, LLC, ET AL.,

11

Defendants.

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EDGEWORTH FAMILY TRUST;
AMERICAN GRATING, LLC,

CASE#: A-18-767242-C

14

Plaintiffs,

DEPT. X

15

vs.

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DANIEL S. SIMON, ET AL.,

17

Defendants.

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BEFORE THE HONORABLE TIERRA JONES, DISTRICT COURT JUDGE
TUESDAY, AUGUST 28, 2018

20

RECORDER'S TRANSCRIPT OF EVIDENTIARY HEARING - DAY 2

21

APPEARANCES:

22

For the Plaintiff:

ROBERT D. VANNAH, ESQ.
JOHN B. GREENE, ESQ.

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For the Defendant:

JAMES R. CHRISTENSEN, ESQ.
PETER S. CHRISTIANSEN, ESQ.

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RECORDED BY: VICTORIA BOYD, COURT RECORDER

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FOR THE PLAINTIFF

MARKED

RECEIVED

None

FOR THE DEFENDANT

MARKED

RECEIVED

None

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Las Vegas, Nevada, Tuesday, August 28, 2018

[Case called at 11:09 a.m.]

THE COURT: -- Edgeworth Family Trust v. Lange Plumbing, A-767242, Edgeworth Family Trust v. Daniel Simon. Okay, Mr. Edgeworth -- are we beginning with him?

MR. CHRISTENSEN: Your Honor, we have client to take -- or one witness to take out of order --

THE COURT: Okay.

MR. CHRISTENSEN: -- Mr. Michael Nunez.

THE COURT: Okay.

MR. CHRISTENSEN: Mr. Nunez.

THE MARSHAL: I'll have you remain standing, face Madam Clerk and raise your right hand.

MICHAEL NUNEZ, DEFENDANTS' WITNESS, SWORN

THE CLERK: Please be seated, stating your full name, spelling your first and last name for the record.

THE WITNESS: Michael Nunez, M-I-C-H-A-E-L, Nunez, N-U-N-E-Z.

THE COURT: Okay. Mr. Christensen, this is your witness.

MR. CHRISTENSEN: Thank you, Your Honor.

DIRECT EXAMINATION

BY MR. CHRISTENSEN:

Q Mr. Nunez, what do you do for a living?

A I'm a lawyer.

1 Q How long have you been a lawyer?
2 A Since 1992.
3 Q How long have you practiced in Nevada?
4 A Since 2008.
5 Q Where do you currently work?
6 A Murchison & Cumming.
7 Q And how long have you worked there?
8 A Nineteen years.
9 Q Are you familiar with Mr. Simon?
10 A Yes.
11 Q How are you familiar with Mr. Simon?
12 A In a professional capacity. I've had one or two cases with
13 him through the years.
14 Q Did you work on a case with Mr. Simon that we're just kind
15 of generically calling the Edgeworth v. Viking case?
16 A Yes.
17 Q Are you familiar with that case?
18 A Yes.
19 Q How are you familiar with that case?
20 A I was counsel for R. Giberti, Giberti Construction.
21 Q How was Giberti positioned in the case?
22 A Giberti was brought in as a third party defendant, by Viking.
23 Q And how did it come about that you became their lawyer?
24 A I was assigned counsel by insurance.
25 Q Do you have an understanding of how insurance was

1 triggered in the case for Giberti?

2 A I know that the claim was tendered. I know that there was a
3 claim's process, while there was a determination of whether a defense
4 would be afforded; ultimately defense was afforded, and I was assigned.

5 Q Do you know if Mr. Simon had a hand in that process?

6 A Yes. He assisted Mr. Giberti in obtaining coverage for the
7 claim.

8 Q Okay. It sounds like you may have come into the case a little
9 late, so-to-speak?

10 A Yes, quite late.

11 Q Okay. Approximately when did you come into the case?

12 A I want to say it was at least a year into the litigation, maybe
13 May, before the October eventual resolution of the case.

14 Q Okay. Did you have difficulty getting up-to-speed?

15 A Yeah. It took me a while. It was a very voluminous file,
16 many, many bankers' boxes, many depositions, a good deal of
17 discovery. The case was well under way by the time I was brought in.

18 Q Did Mr. Simon ever make himself available to you, to help
19 bring you up-to-speed?

20 A I'm not sure what you mean by available. I know I had
21 multiple conversations with all counsel in the case, to come up to speed.

22 Q Did you personally observe Mr. Simon's work on the file?

23 A Yes.

24 Q Can you characterize his work in any fashion that you feel
25 comfortable with?

1 A Sure. Like I said, the case had been well under way by the
2 time that I had brought -- my client had been brought in. I think that he
3 had already positioned his client in a very advantageous position, at the
4 time I was in. The theory that my client was asserted against had more
5 or less been thoroughly covered by Mr. Simon, so I would say he did an
6 incredible job on the file.

7 He was zealous in his representation. He was extremely thorough.
8 There were a great many depositions, exhaustive discovery. I think it
9 was a very thorough, a very competent, a very complete job that Mr.
10 Simon did.

11 Q Just from your perspective did it look like he was working on
12 any other cases, during this period of time?

13 A I did not get the impression he was working on any other
14 case. I know he also had an associate working for him. It seemed like
15 practically on a daily basis I would get communication from Mr. Simon
16 on the case. He was extremely thorough.

17 Q I'm going to show you what's been marked and admitted as
18 Exhibit 32, it's Bate Simon404. Do recognize the email that's been
19 marked and admitted as Exhibit 32?

20 A Yes.

21 Q What is that email?

22 A That was an email I sent to Mr. Simon after I read one of his
23 motions to strike Viking's affirmative defense I believe on the heat
24 defense. It was a devastating motion, I thought.

25 Q Did that motion inure to your client's benefit --

1 A Absolutely.

2 Q -- as well? Now are you aware of a contract that existed
3 between Lange Plumbing and American Grating?

4 A Yes.

5 Q And was that contract of interest to your client and to the
6 case as a whole?

7 A Sure. From the claims being made, from the damages being
8 asserted perspective, yes.

9 Q Okay. The contract has been marked and is admitted as
10 Exhibit 56; the lead Bate is Simon455. What I'd like to do is, is I'd like to
11 jump into the middle of it and show you what's on page 14, which is
12 Bate 468, Section 7.1; and that was a warranty section?

13 A Yes.

14 Q And then the following section was Section 7.2, and that was
15 the indemnity section?

16 A Yes, I've seen these.

17 Q And without going through all the 30 or 40 lines of print
18 there, essentially Lange had obligated itself to pursue warranty claims
19 on behalf of American Grating for any products they installed in the
20 building that were affected; is that true?

21 A I recall that, yes.

22 Q At the time you came into the case did you take a look to see
23 whether, in your opinion, Lange had breached that contract?

24 A From what I remember the principal of Lange had already
25 been deposed by the time that I was brought in as a third party. I do

1 remember reading that deposition, and I do remember I was surprised
2 how freely he admitted that. He understood that they were in breach of
3 their warranty obligations.

4 Q Now this contract also had an attorney fee provision; is that
5 correct?

6 A Yes, I believe so.

7 Q This is Bate 472, Exhibit 56. We're going to take look at
8 Section 18, which is page 18 of the contract; that's the attorney fee
9 section?

10 A Yes, it appears to be.

11 Q So in essence to summarize, that means that if someone has
12 to pay money pursuing that warranty, say to a lawyer, you can seek
13 return of that money from Lange under this contract, correct?

14 A That would be how I would interpret it.

15 Q Was that -- did that generally seem to be how all the lawyers
16 in the case interpreted it?

17 A Yes.

18 Q And that was something that was discussed and relevant to
19 settlement negotiations, et cetera?

20 A Yes. It was a subject in discovery and settlement
21 negotiations.

22 Q Okay.

23 A It was an issue in the case.

24 Q Did you have an opportunity to personally observe Mr.
25 Edgeworth, either at a hearing, or a deposition, or something related to

1 the case?

2 A Yeah. He was involved in the case, and he was present at
3 most depositions.

4 Q Most, but not all?

5 A Maybe just one or two, I would say just about all of them.

6 Q Did you reach any impressions of Mr. Edgeworth during
7 those times that you were able to observe him?

8 A Impressions?

9 Q What was his behavior like?

10 A You know, he was involved in the case, obviously. You
11 know, he was angry that his house had been damaged to the extent that
12 it was; that was evident. He was frustrated that Lange and Viking
13 weren't stepping up to their obligations. He was, I guess, frustrated with
14 how long it was taking for his case to be pursued. I would say it was
15 probably very consuming to him; that's the distinct impression I got.

16 Q How does his -- from what you could see how was his
17 relationship with Mr. Simon during those depositions?

18 A It was -- I mean, they were close. He always sat next to Mr.
19 Simon. He always was passing notes to Mr. Simon. It seems to me like
20 Mr. Simon was doing all he could to represent him as effectively as he
21 could, and Mr. Giberti certainly appreciated that.

22 Q There was a relationship of course between Mr. Giberti and
23 Mr. Edgewood?

24 A Yes.

25 Q Okay. How did Mr. Simon react to this -- like passing him

1 notes in the middle of deposition. Did he --

2 A He was patient. He would always take the time to read them.
3 I don't know what the questions said, so I don't know if he always asked
4 the questions that were put up now, but I know he always took the time
5 to read them.

6 Q How would you describe, Mister -- just in general how would
7 you describe Mr. Simon's advocacy of Mr. Edgeworth?

8 A Stellar. It's one of the most impressive representations I
9 think I've ever seen in my ten years in Nevada, it was exemplary.

10 Q Thank you, Mr. Nunez.

11 MR. CHRISTENSEN: No more questions.

12 THE COURT: Okay. Cross?

13 MR. VANNAH: Yeah.

14 THE COURT: Okay.

15 MR. CHRISTENSEN: Give me just a second to tidy up here.

16 MR. VANNAH: Take all the time you need.

17 MR. CHRISTENSEN: There you go.

18 MR. VANNAH: No problems.

19 CROSS-EXAMINATION

20 BY MR. VANNAH:

21 Q Mr. Nunez?

22 A Yes, sir.

23 Q Mr. Nunez, how are you?

24 A Very good.

25 Q We can agree on one thing, Mr. Simon's a good lawyer,

1 right?

2 A Yes.

3 Q From what you saw he does a good job?

4 A Yes.

5 Q We both agree on that?

6 A Yes.

7 Q So let me just ask you this. Murchison and Cumming, you
8 have offices in four cities; you're a big firm?

9 A Los Angeles, San Diego, San Francisco, Irvine, and Las
10 Vegas.

11 Q Okay. We're just little firms, but how many lawyers do you
12 have in that firm, there must be quite a few?

13 A In the Las Vegas office, or --

14 Q Not a whole office, but the whole thing?

15 A Probably about 80.

16 Q Eighty. So, when you are -- when you were asked to work on
17 the case, I think I understand, I used to do insurance defense; that's what
18 you do, right?

19 A Yes, sir.

20 Q That's a firm that's well-known for insurance defense, right?

21 A Yes.

22 Q One of your former partners used to be a law school
23 professor of mine.

24 A Oh, yeah.

25 Q I know they're a good firm. So, you get paid -- your firm gets

1 paid to -- on this -- how much was your hourly billing on this case?

2 MR. CHRISTENSEN: Excuse me, Your Honor.

3 MR. VANNAH: No, it's very important, because we're talking
4 about 550 for your client..

5 THE COURT: Okay. Let me see what -- what's the objection,
6 Mr. Christensen?

7 MR. CHRISTENSEN: a) it's beyond the scope; and b) it's not
8 relevant, because Murchison & Cumming and this gentleman was paid
9 pursuant to, presumably a contract with an insurance company. And
10 that encompasses not just the work on this case, but the whole body of
11 work that they might get all of the lines of claims that they might get
12 from the carrier.

13 So, I don't like to use the word bulk work, because I think that
14 kind of talks down a little bit to what the real work this gentleman does,
15 but he doesn't just get one case, a one-off case --

16 MR. VANNAH: So, this is --

17 MR. CHRISTENSEN: -- from a carrier.

18 MR. VANNAH: -- an argument, Your Honor. This is like
19 we're now going --

20 MR. CHRISTENSEN: He gets a whole bunch of cases.

21 MR. VANNAH: -- on and on about --

22 THE COURT: No just one second, Mister --

23 MR. VANNAH: -- evidence, sir.

24 MR. CHRISTENSEN: He gets a whole bunch of cases. So,
25 trying to establish relevancy of what this gentleman does to a rate that

1 could be applied to Mr. Simon, it's just not relevant.

2 THE COURT: Mr. Vannah?

3 MR. CHRISTENSEN: And it's beyond the scope, again.

4 MR. VANNAH: Very well. I mean, we're -- I don't disagree.

5 We're not taking the position that Mr. Simon didn't do a fine job, I never

6 said that. Never have said it, never pled it, nor argued it. And I don't

7 disagree with Mr. Nunez that Mr. Simon did a fine job, and it's not a

8 malpractice case in any way, shape or form.

9 So, Mr. Simon is billing \$550 an hour in this case, and he's

10 doing similar work to what Mr. Simon [sic] is doing, I'd like to know how

11 much he charges with this large firm he works with, on this case.

12 THE COURT: Okay. I'll allow Mr. Vannah to ask the question.

13 Mr. Christensen, if you want to follow-up on the cross as to the

14 differences in their work you'll be allowed to do that.

15 MR. CHRISTENSEN: Thank you, Your Honor.

16 THE COURT: Sir, you can answer the questions.

17 THE WITNESS: I don't remember exactly.

18 THE COURT: I thought that might happen.

19 BY MR. VANNAH:

20 Q What amount? You guys have billing rates --

21 A We do have billing rates. It would have been something

22 between 185 and 225, probably in that range.

23 THE COURT: \$185 and \$225? Okay.

24 BY MR. VANNAH:

25 Q All right. so, it would have been somewhere within a range

1 of \$185 an hour, to \$225 an hour, correct?

2 A I believe so, yes.

3 Q Do you think you did a stellar job on the case?

4 A Yes, I did.

5 Q All right. Was your firm losing money, at 185 to 225 an hour,
6 are they losing money?

7 MR. CHRISTENSEN: Your Honor, there is a --

8 MR. VANNAH: I'll withdraw --

9 MR. CHRISTENSEN: Not only is this question --

10 MR. VANNAH: -- the question. I mean, the answer is so
11 obvious.

12 THE COURT: Okay. Ask another question, Mr. Vannah.

13 THE WITNESS: Were we losing money?

14 THE COURT: That's okay, sir. You don't have to answer that
15 question, he withdrew it.

16 BY MR. VANNAH:

17 Q You had been asked what was their relationship with a
18 deposition. I've been in a many -- you went to a lot of depositions in
19 your life, right?

20 A Yes.

21 Q And when you're talking a relationship with a deposition
22 between a client, the clients usually sit next to their attorneys, right?

23 A No. Usually the Plaintiff doesn't attend the depositions.

24 Q Oh, that's a good point. When a client does attend a
25 deposition with the attorney, they usually sit next to each other, right?

1 A Yes.

2 Q And often times you see people passing notes, the client
3 usually telling the attorney, hey, dumbass, here's a good question to ask,
4 right? That's happened to you, right?

5 A It's happened, yeah.

6 Q It's happened to me too. It's happened to everybody that's
7 practiced law, that somebody's saying, hey, you're missing the big point.
8 So that's -- when you talk about the relationships, how many depositions
9 did you attend that Mr. Edgeworth was at with Danny Simon?

10 A At least half a dozen.

11 Q About six, okay. And so, when you say, what's your
12 relationship, generally when you went into the deposition and you see
13 Mr. Simon, and he's sitting next to Mr. Edgeworth, and what you see is
14 Mr. Edgeworth making notes and passing them over for Mr. Simon to
15 look at, and to use as he deems appropriate, correct?

16 A Yes.

17 Q That's the relationship you observed, right?

18 A Yes.

19 Q They weren't yelling at each other, or beating each other up,
20 or anything like that, right?

21 A Not on the record. They seemed to have quarrels from time-
22 to-time in the hallways, or something like that.

23 Q Oh, okay. So, you observed the times that Mr. Edgeworth
24 wasn't totally happy with Mr. Simon, they were having a quarrel in the
25 hallway?

1 A Not with Mr. Simon. As I said, he was frustrated with the
2 case. He was a very angry man. He was angry at what had happened to
3 his house. He was angry that he wasn't getting a response from Lange,
4 or Viking, and that the case had gone on so long.

5 Q Did it seem to be inappropriate that he was angry about the
6 fact that his house had been flooded like this, and they hadn't stepped up
7 to the plate? Did it seem inappropriate that he was angry about that him
8 being Mr. Edgeworth?

9 A Whether it was appropriate or not, he came across to me as
10 very angry.

11 Q Okay. And so, in the hallway, this cordial relationship, you
12 didn't always see that, you saw that they had -- they argued in the
13 hallway sometimes, Mr. Edgeworth and Mr. Simon, correct? You could
14 see that?

15 Q I wasn't eavesdropping on attorney/client communications.
16 But, typically, when there was testimony that Mr. Edgeworth didn't like,
17 he would get angry.

18 A Okay.

19 Q So you had talked about -- you didn't represent Lange, right?

20 A No.

21 Q Now you talk about -- everybody thought Lange owed money
22 to Mr. Edgeworth. Did the Lange attorneys feel that way too? Did they
23 say, hey, we think we owe Mr. Edgeworth a lot of money, did they ever
24 say that to you, or anybody in your presence?

25 A I'm not sure what you're asking. They didn't share their

1 strategies, thoughts, and impressions with me, if that's your questions.

2 Q The question that's been asked of you, did everybody in the
3 case think Lange owed Mr. Edgeworth a lot of money? I thought that
4 was the question that was asked, and you said, Yeah. All the lawyers
5 thought that.

6 A There was consensus that there was a breach of the
7 warranty.

8 Q Okay. Is that -- so a consensus, did the Lange lawyers, the
9 people that are going to spend the money, did the Lange defendants and
10 the Lange lawyers also agree that they had breached the agreement, did
11 they say that to you, or in front of you?

12 A It -- I don't remember. I mean, perhaps not directly. It was a
13 concern. A lawyer is never going to admit that it has no defense, so I
14 don't really call those type of discussions.

15 Q Okay. So, when you say, it was a consensus among all the
16 lawyers, the people who had the money that had to pay the claim that
17 wasn't something they shared with you. We believe that we're going to
18 have to pay a lot of money some day; they didn't tell you that, right?

19 A I only reported to my carrier, and I reported --

20 Q So the answer is, no, they never told you that? The Lange
21 lawyers never told you, we think we're in big trouble here, and we're
22 going to have to pay a lot of money some day; they never said that to
23 you did they?

24 A Well, sure. Everybody was concerned that there was liability
25 somewhere. Everybody is aware this is a very expensive home.

1 Everybody was aware that there was massive flooding. My client had
2 made very large cost estimates as to what it would cost to repair it. We
3 were aware that an attorneys' fees provision was -- was triggered by the
4 contract, so there were a lot of pieces in play.

5 Q Here's the question. Did the Lange lawyers, or the Lange
6 Defendants, ever say to you, or in your presence, that we feel that we are
7 going to have to pay a lot of money someday to Mr. Edgeworth; did they
8 ever say that in your presence?

9 A I don't remember if those words, or words to that effect were
10 used.

11 Q Okay. Now you -- were you aware that there was a
12 settlement offer by Lange for \$100,000 minus 22,000 that they felt Mr.
13 Edgeworth paid; were you aware of that?

14 A I think so.

15 Q When there's a settlement offer in a case like this, who is it
16 that has the decision-making on whether to settle, or eliminate that risk --
17 and to eliminate the risk or to go forward on a case, who is the person
18 that makes that decision, ultimately?

19 A Are you talking about from the Plaintiff's side or from the
20 defense side?

21 Q From the Plaintiff's side? The question from Lange -- Lange
22 offered settlement to the Edgeworths, right?

23 A Yes.

24 Q Who is it that makes the decision as to whether or not to
25 continue forward and accept whatever risk, reward there may be in that

1 situation, or to settle the case, who's the person that makes that
2 decision? Is it the lawyers, or the client?

3 A Ultimately it's the client's decision.

4 Q Okay. The lawyer can advise their client. You've done that
5 many times, given advice to a client, or to an insurance company, as to
6 what you think would be a fair settlement, right?

7 A Are you asking --

8 Q Would they put --

9 A -- my opinions?

10 Q Do they always take your opinions?

11 A No. I make recommendations, and ultimately it's the client's
12 decision.

13 Q So, in this case the decision to accept the Lange settlement,
14 that would have been Mr. Edgeworth's decision, not Mr. Simon's,
15 correct?

16 A I would only assume so. I don't know the relationship, I'm
17 not privy to that.

18 Q Okay. And on the heat defense, can you tell the Court a little
19 -- you mentioned that you thought there was a good motion on the heat
20 defense. I'm kind of familiar with it. Can you tell the Court what that
21 heat defense was?

22 A Sure. A claim against Giberti as the general contractor on
23 the project was one of sequencing and timing. There was an assertion
24 that they allowed the sprinklers to be in place during the hot summer
25 months for too long a period of time, and that may have caused or

1 contributed to the failure.

2 Q And were you aware that Mr. Edgeworth went out and did
3 considerable research on his own, regarding the heat that would apply to
4 these sprinkler systems, during manufacturing, and things like that
5 anyway, and that Mr. Edgeworth is the one that came up with the
6 scientific part of the argument on that; were you aware of that?

7 A No, not at all.

8 Q Who did that, if it wasn't Mr. Edgeworth; do you know?

9 A I always believed it was Mr. Simons.

10 Q You thought Mr. Simon did all this research on his own?

11 A Yes.

12 Q Oh. What's his educational background in the area of
13 engineering; do you know?

14 A No.

15 Q How do you know that Mr. Simon went out and did this
16 scientific research, and looked at all the documents to come up with this
17 information, as opposed to Mr. Edgeworth, who's very involved in the
18 case, as you say, doing the research, getting all the information together
19 and feeding it to Mr. Simon?

20 A I --

21 Q You don't know?

22 A I assumed.

23 Q Okay.

24 A All the discovery, all the communications came from Mr.
25 Simon's office, so I assumed it was his work.

1 Q Did you think that 184 to 225 an hour was a fair
2 compensation to be paid to your firm for your time?

3 A No.

4 Q You think it should be higher than that?

5 A Yes.

6 Q We all think that, right?

7 A Insurance companies don't pay their lawyers enough.

8 Q Okay. Fair enough, I don't actually disagree with that, but
9 that's the amount that was agreed to, and --

10 A Yes.

11 Q Thank you so much.

12 MR. VANNAH: Thank you. I have nothing further, Your
13 Honor.

14 THE COURT: Redirect?

15 MR. CHRISTENSEN: Thank you, Your Honor.

16 REDIRECT EXAMINATION

17 BY MR. CHRISTENSEN:

18 Q Mr. Nunez, you've been practicing for a long time?

19 A Yes.

20 Q So have you ever done your own research when you had a
21 case that involves maybe an engineering issue, or a medical issue?

22 A Sure.

23 Q You hit the books?

24 A Absolutely.

25 Q It's not unusual?

1 A No.

2 Q Certainly it's a client's decision to accept it or reject a
3 settlement. And isn't it also true that it's the lawyer's job to give good
4 advice to the client to assist in that decision?

5 A I would agree with that.

6 Q I want to -- since the billing issue came up, I know it's a tough
7 issue, but let's talk about it a little bit. Does your office have billing
8 software?

9 A Yes.

10 Q It's something that's wired into everybody's computer?

11 A Yes.

12 Q You have folks there at the office who are timekeepers?

13 A Yes.

14 Q You're a timekeeper?

15 A Yes.

16 Q Do you have assistants, for timekeepers, paralegals?

17 A Yes.

18 Q When you -- and Murchison & Cummings is in multiple
19 jurisdictions?

20 A Yes.

21 Q So, the relationship that firm has with an insurance company
22 may apply not just to Southern Nevada, but also maybe Southern
23 California, or maybe Arizona as well?

24 A That's correct.

25 Q So, if you're going to examine what Murchison & Cummings

1 is being paid by an insurance company, you really have to look at the
2 whole picture, and look at all the cases they're getting from the carrier,
3 and how that has an impact on the law firm's bottom line, correct?

4 MR. VANNAH: Your Honor, I'm going to have to -- he's
5 basically testifying. Leading is -- to say he's leading has been an
6 understatement.

7 MR. CHRISTENSEN: I'm just trying to speed things along.

8 MR. VANNAH: Well --

9 BY MR. CHRISTENSEN:

10 Q Mr. Nunez, have you ever worked as a managing partner at a
11 firm?

12 A I'm a senior partner, I'm an equity partner.

13 Q Okay. You have a general understanding at least of how the
14 relationship works between an insurance defense firm and a carrier?

15 A Yes.

16 Q Is it true that the carrier may provide cases in different
17 jurisdictions?

18 A Yes.

19 Q And is it true that you have to look at the big picture when
20 you're taking a look at a particular rate?

21 A Yes.

22 Q I mean, you're not just getting one case from the carrier,
23 you're getting multiple cases?

24 A Yes.

25 Q Okay. And all of that works into the fee calculation?

1 A Yes.

2 Q Okay. That's it. Thank you, Mr. Nunez.

3 A Thank you.

4 MR. CHRISTENSEN: Thank you, Your Honor.

5 THE COURT: Okay. Mr. Nunez may be excused?

6 MR. VANNAH: Certainly.

7 THE COURT: Sir, you're excused. Thank you very much for
8 your testimony here today. Do we have anyone else, or are we ready for
9 Mr. Edgeworth?

10 MR. VANNAH: I think we're ready for Mr. Edgeworth.

11 THE COURT: Okay. He walked out the door.

12 MR. GREENE: I think he might have used the restroom, or
13 something, Your Honor.

14 THE COURT: Yeah.

15 MR. VANNAH: Can I get set up?

16 THE COURT: Yeah. And he's walking in the door.

17 Mr. Edgeworth, if you could take the witness stand. And, sir,
18 we'll just re-swear you in, since it's a different day. Thank you.

19 BRIAN EDGEWORTH, PLAINTIFF, SWORN

20 THE CLERK: Please be seated, stating your full name,
21 spelling your first and last name for the record.

22 THE WITNESS: Brian Edgeworth, B-R-I-A-N, E-D-G-E-W-O-R-
23 T-H.

24 THE CLERK: Thank you.

25 THE COURT: Whenever you're ready, Mr. Christiansen

1 MR. CHRISTIANSEN: Thank you, Your Honor.

2 DIRECT EXAMINATION CONTINUED

3 BY MR. CHRISTIANSEN:

4 Q Mr. Edgeworth, I appreciate you're back on the stand today. I
5 tried to sort of whittle down some of the issues. So, if we can try to
6 move through it, rapidly. Do you remember -- and get at least my
7 examination be complete before the lunch hour.

8 Do you remember yesterday discussing with me the term used in
9 your affidavits about -- the term was the outset?

10 A Yeah. The beginning of the --

11 Q Right. And yesterday you had some challenges with
12 understanding that the outset meant the very beginning, right? You
13 thought it meant June 10th, as opposed to the 27th or 28th of May, right?
14 Now that was your story yesterday on the stand, is that you didn't learn
15 of Mr. Simon's fee at the outset, you learned of it June the 10th?

16 A Correct.

17 Q Correct, okay. And, sir, when did -- can we agree that that
18 version of events, so June the 10th, being the date in which you learned
19 of Mr. Simon's fee of 550 an hour, that that is not contained anywhere,
20 that date, June the 10th, in any of the three affidavits you signed, or the
21 complaint you filed in this case, or I'm sorry, Mr. Vannah's office filed on
22 your behalf?

23 A I believe so.

24 Q That's an accurate statement, correct?

25 A I believe it is.

1 Q And, sir, were you here when Mr. Vannah gave an opening
2 statement on your behalf, yesterday?

3 A Yes.

4 Q And you know that there's been no discovery in this case,
5 nobody's had to sit for depositions, this is our hearing, right? We're just
6 sort of coming into it cold?

7 A Correct.

8 Q Okay. And did you hear -- I went back and listened to it, we
9 had the CD last night, at 11:16 when Mr. Vannah told the Court that at the
10 very first meeting, point blank, you were told Danny Simon's rate was
11 550, and his associate's rate were 275; did you hear him say that?

12 A I'm not sure about that, but I believe you.

13 Q Okay. And that's not your testimony, correct?

14 A No, it's Mr. Vannah's testimony, I guess.

15 Q And he's your lawyer, a very fine lawyer, one of the finest in
16 Southern Nevada, right?

17 A Right.

18 Q And presumably, without telling the contents of the
19 conversation, before he gave an opening statement he'd spoken to you,
20 fair?

21 A Correct.

22 Q And in his presentation he gave a version of events that once
23 I confronted you with the, we'll cross that bridge later email from Mr.
24 Simon you had to alter, correct?

25 A No, I've never altered my story.

1 Q You never told that story in any affidavit, that you were told
2 on 6/10, Danny Simon's right, correct?

3 A Correct.

4 Q In fact, yesterday, after being shown that email and
5 confronted with the bills, for the very first time you conceded that you
6 didn't even know what his associates' were for 14 or 15 months, correct?

7 A Correct.

8 Q All right. And June the 10th, in your exhibits I requested for,
9 I think this is exhibit -- let me ask Mr. Greene.

10 [Counsel confer]

11 BY MR. CHRISTIANSEN:

12 Q This is teeny tiny writing Mr. Edgeworth, so I'm going to --
13 your Exhibit 9, and I'm just going to put a page, is like a side-by-side
14 comparison of bills, that looks like somebody must have done in
15 anticipation for this hearing; is that fair?

16 A Yes.

17 Q You did this?

18 A Yes.

19 Q And you compared the bills?

20 A Correct.

21 Q Okay. And did you find a bill on 6/10, for Danny Simon
22 talking to on the phone for this new version of when you learned of his
23 fee? Did he bill you for that phone call?

24 A He didn't put dates on his early bills.

25 Q So that's a no?

1 A I would assume he billed me for it. There's a block billing on
2 that date.

3 Q Right. He -- at your lawyer's request, later submitted a
4 complete bill for all of his time, correct?

5 A I'm not sure what you mean. my lawyer's request.

6 Q You got a bill in December, and I agree with you that for the
7 first half dozen entries Mr. Simon, in May and June, doesn't put dates for
8 things he did; that's what you're telling me, fair?

9 A Fair.

10 Q Okay.

11 A There's no dates. I think -- I don't know how far. You
12 showed me, yesterday, the exhibit.

13 Q It went about two-thirds of that first page, I think, that you
14 pointed out to me. But later on, after you hired Vannah & Vannah, and
15 listened to Vannah -- you know, were getting advice from Vannah &
16 Vannah, maybe you don't know, but a request was made for a bill, and
17 then a final bill came in. Did you get that bill?

18 A We received a final bill with a court filing motion for
19 adjudication, I believe on January 24, I believe.

20 Q Okay. January 24, so you prepped well enough for this
21 hearing to even remember when things were filed, right?

22 A I remember that date, correct.

23 Q But you didn't read any of your affidavits in preparation for
24 testimony today?

25 A No.

1 Q None of them?

2 A No.

3 Q Okay. Did you see in that court filing for the -- and I agree
4 with you, that's what it was, it was a bill involving adjudication of the
5 lien, a bill for June 10th or a phone call, the phone call that you told the,
6 Judge, for the first time in this litigation that you were informed of Mr.
7 Simon's rate?

8 A There's no phone calls going back after a certain date --

9 Q So the answer's --

10 A -- he stopped them.

11 Q -- no?

12 A No.

13 Q Okay. And I went and found an email from Mr. Simon, on
14 that date, it's --

15 MR. CHRISTIANSEN: John, Exhibit 80. Ashley, what's that --

16 MS. FERRELL: 3499.

17 MR. CHRISTIANSEN: 3499. It's too small for me to read.

18 THE COURT: Which Exhibit is it, Mr. Christiansen?

19 MR. CHRISTIANSEN: 80, Your Honor --

20 THE COURT: And this is your 80?

21 MR. CHRISTIANSEN: Yes, ma'am. It's the CD, it's the giant
22 exhibit.

23 THE COURT: Okay.

24 MR. CHRISTIANSEN: With --

25 THE COURT: With all of the emails and --

1 MR. CHRISTIANSEN: Yeah. You know --

2 THE COURT: -- that were in the chair yesterday.

3 MR. CHRISTIANSEN: -- all the things that were over there.

4 THE COURT: Okay.

5 BY MR. CHRISTIANSEN:

6 Q And I've forgotten which one you like to look on, Mr.
7 Edgeworth. On the screen in front of you can you see the email I'm
8 talking about?

9 A Yes, I can.

10 Q And again, these emails go backwards. It looks like you are
11 asking Mr. Simon, on June the 10th, questions about United
12 Restorations, and other expenses you're having to incur?

13 A Yes, that's correct.

14 Q All right. And he responds to you on June the 10th. Not sure
15 on fireplace issue, we can talk about it, I'm out of town until Monday?

16 A Correct.

17 Q So he's answering you -- this is a Friday, June the 10th, 2016
18 is a Friday. So, he's answering you from out of town, in response to his
19 friend, who at this time he's doing a favor for?

20 A Correct.

21 Q All right. And, yesterday, do you remember talking about, it
22 might have been my term, I can't remember who used it first, for things
23 being in flux between you and Mr. Simon early on?

24 A What do you mean by that?

25 Q Well, at first he was going to represent you as a favor, you

1 told me that?

2 A Correct.

3 Q And then later he was going to charge you?

4 A Correct. Just before the filing of the lawsuit.

5 Q Okay. And I think yesterday I said -- and so at least at that
6 timeframe, things were in flux, and I think you agreed with me?

7 A Up until the Friday call, I'd agree, but then --

8 Q No argument --

9 A -- on Monday the lawsuit --

10 Q -- I'm saying that's what you said.

11 A -- was sent to me, to ask to read it.

12 Q And so, then clearly things would have been set in stone
13 about how you two were going to operate, from that point going
14 forward?

15 A Yes.

16 Q All right. So, when September the 17th of 2017, Exhibit 80,
17 Bate Stamp 173, maybe, is sent from you to Mr. Simon. This is, I don't
18 know, 15, 17 months after he's been your lawyer, let me think? Sixteen
19 months, sorry, my math's not great. Is it fair to say that this email
20 reflects that you don't even know who's paying the experts; are you
21 going to pay them, or is he going to pay them?

22 A No, I'm offering to pay upfront.

23 Q No. No, you didn't. Are you paying these guys, or was I
24 supposed to pay Vollmer [phonetic]. That's the -- I read that, right?

25 A Yeah. He had forward on a bunch of Vollmer bills, and I

1 wanted to know, should I take care of this?

2 Q Right. So, it wasn't set in stone, you didn't know. So that's
3 all I'm pointing out, you didn't know --

4 A Yeah.

5 Q -- correct?

6 A Okay. Correct.

7 Q And that's consistent with Exhibit 80, Bate Stamp 2148,
8 which is just a few days later. Hey, should I pay this, or you?

9 A Correct.

10 Q So it's still not set in stone --

11 A Well, that one there was --

12 Q -- September 17?

13 A That one I had signed a retainer agreement, so I assumed
14 that bills would come to me.

15 Q You were asking, were you not, should I pay this or you?

16 A Correct, of course.

17 Q So, it had not been set in stone. You're asking, you're not
18 telling him I'm paying it, right?

19 A Correct.

20 Q All right. And yesterday there was some discussions about
21 after your being advised by Vannah & Vannah, communications relative
22 to Mr. Simon and Mr. Vannah; do you remember those discussions?

23 A Vaguely.

24 Q And one of them --

25 MR. CHRISTIANSEN: This is Exhibit 53, Mr. Greene.

1 BY MR. CHRISTIANSEN:

2 Q Is an email from Mr. Vannah to Mr. Christensen saying, I
3 guess you can move to withdraw, however that doesn't seem in his best
4 interest. I'm pretty sure you can see what would happen if our client has
5 to spend lots more money bringing someone else up to speed. So, it's
6 up to him, our client hasn't terminated him. We want this fee matter
7 resolved by a judge and a jury.

8 Did I read that correct?

9 A Correctly.

10 Q And that's January the 9, 2018?

11 A Correct.

12 Q You sued him five days before that?

13 A Correct.

14 Q You hadn't served him yet, but you sued him. Do you know
15 one way or another if that's true?

16 A I do not know that.

17 Q Okay. And you had told Mr. Simon in a December 4th email,
18 don't -- talk to John Greene in Mr. Vannah's office for about things going
19 forward?

20 A I think December 5th --

21 Q You're right.

22 A -- but I'm not --

23 Q You're right, Mr. Edgeworth, I apologize.

24 A -- not positive of the date.

25 Q And then I guess if on -- I guess it was a little before us. This

1 is Exhibit 48 on your screen. There's another email from Mr. Vannah's
2 office to Mr. Christensen, where it says that you have lost faith in Mr.
3 Simon; faith and trust, I apologize. Therefore, they, and that means you
4 and your wife, I think Mr. Edgeworth, will not sign the checks to
5 deposited into his trust account.

6 Did I read that accurately?

7 A Yes.

8 Q You didn't want your old lawyer to put his settlement checks
9 that he had earned for you into his trust account, fair? That's --

10 A I don't think the lawyer earned the checks, but, yes, it's fair, I
11 didn't want him to deposit into his trust account.

12 Q And you go on to say, Quite frankly, they are fearful -- you
13 don't say this, this is the lawyers on your behalf, Quite frankly, they are
14 fearful you will steal the money?

15 A That's correct.

16 Q Okay. And in the course your affidavits and the complaint,
17 did you read the complaint in this case filed by Vannah & Vannah against
18 Mr. Simon?

19 A I don't think I did.

20 Q Okay. I won't quarrel with you then about what lawyers
21 wrote, that's a legal thing that Her Honor can figure that out, but isn't it
22 true that in all your affidavits you quote a portion of your September
23 deposition, that Mr. Simon sat through, to stand for the proposition that
24 you had paid in him full?

25 A Up to that point, correct?

1 Q All right. And it's in every single one of your affidavits, fair?

2 A Fair.

3 Q And it doesn't say in any of the affidavits, paid to in full up to
4 that point, it just says paid in full, correct?

5 A Correct.

6 Q And you would agree with me that yesterday I showed you,
7 and I won't get into again with you today, because I'm trying to save
8 some time and get you off the stand, that at least the lawyers on your
9 behalf, took the position that Danny had been paid in full, wasn't owed
10 another dime, and he was trying to convert your money?

11 MR. VANNAH: I'm going to object to that, that's never been
12 our position. He's not saying to what our position is, in which the only
13 way he would know that is through a conversation would be. Our
14 position is we owe Danny Simon money, and that's what you're going to
15 decide, Your Honor. You're going to decide how much he's owed in
16 September 22nd until the date that he stopped billing.

17 THE COURT: Right. And are you --

18 MR. VANNAH: There's a bill there.

19 THE COURT: -- referring to the conversion claim? There's a
20 conversion claim in the lawsuit, Mr. Vannah. Is that what -- that's what I
21 believe Mr. Christiansen is getting at.

22 MR. VANNAH: No, he's asking -- he keeps asking him over
23 and over again, if he doesn't owe him any money from September 22nd
24 to January 8th, that's never been our position, everybody knows that.
25 And that's why we're here to determine how much money he's owed

1 during that four or five month period. We owe him money; we're going
2 to have you make that decision.

3 THE COURT: Okay.

4 MR. VANNAH: Whatever it is we're going to write a check for
5 it, so --

6 MR. CHRISTIANSEN: With all due respect to Mr. Vannah,
7 Your Honor, it's not his witness, so he shouldn't be making objections.

8 MR. VANNAH: Well, but you're asking the witness, he's
9 asking the witness, what did you learn from your attorneys.

10 MR. CHRISTIANSEN: No, I'm not. I asked the witness what's
11 contained in the lawsuit.

12 MR. VANNAH: No. He said he never read the lawsuit.

13 THE COURT: He said he never read the complaint.

14 MR. VANNAH: Right. He never read it.

15 THE COURT: Okay. Mr. Christiansen, can you establish
16 somehow how he would know this?

17 BY MR. CHRISTIANSEN:

18 Q Do you know there's a claim, that you made a claim against
19 Danny Simon, through the lawsuit, brought by Mr. Vannah's office, that
20 he converted your money by filing an attorneys' lien?

21 A Yes.

22 Q You claimed he stole your money?

23 A He was attempting to, yes.

24 Q Right. By filing what you now know to be the ethical
25 approach to resolving an attorneys' fee dispute, correct?

1 A I don't know that at all.

2 Q You don't?

3 A No one's said that that's the ethical way to proceed.

4 Q Okay. And do you remember in your affidavits, Mr.

5 Edgeworth, saying at that 11/17/17 hearing -- I'm sorry, meeting at Mr.

6 Simon's office, the high pressure one, that's your term not mine, that the

7 sole issue Mr. Simon wanted to talk to you about was his bonus?

8 A Correct.

9 Q That's not true, is it?

10 A Yes, it is.

11 Q He wanted to talk to you about the Lange resolution, correct?

12 A He never brought it up.

13 Q He wanted to talk to you about what he had to go in front of -

14 - he had to come to Court that morning in front of Judge Jones, and he

15 wanted to talk to about that too?

16 A No, he never brought it up.

17 Q He never brought any of that stuff up?

18 A None of it.

19 Q And what you said in your affidavit, and I'll show you, this

20 sort of dovetails back to your deposition, okay, that's what I'm sticking

21 with.

22 MR. CHRISTIANSEN: Sorry, this is Exhibit 16.

23 MR. GREENE: Thank you.

24 MR. CHRISTIANSEN: Yeah. It's the first one, John, and I'm

25 at page 4.

1 BY MR. CHRISTIANSEN:

2 Q The bottom of page 4, and I'll try to point -- do you see where
3 my finger is at Mr. Edgeworth?

4 A I see your finger.

5 Q Since Simon hadn't presented these quote/unquote: "new
6 damages" to Defendants in the litigation, in a timely fashion we were
7 savvy enough to know they would not be able to be presented at trial;
8 did I read that correctly?

9 A Correct.

10 Q And by savvy enough, you thought that because Mr. Simon
11 hadn't presented -- well, you thought because you quoted part of your
12 deposition, where Mr. Simon said he produced all the bills that were
13 incurred up to May of 2017, that meant he couldn't present any bills
14 going forward?

15 A Your question was about May of 17 --

16 MR. GREENE: Pete, actually it was September of --
17 September 22nd of 2000 something, not May.

18 MR. CHRISTIANSEN: It actually is May, and I'll show them to
19 you in a minute.

20 BY MR. CHRISTIANSEN:

21 Q But you got savvy in these affidavits, to take the position that
22 Danny, Mr. Simon, was trying to steal your money because you didn't
23 owe him anymore money, and that's actually what he put, was what's
24 contained in the body of the complaint, and I'm not going to quibble with
25 Mr. Vannah or you, we'll just show the judge in an argument that that's

1 right in the complaint, Okay?

2 And what you thought you were savvy about, is that the time had
3 run to present damages in the Lange litigation, right? That's what you
4 thought, when you wrote that in this affidavit?

5 A No.

6 Q You didn't think that?

7 A This is stating that you can't just say at the 11th hour, oh,
8 yeah, my lawyer fees, now that I've one, my lawyer fees are \$2 million
9 more than we ever told you, through the whole case.

10 Q Right. I agree you can't do that. You were aware, were you
11 not, that Mr. Parker, Theodore Parker represented Lange at this stage of
12 the game, correct?

13 A Correct.

14 Q Now Mr. Parker is a very well respected attorney in this
15 community, fair?

16 A I like him.

17 Q And Mr. Parker came into the case, and once Viking settled
18 recognized the nature of the case against his client had changed; do you
19 remember that?

20 A The hearing I went to where Mr. Parker came in, he was
21 mostly arguing that he had just come on the case, he just landed from
22 South Carolina --

23 Q He sure does.

24 A -- I haven't really had time to read it all. Your Honor, I believe
25 before we get it started, I'm not sure that this is a legal contract between

1 my client Lange, and Mr. Edgeworth. That's Mr. Parker.

2 Q You have good memory, that's exactly what Mr. Parker, who
3 is from Charleston, South Carolina and has --

4 A Yeah. It was South Carolina.

5 Q -- a practice down there. My daughter went to college there,
6 so I see Teddy, going back and forth all the time. He had just come back
7 from Charleston and he had -- he wanted to revisit the Lange issue; do
8 you remember that? He wanted to litigate whether the contract was
9 enforceable, things of that nature?

10 A I think the term he used was whether it was a legal contract,
11 yes.

12 Q And when you think you're -- when you use the term in these
13 affidavits that you're savvy enough to know the damages that weren't
14 presented can't be sought, recovery for those can't be pursued, fair?

15 A Extreme amounts that were never presented during the time
16 of the case, they can't just pop up.

17 Q Let me show you Exhibit 80 --

18 MR. CHRISTIANSEN: Bate stamp 4552 through 4555, Mr.
19 Greene.

20 BY MR. CHRISTIANSEN:

21 Q And this is an email from staff at Mr. Parker's office, Parker,
22 Nelson, I know Her Honor knows that's where Mr. Parker works, and it
23 attaches a November 29th letter from Teddy, Mr. Parker, who is new to
24 the case. Mr. Simon told you about Teddy being new to the case; right
25 Mr. Edgeworth?

1 A Yes.

2 Q Mr. Simon told you that the nature of the case against Lange
3 had become streamlined and far easier to pursue, because Viking was
4 out, correct?

5 A No.

6 Q Mr. Simon told you that Teddy wanted to extend the
7 deadlines, and there would be additional time to do discovery, produce
8 evidence, depose witnesses, et cetera, correct?

9 A It was going to delay everything, yes.

10 Q All right. So, when you're savvy about the time having
11 expired, you remember that's what you put in your affidavit, you sort of
12 forgot to tell -- put in your affidavit that Mr. Parker is continuing -- asking
13 Mr. Simon, who's agreed to continue all the cut-offs, so there's plenty of
14 time to present your lawyer damages. You knew that, didn't you?

15 A No.

16 Q You absolutely knew that this agreement between Danny
17 Simon and Teddy Parker had taken place, and instead of telling the Court
18 that, you want to tell the Court how savvy you are about knowing Danny
19 couldn't present any new damages, right?

20 A I've never seen the letter you've shown me.

21 Q The guy that micro-manages everything, and that can quote
22 me the day things were filed in this litigation is telling me he hasn't seen
23 the email?

24 A Can you show me the date of email?

25 Q Sure.

1 A No, I haven't.

2 Q November 29th, 2017.

3 A Did Mr. Simon email me this, because I have no memory of
4 it.

5 Q You're telling me you didn't see it?

6 A No. I didn't see this.

7 Q Okay. And just to be clear, I don't want to put words in Mr.
8 Parker's mouth. Additionally, Mr. Simon pointed out that if Plaintiffs go
9 forward against Lange this case will be different, than the case intended
10 pursue against the Viking Defendants and Lange Plumbing; that's in Mr.
11 Parker's letter, correct?

12 A Correct.

13 Q And that's something that Danny also explained to you?

14 A No.

15 Q Okay. This was that same email, or the same affidavit, just a
16 different copy. We've got so many highlights.

17 MR. CHRISTIANSEN: Paragraph 19, Mr. Greene.

18 THE COURT: Which exhibit is this, Mr. Christiansen?

19 MR. CHRISTIANSEN: I'm sorry, Your Honor. It is --

20 THE COURT: 16?

21 MR. CHRISTIANSEN: 16, Judge.

22 THE COURT: Okay.

23 BY MR. CHRISTIANSEN:

24 Q This was your affidavit under oath, penalty of perjury, Mr.
25 Edgeworth? Paragraph 19.

1 When Simon refused to release the full amount of the
2 settlement proceeds to us, we felt that the only reasonable
3 alternative available to us was to file a complaint for
4 damages against Simon.

5 Correct?

6 A Correct.

7 Q You thought you were due the full amount, and he wasn't
8 due anything?

9 A That's incorrect.

10 Q It's incorrect, however, you agree that you accuse Mr. Simon,
11 in a cause of action contained in your complaint, of conversion?

12 A Correct.

13 Q Do you remember sitting for your deposition, Mr.
14 Edgeworth?

15 A Yes.

16 Q Do you remember quoting that portion of deposition where,
17 in all your affidavits saying that the bills have been presented?

18 A Yes.

19 Q Do you remember not quoting? Do you remember
20 intentionally omitting from your affidavit, the portion of your deposition
21 where Danny Simon asks you questions about your attorneys' fees
22 continuing to accrue? You didn't quote that in a single affidavit, did you?

23 A No.

24 Q You didn't put it in your complaint, did you?

25 A No.

1 Q You intentionally omitted it, didn't you?

2 A No.

3 Q Because you knew, darn good and well, that Mr. Simon
4 asked you questions, and that your damages, or your attorneys' fees
5 were still accruing.

6 MR. CHRISTIANSEN: I'm looking at page 294, John.

7 THE COURT: And what is the exhibit number?

8 MR. CHRISTIANSEN: It's his deposition, Your Honor, which
9 is Exhibit 84.

10 THE COURT: 84.

11 BY MR. CHRISTIANSEN:

12 Q Q Those damages are still accruing every day?

13 A Correct.

14 A Correct.

15 THE COURT: And what page is that.

16 MR. CHRISTIANSEN: 84, Your Honor.

17 THE WITNESS: I've always said that. I actually emailed and
18 asked --

19 THE COURT: Hold on, Mr. Edgeworth --

20 THE WITNESS: Oh, sorry.

21 THE COURT: -- I'm asking a question. So, when I'm talking --

22 THE WITNESS: I'm sorry.

23 THE COURT: -- you're not.

24 THE WITNESS: I beg your pardon.

25 THE COURT: Mr. Christiansen, the Exhibit Number is 84,

1 what's the page number?

2 MR. CHRISTIANSEN: 294, Your Honor.

3 THE COURT: 294, okay.

4 BY MR. CHRISTIANSEN:

5 Q And you also say, sir, at page 289 of your deposition, that
6 you understand, and it's pretty clear under the contract, that's your
7 words, pretty clear under the contract, that pursuant to the contract
8 they're responsible for your attorney's fees and costs; and they being
9 Lange, correct?

10 A Correct.

11 Q And then at your deposition you say, that's correct, it's pretty
12 clear in the contract?

13 A Correct.

14 Q You understood it?

15 A Correct. And I hoped a jury would.

16 Q I didn't hear you?

17 A And I hoped a jury would.

18 Q Okay. And it's true, is it not, that neither one of those
19 sections are contained in any affidavit you signed in this litigation?

20 A It is true.

21 Q It's true, also, is it not, that neither of those sections are
22 contained in the complaint that was filed, if you know?

23 A I do not know that.

24 Q All right. What you told me, yesterday, sir, is that it was your
25 hard work that led to the \$6 million settlement with Viking, correct?

1 A Not completely correct.

2 Q Well, actually, that's exactly what you said in your second
3 affidavit, dated the 12th of February. See that little underline in red, at
4 lines 13 and 14?

5 MR. CHRISTIANSEN: And I'm sorry, Your Honor, let me tell
6 you the number. This is Exhibit 17, Your Honor?

7 THE COURT: 17.

8 BY MR. CHRISTIANSEN:

9 Q I'm looking at paragraph 11. You're talking about, you were
10 the one that located the prior case involving Viking?

11 A Correct.

12 Q You were the one that dug through thousands of documents
13 and found a trail?

14 A Correct.

15 Q You were the one that did the research and made the calls?

16 A Correct.

17 Q This was the work product that caused this case to grow into
18 the one it did?

19 A Correct.

20 Q It's all because of you?

21 A I didn't say that, no.

22 Q Do you say in here it was Danny's work that caused the case
23 to grow what it did?

24 A No, I do not.

25 Q You only take credit for your work, it's causing the case to --

1 and I'm just -- this was the work product that caused the case to grow on
2 the one that it did.

3 A I've never denied he did a good job.

4 Q Right. Because when -- as Mr. Vannah pointed out earlier,
5 when you -- the lawsuit filed the 4th of January this year against Mr.
6 Simon doesn't allege legal malpractice, fair?

7 A Fair.

8 Q He did an outstanding job for you. Fair?

9 A Fair.

10 Q He got you a \$6 million settlement on a \$500,000 property
11 damage claim?

12 A Yes. I think his filings were good, solid.

13 Q But as we approach the hearing to determine to agree again
14 with Mr. Vannah, the value of Mr. Simon's services, it was your work
15 product, alone, that caused the case to increase in value; that's what you
16 put?

17 A Yes.

18 Q And this -- in the second affidavit signed --

19 MR. CHRISTIANSEN: I think it's the 12th, right, Ashley? The
20 12th of February this year?

21 MS. FERREL: Yes, sir.

22 BY MR. CHRISTIANSEN:

23 Q Remember yesterday, just help me keep the timeline, Mr.
24 Edgeworth, we were talking about the end of November when Mr.
25 Vannah sent -- you send the letter to Mr. Simon saying, Vannah &

1 Vannah is involved. Then you told me you didn't think you'd spoken
2 telephonically to Mr. Simon, but you thought it might have been from a
3 couple of days past that?

4 A Yes.

5 Q Is that fair?

6 A He left me a voicemail; I believe I said.

7 Q Right. And do you recall actually directing him, after he left
8 you a voicemail, to just call John Greene?

9 A Correct.

10 Q And you've never spoken to him since?

11 A No.

12 Q All right. And the reason that comes out in your third
13 affidavit, is that you thought somehow Mr. Simon had said something he
14 should not have said to a volleyball coach, at your volleyball club?

15 A Correct.

16 Q Is that a fair statement?

17 A It's a very fair statement.

18 Q All right. And so, what you told, as I read your affidavit, I'm
19 happy to pull it up and show you the whole thing.

20 A That would be helpful.

21 Q Is that you had to explain to -- what's that coach's name, sir?

22 A Coach Herrera.

23 Q Coach Herrera?

24 A Reuben Herrera.

25 Q Herrera?

1 A Herrera.

2 Q Herrera, okay. I'm sorry, if I'm getting it wrong.

3 A H-E-R-R-E-R-A.

4 Q All right. Coach Herrera, who's a coach at a volleyball club

5 you have a relationship with, fair?

6 A I'm the founder of the non-profit, he's the --

7 Q I'm not disputing it.

8 A I'm sorry.

9 Q You --

10 A Clear, yes. I have a relationship --

11 Q It's your --

12 A -- with him.

13 Q It's your club?

14 A It's a non-profit, again.

15 Q And this coach and you had to have -- Mr. Simon sent an

16 email, right --

17 A Correct.

18 Q -- about his daughter, Sienna [phonetic] leaving the club for

19 knee issues, and then he mentions, generically, problems with the

20 Edgeworth?

21 A Correct.

22 Q Plural, Edgeworths?

23 A Correct.

24 Q Right. And that, from your affidavit, I gather, that caused you

25 to go talk to Coach Herrera, correct?

1 A Incorrect.

2 Q You spoke to Coach Herrera, right?

3 A After the second email. After Coach Herrera said, I don't
4 want to know your business. You know, it's none of my business, and
5 then the follow-up email came.

6 Q And what you told Coach Herrera, not in Court, not in
7 litigation, not on the stand, not an affidavit, is that Danny Simon was
8 extorting you, right?

9 A No, I didn't.

10 Q Your words not mine?

11 A No.

12 Q That's what you put in your affidavit. You didn't use that
13 word in your affidavit. I just want to make sure we're clear, before I
14 show you?

15 A I might have used the word in my affidavit, that's --

16 Q But you don't want to admit to telling a third party Danny
17 was extorting you; is that what you're telling me?

18 A I told him the circumstances of --

19 Q Did you --

20 A -- everything going on.

21 Q Did you use the word extortion?

22 A No. I don't believe it did.

23 Q Did you use the word stealing?

24 A No.

25 Q Theft?

1 A No.

2 Q Blackmail?

3 A No.

4 Q Anything else that could be considered criminal?

5 A No. I told him the --

6 Q All right.

7 A -- entire story of the case.

8 Q Because for a guy that's so artfully, or so educated, Mr.

9 Edgeworth, it's pretty clear you don't like to understand what words you
10 use when they're used against you, like outset right. You didn't like that
11 word yesterday. Remember, like fantasy --

12 A I have no problem with the word.

13 Q -- I asked you what fantasy mean; you didn't know what it
14 meant?

15 A I know what it meant. I wanted to know the context you were
16 using in, so --

17 Q Let's use your words in the context you use them. I read the
18 email and was forced to have a phone conversation, followed up by a
19 face-by-face meeting Herrera, where I was forced to tell Herrera
20 everything about the lawsuit, and Simons' attempt at trying to -- this is
21 your word, not mine, sir, extort millions of dollars from me. Right?

22 A Correct, that's my word.

23 Q And you used that word when you talked to Mr. Herrera too,
24 didn't you?

25 A No, I did not.

1 Q So, you just decided to put it in an affidavit, to color it up a
2 little bit?

3 A No. It summarizes the conversation quite well, in my
4 opinion.

5 Q You told Coach Herrera, not in litigation, not on the stand,
6 not in an affidavit that Danny Simon was trying to steal from you?

7 A No, I explained exactly what happened on November 17th,
8 and then the letter of the 27th, and why Danny might be saying stuff
9 about me, that's not true. And that I've never been a danger to children,
10 and this lie that Simon had produced might be because of that, and no
11 other reason.

12 Q Danny Simon never said you were a danger to children in
13 that email, I got it.

14 A He most certainly did.

15 Q You said his daughter had a hurt knee. He wanted to get her
16 out of the volleyball program. The coach isn't calling him back, and he
17 wonders if that's because -- the problems with the Edgeworths, the
18 people that own the place where the coach works?

19 A We don't own, it's a non-profit, sir.

20 Q I got you. That's the context of Mr. Simon's conversation.

21 A No, it's not.

22 Q We'll let your lawyers try to find words in there, where he
23 calls you a bad guy to kids, or any of that stuff, because it's not in here.

24 A Is that a question, do I answer that?

25 THE COURT: No.

1 THE WITNESS: No.

2 BY MR. CHRISTIANSEN:

3 Q And your email, the one we referenced earlier from
4 December the 5th, I just want to make sure I show it to you so that we
5 can agree that we have the correct date, where you tell Danny to call Mr.
6 Greene, that's with this, right?

7 A Correct.

8 Q In response to Danny's voicemail, that he leaves on your cell
9 phone?

10 A Correct.

11 Q And from that point forward no conversations, verbal
12 conversations with Danny?

13 A No.

14 Q Never listened to him anymore, right?

15 A I listened to what he told my lawyers.

16 Q Right. Disregarded his advice relative to settling with Lange,
17 and follow Mr. Vannah's advice, correct?

18 A Yes. I took Mr. Vannah's advice.

19 Q I showed you, yesterday the release for Viking. That was, I
20 think done the first of December, and that was -- you were advised on
21 that by Vannah & Vannah, not Danny Simon, correct?

22 A I was advised on both of them.

23 Q You weren't talking to them?

24 A They were passing on his theory of how I get money, and
25 they were giving their theory, and I took the risk and reward to balance

1 them --

2 Q Followed Mr. Vannah there?

3 A I felt that they had a better outcome, actually.

4 Q All right. I'm not quibbling, and I'm not saying Mr. Vannah
5 was wrong, I'm just saying it was a different set of advice?

6 A Correct.

7 Q Danny had one set of advice, Mr. Vannah and Mr. Greene
8 had a different set of advice. You disregarded Danny's and followed
9 theirs?

10 A That's correct.

11 Q Their name appears on the Viking release; not Danny
12 Simon's, correct?

13 A I don't know that.

14 Q I showed it to you yesterday, it's right in the body of the
15 release?

16 A Well, I'm just telling you I don't remember that, but if you
17 show me I can --

18 Q The Court --

19 THE COURT: We have the release Mr. Christiansen.

20 MR. CHRISTIANSEN: Yeah.

21 BY MR. CHRISTIANSEN:

22 Q And the Vannah firm had you sign that other document, and
23 said, consent to settle, correct?

24 A Correct.

25 Q With Lange?

1 A Correct.

2 Q Danny Simon's name is not on that?

3 A I don't believe it is, no.

4 THE COURT: Mr. Christiansen, before you move on to
5 another -- I have a question in regard to that. Mr. Greene, I apologize
6 early if this was a question you were going to ask, and I already asked it.

7 When is the last time you, personally, had contact with Danny
8 Simon?

9 THE WITNESS: Through email, or telephonically?

10 THE COURT: Any contact at all. Any contact at all between
11 you and him, that doesn't involve --

12 THE WITNESS: December --

13 THE COURT: -- Mr. Vannah, Mr. Greene, you and Danny
14 Simon?

15 THE WITNESS: December 5th.

16 THE COURT: December 5th. And what was that contact?

17 THE WITNESS: Danny left a voicemail on my phone saying
18 something about there was some --

19 THE COURT: Okay. Did you call him back?

20 THE WITNESS: No, I did not.

21 THE COURT: So, you've never spoke to him?

22 THE WITNESS: No.

23 THE COURT: When is the last time you and Mr. Simon
24 conversed? Like there's something --

25 THE WITNESS: Or email --

1 THE COURT: -- from you, something from him?

2 THE WITNESS: Not just emails back and forth. Because the
3 5th --

4 THE COURT: I don't care if it's an email. There's
5 communication, if you communicated with him.

6 THE WITNESS: Yeah.

7 THE COURT: Because if he left you a voicemail, and you
8 didn't call him back, you didn't talk to him. So, what is the last time you
9 personally had communication with Mr. Simon?

10 THE WITNESS: I believe that's the December 5th email that
11 Mr. Johansen [sic] --

12 MR. CHRISTIANSEN: Christiansen, it's okay.

13 THE WITNESS: Christiansen, I apologize.

14 MR. CHRISTIANSEN: Peter's fine, it's okay.

15 THE COURT: Okay. So, the email you sent to Danny Simon?

16 THE WITNESS: Correct.

17 THE COURT: And when's the last time you talked to him?

18 THE WITNESS: Spoke to him was probably November 25th
19 when I was packing to go to Asia.

20 THE COURT: And you spoke with him on the phone?

21 THE WITNESS: Correct. He called me from --

22 THE COURT: It's okay, sir, I don't need details. Okay. Thank
23 you. Sorry, Mr. Christiansen.

24 MR. CHRISTIANSEN: You're fine, Your Honor.

25 THE COURT: And, Mr. Greene, like I said I apologize if you

1 were going to clean that up, but that was just confusing to me.

2 [Pause]

3 BY MR. CHRISTIANSEN:

4 Q I'm almost done, Mr. Edgeworth. I apologize for the delay.
5 Do you remember in your second affidavit, Mr. Edgeworth, Mr. Simon,
6 and I think you're referencing at his office, that the meeting on the 17th
7 of November, told you, you had to do this or else?

8 A Correct.

9 Q Did you ever send -- is there an email that I can point Her
10 Honor to, between that meeting on the 17th, that you and your wife were
11 present, and today, that says, hey, Danny, why are you trying to threaten
12 us. I thought we were friends, I thought we had a deal. Why would you
13 do this?

14 A No.

15 Q Did your wife send an email like that?

16 A No. She had a couple of emails and then telephonically
17 Simon called me while I was on vacation, I don't know how many times.

18 Q Okay. Ever in the phone call, did she say, hey, Danny, why
19 are you doing this to me?

20 A Yes. That's what led to the November 27th letter.

21 Q What you told Danny Simon, sir, is that all you were trying to
22 do is play devil's advocate, and that you knew you didn't have just an
23 hourly agreement; that's what you told him?

24 A No.

25 Q And your wife's emails -- and you read your wife's emails

1 now, that's how prepared you are for this hearing, right?

2 A Which of my wife's emails?

3 Q The ones you just referenced for me, that after the meeting
4 she had emails back forth to Danny Simon?

5 A I haven't read them recently, but I know that she had emails.
6 I was in Asia, so I'm copied on all the emails, I'm reading them while I
7 was in Asia.

8 Q Okay. Your wife never says, hey, Danny, you threatened us?

9 A No.

10 Q You're extorting us, you're stealing our money?

11 A No.

12 Q Never?

13 A No.

14 Q And all this while you know you owe him money, right?

15 A Correct. I had a requested a bill probably the 15th --

16 Q And rather than --

17 A -- not that long --

18 Q -- work it out you hired a new firm, chose to follow their
19 advice and then sued Danny?

20 A Correct.

21 Q And I want to understand, I recognize Mr. Vannah's legal
22 argument, but I want to talk to you about your position. Throughout the
23 course of this lien adjudication issue hasn't it been your consistent
24 position, Mr. Edgeworth that Danny Simon has been paid in full for his
25 work?

1 A No.

2 Q Hasn't it been your consistent position in three different
3 affidavits, Mr. Edgeworth, that Danny Simon was paid through
4 September, and he should quote/unquote: "finish the work he was paid
5 to complete"?

6 A No.

7 Q I'm going to -- Judge can look at your affidavits, I'm just
8 trying to summarize.

9 A Okay.

10 Q Wasn't it your position when your claim went from \$1 million
11 in June, to 2.4 million -- 1 million in March, 2.4 million in June, 3.3
12 million in October, and even after a \$6 million settlement you only
13 valued your own case at 3.8 million; isn't that all true?

14 A No.

15 Q And that's all reflected by emails you created, sir, that we've
16 gone through in this hearing, in the last two days, right?

17 A No.

18 Q Those charts are all yours.

19 A The charts are mine; they don't reflect what you just stated.

20 Q They don't reflect an ever-increasing value, Brian
21 Edgeworth's every-increasing personal evaluation of his \$500,000
22 property claim; they don't reflect that?

23 A They reflect that.

24 Q Okay. Brian Edgeworth's property value claim increased, not
25 because Brian Edgeworth was his own lawyer, right?

1 A No, I wasn't my own lawyer.

2 Q It increased because Mr. Simon pursued a punitive damage
3 aspect to the case that was never contemplated or discussed between
4 the parties, correct?

5 A No. It probably settled -- we'd have to ask Viking exactly why
6 they settled for that amount. But there's good other reasons.

7 Q Sir, the punitive emails that I showed you that you wrote
8 make it unequivocal there was never a meeting of the minds relative to
9 pursuing a claim for punitive damages, correct? You say that, you could
10 never have contemplated it. If you couldn't have contemplated it you
11 couldn't have a meeting of the mind.

12 A We were pursuing the case, from the start, aggressively, to
13 its bitter end. I don't --

14 Q I get confused when you say you were doing things in the
15 case. Did you ever go to Court and argue?

16 A No.

17 Q Did you ever take a deposition?

18 A No.

19 MR. GREENE: Judge, we already covered this yesterday.

20 THE COURT: We did, Mr. Christiansen.

21 MR. CHRISTIANSEN: All right, Your Honor.

22 BY MR. CHRISTIANSEN:

23 Q Did you consult with anybody before hiring Vannah &
24 Vannah?

25 MR. GREENE: What's --

1 MR. CHRISTIANSEN: I just asked if he consulted --

2 MR. VANNAH: Object.

3 MR. GREENE: What's the relevance of that?

4 THE COURT: What's the relevance of that Mr. Christiansen?

5 MR. CHRISTIANSEN: Timing. Constructive discharge and
6 timing, Your Honor. I just want to know if he talked to another lawyer
7 before he sought -- he mentioned several times he talked to Mr. Marquis.

8 MR. GREENE: He testified already that he was out of the
9 country in Asia and --

10 THE COURT: Okay. When did he get back? I mean, he knew
11 he was out of the country in Asia, at the end of November, but I don't
12 know when he returned. That hasn't been testified to, that I've heard.

13 THE WITNESS: May I --

14 THE COURT: No. You just wait until we're done. Mr.
15 Greene?

16 MR. GREENE: I'll ask the question, or John could ask it, I
17 don't care.

18 MR. CHRISTIANSEN: When he got back. She just wants to
19 know when he got back from Asia, John?

20 MR. GREENE: When did you get back?

21 THE WITNESS: I flew back after -- I rescheduled flights right
22 after --

23 THE COURT: Sir, can you just please give us a date?

24 THE WITNESS: Oh, I'm sorry. November 29th, right when I
25 drove to your office.

1 THE COURT: Okay. Well, that pretty much answers the
2 question, as well, Mr. Christiansen.

3 MR. CHRISTIANSEN: I just want to make sure. You land the
4 29th, I think that's the date Mr. Vannah gave me of the fee agreement as
5 to that. I just don't want to misspeak.

6 MR. VANNAH: It is, you're right?

7 MR. CHRISTIANSEN: Is that right Bob?

8 MR. VANNAH: Yeah.

9 MR. CHRISTIANSEN: It is.

10 BY MR. CHRISTIANSEN:

11 Q That's the date on the Vannah & Vannah fee agreement; is
12 that right, Mr. Edgeworth?

13 A I landed the same -- same day that I went to their office.

14 THE COURT: Okay. Mr. Edgeworth, if you could just please
15 just answer Mr. Christiansen's question.

16 THE WITNESS: Oh, I'm sorry.

17 THE COURT: Mr. Greene, as he has clearly demonstrated is a
18 very fine lawyer, and he's going to have just as much time as Mr.
19 Christiansen going to have to ask you questions. And you've got to
20 leave the lawyering to the lawyers, and they're going to -- he's going to
21 clear up anything he thinks that's unclear for me.

22 THE WITNESS: Okay.

23 THE COURT: You've got some of the finest lawyers in town,
24 just answer the question.

25 THE WITNESS: Sorry.

1 THE COURT: We could have done with this a lot quicker, if
2 you'd just answer the question.

3 THE WITNESS: Okay.

4 BY MR. CHRISTIANSEN:

5 Q Sir, do you know one way or another, whether -- I'm not
6 asking who, I'm not asking contents, one way or another if your wife
7 consulted with lawyers before Vannah & Vannah, but after Mr. Simon?

8 MR. GREENE: The same objection, and also privileged.

9 MR. CHRISTIANSEN: I don't understand what the privilege
10 is, Your Honor?

11 MR. VANNAH: Spousal privilege.

12 MR. CHRISTIANSEN: I didn't ask what the communication
13 was.

14 MR. VANNAH: You asked what the wife told him.

15 MR. CHRISTIANSEN: I did not. I said, if you knew one way
16 or another --

17 MR. VANNAH: No, you didn't

18 MR. CHRISTIANSEN: -- if she talked to a lawyer.

19 MR. VANNAH: You're not allowed to know what the wife
20 told him.

21 MR. CHRISTIANSEN: I didn't ask --

22 MR. VANNAH: It's spousal privilege.

23 MR. CHRISTIANSEN: -- if she told him.

24 MR. VANNAH: Well, that's the only way to answer the
25 question.

1 THE COURT: Well, sir, do you have any independent
2 knowledge of that, separate and apart from what your wife told you?

3 THE WITNESS: No.

4 THE COURT: Okay. He doesn't know much right now.

5 MR. CHRISTIANSEN: All right. I think that concludes cross,
6 Judge.

7 THE COURT: Okay.

8 MR. CHRISTIANSEN: Thank you. Mr. Edgeworth.

9 THE COURT: I think that will be a good time to take our
10 lunch break. Because, Mr. Greene, I don't want to cut you off in anyway,
11 I want to give you ample time cross-examine him that you need to.

12 We're going to go to break for lunch right now, it's 12:30. So
13 I'm going to give you guys an hour and a half and we'll be back, or can
14 you guys do it a little quicker like -- do you guys want a hour?

15 MR. CHRISTIANSEN: Ninety minutes is great, Judge.

16 MR. GREENE: An hour-and-a-half is good. I'd liked the hour-
17 and-a-half, Your Honor.

18 THE COURT: I just like to leave, and so we'll be back here --
19 I'm pretty sure my staff likes that too. So, we'll be back here at 2:00.
20 Yes, I have 2:00. So, we'll return at 2:00. All right.

21 [Recess at 12:26 p.m., recommencing at 2:06 p.m.]

22 THE COURT: -- 444, Edgeworth Family Trust v. Lange Plumbing A-
23 767242, Edgeworth Family Trust v. Daniel Simon.

24 Mr. Edgeworth, if you could take the stand. And I would just like to
25 remind you, you are still under oath.

1 THE WITNESS: Yes, ma'am.

2 THE COURT: And, Mr. Greene, whenever you are ready for
3 cross.

4 MR. GREENE: Thank you, Judge.

5 THE COURT: You're welcome.

6 CROSS-EXAMINATION

7 BY MR. GREENE:

8 Q Brian, let's begin where we left off. Do you remember we
9 were discussing an email to Coach Reuben, to and from?

10 A Yes.

11 MR. GREENE: And I apologize, I did not write down the
12 exhibit number that you guys had associated with that. We're happy to
13 use yours, or we can just start a new off our Exhibit 9, our last in order.
14 I'm happy to just do that, Judge, so we can speed this up. Our last in
15 order was Exhibit 9.

16 MR. CHRISTIANSEN: I think ours was 45, Mr. Greene, but
17 whichever one you prefer.

18 MR. GREENE: 45. Let's just keep it simple.

19 THE COURT: Okay.

20 MR. GREENE: We'll keep it simple stupid is what -- all right.

21 BY MR. GREENE:

22 Q Let me show you this email. Do you remember when Mr.
23 Christiansen was showing you these emails, how the first series of the
24 emails is on this second page, and we flip over?

25 A Yes.

1 Q Is that your understanding, as well?

2 A Yes.

3 Q Now regarding this email to Coach Reuben, did you have any
4 discussions with Coach Reuben, to give you an understanding of what
5 was being communicated to him from Mr. Simon?

6 A Yes. He telephoned me.

7 Q He telephoned you. Did he mention this series of emails at
8 all?

9 A Yes. He said he was going to --

10 MR. CHRISTIANSEN: Objection, hearsay, Your Honor.

11 THE COURT: And your response to that?

12 MR. GREENE: Well, it's really good hearsay, Your Honor.

13 MR. VANNAH: Wait a minute, Your Honor.

14 MR. GREENE: I can move on.

15 [Counsel confer]

16 MR. GREENE: Yeah. Just effect on the hearer, Your Honor.

17 THE COURT: Okay. Mr. Christiansen, I'm going to allow it.

18 MR. CHRISTIANSEN: Okay.

19 THE WITNESS: Yes. He telephoned me --

20 THE COURT: There's no question pending, Mr. Edgeworth.

21 He'll get back to you.

22 BY MR. GREENE:

23 Q And when he spoke with you about this email what did he
24 say?

25 A He phoned and told me he was going to forward an email

1 that was troubling, and that the two of you needed to talk to about it.

2 Q Let's just focus on the important page, okay. I've got on
3 page 45 of that exhibit; do you see that?

4 A Yes.

5 Q And I've highlighted a portion. Can you read that for us?

6 A As for the other issue with the Edgeworths, just as you, we
7 believed we were friends. However, as parents we must do everything
8 in our power to protect our children.

9 Q However, as parents we must do everything in our power to
10 protect our children. What, if any effect, did that statement in that email
11 from Mr. Simon have upon you and your wife?

12 MR. CHRISTIANSEN: Objection, relevance.

13 THE COURT: What is the relevance of this, Mr. Greene?

14 MR. GREENE: Look at the timing of this, Your Honor. The
15 date of this email is December 4, 2007. They've talked about --

16 MR. VANNAH: '17.

17 MR. GREENE: I'm sorry, 2017. They've talked about a
18 constructive termination. They made Mr. Edgeworth out to be a bad
19 human being, acting with unilateral steps, doing things to hinder a
20 relationship with Mr. Simon.

21 And then the relevance is, we have this type of information
22 being communicated to the coach of the youth volleyball team, to which
23 I can get more testimony out of it as to whose daughter is playing in it,
24 and what interactions he was going to have with Coach Reuben, and also
25 what steps he had to do to protect himself after this email was received

1 and communicated.

2 THE COURT: Okay. I'll allow the email, that sentence.

3 BY MR. GREENE:

4 Q Did you hear that question? I can ask it again for you?

5 A I'm sorry, please.

6 Q Sure, no worries. What impact did this email, from Coach

7 Reuben -- to Coach Reuben from Danny Simon, have upon you?

8 A Complete humiliation and embarrassment, and I ended up
9 having to expose myself to someone who actually works for the non-
10 profit I founded, and I financed. I paid for the entire thing, and then I had
11 to explain to him why it wasn't true, when it was clearly, the email
12 before, Reuben had said he wanted to know nothing about it.

13 So that the next email came it's obvious, after saying, I don't want
14 to hear about it, it's none of my business, that there was some serious
15 implication here.

16 MR. CHRISTIANSEN: Judge, I'm going to object and ask you
17 to strike the answer. He can't speculate as to what Mr. Simon meant or
18 thought when he sent the email; which is what he's doing.

19 THE COURT: All right. Mr. Edgeworth, if you could just tell
20 us the effect it just had on you, and you said that it forced you to say it
21 wasn't true; what wasn't true?

22 THE WITNESS: That I was a danger to children.

23 THE COURT: Okay. Where does it say that, because I don't
24 see that in this email?

25 THE WITNESS: It says, as for the other issue with the

1 Edgeworths.

2 THE COURT: Okay.

3 THE WITNESS: So, he's talking about us. Just as you we
4 believed we were friends. However, as parents, we must do everything
5 in our power to protect our children. This is why she could not come to
6 the gym --

7 THE COURT: Okay.

8 THE WITNESS: -- because of the Edgeworths.

9 BY MR. GREENE:

10 Q So what impact did that have on you --

11 A It would --

12 Q -- and this volleyball team, and your interactions with Coach
13 Reuben?

14 A He made an awkward situation, and I had to explain myself. I
15 had to explain a bunch of personal business. Then we had to come to a
16 determination on what to do about it.

17 THE COURT: Who is we?

18 THE WITNESS: Me and Reuben.

19 THE COURT: Okay.

20 BY MR. GREENE:

21 Q What was done about this email?

22 A It was decided that Angela and I should retake our
23 background checks with USA Volleyball. So, we filled in the forms and
24 sent in our background checks. Even though we have no contact with
25 children, it was just a protective measure.

1 Q Do you have any understanding how the board reacted to
2 this email from Danny Simon?

3 A The board on that point was myself, my wife, Reuben, the
4 director of volleyball and an attorney.

5 Q And what happened next?

6 A We took the -- we filled in the forms, we paid 140 bucks, or
7 whatever USA Volleyball charges. They were sent in, of course they
8 come back all clear. Then I told Mr. Vannah and yourself about this and
9 you addressed it with Mr. Simon and his attorney, who said it was --

10 MR. CHRISTIANSEN: Objection, hearsay, Your Honor.

11 MR. GREENE: He can most assuredly testify as to what he
12 has personal knowledge of. Whether it's true or not he understood there
13 was a communication made between attorneys, and -- as to what the
14 strategy and response of this email would be.

15 THE COURT: Well, he can testify to what he did in response
16 to this email. But if there's some communication between some
17 attorneys as to how they're going to respond, I don't know how he has
18 personal knowledge of that unless he was there.

19 MR. GREENE: That's fine, Your Honor.

20 BY MR. GREENE:

21 Q What then was done in response to this email?

22 A Basically, I followed up with Reuben a couple of times. It's
23 something you always -- we sound guilty when you say that it's not that,
24 it's not true, it just doesn't make sense. And I've asked, has Mr. Simon
25 ever responded to say, no, this isn't true, that's not what I meant,

1 anything like that. Nothing's ever been sent.

2 Q Did this email have any effect on your relationship with Mr.
3 Simon?

4 A That pretty much ended any time I'll ever speak to the man
5 again, because he knew how much the club means to me, and how
6 much I've put into it, how many years of my life it put into it, to make it
7 what it is. And it just -- it felt like he was trying to hurt me.

8 Q Do you have an understanding whether Mr. Simon was
9 made aware of Reuben's concerns, or the board's concerns?

10 A My attorneys told me that they made --

11 MR. CHRISTIANSEN: Objection.

12 THE WITNESS: -- him aware.

13 MR. CHRISTIANSEN: Hearsay, what other people told him.

14 MR. GREENE: And you have to understand the Judge has
15 already sustained that objection.

16 THE COURT: Okay. Do you know this outside of somebody
17 else telling you?

18 THE WITNESS: No.

19 THE COURT: Okay.

20 BY MR. GREENE:

21 Q Okay. Brian, let's begin at the beginning, after dealing with
22 that, and then work our way back to some other comments that were
23 made, okay. This is your first time you have a chance to introduce
24 yourself to the Court. Give us a little bit of CliffsNotes version of who
25 you are?

1 A Okay. I grew up in Canada. I grew up out in the country,
2 about 20 miles from the nearest town. I graduated from high school.
3 We were fairly poor. My dad was an auto worker, and I grew up in the
4 '80s, which was a bad time in Ontario for auto industry. After high
5 school I couldn't afford to go to university, and neither could my older
6 brother, he was a year ahead of me. I had to drop out because we didn't
7 have enough money.

8 We both worked in factories. I worked in factories for three years,
9 my brother worked in factories for four years, and helped pay each
10 other's way through college, and graduated from Western Ontario
11 School of Business, it's one of the top-ranked undergraduate institutions
12 in the world.

13 And from there I got a job in Houston working commodity
14 derivatives with Enron in '94. I worked there for a couple of years and
15 went to Harvard Business School. After Harvard Business School I
16 worked in Wall Street, in institutional equity sales for six years, up until
17 the point where my wife's father got terminal cancer. And she was an
18 only child, so we moved to Santa Monica to be with him.

19 It wasn't something I could do with the job I did. The job I did I
20 worked on a trading floor; you can't really do it in Santa Monica. So,
21 from that point forward we took over her dad's business. Later bought it
22 when we moved it to Nevada, and we started our own company. We
23 started pediped footwear. It's a kids' show company that makes shoes
24 up until around seven, eight-years-old, for children.

25 And then after growing that company for a bit we needed more

1 space, and we couldn't find it in California, we moved to Nevada in 2006.

2 Q When did you meet Angela?

3 A We went undergrad together.

4 Q Where did you meet, Western Ontario?

5 A We were in the same business -- Western Ontario, the same
6 business school class.

7 Q How long have you been married?

8 A Fifteen years.

9 Q Kids?

10 A Yes.

11 Q How many?

12 A I guess 16 years, sorry. Caroline, whose birthday's today. I
13 appreciate you letting her go. She's 15 today and Lauren, she's 13.

14 Q Sir, we can appreciate that. What do you do for a living now,
15 Brian?

16 A Just run a bunch of small companies. I have Pediped, which
17 I manage on a daily basis. American Grating, which I manage, but
18 somebody who's quite competent runs it. I used to build houses and
19 stuff. This -- ended that business. I also, in partnership with my brother,
20 who -- he's been into cryptocurrency forever, so we run some operations
21 that basically confirm cryptocurrency transactions.

22 Q Brian, why did this lawsuit end your construction business?

23 A Construction is a cash flow business, and basically I needed
24 the cash from this house to keep building another house. So, when --
25 when that house became tied up all my capital in the house became tied

1 up too. You can't acquire and start building your next house, unless you
2 want do leverage with that.

3 Q You were described as being focused in this litigation. So
4 apart from this litigation do you have hobbies and interests?

5 A My kids and I go skiing. I spend a lot of time with youth
6 volleyball, travelling around, watching my kids play, and we go on
7 vacations.

8 Q Brian, this volleyball team was discussed, or described as a
9 charitable organization, a non-profit. Do you have any other charitable
10 and non-profit organizations that you and your wife work with in any
11 capacity?

12 A Well, over the last ten years we've supported numerous
13 charities, mostly focused on kids. We set up a pediped foundation. That
14 gave away around \$3 million to children's charities. Make a Wish used
15 to be a large charity that we did. Every year we would give them
16 hundreds of thousands of dollars. I also donate to charities, my
17 interests, like the Folded Flag Foundation, is a big one for us. Local
18 schools. We give money to -- I think we give about -- small donations to
19 about 100 schools.

20 And then whenever there's a natural disaster we always send
21 shoes. We try to -- like in Haiti we connected with a convent down there,
22 and we shipped them all a whole bunch of shoes, so they can hand them
23 out, stuff like that.

24 Q Any other charitable organizations or non-profits that you
25 and Angela are involved with, you'd like to share with the Judge?

1 A We started Vegas Aces, basically in -- four years ago. There
2 was a real vacuum for youth sports for girls in the town. Volleyball,
3 because we don't have middle school here. What wasn't well-done, and
4 a lot of the girls that had potential to play that sport because they didn't
5 start young enough they really couldn't compete in a lot the scholarship
6 market unless you were a super-gifted athlete.

7 So, with the help from the UNLB coaches and the USC coach,
8 they're very generous with their time, all of these college coaches, they
9 helped us set up a one-port gym in the back. My wife and I financed it,
10 we paid for it all. It lost money every year, of course. And then during
11 this, I had already committed to say we were going to move and build a
12 large facility, and I started building that during this lawsuit, and it was
13 finished June of -- a year and a half ago.

14 This is my proudest thing. Like in four years since we built this,
15 with huge community support, and huge support from the college
16 community, we've won three national championships, which is
17 something nobody ever has done in Las Vegas.

18 Q Thank you, Brian. Let's move to a different topic about how
19 you became to be friends with and know the Simons. When did that
20 relationship first form in your recollection?

21 A Our children went to preschool together, I believe.

22 Q When was that?

23 A It was probably ten years ago. It's been awhile. And for a
24 couple, a couple of years, or three years they attended school together.
25 And then we went -- our wives planned some vacations together. We've

1 gone away skiing, we went to Bora Bora, and to Ko Samui. They met us
2 there when Angela and I were there for a wedding.

3 Q When you were on these family trips, or at any time, did you
4 get to have an understanding as to what Danny did for a living?

5 A He was a lawyer.

6 Q Did you guys talk about your respective careers, to see if you
7 had an understanding, or just dude talk, or anything like that?

8 A No. Well, we'd talk about stuff, but not a super amount of
9 work, but I understand he's a personal injury lawyer, yes.

10 Q Let's move on. Again, the Judge is completely familiar with
11 the facts of this underlying case, so we don't want to spend an inordinate
12 amount of time discussing the flood. If you give, once again, the Cliff
13 Note's version to the Judge as to how this happened and how your
14 concerns were raised?

15 A Basically in 2016, a sprinkler had blew in a house that was
16 five-weeks from completion. It was a 12,000 square foot spec house I
17 was building. Because ironically it was the highest point in the entire
18 house, that's the sprinkler that blew, and flooded the entire house. And I
19 was in LA, I got the call from Mark Giberti, because he went on Monday
20 morning, and the water just poured out when he opened the front door.

21 He called me in LA, I drove home, and by the time I got home the
22 remediation company had already ripped all the drywall down. In a
23 custom home everything insulated at the -- in the interior and exterior so
24 there's no sound. So, all the insulation, it was just a disaster.

25 And then we started remediating it. United Restorations Market

1 called them, which is a friend of his son's I guess, running that company,
2 and they were cleaning it up. In the next three weeks Mark and I spent
3 12 to 15 hours a day there, just trying to see what we could salvage, and
4 get out of there, we took dumpsters, and dumpsters and stuff out of the
5 house. Then I got on with trying to rebuild it, and the rest is history,
6 that's why we're here.

7 Q Yes, we are. So, you figured out you needed some lawyers
8 to get through this. And we've already heard you kind of were led to
9 Danny through your wife, and tell us again, though, with your words,
10 just yes or no answers, how this decision was reached?

11 A Kinsale asked for the head and everything else, and they had
12 it tested, that they were going to pay the claim. Like the adjuster was
13 like, yeah, we just need adjuster's estimates. They got three estimates,
14 and I think when the size of the estimates came in they just flaked, and
15 they called and -- actually they sent a letter and said the claim's refused
16 it's Viking's fault, limited to a manufacturing defect, it's not our problem.

17 And at that point I was told by everybody there, our insurance
18 adjuster -- or broker, sorry, and everyone else who had experience with
19 this on the job, that they were responsible. Lange installed it, and they
20 would inevitably pay. So, I figured, I just need a simple push for them.

21 My insurance broker recommended somebody, whose name was
22 Craig Marquis, his name's been brought up a couple of times, did a
23 preliminary call with him. I didn't feel comfortable because of some of
24 the actions he was going to take against Lange and their contractor's
25 license, that didn't really make sense to me.

1 I also talked to our Estate attorney, Mark Katz, but he was sick at
2 the time, and then Angela suggested I call Danny. I sent him an email,
3 and that was what we've already seen in evidence.

4 Q And you met at Starbuck's didn't you?

5 A On the Saturday. Yeah. He asked me to do a summary of all
6 the stuff and bring it over. We met on Starbuck's on St. Rose.

7 Q What day?

8 A Saturday, May 28th, 2016.

9 MR. GREENE: I'm going to show Exhibit 5 --

10 THE COURT: 5.

11 MR. GREENE: From his book binder, page number 1.

12 BY MR. GREENE:

13 Q I'm going to show you what's been -- I'm going to admit it
14 into evidence as -- we called it a super bill but it's a January of 2018 bill.
15 This is the first page of that. Have you seen this document?

16 A Yes.

17 Q Do you see that date on there; what's the date on top?

18 A 5/27/16.

19 Q What's the description, Brian?

20 A Email chain with client, re: representation.

21 Q Representation of you?

22 A Yes.

23 Q How much were you charged for that?

24 A At this point he was doing it for free, but I actually paid for
25 this -- well, I've been billed for. And I paid for the days on the original

1 bill; it's \$550 an hour.

2 Q The very first day?

3 A Correct.

4 MR. CHRISTIANSEN: Is that 5, John, I'm sorry.

5 MR. GREENE: I'm sorry?

6 MR. CHRISTIANSEN: Is that Exhibit 5?

7 MR. GREENE: Yes.

8 THE COURT: Yes.

9 MR. CHRISTIANSEN: I apologize, sorry.

10 MR. GREENE: Start on page 1.

11 MR. CHRISTIANSEN: I didn't mean to interrupt, I apologize.

12 MR. GREENE: No worries.

13 THE WITNESS: Yes. I was billed from the first day.

14 BY MR. GREENE:

15 Q And even on Exhibit 2, can we show you that one too, Brian?

16 A Yes, please.

17 MR. GREENE: This will be Exhibit 2, page 1, Judge.

18 THE COURT: Okay.

19 BY MR. GREENE:

20 Q Can you see that?

21 A Yes.

22 Q What does that first line say, Frank?

23 A Initial meeting with client: one and three-quarter hours.

24 Q You have no idea what date that was, at least as far as the

25 billing is concerned, correct?

1 A Correct.

2 Q But was there any other initial meeting, than that initial
3 meeting at Starbucks?

4 A No.

5 Q Did you pay this bill --

6 A Yes.

7 Q -- for 100 -- 1.75 hours?

8 A Yes, I did.

9 Q We'll get into more in just a little bit, Brian, about what
10 invoices have been paid, okay. So, Mr. Simon gets involved, but it didn't
11 settle, correct?

12 A No.

13 Q Correct, yes?

14 A Yes, sorry. It did not settle.

15 Q I know, sorry. It's about my leading question that I got away
16 with. I appreciate that. We talked, and you did on cross-examination, I
17 know a lot of yes and no answers, but do you have a recollection as to
18 the substance of the conversations you had with Mr. Simon, when the
19 amount of the fee was discussed?

20 A Yes.

21 Q Would you please share that with the Judge?

22 A Danny called and said, Look, they're not going to settle. This
23 is not going to be --

24 THE COURT: Okay. Do you know what date this was?

25 THE WITNESS: This is June 10th of 2016.

1 THE COURT: Okay.

2 BY MR. GREENE:

3 Q What was said?

4 THE COURT: What did he say?

5 THE WITNESS: He said, they're not going to settle, we're
6 going to need to file a lawsuit, and I'm going to start incurring expenses.
7 The rate at which I've been approved by the Court, my court-approved
8 rate is \$550 an hour, and I hate to charge friends and stuff, but this is
9 going to start costing money. Do you approve of filing a lawsuit against
10 them?

11 I approved and accepted his rate, and then on Monday he
12 emailed me a copy of the lawsuit to read over, and he filed it on
13 Tuesday.

14 Q There was a discussion about whether or not you had any
15 idea about what Ms. Ferrel was going to be charging. Did Mr. Simon
16 discuss at all, in the initial meeting, or that meeting on June 10th,
17 whether Ms. Ferrel was going to be involved in the handling of your
18 case?

19 A No, he did not.

20 Q Who did he indicate to you who was going to be doing the
21 work on your case, when you met with him?

22 A Danny Simon.

23 Q What was your involvement with Mr. Simon, that you recall,
24 after the Starbuck's meeting, and then you have the telephone
25 conversation with him about fees and scope of work; what happened

1 next?

2 A I'm sorry?

3 Q No worries. So, we talked about the Starbuck's meeting, we
4 talked about the telephone conversation you had with Danny about fees.
5 What happened next with Danny's representation of you, as your
6 attorney?

7 A He filed a lawsuit on -- on Tuesday, the following Tuesday.
8 He emailed it to me on a Monday for me to read over. This was -- it was
9 the Friday of the phone call, there was a weekend in between. And I
10 read it over on the Monday and then it was filed with the Court on June
11 14th on the Tuesday.

12 Q Brian, I got a little bit ahead of myself, I apologize. Have you
13 ever had the opportunity to retain lawyers to represent your business
14 interests, prior to the time that you were needing to retain Danny?

15 A Yes.

16 Q And describe that, briefly for the Judge, the experience you
17 had and the reasons why, so we can get a better understanding?

18 A I've had an immigration lawyer. After I left Goldman Sachs I
19 had to do my own immigration. I -- Pediped, somebody stole our patent,
20 started counterfeiting our shoes. We had to sue them in the Federal
21 Court of Southern New York, or the Southern District of New York, I
22 believe it was called.

23 I've had real estate lawyers. When you do a commercial real
24 estate transaction, you have to have a real estate lawyer, look over and
25 do all the documents. I've had an estate attorney, I think it's just a fancy

1 name, he basically did our will, and also did our family trust to pass on
2 our assets to our children.

3 And then regular day-to-day stuff, we, you know, like States will
4 send you something saying, hey, you should file income tax, so we have
5 corporate lawyers that we have to send that stuff to and say, hey, do I
6 need to do this or not?

7 Q Who was the Law Firm Baker Hostetler?

8 A Baker & Hostetler is the law firm that pediped had used,
9 American Grating had used them. We had a partner there, Lisa Carteen
10 that would represent us, and sort of work our way through the other
11 lawyers, direct us to who was needed for each thing. Like if it was
12 customs, you know, we need to know what type of duty to pay on the
13 goods we're importing, or it's a business contract, she would direct it.
14 We've used them for probably 15 years.

15 Q How about Howard & Howard?

16 A Howard & Howard, a partner from Baker moved there, and
17 she's at Howard & Howard in the LA office. So, we use them for filing
18 trademarks. We have a whole bunch of trademarks. We have
19 intellectual property that need to up-kept. And right now, with the new
20 sales tax -- Supreme Court judgment about sales tax, we're using them
21 to guide us through what we're supposed to do as an internet seller in
22 this new environment.

23 Q Brian, at any time that Danny was talking about his fees,
24 when you first established a relationship with him until the end, did he
25 ever discuss with you whether or not his fees a bargain, hourly-wise, in

1 relation to the other lawyers he would hire?

2 A No. He never compared his fees. He basically said, this is
3 my court-approved rate, and because you've got this clause in your
4 contract you'll get all the money back when you win, anyway. Baker &
5 Hostetler, we pay a variety of fees, depending on the lawyer. The same
6 with Howard & Howard, although we've only used three or four of
7 Howard & Howard's lawyers so far.

8 Q Thank you. What sorts of fee agreements, Brian, have you
9 dealt with in your business life?

10 A The Crane Pomerantz one, which I'm not sure if it's a fee
11 agreement, or an expert witness agreement. I signed that one. Angela
12 usually deals with the fee agreements. Then some lawyers, you don't
13 have to have them anyway, and you just call them, and they tell you how
14 much it is, and they know your bill after they've done the task that was
15 needed.

16 Q Would you describe the bulk of your hourly -- of your fee
17 agreements. It is hourly, hybrid contingent, something different, flat fee?

18 A They're all hourly. I've never even got a flat fee one.

19 Q Do you have an understanding as to what Baker Hostetler
20 charges per hour, amongst their --

21 MR. CHRISTIANSEN: Objection. Relevance --

22 BY MR. GREENE:

23 Q -- partners and attorneys?

24 MR. CHRISTIANSEN: -- Your Honor.

25 THE COURT: Mr. Greene, relevance?

1 MR. GREENE: Well, it's relevant to show that Brian -- well,
2 actually, I'll withdraw that, forget that.

3 BY MR. GREENE:

4 Q At any time in the beginning of your relationship with Danny,
5 did he ever ask for a contingency fee agreement?

6 A No.

7 Q Was it ever discussed?

8 A No until we started having the discussion in the airport bar.

9 THE COURT: In where?

10 THE WITNESS: The San Diego --

11 BY MR. GREENE:

12 Q And what date was that?

13 A August 9th, I believe, 2017.

14 Q Did Danny have a structure -- a structured discussion with
15 you on what the -- what the attorney/client relationship' would be?

16 A No, it was -- you mean in the airport bar --

17 Q No, back up, I'm sorry. I'm sorry to confuse you. Let's go
18 back to June of 2016. Did he have a structured relationship with you?

19 There's discussion with as to what the nature of the fee agreement
20 would be?

21 A Yes. I would pay him \$550 an hour, and he would represent
22 me in this case. He would file the lawsuit, and follow-up and did
23 everything that lawyers do in cases.

24 Q I appreciate that.

25 THE COURT: And was this at the bar in San Diego?

1 MR. GREENE: No, Judge, I'm sorry. That was the June 10,
2 2016 meeting.

3 THE COURT: Okay.

4 MR. GREENE: And telephone conversation that resulted in
5 the litigation being planned.

6 THE COURT: Okay.

7 BY MR. GREENE:

8 Q Did Danny ever present you with a written fee agreement to
9 sign?

10 A No.

11 Q I'm going to show you some documents in a few minutes,
12 one dated November 27th, 2017. It seems to be a several page
13 document, and what's a document called a retainer agreement, do you
14 remember receiving that?

15 A Yes. I was in China, I believe.

16 Q Let's cover that in a few minutes, just so we have everything
17 encapsulated under that certain topic; okay Brian?

18 A Okay.

19 Q When this litigation was filed against Viking and Lange, and
20 those related entities, did you have an understanding as to what the
21 nature of that litigation was going to, what it was going to entail?

22 A I was told I could get my legal fees back, and whatever my
23 costs were to repair the damage. I basically needed the money to repair
24 the damage, so I could get the house on the market. That was the urgent
25 part.

1 Q There've been several questions and answers, it talks about,
2 about approximately a \$500,000 repair bill. Is that your understanding --

3 A Yeah. All bills came in around 300,000 to \$800,000, and the
4 remediation company had billed \$73,000. So, it puts you right in the
5 500,000 range.

6 Q What were the circumstances that you remember with Danny
7 -- Mr. Simon, excuse me, discussing with you about, that you would get
8 your fees and costs back from the litigation, how was that presented to
9 you?

10 A Well, it was during the conversation that he was going to
11 start incurring costs and needed to bill me. He told me, but in your
12 contract you're entitled to get all your money back for your legal, so
13 you'll get this money back.

14 Q Was that your expectation as well?

15 A Yes.

16 Q Do you have a recollection, Brian, what Lange's counsel and
17 the Lange Defendant took throughout this litigation, as to whether or not
18 they were willing to pay you attorneys' fees and costs, pursuant to that
19 agreement?

20 A I don't have personal knowledge of their conversations at all.

21 Q Okay. Did you choose to be actively involved in this
22 litigation, Brian?

23 A Yes, I did.

24 Q How come?

25 A Well, the brunt of the case didn't really begin until January of

1 2017, when Danny was -- Mr. Simon was filing various things, and then
2 depositions were going to start. From the start of it, just to help
3 everyone understand construction, some of the technical stuff, I knew a
4 whole bunch about the sprinkler how it worked, why it went off, you
5 know, a ton of different stuff, so I started helping out with the
6 depositions, and then deposition questions.

7 The first person to go was Vince Diorio with Lange, and he sort of
8 danced around and said a lot of things that just were blatantly untrue, if
9 you'd ever worked in construction you would know they bordered on the
10 ridiculous. So, from that day forward, pretty much I was involved in the
11 case.

12 THE COURT: And just so we're clear, I know a lot of people
13 are -- we're all kind of struggling with how to refer to Mr. Simon. Mr.
14 Simon, do you have any objection to some people calling you Danny?

15 MR. SIMON: Call me whatever you want, Judge.

16 THE COURT: Okay. I just want to make sure that the record
17 is clear, because everybody tries to catch themselves. But just whenever
18 we say Danny we are talking about Mr. Simon; we're talking about the
19 same person. But I know everybody has been making conscious efforts
20 to correct themselves. But I just wanted to know, Mr. Simon, if you had
21 any preference or any objection?

22 MR. SIMON: No preference, Your Honor.

23 THE COURT: Okay.

24 MR. GREENE: Just don't call you late for dinner.

25 BY MR. GREENE:

1 Q Describe some of the things that you did, Brian, that you
2 remember, to uncover the scope of Viking's conduct or omissions in this
3 case.

4 A We really didn't know this was a Viking problem until the
5 Viking's PMK was deposed on May 3rd. It was crystal clear the guy was
6 lying about a lot of things. And we still didn't know what, but he lied
7 about ISO procedures, simple factory things that I happened to know
8 because I worked in factories for so long. And from there I think
9 everybody was on edge to look for different things.

10 And the first -- they gave us some documents that day. Some of
11 them were suspicious, some of the power points didn't make sense. It's
12 clear that they had been presenting that this was an installer's problem.
13 And if it was so limited world-wide in scope to what the PMK was
14 claiming, it didn't really make sense that they had executives giving
15 power points on why this is a problem with the installers and not the
16 manufacturers.

17 Then when they started dumping documents is the term that we
18 used, that the first drop of documents was in the thousands after the
19 ones they had brought to the -- the May 3rd deposition. Those -- those
20 came in -- I believe the juicy ones came in in July and Ashley put them
21 up in drop box. She -- she went through the emails that were in there,
22 which I was told that's a typical place where attorneys go to look for
23 juices in the emails that are -- are turned over. And she sent a summary
24 around two weeks later, around the 19th. At that --

25 Q Of?

1 A Of all the emails through --

2 Q The date being? You said the 19th.

3 A Of June.

4 Q Okay.

5 A 2016, I think it was. It might have been July. I apologize.

6 July.

7 THE COURT: And who sent the summary?

8 THE WITNESS: Ashley did.

9 THE COURT: Okay.

10 THE WITNESS: And when I went into the drop box and
11 started going through, it was clear she was never going to get through
12 all the documents because the emails were only a small portion of what
13 was dropped. So, then I started going through everything.

14 BY MR. GREENE:

15 Q Brian, is there a chance you could be confused about the
16 date of the year? You just said 2016. All the emails we've had back and
17 forth don't show that, so.

18 A I apologize. 2017.

19 Q Okay. So, what did you do once you received that bunch of
20 information regarding Viking in that July of 2017 email?

21 A The -- the first things I started doing after I got access to the
22 drop-off documents was going through them. The one person that was
23 named in an email from -- there was talking within Viking. They were
24 talking about a U.K. person which they have different slander laws over
25 there, apparently, saying that this was a bigger problem in the U.S. than

1 it was in the U.K. And he said he had heard from someone at FSS, which
2 is Fire Sprinkler Systems, that it -- that there was 93 activations.

3 I started searching under this guy's name, Harold Rogers, until I
4 found a lawsuit where Viking actually sued Harold Rogers. And I asked
5 Ashley if she could get me the lawsuit so I could read it, and she did. I
6 downloaded the lawsuit. I read through it as -- you know, I'm not a
7 lawyer, but it seemed to indicate that Viking was suing Harold Rogers
8 and another man named Hallman [phonetic].

9 They own two different companies. They're the largest purchaser
10 of the V.K. 457 in the entire world. They purchased around 55 percent of
11 all the heads that were ever installed of this product.

12 Q How many did you learn that that might have been?

13 A Later in the case found out it was 5.5 million have been
14 installed world-wide.

15 Q So go on with what you did to under -- uncover what you
16 did.

17 A So then, I wanted to talk to these guys because anytime that
18 Viking sues their largest customer of a product, obviously there's a
19 problem. I had sent an email to Mr. Simon and Ms. Ferrel about this.
20 They attempted to contact -- I gave them Harold's contacting
21 information. He didn't return their calls.

22 Finally, I believe, I called him July 24th myself. He picked up, a
23 super nice guy, talked to me for a long time. He was actually right in the
24 middle of a settlement conference. In his conference room he had
25 Viking's head counsel there, some of their management, and his

1 attorneys and they were reaching a settlement. And he still spent
2 probably about an hour talking to me.

3 And then on July 26th, 2017, I sent an email to Mr. Simon and Ms.
4 Ferrel just documenting what I learned from Harold.

5 Q Did you contact anyone else, additional activations or
6 anything else that might have affected the value of this case?

7 A Over the case Harold kept leading me to other people and
8 other people led me to other people and it just kind of grew from there. I
9 spoke with Keith Rhoades in the U.K., who had activations in the United
10 Kingdom, which, you know, blows away the heat defense that Viking
11 was blaming these things were only going off because they were being
12 exposed to heat.

13 Q Explain that just a bit. Again, give us a summary of why
14 that's important.

15 A The heat defense by Viking was basically to say if these
16 heads ever got exposed to over 100 Fahrenheit, 100 Fahrenheit, the -- the
17 solder link that holds the sprinkler plugged could be damaged and then
18 at any given time in the future could go off. This was their -- their
19 defense and their, you know, the hill they wanted to die on.

20 They had a whole bunch of other defenses about heat, but the 100
21 Fahrenheit was the end and, you know, these -- these things were going
22 off world-wide. It didn't matter where; they were going in the Pacific
23 Northwest; they were going off in Pennsylvania.

24 And speaking with Keith, they basically had almost bankrupted
25 him. They almost bankrupted Nigel Chandler [phonetic] in the U.K.

1 because they spoke up about it. And like I said, my understanding was
2 they have different slander or libel or whatever it's called laws over
3 there, and Viking basically threatened them, to sue them, out of
4 existence.

5 He really helped me. He sent me -- he referred me to James
6 Carver. James Carver is the El Segundo Fire Marshal. He also sits on
7 the board of the California State Fire Suppression Council, which deals
8 with fire suppression, which sprinklers are -- are part of. I called him.
9 We traded calls back and forth. And he had been given a letter on Viking
10 letterhead which he shared and was later disclosed and discovered, too,
11 by the way, that said that there were very few activations. And at the
12 time, Harold Rogers had documented over a hundred.

13 Q Let's go back for a second. Were you there at the PMK
14 deposition of Viking in this litigation?

15 A Yes, I was.

16 Q Do you remember the number of activations that he owned
17 up to?

18 A Forty-six world-wide.

19 THE COURT: Forty-six?

20 THE WITNESS: Forty-six.

21 BY MR. GREENE:

22 Q After you had done this homework, did you gain an
23 understanding as to a different number of activations world-wide?

24 A By the end of this case, I had 326 with most of them have
25 addresses, a lot of them have owners at the houses, they have the

1 installers, they had -- if then getting that information if I could find a
2 discovery document, they would have the bates number of any
3 document that -- that was applied to that. Mostly what Viking was giving
4 us was basically a bunch of random pictures. You couldn't tell how
5 many activations there possibly were. They had no idea of any
6 addresses, they said. They had no idea of, you know, whether it went off
7 or not. And I made a large excel spreadsheet documenting I believe the
8 end count was 326.

9 Q Who did you provide that to?

10 A Danny and Ashley.

11 Q Did they ask for it?

12 A Well, as I kept updating it, they kept asking for it. Once in
13 this courtroom they asked for it. Her Honor had asked them how many
14 activations happened before the June 14th filing of your lawsuit. They
15 didn't know. They didn't have the paper there. They texted me, asked
16 me, you know, how many had happened. I just pulled out this
17 spreadsheet. It was all numbered by date. I sorted it all by date. And
18 you could just run your finger right down and go right across. And I
19 forget what the number was, a hundred and some odd.

20 Q So over 300 are discovered by you of activations world-wide?

21 A Correct.

22 Q Is that a fair number?

23 A Correct.

24 Q Okay. Is there anything else that you did you'd like to share
25 with the Judge to help uncover the scope of -- of your claims against

1 Viking in this litigation?

2 A So, when I spoke with James Carver, the Fire Marshal in
3 California, he was out of budget to open an investigation on them, and
4 he was hoping to get more budget in the next budget year, whatever. I
5 guess states give out money every year. He had been told it was a small
6 problem. Harold had told him it wasn't a small problem. And he asked if
7 I would share information with him, if he would share information with --
8 with me. I told him I couldn't share a lot of stuff because it's still under
9 protective order, but I'd gladly share of anything that wasn't.

10 He sent me an email of six more houses that were never disclosed
11 by Viking that fire marshals in California had actually investigated,
12 reported where the sprinkler head was, which is really important
13 because the heat defense later on claimed oh, all these things happened
14 in top floors of -- of houses in the desert.

15 So, of course, it's a heat problem. More than half of these things
16 occurred on -- on the main floor of two story houses. So, it's completely
17 random. It was obviously a manufacturing defect that went off
18 randomly.

19 I also had letters that Zurich -- the insurance carrier in this case was
20 Zurich Insurance. Zurich had tested this product in 2015, '15. Even
21 though they're still defending my case, Zurich was providing the lawyers
22 to defend my case. 2015 Zurich went to a lab called Burbone [phonetic].
23 And they got a report, and the report said this product is a
24 manufacturing defect. They went back to the lab for rebuttal that it
25 wasn't, and the lab reiterated it's a manufacturing defect.

1 Q Let's talk about another laboratory. What is Underwriter's
2 Laboratory to your understanding?

3 A UL is an organization that certifies project -- products, excuse
4 me. They -- they certify three billion or some unbelievable number of
5 products. But for fire suppression you have to be UL listed, which
6 means you have to pass a whole series of 40 tests in order to -- to be
7 able to stamp it as UL and allow it to be used in -- in building.

8 There's only three people that make sprinklers. It's an oligopoly.
9 There's Tyco, there's Reliable, and there's Viking. And all of these
10 products have to be certified UL listed or you can't use them in buildings.

11 Q Do you have any opinion whether or not the Underwriters
12 Laboratory testing standards or lack thereof had any bearing at all upon
13 this case?

14 A I --

15 MR. CHRISTIANSEN: Objection. Speculation, Your Honor.
16 He's not a lawyer.

17 MR. GREENE: I just asked if he knows.

18 MR. CHRISTIANSEN: He's not a lawyer.

19 MR. GREENE: One doesn't need to be a lawyer to be able to
20 have an understanding. With all the work and scope of work he's done
21 to research this, one doesn't need to be an expert to go to a class to
22 determine this. He -- if I can set a foundation, he's spent hundreds upon
23 hundreds of hours studying this issue, speaking with experts who have
24 been testifying in other cases, but he has at least as much knowledge
25 about this as anybody out there.

1 THE COURT: And what was your question again; what did
2 you ask him to say?

3 MR. GREENE: If he had -- yes, I'm sorry. If he had an opinion
4 whether the Underwriters Laboratory testing or lack thereof had any
5 bearing upon the value of this case; if he had an opinion about it.

6 MR. CHRISTIANSEN: My objection is speculation. He can no
7 more guess what Underwriter, the UL, had a value on this case, if he
8 complied -- it's a guess. It' s speculation.

9 MR. GREENE: And maybe I asked a horrible question.

10 THE COURT: Because I mean he can talk about the research
11 and everything he did, but I don't know how he could say what the
12 Underwriters value -- what the Underwriters did, how that added value
13 to this case. I think only the people from Viking and Lange can come in
14 on that.

15 MR. GREENE: Then I asked an absolutely horrible --

16 THE COURT: Okay. Because the way I read the question, I
17 think we would have to have somebody here from Viking or somebody
18 here from Lange to say how they valued the case and what they paid,
19 because I don't know how he would know.

20 MR. GREENE: Then I apologize for asking a bad question.

21 BY MR. GREENE:

22 Q Do you have an understanding whether this sprinkler
23 product, if installed in your home, underwent any Underwriter
24 Laboratory testing?

25 A Yes. In order to be installed in a home it has to be UL listed.

1 Not to be mistaken with an underwriter of an insurance policy. It's a
2 laboratory. It's on your lightbulbs, it's on everything. It has to be UL
3 listed; it has to pass the test. This product was never tested by
4 Underwriters Laboratory, and thus it never should have been listed for
5 sale.

6 Q How did you learn that, Brian?

7 A Over the course of a long period of finding the documents
8 were missing. Within discovery, the Underwriter Lab documents were
9 never there. When we kept asking for them, they gave us the wrong
10 documents.

11 At one point they -- when I had asked for I need the actual test data
12 on this head, because the actual test data that they had provided was on
13 all different heads. But it had a whole bunch of mechanical properties of
14 the heads, and I clearly didn't believe what they were saying that 100
15 degree Fahrenheit heat exposure would set this thing off.

16 And the UL testing would prove that it didn't. They never gave us
17 the actual test results. They kept refusing, they kept refusing, up until
18 late in the trial they started admitting -- I think Pancoast first admitted in
19 September that some of the tests may not have been done on the actual
20 product, but UL Laboratories allows you to grandfather in if products are
21 substantially similar.

22 And to answer your question, Mr. Simon, here's the heat test that
23 you're asking for. I was always asking for this heat test. The heat test
24 she attached was for cover plates. That's the little white plate right there
25 up on the ceiling that falls off when it gets to 135 and exposes the

1 sprinkler. It had nothing to do with the VK 457 at all.

2 When we kept pushing on this, she admitted that it's never been
3 tested, and it was grandfathered in because of the VK 456. The -- the
4 thing that sets a sprinkler off is the fusible link. And when the solder
5 melts, these arms pop and all the water comes out. It just opens a hole
6 in it.

7 The VK 456 has about a half dollar size fusible link. The VK 457 has
8 a fusible link that looks like this [indicating]. If you hold your two fingers
9 together, it's two soldered joints, completely different surface area,
10 completely different heat rating, too. There's no way that you can --

11 THE COURT: Okay, Mr. -- I'm sorry. What is the question?

12 MR. GREENE: It was back, I know, kind of coming on.

13 THE COURT: I don't mean to interrupt, counsel, but I've sat
14 through every one of these arguments. When I struck the heat expert,
15 that was me. That wasn't Bonnie, that was me. So, I've heard all of it,
16 but I'm just -- I mean I'm lost. I don't know what the question is that he's
17 supposed to be answering.

18 MR. GREENE: Well, we asked about whether this -- this
19 product that was -- basically, his understanding of this product that was
20 installed in his home underwent any of these Underwriter Laboratory
21 testing, tests, and what effect is his understanding that had on the
22 damages in this case. That's what we're hoping to get at.

23 THE COURT: Oh, okay, I'm sorry. I just -- I just had no idea
24 what the question was that he was answering.

25 THE WITNESS: So, basically, to sum it up and be quicker,

1 I'm sorry --

2 MR. CHRISTIANSEN: Judge, and I renew my objection. As
3 the Court's pointed out, unless they've got somebody from Viking or
4 Lange here to say how they valued the Underwriter Laboratories testing
5 or lack thereof and factored it into what they put a value on the case, this
6 witness doesn't know. He's just guessing. Speculation.

7 THE COURT: Well, I mean like I previously said, Mr. Greene, I
8 mean he can't talk about what to put to the value of this case. I don't
9 know how he would know that.

10 MR. GREENE: I'm only asking him what his understanding is
11 after his voluminous research as to the defective nature of these
12 sprinklers, what Viking knew or didn't know, what they disclosed and
13 didn't know ultimately, how he understood the defected -- the posture of
14 this case.

15 THE COURT: Okay. But how would he understand that,
16 because I'm pretty sure that calls for some sort of hearsay statement as
17 to something that somebody told him.

18 So, how is it that he would understand that; because
19 somebody from Viking or Lange would have had to have told him that,
20 how they -- because how -- how this affects how they value the case
21 because I'm 110 percent aware of Viking and the discovery violations.
22 And we were one step away from having a hearing about striking that
23 answer when this case settled.

24 So, I'm aware of all that, but that -- what Pancoast admitted
25 and everything down in front of the Discovery Commissioner, that all

1 goes into Viking's understanding of what this case is worth. How does
2 he know that without saying Pancoast told him?

3 MR. GREENE: Judge, and I'm happy to move on. I originally
4 started with the scope of his work, what they had done, so.

5 THE COURT: Yeah. And I mean he can discuss that, but I
6 just wasn't sure what the question was. That's the reason I stopped the
7 -- he can discuss that, but when we jump to how that made Viking and
8 Lange value this case, I don't know how he would know that without
9 Viking or Lange telling him that.

10 MR. GREENE: Gotcha.

11 BY MR. GREENE:

12 Q We'll go right back to where we started then. We're kind of
13 going on what work you had performed in this case to assist in its
14 prosecution. Is there anything else that you've not talked about that you
15 did to help uncover the number of activations globally?

16 A I think I've covered a lot of it. I spoke to people in the U.K., I
17 gathered documents from them. Some of the documents have been
18 shredded, apparently. None of them were in the discovery. They -- like I
19 said, they stated the product was defective, and they were paid for by
20 the insurance company. I spoke with Harold. I knew what was going on
21 with his settlement, and how he was removing and replacing all of the
22 existing VK 457's in -- in southern California as fast as humanly possible.
23 Thorpe Design was doing the exact same thing.

24 I also made an analysis of how much it would cost to recall
25 five-and-a-half million based on what they were doing when they're

1 changing them out because five-and-a-half million VK457's is about
2 110,000 homes.

3 Q How did you gain an understanding as to what costs it would
4 take even to replace one of those sprinklers like the one that failed in
5 your home?

6 A Replacing one is fairly easy to figure out. Their list price is
7 like \$80, but the ball price of them is only about \$10. When you get into
8 a scale of five-and-a-half million that are defective, though, \$10 is a lot.
9 And then there was bids on other companies that were doing the
10 removal and replacement had set rates for houses. It was like \$1700.

11 You had to pull a permit, get the fire department out there, put in
12 plans that the new sprinkler heads that Viking had created could be
13 replaced and do just as well as the old, the 457's, and you had to get the
14 homeowners to agree to let you in their house. It wasn't as simple as the
15 original installation, but it was still fairly cheap. And --

16 Q What's the bottom line number you came to?

17 A About \$25 million to -- well, if it was a forced recall, it could
18 be as high as \$200 million, but if they kept going through, the entire --
19 the entire process the way they were doing, it'd be around \$25 million a
20 year. And it's going to take years.

21 Q Did your research indicate or your discussions with any of
22 these other individuals you've talked about indicate that any other entity,
23 other than Viking, was the manufacturer of these sprinkler heads?

24 A This wasn't happening to anyone else. In Harold's trial --

25 MR. CHRISTIANSEN: Objection. Hearsay.

1 BY MR. GREENE:

2 Q It's okay. Just -- you can just give the Judge an
3 understanding as to whether you became aware of whether any other
4 entity, corporate entity, other than Viking was found in your research to
5 be responsible for these failures, other than with Viking?

6 A No. Viking was the manufacturer, and Viking was involved in
7 the entire cover-up.

8 Q Did you have the opportunity, then, to send an email to -- to
9 Danny Simon? Look at this -- this Exhibit 9 on page 1 of Plaintiff's. This
10 is the email dated July --

11 THE COURT: It's Plaintiff's 9, counsel?

12 MR. GREENE: Yes, Judge.

13 THE COURT: Okay.

14 BY MR. GREENE:

15 Q And that's Page 1. We've seen this under a different number.
16 Can you take a glance at this email, Brian. You've seen this before;
17 haven't you?

18 A Yes.

19 Q We talked about this earlier, correct?

20 A Yes.

21 Q Would it be a fair statement that this is the email you sent to
22 Mr. Simon and copied Ms. Ferrel about what you had uncovered?

23 THE COURT: Okay. And this is -- oh, never mind. All right,
24 keep going.

25 THE WITNESS: Yes, I sent this to Mr. Simon and Ms. Ferrel.

1 BY MR. GREENE:

2 Q Would it be a fair statement, too, this contains a good
3 summary of -- a complete summary of what you did?

4 A No. This is a good summary of what I did up until July 25th.

5 Q Sure.

6 A This mess got bigger and bigger and bigger as we
7 progressed. But this showed what I had found out and obviously the 46
8 activations are completely false because on this page you have 157 listed
9 and you have the U.K.

10 Q Do you have an understanding, Brian, that before this -- this
11 email was sent in July of 2017 from the first bit of work that Mr. Simon
12 did on your case until this email, what efforts he had undertaken to
13 undercover the scope of these activations or failures?

14 A None.

15 Q And how do you know that?

16 A He never told me about any. I was keeping the spreadsheet
17 of all the activations. I was adding them that we were using in court. He
18 never added any.

19 Q What information did he share with you, if any, about what
20 he was doing to undercover the scope of these activations or failures of
21 Viking's product?

22 A Nothing.

23 Q How about Ms. Ferrel, the same -- the same question.

24 What is your understanding of what she did to undercover the scope of
25 these failures or activations?

1 MR. CHRISTIANSEN: Judge, I'm just going to object. I don't
2 understand the question; what did they do to undercover? He's asked it
3 three or four times to undercover something.

4 THE COURT: I think he means to uncover; is that what you
5 mean?

6 MR. GREENE: Undercover? Oh, my goodness. Sorry,
7 Judge.

8 THE COURT: Yeah. Did you mean what did they do to
9 uncover?

10 BY MR. GREENE:

11 Q What did they do to discover it?

12 A Ashley summarized the emails prior to this email that had
13 somebody insinuating that there was 93 in California. After this she
14 helped out. When I was looking for documents, she would point me in
15 the right direction of where they were in drop box or a lot of times they
16 weren't in drop box, maybe they didn't upload on the computer or
17 whatever. And then she would -- when I wanted more documents, I
18 would email her about hey, this is missing, we need this. She also
19 helped with some of the motions.

20 When the bigger data dumps came, I kept complaining that the
21 documents were the same with different bates numbers, and it was very
22 confusing to go through them, Mr. Simon and Ms. Ferrel asked me to
23 prove it.

24 I put together a bunch of them that were the exact same
25 documents in different positions. And they started protesting about this.

1 And there was further and further protests ending with Ms. Pancoast
2 actually redoing the documents. And Ms. Pancoast in mid-September
3 said hey, here's the new redone documents with the nice easy
4 searchable list. There used to be 67,000, now there's 40,000 unique
5 ones, that the other 27,000 were duplicates. So, she helped with a lot of
6 that stuff.

7 THE COURT: And when you said she helped with the
8 motions, what motions?

9 THE WITNESS: Well, when they start -- when I first started
10 finding stuff missing in this discovery, they would solicit it back from
11 Viking. Motion's probably the wrong word. Interrogatory, is it, I think is
12 the correct word. I can't say --

13 THE COURT: Interrogatory?

14 THE WITNESS: I'm sorry, I can't say the word properly.

15 THE COURT: Okay. So, you don't mean that you have any
16 knowledge of her filing any motions?

17 THE WITNESS: No, she didn't file. Danny Simon filed the
18 motions.

19 THE COURT: Okay.

20 THE WITNESS: She typed them up. And we edited them
21 together lots of times.

22 THE COURT: And you would what?

23 THE WITNESS: We would edit them together a lot of times.
24 They would send them to me. I would correct any malapropisms or
25 typos. There was a lot of technical terms in this that all the lawyers on

1 the case kept confusing. The biggest one was load versus strength,
2 which is a really important --

3 THE COURT: Okay, Mr. Edgeworth, we don't need to get into
4 that.

5 You edited some motions that were typed by Ms. Ferrel?

6 THE WITNESS: When they were filing stuff with the Court,
7 they would send it to me to see if it was proper what they were saying.

8 THE COURT: Okay.

9 THE WITNESS: I would add things, I would supplement, I
10 would give them listings of houses. I gave them tons of PDF's showing
11 the whole duplicated document thing. And then the worst part that they
12 had done is not just did they duplicate documents, but in -- in series of
13 documents that appeared to be duplicates, there was one document
14 missing from the other discovery dump, which was serious in some
15 cases.

16 The picture that I found that was missing from one bates
17 number dump from the other bates number dump actually had a picture
18 that they were using to show bad insulation as the reason for the
19 activation, and there was a message saying Adrienne moved aside all
20 the insulation to take this photograph. And that wasn't in the other
21 series. It was tons of little stuff like this that came up. I wrote
22 summaries and emailed.

23 BY MR. GREENE:

24 Q All right. Let's move to a different topic for a few minutes,
25 okay? The case settles November 15th of 2017 against Viking. What led

1 up to you as the client deciding to settle that claim?

2 A Just there was -- the whole case was overwhelming. The
3 number was good, it was fair. And I just wanted the whole thing to end,
4 you know. Right after I said I'd accept, I had remorse. I thought we
5 could get them to pay fifteen million because they had subrogated the
6 326 claims that I found and stuffed other insurance companies with the
7 payments.

8 So that alone to them is worth 25 million that they're covering up
9 just from the spreadsheet; because they made all the homeowners'
10 insurance pay for it and then they would pay the fee that you pay with an
11 insurance company, you know; what's it called? You pay like \$1,000 and
12 then the insurance company fixes your house, pays for the rest of it.

13 THE COURT: A deductible?

14 MR. GREENE: Is that deductible?

15 THE WITNESS: Deductible. I'm sorry, I couldn't think of the
16 term. Viking and Zurich would pay the deductibles and then leave the
17 other insurance companies with all the damage. And I've been told that
18 that would --

19 MR. CHRISTIANSEN: Objection. Hearsay.

20 THE COURT: Okay. Sir, can we get back to the point?

21 THE WITNESS: Sorry.

22 THE COURT: The question was, how did you settle this case?

23 MR. GREENE: Yeah.

24 BY MR. GREENE:

25 Q What were the primary considerations and what went

1 through your mind as a client to settle this case?

2 A I wanted it over. I just wanted to put it behind me, just get
3 on, you know, back to construction and do what I wanted to do.

4 Q Because Mr. Simon had given you good counsel to settle for
5 six million; hadn't he?

6 A Yes, definitely.

7 Q Followed that counsel?

8 A Yes, I did.

9 Q Glad you followed that counsel?

10 A Yes, I am.

11 Q This case was your life; wasn't it?

12 A For that period, yes.

13 Q Closure's good; isn't it?

14 A I don't know. I'll let you know when I have closure, but yes,
15 closure's good.

16 Q Let's talk about the invoices for a moment now that the
17 primary case is settled. We'll get into Lange again in a few moments.
18 What role did you have in paying the invoices in this case, Brian?

19 A I looked them over, I signed off on them, and I gave them to
20 our accountant, and he would cut the check; everything except the first
21 invoice I just cut the check myself.

22 Q So, Brian, the Judge has seen evidence who knows how
23 many times and at this hearing, as well, that there were four invoices for
24 fees and costs presented to you beginning in December of 2016 going
25 through September of 2017. Do you have an understanding whether any

1 other -- during that timeframe were there any other invoices sent to you
2 from Mr. Simon's office for you to pay?

3 A No.

4 Q Did you review those invoices before you paid them?

5 A Yes.

6 Q Did you pay them in full?

7 A Yes, I did.

8 Q How long did it take for you to pay those after you received
9 them?

10 A Sometimes the same day.

11 Q Did you have an opportunity to review those invoices, Brian,
12 what the hourly rate was for Danny?

13 A Yes.

14 Q Sorry. Mr. Simon.

15 A Yes.

16 Q And what was that each time?

17 A Five hundred and fifty dollars an hour.

18 Q Did you ever see any of Mr. Simon's entries in which he
19 billed anything other than \$550 per hour?

20 A No, I did not.

21 Q Did you ever get bored and count the number of billing
22 entries that Mr. Simon put on those first four invoices?

23 A No, I did not.

24 Q Okay. Did you get an understanding as to what Ms. Ferrel's
25 hourly rate was in each of those invoices where her time was contained?

1 A Two hundred and seventy-five dollars an hour.

2 Q Every entry?

3 A Every entry.

4 Q Did you pay that invoice in full, all those invoices in full in
5 which her time was on?

6 A Yes.

7 Q How about Ben Miller, he hasn't been all that involved in the
8 handling of this case, so he prepared almost \$6,000 worth of time; is that
9 your understanding, as well?

10 A Yes.

11 Q Did you gain an understanding as to what his hourly rate
12 was?

13 A Two hundred and seventy-five dollars an hour.

14 Q Did he ever bill at any other rate?

15 A No.

16 Q Did you pay those invoices in full?

17 A Yes.

18 Q Brian, we talked about this Exhibit 5. Again, the Judge has
19 seen this a bazillion times. That's the invoice that was produced towards
20 late January of 2018. Did you take the opportunity to review that
21 invoice?

22 A I'm sorry, I don't know which invoice it was. Can I just see it?

23 Q Of course you can. It's kind of thick. I'm not sure if we have
24 the witness binder up there, but.

25 A Oh, is this --

1 Q This is what we -- this is the January 24, 25 --
2 A 24th. I'm sorry. I thought you said January 5th.
3 Q No, I just said January of 2018.
4 A Okay. I apologize. Yes, I know this invoice.
5 Q You've reviewed it front to end?
6 A Not really.
7 Q Okay.
8 A I scanned it.
9 Q Did you gain an understanding after reviewing this exhibit,
10 which is Plaintiff's -- I'm sorry, the Edgeworth Exhibit 5, beginning at
11 page 1, going all the way through page 183? Did you get an
12 understanding as to what Mr. Simon's hourly rate was that he billed on
13 Exhibit 5?
14 A Five hundred and fifty dollars per hour.
15 Q Did you see any, any entry on this invoice regarding Mr.
16 Simon's time in which he billed any other rate than \$550 per hour?
17 A No.
18 Q What's your understanding as to the first date that Mr. Simon
19 had a billing entry in this Exhibit 5?
20 A Can I just see the first page again, please?
21 Q Sure. That's page 1 of it.
22 A May 27th of 2016.
23 Q Do you have a remembrance as to what the last date for his
24 billing entry was or would you care if I showed you that instead?
25 A I'd appreciate the same.

1 Q I'll do that.

2 THE COURT: Are you just referring to Mr. Simon, counsel?

3 MR. GREENE: Yes, right now, Judge.

4 THE COURT: Okay.

5 MR. GREENE: This is page 79 of Exhibit 5. Sticky fingers.

6 BY MR. GREENE:

7 Q In reviewing that, Brian, what's your understanding as the
8 client is the last day that you were billed by Mr. Simon?

9 A It's a little confusing because there's a line item for 135.8
10 hours that has no date, but it appears to be January 8th, 2018, the last
11 dated entry.

12 Q Did Mr. Simon ever explain to you what date this one
13 hundred and thirty-five hours and eight tenths of a minute were spent
14 reviewing these emails?

15 A No. That's actually something I went looking for through
16 the filings and I haven't found how that breaks up at all. It has no date.
17 It's just a line item for 135 hours. I can find no other explanation.

18 Q In your review of the four invoices you paid, do you recall
19 being billed for and paying for review of emails?

20 A It's listed in many, many of the invoices already paid, yes.

21 Q But no explanation?

22 A No, sir.

23 Q Did you gain an understanding after reviewing Exhibit 5,
24 turning to Ms. Ferrel now again --

25 A Okay.

1 Q -- when her work on this case began?

2 A If I could see the document, it would help me.

3 Q Of course. Not a memory test, except when it is. I'm trying
4 to find that.

5 A December 20th of 2016.

6 Q Do you remember speaking with Ms. Ferrel back in
7 December of 2016 about her involvement in this case?

8 A No.

9 Q Was it ever communicated to you as to when she began
10 working on your case?

11 A No, I don't remember. The first time I met her, probably in
12 January, I would think.

13 Q Nonetheless, she did good work --

14 THE COURT: January of what year?

15 THE WITNESS: I apologize. 2017.

16 BY MR. GREENE:

17 Q Nonetheless, she did good work, too, for you; didn't she?

18 A Yeah. I think she did a very admirable job.

19 Q Do you know when the last day she pulled on your file as a
20 client?

21 A If I could see the invoice.

22 Q Of course you can.

23 A I'm sorry, I went over these and I just don't remember the
24 last days. January 2nd of 2018.

25 Q Brian, last off, did you ever have any communications with

1 him about his involvement in your case?

2 A No. I was forwarded an email of research that he did,
3 though, in August 1st of 2017 it was a Word document about punitive
4 damages, and Mr. Simon asked me to look at a page on it and see if I
5 had evidence on three factors; oppression, malice, and fraud, I believe it
6 was. And that was Mr. Miller had -- his name was on that document.

7 Q Do you know Mr. Miller personally?

8 A I think I spoke with him. I think he's the guy that's a Batman
9 fan. He had an office with a lot of Batman stuff, I believe.

10 Q Well, that's quite a way to be known. He billed about \$5995;
11 is that correct?

12 A Yes.

13 Q You don't have any beef with the work that Ben did; do you?

14 A No, not at all.

15 Q He did a good job; didn't he?

16 A No. Or yes, he did a good job. I have no complaints.

17 Q Brian, we talked a little bit earlier under cross-examination
18 the choices you made to pay these legal fees not out of your own pocket,
19 but by getting loans. You said that was prudent.

20 A Yes.

21 Q I'm financially dumb, so help us out. Is the -- what was your
22 decision-making process to determine that that was -- that was prudent?

23 A There's concepts in finance that you should match your -- the
24 debt that you take out with the asset that it is. You know, I think the
25 simplest explanation of this is, should I mortgage my house to buy a car?

1 And the answer's no. The two assets don't match in duration, the car
2 doesn't last, you know, 30 to 100 years, the house does. And you put
3 your house at risk of being homeless.

4 So that would be a non-prudent decision. So, it is prudent to
5 basically match the debt with the purpose of the debt. In this case the
6 purpose of the debt was to repair the house and pursue the claim.

7 Q So you had choices how to get loans. Tell the Judge briefly,
8 because again she's familiar with this case, who were the choices that
9 you went to for loans to pay your fees and costs?

10 A I went to Wells Fargo. They originally -- they've been our
11 bank for 20 years in business. We've been a great client. And I told my
12 personal banker the entire situation, and he said this will never get
13 through underwriting, don't even bother.

14 My other choices were to sell long-term investments, some of
15 which were tied up in partnerships with my brother and another minority
16 investor. He was a smaller investor, but still a partner in the business.
17 And asking them to dividend me out my money or I could take debt.
18 And I borrowed money from my mother-in-law and from my high school
19 friend who runs American Grating, Colin Kendrick.

20 Q Were these loans or did the interest you were paying on
21 them have any impact upon your wellbeing during the litigation?

22 A The loans would be paid back at the end of the litigation.
23 And if the litigation failed, obviously I would be scrounging around to
24 figure out how to pay them off. But it created a lot of stress, yes.

25 Q Did the existence of these loans or maybe the existence of

1 the specific lenders of the loans have any bearing upon your decision as
2 the client to resolve your claim against Viking -- I'm sorry, Viking.

3 A Yes. Sorry. Yes. Yes, they did.

4 Q And how so?

5 A Well, it was causing stress and tension and it was something
6 overhanging me, and it was one reason that the relief of the settlement I
7 could pay them all off.

8 Q When the case did settle and undisputed funds were released
9 to you, did you pay these loans off?

10 A Yeah. Wells Fargo released the funds the same day. I
11 believe it's called Bank of Nevada the check was written on and Wells
12 Fargo said we would -- they would release it the same day. I paid both
13 my mother-in-law and Colin off the same day with all the interest
14 accrued on the loans.

15 Q Brian, let's shift gears.

16 MR. GREENE: Would now be a good time to shift gears? Do
17 you need to take a break, Judge?

18 THE COURT: Probably. We should probably just take our
19 afternoon recess at this time. Okay. So, we're going to just take our
20 afternoon recess for 15 minutes and we will be back at 20 to, okay?

21 COUNSEL: Thank you, Your Honor.

22 THE COURT: Okay.

23 [Recess at 3:25 p.m., recommencing at 3:43 p.m.]

24 THE COURT: All right. So, we'll go back on the record in
25 Edgeworth Family Trust v. Lange Plumbing and Edgeworth Family Trust

1 vs. Daniel Simon.

2 Mr. Greene, whenever you're ready.

3 MR. GREENE: Thank you, Judge. Yes, thank you.

4 BY MR. GREENE:

5 Q I need to go back to your -- these invoices that you paid and
6 the ones that were presented, as well, and wrap up on that, okay, Brian?

7 A Yes.

8 Q Do you have an understanding as to how much you paid Mr.
9 Simon in attorney's fees in the original first four invoices that were
10 presented to you throughout the litigation of those -- we'll call them the
11 four?

12 A Three hundred and eighty-seven thousand.

13 Q And change?

14 A And some change, yeah.

15 Q Okay. Were any other invoices for fees ever presented to
16 you by Mr. Simon?

17 A At the mediation, November 10th, the second mediation, I
18 was given an invoice for approximately \$72,000 that was for fees. And
19 then when we left mediation, I couldn't find it. I assume somebody just
20 picked it up with all the papers on the table.

21 Q I'm going to show you Exhibit -- Plaintiff's Exhibit 9. And that
22 is page 2 of 9. It's an email to you -- from you, excuse me, to Danny
23 Simon copying Peter Shin. Who's Peter Shin?

24 A He's an accountant that pays invoices for my companies.

25 Q Let me show you this exhibit. Do you recognize this email,

1 Brian?

2 A Yes, I do.

3 Q Describe this email to the Judge. First read it for her, if you
4 would, please, and then describe the circumstances.

5 A I know I have an open invoice that you were going to give me
6 at a mediation a couple weeks ago and then didn't leave with me. Could
7 somebody in your office send Peter [copied here] any invoices that are
8 unpaid, please.

9 Q So, as of November 15th, you acknowledge you owed more
10 fees to Mr. Simon, correct?

11 A Yes, correct.

12 Q Has that always been your position?

13 A Yes.

14 Q What does November 15th coincide with ,Brian?

15 A That night is when the mediator's settlement agreement,
16 Floyd Hale, the mediator, said the whole settlement was -- the mediator's
17 agreement was settled on by both parties. So, it's basically the Viking
18 settlement day.

19 Q Did Mr. Simon ever hit reply and type in a response to you?

20 A No.

21 Q Did Mr. Shin, your accountant, ever receive another invoice?

22 A No.

23 Q Did you ever receive another invoice in November from Mr.
24 Simon?

25 A No.

1 Q December of 2017, either?

2 A No.

3 Q If you would have received one as you had asked, what
4 would you have done?

5 A I would have checked it over. If everything was in order I
6 would have scribbled my signature on it and give it to Peter to pay.

7 Q Which you had done each of the four times previously?

8 A Correct.

9 Q Paid it?

10 A Correct.

11 Q In full?

12 A Correct.

13 Q I'm going to look at Exhibit 9, pages 7 through 12, Your
14 Honor, and Brian.

15 THE COURT: Okay.

16 BY MR. GREENE:

17 Q Brian, this is a side-by-side comparison of new bills, new bill
18 hours, paid bills hours, daily total. Do you recognize this document if I
19 just put it on here?

20 A Yes, I do.

21 Q And how do you recognize this document?

22 A I scanned the bills that were presented in late January of
23 2018 attached to a motion of some sort. I scanned them in and then I
24 summed them and then I sorted them by date.

25 Q Would it be a fair assessment to -- to say that you compared

1 the entries on the original four invoices that you had paid with the
2 entries on the new invoice that was attached to Mr. Simon's motion to
3 adjudicate?

4 A Yes. I took the hours that had appeared on the motion to
5 adjudicate in January of 2018. I put them all in the column that says
6 New Bill Hours. And then the bills I had paid previously, the four bills
7 that we had discussed, is in the next column. And then I just summed
8 them by date how many hours for each lawyer. I did it for Daniel Simon,
9 and I did it for Ashley Ferrel.

10 Q Brian, how long did it take you to do this comparison
11 contrast and to prepare this document that's now Exhibit 9?

12 A Probably 20 or 30 hours because the problem was it was just
13 scanned in a lawsuit instead of presented in a way that you could get the
14 data out. So, in hindsight I shouldn't have tried to salvage the
15 document, I should have just hand-typed them all in, but I tried to
16 change the PDF back into an excel file.

17 Q In comparing the invoices, the four that you had been
18 presented by Mr. Simon and paid in full for his fees and the costs
19 reimbursed, did you make any comparisons at all as to what these -- this
20 new invoice from January of 2018 did or didn't do in relation to all those
21 prior billing dates that had been covered on those four invoices?

22 A Yes. The original invoices that have already been paid
23 summed around \$387,000. For those same days, the new bill was
24 adding around another \$300,000, approximately. And then from the date
25 of the last bill I received in late September 2017 through the end of this

1 billing statement there's about \$400,000 in new additional fees, including
2 that one huge one for 135.8. I put that in the new date billing because it
3 didn't have a date on it.

4 Q So just to be clear, was the 135 hours reviewing emails
5 without a date, was that in the original four emails -- I mean, sorry, the
6 four invoices or was that in the new superbill?

7 A That was in the new superbills.

8 Q In looking at this document, I'd like to highlight a few of the
9 days that -- that you also highlighted, okay?

10 A Okay.

11 Q Going to page 10 of Exhibit 9, so just to get a roadmap, fair
12 to say that this column on the left pertains to Danny Simon, Daniel
13 Simon?

14 A Yes.

15 Q The one on the right Ashley Ferrel? Sorry, I'll bring that
16 down.

17 A Correct.

18 Q Okay. So, let's look at Mr. Simon's hours for August 15th. In
19 preparing this did you review August 15th on both the original invoices, I
20 guess the original invoice --

21 A Correct.

22 Q -- for this date, together with the new January of 2018 bill?

23 A Yes, I did.

24 Q And what did you notice on August 15th, 2017, Mr. Simon
25 did?

1 A I noticed that day he had already billed and been paid for
2 seventeen and a half hours. And then on the new bill that was submitted
3 on 2018, January, there was another hour, almost two hours, 1.9 hours.

4 Q Did Mr. Simon ever give you an explanation on August 15,
5 2017, or any day thereafter as to why he was adding another 1.9 hours to
6 the 17.5?

7 A No.

8 Q The next date, a couple of dates, August 20th of 2017 and
9 August 21 of 2017, do you see those?

10 A Yes.

11 Q On the August 20 of 2017 there is nothing -- nothing charged
12 on the original invoice, correct?

13 A Correct.

14 Q That's what the middle column represents?

15 A Correct.

16 Q And then on that -- on that left-hand new bill hours, that's
17 5.65; do you see that?

18 A Yes.

19 Q Off to the left it says same work; do you see that?

20 A Yes.

21 Q Explain that to the Judge, please.

22 A The descriptions on those two days, if you look at the 5.65,
23 that's on the new January 2018 presented bill. And the 675 on the old
24 already paid bill, the descriptions are quite similar, so to me it looks like
25 a dup. I don't know.

1 THE COURT: Well, the 675 goes with August 21st, right?
2 That's a different day.

3 THE WITNESS: Yes, ma'am.

4 THE COURT: Okay. I'm confused.

5 BY MR. GREENE:

6 Q So, yeah, make sure that's not unclear for us. Are you saying
7 that the entry for -- the new entry for 8/20/2017 looks the same as the one
8 that was previously billed and paid for 8/21/2017?

9 A Yes. The second column is the previous paid bill. So, if you
10 look at the description of the work on the bill, it seems quite similar to
11 the description of the work on the new bill on the previous day. So, it
12 seems like it's been -- it's the same work already been billed for, but it's
13 being billed again in the January 2018 bill.

14 THE COURT: So, it appears to be the same work?

15 THE WITNESS: The descriptions are very similar.

16 THE COURT: Okay.

17 BY MR. GREENE:

18 Q Let me move this page aside, this document aside, Brian, and
19 just go ahead and take a look at this is --

20 THE COURT: Well, before you do that, Mr. Greene --

21 MR. GREENE: I'm sorry, Judge.

22 THE COURT: -- I do have a question. Why do some of these
23 have boxes around them and other ones don't?

24 THE WITNESS: I just put boxes around the ones where I
25 actually searched through the bills to get the description of the work

1 performed. On the new bill that was attached to the lawsuit and the old
2 bills that were already paid; because this new bill that was presented
3 in --

4 THE COURT: No, I understand that, Mr. Edgeworth. What's
5 the purpose of the boxes? So that's the ones where you actually looked
6 into the purpose of the work?

7 THE WITNESS: Yes.

8 THE COURT: Okay.

9 And then how -- what is day two, what does that mean?
10 Because some of these there's like a one day difference, some of them
11 there's a couple days difference from day one and day two on the same
12 line. What is the purpose of day two?

13 THE WITNESS: Of why I boxed them, Your Honor?

14 THE COURT: No. Like if you look at the one from July 9th,
15 there's July 9th on date one and then on date two it says July 10th. Mr.
16 Greene, can you move that down so he can see that?

17 MR. GREENE: You bet.

18 THE WITNESS: July 9?

19 THE COURT: See on July 9, right next to it, it says July 10th.
20 But then the next line underneath July 9th also says July 10th. What is
21 the purpose for the dates that are in the box labeled day two?

22 THE WITNESS: Yes, Your Honor. On some of the bills,
23 the old bills, it had from 7-9 to 7-10. In this case, the one you inquired
24 about, there's a range on the bills of dates. It doesn't define the exact
25 date that the hours were performed. So, I put in just to match up with

1 the actual descriptive bills where they have all the line items of the
2 hours.

3 THE COURT: But then on 7-10 there's a new entry, the
4 box -- the line right underneath that?

5 THE WITNESS: Yes. Yes. On the bill it says 7-9 to 7-10. So,
6 I assume it's work performed on those two days.

7 THE COURT: Right. But if you look right below the 7-9, you
8 have another line for 7-10. So, is there a different bill that only describes
9 7-10?

10 THE WITNESS: There might be, or it might be a typo on my
11 part, ma'am.

12 THE COURT: No, but I mean you do that a lot because on the
13 7-11, 7-12 you do the same thing. So, what does that mean? Like what
14 is the difference I guess is my question? See, you got 7-11 to 7-12 and
15 then right by 7-11 you got 7-12 again.

16 THE WITNESS: It might be a merging problem when I
17 merged the sheets together because the one sheet might have had the
18 range of dates and then the new bill might have only had a single date.
19 And so, it put in an additional line where I should have moved it back up.
20 It's probably an error.

21 THE COURT: So, but I mean that's done several times
22 throughout this document. So, is it an error on all those lines?

23 THE WITNESS: On all the lines that would be duplicated
24 problems in error, yes, Your Honor.

25 THE COURT: Okay. And then my next question -- sorry, Mr.

1 Greene, but I just have some questions about this.

2 Like for instance if you look at the line at the top that says
3 630, you have paid bills, 4.25 hours, new bills 1.35. Is that 1.35 extra or
4 does the new bill have 1.35 and then the bill that you paid had 4.25 for
5 the same work?

6 THE WITNESS: The old bill that I already paid at 4.25, the
7 new bill presented in January of 2018 was putting an additional 1.35 on
8 that same date.

9 THE COURT: So, everything under the new bill hours is
10 additional time that was on the January bill that you got?

11 THE WITNESS: Yes, Your Honor.

12 THE COURT: Okay.

13 MR. GREENE: Any other questions, Judge?

14 THE COURT: No, no. I just had that.

15 MR. GREENE: Okay.

16 BY MR. GREENE:

17 Q Let's put a couple of these side-by-side, Brian, okay? We're
18 looking at that August 20 and August 21, those two dates, okay?

19 A Okay.

20 Q This is Exhibit 5, page 38. That is the August 20 day. You
21 can see that the entries start a little bit above that punch hole in the
22 middle of the page, correct?

23 A Yes.

24 Q Does this particular --

25 THE COURT: Can you move that down a little bit, Mr.

1 Greene --

2 MR. GREENE: Of course.

3 THE COURT: -- because mine starts at 8/18, and he can't see
4 that?

5 MR. GREENE: Sure.

6 THE COURT: Okay. There you go.

7 BY MR. GREENE:

8 Q It starts right up there --

9 MR. GREENE: I'm sorry. The actual date for the 20th,
10 Judge --

11 THE COURT: Okay. I thought -- I thought you were talking
12 about the whole page. I'm sorry.

13 MR. GREENE: I'm sorry.

14 MR. VANNAH: What are we looking at? I'd like to know what
15 we're looking at. I have no idea.

16 THE COURT: I think we're starting on August 20th.

17 MR. VANNAH: Of what? What is this, a new bill, the old bill?

18 THE COURT: Exhibit 5, Mr. Vannah.

19 MR. GREENE: Exhibit 5 is the new bill.

20 MR. VANNAH: Thank you.

21 MR. GREENE: You bet.

22 MR. VANNAH: New bill meaning the one from January 2018.

23 THE COURT: Yes.

24 MR. GREENE: Exactly.

25 MR. VANNAH: In addition to what the old bill was?

1 MR. GREENE: Exactly.

2 MR. VANNAH: All right.

3 BY MR. GREENE:

4 Q Brian, in looking at this -- at this bill and nicely cross-
5 examined by your boss, in looking at this exhibit on this page, do you
6 see that duplication that you had mentioned in your prior testimony to
7 the Judge with the same work versus old, new?

8 A Yeah. The descriptions you'd have to hold the two bills side
9 by each, the old one that's already paid. The descriptions seem very
10 similar in my opinion to the ones that were already paid.

11 MR. GREENE: Judge, I brought by a witness binder just
12 because we have limited space on this Elmo.

13 THE COURT: Okay.

14 MR. GREENE: Do you think we could give him the witness
15 binder that I'm hoping that my office staff dropped by?

16 THE COURT: Do we have a witness binder? I know we got
17 the admitted version and then we got a copy. Is it supposed to be my
18 copy?

19 MR. GREENE: Well, yes, you have one. I thought we left one
20 for the --

21 THE COURT: Right. We got one delivered for me and one
22 delivered that you guys wanted admitted. I don't think we got an
23 additional one.

24 MR. GREENE: This is -- this is Plaintiff's or the Edgeworth's
25 exhibit binder.

1 THE COURT: Okay.

2 MR. GREENE: It has the Exhibits 2 and 5 that we're looking
3 at and 9.

4 THE COURT: Okay.

5 MR. GREENE: Any objection to having --

6 THE COURT: Mr. Christensen, any objection to him giving
7 the witness this binder?

8 MR. CHRISTENSEN: No, ma'am.

9 THE COURT: Okay. That would actually help. Thank you,
10 Mr. Greene. Sorry, I just didn't realize. I just didn't know we had one.

11 MR. GREENE: So many pages going about.

12 BY MR. CHRISTENSEN:

13 Q So listen to the page numbers that are given to you, Mr.
14 Edgeworth, and then we can go from there, okay?

15 A Yes.

16 Q So we're looking at Exhibit 5 of the new bill. And we're
17 looking at pages 38 and 39. Those are the two pages of Exhibit 5 that
18 cover the billing entries on -- that are listed for August 20th and August
19 21st.

20 [Pause]

21 Q And then if you look at Exhibit 2, Brian --

22 A Exhibit 2.

23 Q -- at page 24, that's the only page of that original invoices
24 that has an entry for August 21st.

25 A I'm sorry, I can't find the page numbers.

1 Q They're so small, it's annoying, I know.

2 MR. GREENE: May I approach, Judge?

3 THE COURT: Yes, please.

4 THE WITNESS: Okay. So, this is the page here?

5 BY MR. GREENE:

6 Q Yeah. You're in Exhibit --

7 A 24, Exhibit 2?

8 Q Uh-huh. And you can look off to the side with the dates.

9 A Can I open the binder and take the page out?

10 Q Of course you can. Make sure you don't get them out of
11 order.

12 A Okay. Okay.

13 Q So, you indicated on Exhibit 9, page 10, that there was the
14 same work on the August 20th line and then old/new on the August 21
15 line. And we're curious as to what duplicative old or same or new work
16 that you had seen that were included on the new January 2018 bill that
17 you'd already paid from the prior invoice.

18 A Yes. If you look on Exhibit 5, page 38, you can see that on
19 the 20th all of the descriptions are reviewing and -- receiving, reviewing,
20 and analyzing emails from client. And then if you look back to the
21 already paid bill, it just appears that it was already billed for. It says on
22 8-21, finalize, reply to opposition to motion to compel client emails,
23 Pancoast emails, discussion with client.

24 THE COURT: What is the already paid bill, what exhibit
25 number is that?

1 MR. GREENE: Judge, that is Exhibit 2 --

2 THE COURT: 2.

3 MR. GREENE: -- page 24.

4 MR. VANNAH: Can you show what he's talking about so we
5 can all look at it together, the right date and the right entry?

6 THE COURT: Can you put that -- can you put that on the
7 screen, Mr. Greene?

8 MR. GREENE: I just did, Judge, yes.

9 THE COURT: Okay. Okay. So, on the 20th -- the 21st, you
10 mean? I'm sorry, what page, did you say 24?

11 MR. GREENE: Yes, Judge.

12 THE COURT: In Exhibit 2?

13 MR. GREENE: Yes.

14 THE COURT: Mine doesn't have an entry for 8-20. It goes to
15 8-21.

16 MR. GREENE: Correct. And that's what Mr. Edgeworth is
17 telling you, that the entry that was put on 8-20 --

18 MR. CHRISTIANSEN: Objection to counsel testifying, Judge.
19 He can ask a question.

20 MR. GREENE: Well, if you want it clarified for me, Judge, if
21 you want to ask the witness, that's fine. I'm just trying to help out here.

22 THE COURT: Okay, I see it. So, he -- on 8-21 the finalized
23 reply to the opp to the motion to compel client emails, Pancoast emails,
24 discussion with client, and then you have him review the file is what he
25 took to be duplicative of something on 8-20? Of what on 8-20, Mr.

1 Edgeworth?

2 THE WITNESS: Of the new bill --

3 THE COURT: Of the new bill.

4 THE WITNESS: -- that was presented.

5 THE COURT: Where does that duplicate what's in the old
6 bill?

7 THE WITNESS: All the new entries are received, reviewed,
8 and analyzing from client or the vast majority, draft and sending note to
9 client, receive, review, analyzing from client.

10 THE COURT: Okay. So, you think that that's a duplicate of
11 client emails?

12 THE WITNESS: It appears to be.

13 THE COURT: Okay.

14 THE WITNESS: But I can't know for sure.

15 THE COURT: Okay.

16 MR. CHRISTIANSEN: I'm sorry, Judge, I just didn't hear the
17 last part of what he said.

18 THE COURT: He said he can't know for sure.

19 THE WITNESS: I cannot know for sure.

20 MR. CHRISTIANSEN: Oh, thank you. That's what I
21 suspected.

22 BY MR. GREENE:

23 Q Brian, looking down at Exhibit 9, your summary, the easier
24 way to look at these, page 10, there's an entry of 9-11-2017.

25 MR. VANNAH: Can't see it.

1 BY MR. GREENE:

2 Q Do you see that?

3 A Yes.

4 Q You also have a note in the margin; you're referencing with
5 the same notes, question mark.

6 A The similar situation to as above. I just audited random
7 things, and it appears that the two of these, if you look kitty-corner, the
8 540 on 9-11, seems to have the very similar notes to the already paid
9 portion on 9-12 of 2017 on the other bill.

10 Q Did Mr. Simon ever explain to you why on his original
11 invoice for this date that you had paid four hours and seventy-five
12 minutes' worth of time -- sorry -- 4.75 hours' worth of time, why an
13 additional 5.4 hours were added to that date that weren't on the original
14 invoice?

15 A When the new invoice was submitted, there really was no
16 information provided whatsoever, so you couldn't reference anything.
17 That's why I'm saying I don't know. The same notes, it seems very
18 similar. I'd like to know more. You know, this is generally when you get
19 a bill and you see stuff like this, you'd say hey, I think you might have
20 made a mistake here, guys, and then they would come back to you and
21 say oops, sorry, we did, or no, no, we didn't, that's separate.

22 Q Just while we're on this, Brian, we've heard that Mr. Simon's
23 office doesn't have billing software. We get that. They're not an
24 insurance defense firm. You didn't think they were; did you?

25 A No.

1 Q But did he take notes at the depositions in which you were
2 present with him on?

3 A Yes.

4 Q Did he take notes in court?

5 A Yes.

6 Q What other opportunities did he take notes with you when
7 you were present?

8 A Sometimes in his office when he was on a call with the other
9 attorneys he would write on a pad or in a book.

10 Q Was he making notes of things as they were said?

11 A I believe so.

12 Q Did you ever try to get a challenge doing that?

13 A No. No information was provided on the new bill or the
14 sources of how they compiled it or anything. The most information we
15 ever got was about the costs. When I asked for the old invoices of the
16 costs, you informed me that -- well, you forwarded Mr. Christensen's
17 email saying that when we went to get the invoices that you requested,
18 we discovered a \$2750 error, the new costs are 68,800 and change.

19 But then he wouldn't tell us what the \$2750 were, which made
20 reconciling the costs even difficult. And just last week I found an invoice
21 for \$1700 of the costs that had already been paid that has another case's
22 name on it and it's addressed to Ben Miller, not to Daniel Simon, who we
23 already paid that. So, when you don't get clarification or a little bit of
24 guidance or notes on how you do stuff, you can only assume.

25 Q Thank you. Let me turn to page 11 of Exhibit 9, the next --

1 the next three boxes that you have highlighted regarding Mr. Simon.

2 You see the October 17, 2017 date?

3 A Yes.

4 Q How much did he bill you originally on that -- on that date?

5 A I'll never know. The bill that I was presented at the mediation
6 to was never given back to me when I requested it, so I'll never know
7 what he billed me originally.

8 Q Would it be fair to say did anything happen -- tell me, what is
9 your understanding as to the last billing entries that was included in the
10 invoice that you would pay for Mr. Simon?

11 A I'd have to look at the final bill because they didn't match
12 attorneys, so that the September, the late September bill, will have a
13 couple different dates on it.

14 Q Do you remember when you paid that late September of
15 2017 bill?

16 A No, but I would have paid it immediately. It was a large one.

17 Q There have been some representations and court filings that
18 that included time through November 22nd, 2017. Do you have any
19 reason to dispute that that's the last billing date for one of the original
20 four invoices that you had paid Mr. Simon in full for?

21 A I believe you misspoke. I think you meant September that
22 had billing entries. You said November.

23 MR. GREENE: If I said November, Your Honor --

24 THE COURT: You did.

25 MR. GREENE: -- sorry. Sorry, Judge.

1 THE COURT: You did. I was confused, as well.

2 THE WITNESS: So, no, I don't have any reason to dispute
3 that the last billing entry was probably September 22nd. We could
4 actually look at this because you just find where the zeros end and that's
5 where it would be.

6 THE COURT: And that was going to be my question --

7 MR. GREENE: Sure.

8 THE COURT: -- Mr. Edgeworth. It appears that about
9 September 20th you start putting zeros. And you just testified that you
10 don't know how much you were billed for October 17. So, when you put
11 a zero in here, where did that number come from?

12 THE WITNESS: Well, because I didn't have a bill --

13 THE COURT: Okay.

14 THE WITNESS: -- so the left column is --

15 THE COURT: No, I get that Mr. Edgeworth. Can you -- Mr.
16 Edgeworth --

17 THE WITNESS: Yes.

18 THE COURT: -- we're asking very simple questions --

19 THE WITNESS: Okay. Sorry, ma'am.

20 THE COURT: -- if you could just stick to that, otherwise we're
21 going to be here until Friday with you testifying. So, when you put a
22 zero, that's because you don't know because you never got a bill?

23 THE WITNESS: Well, I did receive a bill for that date,
24 but --

25 THE COURT: October 17th?

1 THE WITNESS: Yes. And the mediation, the second
2 mediation on November 10th I was given a bill at the start of the
3 mediation to put in the damages spreadsheet, but at the end of the day it
4 wasn't there. That's the bill I'm emailing Mr. Simon and Ms. Ferrel about
5 on the 15th of November saying hey, you gave me a bill a couple weeks
6 ago at the mediation, I don't have it, can you please send it to Peter.

7 THE COURT: Okay. So, you have never -- so the reason you
8 have zero in here is because that was on the bill you got at the
9 mediation, but you didn't receive it?

10 THE WITNESS: No. I received a bill at the mediation. When
11 I left, it wasn't with my papers.

12 THE COURT: Okay. So, you don't know what happened to
13 it?

14 THE WITNESS: Exactly. So, I have no idea on that date what
15 might have been there.

16 THE COURT: So, when you put zeros, though, on these
17 columns leading all the way to January 8th of 2018, when did the bill that
18 you gave at the mediation, when did it stop?

19 THE WITNESS: I think it stopped, I don't know, like a few
20 days before the mediation is usually -- the earlier mediation I got a bill
21 just before, too. Usually when I got a bill --

22 THE COURT: Okay. Do you know what date it stopped, Mr.
23 Edgeworth?

24 THE WITNESS: No, no.

25 THE COURT: You don't know. Okay. So, when you put

1 these zeros in here, it is possible that this bill that was handed to you at
2 the mediation had some time on it for these days, but you don't know
3 where the bill is and it never got duplicated, so that's why there's zeros
4 here?

5 THE WITNESS: Yes, ma'am.

6 THE COURT: Okay.

7 BY MR. GREENE:

8 Q It never got duplicated, Brian, because you asked for it, it's
9 Exhibit 9, page 2, you asked for it and it wasn't given to you; was it?

10 A No. Nobody replied to me, no.

11 Q Okay. Let's take a look at some of Ms. Ferrel's time on
12 this -- on this Exhibit 9, okay?

13 A Okay.

14 Q Hers is now on this right-hand portion of this; would you
15 agree?

16 A Yes.

17 Q When did you first meet Ms. Ferrel; do you know?

18 A No, I do not.

19 Q Again, we talked about this, but any reason to dispute that
20 the first billing entry that she included on this, on this new invoice of
21 January 2018, was dated, backdated to December 20th of 2016?

22 A That is correct.

23 Q So Ashley could have been working -- I'm sorry -- Ms. Ferrel
24 could have been working for Mr. Simon at this time, you just don't know,
25 correct?

1 A Correct.

2 Q Obviously, she was because she's billing with him; can we
3 make that assumption?

4 THE COURT: Can you make that assumption, Mr.
5 Edgeworth?

6 THE WITNESS: Yes.

7 BY MR. GREENE:

8 Q Let's go to a couple of the boxed out items. And, again, this
9 is going to be page 10 of Exhibit 9.

10 THE COURT: Page 10, counsel?

11 MR. GREENE: Yes. Yes, Your Honor.

12 BY MR. GREENE:

13 Q Do you see what we're looking at in this portion? You have
14 three dates highlighted, the 14th, 15th, and 16th of July?

15 A Yes.

16 MR. VANNAH: August.

17 MR. GREENE: August. Golly.

18 BY MR. GREENE:

19 Q And what caused you to pay attention to these particular
20 three dates in August of 2017?

21 A It's just -- it's another anomaly. The new bill is almost
22 doubling the already paid bill. So, you're claiming that you didn't bill
23 half of the hours that date, it seems like an anomaly. And three days in a
24 row.

25 Q Brian, in your time spent at the law firm of Daniel S. Simon,

1 how would you describe your interactions with Ms. Ferrel once you did
2 get introduced to her; any issues working on your case?

3 A I think we had a good interaction.

4 THE COURT: What did you say, Mr. Edgeworth?

5 THE WITNESS: I think we had a good interaction.

6 THE COURT: Okay.

7 BY MR. GREENE:

8 Q At any time you were interacting with Ms. Ferrel in that good
9 way, did she ever indicate to you, Brian, why she was able to keep track
10 of seven hours of her time on that August 14, 2000 invoice that you paid
11 in full, but was unable to keep track of 8.6 hours that then added to the
12 December -- I'm sorry, the January of 2018 invoice?

13 A No.

14 MR. CHRISTIANSEN: Well, Judge, I'm going to object. He
15 keeps asking why nobody from Mr. Simon's office explained in January
16 of 2018 to the witness a bill. It's because Mr. Greene sent Mr. Simon's
17 office an email saying don't talk to him ever again.

18 MR. GREENE: That's also a speaking objection. That's not
19 what I asked him. Your Honor knows that. I'm asking at any time did
20 Ms. Ferrel ever explain to him in their interactions why she was unable
21 to originally write the time down and why she chose to add it on.

22 THE COURT: Well, I think you have to rephrase the question,
23 Mr. Greene because they have -- there is the letter that says only
24 communicate to you and Mr. Vannah that surfaced in late November --
25 I'm sorry, I'm mixing up the dates -- between November 27th and

1 December 7th at this point. But there's that letter that surfaced. So, we
2 can all agree, everybody in this room, that there's been those
3 communication directly.

4 As a matter of fact, I asked your client about it. There's been
5 no communication between Mr. Simon or any member of his firm and
6 your client that day. So, if you could reask the question as to if she told
7 them that when they were still talking to them without you and Mr.
8 Vannah.

9 MR. GREENE: That's really where I'm going, Your Honor.

10 THE COURT: Okay.

11 MR. GREENE: So, I'll try and speed it up.

12 THE COURT: Okay. Yeah, if you could just rephrase the
13 question.

14 MR. GREENE: Sure.

15 BY MR. GREENE:

16 Q So let me go on to the next entry. You already answered
17 that, the communications you had regarding the August 14, two
18 thousand -- how about August 2015 date, originally paid how much,
19 Brian?

20 THE COURT: August 15th you mean?

21 MR. GREENE: Yes, Judge.

22 THE COURT: Okay. You said 2015.

23 MR. GREENE: Oh, man, I --

24 THE COURT: It's okay. It's late, Mr. Greene.

25 MR. GREENE: What a day, what a day.

1 THE COURT: August 15, Mr. Edgeworth.

2 THE WITNESS: Originally, I paid eight and a quarter hours.

3 BY MR. GREENE:

4 Q Did Ms. Ferrel ever explain to you why she was unable to
5 keep full track of her time for tasks allegedly performed that day?

6 A No.

7 Q What about August 16, 2017, we have -- how much did you
8 pay originally?

9 A Originally, I paid six and a half hours for that day.

10 Q And did she ever tell you why she was unable to keep track
11 of that additional 8.05 hours that she added in the January 2018 invoice?

12 A No.

13 Q So we have the next entry of September 8, 2017.

14 A Could you just move the page up on the projector, please?

15 Q Of course I can. See that better?

16 A Yes, sir.

17 Q Originally paid Mr. Simon for how much of Ashley's time
18 that date?

19 A Seven and a quarter hours.

20 Q And the new entry is for the January of 2018 bill?

21 A Thirteen and -- a little bit more than thirteen and a half more
22 hours.

23 Q For a total of?

24 A 20.80 hours.

25 Q Did Ms. Ferrel ever explain to you at any time why she was

1 unable to properly account for all of her time from September 8, 2017?

2 A No.

3 Q Did she ever tell you at any time before December of 2017,
4 hey, you know, and I have to add some time because I was unable to
5 capture some of my time for September 8, 2017?

6 A No.

7 Q What if she had said something like that?

8 A If it seemed like an honest mistake, I would have told them to
9 bill me for it.

10 Q How about July -- I'm sorry, September 13, 2017, that's the
11 bottom entry on this, originally paid how much, Brian?

12 A Eight and three-quarter hours.

13 Q And the new invoice from January of 2018 contained what?

14 A 14.1 hours.

15 Q For a total of what?

16 A 22.85 hours.

17 Q Did you have any concerns about 22.85 hours billed in one
18 day?

19 A Yes. That's why I circled it.

20 Q How so? What raised your ire?

21 A It's just -- it's beyond improbable that that's possible for you
22 to have that many billable hours in a day, let alone be at work for that
23 many hours in a day. It's very improbable.

24 Q Did she explain to you any time when you were
25 communicating with her why that happened?

1 A No.

2 Q That she had any difficulties keeping track of her time then?

3 A No.

4 Q When you were -- did Ms. Ferrel come with you to -- and Mr.
5 Simon to these depositions or court appearances?

6 A Many of them. Not all of them, but many of them.

7 Q Did she have any trouble that you could see with taking
8 contemporaneous notes?

9 A No. She seemed to be an excellent note taker.

10 Q Pretty thorough; isn't she?

11 A Yes.

12 Q In looking at page 11 of Exhibit 9, what's your understanding
13 as to the last time that Ms. Ferrel billed on the original four invoices that
14 you paid in full?

15 MR. CHRISTIANSEN: What was the date, John? I'm sorry.

16 MR. GREENE: I'm sorry, Pete. That's -- I'm just asking --

17 THE COURT: I think that he asked him for the date, Mr.
18 Christiansen.

19 MR. CHRISTIANSEN: Oh, I apologize. I just got lost on the
20 chart. Those numbers are tiny.

21 THE COURT: Yeah, we're just on page 11, but he's asking the
22 witness --

23 THE WITNESS: It appeared --

24 BY MR. GREENE:

25 Q If I scoot it down, if I do it -- leave it solid and move it down,

1 would it be easier for you?

2 A It appears in Ms. Ferrel's last billing date on the bills that I've
3 received and paid it's September 19, 2017.

4 Q Okay. Do you believe that it's fair that Ms. Ferrel likely
5 worked on your case beyond that date?

6 A Most definitely.

7 Q Do you believe that she's entitled to a reasonable fee?

8 A Most definitely.

9 Q You didn't include Ben Miller on this, on this flow chart. Any
10 reason why?

11 A It was just too much work, and I was already buried, and
12 there was only so many entries for Mr. Miller, it just didn't seem worth
13 my time.

14 Q Okay. Let's talk about San Diego. We're going to spend
15 some time on what the Judge wanted to start with and maybe even
16 finish with. But explain to the Judge in your words, not by yes or no
17 answers, what the circumstances were that led to you, and Mr. Simon
18 meeting in San Diego in early August of 2017.

19 A After we started uncovering a bunch of this stuff and Mr.
20 Miller had sent the hurdles for punitive damages instruction to the jury
21 and I responded, that was August 1st I responded, and I felt --

22 THE COURT: I'm sorry, Mr. Miller had sent what?

23 THE WITNESS: He sent a large document and Mr. Simon
24 had asked me to look at a subsection of the document which was the
25 hurdles to get an instruction for punitive damages to a jury. It had

1 oppression, fraud, and malice.

2 THE COURT: Okay. This is Ben Miller that works for Mr.
3 Simon?

4 THE WITNESS: Correct.

5 THE COURT: Okay.

6 THE WITNESS: Danny Simon forwarded the email. Mr.
7 Miller was the author of it.

8 THE COURT: Okay.

9 THE WITNESS: And he had asked, can we meet this, do we
10 have evidence of all this? That was August 1st. Then the discussion
11 started a little bit more about hey, maybe we could change this
12 agreement from 550 an hour to something else that would be in both our
13 interests. I was completely open to it.

14 I think Mr. Simon was completely open to it. We never really
15 had a discussion about it. When I kept asking when we would, we were
16 going to have it on the trip when we went to visit the experts down in
17 San Diego, which was the 9th of August of 2017.

18 BY MR. GREENE:

19 Q What was going on with the experts down in August -- down
20 in San Diego in August that you needed to go pay a visit?

21 A I was frustrated with this particular expert, as was Mr. Simon.
22 Lange had a far better expert on the same topic. And the guy just didn't
23 seem to understand how the sprinklers functioned, like some basic stuff
24 you would expect out of an expert. And we just went down and gave a
25 presentation how to cut away of the sprinkler or cut into. We just gave

1 him a presentation to make sure he had a thorough understanding of the
2 product and everything related to the product.

3 Q So, you dealt with that meeting. How long did that take?

4 A We were probably there five hours, something like that. His
5 senior partner was in the room with us and some manufacturing expert
6 was also there.

7 Q Is this a one day trip to San Diego, a longer business
8 meeting, what was it?

9 A Yes.

10 Q Yes, what? I'm sorry, it was compound.

11 A We went down and back the same day.

12 Q How did you get there?

13 A Southwest Airlines.

14 Q So we've heard some discussion about a meeting in a bar
15 over some adult beverages. Tell us about that.

16 A Well, we still hadn't discussed, you know, how we could
17 change the contract to something better that would, you know, be a
18 good risk reward for me, maybe put more risk on Mr. Simon. And if we
19 prevailed, maybe he had more upside, but at least, you know, he'd have
20 downside, also. We --

21 Q What risk did Mr. Simon have with the hourly fee
22 agreement?

23 A None whatsoever.

24 Q How so?

25 A He was getting paid \$550 an hour for every hour that he

1 worked on the case. It's risk free.

2 Q How about invoices? You heard Mr. Christiansen talk about
3 how Danny, Mr. Simon fronted his costs. You heard that; didn't you?

4 A Yes.

5 Q Did you have an understanding about how a typical personal
6 injury case works when the term fronting costs is utilized?

7 A I wasn't familiar with the term fronting. When he used that, I
8 figured he means pay, pay up front in full the bill.

9 Q Okay. And that's what you did, paid the bills that they
10 presented; didn't you?

11 A Yes. Whenever the bills were presented, they were paid
12 almost immediately.

13 Q Did he have any risk of loss with the invoices for the experts
14 or the costs in this case?

15 A No. He could have submitted cost bills, as frequently as he
16 wanted. And like I said, they were paid very quickly.

17 Q So you're in this bar in the airport in San Diego. You're
18 sitting there waiting for your flight. Tell the Judge in detail everything
19 that was discussed.

20 A Well, we discussed well, what else can we do; if this goes to
21 a punitive case where we can get a big judgment, what can we change it
22 to? You know, I gave some of my parameters.

23 Q Which are -- which were?

24 A I wanted to pay my mother-in-law back, number one. So, I
25 wanted some of these fees back in exchange for whatever the

1 percentage was. But I was also willing to entertain any combination of
2 the three levers so long as they worked out to reduce my exposure, my
3 risk.

4 THE COURT: What's the three levers?

5 THE WITNESS: That would be the hourly billing rate. It
6 could be anywhere from zero to whatever the --

7 THE COURT: I understand the hourly billing rate.

8 THE WITNESS: Yeah. The percentage of the judgment.

9 THE COURT: Okay.

10 THE WITNESS: And then whether I get money back or not of
11 fees I already paid.

12 THE COURT: Okay.

13 THE WITNESS: Those were my three levers of risk reward.

14 Mr. Simon said well, typically I get 40%. I said that's never going to
15 happen, it's not a personal injury case. I've got some real expenses
16 here. We bounced around a bunch of ideas. Like I said, hey, I'd be
17 willing to explore even caps, you know, floors, caps, whatever you
18 wanted where I get this amount and then we share above that amount or
19 a cap, you know, nothing above this amount. I was willing to explore
20 any options. Nothing really structured came out of the conversation.

21 Q What proposals, other than a straight PI contingency 40%
22 rate did Mr. Simon present to you as you were sitting there in the bar in
23 San Diego?

24 A He didn't present anything else. He asked me, well, have you
25 -- I asked him, how much is this going to cost to the end, like how much

1 more? And --

2 Q In what ways? What kind of costs --

3 A The 550 an hour fees, how much is this going to accumulate
4 to through the end of the trial? I needed an estimate. I needed to keep
5 borrowing money, plus I needed an estimate to figure out whether I'm
6 getting a better deal or not if we did change off the hourly fee
7 agreement.

8 It -- you know, unless I know what I'm remaining to pay, I can't tell
9 what I should really give up. He said, well, have you done a case like this
10 before? I'm like nothing like this. And he's like have you ever gone to
11 trial before? I said yeah, we went to trial, on the pediped intellectual
12 property in New York. I told him about that case. He said how much did
13 that cost? I said three times the last bill you just sent for the entire case
14 and all costs, all the way to the judgment. And then he never responded.
15 He never said much more. Started shooting the breeze about stuff and
16 I --

17 Q As a -- as a consumer and with your education, did you have
18 an understanding as to risk of loss; what that means?

19 A Not exactly. I understood probably around this point that I
20 might not get all my money back from my legal fees. It was right around
21 this time that I found out that just because you have a contract when you
22 get a judgment, it doesn't mean you get all the money back that you paid
23 for the lawyer. Up until near this point I was assuming that that's a done
24 deal.

25 Q Did you have any conversations with Mr. Simon at that

1 facility in San Diego before you caught your flight as to what changes
2 could be made to the agreement you had?

3 A He didn't really reveal his cards that much. I told him that I
4 was open to almost anything as long as he took on some of the risk and
5 had downside. That would align our interests through the case. If we
6 both had downside, it would also make us focus in laser like on all of the
7 big things coming up.

8 Q Did you ever hammer out a lower hourly rate or a hybrid or a
9 straight contingency while you're sitting there in the bar in San Diego?

10 A No.

11 Q Did Mr. Simon get back to you in the next week, two weeks,
12 with the proposal you had asked for?

13 A No. He never -- he didn't reply. I didn't hear anything else
14 about it and I sent an email on the 22nd.

15 Q Let's take a look at that right now if we can, okay? This is
16 Exhibit -- Plaintiff's Exhibit 3.

17 MR. GREENE: The first page, Judge. There's only one page
18 of that.

19 THE COURT: Yeah. Let me just get back to it, Mr. Greene,
20 okay?

21 BY MR. GREENE:

22 Q So I'm at -- I'm at techno dummy, at best. Up at the top left
23 there's FW colon. What's your understanding of what that means in
24 email terminology?

25 A It means he's forwarded the email.

1 Q To you?

2 A No. Out of -- my guess would be to James Christensen.

3 Q No, no, no.

4 THE COURT: That's what that means, Mr. Greene.

5 MR. GREENE: No. I'm am dumb, not quite that dumb.

6 BY MR. GREENE:

7 Q But is this the label that you had put on this email when you
8 sent it to Mr. Simon?

9 A Yeah. I wrote Contingency in the subject line.

10 Q Right there?

11 A Correct.

12 Q What did Mr. Simon communicate with you, if anything, at
13 the bar in San Diego until August 22nd of 2017 following your discussion
14 in the bar about a contingency fee --

15 A About this --

16 Q -- or anything fee related?

17 A He hadn't -- he hadn't explained anything about this topic.

18 And I was coming up to the point where I needed to think about how to
19 get more money, what options I was going to -- going to have to take.

20 And so, I thought I'd email him and see if this a dead deal or not.

21 Move on. If I can't do it, that's fine, I don't care. I would just keep paying
22 the 550. I'd borrow the money. I'd likely have to sell some assets if the
23 bills kept accumulating, but nothing was responded to.

24 Q First line, We never really had a structured discussion about
25 how this might be done. Do you read that?

1 A Yes.

2 Q What were you talking about? Tell the Judge.

3 A We had a free form discussion in the airport. I wanted a
4 structured discussion, something like this with the levers that you could
5 change different amounts up and down to make the same end result. I
6 just wanted something in writing. Just put it down on the table, and we
7 would start negotiating. As soon as I see what you are interested in, it
8 might just be no way, we'll never come to agreement, your value is too
9 low compared to my risk reward, but at least it would start a
10 conversation and get this to a head.

11 Q If Mr. Simon would have presented something in writing to
12 you that said 250 an hour and 25 percent contingency on the outcome of
13 the case, what would have been your response?

14 A No, that's not the right lever. For me the risk reward at that
15 point's not good. Give me something where I can pay more of it back is
16 what I would have replied. But it would just start a conversation. And,
17 you know, if we can't, we would just move on, it's fine.

18 Q You were willing to do something, were you not, if
19 something that was palpable would have been proposed?

20 A Definitely. Any -- anything. I was open to discussion on it.

21 Q But what was proposed?

22 A Nothing.

23 Q Do you -- have you heard the arguments that have been
24 made, Brian, by very good lawyers on the other side that have portrayed
25 this statement as meaning that you never had a structured discussion

1 about attorney's fees to begin with; have you heard that?

2 A Yes.

3 Q What's your response to that?

4 A I don't really follow their logic, but we have disagreements
5 with almost every sentence. The sentence to me clearly says one thing.
6 They're interpreting it -- I don't even see how you get that from those
7 words.

8 Q Did you ever have -- what, if any, structured discussion did
9 you have with Mr. Simon about fees ever?

10 A At the start of the case we had a very -- a very simple
11 agreement that had been ongoing for two years, 550 bucks an hour, as
12 simple as could be. This was going to be more complicated and require
13 some negotiation and may or may not have ever got done, but I was
14 open to negotiating.

15 Q The next sentence, I am more that -- It looks like you're
16 having a day then like I'm having today. I am more than happy -- you
17 probably meant to say than, right?

18 A Yes.

19 Q I am more than happy to keep paying hourly. Is that a true
20 statement?

21 A Yes.

22 Q Is that what happened?

23 A Yes, it is.

24 Q But if we are going for punitive, we should probably explore
25 a hybrid.

1 A Yes.

2 Q What did you mean by that?

3 A Some combination of three leaders -- levers that worked for
4 him and worked for me that, you know, get some downside if we don't
5 get what we all would think that we got or if we had vastly different
6 opinions on what the outcome was, that would be very valuable
7 information for me to know because I was dumping so much money into
8 this lawsuit, I was getting very nervous.

9 So, if my lawyer wasn't willing to do something like this, that
10 would tell me about what he thought the judgment could be in the best
11 case scenario. That's information, too. I was just looking for a proposal.

12 Q What kind of hybrid were you looking for; what would have
13 tickled your fancy? Not using the word levers, that's not -- I mean that's
14 just maybe not as common to us in this courtroom. Do you have other
15 words that would describe a satisfactory hybrid that would have worked
16 if Danny would have ever proposed it back then?

17 A Something that got me out of Margaret's first loan would
18 have been very, very interesting to me.

19 Q And then what?

20 A And then what? Some percentage on the back end. I'd
21 rather pay no fees going forward so that it would take any burden off,
22 and it would continue to keep him involved in the case in exchange for
23 some percentage of the judgment.

24 Q How much did you owe Margaret, your mother-in-law, when
25 this contingency subject was brought up in San Diego?

1 A Three hundred and something with interest.

2 Q So how was she going to be paid back through this hybrid
3 agreement that you would have -- that you had at least entertained for
4 Mr. Simon?

5 A Well, he would give me some money back, and I would take
6 whatever I was stealing in the kitty from my working capital, and I would
7 pay her right off and get rid of one of the loans.

8 Q The sentence goes on, Probably explore a hybrid of hourly
9 on the claim and then some other structure that incents both of us to go
10 after the appeal that these scumbags will file. What did you mean by
11 that, Brian?

12 A I was told around this time that most large judgments would
13 be appealed, which scared the daylights out of me because I had no idea
14 how long that takes. And this whole thing was timely. I needed cash to
15 keep building houses. The whole thing with construction is you need
16 cash; you need to convert stuff into cash.

17 So, this would get me out of the cash flow disaster of the lawsuit,
18 paying for the lawsuit, and all the way through the appeal, which could
19 be a year or two years. It could be anything. It would just give me a lot
20 of financial flexibility.

21 Q As a consumer and as the client who owns the case and the
22 settlement, did there come a time in this case where you believed that
23 the value of the case had increased?

24 A Yes.

25 Q When was that?

1 A Right after talking to Harold Rogers I found it had gone up
2 substantially.

3 THE COURT: When is that, sir?

4 THE WITNESS: July -- July 26, two thousand -- or I spoke
5 with him on the 24th, July 24th, 2017.

6 BY MR. GREENE:

7 Q Did that have anything to do with the number of activations,
8 initial activations, that were revealed?

9 A Yeah. I didn't have evidence of each of them, but I had his
10 numbers of how many were out there, and I had a clear path on how I
11 was going to start tracking them down to make that spreadsheet that I
12 made.

13 Q So when you put in here, Obviously that could not have been
14 done earlier, since who could have thought this case would meet their
15 hurdle of punitives at the start, what did you mean by that?

16 A That was -- the hurdle of punitives was the email on August
17 1st of 2017 that he had forwarded saying do we meet -- and I
18 misunderstood it. I thought we had to meet all three hurdles; the malice,
19 the oppression, and the fraud, I believe they were.

20 Q Are you saying Ben Miller's email?

21 A Correct. Ben Miller's email of August 1st. And we had it on
22 -- I had evidence on all three of them, so I felt yeah, this can meet the
23 hurdle because I didn't know it was an or between each one. I thought it
24 was an and. Just my mistake.

25 Q Okay. But things changed value-wise?

1 A Definitely.

2 Q As you were evaluating what to do as a consumer in this
3 case, did those additional activations have any kind of a swaying factor
4 with you on what to do?

5 A As we gathered more and more evidence of the wrongdoing,
6 it made my percentage in my head, the percentage I put on the chance of
7 me winning, go higher and higher and higher. And then it gave a lot of
8 credibility to at this point maybe we can get punitive damages, how are
9 they valued, everything else, or we can force a settlement.

10 Q Did these increased number of activations and therefore
11 meeting the burden of punitives, did that have any bearing upon you as
12 a consumer on what you would have been willing to entertain from Mr.
13 Simon in this hybrid fee agreement that you asked him to give to you?

14 A You know, on this date he would have gotten a much better
15 deal out of me. As the avalanche of evidence against them kept coming,
16 and then I just wouldn't have given up as much because I -- you know, at
17 that point you paid more in the kitty, there's -- to Mr. Simon there's less,
18 you know, fees left until the light at the end of the tunnel, so why would
19 you give up more; you've taken all the risk.

20 Q You mean who?

21 A Me as Brian Edgeworth, why would I give up more of the
22 settlement? Every day that goes by, this deal would get a little bit worse
23 for Mr. Simon because a lot of the risk in the deal has been abated.

24 Q Finishing up with this email, beginning with "I could," do you
25 see that?

1 A Yes.

2 Q I could also swing hourly for the whole case unless I am off
3 what this is going to cost. What did you mean before the paren, I could
4 also swing hourly for the whole case?

5 A Don't worry about it, keep working on my case, I can get the
6 money and keep paying you as our original agreement.

7 Q And did you?

8 A Yes, I did.

9 Q Did you have to get additional loans from the date of this
10 email forward to pay Mr. Simon's invoices?

11 A Yes, I did.

12 Q About how much?

13 A After this date I think I took one more for 200 out.

14 Q Did you use that money to pay his invoice in full?

15 A Yes, I did. I received an invoice approximately a month after
16 this email for \$255,000, some of which were costs and the rest of which
17 were fees. I don't know the breakdown. And I paid it in full.

18 Q Let's cover that now before we finish up with this email. Did
19 Mr. Simon ever provide you with the proposal that you asked for, hybrid
20 or otherwise?

21 A Never.

22 Q What did you get instead?

23 A A bill -- an hourly bill of \$550 an hour and \$275 per hour for
24 his associate.

25 Q Looking at the new superbill of January 2018, what was

1 every entry of that billed out? We already talked about that, 550?

2 A Five fifty an hour for Mr. Simon and \$275 an hour for Mr.
3 Miller and Ms. Ferrel.

4 Q Any hybrid language in the invoice that you paid?

5 A No.

6 Q Any hybrid invoice in the superbill?

7 A No.

8 Q Any hybrid email that was sent to you?

9 A No.

10 Q Any hybrid letter that was sent to you?

11 A No.

12 Q What did you mean by unless I am off what this is going to
13 cost; what were you concerned about there?

14 A That's my biggest frustration. He didn't answer the one
15 question that would allow me to plan or even evaluate if he gave me a
16 proposal how much more is this going to cost at 550 bucks an hour? I
17 need to know. I need to plan cash flow because I'm running businesses
18 that have to keep the working capital above a certain level. I need to
19 plan in advance. I can't be surprised, especially at this point in time
20 where I was already stretched.

21 Q How many employees were you employing at the time that
22 this contingency email was sent to Mr. Simon?

23 A Two hundred and ten world-wide.

24 Q Did their wellbeing factor in at all about your concerns for
25 knowing what this litigation was going to cost?

1 A Yes.

2 Q How so?

3 A Whenever you pull down your working capital to a certain
4 point, you put your risk of bankruptcy very high. Most companies go
5 bankrupt not because they had a big loss that year, it's because they ran
6 out of money. And you can run out of money in a lot of ways. Mostly
7 it's when you're draining your working capital. That's when you get low
8 on working capital, you need to do detailed planning to make sure you
9 don't run out of cash. And that's what I was trying to do. I just needed --
10 that's why I kept asking him for bills, too, because I couldn't have
11 surprises. I couldn't just get a huge bill and then not have the money in
12 the bank.

13 UNIDENTIFIED SPEAKER: Can I go to the restroom?

14 MR. GREENE: Sure.

15 BY MR. GREENE:

16 Q You talked about borrowing some more money, the next line
17 down, you went to borrow another 450 from Margaret. Did you read
18 that?

19 A Yes.

20 Q Is that what happened?

21 A Yeah, except not in the order I wrote. I borrowed -- I signed a
22 new contract for 200 and 200 for 400 total and I took the first 200 on it.

23 Q Okay. How about sell the house to pay these fees?

24 A I listed both the houses. The house that I was living in -- the
25 house that I was living in is on the same street as the house that's the

1 spec building. They're two doors apart. So, I listed both houses. The
2 house with no flood problems overhanging it, I was told would be likely
3 to sell quicker. We moved out of that house to stage it and get it ready
4 for sale and moved into the new house.

5 And I had both of them listed. I believe Mr. Simon knew. I'm
6 basically saying I can get cash from one of these house sales to keep
7 financing the -- the lawsuit, too. I'm just giving him an open look at my
8 sources to pay him. And I'm giving him from a negotiation standpoint
9 where I want to be negotiating another deal, I'm giving him a great look.
10 I'm laying all my cards on the table. I should be the easiest person to
11 negotiate whatsoever because you know the other steps I'm going to
12 take if I don't get a deal with you.

13 Q Finally, well, did you sell any of those two houses?

14 A I sold the 637 St. Croix house in December of 2017 after this.
15 I sold it for cash because the guy would close in six days and this had
16 started, and I needed cash.

17 Q This wasn't the flood house you sold, correct?

18 A No. I sold the older house, which is 637. It's two doors down
19 from the flood house.

20 Q If it had come to that, what would have been involved in
21 selling the Bit Coin investment to be able to pay Mr. Simon's hourly
22 fees?

23 A I had already gone to Roger, which was my partner and my
24 brother and told them that I needed out. I couldn't keep on with them.
25 And I had already taken my share out, and I sold a bunch to start

1 building the volleyball club. So that money it's like selling a stock, you
2 can get it within days.

3 Q Is there anything else in this contingency email, Brian, that
4 was submitted, and you communicated to, Brian, that you hoped for a
5 response for -- that you were communicating to Mr. Simon hoped to get
6 a response for and didn't?

7 A The last line basically I'm saying I doubt we'll get Kinsale to
8 settle for enough to really finance this. I had a theory like maybe we can
9 squeeze Kinsale to settle because we're doing all their subrogation work
10 for them. They're not even putting up a fight in this.

11 So, they're paying nothing to subrogate the claim that everyone's
12 saying they're responsible for and we're suing and enforcing the
13 warranty for them on my dime.

14 So maybe I can squeeze them, get them to settle, and use that
15 money to pay back some of the loans, but I'm just saying it's not enough
16 to finance the rest of the hourly agreement because the first 750 I pay
17 Colin and Margaret back and get rid of the two loans and Kinsale, why
18 would they settle to us for more than a million? I believe their insurance
19 policy was like a million bucks. It just -- it seemed unlikely.

20 Q Brian, at any time during your relationship as a client of Mr.
21 Simon, the attorney, did he ever advise you that he wasn't billing or
22 including all of his invoices all of the time that he was working on your
23 case?

24 A No. That really wouldn't make sense because part of the
25 claim against Lange was for attorney's fees. So, this is where it just

1 completely defies logic. Why would you under-bill on every bill when
2 the claim file is being presented again and again and again to the court
3 with attorney's fees listed on it every time it's getting submitted to the
4 court. It doesn't make sense. It's a total opposite.

5 What you'd really do is you'd give me a bill and say that you don't
6 have to pay it. And then the fight would be in my deposition would have
7 been, but you haven't paid these bills. No, but I owe them, so they're
8 true costs and damages. The exact opposite is being argued, which is
9 counterintuitive. It's to my detriment, not to my advantage. It doesn't
10 make sense at all.

11 Q In English, if Danny's -- Mr. Simon's invoices had been for
12 more money and those had been produced to Lange as a consumer, as
13 the owner of this claim, what do you believe it would have done to the
14 value of it?

15 A The value of the claim goes up because my attorney's fees
16 listed on the claim are higher.

17 Q At any time did Mr. Simon tell you during your course of
18 attorney client relationship with him, that Ms. Ferrel's entries, her time in
19 the original four invoices, were incomplete?

20 A No.

21 Q That they were going to be adding to those?

22 A No.

23 Q That more was to come?

24 A No.

25 Q Any words to that effect?