

**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

Electronically Filed  
Jan 15 2020 01:09 p.m.  
Elizabeth A. Brown  
Clerk of Supreme Court

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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

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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           A     No.

2           Q     Did anybody at Mr. Simon's office ever explain to you  
3 between May of 2016 through the settlement of this Viking litigation that  
4 additional time in these original four invoices were coming, so get ready  
5 for it?

6           A     No.

7           Q     What would have been your response if that would have  
8 been something that Mr. Simon would have advised you?

9           A     This would have been a very difficult conversation because  
10 I'd want to understand exactly how we were going to go back to Viking  
11 and to Lange and say whoa, whoa, whoa, sorry, the entire claim's  
12 changing, I'm going to add in the most recent, up until the end of -- of  
13 September 22nd, 2017, he's added \$300,000 in billing.

14           So, I want to know how we're going to tell and how I'm going to be  
15 assured that I'm even going to get the money back when we just  
16 doubled our legal fees after for 14 months not having doubled our legal  
17 fees and I don't know how many filings with the court not having double  
18 our legal fees. The extra \$300,000 would essentially double the legal  
19 fees. I just -- it would be a very hard conversation.

20           Q     Brian, you've given testimony that you assisted Mr. Simon's  
21 office in preparing some of the spreadsheets for the calculation of  
22 damages; is that a fair summary of what Mr. Christiansen asked you?

23           A     Probably every spreadsheet.

24           Q     And what was the basis -- how did the conversation come up  
25 at Mr. Simon's office? Hey, Brian, would you do this for us? How did

1 that come about?

2 A At some point he told me I had to make a list of all my  
3 damages. And I put in an excel because damages were always  
4 increasing. You know, we were repairing the house, so it needed to be a  
5 live document.

6 Q You followed his advice?

7 A Correct.

8 Q You did that?

9 A Correct.

10 Q Let me show you a document, as well. It's going to be  
11 Exhibit 8 and it is --

12 MR. GREENE: I didn't have your pages.

13 MR. CHRISTENSEN: Can we see it, John?

14 MR. GREENE: Yeah, sure. That's -- that's the calculation of  
15 damages that we understand was included and I believe the eleventh  
16 supplement that was served on --

17 MR. CHRISTIANSEN: What date?

18 MR. GREENE: Yeah, the September 22nd --

19 MR. CHRISTIANSEN: Thanks.

20 MR. GREENE: -- of 2017. What I can do for ease, Your  
21 Honor, is just add bates numbers to the bottom of this, since they  
22 weren't stamped on this. This 8 under Plaintiff's exhibit with the 16.1  
23 disclosures and --

24 THE COURT: This is Plaintiff's 8?

25 MR. GREENE: Yes.

1 THE COURT: Okay.

2 MR. GREENE: And calculations of damages we left off at  
3 page 77, so if I just did 078.

4 THE COURT: Okay.

5 MR. GREENE: And 079, that will cover the two pages. Only  
6 one page is relevant, though, Judge.

7 THE COURT: Okay. Mr. Christiansen, do you have any  
8 objection to that?

9 MR. CHRISTIANSEN: I don't think so, Judge, but I didn't  
10 memorize what he was going to show.

11 [Counsel confer]

12 THE COURT: You'll just have to provide the Court with a  
13 copy of that, Mr. Greene.

14 [Counsel confer]

15 MR. GREENE: Judge, do you want me to end like right away  
16 for the day?

17 THE COURT: How much more do you have?

18 MR. GREENE: More than the five minutes.

19 THE COURT: More than the five minutes. So, I'd just like to  
20 go until 5 and get in as much as we can, so that we can --

21 MR. GREENE: Okay.

22 THE COURT: -- it's okay

23 MR. GREENE: Sorry, Your Honor.

24 [Counsel confer]

25 THE COURT: Well, are they in the binder?

1 MR. CHRISTENSEN: Your Honor, I have a copy of the  
2 Defendant's exhibits here and they appear to be -- I'm sorry, Plaintiff.

3 THE COURT: Okay.

4 MR. CHRISTENSEN: I'm getting confused. Edgeworth.

5 THE COURT: Okay.

6 MR. CHRISTENSEN: Edgeworth Exhibit 8.

7 THE COURT: 8. Okay.

8 MR. CHRISTENSEN: And I think what Mr. Greene just  
9 showed is bated Edgeworth, eliminating preceding zeros, 1774 and 1775.

10 THE COURT: Mine don't go up that far. Mine, first of all, say  
11 exhibits. They don't say Edgeworth on the bate stamps.

12 MR. CHRISTENSEN: True.

13 THE COURT: Mine say exhibits and mine only go to 77. So  
14 are we talking about something different, because my Exhibit 8 says  
15 exhibit with a bate stamp. It doesn't say Edgeworth.

16 MR. CHRISTENSEN: Well, it does say Edgeworth on -- on the  
17 one that I was provided by -- that was provided by Vannah --

18 THE COURT: Right. I'm just saying they must have given  
19 you a different one, Mr. Christensen, because the one that they gave to  
20 the Court -- Mr. Edgeworth, on the bottom of your page on Exhibit 8  
21 does it say exhibit?

22 THE WITNESS: Exhibit 08 --

23 THE COURT: Yes.

24 THE WITNESS: -- and then 000078 and 79.

25 THE COURT: Right. That's the new ones. Okay, in the

1 binder.

2 THE WITNESS: In this binder, yes.

3 THE COURT: On your Exhibit 8 it says 001? I mean it says  
4 exhibit on the bottom?

5 THE WITNESS: Yeah. It says exhibit, too. Do you want to  
6 see it?

7 THE COURT: No, no. Okay.

8 THE WITNESS: Exhibit 08.

9 THE COURT: So, mine says exhibit and so does his, so that's  
10 the one. So, I think we were reading off something different, Mr.  
11 Christensen.

12 MR. CHRISTENSEN: Well, it may very well be. They look an  
13 awful lot alike, though, but I do --

14 THE COURT: Because what I have appears to be the  
15 documents that were filed with the Court, the 16.1 disclosure?

16 MR. CHRISTENSEN: Yes. Yes, Judge.

17 THE COURT: Okay.

18 MR. GREENE: And we received these from Mr. Christensen.  
19 He was kind enough to give us all of the 16.1 disclosures. All I'm really  
20 having him talk about on this particular line of questioning was the  
21 category under lawyer. There's probably about eight times that lawyers  
22 were mentioned and the invoice dates, so.

23 THE COURT: Okay. So, do you guys have any objection to  
24 me just adding this as page 78 and 79 to what the Court has?

25 MR. CHRISTENSEN: Your Honor, subject to us confirming

1 this, we don't have an objection at this time. I think this has just been  
2 re-Bated --

3 THE COURT: Okay.

4 MR. CHRISTENSEN: -- for whatever reason, but more likely  
5 than not -- if we can have a copy of it, we'll check it tonight.

6 THE COURT: Okay. And we'll need a copy, as well, Mr.  
7 Greene --

8 MR. GREENE: Of course.

9 THE COURT: -- because the Court will need to add it to the  
10 exhibit that's officially the Court record.

11 MR. GREENE: I will do that, Judge.

12 THE COURT: Okay.

13 And so, I'll just ask, do you have like five more minutes with  
14 him about this?

15 MR. GREENE: I can just -- I can leave off on this particular or  
16 I can quit.

17 THE COURT: Okay, yeah. If you could just put it on the  
18 overhead, though, so I can see it because I don't have a copy of what  
19 you're about to show him.

20 MR. GREENE: It's probably going to take more than a couple  
21 of minutes to get through this, though. Should we just wait, and I can  
22 bring everything in.

23 THE COURT: And then we'll all have our own copies. Yeah,  
24 that's fine, Mr. Greene. And then if you could just make copies tonight  
25 for everyone and then we'll just add them in tomorrow. And I have a

1 criminal calendar tomorrow morning, so we will start at 10:30.

2 UNIDENTIFIED SPEAKER: Yes, Your Honor.

3 THE COURT: My criminal calendar will be over.

4 UNIDENTIFIED SPEAKER: See you tomorrow morning.

5 Thank you, Judge.

6 THE COURT: Okay. Tomorrow morning at 10:30.

7 [Proceedings concluded at 5:00 p.m.]

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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.

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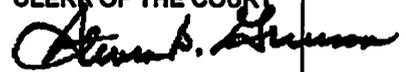
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Maukele Transcribers, LLC  
Jessica B. Cahill, Transcriber, CER/CET-708

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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,

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Plaintiffs,

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vs.

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LANGE PLUMBING, LLC, ET AL.,

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Defendants.

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EDGEWORTH FAMILY TRUST;  
AMERICAN GRATING, LLC,

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Plaintiffs,

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vs.

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DANIEL S. SIMON, ET AL.,

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Defendants.

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BEFORE THE HONORABLE TIERRA JONES, DISTRICT COURT JUDGE  
WEDNESDAY, AUGUST 29, 2018

20

**RECORDER'S TRANSCRIPT OF EVIDENTIARY HEARING - DAY 3**

21

APPEARANCES:

22

For the Plaintiff:

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

23

24

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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INDEX OF EXHIBITS

FOR THE PLAINTIFF

MARKED

RECEIVED

None

FOR THE DEFENDANT

MARKED

RECEIVED

None

FOR THE LAW OFFICE

MARKED

RECEIVED

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Las Vegas, Nevada, Wednesday, August 29, 2018

[Case called at 10:36 a.m.]

THE COURT: -- A738444, Edgeworth Family Trust vs. Lange Plumbing and Edgeworth Family Trust vs. Daniel Simon.

Mr. Edgeworth, if you would come back on the witness stand, we're going to swear you in again because it's a different day.

Please raise your right hand.

BRIAN EDGEWORTH, PLAINTIFF, SWORN

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

THE WITNESS: Brian Edgeworth, B-R-I-A-N E-D-G-E-W-O-R-T-H.

THE COURT: Whenever you're ready, Mr. Greene.

MR. GREENE: I am, Your Honor. Thank you so much. This fabulous spec of tech is not quite giving us --

THE COURT: Yes. I don't know what's going on. Do we know?

MR. GREENE: The power button always helps, doesn't it?

THE MARSHAL: Well, we'll see.

MR. GREENE: Okay.

THE COURT: We see Brian around for super high tech reasons.

THE CLERK: Hold on.

MR. GREENE: If you guys are fine, this exhibit, Jim, is in --

1 we talked about it earlier -- this is Exhibit 8, on Page 59.

2 THE COURT: This is Plaintiff's 8, Mr. Greene?

3 MR. GREENE: Yes, Your Honor.

4 THE COURT: Okay. Page 59, is that what you said?

5 MR. GREENE: Yes.

6 THE COURT: Okay.

7 MR. GREENE: I'm going to hit the auto zoom thing, out of  
8 focus. I hope it's going to work.

9 THE COURT: It usually just takes a minute to warm up, Mr.  
10 Greene. There we go.

11 MR. GREENE: Perfect.

12 CROSS EXAMINATION CONTINUED

13 Q Brian, take a look at this spreadsheet that we just identified  
14 Plaintiff's Exhibit 8, Page 59. Does this look familiar to you?

15 A Yes.

16 Q Could this be an example of one of the calculation of  
17 damages that you prepared in the underlying litigation?

18 A Yes.

19 Q Looking at the highlighted entries that are legal, it looks like  
20 it's dated through what?

21 A Through September 22nd, 2017.

22 Q Based upon this date in legal for September 22nd, 2017, do  
23 you have an opinion one way or the other whether this is the last  
24 calculation of damages that you were able to provide to Mr. Simon for  
25 the underlying litigation?

1           A     It looks like I updated it on October 31st. I put interest on the  
2 loan, and through October -- do you see the next line down --

3           Q     I do.

4           A     -- after the highlights?

5           Q     I do.

6           A     So, I would constantly update this, you know, as I got the  
7 bills and stuff in, so I would -- my guess would be it's through Halloween  
8 of '17.

9           Q     Is there a possibility though, Brad, that you were projecting  
10 what the interest on those loans would be for the purpose of the  
11 calculation of damages?

12          A     It's possible.

13          Q     Okay. Let's move to a completely different topic now.  
14 Explain to the Judge why you, as the client, decided to settle the Lange  
15 litigation?

16          A     Well, were just talking about Mr. Teddy Parker, that was the  
17 big reason. You know, the day I came to court, he left me a little  
18 unsettled. He actually seemed very, very confident, and seemed more  
19 energetic than any of the Defendant's attorneys had been up until this  
20 point.

21                   He brought up a point, which I thought wasn't going to hold  
22 true, that I didn't have a contract, because I didn't have a contractor's  
23 license, so I wasn't legally entered into -- legally allowed to enter into a  
24 contract, but that's going to cost me a lot of money, and it did, you know.  
25 Mr. Simon hired another law firm to look at my contract. I think that

1 ended up costing \$5600, and then I paid --

2 Q Hang on a second. What did Mr. Parker do that changed  
3 your perspective?

4 A One, his enthusiasm; two, the Contractors Board, and I  
5 thought that he would draw the case on and cost me money in legal  
6 fees, more and more hours getting billed.

7 Q What do you mean by the Contractor's Board? That wasn't --

8 THE COURT: I was just about to ask that same thing, Mr.  
9 Greene.

10 BY MR. GREENE:

11 Q -- that wasn't clear. What do you mean by your concern  
12 about the Contractor's Board and Lange?

13 A Well, Ted -- Mr. Parker, I don't mean to disrespect him. Mr.  
14 Parker brought up the fact that I didn't have a contractor's license, so I  
15 couldn't enter into a contractor's contract, and that he wanted all this  
16 analyzed. So, when I checked out Lange at the Contractor's Board, I  
17 found out that Lange, at the time they installed the sprinklers in my  
18 house, did not have a license -- a contractor's license to install sprinklers  
19 in a house.

20 You know, I emailed that to Mr. Simon, and then I looked at Vince  
21 Diorio, who they might have done it under his contractor's license. It  
22 had also expired before my house. So, I was left in the position these  
23 guys might not have had a contractor's license, and this is where Mr.  
24 Parker might have found this stuff when he started -- you know, when he  
25 came into the courtroom and started talking about contractor's licenses,

1 and there was a good possibility he's going to tell Kinsale Insurance.

2 Q And if Teddy, doing his due diligence, would have told  
3 Kinsale Insurance that neither you nor Lange had a contractor's license  
4 to -- you had entered into the contract with Lange to install this set of  
5 sprinklers in your home, what was your concern as the consumer who  
6 owned this case and this potential settlement?

7 A I assumed Kinsale was going to flake. They hadn't paid  
8 anything on the claim that seemed cut and dried at the start of it. This  
9 would give them an angle. At the very least, I would think this would  
10 cause me to spend more and more and more money chasing something  
11 that I could actually lose on or only get a judgment against Bernie Lange,  
12 who I personally know.

13 First of all, I don't want a judgment against Bernie Lange,  
14 because I like him; and, second of all, I don't think he could get half-a-  
15 million dollars together. It would probably bankrupt his company, which  
16 I have no desire to do.

17 Q Did you have any concern if Lange, he is not licensed, that  
18 there would be a coverage issue?

19 A Yes. I figured Kinsale could basically tell Bernie that we don't  
20 cover you when you didn't hold up the regulatory laws that you were  
21 supposed to hold up in your district, and you don't get insurance in that  
22 case.

23 Q Okay. Are there any other concerns you would like to share  
24 with the Judge as to what led you, as the consumer, the owner of the  
25 claim, to settle against Lange?

1           A     Well, the other major point I had was when Mr. Vannah  
2 advised me of Mr. Simon's position of how much money I was leaving  
3 on the table. Mr. Simon never proposed a contingency. You know, this  
4 whole thing was already in action and there's everything, but I want a  
5 contingency fee. If you really thought there was a million dollars or a  
6 million-seven on the table, why wouldn't you have said, yeah, I'll do this  
7 for 40 percent contingency?

8                   THE COURT: Are you talking about in the beginning?

9                   THE WITNESS: No, this is right at the end, Your Honor. This  
10 is after the dispute had already happened, and we were just settling --

11                  THE COURT: Right. This is when you're talking to Vannah,  
12 but when you're saying if you knew there was a million-four on the table,  
13 are you talking about that Mr. Simon knew that at the outset?

14                  Sorry, I don't want to be using the term outset, that's been in  
15 dispute. Are you talking about at the beginning of this, in 2016?

16                  THE WITNESS: No, ma'am, this was early December of 2017.  
17 After we had the settlement with Viking, there was a dispute which I was  
18 questioning.

19                  THE COURT: No, I understand that, Mr. Edgeworth. I need  
20 you to listen to my question. When you just said if he knew there was  
21 1.4 million on the table, why wouldn't he propose a contingency fee? I'm  
22 assuming you're talking about Mr. Simon?

23                  THE WITNESS: Correct.

24                  THE COURT: And at what point were you -- I mean if he  
25 knew it when?

1 THE WITNESS: December 7th of 2017.

2 THE COURT: So, if he knew on December 7th of '17, why  
3 wouldn't he propose a contingency fee then?

4 THE WITNESS: Yes.

5 THE COURT: Okay.

6 THE WITNESS: Because he was -- he was pitching Mr.  
7 Vannah that I should go after Lange. Even though everything else was  
8 settled, I should still pursue against -- the claim against Lange because it  
9 was this huge claim, but nowhere did he propose a contingency. If it  
10 was really a huge claim it would make sense that he would say I'll do it  
11 for 40 percent, because we had already said no, we're going to take the  
12 100,000 that Lange has offered and end the case.

13 THE COURT: Okay.

14 MR. GREENE: And we'll cover that in a moment, Your  
15 Honor, about what the terms of that contingency fee and the retainer  
16 agreement were. Actually, we'll get into that. That's our next --

17 THE COURT: Okay.

18 MR. GREENE: -- the next place that we're going.

19 THE COURT: I'm getting ahead of you. I'm sorry, Mr.  
20 Greene. I'm sorry.

21 MR. GREENE: That's okay. That's okay. It's not hard to get  
22 ahead of me.

23 BY MR. GREENE:

24 Q But, let's move then to the meeting at Mr. Simon's office on  
25 November 17, 2017.

1 THE COURT: And before you go down there, I just want to  
2 be clear. The discussions had with Mr. Vannah's office in regards to the  
3 Lange settlement that also involved Mr. Simon, there is no argument  
4 that those are going to be privileged; is that correct? The discussions are  
5 between Mr. Edgeworth and your office, because I think those are  
6 absolutely relevant to what we're talking about here, but I just want to  
7 make sure so maybe we can avoid the objections.

8 You guys are not objecting to those discussions in regards to  
9 something Mr. Vannah talked to Mr. Simon about, about the Lange  
10 settlement?

11 MR. GREENE: That's correct.

12 MR. VANNAH: Definitely, anything Mr. Simon and I talked  
13 about is not privileged.

14 THE COURT: That you relayed to him?

15 MR. VANNAH: Yeah, that -- I just relayed it to him directly  
16 and --

17 THE COURT: Okay. I just want to make sure that there's no  
18 privilege issues, because I know we've had some issues with what he  
19 discussed with Vannah and Vannah, but I think I need to know what  
20 Vannah and Vannah discussed with him in regards to their  
21 communication with Mr. Simon, and in regards to settling the Lange  
22 litigation because that's a huge issue in this -- this portion.

23 MR. VANNAH: And we'll bring that up when Danny's on the  
24 stand. I'll ask him to explain what we talked about.

25 MR. CHRISTENSEN: Judge, I mean I think Mr. Greene

1 inquiring of Mr. Edgeworth what Mr. Vannah advised him effectively as a  
2 matter of law waives the privilege.

3 THE COURT: And I agree with that Mr. Christensen. I just  
4 want to make sure that I was clear with everybody, because I anticipated  
5 there would like be an objection as to when somebody says -- because I  
6 anticipate you're going to get up here and say what did Mr. Vannah tell  
7 you --

8 MR. CHRISTENSEN: Well, I am.

9 THE COURT: -- and there would be an objection.

10 So, just so we're clear right now, and in regards to this issue  
11 of constructive discharge, I mean I think that's absolutely relevant to that  
12 issue

13 MR. CHRISTENSEN: Sure.

14 THE COURT: -- as to what he was advised by Vannah and  
15 Vannah, and Danny Simon in regards to the Lange settlement.

16 MR. VANNAH: That's fine.

17 BY MR. GREENE:

18 Q Let's then transition into this November 17, 2017, meeting at  
19 Mr. Simon's office, okay?

20 A Yes.

21 Q What led to that, briefly?

22 A Mr. Simon sent me a text around 7:30 in the morning and  
23 said, can you come down to my office at 8:30 in the morning? And I  
24 texted back, you know, what for. I'm in flip-flops, there was a court date  
25 that day. I was assuming I needed to go to court or something. And he

1 said -- he texted back that we had a lot to discuss on the case that we  
2 needed to go over. So, I called my wife, she was in Summerlin at the  
3 time with someone else, and I said, hey, Dan wants to meet us at the  
4 office at 8:30. Can you get someone to drive you down and meet me  
5 there? And she drove down and met us there.

6 When we entered the office, she had to go to the bathroom. I think  
7 there was only one other person in the office at around 8:30. She went  
8 into the bathroom, and I went around to find Mr. Simon.

9 Q What happened next?

10 A Mr. Simon started talking about, well, you've gotten way  
11 more money than -- than, you know, you deserve, and this is a huge  
12 claim. I've done a lot of work on it, and we need to talk about what I'm  
13 going to get. And at that point, I said, well, just a second, like Angela's  
14 here. Let me go get her before we start talking.

15 And Mr. Simon was visibly angry about that. He's like, you know,  
16 what the -- is she doing here? She has nothing to do with this. And I  
17 said, I thought we were talking about the case, so I brought her down  
18 here. So, like I didn't understand, like, what the big problem with Angela  
19 being there and why he was so upset about it.

20 So, I just left his office and went around through the lobby, got her  
21 from the bathroom and brought her in. I mean she bought a bunch of  
22 gourmet doughnuts for his office, a couple dozen doughnuts. So, she  
23 presented them to him and there was niceties exchanged. And then the  
24 meeting started.

25 In the meeting, he basically went over a lot of what was in the

1 letter, just with a lot harder language.

2 Q And we need to hear that, Brian.

3 A Yes.

4 Q Please tell the Judge what Mr. Simon told you, and,  
5 unfortunately, the language that was used as well.

6 A Well, when he asked why my wife was there, he said, why  
7 the F is -- what the F is she doing here, which that's how I knew he was  
8 angry, because normally, he actually liked my wife being there, because  
9 she's easier to deal with than I am. Then he starting right into the thing.

10 Well, I've done an extraordinary job on this case. This case has  
11 made more money than your claim deserved, and it's grown into this  
12 huge thing because of what I've done. I've taken huge personal risk on  
13 this. All the other attorneys involved in the Defense are going to come  
14 after me in the future because of what I've done to them on this case,  
15 you know, and I think I deserve -- and the numbers were so vague.

16 He said 1.2 million at one point, then he said a million, then he said  
17 a million-and-a-half later on in the conversation, and I didn't know what  
18 the numbers really meant.

19 So, I asked him, I said, well, we've already paid you half-a-million  
20 dollars. And he's like, no, you haven't. The insurance company's paying  
21 you that. I'm like, yeah, but I paid it up front. I took the risk. And he  
22 said, and you didn't pay me that anyway.

23 And then he went and there was somebody else in the office in the  
24 back corner because he came back with this pages and pages of the  
25 costs, and said, I only got -- and I forget the number -- 387,000. That's all

1 you've paid me.

2 And I said, yeah, but there's still a bill outstanding. It is more than  
3 three-hundred-and -- you know, it's more than that, and I paid it. And  
4 he's like, that's not how this works. And, you know, we were confused.  
5 Angela piped in a couple of times. And I said, and what about the fees I  
6 paid. And he was very wishy-washy about whether the number he was  
7 giving, the 1.2 million, and then you subtract it off or do you add the 1.2  
8 million. We couldn't even figure that out.

9 And he said, look, I'm taking a huge risk here. You're not going to  
10 get this settlement, it's not done, and if I don't sign it, taking a huge  
11 personal risk of my own signature on this thing, there's no settlement. If  
12 you don't treat me fairly, then I don't know if I can; one, continue on the  
13 case; two, sign your settlement.

14 And we're just like what, what -- we were flabbergasted. Like the  
15 whole -- every time we negotiate on anything, there's a back and forth.  
16 This was like do this or this happens, and this was not a good result.

17 Q As the owner of the claim, you hear that he's saying I'm not  
18 sure I'm going to continue on. How did that impact you and Angela?

19 A We thought the case was going to fall apart. We thought,  
20 you know, there's -- he kept re-emphasizing, there's so many dates on  
21 the trial. There's -- you know, you held this deposition, which is what I  
22 really cared about. I thought that was the crux of the case that was  
23 going to break Viking, basically, because no one else had deposed you  
24 all, and all these things are going to happen, and I don't know -- if you  
25 don't treat me fairly, I don't know if I can continue doing all this.

1 He's -- and I said, but we already paid you 550 an hour. And he  
2 said, I've done tons of cases where I get 550 an hour and 40 percent.  
3 And then the 40 percent number comes out and that confused the  
4 numbers even more. And we're like, what do you mean? It was a back  
5 and forth, and he's like you can ask anyone. Go -- you have lawyers for  
6 friends, go ask anyone. This is how it works.

7 If you don't agree to what I'm proposing, the Judge will give me  
8 the 550 and the 40 percent, because I have a backlog of cases where I  
9 can show her that this -- I commonly get paid this and precedence will  
10 take because that's how I get paid.

11 And at this point, it's like what -- what? And Angela kept kind of  
12 interjecting saying, well, you know, give us something that we can read,  
13 you know, look over, and Brian and I will discuss it. And every time we  
14 tried to go, there would be some threat. Well, if you don't treat me fairly.  
15 I don't know if I'm going to keep losing money. And losing money kept  
16 coming up, which, you know, just kind of set us off to leave. We left the  
17 meeting probably after a half-an-hour, 45 minutes it could have been.

18 Q Brian, back to the beginning of that meeting, and I'm not  
19 asking you to throw out F bombs, but you left a blank when you're first  
20 describing, you said, "What the F is she doing here," the second time.  
21 Did Mr. Simon say what the F or --

22 A No, he swore, like --

23 Q What was his demeanor?

24 A He was -- he was agitated and that's what probably set the  
25 entire meeting off on the wrong foot was he was so agitated just

1 because she was there and that just completely baffled me. It left me like  
2 -- I thought we were talking about the case, first of all, and this thing has  
3 just settled two days before. I thought we were going to talk about how  
4 to wrap it up, and get rid of this, and get it off my life, and, instead, we're  
5 talking about something totally random, and we didn't talk anything  
6 about the case.

7 Just before we left, Angela's like, well, what -- what about court  
8 today? Are you going to go in -- like until we have a contract with Viking,  
9 there's no settlement yet. Until we have a signed contract and the check,  
10 we don't trust these people. They've done a lot of things. Make sure  
11 you keep working on the case.

12 And that led to -- Angela and I drove back to the office. We started  
13 discussing what we thought he meant, and we had no idea. We --  
14 Angela and I couldn't even agree on a number that we had heard. That's  
15 how unstructured the meeting was.

16 Q Let me ask you some different questions. What was -- what  
17 do you remember about Danny's demeanor -- Mr. Simon's demeanor  
18 towards you and Angela during the course of that meeting? How did he  
19 treat you?

20 A He treated us like we were stupid, first of all. He kept -- he  
21 used the phrase, you're using your business mind, you don't understand  
22 the law. You know, that's when he had told us we can go ask other  
23 lawyers, he's entitled to this, and he can get his contingency because  
24 that's all he does is contingency. And you can go ask anyone, you're  
25 going to get that -- he's going to get that. I apologize.

1 Q So when Mr. Simon said, I got to consider my options, what  
2 impact did that have upon you and Angela?

3 A We were scared, like we were scared the whole settlement  
4 might go.

5 Q And so I'm looking back, there's a -- we've showed the Judge  
6 evidence, a meeting in San Diego in August 8 to 9'ish, of 2017. We've  
7 shown her an email of August 22nd, 2017. Both instances, you're asking  
8 for a proposal from Mr. Simon?

9 A Correct.

10 Q Fair summary?

11 A Correct.

12 Q Up until this November 17, 2017 meeting, any proposal from  
13 Mr. Simon as to what he suggested the fee be changed to?

14 A No.

15 Q So we had this meeting on November 17, was a written  
16 proposal presented to you then?

17 A No, he said we had to come to agreement and sign it in his  
18 office. We couldn't have something to leave with.

19 Q So what happened next? It's November 17th, you and  
20 Angela have just left.

21 A We drive back to the office, and then Mr. Simon calls me four  
22 times over the day, saying have you and Angela talked. Have you  
23 discussed this? We need to come to an agreement on this. And I kept  
24 saying, I'm like Angela's -- I forget where she was, she was in Summerlin  
25 or somewhere. I wasn't going to see her until about 10:00 at night.

1           So, he kept calling and asking if I've done something, really  
2 agitated as if there was some hurry to do this, which that's not how I  
3 operate. Like I would want to go back and forth and take days. And  
4 finally, he called me later at night and said, what have you guys  
5 decided? I need to know. And I'm like, I haven't seen my wife yet.

6           Q     Stop for a minute. After hours?

7           A     Yeah, after hours.

8           Q     Didn't you hear Mr. Christiansen condemn you for speaking  
9 to Mr. Simon after hours?

10          A     I know.

11          Q     But Mr. Simon called you after hours, what did he say?

12          A     He wanted a decision right then and there, and he didn't  
13 believe I hadn't spoken to Angela. He basically was calling me a liar that  
14 I hadn't seen Angela, and I'm like what's the big rush, you know, what --  
15 what's the rush? We can talk about this later. You know, we'll talk about  
16 it over the weekend. He's like I leave tomorrow at -- I forget when, it was  
17 like 6 a.m. or 7 a.m. I'm like, wait. Where are you going?

18                 This blew me away because I had no idea he was going away,  
19 because we had to prepare for the UL deposition, which was very  
20 technical and very difficult, and really important to this case. And he  
21 said that he was going to Machu Picchu. And I'm like, what.

22                 And then I didn't expect to hear from him for a week, but he kept  
23 calling me on his trip with the same demands, I want an answer. I need  
24 an agreement. I need an agreement. And finally, when I'm packing for  
25 China on the 25th, he called demanding an answer. This is after he

1 asked me -- he says, send me, you know, your list of costs that we  
2 presented, or whatever the thing that I was shown earlier, which had 3.8  
3 million plus, plus, plus, plus on it, you know, like I had left a bunch blank.  
4 All my time, my business I lost, everything else. Who knows what the  
5 value of that is. I sent that to him on the 21st.

6 On the 25th, he called all agitated, saying, oh, as if this is really  
7 your F-ing damages. This -- you didn't F-ing lose this much. And I'm  
8 like, what are you talking about. Like the whole -- the whole thing was  
9 bazaar, and I'm like what are you talking about. He's like, well, you're  
10 never going to pay these F-ing loans back.

11 And I'm like -- that really set me off, because he's basically asking  
12 me and Angela to give him some more money and to rip off Colin and  
13 Angela's mom for the interest. And right there, it was just like it's over,  
14 and then I lost it. And I just said, you either send me something in  
15 writing that's structured and cogent, or we don't talk about this again.  
16 We don't talk about these fees again. Send it.

17 And then he -- and then I packed. I drove to L.A., I flew to Japan  
18 for a day, and then I believe when I landed in China, I got the November  
19 27th letter.

20 Q Let's talk about that now, but let's not talk about the letter  
21 first, let's go to the retainer agreement.

22 MR. GREENE: Your Honor, that is -- and Pete, that's Exhibit  
23 4, Page 8, and it's entitled Retainer Agreement.

24 THE COURT: Okay.

25 MR. CHRISTIANSON: Okay.

1 BY MR. GREENE:

2 Q This is the top part of that. Just kind of a brief thumbnail  
3 sketch. What type of documents did you get from Danny and how -- Mr.  
4 Simon, and how on this November 27th?

5 A By email, there was, I think -- okay, this was attached. There  
6 was a letter explaining his point of view. This was attached, and there  
7 was some fee agreement that had the breakdown of funds, whatever you  
8 would call that.

9 Q Okay.

10 THE COURT: Was this attached to the November 27th letter?

11 MR. GREENE: Correct, Your Honor.

12 THE COURT: Okay.

13 BY MR. GREENE:

14 Q Looking at this Page 8, this looks familiar to you, Brian?

15 A Yes.

16 Q Now earlier you mentioned to the Judge that if this claim  
17 against Lange was so valuable, why didn't Mr. Simon produce some kind  
18 of a hybrid or whatever agreement that he thought was fair to cover that  
19 claim? Do you remember giving that testimony to the Judge?

20 A Yes.

21 Q Is there anything in your understanding of reading this  
22 retainer agreement that pertains to any contingency fee agreement for  
23 Lange?

24 A No, he's basically saying any future services performed  
25 prosecuting Lange Plumbing will be determined by a separate

1 agreement, like another add on. Like it was just --

2 Q Did you ever get a retainer agreement from Mr. Simon that  
3 pertains to his proposed ideas on how contingency fees, or a hybrid, or  
4 anything thereof, how the scenario can be changed to then reflect him  
5 getting a portion of that?

6 A No.

7 Q So, in looking at this retainer agreement, your  
8 understanding, I mean you -- you're a smart guy, what was Danny, in  
9 your understanding, proposing or demanding, whatever words you  
10 choose, from you and Angela from the Viking settlement?

11 A I'm sorry.

12 Q Sure. Another of my many bad questions?

13 A No, I got distracted by the door. I apologize.

14 Q Oh, that's okay. What's your understanding, as the  
15 consumer, as the client, what Mr. Simon was now presenting to you,  
16 demanding, whatever your word is, from you from this Viking settlement  
17 that had been reached now 12 days earlier?

18 A This seemed to suggest that I owed him another  
19 million-and-a-half on top of what I had already paid him, which sort of --  
20 the other sheet that was attached to this, I didn't understand as much  
21 either. So, the whole thing confused me. Even -- we're at the point  
22 where I'm getting it in writing, which is what I wanted. I wanted  
23 something structured that I could read.

24 But it still didn't jive with me, like I couldn't figure out exactly what  
25 was being asked for. It said a million-and-a-half dollars for services

1 rendered to date, and then it says it includes all past billing statements,  
2 which makes me think that I would subtract it, but I wasn't positive.

3 Q Then there was a page 2 to this retainer agreement. It has  
4 some signature blocks, correct?

5 A Yes.

6 Q Did either you or Angela sign this?

7 A No.

8 Q When Mr. Simon asked you, as you just testified to, to speak  
9 with anyone, any lawyer, anyone, with knowledge about what he's  
10 proposed, what did you do next?

11 A I started looking for a lawyer after I received the letter.

12 Q Did you Google this guy at the table over my left shoulder?

13 A I looked for a lawyer with Supreme Court experience because  
14 that's where I thought it was going. I found Mr. Vannah in Reno, then I  
15 tracked him down. And because he had a -- I liked his bio actually. He  
16 had an engineering background, which was very numbers oriented, and I  
17 thought I could communicate very effectively with someone who's more  
18 numbers oriented, like I am.

19 Q When you got the letter dated November 27th, 2017, it was  
20 emailed to you, did you read it?

21 A Yes.

22 MR. GREENE: Judge, this is Plaintiff's Exhibit 4, beginning at  
23 pages 3 through 7.

24 THE COURT: This is the letter, right?

25 MR. GREENE: Yes, it is, Your Honor. Yeah, we have two in

1 our exhibit, but this is the November 27th one.

2 THE COURT: Okay.

3 BY MR. GREENE:

4 Q Let me put -- this is -- who is this addressed to?

5 A I don't know, no one.

6 Q Nonetheless, was it sent to your email address?

7 A Yes.

8 Q And as you read through these bullet points, Brian, did you  
9 form opinions on to the truthfulness or not as to what Danny was -- Mr.  
10 Simon was alleging?

11 A There was a lot of hyperbole in there, and then there's some  
12 things that were just lies. I didn't feel that the letter was really written to  
13 me at all.

14 Q There's one in particular that I want to -- do you remember  
15 reading something about Mr. Simon stating that you and he would play  
16 devil's advocate upon certain topics?

17 A Yes, I remember the line.

18 Q Can you tell the Judge in -- in what context Mr. Simon  
19 related that information to you and what your opinion is of it?

20 A I don't know because that section of the paragraph is not that  
21 clear to me. I thought he was saying oh, the meeting of the 17th, I was  
22 playing devil's advocate. That's not a term I use that much ever, but it  
23 made no sense. I had no idea what he was talking about. I was also  
24 jetlagged in China reading this letter, which just created more and more  
25 confusion because the letter is very, very hard to read and come to a

1 determination of what it's actually saying.

2 THE COURT: This statement about devil's advocate, is that in  
3 this letter?

4 MR. GREENE: It is, Your Honor.

5 THE COURT: Where is it in this letter?

6 MR. GREENE: Let me -- let me find that for you.

7 [Pause]

8 MR. GREENE: It's on page 4 of that exhibit, Your Honor. Let  
9 me put that up for you. Where in the heck did I just see that? I know I  
10 just saw it. I'm sorry. I may have misspoke, Your Honor, I apologize.  
11 I'm quite certain that I -- oh, there it is. Page 5.

12 THE COURT: Page 5? I just want to follow along what he's  
13 talking about. Is it in the value of my services?

14 MR. GREENE: It is, Your Honor.

15 THE COURT: I see it.

16 MR. GREENE: Yeah.

17 THE COURT: Okay, I see it.

18 MR. GREENE: I have -- that's page 5.

19 BY MR. GREENE:

20 Q Do you see the value of my services, what we have  
21 highlighted there at the top? Would you read that and explain your  
22 position on this statement of Mr. Simon's?

23 A "I was troubled at your statements that you paid me hourly  
24 and you now want to just pay me hourly, when you always knew that  
25 this was not the situation. When I brought this to your attention, you

1 acknowledged, you understood that this was not just an hourly fee case,  
2 and you were just playing devil's advocate." This doesn't make sense at  
3 all.

4 Q Well, is there anything about --

5 A It's not true.

6 Q -- those statements that are true?

7 A No, it's completely false. And after -- it doesn't even -- why  
8 did he send this letter after the meeting if the meeting ended saying, oh,  
9 yeah, I'm just playing devil's advocate. What do you want me to do?  
10 That's ridiculous.

11 Q I'm going to draw your attention to the last paragraph-ish of  
12 Exhibit 4. I'll have you tell the Judge what impact this had on you, okay?

13 MR. GREENE: It's the second to last sentence, Your Honor,  
14 on page 7.

15 THE COURT: 7?

16 BY MR. GREENE:

17 Q Do you recognize that signature, Brian?

18 A Yes.

19 Q Have you seen that a time or two? Who's that?

20 A Danny Simon.

21 Q Okay. Why don't you read that for the Judge, the highlighted  
22 portion?

23 A "If you are not agreeable, then I cannot continue to lose  
24 money to help you. I will need to consider all options available for me."

25 Q Viking had just settled on terms? Had the settlement

1 documents been signed yet?

2 A No.

3 Q What concerns did you have when your attorney is sending  
4 you a letter with this sentence?

5 A He's just repeating the threats he made in the November  
6 17th meeting. You either sign this or I stop your case. I don't go. And  
7 your settlement will fall apart because -- he was saying that Viking was  
8 going to demand Danny Simon commit to whatever settlement  
9 agreement there was and hold him all accountable and kept saying how  
10 much risk there was for him to sign. So, this just reiterates what he said.  
11 If you don't do this, you're done.

12 Q So after you get this letter, you've been invited by Mr. Simon  
13 to talk to the lawyers?

14 A Yeah, both in this letter he told us to go contact other  
15 lawyers and -- in the meeting.

16 Q Despite the November 17th, 2017 meeting, and despite this  
17 November 27th, 2017 letter, did you ever fire Mr. Simon?

18 A No.

19 Q What would it have done to you economically even if you  
20 had chosen to do so?

21 A Well, my biggest fear was how do I get another lawyer on  
22 board with all that's happened in the case? How do I get them ready to --  
23 to end my case, argue in court. If the settlement truly falls apart when  
24 your lawyer quits, then what do I do?

25 Q So, if you don't sign that retainer agreement and he

1 considers his options, what would have your option been?

2 A Basically, go find another lawyer and see if they have time to  
3 sit with me for a few weeks so I can go over the entire case, and they can  
4 figure it out, and -- I don't know. The other lawyer had quit on my case,  
5 Cia (phonetic), the lawyer for Lange Plumbing, and the first thing that  
6 happened was Mr. Teddy Parker came in and asked for a delay. So, this  
7 would just extend everything else out through the whole period. It  
8 would be a disaster for us.

9 MR. GREENE: The Court's indulgence just for a moment.

10 THE COURT: No problem.

11 MR. GREENE: Let me just converse with -- Your Honor, I  
12 have no further questions at this time. Thank you.

13 THE COURT: Okay. Mr. Christiansen.

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

15 REDIRECT EXAMINATION

16 BY MR. CHRISTIANSEN:

17 Q Mr. Edgeworth, you understand you're still under oath?

18 A Yes.

19 Q And I ask you that, Mr. Edgeworth, because I want to make  
20 sure you understand -- do you agree with me that the truth isn't  
21 determined by who asks you the question?

22 A Yes.

23 Q All right. Because when I ask you questions, you don't  
24 understand English. You don't know what outset is. You don't know  
25 what fantasy is.

1 MR. GREENE: I object, Your Honor.

2 BY MR. CHRISTIANSEN:

3 Q You don't have to look at Mr. Vannah.

4 MR. GREENE: That's bad, Your Honor.

5 THE WITNESS: I'm not looking at Mr. Vannah.

6 MR. GREENE: He can treat the witness with respect, for  
7 heaven's sake.

8 THE COURT: Okay. Mr. Christiansen, would you just ask him  
9 a question?

10 MR. CHRISTIANSEN: Sure.

11 BY MR. CHRISTIANSEN:

12 Q Isn't it true, a day ago, two days ago, you told the Judge,  
13 after you heard Mr. Vannah tell the Judge in opening statement, that at  
14 the 11/17 meeting, Danny Simon presented you with a document and  
15 tried to force you and your wife to sign it? Isn't it true that was your  
16 testimony?

17 A Yes.

18 Q Isn't it also true that just now, when Mr. Greene is up here on  
19 direct examination, you denied being forced -- attempted to sign  
20 something on the 11/17 meeting; isn't that true?

21 A No.

22 Q Sir, the Judge just finished listening to John Greene ask you  
23 questions, you don't have to keep looking at them, Mr. Edgeworth. I'm  
24 talking to you.

25 MR. GREENE: He's badgering the witness, and for heaven's

1 sake, he can look at whoever in the heavens he wants to look at.

2 MR. CHRISTIANSEN: Judge, I would ask the witness to not  
3 look to his lawyers for coaching, please.

4 MR. GREENE: Coaching?

5 THE COURT: The lawyers are not going to answer any  
6 questions. Mr. Edgeworth, you can just answer Mr. Christiansen's  
7 questions. They're not helping him answer any questions. I'm watching  
8 them.

9 MR. VANNAH: I don't even know what he's talking about.  
10 How can we coach him? What we got, flashcards over here or  
11 something? I find that offensive.

12 BY MR. CHRISTIANSEN:

13 Q Mr. --

14 MR. VANNAH: Now, let's be polite, okay?

15 MR. CHRISTIANSEN: I apologize, Mr. Vannah.

16 BY MR. CHRISTIANSEN:

17 Q Mr. Edgeworth, you just described for the Court on  
18 questioning by John Greene, the meeting of 11/17; did you not?

19 A Correct.

20 Q You did not, in that description, ever tell the judge that  
21 Danny tried to force you to sign something; isn't that true?

22 A No.

23 Q You did just tell the Judge that this morning?

24 A Yes, I just said that he said we couldn't leave until we had an  
25 agreement signed.

1 Q Sir, that's not what I asked you. When I asked you the  
2 question and when Mr. Vannah stood up in opening statement, he told  
3 the Court that Danny Simon tried to force you that day, you and your  
4 wife, to sign something, right?

5 A Correct.

6 Q But that's not what you just testified to under oath for Mr.  
7 Greene. You did not just say that, correct?

8 A Not the same -- exact same words, no.

9 Q So, the truth is not dependent upon who asked the question,  
10 fair? Fair?

11 A I don't understand your question, can you rephrase it,  
12 because you just end it with fair. So, what am I answering?

13 THE COURT: Is that fair, Mr. Edgeworth? You already  
14 answered this question.

15 THE WITNESS: The truth is not --

16 THE COURT: Does not depend on who's asking you the  
17 question. He's asking you is that fair.

18 THE WITNESS: The truth is the truth, it's the same  
19 regardless of who asks.

20 BY MR. CHRISTIANSEN:

21 Q The truth doesn't depend upon the day you're testifying,  
22 correct?

23 A The truth doesn't depend on the day. Correct, it doesn't.

24 Q And when you tell the Judge one version on the first or  
25 second day of the hearing, and then on questions from your lawyer,

1 change that version, you've changed your story, right, sir?

2 A If I had done that, but I haven't.

3 Q Well, Her Honor just got done listening to you and that's for  
4 to decide, but I'll pull the excerpt from the DBS, where you told me Mr.  
5 Simon tried to force you on 11/17, 2017, when you were there at his  
6 office with your wife, to sign a document and you guys wouldn't do it.

7 A That's correct.

8 Q And you didn't tell Mr. Greene that just 20 minutes ago.

9 A That's incorrect.

10 Q It absolutely is not. Do you remember in the opening  
11 statement when --

12 MR. VANNAH: I move to strike these comments.

13 MR. CHRISTIANSEN: I'll refrain. I apologize, Mr. Vannah.

14 MR. VANNAH: It's just -- this is a running commentary. I  
15 don't try to do that --

16 MR. CHRISTIANSEN: Well --

17 MR. VANNAH: -- and you shouldn't either.

18 MR. CHRISTIANSEN: -- fair enough.

19 BY MR. CHRISTIANSEN:

20 Q Mr. Edgeworth, do you remember the notion furthered in the  
21 opening statement that Danny's plan to go after Lange for attorney's fees  
22 was a secret plan? Do you remember hearing that?

23 A No, I don't remember.

24 Q And, sir, if that was a secret plan, can we agree that he must  
25 be -- Mr. Simon must be the worst secret-keeper on the planet, because

1 it wasn't a secret, was it? You knew that's what he intended to do,  
2 correct?

3 A Correct.

4 Q Mr. Nunez -- you saw Mike Nunez testify yesterday. You  
5 knew -- you heard him say he knew that's what Danny intended to do,  
6 correct?

7 A I don't think I heard him say that. I'm not sure.

8 Q Mr. Simon had filed in -- I want to get the dates right --  
9 January of 2017, a motion for summary judgment against Lange,  
10 correct?

11 A I believe so.

12 Q Right. That was heard in March, and then in April. So that  
13 theory to go after Lange for your attorney's fees was never a secret,  
14 right?

15 A No.

16 Q You always knew about it, correct?

17 A Yes.

18 Q And you chose -- I want to make sure I pick the day right.  
19 After you got -- on the 25th, you had a phone call with Danny; is that  
20 right?

21 A Correct.

22 Q That's when you were -- I think you -- and I want -- I wrote it  
23 down, but I want to make sure I get it right, you said you lost it?

24 A Correct.

25 Q And you said, don't talk to me again. This is November the

1 25th of 2017, correct?

2 A Correct.

3 Q And from that point on --

4 A About the fee agreement. You left that out, sir.

5 THE COURT: Okay. Hold on, Mr. Edgeworth.

6 THE WITNESS: Oh, I'm sorry.

7 THE COURT: He needs to ask the questions.

8 THE WITNESS: I'm sorry.

9 THE COURT: You just answer them.

10 BY MR. CHRISTIANSEN:

11 Q You said, don't talk to me again about the fee agreement.

12 Fair?

13 A Fair.

14 Q From 11/25 until 11/29 -- I want to make sure I got Mr.

15 Vannah's date correct -- you didn't talk -- you didn't have a verbal

16 conversation with Mr. Simon, correct?

17 A Correct.

18 Q And on the 4th -- by the 4th Mr. Greene -- or it might have the

19 5th, John, to be correct -- By the 5th -- 4th or 5th of December, you had

20 been directed by -- or Mr. Simon's directed you to speak only to Mr.

21 Greene, correct?

22 A On the 5th, I believe, December 5th.

23 Q I think I got that right. And that was four days after the

24 Vannah and Vannah firm signed your release with Viking, correct?

25 A I'm not sure.

1 Q You saw those -- that release with Vannah and Vannah's  
2 name on it, did you not?

3 A Maybe, I'm not sure.

4 [Counsel confer]

5 BY MR. CHRISTIANSEN:

6 Q Sir, do you remember who signed the -- or whose name was  
7 contained in your Viking release, whether it was Danny Simon's or Mr.  
8 Vannah's?

9 A No, I do not.

10 Q Whoever's name was in there would have been the lawyer  
11 advising you on it, right? Because you're done -- you're done talking to  
12 Danny by this point, right?

13 A You need to define the point, I'm confused. You're saying by  
14 this point.

15 Q By the time you're signing the Viking settlement, which I  
16 think was executed on the first of December -- okay, do you follow me?

17 THE COURT: Do you have an exhibit number, Mr.  
18 Christiansen?

19 MR. CHRISTIANSEN: I'm sorry. This is -- John, I think this is  
20 your 5, right, or my 5?

21 MS FERREL: It's our 5.

22 MR. CHRISTIANSEN: Can you guys find that for me?

23 THE COURT: It's Number 5?

24 MS. FERREL: Yeah.

25 BY MR. CHRISTIANSEN:

1 Q So, it's signed in 5. Is that your signature that I just showed  
2 you there, Mr. Edgeworth?

3 A Could you just put it up, sir?

4 Q Sure.

5 A Yes, it is, the 1st of December.

6 Q Okay.

7 [Counsel confer]

8 BY MR. CHRISTIANSEN:

9 Q This Section 5-3, for Roman numerally challenged people.  
10 Do you see my fingers?

11 A Yes.

12 Q That's Section 5, subpart E, like Edward or Edgeworth?

13 A Yes.

14 Q Who's the lawyers advising you for the settlement, according  
15 to the document?

16 A I can't read the whole paragraph, sir --

17 Q Okay.

18 A -- if your finger is on it.

19 Q Sure. It says Mr. Vannah --

20 A Oh, Vannah and Vannah.

21 Q -- and Mr. Greene, correct?

22 A Correct.

23 Q It doesn't say Danny Simon in that; does it? Take your time.

24 A No.

25 Q It does not. All right. And then if I just keep the chronology

1 going, that's the first. By the -- I guess it's the 4th or 5th, the volleyball  
2 emails have occurred, right?

3 A Correct.

4 THE COURT: This is December, right, Mr. Christiansen?

5 MR. CHRISTIANSEN: It is.

6 BY MR. CHRISTIANSEN:

7 Q And do you remember those volleyball emails and your  
8 testimony for Mr. Greene that you were devastated and some of the  
9 words I wrote down that you used, distraught?

10 A Yes.

11 Q That the Board made you do things. Do you remember?

12 A Yes.

13 Q Sir, you and your wife control the Board, right?

14 A That's what I said, yes.

15 Q So you made yourself self-report and fill out a little  
16 application, and then want to exaggerate how bad that hurt you because  
17 you made yourself do it. Is that my understanding of your logic?

18 A I think it's a compound question, which question do you  
19 want me to answer?

20 Q Sure. You forced yourself as a board member to submit an  
21 application, correct?

22 A I agreed with it, correct.

23 Q And you controlled the Board?

24 A No. But, yes, I'm on the Board.

25 Q Who's the lawyer on the Board?

1 A Mark Katz.

2 Q That's your lawyer, right?

3 A Yes.

4 Q And your wife's on the Board?

5 A Yes.

6 Q And you're on the Board?

7 A Yes.

8 Q That's three of the four members, correct?

9 A Yes.

10 Q And the fourth is Mr. Herrera?

11 A Correct.

12 Q Who you employed, correct?

13 A Correct. Well, not really, the non-profit does.

14 Q Can we agree that when you forced yourself to fill out an

15 application, that you thereafter want to complain, really caused you

16 distress, that was a self-imposed distress?

17 A No.

18 Q Well, Danny didn't force you to fill out an application; did he?

19 A No.

20 Q Right. And the email says what the email says, and we'll let

21 Her Honor see it, but the email does not accuse you of physically

22 harming anybody, correct? The email, the initial email, not the -- Mr.

23 Herrera's response, not Danny's reply to him, the initial email does not,

24 correct?

25 A May I see it? I'm not sure at this point when he said it.

1 Q Well, sir, if it caused you so much distress and so much  
2 anxiety that you had to force yourself as the Board member to submit as  
3 an individual, an application, aren't you just making yourself miserable  
4 over this?

5 A No.

6 Q Okay. And just so we can give the Court some context or  
7 some flavor numerically. Mr. Greene --

8 MR. CHRISTIANSEN: -- John, I'm sorry. I don't have  
9 your --

10 MR. GREENE: Which one?

11 MR. CHRISTIANSEN: -- exhibit. I'll find it. I think I --

12 BY MR. CHRISTIANSEN:

13 Q Through September -- do you remember the last calculation  
14 you did that Mr. Greene was showing you that had some interest  
15 calculations through October 31st, and like seven lines worth of lawyer?

16 A Yes.

17 Q That's up through sort of the end of September, and you  
18 thought that was your most recent calculation you had done in the  
19 underlying case, and you didn't know if it was done in October or done  
20 projecting what the October payments would be.

21 A I don't know when it was done, yeah.

22 Q Is that fair?

23 A Correct, fair.

24 Q Okay. And by that point in time, sir, you had paid Danny  
25 Simon in attorney's fees -- attorney's fees and costs, \$231,000,

1 260 -- \$231,264. Does that sound about right?

2 A About right.

3 Q Of that, was 46,000 in costs that had fronted. Sound about  
4 right? And you've reimbursed --

5 A Actually, I think your wrong, sir. I think September 22nd, I  
6 think it was far higher.

7 Q All right. Well, let's see if --

8 MR. CHRISTIANSEN: This is just a summary, John, of the  
9 payments. I'm not going to move to introduce it or anything.

10 MR. GREENE: Okay.

11 BY MR. CHRISTIANSEN:

12 Q Here's a summary of the checks you paid. You paid 38,000  
13 for your first payment, right --

14 A Right.

15 Q -- and change?

16 A Correct.

17 Q Thirty-five-thousand and change for your second payment?

18 A Correct.

19 Q One-hundred-and-ten-thousand and change for your third?

20 A Correct.

21 Q Okay. And those costs payments, as I go down there  
22 towards the bottom, those are all accurate, too, correct?

23 A No, there's -- you're missing --

24 Q The last cost payment?

25 A Plus, you're also -- you didn't put in the -- that thing when the

1 judge sanctioned -- it's not a huge deal, t's like \$4800. The sanction  
2 payment to Simon that went towards costs, you didn't have in there.  
3 And you have a bit of an error on your first bill, but it's not huge. You're  
4 off by like \$3,000. You just added it wrong.

5 Q Okay. That could be very possible. So, what I'm -- the point  
6 I'm trying to get at is, so you heard Mr. Vannah tell the Court that you  
7 agree -- and you told me, you agree you owed Danny money?

8 A Yes, I agree.

9 Q And you received a bill -- what's the superbill, you guys call it  
10 superbill -- exhibit.

11 [Counsel confer]

12 Q You received a bill for time from the last payment forward,  
13 both from Danny and from Ashley? I'm sorry, Ms. Ferrel and Mr. Simon,  
14 correct?

15 A Can you define the time? I'm sorry.

16 Q Sure. From the last invoice you paid, sir, which was  
17 September, correct?

18 A 22nd, yes.

19 Q From that invoice forward, there -- you have received, you  
20 got it like in January, attached, I think you told me, to a motion to  
21 adjudicate a lien. Two bills, one for Danny -- one for Mr. Simon, and one  
22 for Ms. Ferrel?

23 A Yes.

24 Q Included --

25 A I received it on the lawsuit, correct.

1 Q Included within those bills are time entries for both Mr.  
2 Simon and Ms. Ferrel from the end of September to, I think, about  
3 January 8th, correct?

4 A I believe so.

5 Q All right. And you agree you owe that money, correct?

6 A Not the money on that bill, no, I don't agree with that.

7 Q No, listen to my question. You agree you owe the money for  
8 the entries made by Ashley Ferrel and Danny Simon from the end of  
9 September through January 8th? Do you agree you owe that money?

10 A If they are honest and accurate billing entries, I agree.

11 Q Okay. And you, as you sit here today, don't have any  
12 evidence, admissible or otherwise, that those entries are not honest or  
13 accurate, correct?

14 A No, I do not.

15 Q All right. So, absence some evidence coming up as we go  
16 forward here, you agree you owe that money?

17 A I owe something from the 22nd through the end, yes, correct.

18 Q All right. And --

19 THE COURT: You mean September 22nd?

20 THE WITNESS: Yes, September 22nd was the last bill I paid,  
21 Your Honor.

22 BY MR. CHRISTIANSEN:

23 Q And I did the math, and I might be wrong, so I had Ms. Ferrel  
24 do the math.

25 THE COURT: She's a lawyer, too, Mr. Christiansen, and you

1 know what they say about our math.

2 MR. CHRISTIANSEN: I do, Judge. That's why we all went to  
3 law school, except for Mr. Vannah, who's an engineer, I learned.

4 MR. VANNAH: I did go to law school, though.

5 MR. CHRISTIANSEN: I know that, too. I wasn't being  
6 pejorative. Ashley, what was the total?

7 MS. FERREL: \$418,742.50.

8 BY MR. CHRISTIANSEN:

9 Q If Ashley's -- Ms. Ferrel, I apologize, if her math is correct and  
10 the entries from that end of September through the end of -- through  
11 January 8, total \$418,742, you agree you owe that money?

12 A No, I do not.

13 Q You just told me you didn't have any evidence those entries  
14 weren't honestly made, correct?

15 A Correct.

16 Q It's the rates at which you told Her Honor, and we can -- we  
17 won't quibble about when you learned about it, but it's the rates you  
18 agreed to pay, correct?

19 A Correct.

20 Q And if those are the entries at the rates you agreed, and they  
21 total \$418,742, you owe the money, correct? Yes or no?

22 A It's a small -- no.

23 Q All right. I didn't think so. You testified yesterday, you told  
24 Mr. Greene -- you told the Judge in response to questions from Mr.  
25 Greene, that it was in July of 2017, that you realized there was going to

1 be a big payout in this case. Do you remember testifying to that?

2 A Yes.

3 Q Okay. And do you remember when I showed you your  
4 affidavit, the very first one, where, in that affidavit, you say after a big  
5 sum of money was offered -- and I'm summarizing, not quoting you on  
6 this -- in a case that blossomed, Danny wanted to change the bill,  
7 correct?

8 A Correct.

9 Q Had that case blossomed just in your mind, sir? Because  
10 that timeline fits with your testimony, that you thought there was going  
11 to be a big pot of money in July, that thereafter, you started writing the  
12 emails that came after you thought there was going to be a big pot of  
13 money, and then you sign an affidavit that reflects that exact chronology.  
14 Right?

15 A Can you restate the question?

16 Q What part of that didn't you understand?

17 A You asked several things in some of your questions, sir. It's  
18 confusing. Maybe you can just chunk them down for me?

19 Q I'll go real slow. It's amazing -- I'll go slow. You agree you  
20 told the judge yesterday that you thought the case was turning into a --  
21 going to turn into a lot of money in July of '17?

22 A Late July, correct.

23 Q You agree -- you signed an affidavit March -- I'm sorry,  
24 February the 2nd of '18 for this hearing, it was in anticipation of this  
25 hearing, in which you stated that after a large chunk of money was

1 offered, you then wrote the August 22nd email, called contingency,  
2 correct?

3 A Correct.

4 Q My question to you, sir, is did that -- and within the  
5 paragraph from March -- February the 2nd, you also stated that it was  
6 after -- that you didn't write the email until a Defendant's conduct had  
7 been exposed and a large sum of money had been offered, correct?

8 That's in your affidavit.

9 A Can you repeat that? I'm sorry. You lost me.

10 Q Your affidavit says that you wrote an email that says  
11 thereafter, a Defendant's conduct was exposed, and they offered a large  
12 sum of money. Significant is the word you used.

13 A After all four of those events --

14 Q Yeah.

15 A -- they occurred at different calendar dates, correct.

16 Q Then you wrote that August 22nd email?

17 A After the affidavit?

18 Q No, after a Defendant offered a significant amount of money?

19 A No.

20 Q Okay. We'll agree to disagree with what the paragraph says.

21 My question to you, ultimately, was did that blossoming or significant  
22 sum of money, was that just in your mind because you thought it was  
23 going to make some money come July?

24 A Correct.

25 Q Right, because nobody had offered any money in July, right?

1 A No.

2 Q Nobody had offered any money in August, right?

3 A I don't know, maybe by August. I'm not sure.

4 Q Nobody had offered any money in September, correct?

5 A Same answer, I'm not sure on exact dates.

6 Q And what your email, both of August 1st and August 22nd,

7 reflect, as you told Mr. Greene, is your attempts to reach a new

8 agreement on a new part of the case that you could have never

9 contemplated at its origination, correct?

10 A Can you repeat it again?

11 Q Sure.

12 A Not with two and the one.

13 Q Your August 1st email, it talks about punitive damages, and  
14 your August 22nd email, it talks -- it is entitled contingent -- contingency.

15 Both of those --

16 A My August 1st email, sir? Sorry.

17 Q Yeah, you wrote an email that talked about punitive damages  
18 August 1st. Do you remember that?

19 A No. Can you show me?

20 Q No, I don't want to show it to you. You don't remember it? I  
21 showed it to you enough the other day. The Judge is ready for me to be  
22 done. Do you remember it?

23 A No.

24 Q Your emails that talk about punitive damages, to quote you,  
25 reflect your understanding that you had to reach a new deal about a new

1 part of your case against Viking that could never have been  
2 contemplated when you hired Danny Simon in May of 2016, correct?

3 A No.

4 Q Sir, don't you actually say the words, could have never been  
5 contemplated in your August 22nd email?

6 A I agree with that.

7 Q Okay. And don't you actually say the words that punies  
8 (phonetic), you need to figure out a deal for punies that incents us both?  
9 Incents, your word not mine.

10 A Yes. I wanted us both to sign it, correct.

11 Q Right. You wanted to create a new deal about a portion of  
12 the case that was never contemplated before you started sending those  
13 emails, right?

14 A No, you're wordsmithing a bit.

15 Q Just tell me yes or no.

16 A No.

17 Q Gotcha. So, they weren't your efforts. That's what you're  
18 telling the Judge now, they were not your efforts, those two emails?

19 MR. VANNAH: He's answered your question. He's not  
20 telling the Judge anything. If you ask bad questions, you will get bad  
21 answers. That's my objection.

22 MR. CHRISTIANSEN: Is it your witness, Mr. Vannah?

23 MR. VANNAH: You know what, I just -- you can't do that.

24 THE COURT: Mr. Christiansen, what was the question?

25 MR. CHRISTIANSEN: Sure.

1 BY MR. CHRISTIANSEN:

2 Q The two emails, where you are discussing punitive damages,  
3 August 1st, August 22nd. You just got done telling me they weren't your  
4 efforts to memorialize or reach an agreement about a new part of the  
5 case, fair?

6 A They weren't my efforts to memorialize a new part in the  
7 case?

8 Q Correct.

9 A No, it's the same case.

10 Q And do you agree that in your August 22nd email, you said  
11 punies could have never been contemplated?

12 A I agree.

13 Q So, it was a new part of the case, correct?

14 A No, it's the same case. It's the -- a new aspect of the case.

15 Q Okay. And for that new aspect, I'll use your words, you  
16 wanted to reach a new deal, correct?

17 A No, I wanted to reach a new deal on the entire thing. I  
18 wanted to renegotiate our fee contract.

19 Q And what you wanted and what you told the Judge  
20 yesterday, is to pay back -- I think your mother's name is -- mother-in-  
21 law's name is Margaret; is that correct?

22 A Correct.

23 Q I don't know her last name, so I'll just use -- that's what you  
24 referred or as, so I don't want to be pejorative.

25 A Margaret Ho.

1 Q H-O?

2 A Yes.

3 Q Ms. Ho, you wanted to pay her back?

4 A Correct.

5 Q And this is what's prompting you to discuss this new aspect,  
6 to use your words, of the case that you entitled punitive damages,  
7 correct?

8 A That's one aspect.

9 Q Okay. And that was what was prompting you to author the  
10 emails, correct?

11 A Not just that, no.

12 Q You borrowed -- how much was your first loan from Ms. Ho?  
13 I think it was 350, right?

14 A No, it was 300, I believe.

15 Q Okay. And by September -- I'm sorry, August of 2017, how  
16 much did you owe her?

17 A I would have to see the sheet, sir. I can't do it in my head. I  
18 don't know. A lot.

19 Q You're -- and those notes, do you recall the email that I  
20 showed you where you were asking if Danny could write the promissory  
21 notes, and he directed you to have the other guy on your Board, Mr.  
22 Katz, your estate lawyer, do it?

23 A Yes.

24 Q Those notes were authored by you, correct -- or by your  
25 lawyers?

1 A I agree.

2 Q You set the terms?

3 A I agree.

4 Q You borrowed the money from your mother-in-law and from  
5 your friend from college?

6 A No, from high school.

7 Q From -- I apologize, from high school.

8 A Sorry, it's just a small point.

9 Q That's okay, I got it wrong. Correct me if I do. And those  
10 loans were guaranteed by the case, correct?

11 A Yes.

12 Q And those loans, the terms of which you set, correct?

13 A Correct.

14 Q So, you agreed to pay your high school friend and your  
15 mother-in-law about -- between 35 and 36 percent a year on loans,  
16 correct?

17 A It's 29 or whatever. I didn't want to say no and have you  
18 back and forth, so it's 29 to 36, 37, correct.

19 Q Right. And it's from those loans that you would thereafter  
20 testify here in court that you, Mr. Edgeworth, bore all the risk in this case,  
21 right?

22 A I beg your pardon. Just --

23 Q Sir, in other words, you didn't pay Danny Simon Brian  
24 Edgeworth's money? You borrowed money from your best -- your good  
25 friend and your mother-in-law, fixed your house, paid your lawyer?

1 A Correct.

2 Q Right. And if we do the math, you're willing to pay those two  
3 people you borrowed money for -- from, more in interest than you want  
4 to pay your lawyer, right?

5 A Correct.

6 MR. GREENE: Objection. What's the relevance of that, Your  
7 Honor?

8 MR. CHRISTIANSEN: He answered the question.

9 MR. GREENE: He's paying back a contractual obligation that  
10 he has to these people. He's paying back a debt. He's never --

11 THE COURT: Mr. Christiansen, what's the relevance of this?

12 MR. CHRISTIANSEN: It goes to the Brunzell factors, Your  
13 Honor.

14 THE COURT: Okay.

15 MR. GREENE: How does the skill of an advocate go to  
16 whether or not Brian honors an obligation to pay back a lender?

17 MR. CHRISTIANSEN: I'm going to get into whether he had to  
18 pay them back next, Your Honor.

19 MR. GREENE: It has nothing to do with the Brunzell factor.

20 THE COURT: Whether he had to pay back who, the mother-  
21 in-law and the friend?

22 MR. CHRISTIANSEN: Right.

23 THE COURT: Okay. Move on to the next question, Mr.  
24 Christiansen.

25 MR. CHRISTIANSEN: Yes, Judge.

1 BY MR. CHRISTIANSEN:

2 Q The notes were secured by the case, correct?

3 A Correct.

4 Q You were the maker of the notes?

5 A Correct.

6 Q And you had -- if you didn't pay the notes back, they could  
7 come after you?

8 A Personally.

9 Q Personally. Your mother-in-law and your dear friend were  
10 going to come get you personally, right?

11 A Correct.

12 Q That's what you were so scared about, that you wanted  
13 Danny Simon to give you back all the money to repay Margaret? Fair?

14 A Incorrect. I wasn't scared, sir.

15 Q Okay. Well, I mean, maybe scared is -- that's what you  
16 were -- I'm trying to think of the word you used when describing  
17 being -- I think you said you were nervous or you didn't like being  
18 overextended in this August, '17 time frame when you were trying to  
19 renegotiate the deal with Mr. Simon. I'm not being pejorative; I'm trying  
20 to make -- get on the same page as you. Is that an accurate statement?

21 A I was nervous, and it was causing stress that I owed a lot of  
22 money, correct.

23 Q All right. And so, you wanted to borrow -- you wanted Mr.  
24 Simon, if he wanted to strike a deal on this new aspect of the case, and  
25 you wanted to strike a deal on this new aspect of the case, to essentially

1 give you back whatever 300,000, plus the 24 to 36 percent interest that  
2 you had been carrying that note, right?

3 A Option or partial.

4 Q And that would have meant you wanted Mr. Simon to give  
5 you a loan as your lawyer, right?

6 A No.

7 Q Well, what was --

8 THE COURT: Mr. Christiansen, can you clarify what you  
9 mean by give him back? Like is he asking Mr. Simon for the money? Is  
10 he asking Mr. Simon that the settlement --

11 MR. CHRISTIANSEN: Sure.

12 THE COURT: -- be more so he can pay them back? Like I'm  
13 not --

14 BY MR. CHRISTIANSEN:

15 Q I took from your testimony yesterday, sir, that in August,  
16 when you started writing the emails that we've discussed, in an effort to  
17 reach an agreement on the new aspect of the case, as you've testified  
18 about, that one of the things you were really interested in is paying  
19 Margaret, Mrs. -- Ms. Ho back her initial loan, at that moment in time,  
20 correct?

21 A I don't agree with everything in your statement. That's why  
22 I'm having difficulty saying correct or incorrect. It wasn't a new aspect of  
23 the case, it was the same case, but one of the reasons that I wanted to  
24 renegotiate, to stop paying hourly and maybe go to anything -- and there  
25 was three different things. I could -- you could either pay a fee, you

1 could pay a lower fee and give up some of the upside of the case, or you  
2 could take money back from fees already paid and maybe give a  
3 different percentage. There's a lot of levers you could negotiate here.  
4 That's what I meant.

5 Q Those were your words, levers. I couldn't recall what you  
6 called them.

7 A Yeah.

8 Q Those are levers that you were --

9 A Yeah, if one goes up, the other might go down. One might  
10 be in my interest,, one might be a better risk profile for him. It depends.  
11 That's how you negotiate different deals.

12 Q And one of the things you desired, as you told the Court, you  
13 testified to yesterday, was the desire to pay that first loan back?

14 A Yes.

15 Q To relieve some stress?

16 A Correct.

17 Q Okay. That loan would have been in excess of all the monies  
18 you would have paid in attorney's fees by that point in time, August,  
19 correct?

20 A I don't know the exact date, but it would be substantial.

21 Q So, that would have -- in effect, had been asking Mr. Simon  
22 for a loan --

23 A No.

24 Q -- to be your lawyer on your case, correct?

25 A I disagree.

1 Q Well, I mean you talk about all the charities that you give to  
2 and the like. Do you remember that testimony yesterday? It was about  
3 the first 30 minutes of your --

4 A Yes, I do.

5 Q All right. In recent years, has anybody on your Board, or  
6 yourself, or your volleyball charity, given money to any other charities,  
7 sports charities, here in the Las Vegas area?

8 A Has anyone --

9 Q Like you donated money to Gorman, for example, where  
10 your kids go to school?

11 A Yes.

12 Q Recently?

13 A Three or four weeks ago. I don't know, my child just started  
14 at Gorman, sir.

15 Q All right.

16 A I think I've donated \$6500 to Gorman.

17 Q I just want to go back in time. Do you remember when I  
18 showed you your second email? I'm sorry, your second affidavit dated  
19 the 12th, that it says that it's your work, in singular, that caused the case  
20 to increase in value. Do you remember that?

21 A Yes.

22 Q Sir, tell me the rule of criminal procedure that would allow  
23 into evidence the U.K. stuff you located in a case against Viking.

24 A I don't know.

25 Q That's interesting because criminal rules -- this is a civil case.

1 You didn't understand the distinction, right?

2 A Correct.

3 Q And you don't know the Rules of Evidence, correct?

4 A Correct.

5 Q You don't know the Rules of Civil Procedure?

6 A Correct.

7 Q You don't know how to make an offer of judgment?

8 A Correct.

9 Q Sir, did you understand that when Mr. Simon, on your  
10 behalf, offered, with your express consent, Lange to settle for a million  
11 dollars, the entire case, in March of 2017, that, in fact, he was trying to  
12 uncap or open up the Lange insurance policy?

13 A Yes, I did. He explained that to me. I didn't understand it  
14 before.

15 Q Okay. And so, when you were telling the Judge yesterday  
16 that it didn't make any sense to you that Lange might have to pay more  
17 than their one million, you sort of forgot the portion where Mr. Simon  
18 had explained that policy likely had been opened for their refusal to  
19 settle with you for one million, correct?

20 A Correct.

21 Q Okay. Do you know what makes evidence admissible?

22 A No.

23 Q Okay. So, can we agree all the things you found, you don't  
24 even know if they could ever been used at a trial?

25 A They wouldn't need to be.

1 Q Well, actually, sir, things have to be admissible for lawyers to  
2 think they can affect the outcome of a case.

3 MR. GREENE: Is that a question?

4 BY MR. CHRISTIANSEN:

5 Q Did you know that?

6 A I disagree.

7 Q Okay. And, sir, early on -- and I'll keep the timeframe for you  
8 -- but when you told me Danny was helping you as a favor initially on  
9 the 27th, 28th of May. Do you remember that time frame?

10 A Correct.

11 Q He wasn't billing you like your other hourly lawyers have  
12 billed you every single month, fair?

13 A No, he actually did bill me for the 27, 28.

14 Q Sir, maybe I'm asking an inartful question. Was he -- he was  
15 not billing you like at the end of May 2016, the end of June 2016. That  
16 didn't occur, right?

17 A Oh, periodical?

18 Q Correct.

19 A No.

20 Q He was doing it as a favor, right?

21 A No, I was billed.

22 Q And when you got the bills, you know they weren't for all his  
23 time, right?

24 A Of course they were.

25 Q I don't have them, but do you remember that big pile of

1 emails that sat over here in like six or seven or eight boxes?

2 A The 5,000?

3 Q Yeah, five-ish thousand.

4 A Emails, yeah.

5 Q They seemed like five million when I was trying to get  
6 through them, but there are a lot of emails, right?

7 A Right.

8 Q On the initial bills that you got, there is no way in heaven you  
9 believed that you were getting billed for all those emails, correct?

10 A Sure, he could have read them.

11 Q He could have?

12 A Just ask the initial bills.

13 Q I know, sir. That's -- well, let's do that. So, do you remember  
14 yesterday with Mr. Greene and John --

15 [Counsel confer]

16 BY MR. CHRISTIANSEN:

17 Q -- you were looking with Mr. Greene at this spreadsheet you  
18 put together.

19 A Yes.

20 Q Do you remember that?

21 A Yes.

22 Q And you were telling -- you were testifying that you had  
23 some, my term and not yours, some misgivings about the bills?

24 A Yes.

25 Q And that you put those in the spreadsheet that you had, and

1 I'm bad with technical terms, but I think you converted a PDF to an Excel  
2 and were having some difficulties with the conversion?

3 A Yes.

4 Q Right. And when Mr. Greene asked you questions -- and I'll  
5 just use an example, you had Day 1 and Day 2, where you were telling --  
6 or you had the opinion that you had been overbilled or double-billed. Do  
7 you remember that testimony?

8 A This isn't one of them, sir, no.

9 Q No, it was when Mr. Greene was asking questions, then Her  
10 Honor asked you some questions, and you agreed this was likely a  
11 mistake.

12 A This one, yes, it was likely.

13 Q All right. And you got a bunch of likely mistakes on here,  
14 right?

15 A Likely. There's hundreds of entries, there's likely mistakes.

16 Q Right. And this is something you prepared in an anticipation  
17 of testifying that you didn't want to pay Mr. Simon any more money,  
18 correct?

19 A No.

20 Q Did you prepare it?

21 A I prepared it.

22 Q And you're here testifying, right?

23 A Yes.

24 Q In an effort to not pay Mr. Simon, correct?

25 A No.

1 Q And one of the things, the areas you dealt with --  
2 MR. CHRISTIANSEN: -- was it the 8/20 and 8/21, Ms. Ferrel?  
3 MS. FERREL: Yes.

4 BY MR. CHRISTIANSEN:

5 Q Is that you patched together --  
6 [Counsel confer]

7 BY MR. CHRISTIANSEN:

8 Q -- you told the Judge that you thought you were -- the bills  
9 weren't fair. You didn't want to pay them because this is -- I guess this is  
10 the old bills, is that right? There's some entries on 8/21, do you see  
11 those?

12 A Yes, I do.

13 Q For emails, including to Pancoast, discussions with client,  
14 and AF, Ashley Ferrel, review file and finalize reply to opposition to  
15 motion to compel. Did I get those right?

16 A Correct.

17 Q And then you told the Judge, likely -- you used the word  
18 seemed impossible because you don't -- you didn't know for sure that  
19 these same bills, or these different entries on the 20th of August looked  
20 the same to you, and you thought they're probably for all the same stuff.

21 A Very possible.

22 Q Possible, right?

23 A Correct.

24 Q Sir, do you know that we don't, in the course of law, talk  
25 about possibilities, we talk about probabilities? Did you know that?

1 A No.

2 Q And so, when you prepared this to come in and talk about  
3 what you possibly -- it didn't happen in your case, that's all this reflects  
4 was possibly didn't happen in your case, correct?

5 A Yes, it's possible.

6 Q You don't have one way or another knowing if you were  
7 double-billed or if those bills that you received in January of this year are  
8 100 percent accurate?

9 A It's impossible to know.

10 Q You don't know?

11 A It's impossible to know.

12 Q And I'll just make it super easy, using -- to give you an  
13 example. On the 20th of August, you sent -- well, it's actually not  
14 impossible, is it, Mr. Edgeworth? You have all your emails, right?

15 A Most of them probably.

16 Q So, if you wanted to tell Her Honor, I know what I sent him  
17 on the 20th, and it's the exact same thing that he billed me for on the  
18 21st, or vice-versa, you could just go compare your emails, right?

19 A The emails depend when the person reads them versus  
20 when you send them, sir.

21 Q Because you sent 12 on the 20th, and then you sent ten on  
22 the 21st.

23 A Okay.

24 Q That was pretty typical Brian Edgeworth back in August,  
25 right? You're inundating these lawyers with emails on a daily basis,

1 correct?

2 A Correct.

3 Q For which now you oppose their efforts to get paid, correct?

4 A No, I'm not opposing their efforts to get paid, sir.

5 Q Well, would you agree that when yesterday you tell Her  
6 Honor that you think you were double-billed for August, the 20th and  
7 August, the 21st, that was an effort to convince the Judge that you  
8 shouldn't have to pay both invoices, right?

9 A No, it was to demonstrate there's anomalies through this,  
10 and I don't have enough information to know whether they're valid bills  
11 or not.

12 Q Right. And who's decision was that to end communications  
13 with the law office of Danny Simon? It was yours, right?

14 A Yes.

15 Q It was yours done in conjunction with the advice from Vanna  
16 and Vannah, these nice lawyers, correct?

17 A Correct.

18 Q It was yours from -- you told Mr. Greene this morning,  
19 November the 25th, when you said, stop talking to me about fees, Mr.  
20 Simon. I want it in writing.

21 A About the fee agreement --

22 Q Right.

23 A -- he was proposing to change, not about fees.

24 Q Okay. And then on the 5th, Mr. Greene said, just direct  
25 everything to me, John Greene.

1 A Correct, to pass on.

2 Q Right. After they had advised you on the settlement of the  
3 Viking case, correct?

4 A Well, I'm not sure about the time and the dates, but possible.

5 Q And that two days before they had you sign the consent to  
6 settle, saying that you were walking away from the Lange claim for a  
7 hundred grand, correct?

8 A It seems the right date.

9 Q And you never tested -- that was, as you told me,  
10 inconsistent with the advice Mr. Simon gave you relative to Lange?

11 A Yes, it was different.

12 Q Right. And you chose -- I think you said you were impressed  
13 with Teddy -- Mr. Parker, and you chose to not test Mr. Simon's theory,  
14 and instead, heed the advice of Mr. Vannah and Greene, correct?

15 A No, I did a risk for reward analysis on the whole thing.

16 Q At the end of your risk for reward analysis, you decided to  
17 heed or listen to these gentlemen's advice, correct?

18 A I took the settlement, correct.

19 Q And to disregard Mr. Simon's advice, correct?

20 A Correct.

21 Q And from that point forward, you have not had any verbal  
22 conversations with Danny Simon?

23 A Correct.

24 Q And when you many, many times yesterday, told Mr. Greene  
25 you had no explanation, you couldn't figure it out, that's because you

1 stopped talking, and listening to, and trusting your lawyer, right? Mr.  
2 Simon?

3 A What -- figure what out, sir?

4 Q The bills that you had all these questions about, that you  
5 tried to impugn Mr. Simon with yesterday.

6 A No, we asked you guys questions too, the counsel.

7 Q I don't know what you're talking about Mr. Edgeworth. Mr.  
8 Edgeworth?

9 A Yes, sir.

10 Q You stopped talking to Mr. Simon, right, not the other way  
11 around?

12 MR. GREENE: I think we covered this, Your Honor, about -- a  
13 few times.

14 MR. CHRISTIANSEN: I'll move on, Judge.

15 THE COURT: Okay. Proceed.

16 BY MR. CHRISTIANSEN:

17 Q In terms of -- do you remember today telling the Judge that  
18 Mr. Parker had raised an issue about the contract and whether it was  
19 valid or enforceable, et cetera, relative to Lange?

20 A Yes.

21 Q And did you get advice from the Vannah firm that that  
22 contract was not valid?

23 A No.

24 Q They did not tell you that?

25 A Pardon me?

1 Q Never mind. I'll let it stand. And the rate you're willing to  
2 pay lawyers to stop you or prevent you from paying Mr. Simon is 925 an  
3 hour?

4 A No.

5 MR. GREENE: Objection, irrelevance.

6 MR. VANNAH: And it wasn't the purpose of the contract.

7 MR. GREENE: It really wasn't, Your Honor. We're talking  
8 about the amount of fees or not that Mr. Simon's law firm is entitled to  
9 receive based upon the work he's performed.

10 MR. CHRISTIANSEN: Okay.

11 MR. GREENE: All this other stuff is irrelevant.

12 MR. CHRISTIANSEN: It goes to the reasonableness of the  
13 hourly fee, Judge. It's not --

14 THE COURT: Okay. Well, Mr. --

15 MR. CHRISTIANSEN: It sets it. It sets it.

16 THE VANNAH: It might be by your fee, and you can't  
17 compare my fee to --

18 THE COURT: Okay, okay. Mr. Vannah, I'm going to have to  
19 ask that you not object when it's not your witness. I understand. I  
20 understand.

21 MR. VANNAH: But you -- but you ordered me to give the  
22 contract to them so they can see the date.

23 THE COURT: Right.

24 MR. VANNAH: I did that.

25 THE COURT: And read the contract.

1 MR. VANNAH: And to see the scope of the work.

2 THE COURT: And if you would let me finish, Mr. Vannah,  
3 what I was about to say is the contract is in evidence. I've seen it. We've  
4 all gone over the fees, and we're going to move on.

5 MR. VANNAH: Thank you.

6 BY MR. CHRISTIANSEN:

7 Q Mr. Edgeworth, you don't have an expert to testify in this  
8 hearing; is that fair? You did not disclose an expert?

9 A I don't think so.

10 Q You're not an expert in the area of legal fees, can we agree  
11 on that?

12 A No, I'm not.

13 Q Tell me the ruling in the *Hallmark* decision.

14 A I don't know.

15 Q Do you know that's the ruling that the Judge relied upon to  
16 exclude Viking's experts?

17 A Yes.

18 Q But you don't know the ruling?

19 A No.

20 Q So, that was Danny Simon's work that got that result?

21 A Correct.

22 Q And can we agree that in January you got the superbills?  
23 The two, one from Ashley, one from Danny?

24 A It was attached. I've never received them. I only got them on  
25 the thing from the Court, but, yes, it was late January.

1 Q And from the time you received them to today's date, you've  
2 not written Mr. Simon a check for those entries from the last day, the end  
3 of September through the end of January, right?

4 A No, I thought that's why we're here.

5 Q And that's the same as when you owed restoration money  
6 and you said, well I don't have a contract, so I'm not going to pay them  
7 either. Do you remember that email?

8 A I paid restoration, sir.

9 Q Not at the time I showed you the email. You weren't paying  
10 them, because you didn't have a contract. Do you remember that?

11 A We had a contract. It was the next day, Mark Jaberdie  
12 (phonetic throughout) came to the office. Mr. Simon knows this. He  
13 called, and Mark Jaberdie admitted that he had signed something when  
14 the first day they came, which committed American Grating to it.

15 Q Sir, do you remember the email that says we don't have a  
16 contract?

17 A Yes, I do.

18 Q Okay. We'll let the Judge figure -- if she recalls it, too.

19 THE COURT: Mr. Christiansen, we're going to go until 12,  
20 and then we're going to go to lunch. So, are you going to be done or  
21 no?

22 MR. CHRISTIANSEN: Judge, if you want to stop now, I might  
23 be done, and maybe I could just look at my notes over the lunch hour,  
24 and then come back and I might have a tiny bit more, but I think I'm  
25 probably real close to being done.

1 THE COURT: Okay. Well, then let's just do that.

2 MR. CHRISTIANSEN: Okay.

3 THE COURT: Let's just break for lunch right now. We'll be at  
4 lunch for an hour-and-a-half. We'll be back at 1:30.

5 And then, Mr. Christiansen, you can look over your notes,  
6 and then, Mr. Greene, I'll give you an opportunity if you have some  
7 follow-up question, but that's totally your call, no pressure. I mean it's  
8 totally your call.

9 MR. GREENE: It's going to be very, very, very short.

10 THE COURT: Okay. And then we will -- Mr. Edgeworth will  
11 finish testifying today?

12 MR. GREENE: Yep.

13 THE COURT: If we all keep our fingers crossed?

14 MR. CHRISTIANSEN: Yeah, yeah.

15 THE COURT: Okay.

16 MR. CHRISTIANSEN: And Ms. Ferrel's next, Judge. Just  
17 so -- I told Mr. Vannah that.

18 THE COURT: Okay. I didn't know if, you know, you guys --  
19 so just so I can inquire, if you guys aren't keeping any secrets, who are  
20 these other 12 people?

21 MR. CHRISTIANSEN: Judge, I think from our standpoint,  
22 from the Simon standpoint, the witnesses will include Ms. Ferrel, Mr.  
23 Simon, and Mr. Kemp.

24 THE COURT: Okay.

25 MR. CHRISTIANSEN: And then that's it for us. I can't speak

1 for these fine gentlemen.

2 MR. VANNAH: Well, it was their witnesses, that we had a list  
3 of 14, so. I'm not -- and I'm glad we're paring them down; I'm not  
4 complaining about that.

5 THE COURT: Okay.

6 MR. VANNAH: So, we're going to have in the future then, so  
7 I don't prepare people I don't need to prepare for. Ms. Ferrel.

8 MR. CHRISTIANSEN: Today.

9 MR. VANNAH: Mr. Simon.

10 MR. CHRISTIANSEN: Tomorrow.

11 MR. VANNAH: And Mr. Kemp.

12 MR. CHRISTIANSEN: Tomorrow.

13 MR. VANNAH: That's it.

14 THE COURT: Okay. And then who would you guys call?

15 MR. VANNAH: Well, we just finished with our client.

16 THE COURT: Right.

17 MR. VANNAH: Oh, are you going to call --

18 THE COURT: But I thought Mrs. Edgeworth, because I know  
19 yesterday there was a discussion about whether she was going to be  
20 called.

21 MR. VANNAH: Well, that's why they asked us to have her  
22 here so they could put her on the stand, so we brought her.

23 THE COURT: All right.

24 MR. CHRISTIANSEN: I think I'm going to be able to, with Mr.  
25 Edgeworth, to get -- because everybody --

1 THE COURT: Everybody here is a trial lawyer. We know how  
2 that works.

3 MR. CHRISTIANSEN: Things were all agreed to and admitted  
4 without my -- I didn't know, as you guys remember, from Day 1. So, I  
5 think with Mr. Edgewood, I can get what I need to and may not have to  
6 call Mrs. Edgewood.

7 THE COURT: Okay. And I was just inquiring for timing. Like  
8 we all know who this works, you know, sometimes you get somebody,  
9 one witness, so you don't even call anybody else. I totally understand.

10 MR. CHRISTIANSEN: I'm going to try to do that, Judge.

11 THE COURT: Okay.

12 MR. CHRISTIANSEN: So that is probably my last area of  
13 inquiry.

14 THE COURT: Okay.

15 MR. VANNAH: And it looks like a good chance we're going  
16 to finish tomorrow. What time is Will coming?

17 MR. VANNAH: Oh, you are so optimistic, Mr. Vannah.

18 [Recess at 12:00 p.m., recommencing at 1:31 p.m.]

19 THE COURT: -- American Grading v. Daniel Simon.

20 Mr. Edgeworth, if you could, just come back on the stand.

21 And I would like to remind you, sir, that you're still under oath.

22 THE WITNESS: Yes, ma'am.

23 THE COURT: Okay. Mr. Christiansen, you were doing your  
24 redirect.

25 MR. CHRISTIANSEN: I was, Your Honor.

1 BY MR. CHRISTIANSEN:

2 Q Mr. Edgeworth, I want to focus your attention on the month  
3 of August 2017 and start you with the trip that you and Mr. Simon make  
4 down to San Diego, to my understanding, to deal with some expert  
5 issues.

6 A Correct.

7 Q It was about August 8, August 9? In that area?

8 A Nine, I believe.

9 Q Nine?

10 A Yes.

11 Q Okay. And you told Mr. Greene yesterday that that was at a  
12 time that Lange had a better expert than you guys did, that you were not  
13 too happy with what your expert -- you and Danny weren't too happy  
14 with what your expert or experts were doing?

15 A We weren't -- yeah, we weren't happy with some of his  
16 explanations and stuff.

17 Q And sir, did you know that, in fact, Lange hadn't disclosed  
18 any experts? Their experts weren't even due yet?

19 A They made a lab report right at the start, sir.

20 Q So, they didn't have any disclosed experts? You were talking  
21 about a lab report from right at the start?

22 A Yes. Kinsale had an expert at the start.

23 Q Gotcha. And again, if we just stick with that time frame in  
24 the August-ish time frame, that's when you -- I want to try to keep things  
25 in order -- authored the --

1 MR. CHRISTIANSEN: -- John, this is page 27, I'm sorry.

2 BY MR. CHRISTIANSEN:

3 Q The August 22nd email we've all looked at. I'm not going to  
4 beat the horse. I just wanted to put it up in front of you, so you see  
5 that's --

6 A Yes.

7 Q -- the date. And that's your email entitled contingency --

8 A Right.

9 Q -- about -- and what you write is, obviously, that could not  
10 have been done earlier since who would have thought this case could  
11 have -- would meet the burden of punitives from the start. Those are  
12 your words?

13 A Correct.

14 Q Okay. This is the time when yesterday, you were describing  
15 to Mr. Greene, you wanted a better deal, right? That's what you were  
16 looking to negotiate was a better deal for you --

17 A Not --

18 Q -- right?

19 A -- exactly.

20 Q Sir, I didn't ask you if that's exactly what you wanted. I'm  
21 asking you if that's not exactly what you told Mr. Greene yesterday.

22 MR. GREENE: Your Honor, he answered the question.

23 Maybe he wants a different answer, but he answered the question.

24 MR. CHRISTIANSEN: This is a speaking -- coaching  
25 objection. It's not proper.

1 THE COURT: Okay. Your question was, wasn't he trying to  
2 negotiate a better deal for himself?

3 MR. CHRISTIANSEN: Yeah.

4 THE COURT: And then his response was not exactly?

5 THE WITNESS: Yeah.

6 THE COURT: Okay. So, you weren't trying to negotiate a  
7 better deal for yourself?

8 THE WITNESS: About a risk reward profile as explained  
9 yesterday.

10 THE COURT: Okay.

11 BY MR. CHRISTIANSEN:

12 Q I counted, when I watched it again last night, five different  
13 times you told Mr. Greene that during this time frame what was  
14 motivating you or going through your head was trying to get a better  
15 deal for you, correct?

16 A Sort of the way you --

17 Q Okay.

18 A -- say it, yeah.

19 Q And on what you've told me today to use your terms was a  
20 new aspect of the case, correct? That's what you said today, right?

21 A I don't know that I said -- there was new evidence in the case,  
22 correct.

23 Q Didn't you, in fact, before lunch, call it a new aspect?

24 A I'm not sure if I used that exact phrase.

25 Q You don't remember right before lunch?

1           A    No.

2           Q    That's fine.

3           A    I don't remember the exact phrase I used to describe  
4 something.

5           THE COURT: Okay. But you meant like a new area of the  
6 case, right, Mr. Edgeworth?

7           THE WITNESS: No, ma'am. What I meant was that the case  
8 had far more potential than Mr. Simon had originally said that it had. At  
9 first, it was only a \$500,000 damage case.

10          THE COURT: Right. I've got that Mr. --

11          THE WITNESS: Yeah.

12          THE COURT: -- Edgeworth, but I believe you said new  
13 aspect, but you don't remember if you used that word exactly, but you  
14 said something along those lines right before lunch?

15          THE WITNESS: Yeah.

16          THE COURT: Okay.

17          THE WITNESS: It was a new opportunity.

18          MR. CHRISTIANSEN: All right.

19 BY MR. CHRISTENSEN:

20          Q    And you never were able to negotiate or reduce to writing a  
21 better deal for yourself, correct?

22          A    No.

23          Q    That's not fair or that is fair?

24          A    Well, that's a weird question. I was never able to negotiate a  
25 better deal for myself.

1 Q Okay. And the case settled on or about the middle of  
2 November with at least as to the number, the six million of Viking?

3 A Correct.

4 Q And after the case settled, Mr. Simon asked you to put in  
5 writing what you thought the value of your case was, the true damages  
6 that you incurred?

7 A He asked me to send him the spreadsheet I've been sending;  
8 correct.

9 Q And that is from --

10 MR. CHRISTIANSEN: Mr. Greene, I'm sorry.

11 MR. GREENE: That's okay.

12 MR. CHRISTIANSEN: Thirty-nine.

13 MR. GREENE: Thank you.

14 THE COURT: That's your 39, Mr. Christiansen?

15 MR. CHRISTENSEN: It's my 39, Your Honor.

16 THE COURT: Okay.

17 BY MR. CHRISTIANSEN:

18 Q And the new spreadsheet is dated November 21, from you,  
19 Brian Edgeworth, to Daniel Simon, and it's entitled -- the subject line is,  
20 this is the updated sheet of costs?

21 A Correct.

22 Q Right at the top, you say, it does not include any of my time  
23 on the case or lost profits?

24 A Correct.

25 Q And this was the one that I think, right before lunch, to Mr.

1 Greene, right before I started questioning, you testified that the number  
2 3.8, in your mind, was plus, plus?

3 A Yeah. The three pluses that were still there are legal bills not  
4 yet paid because there's a whole bunch of hours, so he hadn't billed yet  
5 for it at that point. It basically destroyed my construction business that  
6 actually has a value. And me and Mark spent a ton of time, correct.

7 Q Right. You wanted to be paid for all your time, correct?

8 A Correct.

9 Q All right. And your construction business, isn't it true, Mr.  
10 Edgeworth, the house that flooded was the first home from beginning to  
11 end, this construction business of yours had ever completed?

12 A From beginning to end, yes.

13 Q Oh, okay. And so, did you have an expert to line item in your  
14 lawsuit the loss of your construction business to go into here?

15 A No.

16 Q Okay. So, that's just a soft number in your mind that you  
17 wanted to recover for it?

18 A I wouldn't call it soft.

19 Q Okay. You didn't have an expert, fair?

20 A Fair.

21 Q All right. And when you tallied this all up -- and you were  
22 free to do this on your own, right? In other words, Mr. Simon is not  
23 causing you any undue hardship to do another one of these  
24 spreadsheets --

25 MR. CHRISTIANSEN: -- I'm sorry. I didn't think I did that.

1 THE COURT: It's not you, it's fine.

2 MR. CHRISTIANSEN: I could have --

3 BY MR. CHRISTIANSEN:

4 Q In other words, you did this of your own free will?

5 A Yes, I did.

6 Q And the number you came to was \$3,827,147.96?

7 A Correct.

8 Q And included in that is Mr. Simon's brother-in-law's figure  
9 for a million-five?

10 A Correct.

11 Q So, if we just assume your math is right, after the case is  
12 settled and excluding all the soft costs that you didn't have experts to  
13 support, like your lost construction business, you thought you had been  
14 overpaid 2.2 million, roughly?

15 A That's not the words I would use.

16 Q You got six, right?

17 A Correct.

18 Q You put 3.8 in change on this sheet, correct?

19 A Correct.

20 Q The difference is about 2.2 million, correct?

21 A Correct. I just wouldn't call --

22 Q And then if --

23 A -- it overpaid.

24 Q And then if I happen to back out what Mr. Simon's brother-  
25 in-law added to the value of the case, you were overpaid 3.8 million,

1 right?

2 A Same objection. I wouldn't use those words, but I --

3 Q Sir, you just have to answer my question. You don't need to  
4 make objections. The number -- the math --

5 A The math.

6 Q -- would simply be --

7 A Correct.

8 Q -- 3.8 million, right?

9 A About 2.3, I think you said, sir. You said subtracted out --

10 Q Right.

11 A -- it would be about 2.3.

12 Q And you got how much?

13 A Six.

14 Q So, you were overpaid 3.7?

15 A I still don't agree with that, yeah.

16 Q The difference in the math is 3.7 million?

17 A Correct.

18 Q And, similarly, if we did math, and we put Mr. Greene's  
19 hourly rate at 925 on the hours spent by Danny Simon and Ashley Ferrel  
20 and submitted it to you in the big superbills, two superbills, do you know  
21 what that math comes out to?

22 A I have no idea, sir.

23 MR. GREENE: Object to the relevance. That has nothing to  
24 do with the fee agreement that Mr. Edgeworth has testified that he and  
25 Mr. Simon reached back in June of 2016.

1 MR. CHRISTIANSEN: Your Honor, respectfully, that's an  
2 evidentiary objection. That's testifying.

3 MR. VANNAH: No, it's not.

4 MR. GREENE: No, it's not.

5 THE COURT: Well, he made a relevance objection.

6 MR. GREENE: Exactly.

7 THE COURT: What's the relevance of this, Mr. Christiansen?

8 MR. CHRISTIANSEN: The relevance is they've established an  
9 hourly rate and I -- by turning over what they're willing to pay as a fair  
10 hourly rate, and I use Mr. Greene, not Mr. Vannah, intentionally, and I  
11 want to just know has he done the math to the hours performed by Ms.  
12 Ferrel and Mr. Simon to that rate.

13 MR. GREENE: There's still absolutely no relevance in the  
14 agreement that he needed to reach with our firm versus what was clearly  
15 patterned and reached with Mr. Simon's firm.

16 THE COURT: Right. And we got the 550 an hour, so is this  
17 just a numbers thing, Mr. Christiansen?

18 MR. CHRISTIANSEN: It was, Your Honor. It was just  
19 numbers.

20 THE COURT: Okay. You can answer the question, sir, if  
21 you've done the math. Have you done the math?

22 THE WITNESS: No.

23 THE COURT: Okay.

24 BY MR. CHRISTIANSEN:

25 Q Would it surprise you to know it's about 2.3 million?

1 A I have no idea.

2 Q And, sir, remember right before or sometime in my last  
3 session with you we talked about the volleyball emails that we've sort of  
4 all referred to that way, and then how it came about you felt the way you  
5 felt. Remember those discussions?

6 A Yes.

7 Q And you told the Court on questions from Mr. Greene that  
8 you felt threatened when you got Mr. Simon's November 27th response  
9 to your November 21st email; do you remember that?

10 A Correct.

11 MR. CHRISTIANSEN: And just so I'm clear, John, this is  
12 exhibit -- Mr. Greene, this is Exhibit 40.

13 MR. GREENE: Okay.

14 MR. CHRISTIANSEN: Okay.

15 BY MR. CHRISTIANSEN:

16 Q And that's -- so we're all clear, this is -- Mr. Simon's  
17 November 27th letter is exactly what you had told him you wanted;  
18 something in writing, fair?

19 A Something in writing, correct.

20 Q In response to your November 21st breakdown that you  
21 could evaluate yourself?

22 A Correct.

23 Q And this was -- you told him that on the, I think you recalled  
24 specifically, the November 25th phone call where you said, I've had  
25 enough?

1 A Correct.

2 Q Give it to me in writing?

3 A Correct.

4 Q And the way it ends, and Mr. Greene shows you this, it says,  
5 if you're not agreeable, then I cannot continue to lose money to help  
6 you. I'll need to consider all options available to me.

7 A Correct.

8 Q Did it say in this letter that he would try to ruin your  
9 settlement?

10 A Yes, I think that does.

11 Q That says I'm going to try to ruin your settlement?

12 A In context with what was said in his office, definitely.

13 Q That's sort of like when you made yourself fill out an  
14 application to get checked at the volleyball club, right? That's like a self-  
15 imposed distress, because that's not what the words say, right, sir?

16 A No. The implication is clear.

17 Q The words don't say that, right?

18 A Yes, they do, sir.

19 Q Does it say withdraw?

20 A No.

21 Q That was something you were worried about?

22 A Yes.

23 Q That was another self-imposed distress, correct?

24 A No.

25 MR. CHRISTIANSEN: I'm sorry, Your Honor. I'm almost

1 done. John, Exhibit 42.

2 BY MR. CHRISTIANSEN:

3 Q Mr. Edgeworth, this is the one area I just wanted to ask you.  
4 Have you seen this email from your wife to Mr. Simon?

5 A I was copied it, yes.

6 Q I didn't hear you, sir. Somebody coughed.

7 A I was copied on the email.

8 Q Oh, you were?

9 A Yeah.

10 Q I apologize. It's dated that same day that Mr. Simon's letter  
11 came to you?

12 A Yes.

13 Q And this is -- your wife writes. As you know, Brian is out of  
14 town and in China at the moment. I will need a couple of days to discuss  
15 this with him. We will be glad to meet once he is back. Did I read that  
16 accurately?

17 A Yes.

18 Q We would need to have our attorney look at this agreement  
19 before we sign. In the meantime, please send us the Viking agreement  
20 immediately so we can review it. Angela Edgeworth. Correct?

21 A Correct.

22 Q This is about 10 days after the meeting you described, that  
23 first meeting?

24 A Correct.

25 Q There's nothing in here about being threatened, fair?

1 A Fair.

2 Q Nothing in here about being blackmailed or extorted?

3 A Fair enough.

4 Q And in fact, what Mrs. Edgeworth is saying is that you all will  
5 be glad to meet with Mr. Simon once Mr. Edgeworth, Brian, is back from  
6 China?

7 A Correct.

8 Q And the day you got -- as I understand your testimony from  
9 Mr. Greene yesterday, actually what happens is the day you get back  
10 from China, you go right to Mr. Vannah's office and hire him?

11 A That is correct.

12 THE COURT: And I have one question about that, Mr.  
13 Christiansen. So that email was sent before you returned from China?

14 THE WITNESS: Yeah. Your Honor, I was still in China. It's  
15 confusing because --

16 THE COURT: Okay. I just need a yes or no, Mr. Edgeworth.

17 THE WITNESS: Yes. Sorry, yes.

18 THE COURT: I'm trying my best to stop your testimony  
19 today.

20 THE WITNESS: I'm sorry, ma'am. I --

21 THE COURT: , that email was sent by your wife. You were  
22 CC'd on it, but you were still in China?

23 THE WITNESS: Yes, I was.

24 THE COURT: And when did you return from China?

25 THE WITNESS: The 29th.

1 THE COURT: Okay. And then that's the day you guys met  
2 with Mr. Vannah?

3 THE WITNESS: That's correct.

4 THE COURT: So, who is the attorney that she's referring to  
5 in the email? She says, we need to meet with our attorney. Who is she  
6 talking about? Do you know?

7 THE WITNESS: I don't know. I didn't --

8 THE COURT: Okay.

9 THE WITNESS: I didn't really --

10 THE COURT: And then is that email being sent in reference  
11 to the Viking settlement agreement?

12 THE WITNESS: Yeah. She's asking where is the Viking  
13 settlement agreement.

14 THE COURT: Right, but you need to meet with your attorney,  
15 and then she says, please send us the Viking settlement agreement, but  
16 the whole purpose of that email is about the Viking settlement  
17 agreement?

18 THE WITNESS: I believe so.

19 THE COURT: Okay.

20 BY MR. CHRISTIANSEN:

21 Q In one of your -- Mrs. Edgeworth's emails, she changes the  
22 female pronoun her; does that that help? When referring to a lawyer,  
23 would that help you understand who she was talking about?

24 A She was speaking to two of her friends. I know who she  
25 spoke with, but I didn't speak with them. Can I testify about that?

1 THE COURT: No, I asked you if you knew --

2 MR. CHRISTIANSEN: The Judge -- yeah.

3 THE COURT: -- who she was referring to --

4 MR. CHRISTIANSEN: I was just trying to help.

5 THE COURT: -- was the question.

6 THE WITNESS: I know who she spoke to. I don't know  
7 whether she had the intention to speak to them when she sent that.

8 THE COURT: Okay. Who was the lawyer that she spoke to,  
9 Mr. Edgeworth?

10 THE WITNESS: She spoke to Lisa Carteen and Miriam  
11 Shearing.

12 THE COURT: Okay.

13 BY MR. CHRISTIANSEN:

14 Q Justice Shearing?

15 A I believe she's a Chief Justice here, yes.

16 Q She was at some point.

17 THE COURT: Yes.

18 BY MR. CHRISTIANSEN:

19 Q I just want to show you, This is my -- I think my last exhibit  
20 for you, Mr. Edgeworth.

21 MR. CHRISTENSEN: John, this is 41. I'm sorry.

22 MR. GREENE: Uh-huh..

23 BY MR. CHRISTIANSEN:

24 Q This is Mr. Simon's response to your wife's email, and you're  
25 copied on it, as well, fair?

1 A Yes.

2 Q He offers to meet with your wife, correct? If you'd like to  
3 come to the office or call me tomorrow, I would be happy to explain  
4 everything in detail, right?

5 A Correct.

6 Q My letter also explains the status of the settlement and what  
7 needs to be done?

8 A Correct.

9 Q Due to the holiday, they probably were not able to start on it.  
10 I'll reach out to the lawyers tomorrow and get a status. I'm happy to  
11 speak with your attorney, as well. Let me know. Thanks. Did I read that  
12 all right?

13 A Correct.

14 Q No threats in that email, right?

15 A No.

16 Q No -- in fact, he expressively says he'll continue to work on  
17 your behalf, correct?

18 A Oh, I will reach out to the lawyers part?

19 Q Yeah.

20 A Correct.

21 MR. CHRISTIANSEN: That concludes cross-examination.

22 Thank you, Mr. Edgeworth.

23 THE COURT: Mr. Greene, do you have any re -- well, I guess  
24 it's kind of -- we're kind of doing it opposite. That's kind of the cross and  
25 yours will be a redirect.

1 MR. GREENE: Well, whatever we are. Let me just -- let me  
2 just confer for one second, please.

3 THE COURT: No problem. Take your time.

4 [Counsel confer]

5 MR. GREENE: We are so close to being done.

6 THE COURT: Okay. I'm keeping my fingers crossed, Mr.  
7 Greene. I'm not rushing you in any way. Go ahead. Take your time.

8 MR. GREENE: Okay.

9 RECROSS EXAMINATION

10 BY MR. GREENE:

11 Q Let's just finish with this meeting with Mr. Simon at his office  
12 on November 17th of 2017, okay? Brian, you testified earlier that there  
13 was a pile of documents that was brought in by Mr. Simon or a staff  
14 member and put on his desk; do you recall that testimony?

15 A Yes.

16 Q Did Mr. Simon ever indicate to you what was in that pile of  
17 papers?

18 A We went over some of it. It was listing all costs and stuff, but  
19 it didn't sum -- he explained that his software doesn't sum. It just puts  
20 negatives in, so I just had to ignore it and look at the end, and it was to  
21 show how much I paid in costs and how much he got.

22 Q Okay. At any time while you were there then at Mr. Simon's  
23 office on that day in November, did you -- did he present to you some  
24 kind of written proposal for you to sign concerning changing the fee  
25 agreement?

1           A     You -- he basically was going over a bunch of different  
2 options, and said we need to print something out and sign something,  
3 and present it, basically an agreement, you know. That's my view of it,  
4 and he said we need to sign. Did he physically present it? No, he did  
5 not, and he would not allow us to leave with anything when Angela  
6 asked for the agreement, so we could read it over on the way home. He  
7 didn't give it to us. He said first we needed to agree on how much he  
8 was getting.

9           Q     Let me just wrap up with one final short line of questions.  
10 Earlier, Mr. Christiansen made this out to be that you had approached  
11 Danny for selfish reasons for you to benefit from a change in the fee  
12 agreement; is that your understanding?

13          A     No. I wanted something that, from his perspective, was a  
14 win-win. Something that he would say, oh, I think this case is worth so  
15 much money that maybe my perception -- the one percentage was worth  
16 more to him than me. It's a role of perception on what the case is going  
17 to cost, what he might get in fees for the rest of the case versus his  
18 impression. So --

19          Q     Well, hang on. If Mr. Simon had given you a written  
20 proposal in August of 2017, for a contingency hybrid fee agreement  
21 based upon the expected value of the case, at that time, with you being a  
22 numbers guy, wouldn't he have benefitted economically, as well?

23          A     It would all -- yes, if his perception of the settlement was  
24 better than mine, it would all -- it would show a lot to me as a client on  
25 how much he thought the settlement was going to be. If it settled for the

1 six --

2 Q Okay.

3 A -- million.

4 Q Okay. Despite that he was going to benefit economically  
5 from a hybrid contingency fee agreement in August of 2017, did he ever  
6 present you with one?

7 A No. He didn't even present me with just a proposal on a  
8 piece of paper to start negotiating.

9 MR. GREENE: Let me show you one final billing entry, and  
10 then --

11 THE COURT: Sure.

12 MR. GREENE: -- I promise, Scout's honor, I'm done. I'll keep  
13 saying that until I am. And this is going to be the last page of Mr.  
14 Simon's billing entry for what we call the superbill, the new bill in  
15 January of 2018.

16 THE COURT: So, that's Exhibit 5?

17 MR. GREENE: Yes. I'm just finding the page number, Judge,  
18 and getting the exhibit --

19 THE COURT: Okay.

20 MR. GREENE: -- number. That's on page -- of all things, 79.

21 THE COURT: Okay.

22 MR. GREENE: It's also page 79 of Mr. Simon's bill.

23 BY MR. GREENE:

24 Q I draw your attention to the highlighted part, Brian.

25 A Yes.

1 Q Review all emails concerning service of all pleadings, 135  
2 hours. Do you see that?

3 A Yes.

4 Q Now, if my math is right, and I used the calculator, assuming  
5 that Ms. Ferrel's math is right, and I am assuming that, \$418,742 of total  
6 hours and fees billed from September 23rd through January 8th of 2018.  
7 Again, assuming simple math that 135.8 hours times \$550 per hour  
8 equals \$74,690. If the simple math shows that that's \$334,052; any  
9 reason to dispute that number, math guy?

10 A No.

11 Q What are your feelings as the consumer, the client, upon  
12 getting a block billing entry without a date for 135.8 hours?

13 A It's just not reasonable. It's \$75,000. It's just not a  
14 reasonable way to bill, and it seems incredulous.

15 Q You ever receive a billing entry like that in all the years that  
16 you've been in business and using lawyers and professionals?

17 A Absolutely not.

18 MR. GREENE: That's all I have, Your Honor.

19 THE COURT: Okay. Thank you, Mr. Greene.

20 MR. CHRISTIANSEN: Super quick, Judge, just on the areas  
21 Mr. Greene brought up.

22 John, may I see that little piece of paper you had?

23 MR. GREENE: Sure.

24 MR. CHRISTIANSEN: That last one.

25 FURTHER REDIRECT EXAMINATION

1 BY MR. CHRISTIANSEN:

2 Q Sir, one way or another, are you aware of this time entry that  
3 Mr. Greene was just talking to you about, whether you were billed for the  
4 emails referenced in that 135 hours and paid for those hours in any of  
5 your four invoices?

6 A It would appear so. They were --

7 Q I didn't ask you -- I don't want you to guess. Do you know  
8 whether you did?

9 A I do not know.

10 MR. VANNAH: Wait. I'm sorry. This has nothing to do with  
11 the four prior invoices. This is for the September 22 to January 18, this  
12 is that bill for that time, not the prior invoices. I think there may be some  
13 confusion there.

14 THE COURT: This bill is for September 22nd to -- well, my  
15 Exhibit 5 shows that this bill --

16 MR. CHRISTIANSEN: It's not, Judge.

17 THE COURT: -- started in May.

18 MR. CHRISTIANSEN: Mr. Vannah is just wrong. It's --

19 MR. VANNAH: You know what? If I'm wrong, I want to at  
20 least have -- I want to understand it.

21 MR. CHRISTIANSEN: It is, Bob. It's from the beginning.

22 THE COURT: Yeah. This started in May. The bill starts in  
23 May.

24 MR. VANNAH: So, all this -- this 135.8 goes all the way back  
25 to May?

1 THE COURT: Well, I mean, I don't know that that's in  
2 evidence, Mr. Vannah, but what I'm saying is my Exhibit 5 starts May  
3 27th of --

4 MR. CHRISTIANSEN: It does.

5 THE COURT: -- 2016. And so, I think what Mr. Christiansen is  
6 asking him is did he, on any of those previous invoices which go back  
7 that far, had he paid for the reading of these emails that he knows.

8 MR. VANNAH: And I guess that's the reason -- I guess that's  
9 the problem. I have no idea what that means, because we didn't do any  
10 discovery in the case, and I guess we're going to ask that of Daniel. I  
11 just --

12 THE COURT: Well, I guess -- yeah, Mr. Simon is going to  
13 testify, and you can ask him that.

14 MR. VANNAH: No, I made the assumption and maybe I'm  
15 wrong that that number was for September 22 until January 8th, but if  
16 it --

17 THE COURT: Right. And I don't have anything in evidence  
18 right now that tells me. I have no idea what that number is for.

19 MR. VANNAH: Oh.

20 THE COURT: I think we have to wait for Mr. Simon to testify.

21 MR. VANNAH: You know what that's a really good point. I  
22 might've made the wrong assumption here.

23 THE COURT: Yeah, I didn't -- I have no idea. Like from the  
24 testimony I've heard in the last three days, I don't know.

25 MR. VANNAH: I have no clue either. Okay. Thanks. I wasn't

1 trying to be obstructive. It was just trying to make sure I understood.

2 THE COURT: No, I think you were trying to clarify things in  
3 case Mr. Christiansen was confused, but I think I understood you to say --

4 MR. VANNAH: Yeah.

5 THE COURT: -- did you previously pay for the reading of  
6 these emails in any of those previous bills that you know.

7 BY MR. CHRISTIANSEN:

8 Q And I think, Mr. Edgeworth, your answer was you don't  
9 know?

10 A No. My answer would be yes, because they're detailed all  
11 the way -- thousands of lines above every single email.

12 Q Okay. And you would agree because of all the things we've  
13 talked about, there's never been, to your knowledge, a conversation from  
14 Mr. Greene to Mr. Simon saying, hey, explain this stuff to me. I mean,  
15 clearly, there's still some discrepancy, right?

16 A I don't know what Mr. Greene said.

17 Q All right. And the document -- I'm trying to grasp -- I'm  
18 trying to talk to you just about the last thing Mr. Greene did, which was  
19 the November 17th meeting that when we start, you had told me a  
20 document was placed in front of you, and you were asked to sign it.

21 A It was on his desk, and he insisted that we come to an  
22 agreement, sign the agreement before we leave. We asked for the  
23 document, he had never given to us until we got the email 10 days later.

24 Q Do you agree that just now, you told Mr. Greene you never  
25 actually saw what he wanted you to sign?

1 A No, I couldn't like grasp it. I couldn't grab it.

2 Q Okay. So, you couldn't tell the Judge what it looked like?

3 A No.

4 Q You couldn't tell the Judge details of it?

5 A No.

6 Q You couldn't tell the Judge what it was entitled?

7 A No.

8 Q All right. And then your testimony over lunch became that  
9 you were prevented from leaving with it, correct?

10 A Prevented? Maybe not -- that's not the right term. We  
11 weren't allowed to have it. He would not give it to us until we agreed --

12 Q So, in other words, you asked? You said, Danny, can I have  
13 those documents on your desk and take them with us?

14 A My wife insisted on we having something driving home to  
15 read, yes.

16 Q You asked and he refused. He said, you can't have these  
17 documents.

18 A He said not until we come to an agreement.

19 Q Okay, but you don't know what the documents were?

20 A Well, the new fee agreement would be my assumption.

21 Q Okay. So, you're just assuming, again?

22 A Yes.

23 Q Thanks, sir.

24 THE COURT: Any follow-up on that, Mr. Greene?

25 MR. GREENE: No, Your Honor.

1 THE COURT: Okay. This witness can be excused. Mr.  
2 Edgeworth, you can be excused. Thank you very much.

3 Is there a next witness?

4 MR. CHRISTIANSEN: Ashley Ferrel, Your Honor.

5 THE COURT: Okay.

6 THE MARSHAL: Please raise your right hand.

7 ASHLEY FERREL, PLAINTIFF'S WITNESS, SWORN

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

10 THE WITNESS: Ashley Ferrel, A-S-H-L-E-Y, F-E-R-R-E-L.

11 THE COURT: I'm sorry. I just had to laugh. It's always  
12 amazing that we have to always remind the lawyers to raise their right  
13 hand so they can be sworn, but all of our lay witnesses just get up here  
14 and raise their hand.

15 MR. CHRISTIANSEN: I took his Post-its and [indiscernible].

16 DIRECT EXAMINATION

17 BY MR. CHRISTIANSEN:

18 Q Ms. Ferrel.

19 A Yes.

20 Q Good afternoon.

21 A Good afternoon.

22 Q What do you do for a living?

23 A I'm an attorney.

24 Q How long have you been an attorney?

25 A I have been licensed for seven-and-a-half years.

1 Q Can you give us a little thumbnail sketch of your work  
2 history?

3 A Yeah. For about four-and-a-half years, I worked with Mr.  
4 Eglet and Mr. Adams over at the Eglet Firm, and then for the last three-  
5 and-a-half -- three years, I've worked with Mr. Simon.

6 Q When you've been working for Mr. Simon, have you had  
7 experience on a variety of cases?

8 A I have.

9 Q What kinds of cases?

10 A Personal injury, product liability, med mal.

11 Q Done any trials?

12 A Yes, sir.

13 Q Done any large document cases?

14 A Yes, sir.

15 Q Do you have any experience with hourly billing?

16 A Absolutely none.

17 Q Have you ever done any -- did you do any hourly billing over  
18 at Mr. Eglet's firm?

19 A No, sir.

20 Q Have you done any hourly billing other than, I guess, the  
21 attempts in this case over at Mr. Simon's office?

22 A No, sir. Not other than this case.

23 Q Does the law office have any billing software?

24 A No. Law office -- Mr. Simon's?

25 Q Yes.

1 A No.

2 Q Does the law office -- Mr. Simon -- I'm just going to say law  
3 office.

4 A I understand now.

5 Q Okay.

6 A Sorry, I just wanted to be sure.

7 Q Does the law office have any timesheets?

8 A No.

9 Q Any experienced timekeepers?

10 A No.

11 Q Are any of the staff experienced at hourly billing?

12 A Not that I know of, no.

13 Q Okay. Are you familiar with the Edgeworth case?

14 A Yes, sir.

15 Q What kind of a case was it?

16 A It was -- I mean, a complex case. It was a product defect case  
17 and also a breach of contract case.

18 Q And have you worked such cases in the past?

19 A Yes, sir, I have.

20 Q And have you worked such cases with Mr. Simon in the past?

21 A Yes, sir, I have.

22 Q Was Mr. Edgeworth a demanding client?

23 A He was demanding, I mean, yes.

24 Q Let's see if we can flesh that out a little bit.

25 A I mean, so Mr. Edgeworth -- when I first met Mr. Edgeworth,

1 it was my understanding he was a close friend of Mr. Simon's. I kind of  
2 get pulled in on cases that Mr. Simon is working on, and so I just wanted  
3 to make sure I did everything I could for Mr. Edgeworth because it was  
4 my understanding that he was a close friend of Mr. Simon's.

5 Q Were there a lot of phone calls from Mr. Edgeworth?

6 A Yes, sir. Once I started working on the case, there were.

7 Q Can you quantify the number of phone calls that were made  
8 by Mr. Edgeworth as compared to some other client in a product defect  
9 case?

10 A Well, I mean, I can say this. Mr. Edgeworth had my cell  
11 phone number at some point, I mean, in the litigation. I gave him my  
12 cell phone number. I just don't give my cell phone number out to any  
13 other client. And so, I mean, I would -- he would call, and I would  
14 answer his phone call as best I could. I mean, if I was in the middle of a  
15 deposition or something like that, I wouldn't answer his phone call, but I  
16 would take his phone call whenever -- at the office whenever I could.

17 Q How about emails?

18 A He liked to email. There were a lot of emails. I mean, we  
19 would go back and forth, I mean, on things, probably -- I mean, on  
20 average, I could say probably five, six emails a day during the -- and but  
21 sometimes there were like 12, sometimes there were like 15. I mean, but  
22 we would be going back and forth on chains.

23 Q Did you ever have an occasion to see any expressions of  
24 temper by Mr. Edgeworth?

25 A Yes. He never got angry with me, specifically, but he did --

1 he was very -- he did get angry sometimes during the depositions.  
2 Sometimes, you know, when things weren't necessarily favorable in the  
3 case, he did get a little angry, yes.

4 Q Did he ever make any expressions of temper, anger, or  
5 disagreement towards any Defense counsel?

6 A Towards the end. He didn't really care for the attorneys out  
7 of Los Angeles, and Ms. Pancoast, as well. I don't really know about Ms.  
8 Dalacas. It was more so because we were more focused on Viking, and  
9 he didn't really care for them. At one point, I think he said he wanted to  
10 file a bar complaint or something, or just asked about a bar complaint.

11 Q Did he ask you or Mr. Simon?

12 A It was a conversation. I don't know if it was specifically at  
13 me, but I know that -- I don't know if the question was directed at me or if  
14 it was directed at Mr. Simon, but I was in the room when we discussed it.

15 Q Did you folks, and by that, I mean yourself and Mr. Simon,  
16 pursue that?

17 A Oh, we did not. No, sir.

18 Q Were there times that Mr. Edgeworth, for lack of a better  
19 term, tried to act like a lawyer during the case?

20 A Yeah, I think so. Yes.

21 Q Can you give an example?

22 A Yeah. I mean, like so one that came to my mind would be  
23 request for admissions, which are written discovery, obviously, and --  
24 well, I had already drafted them, and he sent over a whole list that he --  
25 of stuff he wanted to admit that we were able to -- that I responded, that

1 was forwarded -- either he forwarded it to me or Mr. Simon forwarded it  
2 to me, and I responded back, these are already all in there. Another -- I  
3 mean, sometimes in regard to motions, you know, he would want a  
4 specific section in the -- like a factual section in there, and we would say,  
5 well that's already in there because it was something we had already all  
6 discussed and what not, that kind of thing, and the motion had already  
7 been filed.

8 Q Okay. And that's not to say -- did he ever come up with  
9 something that was useful?

10 A Oh, no. He came up with stuff that was useful sometimes.

11 Q Okay.

12 A I mean, he was pretty smart on the factual stuff.

13 Q Okay. He did have a habit of raising issues that had already  
14 been addressed?

15 A Yes, sir.

16 Q Okay. Any other examples of them in ones you've talked  
17 about that jump to mind?

18 A Well, with regard to the activations, maybe -- I don't know if  
19 I'm jumping ahead, but --

20 Q Well, we can get to activations in a bit.

21 A Okay.

22 Q You said that you understood that Mr. Edgeworth was a  
23 Simon family friend?

24 A Yes, sir.

25 Q A friend of Mr. Simon's?

1           A     A friend of Mr. Simon's, at least. Yes, sir.

2           Q     Okay. Did the office have that understanding?

3           A     I think so. I mean, Mr. Edgeworth pretty much dealt with me  
4 and Mr. Simon, but I mean he would -- he would kind of -- He would  
5 come back behind the reception desk, and -- like the way our office is set  
6 up, you've kind of got to go through a door, and the receptionist usually  
7 will seat you in a conference room, but he would just come on back, and  
8 he would go right to Danny's office or right to my office. I mean, and  
9 then at a couple depositions and stuff -- I mean, he basically had free  
10 reign in the office. He didn't do anything like bad, but it was just he  
11 would -- I think the office staff knew who he was, and they knew that he  
12 was a friend of Mr. Simon's.

13          Q     Any other clients given free rein to the office?

14          A     Not typically; no.

15          Q     Given Mr. Edgeworth was a demanding client, did he ever  
16 make any acknowledgment of that to you?

17          A     Verbally, I don't think he ever said that directly to me, I mean,  
18 but I think he had to know that he was -- I mean, the office was pretty  
19 consumed. The office, meaning Danny and I were definitely consumed  
20 with his taste, and that's basically all we were doing.

21          Q     Let's focus in on some bills for a bit. Did you learn, at some  
22 point, that Mr. Simon wanted to generate an hourly bill on the  
23 Edgeworth case?

24          A     Yes, sir.

25          Q     Do you recall about when that occurred?

1           A     It was around November-ish, sometime. It was in the fall.  
2     So, it was like November -- it was right around the ECC. Danny said we  
3     needed to -- he was like hey, remember that -- we had a case, we need to  
4     come up with -- he needed to come up with an hourly bill, and we were  
5     going to put a bill together for the Lange, because the Lange contract  
6     had a provision in it for attorney's fees.

7           So, part of the calculation -- part of that, part of our damages in the  
8     16.1 initial disclosure in November, needed to be a calculation of  
9     damages and we needed to bill out our attorney's fees.

10          Q     Was that --

11                 THE COURT: And this is November of what year?

12                 THE WITNESS: 2016. I apologize.

13                 THE COURT: '16.

14     BY MR. CHRISTIANSEN:

15          Q     And that was in preparation for an early case conference  
16     disclosure?

17          A     Yes.

18          Q     What did you respond to Mr. Simon when he brought up the  
19     issue of an hourly rate?

20          A     Well, so what I said to him, I was like, well hey, remember  
21     earlier this year, we had that mis -- there was a case that mistrialed, and  
22     we had to file a motion in front of Judge Israel asking for attorney's fees  
23     and costs, so we had to bill out all of our hours, him and I both. And in  
24     that case, he charged \$600 an hour, I charged \$300 an hour.

25                 And so, we took those because Judge Israel had approved them,

1 and we figured the Defense couldn't balk at those. They couldn't, you  
2 know, think that they were unreasonable, and then we cut it down a little  
3 bit. Danny's was 550 and mine was -- well, at that point in time, mine  
4 was not 275, but later down the road in April when I started billing, that's  
5 where I get my basis, too, is 275.

6 Q Okay. That was the Ash case?

7 A Yes, sir.

8 Q And that was mistrialed in front of Judge Israel in  
9 Department 28 --

10 A Correct.

11 Q -- in this building?

12 A Yes, sir.

13 Q Okay. And that's where the 550 number came from?

14 A Yes, sir.

15 Q Was Mr. Edgeworth involved in the decision of setting the  
16 550 rate?

17 A No, sir. I mean, not part of that discussion; no.

18 Q Okay. As I understand it, that discussion occurred, and then  
19 Mr. Simon said okay and used the 550 number?

20 A Yes, sir.

21 Q And that was in November of 2016?

22 A Correct.

23 Q When did you start working on the Edgeworth case?

24 A Well, I started working on it in January of 2017, on the bill. I  
25 did do -- our paralegal was out, so I did do a download on December

1 20th of 2016. That is in -- that's technically, I guess, the first number in  
2 what's the timesheet, that's also been referred to as the superbill for my  
3 time, but I started working on the case in January of 2017.

4 Q What were you doing at that time?

5 A What was I -- at that time, I was just helping Mr. Simon. We  
6 were getting ready to -- he filed -- we were getting ready to file a motion  
7 for summary judgment, which was ultimately filed later that month, and  
8 we were just kind of ramping it up. Basically, it was -- he had been doing  
9 some stuff on it. I hadn't really been working on the case yet, and he  
10 asked if I could help him.

11 Q Okay. When did you start billing on the file?

12 A I didn't start billing until April.

13 Q Of 2017?

14 A 2017. I apologize, yes.

15 Q Okay. Is it fair to say that you didn't bill for your January  
16 through April 2017 time until the generation of the timesheets that were  
17 submitted in this hearing that some folks have been calling the superbill?

18 A Yes, sir.

19 Q Going back to the first bill that Mr. Simon generated on the  
20 Edgeworth case, do you have an understanding of the purpose of that  
21 bill?

22 A As I just said, my understanding was it was to support the  
23 calculation of damages. It was because there was an attorney's fee  
24 clause in the Lange contract.

25 Q Sorry, I'm jumping around a little bit, but why the delay from

1 January to April 2017, in including your time and your work on the bills  
2 that were sent to Mr. Edgeworth and that were disclosed in the  
3 litigation?

4 A Because it was my understanding this was Danny's friend I  
5 was just helping out. The bills weren't really bills. They were only  
6 supposed to be for calculation of damages. So, but then in April, we  
7 realized after -- I think it was Judge Bonaventure, on April 25th, denied  
8 our motion for summary judgment to put a moratorium on discovery.  
9 We've got to start taking depositions, we've got to start doing all this on  
10 written discovery and all that stuff.

11 So, at that time, I'm working on the case, I need to start billing my  
12 time so we can add it to the computation of damages.

13 Q When you started billing your time, did you bill all your  
14 work --

15 A No, sir.

16 Q -- and all your time?

17 A Oh, I'm sorry.

18 Q All your work and time, did you bill it?

19 A No, I did not.

20 Q Why not?

21 A Well, because again, this was Danny's friend. I billed the  
22 substantial things -- like the substantial documents, like the motions that  
23 I did, the depositions I attended, the court hearings I attended. Basically,  
24 I didn't bill any emails, I didn't bill any telephone calls. This was Danny's  
25 friend, and this was just us putting together bills for the calculation of

1 damages. Plus, I'm not a great biller. I don't have any billing software. I  
2 don't know, you know -- and so I mean, I didn't think to really bill that  
3 way. That was just when I was putting together the substantial stuff.

4 Q Was there an office effort to bill on this file?

5 A No, sir. Not at that time.

6 Q To your knowledge, have any paralegals ever billed any time  
7 in this file?

8 A No.

9 Q Any assistants?

10 A No.

11 Q Were you involved in the document management of this  
12 case?

13 A Yes, sir, I was.

14 Q Do you have an understanding of the size of the file and the  
15 documents produced?

16 A Yes. It was huge.

17 MR. CHRISTIANSEN: Your Honor, I'd like to bring in a  
18 demonstrative piece of evidence --

19 THE COURT: Okay, which is?

20 MR. CHRISTIANSEN: -- for the Court's --

21 MR. GREENE: It would be nice if we could have seen it first.

22 MR. CHRISTIANSEN: It's going to be very technical and hard  
23 to understand.

24 MR. GREENE: Generally, before you show exhibits to  
25 witnesses, you show them to either side, don't you?

1 MR. VANNAH: No surprises.

2 MR. CHRISTIANSEN: Is this your witness, Mr. Greene?

3 MR. GREENE: Yeah. No, we have terrible way about each  
4 other, apparently.

5 MR. CHRISTIANSEN: I've noticed.

6 MR. VANNAH: I didn't know.

7 MR. CHRISTIANSEN: [Indiscernible].

8 MR. VANNAH: I can understand that.

9 MR. CHRISTIANSEN: It's not that.

10 MR. VANNAH: Whatever.

11 MR. CHRISTIANSEN: I know.

12 THE COURT: And what is this, Mr. Christiansen that requires  
13 four people to hold the door open? So, now I'm nervous.

14 MR. VANNAH: It's a big bulletin.

15 MR. CHRISTIANSEN: It's some boxes, Your Honor.

16 MR. VANNAH: Oh my God.

17 MR. CHRISTIANSEN: It's boxes.

18 MR. VANNAH: If somebody gets a bad back out of all this,  
19 I'm not responsible.

20 THE COURT: I'm not liable either, Mr. Vannah.

21 MR. VANNAH: Oh my gosh. Are we filming this?

22 MR. CHRISTIANSEN: We're building a wall. It's like a  
23 concert I went to once, a long time ago.

24 THE COURT: Oh, my goodness.

25 MR. CHRISTIANSEN: While the folks are bringing in the

1 boxes --

2 BY MR. CHRISTENSEN:

3 Q Ms. Ferrel, while the folks are bringing in the boxes --

4 A Yes, sir.

5 Q -- how many documents were produced in discovery in the  
6 Edgeworth case?

7 A Just discovery alone were 122,458 pages.

8 Q Did you do any research into how many pieces of paper fit  
9 into a standard bankers box?

10 A Yeah, 5,000 pieces of paper.

11 Q So, do the math for us and round up, if you would, how  
12 many banker's boxes of paper was that equal to?

13 A It's 24.5, so 122,458 divided by 5,000 is 24 -- approximately  
14 24.5 boxes. So, 24.5 boxes just in the production.

15 Q So, that would be 25 boxes?

16 A Twenty-five boxes. Yes, sir.

17 Q Okay. We're not quite there yet. Did you have the lovely  
18 opportunity to look at all those pieces of paper?

19 A Yes, sir.

20 Q Now, the boxes that we're, I guess, still bringing in, would  
21 that include the pleadings that were filed in the case?

22 A No, sir.

23 Q Motions?

24 A No, sir.

25 Q Depositions?

1 A No, sir.

2 Q Exhibits attached to depositions?

3 A No, sir.

4 Q Research?

5 A No, sir.

6 Q And of course, the emails, we know were in a whole bunch of  
7 additional boxes behind those?

8 A Yes, sir.

9 Q Okay. So that would be in addition to the 25 boxes?

10 A Yeah, that's just the discovery produced in the case.

11 Q I'd like to talk a little bit about the timesheets that were  
12 submitted during the adjudication process.

13 A Okay.

14 Q I think we've been calling them superbills today.

15 A Yes, sir.

16 Q Okay.

17 A I understand what you're talking about.

18 Q All right. Those are exhibits 13, 14, and 15?

19 A Yes. I believe so, yes.

20 Q Did you have a role in the creation of those --

21 A Yes, sir.

22 Q -- timesheets?

23 A Yes.

24 Q What was your role?

25 A Well, I did all of mine, and then I also helped with Mr.

1 Simon's.

2 Q I think there was an allegation that you all sat around a  
3 conference table and dreamed up the numbers contained in the  
4 timesheets; is that true?

5 A No, sir. We did not do that.

6 MR. VANNAH: I'm going to object to that. I don't remember,  
7 and I'm pretty good at reading, but I don't remember anybody saying  
8 anybody sat around a conference table and dreamed up anything. Can  
9 we just come up with crap like that with no background? Can we not do  
10 that?

11 THE COURT: Well, I mean, I don't recall that, Mr.  
12 Christiansen, anybody saying that.

13 MR. VANNAH: Yeah. If you want to show me where I ever  
14 alleged in a pleading that you guys sat around the table holding hands,  
15 praying, and coming up with a time out of the blue, I'd like to see that.

16 MR. CHRISTIANSEN: I will provide it.

17 MR. VANNAH: Okay. Well we'll --

18 MR. CHRISTIANSEN: Tomorrow.

19 MR. VANNAH: Maybe Mr. Simon can --

20 MR. CHRISTIANSEN: I didn't anticipate your standing up and  
21 contradicting that, but we'll give it to him.

22 THE COURT: Okay.

23 MR. CHRISTIANSEN: We'll provide it.

24 THE COURT: Okay.

25 MR. VANNAH: All right.

1 BY MR. CHRISTIANSEN:

2 Q So, what went into your timesheets?

3 A What went into my -- the superbill timesheets?

4 Q Correct.

5 A So, basically, we billed -- so, I guess you could kind of split it  
6 up into two things. From September 19th, so like September 20th, I think  
7 it is, through when we stopped working on the case, which mine is  
8 sometime in January 2018. That was all hours that we were working on  
9 the case. Everything before that -- and I'm just talking about mine. I  
10 don't know if I clarified that. All of mine before that, we went back to  
11 May of -- I didn't start working the case until May, until January, except  
12 for that one December 20th, 2016 date. In January from that point to  
13 September 19th, all of those bills were emails, and telephone calls, and  
14 downloads -- WIZnet downloads, that I did that I had not billed for  
15 previously. And --

16 Q Was that a time consuming process?

17 A Yes, sir. I had to go through all of the emails.

18 THE COURT: Okay. I'm sorry, Mr. Christiansen. I have a  
19 question. So, your bills, in this superbill --

20 THE WITNESS: Yes, ma'am.

21 THE COURT: -- everything from January of 2017 to  
22 September 19th of 2017, is for emails, telephone calls, and WIZnet  
23 downloads that you hadn't previously billed for?

24 THE WITNESS: Yes, ma'am.

25 THE COURT: Okay. And that's what's included in this

1 superbill?

2 THE WITNESS: Yeah. And I believe if you look at mine,  
3 that's all that's in there are telephone calls for my cell phone --

4 THE COURT: Okay.

5 THE WITNESS: -- and WIZnet downloads, and also emails.

6 THE COURT: But from September 20th to January 2018,  
7 that's the hours you worked on this case?

8 THE WITNESS: Well, that's the hours I worked on this case,  
9 including -- but I also incorporated in my downloads, also my emails,  
10 and my telephone calls in there, as well.

11 THE COURT: So, that's in that calculation --

12 THE WITNESS: Yes, ma'am.

13 THE COURT: -- on the superbill? Okay.

14 BY MR. CHRISTIANSEN:

15 Q Do the timesheets capture all the work?

16 A No. So, the timesheets -- when we had to go back and do it  
17 for this adjudication process, we had to show -- because it's my  
18 understanding we had to show the Court how much work we did on the  
19 file, and so we went back, and we only put entries on there that we could  
20 support with documentation.

21 So, that's why the emails were added, that's why the cell phone  
22 records were added, and that's also why the WIZnet filings were added,  
23 as well. And so, basically -- and because we had a hard document. If we  
24 didn't have a hard document, we didn't capture it on the bill. We didn't  
25 put it on there. Any discussions with Mr. Simon that I had, you know, 10

1 minute discussions -- there are a few discussions on the bills that are on  
2 there, those aren't captured.

3 Any calls from the office that we did with regard to this case,  
4 whether it be with Mr. Edgeworth, whether it be with experts, whether it  
5 be whoever, any calls from the office we weren't able to get, we  
6 subpoenaed the records from Cox and were not able to obtain those, so  
7 those aren't include on there -- included on there.

8 But what we did to get those dates on that superbill was we had to  
9 choose a landmark date. So, with regard to the WIZnet filings, because I  
10 needed something -- I needed a landmark date for each of those filings, I  
11 went to the date that that thing was filed, the date that the pleading was  
12 filed and that's the date that I put it in on.

13 I know there's been some allegations about a 22 hour day, which I  
14 know we're going to talk about in detail, but that kind of explains that  
15 because I -- and I mean, again, I talked about it in detail. Everything that  
16 was filed, for example, on September 13th, I put on September 13th for  
17 the WIZnet filings. Every email that was received on September 13th, I  
18 put on September 13th, and then I also gave all of the WIZnet documents  
19 .3 hours, because what I did was I would review the -- when it came in on  
20 WIZnet -- I was the one working on this case. We didn't have a paralegal  
21 in this case. I was the one that did it. I would open the WIZnet  
22 document, review it, download it, save it, and send it out to wherever it  
23 needed to do. Some of these, super quick, maybe not .3. Some of them,  
24 way longer than .3.

25 So, we had to have a base mark number for all of the WIZnet

1 filings, so that's why we chose .3 for the WIZnet filings, which are  
2 identified as -- I can tell you, if you'd like. On my bills, review, download,  
3 and save, and then I put the name of the document, and that's a WIZnet  
4 filing. So anytime you see review, download, and save, that's a WIZnet  
5 filing.

6 Same thing with emails. Our base calculation, I had to put a base  
7 calculation, it was .15, and then if the email was more time consuming,  
8 the appropriate number was put on there. This is with regard to my bill.

9 Q So, I heard a couple of things. One, I heard no paralegal.

10 A Yes, sir.

11 Q So that's why there are no paralegal bills?

12 A Yes, sir.

13 Q Okay. Thanks for clearing that up. Let's take the WIZnet  
14 filings as an example. What did you do with a WIZnet filing when it was  
15 made in this case, in the Edgeworth case?

16 A I would -- like a WIZnet, like any filing?

17 Q Like someone filed a motion. One of the Defendants filed a  
18 motion.

19 A When the Defendants filed a motion, I would download it, I  
20 mean, review it, save it, and then send it out to Danny, send it out to  
21 Brian, send it out to whoever. And I didn't send it to Brian every single  
22 time, but some of the more important things, I know Brian was very  
23 active in the case, and like he wanted to be in charge -- like not in charge.  
24 Informed of the stuff going on. So, I would sometimes send it to him,  
25 too.

1 Q Okay. And is that different from any review you would do if  
2 you were say taking the lead on drafting an opposition to a motion?

3 A Well, yeah. I would review it to see what it is. I mean, do I --  
4 and then I would also have to like calendar it or what not, too. I mean,  
5 and if I was supposed to do an opposition, so for example, with your  
6 example, a motion. A motion comes in, the review, download, and case  
7 only incorporates the review, download, and save. If it was a motion,  
8 then I -- and I was going to do an opposition to it, I would review it later.  
9 I wasn't reviewing it at that time to draft the opposition.

10 Q Okay. You indicated that you did some -- that you helped Mr.  
11 Simon with his timesheets?

12 A Yes, sir; I did.

13 Q What did you do --

14 A Some of it.

15 Q -- for Mr. Simon?

16 A Well, I did -- I took his cell phone records. Again, because we  
17 weren't able to get the office records, so I took his cell phone records and  
18 I plugged in his cell phone records into the bill, and then I also -- I'm the  
19 one that put the infamous, on Exhibit 13, a Plaintiff review of all emails  
20 concerning service of all pleadings, (679 emails), without a date. So,  
21 would you like me to explain that?

22 THE COURT: I would.

23 THE WITNESS: Okay.

24 MR. CHRISTIANSEN: Yeah, I'd like to hear about it, too.

25 THE WITNESS: So, what that is, is that's the WIZnet filings.

1 If you look at any of Mr. -- if you look at Mr. Simon's superbill, there are  
2 no WIZnet filings in his. And so, when I would send the WIZnet filing -- I  
3 sent every single WIZnet filing to Mr. Simon.

4 So, what that number is -- or so what is, there were 679  
5 emails, and I had multiplied that by .2 because he would have to open it,  
6 and then analyze it or whatever, and then that was it. And if he wanted  
7 to do more to it, then he could choose to do more to it, but because there  
8 was a formatting issue, plugging every one of those 679 emails in -- so  
9 those are all WIZnet filings. Those WIZnet filings are for the entire case,  
10 679. So, that goes from May -- well, I guess the complaint wasn't filed  
11 until June, so June of 2016 through -- I guess the attorney lien is when  
12 we kind of stopped counting. That's when we stopped counting any of  
13 the WIZnet filings in the case.

14 MR. CHRISTENSEN: Okay.

15 THE COURT: So, that's through the attorney lien?

16 THE WITNESS: Yes, ma'am. The amended attorney lien in  
17 January.

18 THE COURT: And do these include some of the same WIZnet  
19 filings that are in your bill?

20 THE WITNESS: Yes, ma'am.

21 THE COURT: Okay.

22 THE WITNESS: But we would both -- I mean, he would read  
23 them as I -- he didn't download them. He just read them when I would  
24 send them to him.

25 THE COURT: And what did you -- what was the time per --

1 THE WITNESS: .2.

2 THE COURT: .2. Okay.

3 BY MR. CHRISTIANSEN:

4 Q Did Mr. Simon enjoy billing?

5 A No.

6 Q How do you know?

7 A He was super grumpy about it, and he had lots of Post-Its  
8 everywhere, and he just -- he absolutely did not enjoy billing. I don't  
9 know how many times he said he didn't know how to bill.

10 Q Let's talk about the Edgeworth Exhibit 9.

11 A Okay.

12 Q Have you seen Edgeworth Exhibit 9?

13 A Yes, sir.

14 Q What did you do when you first received Edgeworth Exhibit  
15 9?

16 A Well, I looked at it. I added up -- not that I'm great at math,  
17 but I think I'm decent enough. I added up just to make sure their hours  
18 were all, and the math -- the chart was right. And then I looked at all of  
19 the boxed ones, because I assumed those were the ones that they had  
20 issue with, and then I pulled the bills for -- if -- because some of them are  
21 prior to the superbill. I pulled the paid hours and the new hours, the  
22 superbill hours, and I compared them to see what their issue was or  
23 what I thought their issue was with it.

24 Q Okay.

25 A So I could review it.

1 Q And just for clarification of the record, it's Edgeworth Exhibit  
2 9, Bate 8 through 12; is that what you have?

3 A I believe it's 7 through 12.

4 Q Oh, did I miss one?

5 THE COURT: Yes, it starts on 7.

6 MR. CHRISTIANSEN: Okay. I apologize. I missed one.

7 THE COURT: Well, Ms. Ferrel starts on 8, but the --

8 THE WITNESS: Oh, I do --

9 THE COURT: Right. There's beginning with Mr. Simon on  
10 page 12.

11 THE WITNESS: Sorry, Judge.

12 MR. CHRISTIANSEN: Okay.

13 THE COURT: I mean on 7.

14 BY MR. CHRISTIANSEN:

15 Q So, there was some discussion about email billing for Mr.  
16 Simon on 8/20 and 8/21/2017.

17 A Yes, sir.

18 Q Do you recall that earlier today?

19 A Yes, I do.

20 Q Okay. So, what did you find when you took a deeper look  
21 into those boxes on this exhibit?

22 A On Mr. Simon's 8/20 and 8/21, or just --

23 Q Correct.

24 A -- all boxes? On those boxes, it was different things. A lot of  
25 -- what I think the common error is, and maybe Mr. Vannah can correct

1 me if I'm wrong, but it's the emails, the WIZnet filings, and the telephone  
2 calls that were added that put all of these -- that put -- that I think they're  
3 questioning these hours, because -- and again, like I just told you, I had  
4 to use a landmark date.

5 So, whether I opened, reviewed, and downloaded on that specific  
6 day, or whether it was the next day, or the next day, I mean, it happened  
7 within a few days of that, but I used a landmark date because again, I  
8 wanted to have support for everything I put into the superbill.

9 Q Talking, specifically, about the Sing [phonetic] work old, new,  
10 on 8/20/2017, that's listed on Bated page 10 of Exhibit 9 for Mr. Simon.

11 A Oh, I apologize. Yeah. Well, what I found on there is that he  
12 had -- they're different. It's actually different stuff.

13 Q Okay. Those are the emails that Mr. Christiansen showed to  
14 Mr. Edgeworth earlier today?

15 A I believe so, yes.

16 Q And copies of those emails are in Exhibit 80 that's been  
17 submitted to the Edgeworth counsel and to the Court?

18 A Yes, sir. And I believe one of them, and I can't tell you which  
19 date right now, one had 10 emails and one had 12 emails.

20 Q Okay.

21 A And on one of those days, I believe it was 8/21, he hadn't  
22 billed for any emails at all.

23 Q So, let's take a look at some of these issues on here. There's  
24 a 22 hour day on here.

25 A Yes, sir.

1 Q 9/13/2017. That's on page 10 of Exhibit 9.

2 A Yes, sir.

3 Q What's going on there?

4 A Okay. So again, what I think happened, if you look at the --  
5 it's the very last entry on that page. On the paid bills, it was -- I had eight  
6 hours, 8.75 hours, and then on the new superbill, there's 14.10 hour, and  
7 if you look at the new bill, all of the time is review, download, and save  
8 the WIZnet filings. But, also, on that day, and I know for a fact because  
9 that was right after -- we had to do out-of-state commission. We're like  
10 ramping everything up. This case was incredibly fast at the very end.

11 Q Let me interrupt you for just a second.

12 A Okay.

13 Q Did something happen the day before that date on 9/13?

14 Was there a deposition or something that went on?

15 A Well, on 9/7 --

16 Q Okay.

17 A -- Mr. Carnahan -- yeah, Carnahan, he was deposed.

18 Q Okay.

19 A And he was our expert for like seven hours, and so then one  
20 of their other complaints they have is the one right above that -- or not  
21 complaints. I apologize. One of the other issues that they had boxed  
22 was the 9/8/17 date.

23 Q Okay.

24 A And that was the date after Mr. Carnahan's deposition, and  
25 there was a ton going on that day because of what Mr. Carnahan had

1 testified to, we were -- I mean, we were resetting depositions, we were  
2 starting the motion to strike, we were noticing all these depositions over  
3 that course of between the 8th, the 13th. I mean, and it just all happened  
4 in a short period of time, Viking people in Michigan.

5 So, on the 13th one, which you were talking about a minute ago, a  
6 lot of those downloads were for Michigan people, okay? The Viking  
7 counsel refused to accept service on a lot of them, so we had to file  
8 applications to take out-of-state commission, deposition, out-of-state -- I  
9 think everyone knows what I --

10 THE COURT: Out-of-state depositions?

11 THE WITNESS: Yeah, the commission to take an out-of-state  
12 deposition. There we go. So, we had to file that. But then you had to  
13 also file all of the paperwork with the Court in that jurisdiction. Well, in  
14 Lansing, you have Ingham and Eaton, and that's where some of these  
15 were at, and then some of them were in Grand Rapids, which is a  
16 different county, and you had to fill out documents each time you did.

17 So, some of these, yeah, it was, you know, an amended  
18 deposition notice, okay, but each time I filed that deposition notice, I had  
19 to resubmit the paperwork to the Court, which took time. I mean, and it  
20 was, yeah, I had some of it filled out. It was a little quicker the next  
21 times, but you know, that's why it took so long each time I did it, even  
22 whether it was amended or the first notice.

23 BY MR. CHRISTIANSEN:

24 Q We were talking about some of the WIZnet filings with regard  
25 to the 22 hour entry on 9/13.

1           A     Yes, sir.

2           Q     So, you know, I use WIZnet, sort of, right? I get an email, I  
3 can open it up, I can download something. I don't always do it that day.  
4 Sometimes I do it the following day when I get to it. What were you  
5 doing in this case?

6           A     What was I doing in the WIZnet --

7           Q     Yeah, with the WIZnet.

8           A     -- with regard to WIZnet?

9           Q     Did you open them every day as soon as they came in? How  
10 did that work?

11          A     No. I mean, yeah, I would try to do that, but there was,  
12 again, a lot of stuff going on with the case. I mean, if I'm working on a  
13 motion to strike, I'm not going to stop my motion to strike when I see,  
14 you know -- just when I'm downloading, when I know I just filed 10 or 12,  
15 you know, deposition notices, especially in the ones Viking counsel's,  
16 you know, taking -- that they're accepting service of.

17                I'm not going to stop working on my motion to strike and/or reply,  
18 or opposition, or motion to compel, or whatever I'm working on, to  
19 download that day. It may have been the next day or the next day, but it  
20 would've had to be within two or three days because we had to keep up  
21 to date on this case all the time.

22          Q     So, I mean, why does it take you to do this work, just to do a  
23 WIZnet for a notice of taking deposition?

24          A     Okay. So, what happened in this case is they had a  
25 confidentiality order, right? A protective order. I know that's super

1 common in these big document cases and things like that, but this one,  
2 they had actually threatened us because a document got served that was  
3 confidential, and they sent a letter to us threatening to sue us if --  
4 because we violated -- not sue us, but they were going to take action  
5 against us, because we violated the protective order.

6 And so, they told us to withdraw it and then we had to do all this  
7 other stuff from that. So, because of that, I was the one that was doing  
8 all of this.

9 Q Well, is calendaring also an important issue in a large  
10 complex litigation?

11 A Yes.

12 Q I mean, you have to keep track of all the different parts, right?

13 A Yes.

14 Q But do you keep track of all the different parts and do this  
15 kind of labor on a smaller case?

16 A No.

17 Q Only the larger cases?

18 A I mean, this is the only one that I typically do all of it on. I  
19 mean, we have a paralegal who is very competent and has done --  
20 worked for Mr. Simon for 20 years, so she does most of it, but with  
21 regard to this case, because again, it was kind of a -- it was a very -- it  
22 was his friend, it was a very fast moving case. We didn't want to miss  
23 anything. That's why I was doing all of it.

24 Q When you performed your review of these box entries, did  
25 you find any errors?

1 A On?

2 Q On any of the billing? Did you go and see -- like for the 22  
3 hour day, did you go back and see, yeah, there were however many  
4 WIZnet filings that day and --

5 A Oh, yeah. No. Sorry. I didn't quite --

6 Q Yeah.

7 A -- understand. Yeah. So, no, I did. I took that day, and I  
8 pulled -- you know, I pulled the paid hours, and then I also pulled the  
9 new hours, and I compared them, and these are an exhibit, if you needed  
10 them, but -- and there were no -- I recalculated everything because I  
11 anticipated that they were going to talk to me about the ones in the box  
12 -- in the boxes.

13 Q Okay.

14 A So, I just wanted to make sure that I didn't screw up, so if I  
15 did screw up, I could at least say that it was my fault.

16 Q Okay. Well, are you padding bills?

17 A No, sir.

18 Q Was that your intent?

19 A No, sir.

20 Q Long days happen when you're an attorney?

21 A Yeah. Especially a trial attorney, yes.

22 Q Okay. And especially in document intensive cases?

23 A Yes, sir.

24 Q I think your testimony is that you probably didn't work 22  
25 hours on 9/13 because of the WIZnet filings?

1 A Yeah. I don't think I worked 22 hours on 9/13, however --

2 Q And --

3 A -- I do --

4 Q Have you worked 22 hour days before?

5 A I have one hundred percent worked 22 hour days before.

6 Q Okay. Can you --

7 A When I --

8 Q -- explain that a little bit?

9 A Yeah. When I worked over with -- at Mr. Eglet's firm, we did  
10 -- I worked hand-in-hand with him and Mr. Adams, and a couple of other  
11 attorneys on the endoscopy cases, and those were huge, complex cases,  
12 very similar -- I mean, not similar in fact and stuff to this case. I mean,  
13 but when we were preparing for it, I mean, we're talking hundreds and  
14 thousands of documents. Yeah, we would. We would work, I mean, on  
15 average, 15, 16 hour days. That was an average day for us if we were in  
16 trial.

17 Q Okay.

18 A There were -- I can think of at least a dozen days where we  
19 worked all through the night, me and Mr. Adams, and I went home, I  
20 would shower, and I'd come right back to work, and we'd go right to  
21 trial. Did it happen on this day? No. I didn't do 22 hours on this day  
22 specifically, but again, that -- I have worked 15 hour -- yeah, I have  
23 definitely worked 15, 16 hour days on this case.

24 You know, I mean, and so there was a lot of times I would even  
25 work from home. I think it was said, and I don't remember who said it,

1 but I heard the testimony, or it may have been in opening that, you  
2 know, I was working from my -- there is no way someone could work  
3 from their office for that long. Well, I have remote access, and so I'm -- I  
4 work a lot of times at home until 1 or 2:00 in the morning. I live by  
5 myself with my dogs, so, you know, I mean, I don't have a lot of  
6 interruptions.

7 And so, you know, I mean, I work from home a ton. I'm at the --  
8 but in this case, I had to be at the office for a lot, and so it was very  
9 common for me to be there 12, 13 hour days, and then I would go home  
10 and work from home. And I have email on my phone, I have email --  
11 remote access on my laptop. So, I mean, I would work long hours.

12 Q Did you do all the work that you billed for?

13 A Yes, sir; I did.

14 Q Did you get the right date on all the work that you billed for?

15 A Well, I mean, I think I did. Yeah, with what we've just talked  
16 about, I mean, with the exception of those -- with the WIZnet filings  
17 maybe being the next day or the following day within that time range;  
18 yes, I did.

19 Q Okay. And on that same theme, we've got a 135 hour block  
20 entry for Mr. Simon. How do you know that he was reviewing these  
21 emails that you gave him credit for?

22 A Because he would respond back to the email with the WIZnet  
23 filing attached.

24 Q Okay.

25 A Like he would -- like I would send the email, and then he

1 would respond to the email, and the WIZnet filing would be at the  
2 bottom. You know how an email is.

3 Q So, he was on top of it?

4 A Yes, sir.

5 Q Okay. Let's talk a little bit about the review of these  
6 produced documents and the assertion by Mr. Edgeworth that he was  
7 solely responsible for the blossoming value of the case. Is it fair to say  
8 that you get the first look at any document production?

9 A Yes.

10 Q Was the first major production on July 6th, 2017?

11 A Yeah, that's the first one that was like thousands and  
12 thousands of pages. It was a lot more. They had only produced like a  
13 couple hundred pages or maybe a thousand pages before that one.

14 Q Okay.

15 A That's the first big one.

16 Q And that was by Viking, I believe?

17 A Yes, sir.

18 Q Okay. So, this is Exhibit 88. It's the law offices, Exhibit 88.

19 So, this appears to be an email from you, Ms. Ferrel, on July 6th; is that  
20 correct?

21 A Yes, sir.

22 Q And that's 2017?

23 A Yep. Yes. Sorry.

24 Q And it seems to be a -- as these emails are set up, as we can  
25 see, it's a forward on top of an email from Janet Pancoast --

1           A     Yes, sir.

2           Q     -- to some of the other lawyers in the case, including  
3 yourself?

4           A     Yes, sir.

5           Q     So, first of all, can you tell me a little bit about what had gone  
6 on in the case prior to this time about disclosures and attached  
7 documents?

8           A     Yeah. So, what Viking was doing when they were producing  
9 their documents and, actually, Lange was doing it, too, is they'd serve  
10 the pleading without any documents attached, unless it was like six  
11 pages or something like that, or maybe even like 20 pages. I don't -- you  
12 know, but a small amount. And then they'd send a disc in the mail, and  
13 so we would wait three days, four days, or however long the mail took to  
14 get it. And I mean, that's -- and when a case is moving this case, you  
15 kind of need the documents then.

16           So, I said something to Janet -- Ms. Pancoast, and so then that's  
17 why she sent the email before they would serve a pleading, or the day  
18 they'd serve the pleading, and it let -- she then would email us and tell  
19 us, hey, we're going to serve this today. Let me know if your runner is  
20 going to come pick it up.

21           So, I would send a runner to pick it up, so then they would put it --  
22 so it wouldn't get put in the mail. The runner would come back, bring it  
23 to me, so then I could start going through it as soon as I get it.

24           Q     Did that happen with this production on July 6th?

25           A     Yes, sir.

1 Q So, the runner went and picked up the production on July  
2 6th?

3 A Yes, sir.

4 Q And then you started in on it?

5 A I downloaded it and started in on it right as soon as I got it,  
6 and this is at 9:12 in the morning, so she went and picked it up pretty  
7 early.

8 Q About how much was the -- that download? The July 6th  
9 download?

10 A Twenty-two -- 24,000 pages. I don't know exactly, but it was  
11 at least 22, but it may have been 24,000.

12 Q I want to show you what's been marked as the Law Office  
13 Exhibit Number 89. It's an email. So, it looks like you sent an email on  
14 July 10, 2017, at 10:26 a.m.

15 A Could you bring it down just a little bit? Oh, 10:26. Yeah,  
16 never mind. I see what you're saying. Yes, sir.

17 Q You see that? Right --

18 A Yeah.

19 Q -- in the middle?

20 A Yes.

21 Q And you wrote, holy crap, two words, punitive damages.

22 A Yeah.

23 Q And then you mention there's a ton of documents, and then  
24 you talk about sending a Dropbox link out to folks for their review?

25 A Yes, sir.

1 Q Is that fair?

2 A Yes.

3 Q Okay. What did you find?

4 A In there? I mean, there was so much stuff. So, kind of go  
5 back a minute. The reason why I said that was, holy crap, punitive -- two  
6 words, punitive damages, is because on May 3rd, Scott Martorano, who  
7 was the 30(b)(6) witness for Viking was deposed for the first time, and he  
8 had said that there were 46 activations, okay? Activation is something  
9 that Mr. Edgeworth testified to, and it's all throughout this entire case.

10 Q It's when a sprinkler brings rain to everyone --

11 A Yes.

12 Q -- below it and everything below it?

13 A Correct.

14 Q It's when one of those sprinklers goes off.

15 A Yes.

16 Q The 457s. Okay.

17 A Correct. And so, in his deposition, he testified 46 activations.

18 So, when reviewing these, there was a ton of emails, and I don't know  
19 how many emails there were. There was a ton of emails. There were  
20 also a ton of other documents and things like that. Well, in these emails,  
21 they kept referencing another activation, another activation, another  
22 activation, another activation. Oh, we had two go off this weekend. Oh,  
23 we had two go off this weekend, or -- and even some of these emails  
24 were from Viking. Some of these -- I mean, they all came from Viking.  
25 Some of them were from people, it turns out, in Southern California,

1 talking about other activations. Well, just looking at it, you could tell that  
2 it had it up to weigh more than 46. So, he had basically lied under oath  
3 or misrepresented, you know, 46 activations. There were definitely more  
4 than 46 activations.

5 Q When you reviewed the July 6th documents, were you  
6 looking for something to drive some sort of a punitive damages claim?  
7 Was that the part of your thinking?

8 A Well, yeah, that's just something that we do. That's  
9 something that I've learned as, you know -- that is -- that's kind of how  
10 you kind of change a case, I guess, you know, to say -- I don't know how  
11 to exactly say it other than that, but when you find out people are hiding  
12 things. When you find out, you know, things like that. We're always  
13 looking for ways to, you know, change it and get punitive damages in the  
14 case.

15 Q You had done that in other cases to drive value?

16 A Yes. Multiple.

17 Q Without violating any confidentiality provisions, is it fair to  
18 say that the law office has recovered a number of seven and eight figure  
19 cases using this method?

20 A Yes, sir.

21 Q I'd like to show you what's been marked by the Office as  
22 Exhibit 80. This is Bates stamp 6751. It's an email from you to Brian  
23 Edgeworth; is that correct?

24 A Yes, sir.

25 Q And this is July 10, 2017, at 11:40 a.m.?

1 A Yes, sir.

2 Q And is it fair to say that via this email, you were providing  
3 him with a link to the Dropbox where you had loaded that Viking  
4 production into?

5 A The sixth supplement; yes, sir.

6 Q Okay. And then again, looking back to -- let's take a look at  
7 the time here that's 11:40 on July the 10th, and going back to Exhibit 89,  
8 the time here is 10:26 a.m.; is that true?

9 A Yes, sir.

10 Q Okay. So, you'd already looked through these and had  
11 located evidence to support the punitive damage claim, or at least get it  
12 up and running --

13 A Yes, sir.

14 Q -- before these documents were ever provided to Mr.  
15 Edgeworth --

16 A Yes, sir.

17 Q -- is that accurate? Okay. Now, Mr. Edgeworth talked about  
18 an email summary in the last couple of days?

19 A Yes, sir.

20 Q Do you recall the email summary?

21 A Yeah. It was based off of that sixth supplement. There --  
22 again, there were thousands and thousands of pages of emails, and so  
23 we created an email summary. I created an email summary of what  
24 those emails said with Bates stamps, and so it was easier for us to  
25 locate. And at that point, activations were, I mean, key for us, so I bolded

1 anywhere it kind of referenced something that was activation related.

2 Q Okay. So, the email was sent around on July 19 via -- or the  
3 summary was sent to around on July 19 via email?

4 A I believe so; yeah.

5 Q Okay.

6 MR. CHRISTIANSEN: I'd like to mark Plaintiff's next in order,  
7 it's 91. This is 91.

8 MR. GREENE: And what is that?

9 MR. CHRISTIANSEN: It's the e-mail summary --

10 MR. GREENE: Okay.

11 MR. CHRISTIANSEN: -- that Brian talked about earlier today,  
12 or maybe it was yesterday. I forget.

13 THE COURT: So, this is the email summary that Ms. Ferrel  
14 prepared?

15 MR. CHRISTIANSEN: Correct.

16 THE COURT: Okay. Exhibit 91.

17 [Law Office's Exhibit 91 Received]

18 MR. CHRISTIANSEN: Your Honor, if I could -- yes?

19 THE COURT: Defense has got it. Okay.

20 MR. CHRISTIANSEN: If I could approach the witness?

21 THE COURT: Yes.

22 MR. CHRISTIANSEN: I have a courteous copy for you.

23 THE COURT: I was going to say; do I have a copy. Yeah.

24 MR. CHRISTIANSEN: You sure do.

25 THE COURT: This way I can follow along.

1 MR. CHRISTIANSEN: And you can have a Post-It.

2 THE COURT: Well, thank you.

3 MR. CHRISTIANSEN: There you go.

4 BY MR. CHRISTIANSEN:

5 Q When did you put together Exhibit 91?

6 A Well, I started putting it together after we received the -- it  
7 was sometime between July 6th -- I probably -- I didn't start it on the 6th.  
8 It would've been the 7th, 8th, sometime after that.

9 Q Okay.

10 A After we received the document production. It took a while.  
11 It's a lot of emails.

12 Q When did you finish it?

13 A Well, I sent it out on July 19th.

14 Q Okay. Do you recall if you finished on the 19th or on the  
15 18th?

16 A It could have been the 18th. It could have even been the 19th  
17 depending on what time the email -- I sent the email. I'm sure I sent it  
18 out after.

19 Q Fairly quickly?

20 A Yes, sir.

21 Q Okay. So, tell me a little bit about the work that went into  
22 this.

23 A Well, I looked at the email, I would write Bates stamp down,  
24 any key phrases kind of that would jog my memory. I mean, I guess it  
25 was more geared towards me, but it was also for everybody else to look

1 at. Description of the email, date, from, to. I mean, I just kind of filled in  
2 the --

3 Q You also had the Bates number of the particular document  
4 that you're discussing?

5 A Correct.

6 Q Okay. And this was sent around to everyone, including  
7 Brian?

8 A Yeah. Yes.

9 Q All right. It looks like the very first entry addresses Harold  
10 Rogers?

11 A That was who the email was to, yes.

12 Q Okay. Was that the same Harold Rogers that we heard Mr.  
13 Edgeworth discuss yesterday?

14 A I believe it was, yes.

15 Q Okay. Without going through -- how many pages is this?

16 A Twenty.

17 Q Okay. You counted it?

18 A I just counted it, yeah. I recounted it.

19 Q Okay. Thank you. How many activations were you able to  
20 identify that are reflected just on this email summary, Exhibit 91?

21 A Well, so in --

22 MR. VANNAH: I didn't understand your words. How many  
23 what?

24 MR. CHRISTIANSEN: Activations.

25 MR. VANNAH: Activations. Thank you. Thank you.

1 MR. CHRISTIANSEN: Sorry.

2 THE WITNESS: So about 83, but the other thing that's in  
3 here is there's an email of 91 in the U.K. So, that was something that  
4 was -- I mean, 91 in and of itself, that one email. So, it shows that it's  
5 over 46, right? But setting that 91 email aside, there was at least, I  
6 believe, 83 to 85. I'd have to go back and count exactly again, which is  
7 obviously more than 46, so.

8 BY CHRISTIANSEN:

9 Q The 80 some activations were here in the U.S.?

10 A Yeah, those were in the U.S.

11 Q And then we had 91 in the U.K.?

12 A Right. and that was kind of a distinction. I should've made  
13 that distinction because whether the U.K. ones were going to come in or  
14 not, I mean, that was kind of a fight we were having with -- you know, in  
15 the case, but there were definitely over 46, in the 80s referenced in here,  
16 you know, at the time I did the summary.

17 Q The Defense were fighting introduction of activations in a  
18 different country?

19 A Yes, they were.

20 Q On evidentiary grounds?

21 A Yes, they were.

22 Q Of course, the U.K. is traditionally a little bit colder than the  
23 western United States, especially California, southern California?

24 MR. VANNAH: Is that an expert opinion on the weather?

25 Objection. Some days it's colder, some days it's not.

1 THE WITNESS: I'm not an expert on it. I know Southern  
2 California gets warm.

3 MR. CHRISTIANSEN: Whenever I see those guys on the golf  
4 channel, they always look cold when they're in the U.K.

5 MR. VANNAH: During the summer, it's not as bad.

6 THE COURT: Mr. Vannah is probably pretty much an expert.

7 MR. CHRISTIANSEN: He could be.

8 MR. VANNAH: Mr. Christensen -- he's not here.

9 MR. CHRISTIANSEN: Christiansen.

10 MR. VANNAH: He just got -- yeah, but he just --

11 THE COURT: Oh, he's here.

12 MR. VANNAH: He's an expert because --

13 MR. CHRISTIANSEN: He's in the back.

14 MR. VANNAH: He's got a daughter that's living in Scotland,  
15 right?

16 MR. CHRISTENSEN: Yeah, I do.

17 MR. VANNAH: So, he can be an expert, but I don't think she  
18 can.

19 MR. CHRISTIANSEN: I hear he sends her sweaters like every  
20 week, because it's so cold.

21 MR. VANNAH: Maybe a bikini, too. Who knows?

22 MR. CHRISTIANSEN: Oh, stop.

23 MR. VANNAH: I'm talking about summer.

24 MR. CHRISTIANSEN: You know --

25 THE COURT: Oh, we are so far -- oh, Mr. Greene, just come

1 save us.

2 MR. CHRISTIANSEN: So, moving on, Your Honor. Moving  
3 on.

4 BY MR. CHRISTIANSEN:

5 Q Taking a look at Number 91, was that the extent of the work  
6 that you did on activations?

7 A No. This was just kind of the beginning of it. I mean, no -- I  
8 mean, this is -- the activations turned into a huge thing, and Mr.  
9 Edgeworth created -- I believe he's testified to, a big chart that had -- I  
10 think he said -- I don't even remember anymore. There was a lot, over a  
11 hundred activations on this chart that were broken down, that he  
12 testified to in his --

13 Q Did you --

14 A -- direct.

15 Q -- see the chart from Mr. Edgeworth?

16 A Yes. He sent it. Each time he would add stuff to it, he sent it.

17 Q Okay. Was the starting point of the chart some of the  
18 activations on Exhibit 91?

19 A I believe it was. That's one of the first times that we got  
20 detailed, you know -- we got detailed, like Bate stamps, because in his  
21 chart, he had Bate stamps, and like he had the addresses and things like  
22 that. Again, other than the emails, there were a couple other things in  
23 there.

24 Q Did you send this around -- 91 around in Excel form?

25 A No. No, it was a PDF.

1 Q Oh, okay. Was Mr. Edgeworth's chart useful?

2 A Yeah.

3 Q Okay. Did you discover evidence of more activations during  
4 discovery?

5 A Yes, we did.

6 Q And that was through a use of what I would call traditional  
7 discovery?

8 A Yes.

9 Q Interrogatories, request for production of documents --

10 A Motions to compel.

11 Q -- motions to compel. Okay. So, that information combined  
12 with -- did Mr. Edgeworth ever independently find an activation?

13 A Maybe -- I'm sure he found activation. Yeah, I'm sure --

14 Q Okay.

15 A -- he did. There was lots of them. I mean --

16 Q All right.

17 A -- so yeah.

18 Q So, those were all used?

19 A Yes.

20 Q Okay.

21 A I mean -- yeah. I think -- yeah, we used the chart. So, yes.

22 Q All right.

23 MR. CHRISTIANSEN: Can I have just a moment, Your Honor?

24 THE COURT: Yes.

25 [Counsel confer]

1 MR. CHRISTIANSEN: No more questions, Your Honor.

2 THE COURT: Okay. And, Mr. Vannah, would you mind if we  
3 took like 10 minutes before you start so I didn't have to stop in the  
4 middle, because I'm going to need use the restroom before you finish  
5 with her. So, if we just go now, then we can do it, and I won't have to  
6 cut you off in the middle.

7 MR. VANNAH: I think that's a great idea.

8 THE COURT: Okay. So, we'll take 10 minutes. We'll be back  
9 at 3:00.

10 [Recess at 2:55 p.m., recommencing at 3:08 p.m.]

11 THE COURT: Okay. Are you guys ready? We're going to go  
12 back on the record in 9738444, Edgeworth Family Trust, American  
13 Grating, v. Daniel Simon doing business as Simon Law.

14 Mr. Christiansen, you were finished?

15 MR. CHRISTIANSEN: Yeah.

16 THE COURT: Mr. Vannah --

17 MR. CHRISTIANSEN: Yes, Your Honor.

18 THE COURT: -- your witness.

19 CROSS-EXAMINATION

20 BY MR. VANNAH:

21 Q Do you mind if I call you Ashley?

22 A That's fine.

23 Q We've known each other a long time.

24 A Yes, we have.

25 Q You used to work over at the house of Eglet that I helped

1 build, right?

2 A Yes, we did.

3 Q All right.

4 THE COURT: Mr. Vannah, we just actually had a discussion  
5 as to whether you were ever partners with Eglet. I wasn't sure.

6 MR. VANNAH: Well, I own half the building, but he put his  
7 name on there. He had more votes than I did. I think Mr. Christiansen  
8 voted for him; didn't he?

9 THE COURT: You wanted to call him out.

10 MR. GREENE: I think he did.

11 MR. VANNAH: I don't want to get into that. It's now the  
12 house of Eglet, though, but I pay half of it. Okay. I think that was the tie.  
13 That was before the endoscopy, I think.

14 THE WITNESS: Yeah.

15 MR. VANNAH: It was me they were looking to, not him. All  
16 right.

17 BY MR. VANNAH:

18 Q So, if you don't mind if I just call you Ashley? I don't mean  
19 any disrespect. I've just known you that way. It's hard to --

20 A That's fine.

21 Q Okay. So, I just wanted to clarify some things. So, do I  
22 understand correctly -- we've seen four invoices and the superbill, right?

23 A Yes, sir.

24 Q All right. And I just wanted to clarify and make sure I  
25 understand it. Somebody had to actually prepare those; was that you?

1           A     Well, so let me -- the superbill -- I prepared my own superbill,  
2 or the timesheet, the big one. And then I prepared all my own invoices.  
3 So, I started invoicing, is it April? So, I only did the last two, and I would  
4 only prepare my own invoices.

5           Q     Yeah. And I may be -- so, let me just back up and make sure I  
6 understand it. And I'm not trying to confuse you or make -- either one.

7           A     Of course.

8           Q     So, I think of four invoices that got paid, I think that way.

9           A     Yes.

10          Q     Are you with me, up through --

11          A     Yeah.

12          Q     -- September 22, 2017?

13          A     Yes, sir.

14          Q     Where there was four separate invoices?

15          A     Correct.

16          Q     All right. So, let's start with that. Somebody actually had to  
17 sit down and prepare that, and kind of what I was listening to is that  
18 somewhere in late 2016 or so, that you and Danny had a conversation  
19 about the fact that, hey, we need to send an invoice out, right?

20          A     Yes, sir.

21          Q     Is that right?

22          A     Yeah. It would have been like the fall. It was in November-  
23 ish.

24          Q     Okay.

25          A     Yes, sir.

1 Q Of 2016?

2 A Yes, sir.

3 Q And that's the invoice number one --

4 A Yeah, that's invoice number one.

5 Q -- can we call it?

6 A Yes, sir.

7 Q Okay. Fair enough. So, my question to you is that  
8 somebody, a human -- some human being, prepared that invoice,  
9 actually went through and put it together. Was that you?

10 A No.

11 Q Okay. Who did that?

12 A I believe it was Mr. Simon.

13 Q Okay.

14 A I'm not sure. I did not do it.

15 Q Not a problem. Let's talk about invoice number two --

16 A Okay.

17 Q -- that had been paid.

18 A Yes.

19 Q Did you have any input in preparing that invoice?

20 A No, sir. I did not do that invoice either.

21 Q Do you know -- again, was that Mr. Simon, to your  
22 knowledge, that did that, or do you know?

23 A I don't know.

24 Q And as to invoice number one, do you actually know or is  
25 that just kind of a guess on your part?

1           A     I know I've physically seen Danny typing into that invoice,  
2 whether the actual final one was the one that was -- you know, he did it  
3 all. I don't know.

4           Q     Okay. Let me ask you about invoice number three.

5           A     Yes.

6           Q     Did you have any input in preparing invoice number three?

7           A     Yes.

8           Q     What -- did you prepare the entire invoice number three?

9           A     No, sir. The one that's -- okay, so invoice number three --

10          Q     Yes.

11          A     -- it had a cover sheet on it, if I remember correctly, and then  
12 it had an invoice for Daniel S. Simon, and then it had the chart, and then  
13 after that it had invoice for Ashley M. Ferrel. So, everything that was  
14 identified as invoice for Ashley M. Ferrel, I prepared.

15          Q     All right. I appreciate that.

16          A     Uh-huh.

17          Q     Now, how did you go about making the document? What do  
18 you physically do?

19          A     So, I actually used, as I told Mr. Christiansen, we had put  
20 together an hourly bill for a case in Mr. Israel's court -- Judge Israel, with  
21 regard to hours for that mistrial earlier in 2016, so I actually just used  
22 that template. It was a Word document that I -- that had four columns in  
23 it -- and I think it's four. Three. I apologize. It had a date -- well, that's  
24 Danny's. Yeah, it had three. Date, description, and time.

25          Q     Okay. So, if I understand correctly then, that's a two-part

1 document, invoice three?

2 A Yes, sir.

3 Q And one part is Danny's time and one part is your time,  
4 right?

5 A Yes, sir.

6 Q And you use that template and you prepared -- completely  
7 prepared the portion of invoice number three of your time, right?

8 A Yes, sir.

9 Q Okay. Invoice number four, same question. Tell me -- the  
10 same question I'm going to ask you is do you know who prepared that?  
11 Is that when you prepared your portion and Danny prepared his?

12 A Yes, sir. And I believe in that one Mr. Miller also had one.

13 Q Okay.

14 A He has like a single sheet, and I believe his format is very  
15 similar to mine, and it's just a single sheet, and he did that himself.

16 Q Okay. But you did your share of that --

17 A Yes, sir, I did.

18 Q -- for your time?

19 A Yes, sir.

20 Q And when you say format, I think I sort of get it. So, the  
21 format -- normally on a bill that I see from law offices, I've sent a  
22 hundred -- probably millions, millions of those, maybe billions of those.

23 A Uh-huh.

24 Q But on bills, normally, you have something that says the date  
25 you do the item.

1           A     Yes, sir.

2           Q     A description of the item, the number of hours, and  
3 sometimes off to the right, some people multiply that out, but a lot of  
4 times, just at the bottom, they add up the hours and then put down the  
5 rate and come up with the amount; is that how you did that?

6           A     Yes, sir. It just had three columns. Date, description, time,  
7 and then at the bottom, I think the last page had -- I mean, it will say -- I  
8 don't have a full copy of it up here, but it had like total hours, and then it  
9 would multiply by \$275, because that was for --

10          Q     Okay. Very good. Now, I want to kind of back up to a  
11 conversation that you and Mr. Simon had when the first invoice was  
12 going out. And I may be wrong about that, so I just want to make sure I  
13 understood it. My understanding was that in late 2016, whenever that  
14 was, that you and Mr. Simon had a conversation where Mr. Simon says,  
15 you know, we need to send a bill -- an invoice out to the client. Do you  
16 remember that? Am I right about that? Did you have that conversation  
17 before the first invoice went out?

18          A     It was with regard to creating an invoice for purposes of the  
19 calculations of damages because of the attorney's fee provision in the  
20 Lange contract. That was the discussion we had for it. I don't recall  
21 anything with regard to him sending this to the client or anything like  
22 that. The discussion was just with regard to the hourly rate and how we  
23 could do the hourly rate, and that's where the *Sarah Ash* case came in.

24          Q     Okay. So that conversation -- how did that conversation  
25 come about? I mean, why were you having this conversation, because

1 you're not going to be doing it in billing? Why is he talking to you about  
2 it?

3 A Well, we talk about all of our cases.

4 Q Okay.

5 A I mean, and so I'm sure I was just talking to him about a case  
6 that was going on or a couple issues that I had in other cases not related  
7 to this case. And I mean, we just sat down, and we were talking, and I  
8 think he just brought it up. It was one of -- because he was working on  
9 the Edgeworth case. At that point in time, you know, he wasn't like fully  
10 consumed as he was at the end of the Edgeworth case. You know, and  
11 so it was kind of more just us talking about it, and he had to put together  
12 a bill for that disclosure.

13 Q Yeah, so I'm just trying to get my brain around the whole  
14 thing. So, do you remember the conversation?

15 A Yeah. I mean, the verbatim, no, not the exact.

16 Q But you remember the conversation occurring?

17 A Yes, sir.

18 Q Okay. So, here it is. You're not working on the case, but you  
19 guys are talking about it, right?

20 A Yes.

21 Q He's telling you; you know, I need to put together an invoice  
22 -- a billing invoice on the case, on the Edgeworth matter, right? He tells  
23 you; I need to get an invoice put together?

24 A He may have said sprinkler case, but yeah, we all knew it was  
25 Edgeworth -- I knew it was the Edgeworth case.

1 Q What did you guys call it?

2 A The sprinkler case. The Edgeworth case.

3 Q That's --

4 A Same thing.

5 Q You're like me. It's easier to think of the sprinkler case. Yes.

6 A Yes, sir.

7 Q Okay. So, you talk about the sprinkler case. I need to do an  
8 invoice to the client, right?

9 A Yes, sir.

10 Q All right.

11 A I've got -- sorry. An invoice for the calculation of damages. I  
12 don't know whether or not at that point he was sending it. It was -- the  
13 hours he was working, I don't know if he was actually going to send it to  
14 the client at that time. In the conversation, I don't know.

15 Q That's fair.

16 A Okay.

17 Q So, out of curiosity, there in the firm, people always ask me  
18 questions. Did you ask them at that point in time, by the way, what are  
19 your -- what are the terms of our engagement in that case? Did you ask  
20 him during that period of time? What exactly is our billing arrangement  
21 with him?

22 A No. I kind of leave the money stuff to him.

23 Q Okay, and that's fair. So, was there -- okay. So, we know  
24 you didn't know anything about the billing arrangements by the end of  
25 2016. You don't have any clue what the billing arrangements are, right?

1 A Correct.

2 Q On the sprinkler case?

3 A Other than what I just told you.

4 Q That he needed to put together a bill?

5 A Correct.

6 Q Right, but you didn't talk about whether it was hourly,  
7 whether it was contingency, whether it's an hourly plus a contingency, or  
8 how much the hourly was if it was; none of that discussion, right?

9 A Well, with regard to the *Sarah Ash*, it was the five -- we chose  
10 the 550. We discussed what he should put.

11 Q Okay.

12 A So, the five -- that's where the 550 came from was -- there  
13 was a discussion about his hourly rate at that time.

14 Q And that's -- I want to make sure I get all of the parts of the  
15 conversation.

16 A Okay. Sorry.

17 Q And then that's why I've been asking you a little more  
18 penetrating questions, so.

19 A Okay.

20 Q So, in this conversation in 2016, late two-thousand -- can I  
21 call it late 2016?

22 A That's fine. Yes, sir.

23 Q All right. So, now that you thought about it, you do  
24 remember, and I think you might've said that earlier -- you do remember  
25 that as part of the conversation, there was a discussion about what was

1 going to be the billing of rate? There was a discussion about that?

2 A Yes, sir.

3 Q And let me involve myself on that. Did Mr. Simon tell you, I  
4 don't have an agreement with the client on an hourly rate, so I need to  
5 come up with something that I can justify or something like that? How  
6 did that come up about the hourly rate?

7 A Well, I mean, he didn't specifically -- I just remember he  
8 needed to come up with an hourly rate, and so I said, why don't we use  
9 the *Sarah Ash* thing, so --

10 Q So, okay, I want to make sure I get it.

11 A Yeah.

12 Q So, Mr. Simon is looking to you for your thoughts and says  
13 to you, I don't have an hourly rate, I don't have an agreement with the  
14 client for an hourly rate. Does he say, what do you think would be a  
15 good hourly rate or just exactly how -- can you remember the details of  
16 that conversation?

17 A All I know is we were talking about the case, and that he  
18 needed to -- he was coming up with an hourly rate, and I suggested  
19 using the *Sarah Ash* order from Judge Israel. And so, in that one -- do  
20 you want me to just talk? I'm sorry. I don't --

21 Q Yeah, go ahead.

22 A Okay.

23 Q I don't mind.

24 A In that one, it was \$600. Judge Israel, \$600 for himself. And  
25 so, he decided to just knock it off so the Defense wouldn't complain,

1 balk, whatever word you want to use, wouldn't complain about the rate,  
2 because Judge Israel -- if they were to complain about the rate, we had  
3 an order from Judge Israel saying that the rate was, you know, approved  
4 earlier that year.

5 Q Right. So, if I understand correctly, you have a mistrial?

6 A Yes.

7 Q And Judge Israel says, you guys are going to pay for this  
8 mistrial, right?

9 A Well, not ask the Defense, but yes.

10 Q Not you.

11 A Yeah.

12 Q But the people that caused the mistrial, the bad boys.

13 A Yes, sir.

14 Q And he says, you guys are going to pay for the mistrial. So,  
15 I'm going to give you an hourly fee for how much you guys lost, you  
16 come up with what you did in the case, and we'll come up with a fair  
17 hourly fee, right?

18 A Yes.

19 Q And Judge Israel eventually approved \$600 an hour to Mr.  
20 Simon as a reasonable compensation for his time, given his stature in  
21 the community, correct?

22 A Yes, sir.

23 Q Okay.

24 A I mean, I think.

25 Q So, I'm back to the conversation. I get that.

1 A Okay.

2 Q So, Danny and you were talking, and do you call him Danny?

3 A I do.

4 Q Okay. All right. So, Danny and you were talking and  
5 somehow, he discusses with you, I need to do a billing, I need to  
6 prepare a billing, and does he say to you, what do you think would be a  
7 fair billing, or do you just volunteer that number, or does he say, I  
8 wonder what I ought to bill? I mean, I'm trying to get my arms around  
9 that because that's -- let me tell you why.

10 You've been in the courtroom. My client has a clear, clear  
11 recollection of the conversation at the onset of the case, looking at an  
12 onset meeting, you know, within a week, you know, a broader term than  
13 Mr. Christiansen likes, but at the onset of the case that the billing was  
14 going to be for his time, they don't talk about you. I was wrong the other  
15 day when I said that, but it wasn't you who was discussed, it was 550 an  
16 hour. Do you remember hearing that testimony?

17 A I heard that testimony.

18 Q Okay. So, that's why I'm so interested in your conversation  
19 with Danny, in more -- in as much detail as possible. Did Danny say to  
20 you, I don't have an agreement with Mr. Edgeworth as to an hourly fee,  
21 so I need to come up with something? Did he say that to you?

22 A He didn't talk about the agreement between him and Mr.  
23 Edgeworth at all.

24 Q So, see, here's why I'm asking that question, because I mean,  
25 if he's going to prepare an hourly bill to Mr. Edgeworth, was it your

1 impression this hourly bill wasn't a "real bill"? It's going to be just a bill  
2 that's going to be presented to the Defense to say, hey guys, your  
3 damages are getting bigger, and bigger, and bigger under this indemnity  
4 agreement to Lange. The more I bill, the more you guys got to pay. Was  
5 that kind of what you saw that as the purpose?

6 A That was my -- yes, sir. That was my understanding of it.

7 Q That that was the purpose of the bill?

8 A That was the purpose of the bill.

9 Q So, you know, I find it kind of odd that the bill that he's  
10 preparing to show to Lange that he actually sends to Mr. Edgeworth, and  
11 that Mr. Edgeworth actually writes checks and pays not only the legal  
12 portion of the bill, but all the costs? Do you see -- you understand that  
13 happened?

14 A No, I understand that happened.

15 Q Okay. And in invoice number two, that happened again,  
16 right? He prepared another bill at 550 an hour, sent -- gave eventually to  
17 the Lange people in discovery, but also sent that to Mr. Edgeworth, and  
18 Mr. Edgeworth writes a check for the 550 an hour and all the costs, and  
19 pays that bill.

20 A I understand that happened.

21 Q And then, eventually, you get involved in the billing process?

22 A Yes, sir.

23 Q And I think that was on invoice number three?

24 A Yes, sir.

25 Q And so, in invoice number three, again, Mr. Simon prepares

1 a bill for 550 an hour, outlines it. You then prepare your portion of the  
2 bill for how much?

3 A Two-seventy-five.

4 Q Very reasonable. No complaints. You're worth more than  
5 that, probably. So, for 275 an hour, which is more than that other guy on  
6 the stand bills, but that's okay. You prepare your share of the bill for 275  
7 an hour, and at the time that you did that, were you also under the same  
8 thinking that these are just bills being prepared to give to Lange -- the  
9 Lange lawyers to say, well, your damages are getting bigger and bigger?  
10 Is that --

11 A That's my understanding of what the bills were for.

12 Q But what you had learned is that Mr. Simon took that bill, not  
13 only gave it to the Lange people, but gave that to the Edgeworths and  
14 the Edgeworths paid all of that bill, plus all of the costs that had been  
15 incurred to date, right?

16 A I understand Mr. Edgeworth paid the bill; yes, sir.

17 Q And on the fourth invoice, they got paid. Again, your time's  
18 included in that, right?

19 A Yes, sir.

20 Q Mr. Simon's time is included in that?

21 A Yes, sir.

22 Q And there might've been someone else. Ben, was he in  
23 there?

24 A Mr. Miller. Yeah, Ben Miller.

25 Q And I don't know him, but I'm sure his bill was reasonable,

1 but he included time in that. That was all presented to the Edgeworths,  
2 and they paid that bill again, in full, with all the costs, correct?

3 A That is my understanding, yes.

4 Q All right. Were you ever present at any meeting, or overhear  
5 any discussion on the phone, or anything else where you overheard or  
6 were present, where Mr. Simon said to Mr. Edgeworth, hey, old buddy,  
7 I'm sending you a bill for 550 an hour, but my time is worth a whole lot  
8 more than that, and some day we're going to have to reckon this thing  
9 out. Did you ever hear him say something like that?

10 A No. That -- I wasn't around for any of those conversations.

11 Q Okay. Did Mr. Simon ever say to you, hey, I'm billing him for  
12 550 an hour, but, in actuality, I have a better idea, someday I'm going to  
13 bring him in, sit him down, and tell him, you know what, all my options  
14 are on the table, and you guys need to come up and agree to pay me  
15 more than the agreement we agreed to in the first place? Did you ever  
16 heard that kind of a conversation from Mr. Simon or anyone else?

17 A No, sir. I didn't have anything -- discussions with him like  
18 that.

19 Q Did Mr. Simon ever tell you that he had planned on bringing  
20 the Edgeworths into the office -- and after they had paid four of those  
21 invoices in full, did he ever tell you that he planned on calling them into  
22 his office and sit down and say, you know what, you paid all your bills  
23 faithfully, you've written every check, you've paid every bill I've given to  
24 you, but you know what, I'm losing money. I'm losing money and you  
25 guys need to pay me more or my options are on the table. Did he ever

1 tell you he was going to do that? Mr. Simon tell you he was going to do  
2 that?

3 A No. I wasn't privy to any of those conversations.

4 Q Did you ever have a conversation with Mr. Simon where you  
5 said, you know, Mr. Simon, or boss, or Danny, are you aware that there's  
6 rules in the Rules of Professional Conduct that actually talk about having  
7 an agreement with a client upfront before you do all of this billing,  
8 before you charge them, and you get the fee agreement preferably in  
9 writing, but certainty clear as a bell, early on or at the very near outset of  
10 the case? Did you ever have that conversation with Mr. Simon where  
11 you told him, you ought to do that?

12 A No, sir. I wasn't involved in the case in early -- in mid-  
13 summer of 2016. So, I --

14 Q I mean, I'm talking about even later have you ever had that  
15 conversation with him? Like why didn't you just have an agreement that  
16 everybody was familiar with and have somebody signed it, and you  
17 wouldn't be here today. Did you ever say that to him?

18 A I don't think I've ever said that. I just -- you know, I don't  
19 have any idea what their agreement was, and I have never had any of  
20 those conversations with Mr. Simon, so.

21 Q It felt a little uncomfortable telling him that maybe a little  
22 preventative medicine might prevent a lot of what we're doing here  
23 today?

24 A Well --

25 Q I get that. And you're an associate, right?

1           A     I am an associate.

2           Q     Okay. And, again, it's not comfortable to go to a partner and  
3 say, you know -- I'm just asking if you ever --

4                   MR. CHRISTIANSEN: Excuse me, Your Honor. I'm going to  
5 object on foundation grounds. From what I've heard, there is no  
6 foundation that she knew whether there was or wasn't a fee agreement.  
7 So, this is -- there's no evidence in the record to support any of these  
8 questions. He has to lay a foundation first before he can ask these  
9 questions.

10                   MR. VANNAH: I'm laying a foundation for one thing, but I'm  
11 asking a separate question. I think that my foundation is well laid here.

12                   THE COURT: Well, I mean, what is the -- I mean, you're  
13 asking her if she ever had said to Mr. Simon that he could've prevented  
14 this?

15                   MR. VANNAH: Yeah.

16                   THE COURT: Okay.

17                   MR. VANNAH: Just by simply having a fee agreement.

18                   THE COURT: Right. And I think she already said no.

19                   MR. VANNAH: I think she has.

20                   THE COURT: So, can you ask her something else until, Mr.  
21 Vannah?

22                   MR. CHRISTIANSEN: She has to know whether the, you  
23 know, was there an agreement.

24                   MR. VANNAH: I thinks he said, no, she didn't have that  
25 conversation.

1 MR. CHRISTIANSEN: Was there --

2 THE COURT: Okay. Hold on. Only one of you is going to  
3 talk at any given time. We're still in court.

4 MR. VANNAH: Well, he's objecting -- okay.

5 THE COURT: We're still having court here.

6 MR. VANNAH: You are. Go ahead.

7 THE COURT: I mean, this is the deal. He asked her if she  
8 ever said that to Mr. Simon, which I think she can testify to, but she  
9 already said, no, I never said that to him.

10 MR. CHRISTIANSEN: Absolutely, and then the questions --

11 MR. VANNAH: I'm not -- I don't have any other questions.

12 THE COURT: Okay. He's going to move on.

13 MR. VANNAH: So, to make it simple --

14 MR. CHRISTIANSEN: Okay.

15 MR. VANNAH: I mean, I don't have questions about --

16 THE COURT: About that.

17 MR. VANNAH: -- that because --

18 THE COURT: Okay.

19 MR. VANNAH: -- that answered the question.

20 THE COURT: Okay.

21 BY MR. VANNAH:

22 Q Has Mr. Simon ever told you that he actually had a fee  
23 agreement with Mr. Edgeworth that he made early on in the case? Has  
24 he ever said I actually had a fee agreement?

25 A I have never had any conversations with regard to the fee

1 agreement with Mr. Simon.

2 Q Okay. And so, you know, this is a yes or no question. Has  
3 Mr. Simon ever told you -- I just want to make it clear -- that he actually  
4 had a fee agreement with Mr. Edgeworth that he entered into at the  
5 outset of the case?

6 A No, sir.

7 Q Thank you. Now, I don't want to go through each and every  
8 one of your billings, but the ones -- I just pulled out some. Like the  
9 9/13/2017.

10 A Yes, sir.

11 Q You billed -- I think you billed -- at least I just added up 22.85  
12 hours.

13 THE COURT: And are you referring to the chart that was  
14 created by your client, Mr. Vannah?

15 MR. VANNAH: I am because I think that reflects that day.

16 THE COURT: Okay. I'm just -- I just need to follow along  
17 with you. I just wanted to know what document we're talking about.

18 MR. VANNAH: Good question. I don't even know that.

19 THE COURT: So, it's your Exhibit 9.

20 MR. VANNAH: 9.

21 THE COURT: Okay. And what date did you say, Mr. Vannah?

22 MR. VANNAH: I just want to take one date and just go to  
23 September 13th --

24 THE COURT: '17?

25 MR. VANNAH: -- 2017. That date. Hold that right there. Let

1 me just ask some preliminary questions.

2 THE WITNESS: Okay.

3 BY MR. VANNAH:

4 Q So, what I understand --

5 MR. VANNAH: -- okay. While he's looking for that let me just  
6 make sure --

7 THE COURT: It should be Bates stamp page 10, Mr. Greene.

8 MR. GREENE: It sure should.

9 THE COURT: At the very bottom.

10 MR. VANNAH: All right.

11 MR. GREENE: Thank you, Judge.

12 THE COURT: You're welcome.

13 BY MR. VANNAH:

14 Q I want to call it the original invoice.

15 A Yes, sir.

16 THE COURT: Okay. Just so we're clear, Mr. Vannah, this  
17 isn't the invoice. This is a chart that your client prepared, not the invoice  
18 that was sent out by Mr. Simon's office, right?

19 MR. VANNAH: Right. I'm saying -- I want to talk -- yes.

20 THE COURT: Oh, so you are talking about the original  
21 invoice?

22 MR. VANNAH: Yeah. Just keep this in mind.

23 THE COURT: Okay.

24 BY MR. VANNAH:

25 Q We're going to go to this. I want to now go to -- just in my

1 mind. You don't have to look at it, I don't think. What I call the original  
2 invoice, would that be invoice number three or invoice number four that  
3 would capture this date?

4 A That would be invoice number four.

5 Q Okay. I don't think we have to look at it, because you've  
6 already looked at it, but on invoice number four that was eventually sent  
7 to Mr. Edgeworth that he paid --

8 A Yes, sir.

9 Q -- on that date, 9/13/2017, had your time on that date been  
10 8.75 hours on invoice number four? And if you need to look at it, you  
11 can.

12 A Yes, sir. It was 8.75.

13 Q 8.75. And this one you've looked at, so you're pretty sure of  
14 what you're saying, right?

15 A Yeah. I actually --

16 THE COURT: Mr. Vannah, I need to follow along, so I'm  
17 going to need some page numbers.

18 MR. VANNAH: Okay. Then help me just --

19 MR. GREENE: That's Exhibit 2, page number --

20 MR. VANNAH: We'll do -- help me out here.

21 MR. GREENE: -- 30.

22 THE COURT: Page 30? Okay.

23 MR. GREENE: Yeah.

24 THE COURT: Okay.

25 MR. VANNAH: I'm going to have --

1 THE COURT: Okay. So, 9/13. Okay.

2 MR. VANNAH: I've got this tech genius here next to me. He  
3 can't even turn a cell phone on, but --

4 BY MR. VANNAH:

5 Q All right. Just point -- so if you look at -- what's the  
6 document number so I say it right? Exhibit what?

7 THE COURT: 2.

8 MR. GREENE: Exhibit 2.

9 MR. VANNAH: Exhibit 2? That's our Exhibit 2?

10 MR. GREENE: Yes, it is.

11 THE COURT: Yes.

12 MR. VANNAH: Page 30. Point to where it says that. So, if  
13 you look at line item -- it would be 9/13.

14 THE COURT: The very top two, Mr. Vannah.

15 MR. VANNAH: Thank you.

16 BY MR. VANNAH:

17 Q Yeah, so, if you look at 9/13, the very top two, in detail, you  
18 talked about you prepared, and you attended a hearing on Defendant's  
19 motion to compel home inspection, right?

20 A Yes, sir.

21 Q And you reviewed the Pancoast letter and discussed it with  
22 DSS, and that'd be Danny Simon, I'd take it?

23 A Yes, sir.

24 Q So, your time for that particular task was 6.25 hours, right?

25 A Yes, sir.

1 Q All right. Then you go down to the next item. Finalize and  
2 serve Nevada revised civil procedure 30(b)(6), notice of deposition. That  
3 time took two-and-a-half hours, right?

4 A Yes, sir.

5 Q Or two-and-a-half, right? So, if we add those two things  
6 together on 9/13, on the bill that got paid, you -- the firm got paid for 8.75  
7 hours of your time for 9/13/2017, right?

8 A Yes, sir.

9 Q Then if I understand correctly, then you went back, and we've  
10 talked about that a little bit, and created among other things -- so this --  
11 you created more time for -- that the firm wanted to be reimbursed, for  
12 example, on this date, the very same day, 9/13/2017, correct? That's  
13 what you entered in timewise, correct?

14 A Yes.

15 Q Okay. Now, let's talk about that. So, the time in addition to  
16 the 8.75 hours that you came up with in this task that you undertook was  
17 an additional 14.1 hours to bill for on 9/13/2017, right?

18 A Yes, sir.

19 Q Now, when you add that up, I come up with really close to 23  
20 hours. Do you see that?

21 A Yes, sir.

22 Q All right. And in all due candor, I think you've said that  
23 earlier, and I know you're an honest person, you didn't work anywhere  
24 near 23 hours that day, correct --

25 A Likely not that day.

1 Q -- on this case?

2 A Correct.

3 Q Okay. So, when we look at this -- and I'm just not going to  
4 go through every entry, okay, because it would -- we would be here, I  
5 mean, literally until months from now, and I don't want to do that, but if I  
6 look at one entry here, you're clearly telling me that's just erroneous that  
7 you know for a fact you did not bill -- you did not work 23 hours plus that  
8 day on the sprinkler case, right?

9 A On that day, probably not, but those --

10 Q That's my question.

11 A Okay.

12 Q Because the billing is for that day.

13 A What?

14 Q The billing is for that day, right?

15 A The billing is on -- identified as 9/13/17, correct.

16 Q All right. And you understand, and to be honest and fair to  
17 you, you've never sent a bill to another client in your entire life, correct?

18 A Correct.

19 Q You don't have anything to do with billing?

20 A Nope.

21 Q Never had anything to do with billing?

22 A No, sir.

23 Q This is the one and only client that you've ever billed, right?

24 A Well, yeah, that I've -- yeah, that I've ever billed.

25 Q Hourly.

1 A Correct.

2 Q I mean hourly.

3 A Other than the Ash. Putting together hours for the Ash case.

4 Q Okay.

5 MR. GREENE: This is Exhibit 5, Your Honor. This is from --

6 THE COURT: I think it was page --

7 MR. GREENE: That's correct.

8 THE COURT: I don't know what page it was.

9 MR. GREENE: It begins at pages -- page 131 and goes  
10 through page 134.

11 THE COURT: Okay.

12 MR. VANNAH: Right.

13 BY MR. VANNAH:

14 Q And if you look at that document, so what you did -- this is  
15 the ongoing -- what we've been calling the superbill for that date.

16 There's all those entries about an email chain, et cetera, et cetera, review  
17 email, the attachment, review email from documents, and there's just  
18 one after another after another, and they're at -- they start at the email  
19 chain with DSS, which is Danny Simon. Documents being sent to  
20 Zamisky [phonetic], and then it goes -- you go through the next page,  
21 and some of them are .15. There's a lot of .30's, right, for review,  
22 download, and save, review, download, and save. And then you go to  
23 the third page, and you get a lot more review, download, and save, and  
24 all at .3, correct?

25 A Correct.

1 Q And then you go to the next page, and you've got a lot more  
2 review, download, and save, going all the way down to the last entry,  
3 which is review of email from Robinson re deposition dates for Zamisky,  
4 Hastings, and Olives [phonetic], and that's .15, right?

5 A Correct.

6 Q So, when you add all that up, that's when you come up with  
7 this 14.1 new hours in addition to the 8.75 that you already billed on that  
8 day, correct?

9 A Correct.

10 Q Okay. So, was it ever explained to you why Mr. Simon -- did  
11 Mr. Simon ever explain to you why he wanted you to go back and create  
12 this new billing that had never been presented to the Edgeworths for that  
13 period of time in May of 2016 through September 22, 2017? Did he ever  
14 tell you why he wanted you to go and come up with all this new -- these  
15 new numbers?

16 A Well, the new numbers were all just emails -- things that I  
17 could have a hard tie, because I had never billed for any of that time.  
18 And it was actually -- I didn't start working on the file until January, so I  
19 didn't bill for anything from May until January, but for that one 12/20/16  
20 download. So, from that period to the September, so January '17 to  
21 September '17, because I had not -- well, January to April, I had not  
22 billed for, and so those are emails, phone calls, that kind of thing.

23 Q My question was, did Mr. Simon ever tell you why he wanted  
24 you to go back and create all this additional time to put in invoices that  
25 had already been sent, reviewed, and paid? Did he ever tell you why he

1 wanted you to do that?

2 A It was my understanding for Lange adjudication process, we  
3 had to put together all of our time that we spent on the case.

4 Q Okay. Now, in all fairness, Mr. Edgeworth never said in this  
5 courtroom or anywhere that you guys did nothing of any value on this  
6 case. Do you understand that? Have you ever heard him say otherwise?  
7 Have you ever heard Mr. Edgeworth say you guys never did anything of  
8 value on the case?

9 A Not as I sit here right now.

10 Q Do you remember when Mr. Edgeworth said he thought you  
11 were very -- you, personally, were very competent, very good at what  
12 you did, and he was pleased to work with you. Do you remember him  
13 saying that?

14 A I don't know if those were his exact words, but I do -- I wasn't  
15 here yesterday when he was testifying.

16 Q Oh, okay.

17 A Yes, sir.

18 Q Did you always have cordial, good relationships with Mr.  
19 Edgeworth?

20 A Mr. Edgeworth and I had a cordial relationship.

21 Q Did you find him to be -- it's posed to most clients that I've  
22 had at least, did you find him to be more easy -- did you find him more --  
23 I don't want to use the word intelligent, but the type of logical mind that  
24 could understand the things that you were telling him, as opposed to a  
25 lot of clients that I have that -- I mean, personal injuries tend not to get

1 anything.

2 A I mean, he's a smart guy. He's definitely a smart guy. I  
3 mean, I have other clients, though, that are engineers, lawyers, things  
4 like that. So, I don't want to say he's the only smart guy. I mean, but I  
5 won't take away that he's a smart guy.

6 Q I mean, but he -- was he trying to help when he would give  
7 you information that he would go out and find? Did you get to -- was  
8 some of it helpful to you?

9 A Yeah. Some of it was helpful, yes, sir.

10 Q Did he seem to understand the factual background in the  
11 case, the way the failure happened about the different activations, what  
12 they had withheld from you guys, and how these things were being  
13 activated? Did he seem to understand that?

14 A The factual background to the case with regard to the  
15 sprinkler and stuff like that, he was very knowledgeable about that,  
16 correct. With holding stuff, I don't understand, but definitely with regard  
17 to the factual stuff, yes.

18 Q Yeah, I wasn't suggesting he was withholding anything.

19 A No, no, not him, but I didn't understand that part. That was  
20 all I wanted to clarify.

21 Q I understand.

22 A Okay.

23 Q Okay. So -- now, were you at the deposition of Brian  
24 Edgeworth?

25 A I was not at Mr. Edgeworth's deposition, no, sir.

1 Q Did you ever read that deposition?

2 A I've read bits and pieces of it, and I haven't read it from cover  
3 to -- I have read it, yes, in its entirety, but it was in the middle of the case.

4 Q Did you read the portion of the deposition where Mr. Simon,  
5 while, albeit, not under oath, as the attorney said, look, I had given you  
6 our billings over and over and over again to billings in this case. Do you  
7 remember reading that?

8 A I know that part of the deposition, yes, sir.

9 Q Okay. And when you reviewed that part of the deposition,  
10 did you ever see anywhere where Mr. Simon said, well, there's actually  
11 more billings for that time, but I'm just giving you the friends and family  
12 discount portion of the billing. Did you ever hear him say that to the  
13 other side?

14 A Well, no, I don't -- the way -- not the friends and family  
15 portion, but my reading of that is that we had supplemented it over and  
16 over and over again. That's what he meant by over and over and over  
17 again is my understanding. I mean, I don't know, you can ask him,  
18 which I'm sure you're going to.

19 Q You're right.

20 A But that we were supplementing, because we did  
21 supplement the calculation and the damages over and over and over  
22 again, so that's my understanding of that. I don't --

23 Q Did you personally, as working on the case, ever tell the  
24 lawyers on the other side, especially the Lange lawyers, or anybody on  
25 the other side, hey, you know, these billings that we're submitting as

1 part of the damages, the billings that have been paid by Mr. Edgeworth,  
2 these aren't -- this is only a portion of the billings during that time? Did  
3 you ever tell anybody on the other side so that they don't get mislead  
4 here, that our billings in this case and the damages to Mr. Edgeworth as  
5 a result of our legal billings are going to be quite a bit higher than what  
6 we've told you so far? Did you ever tell anybody that?

7 A No, sir, I never had that conversation with any of the other  
8 defense lawyers or anybody.

9 Q Were you -- did you, during your time you worked in the  
10 case, did Mr. Simon ever say to you, you know, these billings that we're  
11 giving to the other attorneys, that we're giving to them as our  
12 computation of the damages, they really aren't as big as they really are.  
13 They're going to be a lot bigger some day when I get a chance to go back  
14 and rebill the file? Did they ever tell you that? Did Mr. Simon tell you  
15 that?

16 A Not in those words. I knew that the bills, at least mine,  
17 specifically -- you would have to ask him. I mean, and I've looked at his  
18 bills. It didn't include the emails, the WIZnet filings, and telephone calls,  
19 specifically. I knew that, but that conversation -- what you just asked me,  
20 did that conversation happen, no, sir.

21 Q So, let me ask you this because I'm trying to understand why  
22 you would do something like that. So, it was your belief, was it not, right  
23 or wrong, but it was your belief that the larger the bills were that were  
24 being paid by the Edgeworths, the more they paid for legal fees, the  
25 more Lange would have to reimburse; is that -- that's kind of the thinking

1 that was going on there? At least that's what they told Mr. Edgeworth; is  
2 that what you understood?

3 A Well, my understanding is that there was an attorney fee  
4 provision in the Lange contract, so whether it was \$1,000 or \$500, or  
5 whatever, whatever his attorney's fees were, were recoverable.

6 Q And my point is this, is if those fees were recoverable to the  
7 Edgeworths when the case is over. If they're recoverable, wouldn't you  
8 want the fees -- if the fees are actually higher than what you're giving  
9 them, would you want the fee that you're going to be seeking recovery  
10 on to be as high as possible? And not just inflated artificially, but if the  
11 fees are really more than what you are giving them in the computation of  
12 damages, don't you want to say, hey, we need to get the full amount of  
13 the fees that he's eventually going to be responsible for into the  
14 computation of damages? Wouldn't you want that to happen?

15 A Well, I mean, yeah, but it was my -- this case was super  
16 quick. I mean --

17 Q So, I just want to ask then, when you want that to happen --

18 A Oh, okay. Sorry.

19 Q -- wouldn't you want to get all the damages to the  
20 computation of damages, not just part of them?

21 A Yes.

22 Q In fact, you understand, do you not, that if you -- the way the  
23 rules work -- I mean, I know you know this, that if you don't do a proper  
24 computation of damages, then you leave damages out, at the time of  
25 trial, you can't just come up and say, well, we actually had more

1 damages, and we forgot to put them in here, right? You can't just --  
2 that's a problem, right?

3 A I understand what NRCP 16.1 says, yes, sir, with regards to  
4 computation of damages.

5 Q I bet you know that more than I do, because you're in the  
6 trenches doing that and the partner sometimes just relies on the people  
7 that really do the good work and know the rules.

8 So, you knew that those computations of damages that in -- that  
9 were including the attorney fees of the Edgeworths' pay, you knew that  
10 they had a lot of significance to what his damages that he could  
11 eventually recover from Lange would be; you knew that, right?

12 A I knew that they were going towards the provision. It was a  
13 portion of damages. Yes, sir.

14 Q So if you knew -- if you and Mr. Simon knew that there were  
15 going to be additional billings over that four-invoice period, and you  
16 knew that the Defense didn't know that, right? They didn't know there  
17 was going to be additional billings during that four-invoice period, right?

18 A I don't know what they knew, but I would assume, no; I don't  
19 know.

20 Q So, wasn't it incumbent if you had, in your mind and Mr.  
21 Simon's mind, you guys had reached the agreement that there's a lot  
22 more billing that Mr. Edgeworth's eventually going to have to pay during  
23 that period of time that covers those four invoices, we'd better get those  
24 supplemented so that we could collect that from Lange? Did you and  
25 Mr. Simon ever have a conversation like that?

1           A     Not during -- the case was moving so quickly. Like I was  
2 saying, none of the emails or telephone calls were captured in those  
3 initial bills.

4           Q     That's not the question I'm asking you.

5           A     Okay.

6           Q     My question was if you knew that there was going to be a  
7 substantial additional time during the four invoices that you had  
8 basically given as a computation of damages to Lange, if you knew there  
9 was considerable extra time that wasn't being presented to the Lange  
10 defendants, for example, didn't you know that would be a problem in the  
11 future when suddenly you say, oh, by the way, you guys have been  
12 defending this case for two years, but, here, we have 300,000 more in  
13 damages that you weren't aware of that we never bothered to tell you  
14 about; didn't you know that would be a problem?

15          A     Yeah, it could be a problem at trial. Yes, sir.

16          Q     Okay. You knew that -- did you know that you didn't have  
17 this case on a contingency fee?

18          A     I didn't know what the fee agreement -- or fee arrangement  
19 was on this case.

20          Q     And you -- were you aware, as you were preparing the billing  
21 in the first place, that eventually the Edgeworths would be charged for  
22 these additional billings that you were eventually going to come up with  
23 at the end of the case?

24          A     No, sir. We didn't start doing this, the -- what everyone's  
25 called the superbill, until the Lange adjudication process, so I don't think

1 that --

2 Q So, here's what really happened; isn't it? So, what happened  
3 is the Edgeworths and the Simons had a little bit of a falling out in  
4 November; that would be fair to say, right?

5 A I don't know their relationship. I know they're not talking any  
6 more, and I know they used to be friends, so I think that's fair.

7 Q But you learned that working at the office, I assume, that  
8 there was some discussion at the office about this Lange adjudication?

9 A Yeah. Yes.

10 Q And then at that point, Mr. Simon said, you know what, I  
11 don't know how the Judge is going to rule here, but let's go back and  
12 add all the time we can that we can add to -- into the period of time that  
13 the Edgeworths were already billed, and even though they had paid  
14 those bills in full and even though they paid all the costs in full, let's go  
15 back and find more time and add more time so that we can be in a better  
16 position with the Judge; isn't that what happened?

17 A No. It's my understanding that they're timesheets, so it's just  
18 the hours that were not captured. The purpose of the -- what's been  
19 termed the superbill is just a timesheet to show the Judge how much  
20 work has been done. Whether or not that's considered a bill, that's  
21 something Mr. Simon -- I was told to put my time into a timesheet to put  
22 in the motion for adjudication.

23 Q Well, you are aware, are you not, that Mr. Simon is asking  
24 the Court to rule and determine that the Edgeworths should pay this  
25 extra, what is it, 2-, 300,000?

1 MR. CHRISTIANSEN: Your Honor, I'd like to object as a  
2 mischaracterization of a motion for adjudication of Lange.

3 MR. VANNAH: Of what? I haven't asked a question yet.

4 THE COURT: Okay. Only one of you can talk at any given  
5 time. And what was the objection, Mr. Christiansen?

6 MR. CHRISTIANSEN: It's a mischaracterization of a motion.  
7 We requested quantum meruit, which is a reasonable fee.

8 MR. VANNAH: That would be great.

9 MR. CHRISTIANSEN: But in this case, that was the larger  
10 number. That's not what these hours are based upon.

11 THE COURT: Mr. Vannah, your response?

12 MR. VANNAH: I haven't asked the question, so I don't know  
13 how to respond. I just started the question.

14 THE COURT: Well, you said are you aware that Mr. Simon is  
15 requesting, and then you turned to Mr. Greene to say --

16 MR. VANNAH: Right, so I'd like to finish the question.

17 THE COURT: Okay.

18 MR. VANNAH: Yeah.

19 BY MR. VANNAH:

20 Q Are you aware that Mr. Simon is asking this Court to take  
21 into account this additional billing that you guys had come up with,  
22 which includes, for example, clearly erroneous billing on one day of  
23 almost 23 hours, and they're asking this Court to take -- to factor that in,  
24 this additional billing, that had never been presented to Mr. Edgeworth  
25 until after December of last year?

1 MR. CHRISTIANSEN: Objection, Your Honor. Compound.

2 MR. VANNAH: It's one question, yes or no, you're aware of it  
3 or you weren't aware of it.

4 MR. CHRISTIANSEN: Your Honor, that's not a yes or no  
5 question, because he put in a lot of variables and statements into that  
6 question. For example, clearly erroneous billings, things of that type.

7 MR. VANNAH: I never said much --

8 MR. CHRISTIANSEN: There's too much in that one question.

9 MR. VANNAH: I never said anybody who had been clearly  
10 erroneous.

11 THE COURT: Okay. Well, that's what you said, Mr. Vannah.  
12 You said clearly erroneous about the 23 hours that was billed in one day.

13 MR. VANNAH: Oh, I did.

14 THE COURT: Yeah. And you said --

15 MR. VANNAH: I did. I did and that was clearly erroneous.

16 BY MR. VANNAH:

17 Q You didn't bill --

18 A I don't believe it is.

19 Q You didn't work 23 hours in that day on that case, right?

20 A I think I've testified as to why they're --

21 Q I think my question is you didn't work 23 hours on that day  
22 on that case, correct?

23 A I don't believe I did.

24 Q Okay. And my question was are you aware that Mr. Simon  
25 has taken your work product on these billings and is asking the Court to

1 consider 275,000 in additional billings during that period of time that the  
2 Edgeworths have already paid 387,000 in attorney fees; are you aware of  
3 that?

4 A That's not my understanding of what the motion is, but so I  
5 guess the answer would be no.

6 Q Okay.

7 MR. VANNAH: Let me just go through some of the -- I might  
8 have covered a lot of these.

9 BY MR. VANNAH:

10 Q So, at the time of Mr. Edgeworth's deposition, when Mr.  
11 Simon said -- do you remember Mr. Simon saying all of these bills -- all  
12 of these invoices have been disclosed to you numerous times? You  
13 remember him saying that, right?

14 A Yes.

15 Q At any time, did Mr. Simon tell the Defense we've only  
16 disclosed a portion of Plaintiff's fees and costs to you. Did he ever say  
17 that?

18 A I wasn't at the deposition. That is not in the deposition  
19 transcript though.

20 Q You've read it though?

21 A I've read the deposition transcript and --

22 Q And I'm asking you, from your review of the deposition  
23 transcript, did Mr. Simon ever say to the Defendants we've only  
24 disclosed a portion of Plaintiff's fees and costs to you? Did he ever say  
25 that?

1           A     I didn't read that in the transcript, no, sir.

2           Q     Did Mr. Simon ever say to the Defendants that there are  
3 more invoices for additional fees and costs, which will be disclosed that  
4 cover that period of time, up to September 22?

5           A     I didn't read that in the deposition transcript, but again, it's  
6 been a long time since I've read it, so --

7           Q     Did Mr. Simon ever say to the Defendants, we're going to be  
8 sifting through Plaintiff's invoices and our files and add time and fees  
9 that we haven't added or disclosed yet to you; did he say that to the  
10 Defendants?

11          A     He couldn't have. So, no, sir, that's not in the transcript.

12          Q     Did he ever say anything to the Defendants in the transcript  
13 to give notice or even an indication that every fee and cost incurred  
14 today hadn't been produced to the Defendants?

15          A     Not based upon the transcripts that I recall.

16          Q     Okay. Now, when you go back and look at the early billings,  
17 you see that they go back and even cover the meeting at Starbucks,  
18 right?

19          A     I believe -- well, it doesn't have a date on it, but that says,  
20 yeah -- yes, sir, I've seen that.

21          Q     So, the -- in spite of the -- and that's okay. In spite of the  
22 friends and family discount, whatever that is, it is apparent when you've  
23 reviewed the billings that the billings do cover the meeting at Starbucks  
24 and all those things that happened at that point in time, all the way back  
25 to the first day that they met?

1           A     There are some entries that are in the first bill, yes, sir.

2           Q     Okay. Oh, I know one thing I wanted to talk to you about that  
3 was kind of interesting. Mr. Christiansen, when he was talking to Mr.  
4 Edgeworth was saying that -- pointed out to him that he had said in  
5 August of 2017, that he had perceived that the case -- and I can't  
6 remember the exact words -- but had blossomed, gotten better,  
7 improved greatly? Do you remember that? Did you ever hear that  
8 testimony?

9           A     I heard the testimony, yes, sir.

10          Q     All right. And in fact -- and then Mr. Christiansen said, well,  
11 you say that, but had any defendants offered you a dime in this case at  
12 that point by August 2017, and his answer was, no, correct?

13          A     That was his answer, I believe.

14          Q     Is that true? But is that true, I'm sorry?

15                 MR. CHRISTIANSEN: Objection, Your Honor. That's a  
16 mischaracterization of the record.

17                 MR. VANNAH: I don't think so, but --

18                 THE COURT: Okay. Would Mr. Christiansen saying that  
19 nobody had offered any money by August of 2017?

20                 MR. VANNAH: That's what he asked.

21                 THE COURT: Right, and isn't that what Mr. Edgeworth  
22 testified to?

23                 MR. VANNAH: It is.

24                 THE COURT: Okay. I recall Mr. Edgeworth saying that.

25                 MR. CHRISTIANSEN: Different testimony at different times.

1 MR. VANNAH: I don't understand. I just asked the question  
2 very specifically. What am I mischaracterizing?

3 THE COURT: What is the mischaracterization? Because Mr.  
4 Christiansen asked Mr. Edgeworth about that blossoming email. We  
5 talked about blossoming for about an hour. And then Mr. Edgeworth  
6 said, yes, I said blossoming in the email. He finally said that, and then  
7 Mr. Christiansen said isn't it true no one had offered any settlement  
8 money by August of 2017, and Mr. Edgeworth agreed to that.

9 MR. CHRISTIANSEN: At one point that is correct; however,  
10 when they were going over Exhibit 16 of Mr. Edgeworth's deposition, in  
11 which he stated under oath to this Court earlier, that there was a  
12 significant offer on the table prior to the blossom -- the dreaded  
13 blossoming email, he affirmed that and then he got -- he went back and  
14 forth on it. It was very confusing testimony. He went back and forth a  
15 number of times. So, that's why it's a mischaracterization. And it also  
16 ignores what Mr. Edgeworth said in a -- in his declaration under oath.

17 MR. VANNAH: So, we --

18 THE COURT: No, and I mean I know that there's a huge  
19 dispute about what was said in the declaration that attached to the  
20 motion. What he testified here to today is nobody had offered any  
21 money by August of 2017.

22 MR. CHRISTIANSEN: Oh, today?

23 THE COURT: Yes.

24 MR. CHRISTIANSEN: As opposed to yesterday or the day  
25 before?

1 THE COURT: Right. But today --

2 MR. CHRISTIANSEN: I withdraw the objection then.

3 THE COURT: Okay.

4 MR. CHRISTIANSEN: Okay.

5 THE COURT: When Mr. Christiansen asked him, he said, no.  
6 Okay. Mr. Vannah, you can ask the question.

7 MR. VANNAH: I don't think it was really disputed.

8 BY MR. VANNAH:

9 Q Wasn't he offered -- there was no offer on the table as of  
10 August 17th, or whatever that date was, 2017, was there?

11 A I don't believe there were any offers on the table in August of  
12 2017.

13 Q Right.

14 THE COURT: Okay. Mr. Vannah, we've moved on.

15 BY MR. VANNAH:

16 Q Right. So, when Mr. Christiansen said, well, you're talking  
17 about how this case is blossoming and the offers to you are zero;  
18 remember that?

19 A I was here for the testimony.

20 Q Yes. Okay. But, now -- and you're very bright, and you're  
21 very perceptive, and in July of 2017, before this August meeting took  
22 place --

23 A Okay.

24 Q -- you were very perceptive and wrote, holy crap.

25 A Yes, I did.

1 Q Holy crap with big explanation marks. That's a legal term,  
2 right, holy crap?

3 A Completely. Black's law.

4 Q It's a joke, but it's like, wow, and then you wrote something  
5 like can you say punitive?

6 A Something like that, yes, sir.

7 Q Something like that. So, in July -- being the perceptive  
8 young lawyer you are, with a lot of experience working with good firms,  
9 in July, before this August meeting, you recognized that, by your holy  
10 crap comment, holy crap, you know, punitives are in play at this point,  
11 right?

12 A Yes, sir.

13 Q And that changes the case substantially; doesn't it?

14 A Punitive damages definitely change a case, yes, sir.

15 Q Changes the complexion of negotiations when insurance  
16 companies got their insured out there facing a potential punitive claim,  
17 the insurance company can be a little more generous, right?

18 A From my experience.

19 Q Okay. So, when Mr. Edgeworth said in August that the case  
20 had blossomed, even though there hadn't been any offers on the table,  
21 you recognize that the case had greatly changed when you wrote that  
22 holy crap memo, right?

23 A Yeah. There was a lot of stuff that happened, but, yes, sir,  
24 that was one of the aspects of it.

25 Q Now, did Mr. Simon ever say to you that he had some -- that

1 he was only charging Mr. Edgeworth a fee to collect compensatory  
2 damages? Did he ever, like, tell you, well, I have a fee agreement for  
3 compensatory damages, but my fee agreement doesn't include  
4 exemplary or punitive damage; did Mr. Simon ever tell you that?

5 A No, I don't have any idea what their fee agreement was.

6 Q And isn't it true that it was Brian Edgeworth, if you know,  
7 who actually contacted fire marshals and others, both here and abroad,  
8 and discovered how extensive these activations were, both before and  
9 after Plaintiff's incident, before his activation?

10 A I know that Mr. Edgeworth contacted a fire marshal in  
11 California, and I know he contacted some people in Europe.

12 Q And he did that, right?

13 A He's the one that made the phone call.

14 Q So, isn't it true that Brian was the one who found the link that  
15 uncovered hundreds of additional activations of these sprinklers? He's  
16 the one that actually went out and found that, right?

17 A I believe that he found some additional activations. I'm not  
18 going to discredit him for that, but I don't think he found all of them.

19 Q So -- but he found a great many of them?

20 A He found -- he found -- yeah, he found some, yes.

21 Q And brought that to your attention?

22 A Yeah, he -- well, I mean, I think in the documents that we had  
23 as well.

24 Q And isn't it true that Brian prepared many of the document  
25 productions and other discovery responses in this litigation?

1 A I can't agree with that, no.

2 Q Okay. So, let me --

3 MR. VANNAH: -- if I can confer with the client?

4 THE COURT: Yes.

5 [Pause]

6 BY MR. VANNAH:

7 Q Now, you had mentioned that a part of your efforts -- which  
8 are your efforts too, to go back and create this additional billing for that  
9 four-invoice period, that you went out and got cell records?

10 A Cell phone records, yes, sir.

11 Q Where did you get the cell records from? From what  
12 company?

13 A Well, I got mine from my company and then Mr. Simon  
14 obtained his.

15 Q Where are those records?

16 A Where are those records?

17 Q Yes.

18 A On the internet. I mean, I just looked them up.

19 Q Well, do you have -- do you have those so you can show the  
20 Court and us?

21 A I'm happy to -- I mean, mine, I don't know -- yeah, I don't  
22 have them with me right now.

23 Q No, no, I mean, but could you -- we're going to be here --  
24 today's Wednesday. Yeah, and I'd like you to stay available. I don't  
25 want to call you back up. I want --

1 MR. CHRISTENSEN: I'm sorry, Your Honor, if Mr. Vannah  
2 has a discovery request, he should make it to counsel, not to the person  
3 on the witness stand.

4 MR. VANNAH: I guess we're not allowed to do discovery in  
5 this case. I mean, all due respect, you told us --

6 THE COURT: Well, I said you weren't allowed to do  
7 depositions, Mr. Vannah. I wouldn't allow depositions. I mean, it's my  
8 understanding there have been some conversations between the two of  
9 you and there's been some documents exchanged.

10 MR. VANNAH: Well, I'd like to see the phone records that  
11 she's referring to that she used for both her and Mr. Simon. Yeah, that's  
12 a simple request, so we can look at them tomorrow and then -- and  
13 compare them to her work, and I may recall her as a witness, depending  
14 on what I find from that, since we're now relying on documents that  
15 have never been produced in this litigation. Can I have those  
16 documents?

17 THE COURT: Mr. Christensen.

18 MR. CHRISTENSEN: Your Honor, do I get an opportunity to  
19 respond?

20 THE COURT: Yes.

21 MR. CHRISTENSEN: Thank you, Your Honor. We've actually  
22 been working very well on producing documents. For example, Mr.  
23 Greene asked late last week for some documents, and we got them right  
24 over to him pretty promptly. If this request had come in early after the --  
25 I mean, this -- the timesheets were provided in January. Even having

1 said all of that, they waited months and months to bring this up, to raise  
2 it during the third day of the hearing. I don't have a base objection to  
3 produce any redacted phone records, only the calls that relate to the  
4 billings here. That's not going to be done overnight.

5 THE COURT: Well, I mean, and that was my concern,  
6 because my concern is we're not entitled to know everybody that Ms.  
7 Ferrell is talking to back in 2017.

8 MR. VANNAH: I don't want that.

9 THE COURT: So, we're only entitled to know which calls she  
10 used in regards to preparing this -- we'll refer to it as the superbill  
11 because everybody knows what we're talking about -- the superbill in  
12 this litigation. So, I mean, that's going to have to be redacted.

13 MR. VANNAH: I agree.

14 THE COURT: So --

15 MR. VANNAH: I don't want -- I don't want to know who  
16 she's --

17 THE COURT: Well, you had also --

18 MR. VANNAH: She may have somebody we don't want to  
19 see. No, I'm just teasing.

20 THE COURT: You would also agree with me, Mr. Vannah,  
21 that we can't force her to do that tonight?

22 MR. VANNAH: Yeah. So, here's -- I appreciate Mr.  
23 Christiansen, but --

24 THE COURT: Mr. Christensen.

25 MR. CHRISTENSEN: Christensen.

1 THE COURT: It's okay.

2 MR. VANNAH: I'm going back and forth.

3 THE COURT: It's okay.

4 MR. VANNAH: You guys should not work together.

5 MR. CHRISTIANSEN: It's our plan.

6 MR. VANNAH: It's a good plan. If I had known, remember,  
7 this is the problem, and I'm not coitizing anybody for that, but if I had  
8 been able to -- if I had taken her deposition she would have told me all of  
9 this, and I would say, oh, I want those phone records.

10 So, I get it, but I -- that's part of the problems that occur  
11 when you're doing discovery in the middle of the hearing. I'd just like to  
12 see those phone records and have them redacted so we can see them  
13 and be able to compare to what those phone records -- because my --  
14 you know, I'd like to be able to compare them and see if those phone  
15 records match up to what she's got in here. There's a lot of time for  
16 telephone calls.

17 THE COURT: Well, there is a lot of time for --

18 MR. CHRISTENSEN: Your Honor, if I may? I've already said I  
19 don't have an objection to producing them. You should have asked  
20 earlier.

21 THE COURT: You just have an objection to her staying up all  
22 night.

23 MR. CHRISTENSEN: You can't get them tomorrow. I'm not  
24 doing that.

25 THE COURT: Well, and I -- we can't expect them tomorrow. I

1 mean, we just cannot.

2 MR. VANNAH: All right. I'm okay.

3 THE COURT: But, I mean, I think then in regards to timing of  
4 this case, I mean, if we can get -- I assume we'll finish Ms. Ferrell today  
5 because it's only 4:00 right now, so I think we're doing well on her, so if  
6 we can get her off the stand today, we then still have Mr. Simon and Mr.  
7 Kemp is my understanding that are coming in tomorrow.

8 MR. VANNAH: That's fine.

9 THE COURT: I'm not going to hold out a ton over -- that's not  
10 going to leave us a ton of time at the end of the day. So, I mean, we're  
11 going to have to come back on this case for something else later  
12 anyway, so if you want the phone records, we can produce them, but  
13 they're not -- that's not going to be done tomorrow.

14 MR. VANNAH: That's fine, Your Honor. And what Mr.  
15 Christensen says, he could have asked earlier, I didn't --

16 MR. CHRISTENSEN: You can call me Jim.

17 MR. VANNAH: When Jim got -- you know, that's a lot easier.  
18 Jim and Pete, that's easy. You can call me Bob. So, bottom line is I --

19 THE COURT: I understand the point you're making, Mr.  
20 Vannah.

21 MR. VANNAH: I didn't know anything about any phone  
22 records or how she did it. I didn't even know she was the one who did it.

23 THE COURT: Right. Well, we found all that out today.

24 MR. VANNAH: It's okay.

25 THE COURT: But you said it at the hearing, Judge, I want to

1 do depositions, and I told you that you and I were going to find out all  
2 these stuff at the same time, and that's exactly what's happening here  
3 today.

4 MR. VANNAH: And I --

5 THE COURT: So, we're going to -- Ms. Ferrell, we're going to  
6 need you to produce those records, you know, timely, but not tonight.

7 THE WITNESS: Okay.

8 THE COURT: Okay. We're not going to ask you to produce  
9 them tonight, so we'll address, you know, how we proceed after  
10 tomorrow at the end of the day tomorrow, but there is no expectation for  
11 you to have those here tomorrow. But they'll be redacted, any personal  
12 information, just the records in regards to the calls you made in regards  
13 to the Edgeworth's litigation.

14 THE WITNESS: Okay.

15 MR. VANNAH: And the damage records too. His phone.

16 THE COURT: Well, we have to ask Mr. Simon for those,  
17 because she just testified that she got them from him, and it's my  
18 understanding that it's probably just going into -- I'm using Verizon  
19 because that's my carrier.

20 MR. VANNAH: Okay.

21 THE COURT: Probably you went into Verizon's website and  
22 pulled up all your old billings. I'm assuming you don't have access to  
23 Mr. Simon's cell phone bills, so we can request that of Mr. Simon to get  
24 you those, but he's going to have to get you those because what she's  
25 saying is there was no court order issued. She went on the website and

1 went through her old bills. So, Mr. Simon would need to sign in, put his  
2 password in, and go get his bills.

3 MR. VANNAH: And I -- but I thought you did that?

4 THE WITNESS: I didn't get Mr. Simon's bills.

5 THE COURT: No, she said she didn't.

6 THE WITNESS: I just put them into a bill.

7 BY MR. VANNAH:

8 Q Well, I didn't mean you went and got them, but you had --  
9 you had his billing records -- you had his phone bill records.

10 MR. CHRISTENSEN: Your Honor --

11 THE COURT: Yes.

12 MR. CHRISTENSEN: Can I short circuit this, please?

13 THE COURT: Yes.

14 MR. VANNAH: Yeah, sure.

15 MR. CHRISTENSEN: Okay.

16 MR. VANNAH: Anything you can do to help.

17 MR. CHRISTENSEN: My understanding is that Mr. Simon  
18 has calls in paper form.

19 MR. CHRISTIANSEN: I think so.

20 MR. CHRISTENSEN: Okay. So whenever appropriate, which  
21 we'll address tomorrow --

22 THE COURT: Yes.

23 MR. CHRISTENSEN: At some point in the future we'll do the  
24 redaction job, we'll provide them.

25 THE COURT: Okay. And we'll get the timing and everything

1 of that, depending on how things shape up tomorrow by the time we  
2 end.

3 MR. VANNAH: Which brings up an additional question, and  
4 I'm almost done.

5 BY MR. VANNAH:

6 Q So, the question is, too, when you talked to Mr. Edgeworth, it  
7 was usually on your cell phone?

8 A No, both. If I didn't answer my cell phone, he would call the  
9 office or vice versa.

10 Q And just out of curiosity, so would your office -- did that keep  
11 track of the length of the call with somebody and who you talked you?

12 A No, that's the problem because we subpoenaed the Cox --  
13 Cox is our phone provider, and Cox wasn't able to give us the bills for  
14 that time period.

15 Q So, what bills you're talking about, you looked at, would be  
16 the cell phone records?

17 A The cell phone records, correct.

18 Q Okay.

19 A Yes, sir.

20 Q No, I just want to make sure I'm kind of narrowing it --

21 A Yeah.

22 Q Ashely, thank you very much. It's nice to see you again.

23 A Nice to see you, too.

24 THE COURT: Okay. Mr. Christensen.

25 MR. CHRISTENSEN: Thank you, Your Honor.

1 REDIRECT EXAMINATION

2 BY MR. CHRISTENSEN:

3 Q In follow up on our last -- this last discussion that we had,  
4 you were able to get cell phone records, at least for a period of time for  
5 the entire case?

6 A Yes, sir.

7 Q But no landlines from the office?

8 A That is correct, yes.

9 Q Okay. So, if there was a long conversation between Mr.  
10 Simon and Mr. Edgeworth, while Mr. Simon was sitting at his office on  
11 his phone, we did not capture that time?

12 A That -- any time with phone calls at the office was not  
13 captured, whether it was Mr. Simon, myself, talking to the experts or Mr.  
14 Edgeworth, correct.

15 Q Or Mr. Miller?

16 A Or Mr. Miller, yeah. None of the office phones' times was  
17 captured.

18 Q That's a good time on talking to experts or witnesses or --

19 A Correct. Anything from -- anything from the office was not  
20 captured, yes, sir.

21 Q Okay. So, that's part of the time that is not reflected on the  
22 timesheets that the Judge has?

23 A Correct.

24 Q Do you have a ballpark estimate on the amount of time in  
25 addition to the phone calls that are not reflected in the timesheets that

1 the Judge has?

2 A I'm sorry, could you say that one more time?

3 Q Do you have an estimate of the number of hours that are not  
4 reflected on the timesheets that have been submitted?

5 A Couple -- yeah, a couple hundred probably.

6 Q Okay. That's a ballpark estimate?

7 A Ballpark. I don't know exactly.

8 Q Okay. There were some questioning by Mr. Vannah about  
9 deadlines?

10 A Yes, sir.

11 Q We all know about deadlines.

12 A Yes, sir.

13 Q Deadlines get moved sometimes; don't they?

14 A Yes, they do from my experience.

15 Q And when a deadline is moved, then you have more time to  
16 produce damage information, correct?

17 A Yes, sir.

18 Q Do you know what was happening to the deadlines in the  
19 sprinkler case, or the Edgeworth case?

20 A At the end of the case, or when?

21 Q Correct.

22 A At the end of the case, I know we were extending things. Mr.  
23 Parker had just joined the case, and we were extending the deadlines out  
24 from there.

25 Q Okay. The number of activations that you found in early

1 July, as I recall, was 80- some, maybe 83 or so, domestically?

2 A Correct.

3 Q And then another 90 or 91 over in the United Kingdom?

4 A 91 in the UK.

5 Q Okay. So, at least right off the bat, you tracked down 170?

6 A Yeah, if that's the math, sir.

7 Q Okay. And certainly Mr. Edgeworth tracked down some of  
8 his own?

9 A Yes. Yeah, absolutely.

10 Q Okay. There was some discussion of Mr. Edgeworth's  
11 deposition?

12 A Yes.

13 MR. CHRISTENSEN: And, Your Honor, that's in the Law  
14 Office exhibits, at Exhibit 84.

15 BY MR. CHRISTENSEN:

16 Q When Mr. Vannah was questioning you, did you have a  
17 memory of when Mr. Simon was asking questions in the deposition at  
18 pages 293 and 294?

19 A No. Just like I told Mr. Vannah, I read this deposition from  
20 front to back a long time ago. I don't remember everything in the  
21 deposition.

22 Q Okay. Were you here when Mr. Christiansen was  
23 questioning Mr. Edgeworth about what was contained in the -- Mr.  
24 Simon's part of his deposition?

25 A Yes, that the damages were still continuing.

1 Q Including attorney's fees?

2 A Yes, sir.

3 Q Okay. So, at least based upon that, that -- I guess it was in  
4 the deposition?

5 A It was in there. I -- yeah.

6 Q Okay.

7 A Not that you refreshed my recollection, I do recall that part.

8 Q That's okay. There's a lot of stuff going on. Let's talk about  
9 the 22-hour day that was focused on in cross-examination.

10 MR. CHRISTENSEN: And, Your Honor, I'm taking a look at  
11 Edgeworth Exhibit 5 that begins at Bate 131 and goes through 134.

12 THE COURT: Okay.

13 BY MR. CHRISTENSEN:

14 Q On this timesheet, there is a bunch of entries that say review,  
15 download and save. For example, application for issuance of  
16 commission to take out-of-state deposition Tyco (phonetic). Do you see  
17 that for example?

18 A Yes, sir.

19 Q Okay. And the review, download and save, what is -- what  
20 was that short for?

21 A Those were all WIZnet files. Anywhere it says review,  
22 download and save, and then the title of the document.

23 Q Okay. So, I mean, this happened, right?

24 A Correct. There's a hardcopy to tie every single one of these  
25 two this time right here on 9/13.

1 Q Every one of these WIZnet filings that are documented --

2 A Yes.

3 Q -- on this exhibit for 9/13 happened in the case, right?

4 A Yes, they did.

5 Q I mean, you went to the register of actions and you went to  
6 WIZnet and that's how you got this information, right?

7 A Yes, that's exactly how I got the information.

8 Q Okay. So, someone, I guess it was you, reviewed and  
9 downloaded and saved all this work, right?

10 A Yes, it was me. Yes, I did do it.

11 Q I mean, people don't file stuff in a big case and you just  
12 ignore it?

13 A Correct. No, you can't ignore it.

14 Q Okay. So, all of this work was done?

15 A Yes.

16 Q Just maybe not on 9/13?

17 A Exactly. Like I said before, it could have been the next day or  
18 within two days of that date, correct.

19 Q Okay. And at least as a timesheet that reflects the amount of  
20 work that you did on the file, it's accurate?

21 A Correct. Yes. This work did happen.

22 Q Okay. Maybe not on 9/13?

23 A Maybe not on 9/13.

24 Q Maybe some of it on 9/14?

25 A Maybe some of it on 9/14, yes, sir.

1 Q Or 9/15?

2 A Or 9/15, yes, sir.

3 Q Okay. But you weren't in the habit of ignoring WIZnet filings  
4 on the case?

5 A I could not ignore WIZnet filings, that is correct.

6 Q Okay. And on the entries that describe emails, those have all  
7 been produced, right?

8 A Yes.

9 Q Anybody can go look them up themselves and confirm that  
10 they occurred?

11 A Yes, sir.

12 Q Okay. All right. Thank you.

13 A Thank you.

14 THE COURT: Mr. Vannah, do you have any recross?

15 MR. VANNAH: No.

16 THE COURT: No. Okay. This witness may be excused. Ms.  
17 Ferrell, thank you very much for being here.

18 THE WITNESS: Thank you.

19 THE COURT: Mr. Christiansen, and I hate to do this to you  
20 guys, but I'm going to ask you to put Mr. Simon up today in the interest  
21 in making sure we finish tomorrow.

22 MR. CHRISTENSEN: We can get started.

23 THE COURT: I mean --

24 MR. VANNAH: Judge, can we have a two-minute bathroom  
25 break?

1 THE COURT: Sure.

2 [Recess at 4:19 p.m., recommencing at 4:29 p.m.]

3 THE COURT: We're back on the record in A767242, A738444,  
4 Edgeworth Family Trust v. Daniel Simon dba as the Law Office of Daniel  
5 Simon. Mr. Simon is on the witness stand.

6 Mr. Simon, if you can stand and raise your right hand.

7 DANIEL SIMON, DEFENDANT'S WITNESS, SWORN

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

10 THE WITNESS: Daniel Simon, D-A-N-I-E-L S-I-M-O-N.

11 THE COURT: Okay. Mr. Christensen.

12 DIRECT EXAMINATION

13 BY MR. CHRISTENSEN:

14 Q Mr. Simon, did you have an oral agreement to provide legal  
15 services to Mr. Edgeworth for \$550 an hour on May 27, 2016?

16 A I did not.

17 Q How about May 28th, 2016?

18 A I did not.

19 Q How about June 10th, 2016?

20 A I did not.

21 Q What do you do for a living?

22 A I'm a lawyer.

23 Q How long have you been a lawyer?

24 A Twenty-six years.

25 Q Where have you practiced?

1 A Las Vegas, Nevada.

2 Q What kind of cases have you done?

3 A Personal injury cases, worker compensation cases.

4 Q Have you done product defect cases?

5 A Yes, sir.

6 Q How would you characterize the, what's been called the  
7 Edgeworth or the sprinkler case?

8 A Complex litigation.

9 Q And there was a product defect aspect to it?

10 A There was -- it was complex for several reasons. There was a  
11 product defect element to it. There was breach of contract, construction  
12 defect, a lot of nuances that related to both aspects of both of those  
13 cases.

14 Q Okay. All right. Getting over some of the preliminaries we  
15 just had, did you meet Mr. Edgeworth on May 28, 2016 at a Starbucks  
16 somewhere in the greater Las Vegas area?

17 A I did.

18 Q What did you talk about?

19 A He wanted me to come review and discuss a case about a  
20 flood that he had at his property that has been ongoing, I guess, since  
21 April, and he was having difficulty with the insurance company, the  
22 plumber, and wasn't getting satisfactory responses and needed some  
23 help, and he asked me for -- if I would take a look at it.

24 Q How much information did you know about the flood before  
25 you met Mr. Edgeworth on May 28th?

1 A Not much.

2 Q Not a whole lot?

3 A Not a whole lot.

4 Q Okay. I mean, why not? You guys were friends, your  
5 families were friends. What was going on?

6 A I basically got an email out of the blue from him. It kind of  
7 asked me to do that, and so I responded and said, all right, I'll meet, and  
8 I'll take a look at it. I don't know if I had a conversation over the phone or  
9 not briefly with him, but the idea was -- is that he was going to bring his  
10 problem, and his issues, and file the best he could, and then I would  
11 meet with him to chat about the scope of what his problem was and see  
12 if I could help him or not.

13 Q Did you ever discuss with him, either verbally or via email at  
14 that early stage, at that very outset of some other lawyer handling the  
15 case?

16 A Yes. He had mentioned that Craig Marquis, who is a  
17 business litigation lawyer who does sprinkler cases, that he was referred  
18 there by his own insurance company, because he didn't have course of  
19 construction or law, some case with fire or flood, so he didn't have the  
20 proper insurance. So, since the plumber wasn't going to pay his claim,  
21 his own insurance company, I believe, gave that name to him for him to  
22 go visit because he specialized in that.

23 Q Okay. I'd like to show you what's been previously marked as  
24 Exhibit 80. I believe it's Bate 3552 through 3553, and it's an email string  
25 that's from May 27, 2016.

1 THE COURT: Which exhibit is this, Mr. Christensen?

2 MR. CHRISTENSEN: 80.

3 THE COURT: Okay.

4 MR. CHRISTENSEN: The Law Office Exhibit 80, Bate 3552  
5 through 53.

6 BY MR. CHRISTENSEN:

7 Q I'm just showing you the top of the email right now, and of  
8 course we have that problem with email strings and how they format  
9 when you print them out. Do you recall this string of emails?

10 A Sure. If you can start at the bottom and work your way up,  
11 and is there any way I can get my glasses?

12 MR. CHRISTENSEN: If I can approach, Your Honor --

13 THE COURT: Yeah.

14 MR. CHRISTENSEN: --and deliver Mr. Simon his glasses?

15 THE COURT: You know --

16 THE WITNESS: Thank you.

17 MR. CHRISTENSEN: Thank you, Your Honor.

18 THE COURT: -- I think everybody's adjusting their glasses at  
19 this point.

20 THE WITNESS: That's old age.

21 THE COURT: I'm wearing contacts. Don't be fooled.

22 BY MR. CHRISTENSEN:

23 Q So, I'm going to destroy my own exhibit. Let's see if we can  
24 make this work.

25 THE COURT: Okay.

1 BY MR. CHRISTENSEN:

2 Q So what I'm showing you is the bottom part of 3552 and  
3 then the bottom part of 53. That's kind of it. Let's see if I can do a little  
4 bit better here. So, what we have here is an email that starts off with  
5 Brian saying, hey, Danny. Do you see that part?

6 A I see that.

7 Q And he doesn't want to waste your time?

8 A Yep.

9 Q That is Brian doesn't want to waste your time?

10 A Correct.

11 Q Okay. At this time, did you at least know a little bit about the  
12 flood?

13 A Not a whole lot.

14 Q Okay. And he wants to avoid paying a whole lot of money to  
15 Craig Marquis; is that a fair summary?

16 A Well, yeah. I mean, you look at the email ,and he starts out, I  
17 don't want to waste your time other than force you to listen to me bitch  
18 about it. And so, what that means to me is I've got a friend calling me  
19 whose got a problem that he's -- you know, in his life, and he wants to  
20 tell me about it. He doesn't want to necessarily waste my time  
21 professionally, but as a friend, he wanted me to at least listen to him,  
22 evaluate it, and probably either refer him to somebody or just get my  
23 thoughts on it, which I was happy to do.

24 Q Okay. So, you responded at 12:58. You indicated that you  
25 know Mr. Marquis; you know Craig?

1           A     I do.

2           Q     And you said, let me review file and send a few letters to set  
3 them up, and then you go on and say how that might be -- that might get  
4 him started. What did you mean when you said that?

5           A     Well, he probably told me a little bit about the insurance  
6 company was denying it, they weren't responding, so I figured what I  
7 could do is at least send some letters to try and trigger coverage, and I  
8 think his idea at that time too was, hey, you know, I tried to get them to  
9 accept liability; they're not, so maybe if I, you know, send a letter on a  
10 lawyer's letterhead, they might change their mind. And so, that was kind  
11 of the idea, that I would send some letters, try to trigger coverage.  
12 Hopefully, they would jump in and adjust his claim, and pay it, and we  
13 would be done.

14          Q     You wanted to motivate a claim's adjuster?

15          A     Correct.

16          Q     And you were willing to do that for your friend?

17          A     Correct.

18          Q     Did you have it in your mind you were going to charge him?

19          A     No.

20          Q     This was, as Mr. Edgeworth talked about the first couple of  
21 days, a favor?

22          A     Yes.

23          Q     Okay. When you had your face-to-face meeting with Mr.  
24 Edgeworth on May 28th, Saturday, 2016, did you reach -- did you talk  
25 about an hourly rate?

1 A No.

2 Q Did you have an hourly rate at that time?

3 A No.

4 Q Had you ever charged or worked an hourly case at that point  
5 in time?

6 A No.

7 Q From time-to-time you probably submitted a list of hours if  
8 there was a -- you got sanctions against someone, and you spent four  
9 hours working for a -- you know, preparing for a hearing or something of  
10 that type, or like the *Ash* case where there was a motion for mistrial.  
11 Other than that, had you ever put together a bill?

12 A I don't recall putting together a bill, contemporaneous with  
13 work that I would bill for in my career. However, there's many times that  
14 I might have to go back and try to recreate a bill after a favorable ruling,  
15 either by a judge, a jury, sanctions, a jury trial, whatever.

16 Q Okay. I'm going to show you what's been marked as Office  
17 Exhibit 80, and this begins at Bate 3557, and continues through 5-A. And  
18 this is the odd one we've got down here where this is also part of this  
19 last email that we saw. It says, I know Craig. Let me review the file.

20 A Correct.

21 Q Do you see that?

22 A Yes.

23 Q And then we go on up, and we have Mr. Edgeworth types,  
24 and he's talking about documents paying you, paying Craig, typing up  
25 summaries, all sorts of things, correct?

1 A Yes.

2 Q And you wrote back, let's cross that bridge later?

3 A Yes.

4 Q Do you recall what you meant when you sent that off to Mr.  
5 Edgeworth?

6 A Yes. He didn't want to pay Craig. From our meeting, Craig  
7 wanted to charge him a nice retainer. He was going to bill him a nice  
8 hourly rate. His sense of Craig was that Craig was going to delay the  
9 case, bill it out at a huge rate, and at the end of the day he didn't want to  
10 pay for that type of lawyer at that time. So, he wanted me to take a look  
11 at what --

12 Q Just to get things straight, I mean, was that your impression  
13 of Craig?

14 A Mr. Marquis?

15 Q Correct.

16 A I haven't dealt with him professionally.

17 Q Okay.

18 A But if he's a lawyer who's handling these type of cases, I'm  
19 sure he's going to bill a hefty fee if that's what he does.

20 Q Okay. Fair enough.

21 A But when he says in his email, I don't want the billing to go  
22 nuclear by Craig, I'm assuming he thinks that he's not sure what Craig  
23 would do or not do with the billing and he didn't want to get in that  
24 situation. But beyond that, I don't know.

25 Q Okay. And you understood that?

1 A Yeah.

2 Q You were willing to send a few letters?

3 A Yeah, of course.

4 Q I'm going to show you -- again, this is Office Exhibit 80, Bate  
5 3505. This is an email from Brian, apparently sending to you on a  
6 Sunday about a simple loan contract. How did you take this email when  
7 you received it? What was your understanding of what was being asked  
8 of you here?

9 A I didn't really have an understanding because the whole loan  
10 stuff that he was doing was all on his own. He was dealing with all of his  
11 repairs. I had really nothing to do with that part of it, so when he was  
12 talking about loans, I wasn't going to get involved in that. I don't do  
13 promissory notes. I'm not a business lawyer, so I -- he asked me, should  
14 I have my lawyer do it, and I didn't want to be involved with that, so I  
15 said, yeah, have your lawyer do it.

16 Q Okay. Do you know if you responded to him by email, or did  
17 you call him up and talk to him about that? Or do you know?

18 A I think I responded to him in email and said, you know, have  
19 Mr. Katz do it.

20 Q Okay. Did you hear the testimony concerning a conversation  
21 on June 10, 2016?

22 A Yes.

23 Q You've seen the emails from June 10, 2016 that indicate  
24 you're heading out of town?

25 A Yeah, it was a Friday, because he brought that date up for the

1 first time in this adjudication hearing; it just appeared. We went and  
2 looked at an email and the email -- basically, I was -- had -- I think I was  
3 already out of town is I think the way the email reads, so, yeah.

4 Q Can you say whether or not you actually spoke to him on a  
5 telephone on June 10th, 2016?

6 A I cannot.

7 Q Can you tell this Court whether you have a memory of  
8 reaching a fee agreement with Mr. Edgeworth for this sprinkler case on  
9 June 10, 2016?

10 A I have a memory that I did not have a fee agreement for \$550  
11 an hour on June 10th.

12 Q If you don't recall talking to him on the phone, or if you did  
13 or if you didn't, how can you have the memory that you did not have a  
14 fee agreement with him on June 10th?

15 A Because the evolution of my assistance for this guy, starting  
16 from the beginning, was to help him out as a family friend. I treated  
17 them like family. And so, when I took it on, I met him at the Starbucks, I  
18 said I'll help you out. I wasn't even going to charge him. I was hoping to  
19 trigger coverage and hopefully he'd maybe buy me dinner or something.  
20 I wasn't even charging him.

21 Then as they denied the claim, we got to the point where, all right,  
22 the contract's pretty clear. The facts of the case are pretty clear under  
23 this contract, why this plumber and their insurance company is not going  
24 to pay his claim. It was virtually ridiculous.

25 So, at that point, because the insurance adjusters sometimes don't

1 make good decisions, like my first email, so then what you do is you file  
2 a lawsuit and hopefully lawyers get assigned and you get a lawyer who  
3 can look at the coverage issue and hopefully get involved and trigger  
4 coverage. And that's all that I was doing is from the very beginning, all  
5 the way through the motions for summary judgement, was trying to  
6 trigger coverage for his claim so that the insurance company would  
7 come in, pay his claim, and then they can go subrogate against Viking if  
8 they feel it's appropriate. And that was my mindset and everything that I  
9 was doing from the day I was first contacted by Brian Edgeworth  
10 through the time of motion for summary judgment.

11 Q So, what's the deal with the bill in November of 2016?

12 A Because we filed the lawsuit in June. As you know, it takes a  
13 little while to get through the court system to set it up. By the time you  
14 get through exemptions and everything else, now we have an ECC  
15 coming up in November.

16 As part of the contract with Lange, there's an attorney's fees  
17 provision, and so I knew that since I did a breach of contract against  
18 Lange, as well as a product's liability claim against Viking, that I had to  
19 come up with some damages for his benefit to produce in the Lange  
20 litigation. Just like any other damage that I would have to do. His cost  
21 of repairs, the interest on his loans that he was claiming.

22 So, any item of damage that we would come up with, we'd have to  
23 present, and so because the ECC, I knew that that obligation was going  
24 to start soon, and so now I'm in the position of I guess I have to produce  
25 a bill for the ECC, which is a miserable process. So, I went back and

1 recreated the best bill that I possibly could, knowing that it didn't capture  
2 a lot time because I'm recreating it six months later. And everybody  
3 knows you can't capture time if you're doing billing that way.

4 Q You're not going to get it?

5 A And that's why I -- there was no agreement because I wasn't  
6 billing him, but once we were in a position where I had to actually create  
7 a bill, I had to go back and recreate it six months later.

8 Q Did you have a conversation with Mr. Edgeworth at any point  
9 in that six-month period about, hey, let's do an hourly case?

10 A No.

11 Q Did you ever have an agreement with him to do an hourly  
12 case?

13 A No.

14 Q How did you come to choose the number \$550 to use as your  
15 rate in the November bill?

16 A Because I knew I was using it as an item of damage in the  
17 case. I knew that lawyers would be scrutinizing it from the defense side  
18 because, you know, what's a reasonable damage. So, I had some  
19 discussions with Ashley and said, hey, you know, let's talk about an  
20 hourly rate. What hourly rate is fair? And then she kind of came up with,  
21 well, the court approved 600 in that case, why don't we just go with that,  
22 and said -- I said, okay, and then we'll reduce it a little bit, so it's  
23 bulletproof.

24 Q Is that so unusual for you to walk around and bounce ideas  
25 off your associates and ask for input?

1           A     Not at all. I bounce ideas off of Ashley, Ben, Janelle,  
2 Jennifer, everybody in the office I do.

3           Q     Okay.

4           A     Because everybody has different perspectives, and they've  
5 been with me a long time and I value -- and they remember cases, they  
6 remember stuff that I don't.

7           Q     What was your expectation when the bill was served on the  
8 Defense via the ECC?

9           A     Well, the bill wasn't served until --

10          Q     And let me stop you there because that was an absolutely  
11 horrible question. Let me ask a couple of setup questions. Did you ever  
12 send that bill to Mr. Edgeworth or -- and I'm using Edgeworth  
13 generically; you understand that, right? That means the trusts, American  
14 Grating, right?

15          A     Okay. Fair enough.

16          Q     Okay. So, did you ever attach a cover letter to it and send it  
17 to them and say, hey, here's the bill, please play within 30 days, you  
18 know, anything like that?

19          A     I don't recall.

20          Q     Do you have a typically billing letter like that that you send  
21 out?

22          A     I don't have a typical billing letter, because I don't typically  
23 bill.

24          Q     Okay. So, what was your expectation vis-a-vis the  
25 Edgeworths and that bill when it was created in November?

1           A     The first bill, my expectation was I'm going to send it to him  
2 so he can see what we're creating as a damage in his case, number one.  
3 I wanted to show him what costs were expended up to that point  
4 because I advanced them. And at that point, we were still -- well,  
5 actually, it didn't get sent to him until December, and then I was filing a  
6 motion for summary judgment in January to be heard in March.

7           And so, the idea was hopefully it seemed pretty clear that the  
8 judge should give me MSJ on that contract issue as to liability only, and  
9 then hopefully that would trigger coverage and then whatever that bill  
10 would be, whether he paid it or did not pay it, hopefully would be picked  
11 up by Lange.

12          Q     So, the idea was you got the lawyers to look at it, they didn't  
13 bite, so then you were going to file the MSJ and compel them to bite, so  
14 to speak?

15          A     Right.

16          Q     I understand there was a little bit of -- did you have a  
17 substitute judge, or the judge had left the bench? Or what did -- what  
18 was the lead up? How --

19          A     Judge --

20          Q     So, who heard the MSJ?

21          A     Judge Walsh -- Jessie Walsh left the bench. Judge Barker  
22 came in as -- to take over her calendar while she was gone until they  
23 selected a new judge at some point. And so, he basically said, you  
24 know, I can see where you're going with this. It seems pretty clear to  
25 me. And at that time, we didn't have American Grating in there, only

1 Edgeworth Family Trust, so he said amend your complaint, bring them --  
2 bring in the other plaintiff, because they're the party to the contract, even  
3 though they were the beneficial owner of the property, and I did that  
4 immediately.

5 I brought in American Grating. It might have been -- I amended the  
6 complaint the same day; I'm not sure. And then refiled my motion  
7 immediately and then it was heard on April 25th. And at that point, we  
8 had a new judge, Judge Bonaventure, and so Judge Bonaventure just  
9 said, hey, listen, you haven't started discovery yet. I don't like granting  
10 summary judgment motions until discovery is completed, so go do  
11 discovery and come back.

12 Q Okay. While we still have a little bit of time today, I want to  
13 jump ahead on our timeline and move to the meeting of November 17,  
14 2018 [sic].

15 THE COURT: 2017?

16 MR. CHRISTENSEN: Oh, I'm sorry, 2017.

17 THE COURT: That's okay.

18 MR. CHRISTENSEN: Yeah, I actually wrote '18.

19 THE COURT: That's okay. It hasn't happened yet, Mr.  
20 Christensen.

21 MR. CHRISTENSEN: Thank you, Your Honor.

22 BY MR. CHRISTENSEN:

23 Q Mr. Simon, you heard the testimony of Mr. Edgeworth  
24 concerning your actions in that meeting, and I'd like to go on over them.

25 A Sure.

1 Q Did you ever threaten Mr. Edgeworth?

2 A I did not.

3 Q Did you ever complain about Angela's presence at the  
4 meeting?

5 A I did not.

6 Q How do you know Angela?

7 A I've known Angela a long time. I thought I had a very close  
8 relationship. I always like to see Angela. My wife loves Angela. They're  
9 considered sisters; at least Angela has said that many times. My wife felt  
10 very close to them. We felt very close to them. You know, I guess I felt  
11 differently about Brian than he felt about me, but I generally considered  
12 them close family friends and I was willing to do a lot for them, and  
13 apparently that was a mistake.

14 Q Okay.

15 MR. VANNAH: Move to strike that that was a mistake as non-  
16 responsive to the question.

17 THE COURT: Mr. Christensen.

18 MR. CHRISTENSEN: I'll just ask a new question.

19 THE COURT: Okay.

20 BY MR. CHRISTENSEN:

21 Q Did you feel that it was a mistake how you felt about them?  
22 How do you feel now about them?

23 MR. VANNAH: That's irrelevant, how -- whether he thinks it  
24 was a mistake and how he felt or not. I mean, let's get to the case.

25 THE COURT: Well, I mean, I think it's relevant how he feels

1 now.

2 Mr. Simon, you can answer the question.

3 THE WITNESS: I feel duped right now. As I sit here today,  
4 that's how I feel.

5 THE COURT: Okay.

6 BY MR. CHRISTENSEN:

7 Q Did you use any -- what are we saying? Did you use any F  
8 bombs during the meeting?

9 A I did not. I did not.

10 Q Did you direct any harsh language towards anyone?

11 A I did not.

12 Q Did you have a written fee agreement in your possession on  
13 November 17, 2017?

14 A I did not.

15 Q You set one later on --

16 A Correct.

17 Q -- on the 27th?

18 A Correct.

19 Q When did you create that?

20 A When I got back from my vacation.

21 Q So, that would have been after -- about the 25th or so?

22 A Yeah.

23 Q Okay. Did you have one -- had you ever put pen to paper, so  
24 to speak, or I guess these days it's fingers to the keyboard, on November  
25 17, 2017 or any time before that to create a fee agreement?

1           A     I did not.

2           Q     Did you ever threaten that bad things would happen to the  
3 case if the Edgeworths didn't sign the fee agreement that day?

4           A     No.

5           Q     Did you ever threaten with withdraw?

6           A     No.

7           Q     What is your memory of what was done and said at that  
8 meeting of November 17, 2017?

9           A     I specifically remember that day. I had a lot going on. I had  
10 a lot on the calendar. I had motions on calendar. There was so much  
11 going on in the case that the mediator proposal came in on a  
12 Wednesday. This was, I believe the next day, that -- well, the mediator  
13 proposal came in earlier. We kind of ignored it for a few days, and then I  
14 got a call from Mr. Hill saying, hey, you going to accept that?

15           And I kind of knew what that meant, so I called up Brian and said is  
16 this something you want to do and, you know, he says in theory, the  
17 number, yeah.

18           And so, what ends up happening is I have all this stuff on calendar.  
19 I call him in the morning. I talk to him. I say, hey, can you come on  
20 down? And he says, well, is it for court or something? That -- he knew  
21 we had court. And I said, no, you don't need to do the court thing unless  
22 you want to, but, you know, come on down, we have a lot to talk about,  
23 you know, the Viking sale, right, and the case status. And so, he said, all  
24 right, I'll meet you at your office before court.

25           Q     Let's talk a little bit about that mediator proposal. As I

1 understand it, it had some additional clauses or contingencies in it; is  
2 that correct?

3 A Correct. It wasn't just \$6 million, hey, the case is over. They  
4 had stipulations attached to the \$6 million. They wanted a confidentiality  
5 clause. They wanted a motion for good faith settlement, and there was a  
6 lot to talk about in regard to the settlement itself because it wasn't a  
7 done deal just because they said \$6 million. And Brian didn't want a  
8 confidentiality. I mean, that was a deal breaker for him the whole way  
9 through this case. And every mediation, I'm not signing a  
10 confidentiality. So, when that came in with that requirement, it's kind of  
11 a problem.

12 Q It's something you had to talk to him about?

13 A Yeah, he wanted to understand how it would affect him, why  
14 he would want to do it, why he wouldn't want to do it, and that was just  
15 one of the many things that we talked about on November 17th in my  
16 office.

17 Q I mean, the \$6 million offer, that's not peanuts.  
18 Confidentiality seems like a small thing.

19 A I don't know if it's a small thing or not. I know I don't like  
20 confidentiality. I know that as a routine basis, I don't sign off on  
21 releases with confidentiality, because with confidentiality comes a lot of  
22 invitations for lawsuits. It can create exposure to clients beyond that  
23 particular deal.

24 Q Did the settlement agreement with Viking have a  
25 confidentiality provision in it in the -- in its final form when it was

1 signed?

2 A It did not.

3 Q Why not?

4 A Because I negotiated that out of there.

5 Q And that was at Brian's request? As well as being your  
6 opinion of what should happen?

7 A Yeah.

8 Q So, we talked about the mediator proposal. Was that  
9 discussed at the meeting of November 17th?

10 A Yes.

11 THE COURT: And, I'm sorry, Mr. Christensen, but I am the  
12 finder of facts, so I have some questions.

13 Mr. Simon, you said that you basically negotiated the  
14 removal of the confidentiality agreement you all agreed with because  
15 normally you don't do it and Mr. Edgeworth didn't want it, so together  
16 you guys agreed to do this. Do you remember when Viking agreed to  
17 remove that?

18 THE WITNESS: I do not.

19 THE COURT: Okay.

20 THE WITNESS: But I think it was prior to the final release, so  
21 I think it would have been --

22 THE COURT: Was it prior to you going on vacation?

23 THE WITNESS: It would not have been prior. It probably  
24 would have been right when I got back.

25 THE COURT: Okay.

1 BY MR. CHRISTENSEN:

2 Q And your vacation was right over Thanksgiving?

3 A Correct.

4 Q Okay.

5 A So, technically, I was back in the office on that Monday.

6 THE COURT: Which is the 27th? Monday is -- of November?

7 THE WITNESS: Yeah.

8 THE COURT: Yeah, Thanksgiving would have been the 23rd,  
9 so that following Monday is the 27th.

10 THE WITNESS: Okay. So, when I got back from that,  
11 obviously I went -- hard to work on all aspects of the Edgeworth case. I  
12 was, you know, negotiating that out, and then obviously preparing my  
13 letter and the proposed retainer that I sent to them attached to the letter.

14 THE COURT: Okay. But at this point, you have not had any  
15 contact with the Edgeworths since the 17th?

16 THE WITNESS: I never -- no, I think -- I've had some phone  
17 call -- I had some -- I had this meeting and I had a few phone calls after  
18 this meeting, and then I tried to iron this out a few times over my  
19 vacation with him.

20 I think the last full communication ever with -- verbally with  
21 either one of them was the 25th when I was boarding a plane, because I  
22 never had a lot of time to be available because I was always -- you know,  
23 if I was on a plane for five hours, I'm unavailable.

24 So, I tried to get a hold of him, you know, when I could, and I  
25 think the last time was when I was boarding the plane to come home.

1 THE COURT: And I think that's what he testified to is that it  
2 was the 25th.

3 THE WITNESS: 25th, sounds right.

4 THE COURT: But when you are negotiating the removal of  
5 this confidentiality agreement in the Viking settlement, you have no --  
6 had you been made aware at that point that they had spoken with Mr.  
7 Vannah's office?

8 THE WITNESS: No.

9 THE COURT: Okay. And, I'm sorry, Mr. Christensen, that  
10 was just my question.

11 MR. CHRISTENSEN: It's your courtroom, Your Honor. You  
12 have a question, you ask it.

13 THE COURT: I think it's just a little different than a jury trial,  
14 because if I have a question then --

15 MR. CHRISTENSEN: Absolutely, Judge.

16 BY MR. CHRISTENSEN:

17 Q What else did you talk about, if anything, at the November 17  
18 meeting?

19 A We talked about quite a bit. We talked about the motions  
20 that were on the calendar. We had a motion to compel. There was a  
21 motion to de-designate all of these documents that they were trying to  
22 make confidential in the case. We talked about the pending evidentiary  
23 hearing, how that would be affected. We had all these notices of  
24 depositions. We had depositions in Chicago of this United Laboratories  
25 already set. We had depositions that were noticed by the defense that

1 were on calendar of all our experts. We had basically a ton of stuff going  
2 on.

3 And then, as far as the -- we talked about the settlement. We  
4 talked about what the motion for good faith determination means, how  
5 that affects the settlement. About the Lange claim. And that was  
6 another provision where they tried to include the Lange claim as part of  
7 the global settlement from Viking, and I excluded that as well. So, I was  
8 able to preserve the Lange claim with the Viking settlement.

9 So, at that time, I talked to them also about the Lange claim and  
10 the application of that and how we would proceed forward. I told them  
11 that I already had discussions with Mr. Parker, that we were going to  
12 continue to the case because the posture of the case was now changing.  
13 It was now defined in a very narrow scope, which was really just the  
14 recovery of the attorney fees provision. And, basically, then I asked -- I  
15 told him about now it's time to settle up the fee because now we know  
16 the outcome, and so I just wanted to determine what a fair fee would be.

17 And in response to that, Brian said absolutely nothing. Angela --  
18 and he was sitting in my -- in front of my desk to the right of me, and  
19 Angela was in the left, and she just kind of looked at Brian, looked back  
20 and goes, we'll talk about it. And then at that point, I gave them a -- the  
21 cost, the outstanding cost, which is about \$72,000, which is the printout  
22 of all the costs that he's seen before on many occasions, which we've  
23 showed him at mediation, so he always knew what his costs were.

24 I handed him a copy of that and said this is your outstanding costs  
25 as of today. And then get back to me on what your thoughts are on the

1 fee.

2 Q Did you --

3 A And I told him -- and I did tell them that my normal fee in this  
4 type of case, you know, on a regular fee if it was a contingency would --  
5 my normal fee would be at \$2.4 million for this settlement, but you  
6 know, you guys talk about it and tell me what you think is fair, and I'll tell  
7 you what I think is fair and obviously I'm willing to come off of that and  
8 do what's fair, and that's how we left it and they left.

9 Q The breakdown of cost is what your office calls a case  
10 expense summary?

11 A Yes.

12 Q Okay. And that was about \$72,000 or so?

13 A Yes.

14 Q Were tensions high during that meeting?

15 A No.

16 Q Did you get the perception that anyone was feeling scared or  
17 intimidated?

18 A No, there was nothing to be scared or intimidated about. I  
19 wasn't demanding anything from them. I explained everything about the  
20 case because the settlement wasn't even necessarily agreed to. Brian  
21 still was confused as to how the confidentiality was going to work. And  
22 so, that's why I had later discussions with him, even that evening, talking  
23 about how the confidentiality would work.

24 Q I mean, the -- so the -- you hadn't struck a deal yet on the \$6  
25 million.

1           A     It wasn't -- yeah, it wasn't an official deal. The number was  
2 okay, but the remaining terms that they were requiring were still not  
3 agreed to by the Edgeworths.

4           Q     As Judge Earl used to say, the devil is in the details, right?

5           A     Yeah.

6           Q     Okay.

7           A     I mean, there's deal breakers all the time.

8           Q     Yeah.

9           A     Just when you get a good number, it doesn't mean people  
10 are going to go through with it.

11          Q     So, at the time that you told them what your normal fee  
12 would be in that type of a situation, that was preliminary?

13          A     Right.

14          Q     Okay.

15                THE COURT: And if -- yeah, we were just going to finish up  
16 with the 11/17 meeting --

17                MR. CHRISTENSEN: Okay.

18                THE COURT: -- if you were finished.

19 BY MR. CHRISTENSEN:

20          Q     Let's finish with 11/17. Was that the end of the meeting?

21          A     That was the end of the meeting, and then I was headed off  
22 to court. They left. Then I basically went over to court and took off the  
23 motion because we weren't going to proceed at that time. I think we  
24 worked on continuing it, kind of keeping it on, in case we needed to  
25 come back for it, in case the settlement didn't get ultimately finalized.

1 Q You wanted to keep that, sort of hanging over their head  
2 while you worked out the details of this settlement?

3 A Correct.

4 Q Okay. Did you have conversations later that day with Brian  
5 on the telephone?

6 A I did. So later that day we talked about, a) the confidentiality,  
7 how that would work again. We kind of went over a little bit of the same  
8 stuff because they were confused about all of the information that I gave  
9 them, and then we started talking about the fee and what a fair fee would  
10 be, and he was always just, well, I'm just trying to figure this out. I  
11 mean, he was kind of just, you know, very cagy about it all, right.

12 And so, you know, what's there to figure out? What's your  
13 questions? Help me explain it to you. You know, what -- I don't  
14 understand why he was playing -- he was playing a little dumb at that  
15 point, where I just don't get it. I'm just not sure. And I'm like, okay, well,  
16 what's there not to get?

17 And that was basically -- we had multiple conversations, I guess at  
18 that point, and I said, well, talk to your wife and let me know.

19 Q Okay.

20 A And I was leaving out of town, 6:00 a.m. the next day, so I  
21 was hoping to get an answer from them. I don't know what would be  
22 too difficult about it. I mean, here we are at the end of the case. I've got  
23 an amazing result, and now it's time to figure out a fair fee, so here's my  
24 regular rate. Give me something that you think is fair. And that's all I  
25 was asking for.

1 Q You were just looking for a number back?

2 A Yeah.

3 Q Okay.

4 A Yeah. Tell me what your thoughts are that's fair. And then if  
5 it was something that I was -- I didn't think was fair, then we'd have a  
6 discussion. But they would never give me a number. He would never,  
7 ever say what he thought was fair. And then ultimately, I know we're  
8 still at the 11/17, but fast-forward, I had a discussion with him, I think on  
9 my trip or something and I said, send me that -- your cost.

10 Tell me what you're real -- what you believe are your out-of-pocket  
11 damages so I can really come up in my mind with a fair number that  
12 you're going to be happy with and be excited and that's fair to me so I'm  
13 not losing too much money on this case. And that's why he sent me the  
14 11/21 email.

15 Q During this time, did you also have conversations about the  
16 added dynamic of the potential for recovery against Lange?

17 A Yeah, definitely.

18 Q Did you explain that all to him?

19 A Yeah, because before that, Teddy Parker came in here and  
20 brought this motion about the contractor license thing. And that  
21 definitely freaked Brian out. I mean, he was freaked out. He was like, oh,  
22 my God, I did something wrong. I -- I'm not a contractor, but I'm  
23 building houses. And he wasn't sure really of the legal ramifications of  
24 that.

25 And so, as we know, Teddy likes filing similar motions because he

1 has a construction defect background, but ultimately we went back to the  
2 office and researched it and I forward him the cases, and there's a  
3 controlling case, MGM, that says, sorry, Teddy, your analysis is -- it's a  
4 good try, but other people have tried it when they were building the  
5 MGM hotel back in the day and it didn't work.

6 And so, I'm not a construction lawyer, and so I didn't want to take  
7 any chances with the issue, so I outsourced the legal issue to George  
8 Oligopoly and -- who's an expert in that, and ultimately he came back  
9 with the same exact conclusion that I did, which I had already explained  
10 to Brian.

11 And so, as far as the attorney fee provision, in my mind, whatever  
12 they were going to pay me, that we came to a number that was fair for  
13 what I did for them, we would turn around and go seek reimbursement  
14 from Lange, and it was a -- seemed like a very simple trial to just prove  
15 up, A, what you paid me. Here's the contract revision; that's what you  
16 should get back.

17 Q In the depositions of Lange employees, what was -- how did  
18 the testimony come out about whether they complied with our contract  
19 terms or whether they were in breach?

20 A I took four or five depositions of all the Lange employees,  
21 including the PMK and the owner, Bernie and his wife, who are the  
22 principles. I got everybody to agree in their deposition that they  
23 breached the agreement and that their product was defective and that all  
24 damages or attorneys' fees that he's seeking for enforcement of their  
25 warranty are covered under the contract.

1 Q What was their policy on that?

2 A \$2 million.

3 Q Had you made demands upon the carrier to come in and  
4 adjust the loss prior to this time? Multiple times?

5 A Yeah. And in March, when we were trying to trigger  
6 coverage, we sent an offer of judgment for \$1 million. They didn't accept  
7 it and so the -- there was no policy in affect. They blew it.

8 Q There is no policy limit?

9 A There's no policy limit, correct.

10 Q The insurance company had bought that risk?

11 A Correct.

12 Q Okay.

13 THE COURT: Okay. I think that's a good place for us to break  
14 for the evening.

15 So, Mr. Simon, we'll re-swear you in tomorrow, but I'll just remind  
16 you you're still under oath.

17 So, we're going to break for the evening. We'll be back tomorrow  
18 morning at 9:00, and I don't have a calendar, so we can get started at  
19 9:00.

20 MR. CHRISTENSEN: Thank you, Your Honor.

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MR. VANNAH: Thank you, Your Honor.

THE COURT: Thank you.

[Proceedings concluded at 4:29 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.



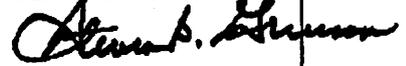
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DISTRICT COURT

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CLARK COUNTY, NEVADA

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EDGEWORTH FAMILY TRUST;  
AMERICAN GRATING, LLC,

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Plaintiffs,

CASE#: A-16-738444-C

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vs.

DEPT. X

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LANGE PLUMBING, LLC, ET AL.,

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Defendants.

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EDGEWORTH FAMILY TRUST;  
AMERICAN GRATING, LLC,

14

Plaintiffs,

CASE#: A-18-767242-C

15

vs.

DEPT. X

16

DANIEL S. SIMON, ET AL.,

17

Defendants.

18

19

BEFORE THE HONORABLE TIERRA JONES, DISTRICT COURT JUDGE  
THURSDAY, AUGUST 30, 2018

20

**RECORDER'S TRANSCRIPT OF EVIDENTIARY HEARING - DAY 4**

21

**APPEARANCES:**

22

For the Plaintiff:

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

23

24

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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Las Vegas, Nevada, Thursday, August 30, 2018

[Case called at 9:05 a.m.]

THE COURT: We're on the record in A738444, Edgeworth Family Trust vs. Daniel Simon. Mr. Simon, we're going to re-swear you in just because it's a different day, so if you could stand up and raise your right hand.

MR. SIMON: Yes.

DANIEL SIMON, DEFENDANT'S WITNESS, SWORN

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

THE WITNESS: Daniel Simon, S-I-M-O-N.

THE COURT: Okay. Whenever you're ready, Mr. Christensen.

MR. CHRISTENSEN: Thank you, Your Honor.

Before I get started with Mr. Simon, I have a couple of housekeeping matters. One, I'd like to move to admit the Office's Exhibit Number 91. That was the Ashley Ferrel summary of emails that we talked about yesterday.

THE COURT: Okay. Any objection to that?

MR. GREENE: No, no objection.

THE COURT: Okay.

MR. CHRISTENSEN: Thank you.

THE COURT: That will be admitted.

[Defendant's Exhibit 91 received]

1 MR. CHRISTENSEN: The second thing is, during the hearing  
2 of April 3rd, 2018, I have to apologize to Mr. Vannah, he did not talk  
3 about dreaming up numbers around a conference table. What he said  
4 was, how do you keep the time records, did you keep them in time  
5 matters, one of those programs, or was it just something that came up  
6 with, you know, in a prayer session sitting around your table pulling  
7 hands one night. So, my memory was faulty on that. Here's a copy of  
8 the transcript.

9 MR. VANNAH: It was the prayer session, yes, that's  
10 what I said.

11 MR. CHRISTENSEN: Okay.

12 THE COURT: And --

13 MR. CHRISTENSEN: I wanted to clean it up from yesterday.

14 THE COURT: Okay. And while we are talking about exhibits,  
15 another thing, when you guys -- Defense's -- I mean Plaintiff's 9, when  
16 we talked about it in the beginning, you guys said that the Howard  
17 portion would not be admitted, so it has not been admitted.

18 MR. GREENE: That is correct.

19 THE COURT: Okay.

20 MR. GREENE: That wasn't something that I --

21 THE COURT: Okay. Okay. I just wanted to make sure that  
22 we were all still on the same page with that.

23 MR. GREENE: There was also another law firm mentioned. I  
24 can't think of the name off the top of my head, but we can certainly take  
25 those probably three pages of exhibits out of Exhibit 9.

1 THE COURT: Okay. I just wanted to make sure that you  
2 didn't forget that because I didn't know if there was going to be another  
3 witness who could bring that in or if you just didn't do that. Okay.  
4 You're on top of it, Mr. Greene.

5 Thank you. Mr. Christensen, whenever you're ready.

6 MR. CHRISTENSEN: Thank you, Your Honor.

7 THE COURT: Mr. Christiansen and Ms. Ferrel, I apologize.  
8 We were just, you know, just rolling.

9 MR. CHRISTENSEN: Sorry, Judge, the elevator lines kept us  
10 for a bit.

11 THE COURT: No. We're so good about that in the RJC.

12 CONTINUED DIRECT EXAMINATION

13 BY MR. CHRISTENSEN:

14 Q Mr. Simon, we left off yesterday discussing the brief  
15 telephone call you had with Mr. Edgeworth on November 25, 2017; do  
16 you recall that testimony?

17 A I do.

18 Q And that was the last time you spoke to Mr. Edgeworth?

19 A Yes.

20 Q There's a letter that's been discussed that was sent to Mr.  
21 Edgeworth and Angela Edgeworth on November 27, 2017?

22 A Yes.

23 Q Do you recall drafting that letter?

24 A Yes.

25 Q And you mailed that letter?

1 A Emailed it.

2 Q Okay. We're going to use the Edgeworth Exhibit Number 4.  
3 It's bated three of Exhibit 4 of the Edgeworth exhibit. Sorry.

4 THE COURT: It just takes a minute to warm up, Mr.  
5 Christensen.

6 MR. CHRISTENSEN: Yes. I forgot to press auto tune. There  
7 we go.

8 THE COURT: There we go.

9 MR. CHRISTENSEN: There we go.

10 BY MR. CHRISTENSEN:

11 Q Is this the -- do you recognize the header of the letter on the  
12 first page?

13 A Yes.

14 Q Okay. I want to go to the -- well, let's talk a little bit about  
15 this letter first. Why did you send the letter?

16 A Number one, they requested it.

17 Q Anything else?

18 A Well, they requested it. We got to the point where they were,  
19 for lack of a better word, playing dumb, acting like they didn't  
20 understand what I was communicating to them. I wanted to make it  
21 crystal clear what I was communicating to them. And I took a great deal  
22 of time to draft a five page letter.

23 And what my thought process was, to be honest with you, is  
24 that because Brian was being very cagey, acting like he didn't  
25 understand anything I was talking about, and since Angela really wasn't

1 involved in this very much, at least from my perspective, I don't know  
2 what Brian was telling her, but I had the sense that Brian really wasn't  
3 giving her all the information about my scope of involvement, because  
4 as you heard here today, he still thinks that this case was all him. And I  
5 wanted to communicate to Angela through this letter and let her know  
6 exactly what I did; because my sense of Angela is that once she read  
7 this, she would understand, hopefully, what would be fair.

8 Q Okay. Did you --

9 A But I also wanted to summarize the relationship to make sure  
10 it was crystal clear in everybody's mind what my position was.

11 Q Okay. And just jumping back for a second to the meeting of  
12 11-17, did Mr. Edgeworth or Mrs. Edgeworth ever have any significant  
13 discussion with you over fee, how to arrive at a fee, what your position  
14 was, what their position was?

15 A No. They said they would just talk about it and let me know.

16 Q Okay. Attached to this letter that is within the Edgeworth  
17 exhibits an Exhibit 4, re bate 008 is a Retainer Agreement.

18 A Correct.

19 Q Did you draft this Retainer Agreement?

20 A I did.

21 Q When did you draft the Retainer Agreement?

22 A When I returned from vacation on or about the Sunday or  
23 Monday that I sent it on the 27th, so it would have been the 26th or the  
24 27th.

25 Q So this would have either been the day you sent it or maybe

1 the day before?

2 A Correct.

3 Q Had you ever drafted any written retainer agreements  
4 previously?

5 A Not for the Edgeworth case.

6 Q There was some testimony, I think it was yesterday,  
7 concerning the proposal that -- were some words to the effect that you  
8 were going to charge 550 an hour and get a contingency; do you recall  
9 that testimony?

10 A I recall it.

11 Q What I'd like you to do is take a look at numbered paragraph  
12 one on the first page of Exhibit 4, re bate 008.

13 A Yes.

14 Q And the highlighted line says, The above sum will be  
15 reduced by all payments already made toward the attorney's fees. Was  
16 that your proposal?

17 A It was. There's no way that I could charge a 40% contingency  
18 and an hourly fee on top of that. And that's never what I communicated  
19 to them. I've never told him that, ever. Never told any client that. It  
20 doesn't make any sense. And when I drafted this, you know, he acted  
21 like he didn't understand this document, which it's crystal clear.

22 I was proposing this amount of money, which was 1.5 total, which  
23 is only 25%, number one, which I thought was extremely reasonable  
24 because it's \$900,000 off the usual and customary fee for this type of  
25 case. And I arrived at that sum, because I thought it would be a no

1 brainer, that they would say of course that's fair, of course we got a great  
2 result, of course you did an amazing job for us. And I made it crystal  
3 clear that anything that they already paid me would be even deducted  
4 from that. So, I'm at a loss for why Mr. Edgeworth would suggest that  
5 he didn't understand what this document meant.

6 Q And this -- to be clear, this was provided to them as a  
7 proposal before they sued you personally?

8 A That is correct.

9 Q Okay. There was some discussion about how the Lange  
10 Plumbing case worked into this fee agreement. The line just before the  
11 highlighted line says, however, all past services performed prosecuting  
12 Lange Plumbing will be included in the above fee. What did you mean  
13 by that line?

14 A That the payments that he's already paid, including this new  
15 1.5, everything would be satisfied up until this date. We would finalize  
16 the Viking settlement, we would take my fee of whatever we determined,  
17 hopefully I thought it would be this fee, and then we would work out a  
18 new fee agreement to prosecute reimbursement of attorney's fees under  
19 the Lange contract.

20 Q So at least at that time that you wrote this on November 27th  
21 or so you were contemplating what in essence would be a separate  
22 action against Lange for recovery of the attorney's fees?

23 A Yeah. And the separate action against Lange for the  
24 recovery of attorney's fees is always a separate action for the entire -- it's  
25 always been a separate action during the entire time.

1 Q Okay. Now, on the last page of the fee agreement, which is  
2 Edgeworth Exhibit 4, Bate 009, you've got a signature line for Brian  
3 Edgeworth and you have a signature line for Angela Edgeworth; is that  
4 correct?

5 A Correct.

6 Q Why did you have a signature line for Angela Edgeworth?

7 A Because Angela would have to be included, obviously, in any  
8 settlement. She's a 50% owner on all of the Edgeworth Family Trust and  
9 American Grating.

10 Q So she would have to be involved in any agreement that was  
11 reached on fees?

12 A Correct.

13 Q Whether that agreement was reached on November 17th,  
14 November 27th, or any other date?

15 A Correct.

16 Q What's the next contact that you had from Brian and Angela  
17 Edgeworth?

18 A I never had any contact with them again, other than a few  
19 emails from Angela after that.

20 Q Well, I hate to take issue with you, but I'd like to show you  
21 what's been marked as the Office Exhibit 43. Do you recall this fax of  
22 November 29, 2017?

23 A I do.

24 Q And this is signed by Brian Edgeworth?

25 A Yes.

1 Q This was entitled Letter of Direction?

2 A Yes.

3 THE COURT: What exhibit is that, Mr. Christensen?

4 MR. CHRISTENSEN: That's the Office Exhibit 43.

5 THE COURT: 43. And what is the date on that? Can you  
6 push it down a little bit? Okay, thank you.

7 MR. CHRISTENSEN: Woops. November 29, 2017.

8 THE COURT: And this is a fax? Okay, I see it at the top.

9 MR. CHRISTENSEN: It has a fax header on it.

10 THE COURT: Yeah, I see it at the top. Okay.

11 BY MR. CHRISTENSEN:

12 Q The fax header actually indicates that it was sent on  
13 November 30, 2017, at 9:35 a.m., assuming that was calibrated correctly.  
14 Mr. Simon, what did you think this letter meant when you read it?

15 A I was fired.

16 Q Why did you think that?

17 A Because in the practice of law when your clients go and meet  
18 with other attorneys and then you get a letter saying hey, the other  
19 attorney is involved in this case, it pretty much means that I'm not the  
20 attorney anymore.

21 Q I'd like to show you what's been marked as Office Exhibit 90.  
22 This has been previously discussed. This is the fee agreement between  
23 Vannah and Vannah and Brian Edgeworth. I don't see Angela's  
24 signature on here, but at least Brian signed it. The highlighted  
25 paragraph indicates, client retains attorneys to represent him as his

1 attorneys regarding Edgeworth Family Trust and American Grating, The  
2 All Viking Entities, all damages, including, but not limited to, all claims in  
3 this matter and empowers him to do all things, and it goes on, to effect a  
4 compromise in said matter or to institute such legal action as may be  
5 advisable in their judgment and agrees to pay them on some conditions.

6 The sprinkler case that we've been referring to, the case in which  
7 there's an offer for \$6 million from Viking, that was the American Grating  
8 versus all Viking entities case, correct?

9 A Yes.

10 Q When you saw this, what did this do to your belief of what  
11 the November 29th letter meant?

12 A This made it crystal clear that I was fired as of November  
13 30th when I received notice of his Letter of Direction, because he's now  
14 retained these lawyers for the exact action in which I was representing  
15 them for.

16 Q Now, there were still a lot of things going on in the case at  
17 this time; is that correct?

18 A A lot.

19 Q Well, for example, we're not going to spend a whole lot of  
20 time on it, but Office Exhibit 80, re bate 4552, is an email from Mr.  
21 Nelson that seems to be sent to you, lead counsel, at least he thought,  
22 for the Edgeworth's and Janet Pancoast, who was lead counsel for  
23 Viking at the time?

24 A Yes.

25 Q And attached to this was Mr. Parker's letter of November 29,

1 again addressed to the same parties, re bate 4553, and this was a letter  
2 addressing discovery and some other issues?

3 A Yes.

4 Q Can you sum up that letter and --

5 A This letter basically confirms that Mr. Parker and myself, ever  
6 since his appearance, have been talking about this case and how we're  
7 going to proceed with him and his client, Lange Plumbing. From day  
8 one of his coming into the case, he wanted to extend the trial, continue  
9 the trial, extend discovery, so he could get (a) caught up. He's made that  
10 argument and, you know, representation to the Court on a few  
11 appearances.

12 And I've known Teddy for 20 plus years. I've worked with him on  
13 many cases. We have mutual respect for each other. And as far as us  
14 reopening discovery, now that we were finalizing the Viking settlement,  
15 that's what we were going to do. And it only benefitted my claim and  
16 Mr. Edgeworth's claim against Lange Plumbing if we decided to pursue  
17 it.

18 Q Now, even though in your mind you'd been fired, that puts  
19 you in a tough position with the client, correct?

20 A Yes.

21 Q You can't do anything to torpedo the settlement, for  
22 example?

23 A Obviously.

24 Q I mean you're going to have to carry on to a certain extent,  
25 correct?