

1 **IN THE SUPREME COURT OF THE STATE OF NEVADA**

2
3 ROBERT DARBY VANNAH, ESQ.; JOHN
4 BUCHANAN GREENE, ESQ.; and
5 ROBERT D. VANNAH, CHTD. d/b/a
6 VANNAH & VANNAH; EDGEWORTH
7 FAMILY TRUST; AMERICAN GRATING,
8 LLC; BRIAN EDGEWORTH AND
9 ANGELA EDGEWORTH,
10 INDIVIDUALLY, AS HUSBAND AND
11 WIFE ,

12 Appellants,
13 vs.

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

17 Respondents.

SUPREME COURT

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18 **SIMON RESPONDENTS' APPENDIX IN SUPPORT OF ALL**
19 **RESPONDENTS' ANSWERING BRIEFS**
20 **VOLUME II**

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1 the components versus getting a new fireplace in
2 entirety?

3 A. I didn't have the money to get a new
4 fireplace in its entirety.

5 Q. Okay. Because that would have been -- I
6 think we've seen some numbers like \$80,000 or
7 something?

8 A. At that point it probably would have
9 been -- depends on -- it's a custom-built fireplace.
10 So you're looking at 20 weeks until they build
11 another one.

12 THE REPORTER: You're looking at what?

13 THE WITNESS: 20 weeks. After I pay
14 them, they would start building it. Then like I
15 said, it's 2,000 pounds; so you would just have to
16 look at the house and figure out what I couldn't do
17 in those 20 weeks. Basically what I'm telling you
18 is this house would have sat there for well over a
19 year if we repaired everything back to the new
20 condition because everything has a lead time.

21 And I told this all to Mr. Kreason and I
22 believe I communicated it to Ms. Brooks.

23 The cabinets alone had a 20-week lead
24 time.

25 \\

1 BY MS. DALACAS:

2 Q. And I'm just trying to understand what
3 the rationale was for determining what repairs to
4 make and what not to make; so if that's your answer
5 to that, then that's fair. I just want to hear what
6 your rationale was for making the determination to
7 not replace the fireplace in its entirety at the
8 time that the discharge happened.

9 A. If I had enough money, I would have
10 replaced the fireplace. I did not.

11 Q. With the loan that you got from your
12 mother-in-law, did you allocate that to specific
13 repairs?

14 A. I don't understand your term "allocate."

15 Q. Sure. Let's say the fireplace cost
16 \$60,000 to repair. Did you allocate a specific
17 amount of money from the money that your
18 mother-in-law lent you to the specific repairs like
19 the fireplace?

20 A. No. I just had a lump sum of repairs to
21 do that I thought that we would get -- get it into
22 condition. It wasn't like \$22 here. Like --

23 Q. It wasn't like, "If we use 60 of the 300
24 to do the fireplace, we'll only have this much left
25 to do the rest"?

1 A. No.

2 Q. Did you think of it that way at all?

3 A. No, when -- when I budgeted at the first,
4 yes, we had to scratch stuff off, and that's what we
5 just spoke about.

6 Q. Okay. Did you budget -- when you say
7 "when we budgeted," is that something that you
8 drafted yourself, a budget for the repairs?

9 A. No. I sat down with Mark and I said,
10 "Look, we're going to have about this amount of
11 money to fix this. What can we do and what can't we
12 do? And let's shuffle it and figure out what has
13 the biggest impact," because I was trying to
14 mitigate the damages that were the responsibility of
15 Lange, and no one was helping me. And I had six
16 companies to run at the same time.

17 Q. This budget that you went over with
18 Mr. Giberti, is that something that was a written
19 document?

20 A. Probably at one time. We might have
21 written something down. I don't know.

22 Q. Do you still have that document?

23 A. I don't know that there is a document.

24 Q. I --

25 MR. SIMON: Just tell her you don't know.

1 She wants you to -- if there is a document, she
2 wants to know about it if it's separate than
3 anything that's already been produced.

4 A. I've turned over every single document
5 that we have on this file.

6 BY MS. DALACAS:

7 Q. Okay. As you got the second amount of
8 money in the loan from Mr. Kendrick, can you tell me
9 if there was a specific allocation of that amount
10 for legal bills versus repairs?

11 A. No. It's money I owed because of this.
12 A lot of it was already owing. I waited as long as
13 I could.

14 Q. Do you remember who it was specifically
15 owing to?

16 A. No, I do not. We could probably track
17 through this document using the dates.

18 Q. Okay. And then the same question as it
19 relates to that third loan that you just got from
20 your mother-in-law for \$200,000, is there a specific
21 allocation of that monies for legal bills versus
22 repairs?

23 A. I don't know. I think most of it went to
24 legal bills at this point.

25 Q. Right, because you stopped doing repairs

1 like in June of 2017; is that right?

2 A. That's not true.

3 Q. It's not true?

4 A. I just told you somebody was at the house
5 yesterday fixing this, and I told you someone was
6 probably there today because another thing went
7 wrong last night. I testified to that earlier.

8 Q. Are you referencing the electrician and
9 the --

10 A. Correct.

11 Q. -- low-voltage folks that are out there
12 today?

13 A. They're both there, correct.

14 Q. Okay. Have you had a specific discussion
15 with your real estate agent who's listed the house
16 for sale about what you need to disclose as it
17 relates to the water damage to any potential
18 seller -- I mean, excuse me, potential buyer?

19 A. I told him my plan is to disclose
20 everything.

21 Q. And what is "everything"?

22 A. Everything that's happened to this house.

23 Q. Okay. Are you selling the house in an
24 as-is condition?

25 A. You cannot.

1 Q. You cannot sell it in an as-is condition?

2 A. No. There's going to be a warranty on
3 this house.

4 Q. Who is providing the warranty on the
5 house?

6 A. We will have to back it.

7 Q. Who is "we"?

8 A. American Grating will have to back --
9 every time somebody comes with a warranty claim, we
10 will have to pay it.

11 Q. And why is that?

12 A. It's the law.

13 Q. So is it your testimony that you cannot
14 sell it in an as-is condition?

15 A. You can sell something as an as-is
16 condition. If something's wrong with it, you owe
17 them the money.

18 Q. How long is the warranty period that you
19 plan on providing to the new owner of the home?

20 A. Whatever's necessitated by law.

21 Q. Have you done any research into what the
22 law requires as it relates to a warranty?

23 A. I believe it's ten years.

24 Q. And what makes you think that?

25 A. Mark told me.

1 Q. Have you done any independent research on
2 that yourself?

3 A. No, I have not.

4 Q. Have you asked any attorneys about that?

5 A. Yes, I have.

6 Q. Did you ask Mr. Simon about that?

7 A. No, I did not.

8 Q. So what kind of warranty would American
9 Grating provide if they aren't the general
10 contractor for the house?

11 A. You're the seller. Anyone who sold the
12 house is responsible for the damages in the house.

13 I don't understand your question.

14 Q. Okay. Is it your intent to provide a
15 warranty on behalf of American Grating for the
16 construction of the residence?

17 A. I don't understand your question.

18 Q. I'm just trying to understand what kind
19 of warranty you're going to give somebody --

20 A. I don't know.

21 Q. -- when they buy it.

22 A. I don't understand if a "warranty" is a
23 legal term or not. There's an implied warranty
24 whenever you sell real estate, and you are liable
25 for it as the seller.

1 If something's wrong with something you
2 sold, you should fix it. Ethically you should fix
3 it, or you probably will get sued.

4 Q. Have you and your real estate agent made
5 a specific listing or drafted the specific
6 disclosure to be made for the sale of 645?

7 A. It's on the -- it's a standard document.

8 Q. The form that's real property disclosure
9 form?

10 A. I don't know that that's what it's
11 called, but it's the standard document, correct.

12 Q. Okay. I've seen that form and there's a
13 bunch of boxes that you have to check.

14 A. Correct.

15 Q. Is there -- is that the only disclosure
16 that you're referencing when you say, "We're going
17 to make a disclosure"? It's just that actual form?

18 A. When somebody puts an offer in, there is
19 an actual form that asks if there's water damage or
20 flood damage that you know, two separate line items.
21 I intend to disclose that, and I intend to
22 disclose -- when they go, "What flood damage
23 happened, Mr. Edgeworth?" I intend to tell them the
24 whole truth.

25 Q. Okay. Did you discuss with your real

1 estate agent that issue, the disclosure issue, when
2 you were determining the price for listing the
3 house?

4 A. Yes.

5 Q. And so did your agent advise you to list
6 the house for 5.5 million because of that potential
7 disclosure?

8 A. No.

9 Q. What was the reasoning for listing the
10 house for 5.5 million?

11 A. That's the market value of the house
12 right now if it was in like-new condition.

13 Q. Okay. That's my question. So the 5.5
14 million listing from your real estate agent does not
15 take into account any disclosure that you intend to
16 make as it relates to flood or water damage?

17 A. No. After an offer comes in, they'll
18 determine that.

19 Q. Who will determine that?

20 A. The people who made the offer.

21 Q. Oh, they'll determine -- after they make
22 an offer, they'll determine what impact flood and
23 water damage has on the house, price of the house?

24 A. They're the buyer.

25 Q. Okay. I'm just trying to clarify what

1 basis there is for the \$5.5 million listing, and I
2 think your answer is, is that that's the value of
3 the house as your real estate described to you in
4 new condition; is that right?

5 A. Correct.

6 Q. Okay. So that number doesn't have any
7 qualifier because there's been flood damage?

8 A. No.

9 Q. Okay. Do you understand that Lange
10 Plumbing has never had an incident where a fire
11 sprinkler head that they've installed has
12 prematurely discharged as the one that's happened
13 here at your house?

14 A. No, I do not understand that.

15 Q. Okay. Are you critical of Lange
16 Plumbing's installation of the fire sprinkler
17 system?

18 A. If we keep it to the narrow installation,
19 yes.

20 Q. What is your criticism of their actual
21 installation?

22 A. They were sent a letter to perform or be
23 fired off the job.

24 Q. Understood, because there was some kind
25 of delay, as I understand it, in --

1 A. Correct.

2 Q. -- their being on site?

3 A. Correct.

4 Q. Okay. Outside of that delay for the
5 month or two -- and I don't know the specifics of
6 how long it was, but I think it was about a month or
7 two; is that right?

8 A. I'd have to look.

9 Q. Okay. Outside of that delay, are you
10 critical of their installation of the fire sprinkler
11 system?

12 A. They were only on the site installing it,
13 what, three months, and they were missing two
14 months. Yeah, that would be their install; right?

15 Q. Right. But outside of that delay, are
16 you critical of their work in the installation of
17 the fire system?

18 A. Yeah. I don't really appreciate that
19 none of the caps fit right, but I'm not sure what
20 you're asking. I don't really like the way it's
21 been installed, no.

22 Q. Okay. What is your criticism of the
23 installation of the fire sprinkler system?

24 A. Well, a good example would be to look at
25 the sprinkler that discharged. Just look at the

1 finish sprinkler that's in there now. The cap
2 doesn't even fit.

3 Another example would be when we were
4 going back and forth with you about getting them on
5 the site so I could get a certificate of occupancy
6 and they weren't showing up for a month or whatever
7 after this happened, then the next head fell, blew
8 up, and we agreed to change all the heads out.

9 I specifically questioned if the new
10 heads that they were going to put in were the exact
11 same dimensions as the heads they were removing.
12 They obviously weren't because they drilled holes.

13 Q. You're talking about during the
14 replacement of the Viking heads in around October
15 of --

16 A. Correct.

17 Q. -- 2016?

18 A. Correct.

19 Q. Okay. I want to limit my question to:
20 Are you critical of Lange's work during their
21 installation of the original system up and to the
22 point where the fire sprinkler discharged?

23 A. Other than what I've just told you about,
24 I don't have a lot of knowledge about their
25 installation.

1 Q. Okay. Do you have any basis for alleging
2 that Lange intentionally installed the sprinkler
3 system in a way that would have caused the
4 discharge?

5 A. Not that I know of.

6 Q. Do you have any evidence to support an
7 allegation that they were reckless in their
8 installation of the sprinkler system as it relates
9 to the discharge?

10 A. Not that I know of. Although the one guy
11 testified that they assembled all the heads in the
12 theater. There's no lights down there. That seems
13 a little weird.

14 Q. Do you believe as you sit here today that
15 that testimony of the assembly of the heads by the
16 Lange employee was a cause in the fire sprinkler
17 discharge at 645?

18 A. I don't believe the testimony.

19 Q. You don't believe the testimony for
20 purposes of determining whether or not he actually
21 installed the fire -- excuse me, he actually
22 assembled the heads in the basement? Is that what
23 you mean?

24 A. The assertion's absolutely ridiculous.

25 Q. Okay. But that's not my question. My

1 question is, is that are you critical of the
2 substance of the testimony, meaning that that act by
3 Lange that they assembled the heads in the basement,
4 is it your testimony that that somehow caused the
5 fire sprinkler discharge to happen at 645?

6 MR. SIMON: I'll just object, calls for
7 speculation.

8 A. I can't really speculate on that because
9 I know they didn't assemble them in the basement.

10 BY MS. DALACAS:

11 Q. Are you critical -- or no, strike that.

12 Do you have any evidence to support an
13 allegation that Lange was negligent in their hiring,
14 training or supervision of employees as it relates
15 to the installation of the sprinkler system?

16 A. I don't know enough about that to answer
17 that question.

18 Q. Do you believe that any negligent hiring,
19 training or supervision of Lange of their employees
20 caused this fire sprinkler discharge at 645?

21 A. I do not have enough knowledge of those
22 areas to answer the question.

23 Q. Is there a specific reason why American
24 Grating LLC was not included as a plaintiff in this
25 case when you originally filed the complaint on --

1 in June of 2016?

2 A. I don't know.

3 Q. Is there a specific reason why American
4 Grating LLC was not included as a plaintiff in this
5 case when you filed the amended complaint in August
6 of 2016?

7 A. I do not know.

8 Q. Why did you actually add American Grating
9 LLC as a plaintiff in this case?

10 A. I do not know.

11 Q. Is it your testimony that that was a
12 decision by somebody else other than yourself?

13 A. My lawyer would put all the typing on
14 those documents, not me. You're asking me questions
15 I can't answer.

16 Q. Okay. Did you ever think when you were
17 filing the complaint that -- originally in June of
18 2016 that American Grating LLC even had anything to
19 claim in this case as damages?

20 A. Of course they did.

21 Q. So why didn't you include them then as a
22 plaintiff?

23 A. I don't know.

24 Q. In August of 2016 when you filed the
25 amended complaint, did you think that American

1 Grating LLC had some kind of damages to claim in
2 this case?

3 A. Of course they did.

4 Q. So why didn't you add them as a plaintiff
5 in August of 2016 when you filed the amended
6 complaint?

7 A. I do not know.

8 Q. Why did you wait till March of 2017 to
9 add them as a plaintiff in this case?

10 A. I do not know.

11 Q. So is it fair to say that prior to March
12 of 2017, American Grating LLC had not incurred any
13 attorneys' fees and costs in this case?

14 A. No.

15 Q. That's not fair?

16 A. No.

17 Q. Okay. So what attorneys' fees and costs
18 did American Grating LLC incur in this case prior to
19 them being added as a plaintiff --

20 A. American --

21 Q. -- in March of 2017?

22 A. American Grating's responsible for all
23 the costs in this regardless of whether I pay them
24 or not. American Grating's going to have to
25 reimburse me just like I reimburse them.

1 Q. But did American Grating actually have
2 any attorneys' fees before March of 2017 related to
3 this case?

4 A. I would think so.

5 Q. And what were those?

6 A. All the ones on this sheet.

7 Q. Okay. And are you -- is that your
8 testimony because you own American Grating and you
9 also own the Edgeworth Family Trust -- or excuse me,
10 are the trustee of the Edgeworth Family Trust, and
11 so since you're the common owner, those bills go
12 both ways? Is that really the basis of that?

13 A. No.

14 Q. So what is the basis for your testimony
15 that American Grating had attorneys' fees and costs
16 in this case prior to them being added as a
17 plaintiff?

18 A. American Grating's responsible for this,
19 for the damages in this. They're responsible to me.
20 Whether -- whether I pay one of the contractor's
21 bills for expediency to get them paid, they're going
22 to owe me that money back.

23 I don't understand your question.

24 Q. They're going to owe you, Brian
25 Edgeworth, personally that money back?

1 A. Brian and Angela Edgeworth. If -- if
2 those are the two parties that wrote the check, they
3 will.

4 Q. Do you do a reconciliation every year as
5 between the money that American Grating LLC owes
6 you, Brian and Angela Edgeworth, personally?

7 A. Yes.

8 Q. And why do you do that?

9 A. Because it's the tax law.

10 Q. Because they're a separate entity that
11 has to file a separate tax return and you have to
12 keep the books completely separate from Brian and
13 Angela Edgeworth personally; is that right?

14 A. No.

15 Q. Okay. So what is the reason then?

16 A. There's a tax law that says you must do
17 that.

18 Q. That says what?

19 A. You must take all your personal expenses,
20 reimburse your company for them and remove them
21 before you file your tax return.

22 Q. Before you file your company tax return?

23 A. That's correct.

24 Q. Okay. So had you been doing that in this
25 case prior to -- did you do that for 2016, I guess?

1 A. Do what?

2 Q. Follow the tax law that says that you
3 have to separately take out the personal expenses.

4 A. I do that every year.

5 Q. So you did that for 2016?

6 A. Every year.

7 Q. Okay. So is there some line item that
8 you can show me an attorneys' fees and costs that
9 American Grating LLC incurred prior to March of 2017
10 when they were added as a plaintiff?

11 A. I don't know. Maybe. I don't know.

12 Q. Where would we look for that?

13 A. I'm not sure.

14 Q. Where would that information be
15 contained?

16 A. I don't know.

17 Q. Would it be in this reconciliation that
18 you're referencing?

19 A. Maybe or maybe not. It depends on when
20 the timing of payment is.

21 Q. Well, had there been any -- I understand
22 you probably haven't done that for 2017 yet, the
23 reconciliation; is that right?

24 A. I haven't completed 2016.

25 Q. You haven't completed the reconciliation

1 for 2016?

2 A. No.

3 Q. Have you filed the tax return for
4 American Grating for 2016?

5 A. I don't think so. I just got an email
6 from my tax accountant.

7 Q. Okay. So if there was information about
8 attorneys' fees and costs that American Grating has
9 incurred, would it be contained on that
10 reconciliation?

11 A. Probably for 2017, maybe 2016.

12 Q. Depending on when it was paid?

13 A. But that wouldn't be on the
14 reconciliation. That's not a personal expense
15 American Grating paid on my behalf.

16 Q. Okay.

17 A. I think you're confusing that.

18 Q. I'm just trying to figure out if there is
19 an expense related to attorneys' fees and costs that
20 American Grating would have had prior to becoming a
21 plaintiff in this case, how would I know that
22 number?

23 A. They would owe it to me.

24 Q. Okay. And how would you know what that
25 specific amount owed is?

1 A. At the end of the tax year when we
2 reconcile all -- all the different expenses, it
3 would be on there.

4 Q. Okay. And is it your testimony that you
5 haven't reconciled the 2016 taxes yet?

6 A. No.

7 Q. Okay. So -- and obviously you haven't
8 done the 2017 taxes yet?

9 A. No.

10 Q. Okay. So there's noplacement that you could
11 look for that information and tell me a number of
12 attorneys' fees that American Grating LLC has
13 actually incurred prior to May of 2017?

14 A. Yes, I could.

15 Q. You could?

16 A. Yes.

17 Q. Okay.

18 MR. SIMON: They've all been disclosed to
19 you.

20 MS. DALACAS: The reconciliations?

21 MR. SIMON: No.

22 MS. DALACAS: The attorney --

23 MR. SIMON: The attorneys' fees and costs
24 for both of these plaintiffs as a result of this
25 claim have been disclosed to you long ago.

1 MS. DALACAS: I'm --

2 MR. SIMON: And they've been updated as
3 of last week.

4 MS. DALACAS: I understand that.

5 BY MS. DALACAS:

6 Q. I'm just wondering or trying to determine
7 whether or not -- since we've talked about these
8 different entities, Edgeworth Family Trust and
9 American Grating, is there a separation as between
10 the attorneys' fees between the two entities?

11 A. No. American Grating owes the attorneys'
12 fees.

13 Q. American Grating owes the attorneys'
14 fees?

15 A. Correct.

16 Q. Is that your testimony as to attorneys'
17 fees and costs incurred prior to May of 2017 when
18 they became a plaintiff in this case as well?

19 A. Yes, they would owe that.

20 Q. Okay. And why is that?

21 A. Because obviously it's their case.

22 Q. American Grating's case?

23 A. Yes.

24 Q. Okay. So why weren't they included as a
25 plaintiff from the filing of the original complaint

1 in June of 2016?

2 A. I --

3 MR. SIMON: Objection. Objection, asked
4 and answered.

5 THE WITNESS: That's what I was going to
6 ask. Didn't I just answer this?

7 BY MS. DALACAS:

8 Q. I know, and you said, "I don't know."

9 MR. SIMON: You did. She didn't figure
10 it out. So asked and answered, and you don't need
11 to answer it again.

12 BY MS. DALACAS:

13 Q. An item we haven't spoken about very much
14 is this -- it's a figure that you've identified as
15 diminution in appraised value and it's \$1.52
16 million, and it is -- I think that amount is
17 actually calculated by your expert. Are you aware
18 of that figure?

19 A. Yes.

20 Q. Is there any reason why -- or no, strike
21 that.

22 That amount, 1.52 million, that is
23 associated with the diminution in value that you're
24 claiming as it relates to the house owned by
25 Edgeworth Family Trust?

1 A. 645 St. Croix, correct.

2 Q. Okay. So is there any claim that
3 American Grating LLC would have as it relates to
4 that \$1.52 million number?

5 A. They're going to owe that money to
6 Edgeworth Family Trust.

7 Q. American Grating is?

8 A. Yes.

9 Q. And why is that?

10 A. Because they're the ones who built the
11 house.

12 Q. Okay. So but I think you said earlier
13 Edgeworth Family Trust does not have a written
14 contract with American Grating; is that right?

15 A. No.

16 Q. Just to clarify, is it correct that they
17 don't have a contract?

18 A. It is correct they do not have a contract
19 with American Grating.

20 Q. Thank you. We get a little -- too many
21 noes confuse all of us.

22 So if there's no contractual language
23 between Edgeworth Family Trust and American Grating
24 LLC as it relates to building of the house, what is
25 the basis for your claim that American Grating LLC

1 would owe that money to Edgeworth Family Trust?

2 A. There's a contract.

3 Q. What contract are you referring to?

4 A. It's a verbal agreement. Of course it
5 owes the money. Why wouldn't it?

6 Q. Well, what is the verbal agreement
7 between Edgeworth Family Trust and American Grating
8 as it relates to construction of the house?

9 A. American Grating was developing the
10 house. As a developer, they're liable.

11 Q. Okay. So, I mean, was there really --
12 you're technically the owner of both entities; so
13 was there an actual discussion had between someone
14 that would create this oral contract or is that just
15 something that you discussed with your wife, or how
16 did that contract come into place?

17 A. It's an agreement. When we do stuff
18 between companies, that's how we account for stuff.
19 We have a number of entities. We divide stuff up
20 and we do it fairly.

21 And yes, I would be both the claimant and
22 the plaintiff if that went to a lawsuit. I'm pretty
23 sure I would win.

24 Q. Well, so in this case, the only two
25 entities involved are Edgeworth Family Trust and

1 American Grating. Is that fair?

2 A. In what case?

3 Q. As you sit here today, the only two of
4 your entities that are involved with the litigation
5 we're here for is Edgeworth Family Trust and
6 American Grating LLC?

7 A. And Lange Plumbing and Kinsale and Viking
8 and -- I don't understand your question.

9 Q. Sure. I mean the only two of your
10 entities that are involved in this case are
11 Edgeworth Family Trust and American Grating. Is
12 that right?

13 A. As far as I'm aware.

14 Q. Okay. So what agreement did you have
15 between Edgeworth Family Trust and American Grating
16 as it relates to construction of the house?

17 A. I believe I already answered that. Was
18 the question not asked already?

19 Q. Did you --

20 A. American Grating was developing the house
21 for Edgeworth Family Trust.

22 Q. So when American Grating develops other
23 properties for the different entities that you own,
24 do you have contracts, written contracts, in those
25 cases?

1 A. Obviously.

2 Q. And I mean a contract between American
3 Grating and then the entity that they're doing the
4 work for.

5 A. Yes. If American Grating had destroyed
6 Pediped's store, American Grating would be paying
7 Pediped for that destruction.

8 Q. Would there be a written contract in
9 place for that?

10 A. No.

11 Q. Same thing with the volleyball
12 facility --

13 A. Correct.

14 Q. -- was there a written contract in place
15 between the volleyball entity -- and I'm not sure of
16 its name -- and American Grating for construction of
17 that volleyball facility?

18 A. No.

19 Q. Same thing for the volleyball court
20 that's at 1191, was there --

21 A. The tenant improvement?

22 Q. The tenant improvement.

23 A. No.

24 Q. So you never have a written contract
25 between your entity and American Grating as it

1 relates to construction that American Grating is
2 doing?

3 A. No. I fully trust them.

4 Q. Okay. If you were using a different
5 developer entity that was not American Grating, that
6 was not your own company, would there be a written
7 contract in place?

8 A. I don't understand your hypothetical.

9 Q. Sure.

10 Let's say you didn't own American Grating
11 and you just wanted to build 645, you wanted to hire
12 someone to build 645 for you and develop the
13 property just like American Grating did it in this
14 house, for this house. Would you have had a
15 contract with that entity?

16 A. Yes.

17 Q. Okay. So why is it that you don't have
18 one in this case with the company that actually
19 developed and built the house for you?

20 A. I answered that I did have a contract.

21 Q. And I asked about a written one.

22 A. You just asked about a contract, ma'am.

23 Q. Okay. So you don't have a written
24 contract, but you would if this was a different
25 entity, if this was not American Grating, as I

1 understood your testimony; is that right?

2 A. I didn't testify to that, I don't
3 believe.

4 Q. Okay. My point is: If you had to hire a
5 company to develop and build your property at 645,
6 would you have entered into a written contract with
7 that company?

8 A. Yes.

9 Q. Okay. So is there a reason that you
10 didn't enter into a written contract with American
11 Grating for work at 645?

12 A. I have full visibility into their
13 management and their finances. There's really not a
14 need to. When you enter into a written contract
15 with someone, it's because you might not know who
16 they are as a person, like me and Bernie Lange, and
17 you might need to hold them to their obligations in
18 that written contract later.

19 American Grating, I feel pretty
20 comfortable with the people that own it and its
21 financial position at the time that I entered into
22 the contract.

23 Q. Because you're the owner of American
24 Grating?

25 A. That is correct.

1 Q. And your wife is the owner of American
2 Grating?

3 A. That is correct.

4 Q. So you fully understand your own
5 financial situation and the policies and procedures
6 at American Grating?

7 A. Yes.

8 Q. Okay.

9 MS. DALACAS: I think I am going to pass
10 the questioning at this point. Thank you so much.

11 MR. SIMON: Do you have any? No?

12 EXAMINATION

13 BY MR. NUÑEZ:

14 Q. Mr. Edgeworth, I just have a few
15 questions for you.

16 You are aware that Viking has filed a
17 third-party complaint against Giberti Construction;
18 correct?

19 A. Yes, I am.

20 Q. And you're aware that the gravamen of
21 that complaint said they are blaming Giberti
22 Construction for the failure and denying their own
23 responsibility for the failure; is that correct?

24 A. Yes, I am.

25 Q. Okay. Mr. Edgeworth, do you have any

1 claim or contention that Giberti Construction or
2 Mark Giberti did anything or failed to do anything
3 that caused or contributed to the sprinkler failure
4 or any of your damages in this case?

5 A. No.

6 Q. Okay. Are you making any claim or
7 contention in this case that there was any delay in
8 the pace or construction of the project after the
9 installation of the fire sprinklers until the date
10 of discharge?

11 A. No.

12 Q. Did you have occasion to be on site at
13 the property --

14 A. Daily.

15 Q. -- after the fire sprinklers were
16 installed?

17 A. Daily.

18 Q. Were you on the site daily during the
19 summer of 2015?

20 A. Yes.

21 Q. Did you perceive any excessive
22 temperatures within the home or residence during the
23 summer of 2015?

24 A. No.

25 Q. What's your best estimate of the hottest

1 it got inside that house during the summer of 2015?

2 A. Upstairs, maybe in the mid-90s.

3 Midlevel, probably mid to high 80s.

4 Q. Okay.

5 A. Basement probably didn't hit the 80s.

6 Q. Did you ever have occasion to enter the
7 attic during the summer of 2015?

8 A. I think once.

9 Q. Okay.

10 A. But not like -- it's not memorable.

11 Q. Did you notice or perceive any
12 significant temperature variance inside the attic
13 and within the residence itself?

14 A. I --

15 MS. PANCOAST: Object to form.

16 A. I've been in the attic several times
17 since. There's -- there's a perceivable difference,
18 probably like 5 to 10 degrees, like every attic that
19 is built pre-2010.

20 BY MR. NUÑEZ:

21 Q. Okay. Mark Giberti offered similar
22 testimony. His best estimate was that it was no
23 more than a 13-degree temperature variance within
24 the home and the attic. Would you generally agree
25 with that testimony?

1 A. Yeah. I would think 5, maybe 15 at the
2 very peak. But average on a day, it's probably 5 or
3 less.

4 Q. Okay.

5 A. Depends how you're calculating.

6 Q. During the summer of 2015, did you hear
7 any complaints from any of the workers within the
8 residence that it was too hot to work?

9 A. Definitely not.

10 MR. NUÑEZ: Okay. Thank you, sir.
11 That's all the questions I have.

12 MR. SIMON: I have a few questions for
13 you.

14 EXAMINATION

15 BY MR. SIMON:

16 Q. As your house sits there today, do you
17 have a mold certificate?

18 A. No.

19 Q. So as your house sits there today, we
20 don't know if there's any mold in your house?

21 A. No.

22 Q. As far as the white matter that's coming
23 through your walls, do you know if that's water
24 moisture at all?

25 A. I don't know. I'm really concerned about

1 that.

2 Q. You talked about Lange when they allege
3 that they were assembling the sprinkler heads in the
4 basement, and you didn't believe that testimony.

5 A. Yes.

6 Q. All right. Part of the reason, there's
7 no lights down there?

8 A. You can't see anything in the basement.

9 Q. And to your knowledge, they didn't bring
10 any of their own lights?

11 A. I know they didn't.

12 Q. Okay. But you were asked whether you
13 were critical of anything they did, and you said,
14 "Well, I can't be critical of that because I don't
15 believe they did it."

16 Is it fair to say you don't know what
17 Lange did at all as it relates to those sprinklers
18 from the time they picked it up at Viking SupplyNet
19 until they put it in the ceiling in your house?

20 A. I have no idea.

21 Q. So we don't know what, if anything, they
22 did to those sprinklers; right?

23 A. No.

24 Q. Does it matter?

25 A. It might. I don't know. I doubt it.

1 Q. Well, they had a contract with you;
2 right?

3 A. Correct.

4 Q. And part of that contract, they had to
5 install products that were free of defect?

6 A. Correct.

7 Q. Right? And you don't care whether the
8 defect came from the manufacturing plant or some
9 damage happened in their truck or as they were
10 assembling in the basement. That's not your
11 concern; right?

12 A. No. That's Lange's problem.

13 Q. That's Lange's problem.

14 And Lange, when you say are you critical
15 of anything that they did in the installation, are
16 you critical that they put a defective sprinkler in
17 your house that destroyed your entire house?

18 A. Yes.

19 Q. Okay. And that's part of their
20 installation that they put that faulty product in;
21 right?

22 A. Yes.

23 Q. And to your understanding, is that a
24 breach of contract?

25 A. It is.

1 MS. DALACAS: Calls for a legal
2 conclusion.

3 A. Most definitely.

4 BY MR. SIMON:

5 Q. Okay. Did Bernie Lange or anyone from
6 Lange Plumbing ever offer to help you with any of
7 the repairs that were necessary because of the flood
8 that damaged your house?

9 A. No, and I personally asked him several
10 times.

11 Q. Did Bernie Lange or anyone at Lange
12 Plumbing ever make any effort to enforce the
13 warranty of the defective product from Viking that
14 they installed in your house?

15 MS. DALACAS: Calls for speculation.

16 A. Not that I know of. And I asked him to
17 do that exact thing after his insurance company
18 refused to pay him.

19 BY MR. SIMON:

20 Q. So when the insurance company refused to
21 pay, you had to hire a lawyer?

22 A. Correct.

23 Q. Right? And when we say "you," we're
24 talking about the owner of the property, Edgeworth
25 Family Trust; right?

1 A. Correct.

2 Q. As well as American Grating?

3 A. Correct.

4 Q. And whether you're named on an initial
5 complaint or an amended complaint, American Grating
6 is still incurring attorneys' fees to try and get
7 recovery for the damages caused by the breach of
8 contract by Lange?

9 A. Correct.

10 Q. Now, American Grating and Giberti --
11 American Grating, the developer; Giberti, the
12 general contractor -- were building the house at
13 645; is that accurate?

14 A. That's correct.

15 Q. All right. Any cost associated with the
16 repairs is a cost that's incurred by American
17 Grating?

18 A. Yes.

19 Q. Any attorneys' fees and costs incurred as
20 a result of being compensated for the damage caused
21 is incurred by American Grating?

22 A. That's correct.

23 Q. And ultimately has to be reimbursed to
24 the owners of the project?

25 A. That's correct.

1 Q. Which is the Edgeworth Family Trust?

2 A. That is correct.

3 Q. We were talking about fines claimed, and
4 there was a period for fines because of the repair
5 period. Do you remember that?

6 A. Correct.

7 Q. All right. And whether or not those
8 fines are going to be ultimately paid by the
9 Edgeworth Family Trust at the close of some escrow
10 hopefully in the near future, that's still damages
11 that were incurred by American Grating because it
12 was part of the construction?

13 A. That's correct. American Grating will
14 owe them that money.

15 Q. As well as all of the repairs, American
16 Grating had to deliver a completed house to the
17 Edgeworth Family Trust?

18 A. Correct.

19 Q. Right? And so if there's damage caused
20 during the course of construction, American Grating
21 has to incur the costs of repair; correct?

22 A. That's correct.

23 Q. And regardless of who pays it, out of
24 what account, what credit card, what loan, American
25 Grating incurred those expenses; correct?

1 A. That's correct. American Grating wasn't
2 in a working capital position to pay them.

3 Q. Has Lange Plumbing ever offered to pay
4 any part of your attorneys' fees and costs?

5 A. No.

6 Q. Pursuant to the contract, they're
7 responsible for your attorneys' fees and costs; is
8 that your understanding?

9 A. That is.

10 MS. DALACAS: Objection, form, calls for
11 a legal conclusion.

12 A. That's correct. It's pretty clear in the
13 contract.

14 BY MR. SIMON:

15 Q. Okay. In fact, I think paragraph 18 lays
16 that out pretty clearly, but they still haven't
17 offered to assist you in any way in prosecuting
18 these claims against Viking, have they?

19 A. No, and I've asked Bernie Lange.

20 Q. Pursuant to the contract, is it your
21 understanding -- let's see.

22 Turning to Exhibit 11, pursuant to the
23 contract, it says contractor being Lange Plumbing
24 and American Grating being the owner, and that's
25 basically just a definition so that when you read

1 this contract you know the obligations of each of
2 the parties within the contract?

3 MS. DALACAS: Objection, calls for a
4 legal conclusion.

5 BY MR. SIMON:

6 Q. Calls for common sense when you read the
7 contract too.

8 A. Yeah. It's a short form. Obviously the
9 general contractor is Giberti, not Lange Plumbing.
10 Lange Plumbing was a subcontractor. These aren't
11 legal terms. They're just terms.

12 Q. Right. So this helps when we read
13 through this contract and we know the rights and
14 obligations of the parties, when it refers to
15 "owner," we know that "owner" within the contract
16 means American Grating because it says it right at
17 the beginning?

18 A. Correct. It could have said "AB-" --

19 MS. DALACAS: Objection, calls for a
20 legal conclusion.

21 A. Correct. It could have said "ABC."

22 BY MR. SIMON:

23 Q. Right. Okay. So as part of that, the
24 indemnities, under "'Indemnities,'" 1.7, it says,
25 "shall mean Owner," and owner under the contract is

1 American Grating?

2 A. Correct.

3 Q. Right? Is that your understanding?

4 Then it also says, "its subsidiaries,
5 affiliates." Is Giberti an affiliate under this
6 contract?

7 MS. DALACAS: Objection, calls for a
8 legal conclusion.

9 A. I think so.

10 MR. SIMON: Did you get that?

11 THE REPORTER: "I think so."

12 MR. SIMON: Yes.

13 BY MR. SIMON:

14 Q. And "Owners." Edgeworth Family Trust is
15 an owner of American Grating?

16 A. That is correct.

17 MS. DALACAS: Objection, calls for a
18 legal conclusion.

19 BY MR. SIMON:

20 Q. So "owners" is also defined here within
21 indemnities under 1.7?

22 A. That is correct.

23 MS. DALACAS: Same objection.

24 BY MR. SIMON:

25 Q. Right? "Directors, officers, agents and

1 employees."

2 A. Yeah. Mark would be an employee.

3 Q. Right.

4 A. Directors, officers --

5 MS. DALACAS: And can I just --

6 A. -- and agents would be me and Angela.

7 MS. DALACAS: I don't mean to interrupt
8 you, Mr. Edgeworth.

9 Can I have a running objection as it
10 relates to every question that he's asking specific
11 to the contract? Calls for a legal opinion and
12 object to form.

13 BY MR. SIMON:

14 Q. Okay. And then the owners and directors
15 or officers would also apply to you and Angela
16 Edgeworth; right?

17 A. That's correct.

18 Q. Right. And under 7.1, it also says that
19 Lange Plumbing warrants that they're not going to
20 put any materials or equipment in there that has a
21 defect. See where it says that?

22 A. Yes.

23 Q. And they violated that provision when
24 they put in the defective Viking product in your
25 house; right?

1 A. They most certainly did.

2 Q. And a result, a direct result of that
3 defective material destroyed your house?

4 A. That is correct.

5 Q. Do you think that Bernie Lange or anyone
6 from Lange Plumbing has acted in good faith in
7 complying with the terms of their agreement that
8 they entered into by this contract in Exhibit 11?

9 MS. DALACAS: Same objection.

10 A. No.

11 MS. DALACAS: Calls for a legal
12 conclusion.

13 A. No. They haven't at all. You know, I
14 asked Bernie and I asked him to get a separate
15 attorney and get legal advice because he wasn't
16 abiding by his contractual duties.

17 BY MR. SIMON:

18 Q. And as a result of his breach of contract
19 and his conduct in failing to act in good faith and
20 deal fairly with you, you have incurred over
21 \$500,000 in attorneys' fees, costs in this case,
22 haven't you?

23 MS. DALACAS: Objection, calls for a
24 legal conclusion, form.

25 A. That's correct. In the contract, he was

1 supposed to enforce the warranty against Viking if
2 he believed it was a defect. He never did.

3 BY MR. SIMON:

4 Q. Okay. And that doesn't even cover the
5 cost of repairs that you had to come out of pocket
6 for; right?

7 A. He was obligated under the contract to
8 immediately repair the house also.

9 Q. Okay.

10 A. He never did.

11 Q. So he didn't do that part, and then he
12 didn't enforce the warranty, causing you to spend
13 another half a million dollars plus?

14 A. That is correct.

15 MS. DALACAS: Same objection.

16 BY MR. SIMON:

17 Q. And those damages are still accruing
18 every day?

19 A. Correct.

20 Q. Do you know whether Mr. Lange or Shelli
21 Lange or anybody at Lange Plumbing tried to take a
22 home equity loan out on their property?

23 A. No, they --

24 MS. DALACAS: Objection, calls for
25 speculation, form.

1 BY MR. SIMON:

2 Q. Do you know if they ever tried to get a
3 loan on any of their assets that they have?

4 A. No.

5 Q. Do you know if they tried to use any of
6 their working capital at their business to try and
7 pay for any of the damages that you've been caused?

8 MS. DALACAS: Same objection.

9 A. They most certainly did not.

10 MR. SIMON: I don't have anything else.

11 Thank you.

12 MS. PANCOAST: Good enough.

13 MR. SIMON: Finished or you got --

14 MS. DALACAS: Sorry, I just have one
15 follow-up.

16 I thought you had more, Janet.

17 MS. PANCOAST: No.

18 MS. DALACAS: Just one question for you,
19 Mr. Edgeworth.

20 EXAMINATION

21 BY MS. DALACAS:

22 Q. Do you have any information at all about
23 what Lange Plumbing may have done to try to enforce
24 the warranty with Viking?

25 A. Only my discussions with him.

1 Q. And what was your discussion with Bernie
2 in that regard?

3 A. We -- when we met at the house, I asked
4 him what he was doing. He said he was going to send
5 it to a third-party lab and get it tested and see
6 if -- what it was. And then he went on about, "Then
7 maybe we'll send it to Viking," stuff like that.
8 And then he copied me on some emails.

9 Q. Was that meeting with him shortly after
10 the discharge?

11 A. Four, five days after.

12 Q. Okay. I just wanted to make sure on the
13 timing.

14 But since that time, since that meeting
15 with him, have you had any conversations with him
16 about his efforts to try to get Viking to enforce
17 the warranty?

18 A. To get Viking?

19 Q. I'm sorry. To try to enforce Viking's
20 warranty.

21 A. Under the narrow scope of the question,
22 no.

23 Q. Okay.

24 MS. PANCOAST: I do have one question if
25 you're done.

1 MS. DALACAS: I'm all done. Yes, thank
2 you.

3 EXAMINATION

4 BY MS. PANCOAST:

5 Q. You said that you had an estimate for
6 800,000 to repair the house. Was that a single
7 estimate? I haven't seen that; so I'm wondering --

8 A. It's not a written estimate. We went
9 around and ballparked it if it was done properly,
10 not done as if it was a tract home.

11 These companies that come in to repair,
12 they're not custom homes. You know, there's not a
13 big enough market of \$5 million homes for a company
14 just to remediate water damage in big custom homes.
15 They deal with tract homes, town houses, apartments,
16 stuff like that.

17 Q. So when Mr. Giberti gave you these
18 estimates, was this an estimate of the -- of, "We'll
19 see how much you can get done"? Because his was for
20 350.

21 A. Mark never gave me that estimate. That
22 estimate is supposed to be comparable to whoever
23 Kinsale or -- I don't even know which party.

24 Q. The United --

25 A. It's comparable to that estimate.

1 Q. To the United Restoration? So if it --
2 and the reason I ask you about that is I haven't
3 seen an estimate for 800,000; so I want to make sure
4 I'm not missing something.

5 So that's your understanding. But
6 there's no actual estimate that was drafted for
7 that; is that correct?

8 A. No, no. When we knew what a disaster
9 this was becoming, that Lange was going to leave us
10 hanging out to dry to pay for this, we walked around
11 and just sort of ballparked how much everything
12 would cost to fix it perfect condition or to patch
13 and repair.

14 These quotes are very much
15 patch-and-repair quotes --

16 Q. Okay.

17 A. -- because that's what those contracting
18 companies do.

19 Q. All right.

20 A. J&J doesn't build custom homes.

21 Q. All right.

22 MS. PANCOAST: Okay. I just wanted to
23 make sure. Thank you.

24 Anybody else?

25 I think we are done.

1 (Deposition recessed at 4:39
2 p.m.)
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20			I, BRIAN J. EDGEWORTH, witness herein, do	
21			hereby certify and declare under penalty of perjury	
22			the within and foregoing transcription to be my	
23			deposition in said action; that I have read,	
24			corrected and do hereby affix my signature to said	
25			deposition.	
			<hr/> BRIAN J. EDGEWORTH	<hr/>
			Witness	Date

1 REPORTER'S CERTIFICATE

2 STATE OF NEVADA)
3) ss
4 COUNTY OF CLARK)

5 I, William C. LaBorde, a duly certified court
6 reporter licensed in and for the State of Nevada, do
hereby certify:

7 That I reported the taking of the deposition
8 of the witness, BRIAN J. EDGEWORTH, at the time and
place aforesaid;

9 That prior to being examined, the witness was
10 by me duly sworn to testify to the truth, the whole
truth, and nothing but the truth;

11 That I thereafter transcribed my shorthand
12 notes into typewriting and that the typewritten
13 transcript of said deposition is a complete, true
and accurate record of testimony provided by the
witness at said time to the best of my ability.

14 I further certify (1) that I am not a
15 relative, employee or independent contractor of
16 counsel of any of the parties; nor a relative,
17 employee or independent contractor of the parties
involved in said action; nor a person financially
18 interested in the action; nor do I have any other
relationship with any of the parties or with counsel
19 of any of the parties involved in the action that
may reasonably cause my impartiality to be
questioned; and (2) that transcript review pursuant
to NRCP 30(e) was requested.

20 IN WITNESS WHEREOF, I have hereunto set my
21 hand in the County of Clark, State of Nevada, this
1st day of October 2017.

22
23 _____
24 William C. LaBorde, CCR 673, RPR, CRR
25

Daniel Simon

From: Brian Edgeworth <brian@pediped.com>
Sent: Saturday, November 11, 2017 10:17 AM
To: Daniel Simon
Subject: Re: Edgeworth v Viking and Lange Plumbint

We agree. He should of proposed 5

Brian Edgeworth

On Nov 11, 2017, at 10:04 AM, Daniel Simon <dan@simonlawlv.com> wrote:

Begin forwarded message:

From: "Floyd A. Hale" <fhale@floydhale.com>
Date: November 10, 2017 at 3:39:45 PM PST
To: <dan@danielsimonlaw.com>, <janet.pancoast@zurichna.com>, <mcconnell@mmrs-law.com>, <robinson@mmrs-law.com>
Subject: Edgeworth v Viking and Lange Plumbint

Counsel: attached is my, time-limited, mediator proposal. Floyd
Hale

<mediator proposal 11-10-17.pdf>

Daniel Simon

From: Brian Edgeworth <brian@pediped.com>
Sent: Tuesday, November 21, 2017 3:39 PM
To: Daniel Simon
Subject: This is the updated sheet of costs

It does not include any of my time on the case or lost profits.

Type of Cost and Status	
Legal Bills/consult/experts etc.	\$501,453.29
Legal Bills Costs not billed yet	
Repairs to House Paid	\$512,636.00
Still owing to remediator	\$24,117.50
Loan Interest (GROWING)	\$342,942.00
Still to repair	\$194,489.00
Pre-Judgement Interest (growing)	\$285,104.17
Real Unknowns (electric/paint repair)	\$80,000.00
Trapped Capital Interest	\$262,013.00
Fines, HOA, Taxes	\$55,393.00
Stigma Loss/Quality Loss	\$1,520,000.00
Increase in Insurance	\$49,000.00
Construction Business Gone	
Brian's Time / Mark's time after repair	
	\$3,827,147.96

Interest through mid December
fireplaces/garage doors/wood repair/stucco/cabinets
5.25-6.25% per year (prime plus 2) on Judgment (assuming j
Need to rewire one panel and lights. Still paint and drywal
can claim interest on capital invested that is stalled during r
Costs are all documented during the repair period
25% discount in report, would house really sell immediately a
\$14k/year
we lost all the projects we had and hours spent hurt other b
I have spent almost 2,000 hours on case uncovering fraud/pi

Already Discounted Hourly Rate from \$300 to \$150/165 on AMG bills. This IS a \$170-190,000 discount over claim at tri

VANNAH & VANNAH

AN ASSOCIATION OF ATTORNEYS
INCLUDING PROFESSIONAL CORPORATIONS

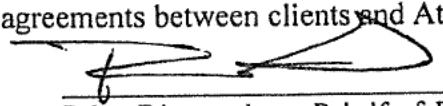
This agreement, made in duplicate this 29th day of November 2017, by and between Brian Edgeworth on Behalf of Edgeworth Family Trust and American Grating, hereinafter known as "Client" and Vannah & Vannah, hereinafter known as "Attorneys."

Client retains Attorneys to represent him as his Attorneys regarding Edgeworth Family Trust and AMERICAN GRATING V. ALL VIKING ENTITIES all damages including, but not limited to, all claims in this matter and empowers them to do all things to effect a compromise in said matter, or to institute such legal action as may be advisable in their judgment, and agrees to pay them for their services, on the following conditions:

- (a) Initial Retainer Fee of \$9,250.00, which shall be the minimum fee charge regardless of the amount of hours billed or work performed.
- (b) \$925.00 an hour for attorney time for Robert D. Vannah and John B. Greene;
- (c) Client agrees that his attorneys will work to consummate a settlement of \$6,000,000.00 from the Viking entities and any settlement amount agreed to be paid by the Lange entity. Client also agrees that attorneys will work to reach an agreement amongst the parties to resolve all claims in the Lange and Viking litigation.

I have read this contract, have received a copy of it and agree to the terms and conditions. There are no other oral or written agreements between clients and Attorneys


ROBERT D. VANNAH, ESQ.


Brian Edgeworth on Behalf of Edgeworth Family Trust and American Grating

VANNAH & VANNAH
AN ASSOCIATION OF ATTORNEYS
INCLUDING PROFESSIONAL CORPORATIONS

December 7, 2017

CONSENT TO SETTLE

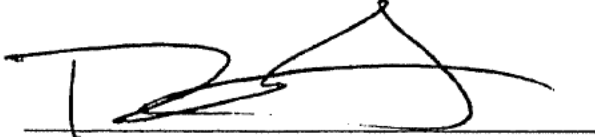
RE: EFT & AMERICAN GRATING v. LANGE

WE, Brian Edgeworth and Angela Edgeworth, on behalf of the Edgeworth Family Trust (EFT) and American Grating, consent to settle all claims against LANGE for the gross amount of \$100,000, minus sums owed to LANGE pursuant to the Contract. We acknowledge that our attorneys have advised us that by settling the outstanding claims with LANGE, we will be waiving all claims for attorneys' fees, including any contingency fee that a court may award to the Law Office of Daniel S. Simon. By settling our claims with LANGE, we understand that LANGE will also agree to dismiss all claims against VIKING entities, including claims for contribution and indemnity. Also, we understand that no party to the litigation will oppose any motion for Good Faith Settlement. We understand and agree that by settling our claims against LANGE and VIKING, all aspects and claims related to the litigation will be resolved and dismissed with prejudice.

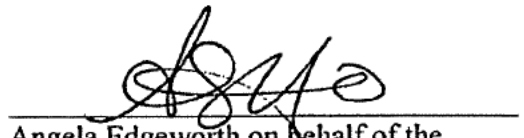
We acknowledge that Mr. Vannah has also explained to us that to continue to litigate with LANGE is economically speculative, as we've already been made more than whole with the settlement with the VIKING entities, and LANGE may be legally entitled to an offset for the amount of the settlement paid to us by VIKING. We also understand that to continue to litigate with LANGE over the payment of attorneys fees is also not only speculative, but is akin to throwing good money after bad by spending considerably more money on attorneys fees in an effort to recover attorneys fees.

Rather, we acknowledge that Mr. Vannah has advised us to settle with LANGE for the negotiated amount of \$100,000 and we consent to settle.

DATED this 7th day of December, 2017.

A handwritten signature in black ink, appearing to be 'B Edgeworth', written over a horizontal line.

Brian Edgeworth on behalf of the EFT
and American Grating

A handwritten signature in black ink, appearing to be 'A Edgeworth', written over a horizontal line.

Angela Edgeworth on behalf of the
EFT and American Grating

Bank of Nevada
A Division of Western Alliance Bank
Sahara Branch

TR:76 2130-1 01/08/18 04:23 PM

Ck Deposit

XXXXXX4141

DUP

Transaction amount: \$6,000,000.00

Checks: \$6,000,000.00

Further review may result in delayed
availability of this deposit.

Thank you for banking with us.

Bank of Nevada

NOTICE OF HOLD
CUSTOMER COPY

Originating Branch: 2130
Date of Deposit: 01/08/2018
Deposit Amount: \$6,000,000.00
Account Number: XXXXXX4141

We are delaying the availability
of \$6,000,000.00
from your deposit.
In Person Notice
Hold type: New account 9 business days

These funds will be
available on the
following business days
after the day of deposit:

Date/Amount

01-22-2018/\$6,000,000.00

/

/

/

/

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Prepared by

Reviewed by

If you wrote checks against this
deposit that were returned solely
due to the additional delay we are
imposing and you did not receive
this notice at the time of this deposit,
we will refund any overdraft or
returned check fees that you
incurred as a result.
To obtain a refund of such fees
call your branch of account.

Branch: 2130 ID: W103439

Tran number: 76 Time: 16:23

DUP

RA000308



RTRAN

DISTRICT COURT
CLARK COUNTY, NEVADA

EDGEWORTH FAMILY TRUST,

Plaintiff,

vs.

LANGE PLUMBING, LLC,

Defendant.

CASE NO. A-116-738444-C

DEPT. X

BEFORE THE HONORABLE TIERRA JONES, DISTRICT COURT JUDGE

TUESDAY, FEBRUARY 06, 2018

**RECORDER'S PARTIAL TRANSCRIPT OF HEARING
MOTIONS AND STATUS CHECK: SETTLEMENT DOCUMENTS**

APPEARANCES:

For the Plaintiff:

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

For the Defendant:

THEODORE PARKER, ESQ.
(Via telephone)

For Daniel Simon:

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

For the Viking Entities:

JANET C. PANCOAST, ESQ.

Also Present:

DANIEL SIMON, ESQ.

RECORDED BY: VICTORIA BOYD, COURT RECORDER

TRANSCRIBED BY: MANGELSON TRANSCRIBING

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Las Vegas, Nevada, Tuesday, February 06, 2018

[Case called at 9:47 a.m.]

THE COURT: We're going to go on the record in Edgeworth Family Trust versus Lange Plumbing, LLC.

We have Mr. Parker present here on behalf of Lange plumbing. He's present on court call.

[THEODORE PARKER, APPEARING TELEPHONICALLY]

THE COURT: If we could have the other parties' appearances for the record.

MR. VANNAH: Robert Vannah and John Greene on behalf of the Edgeworth Family.

MR. CHRISTENSEN: Jim Christensen on behalf of the law firm.

MR. CHRISTIANSEN: Pete Christiansen on behalf of the law firm.

MS. PANCOAST: Janet Pancoast on behalf of the Viking entities.

THE COURT: Okay. Ms. Pancoast, we're going to do the stuff that involves you and Mr. Parker first and then -- since -- so we can get Mr. Parker off the court call. So Mr. Parker has a Motion on for a Determination of a Good Faith Settlement. There has been no Opposition to this Motion. I'm assuming there's no Opposition since the checks have already been issued and this case has already been settled.

1 So, based upon that the Motion for Good Faith Settlement is
2 going to be granted under the *MGM Fire* factors have been met, as well
3 as NRS 16.245.

4 And in regards to the settlement documents, I believe we have
5 those because I believe the checks have been issued, is that correct?

6 MS. PANCOAST: Your Honor, the checks were issued long
7 ago from the Viking entities and frankly, I've got a stipulation that I've
8 brought today hoping to get Mr. Simon's signature and Mr. Parker is the
9 final signature as to -- so to get Viking out.

10 I mean, Mr. Simon did sign a dismissal to get Viking out, but
11 we're trying to sort of wrap up the entire case and now we've had, as
12 you are aware, a bit of a snafu. And so I'm not sure how we deal with
13 that. But I mean, I'd like to get this stip filed, so at least --

14 MR. CHRISTENSEN: I can do it.

15 MS. PANCOAST: -- you know, Mr. Parker and I and our
16 clients are sort of harm's way.

17 MR. SIMON: We don't have the checks yet.

18 THE COURT: And --

19 MR. CHRISTENSEN: Your Honor, just to let the Court know,
20 the closing documents for Lange took a little bit of time. They have
21 finally been -- they were signed by the client where needed yesterday
22 and then been provided to Mr. Simon who's got to get some signatures
23 and get them on over back to Mr. Parker.

24 THE COURT: Okay. So that's where you are. Counsel, what
25 is --

1 MR. CHRISTENSEN: It's in the works.

2 THE COURT: -- you and Mr. Simon's position in regards to
3 this stip?

4 MR. CHRISTENSEN: I think it's appropriate.

5 MR. SIMON: Yeah, there's -- unless Mr. Vannah has an issue
6 with it.

7 MR. VANNAH: No.

8 THE COURT: Okay.

9 MR. VANNAH: No, we're -- my understanding of the whole
10 case is -- the underlying case is -- we signed everything yesterday we --
11 and we want Mr. Simon to finish it off and it's almost done.

12 THE COURT: Okay.

13 MR. VANNAH: The whole case is just about to be dismissed,
14 it's just a matter of a few days, I imagine.

15 THE COURT: Okay. So Mr. Panco -- Ms. Pancoast, you can
16 get Mr. Simon to sign that. Mr. Parker is not here today, you'll have to
17 get him as soon as he's back in the jurisdiction.

18 MR. PARKER: And I'll be back -- Your Honor, this is Mr.
19 Parker. I'll be back in jurisdiction tonight and --

20 THE COURT: Okay.

21 MR. PARKER: -- certainly I can find time to go by Ms.
22 Pancoast's office if necessary to sign the stipulation tomorrow. Or if she
23 had it delivered to my office, I will sign it tomorrow morning.

24 I wanted to make sure that it was clear on the record that the
25 Good Faith Settlement determination, as well as the stipulation that

1 we've -- we will be signing involves and determines that not only were
2 the settlements in good faith, you know, reached at arm's length
3 negotiations, but they include the resolution of all claims between the
4 Defendant and cross-claims and any additional shared obligations the
5 Defendants may have had amongst each other, as well the, of course,
6 the Plaintiff's claims.

7 THE COURT: Well did --

8 MR. PARKER: I think that's all but agreed, but since I'm not
9 there I figured I'd say it one more time so it's on the record clearly.

10 THE COURT: Okay. And does anyone have an objection to
11 that?

12 MS. PANCOAST: No, that's agreed. That's correct.

13 THE COURT: Okay. There being no objections to that that'll
14 be part of the record. And then in the regard to the settlement
15 documents, as soon as those things are signed, we'll get those. Do you
16 guys think we need another status check to get those done or do you
17 guys --

18 MR. SIMON: You might as well set it. We still don't have the
19 settlement checks from Mr. Parker, but --

20 MR. PARKER: Yeah.

21 THE COURT: Okay.

22 MR. PARKER: I'm sorry, I couldn't hear --

23 MR. SIMON: So I mean, there's a --

24 MR. PARKER: -- what someone just --

25 MR. SIMON: -- little bit left to do.

1 MR. PARKER: -- said, but let me just put on the record, Your
2 Honor, this is again Teddy Parker on behalf of Lange. We do have our
3 settlement check. It has arrived. So tomorrow I'm more than happy to
4 have it sent over to Mr. Simon's office in exchange for the settlement
5 documents.

6 THE COURT: Okay. So what we will do then is we'll set a
7 status check on that issue in two weeks just to make sure all of that stuff
8 has been resolved.

9 MS. PANCOAST: Yes, Your Honor, that would be great. And
10 what I am doing is I'm giving the stipulation to Mr. Simon because he
11 doesn't have the check yet and I can understand he doesn't want to sign
12 it before the check, so he's got it then he will get it to Teddy or exchange
13 it when they exchange the check, so --

14 THE COURT: Okay.

15 MS. PANCOAST: -- Mr. Simon's facilitating wrapping this up.

16 THE COURT: Okay. Mr. Parker, could you hear that? Based
17 on when you and Mr. Simon exchange the check, then the stipulation
18 can be signed after that.

19 MR. PARKER: Sounds great.

20 THE COURT: Okay. So we'll set a status check on the
21 settlement documents in two weeks. That date is?

22 THE CLERK: February 20th at 9:30.

23 THE COURT: Okay.

24 And so then in regards to the other motion, I mean, Mr.
25 Parker, you're not involved in the other motions, would you like to stay

1 on the court call or would you like to -- it's up to you.

2 MR. PARKER: Your Honor, I am -- I'm -- I think tangentially
3 I'm involved --

4 THE COURT: Okay.

5 MR. PARKER: -- and the only reason I say that is because I
6 think we all as a party to this case would like to have this whole thing
7 wrapped up at once so that there's nothing hanging over any of our
8 hands any further -- any longer.

9 THE COURT: Okay.

10 MR. PARKER: So I'd like to stay on in the event my
11 comments may prove beneficial to the Court's consideration of the
12 motion.

13 THE COURT: Okay. And I appreciate that, Mr. Parker, I just
14 didn't know if you had something else to do or --

15 Okay. So, we're going to start with Danny Simon's Motion to
16 Consolidate that was done on an Order Shortening Time. I have read
17 the motion, I've also read the Opposition, and I did read the Reply that
18 did come in yesterday.

19 Mr. Vannah, have you had an opportunity to review the Reply?

20 MR. VANNAH: I have, Your Honor.

21 THE COURT: Okay. So based upon that, Mr. Christensen.

22 MR. CHRISTENSEN: Yes, Your Honor.

23 So Rule 42 addresses consolidation; essentially if there is a
24 common issue of fact or of law the cases can be consolidated under the
25 discretion of the Court.

1 In this situation we have common issues of fact. The common
2 issues of fact are the litigation of the case against Viking and Lange and
3 the facts of that underlying litigation, the house flood, et cetera.

4 Common issues of fact are the work of the law office. Common issues
5 of fact are the reasonable fees due the law office.

6 Common issues of law are the relationship between the law
7 office and Plaintiffs, whether there's an express contract or not, and
8 those types of related issues to the existence of the contract; whether
9 there was a constructive discharge of the contract, things of that type.

10 I don't want to go through all the facts of the consolidation,
11 Your Honor, is quite familiar with the underlying case.

12 THE COURT: And I've read it, but I will tell you one of the
13 concerns that I have is the issue with this contract because as you know
14 from where you guys are standing your position is there was some
15 discussions, but there was never anything put in writing, but from
16 where -- and Mr. Vannah's Opposition basically what Mr. Vannah is
17 saying is everything indicates that there was a contract that this would
18 be done on an hourly basis. And I do have a couple questions for Mr.
19 Vannah in regards to that. So I do want to hear your position about that.

20 MR. CHRISTENSEN: Okay. Jumping the gun a little bit on
21 the Motion to Adjudicate, but that's --

22 THE COURT: Sorry.

23 MR. CHRISTENSEN: -- fair enough. It's all right.

24 So, first of all, in the big picture the existence of the contract
25 does not affect the jurisdiction of the Court over the Motion to Adjudicate

1 and only affects the manner of calculation of the fee due.

2 THE COURT: Right.

3 MR. CHRISTENSEN: On the issue of the existence of the
4 contract, we're talking about whether there's an express contract or not.
5 There seems to be a little bit of confusion, so let me see if I can clear it
6 up. An express contract can be writing or oral, there just has to be a
7 meeting of the minds. So, whether I have a piece of paper that says I'll
8 cut your lawn for \$20 and it's signed or whether I say I will cut your lawn
9 for \$20 and the homeowner agrees and I cut the lawn and I then get
10 \$20, that's an express contract.

11 You can also have contract implied by the facts or conduct.
12 That's an implied contract and that's not an express contract. So, it may
13 be a little nuanced here, this distinction and as a practical matter when
14 we get into the weeds on that, it may cut different ways, but as we go to
15 the existence of the contract, the allegations of the underlying Complaint
16 filed in the other case argue that an express contract was formed in May
17 of 2000 -- in May of 2016. And that doesn't jive with the e-mail that was
18 sent May 27th. It seems like -- you know, if you read that e-mail and take
19 reasonable inferences from it, you say hey, I got this problem --

20 THE COURT: This is the e-mail between Mr. Edgeworth that
21 was sent to Danny Simon.

22 MR. CHRISTENSEN: Correct.

23 THE COURT: Yes.

24 MR. CHRISTENSEN: It's attached as Exhibit A to the Reply --

25 THE COURT: No, I've read it. I just want to make sure--

1 MR. CHRISTENSEN: -- and it's also --

2 THE COURT: -- we were talking about the same one.

3 MR. CHRISTENSEN: Right.

4 THE COURT: Yes.

5 MR. CHRISTENSEN: Exactly.

6 And so that raises this reasonable inference that they didn't
7 have an express oral contract at that time.

8 So, the case moves forward and suddenly becomes more
9 than just a simple claims process claim. There's a lot more involved.
10 And the first billing isn't sent up by Mr. Simon's office until something like
11 seven months later in December.

12 THE COURT: Was there an understanding between Mr.
13 Edgeworth and Mr. Simon as regards to when the billing would actually
14 occur?

15 MR. CHRISTENSEN: I don't believe that was -- well, on the
16 part of the law office, no --

17 THE COURT: Okay.

18 MR. CHRISTENSEN: -- and I don't believe that that was
19 asserted on the part of Mr. Edgeworth.

20 THE COURT: Okay. And I mean, he didn't assert that, that's
21 a question that I have --

22 MR. CHRISTENSEN: Right.

23 THE COURT: -- because as we talk about like how long it
24 took for the billings to begin and stuff like that, that was just a question
25 that I had.

1 MR. CHRISTENSEN: Well -- and it's a good question, Your
2 Honor, because when you do hourly work that's typically a material term.
3 I mean, usually when doing hourly work you're getting billed within 30 to
4 60 days --

5 THE COURT: Right.

6 MR. CHRISTENSEN: -- if events are occurring and you know,
7 then there's language in there about how quickly it's going to get paid, et
8 cetera, et cetera.

9 In the alleged oral contract that the Edgeworths say existed,
10 the only term they talk about is \$550 an hour. I cited the *Loma Linda*
11 case, that's been law in Nevada for a long, long time. Even if you're
12 asserting an oral contract and you've got one term that seemingly
13 there's an agreement upon, if there's not agreement upon all the other
14 terms, there's no contract. It's all or nothing. So, that's the position of
15 the law firm that there was no contract.

16 As you move forward in time to August of 2017, when the
17 case was obviously getting very hot and heavy in this courtroom --

18 THE COURT: Uh-huh.

19 MR. CHRISTENSEN: -- you can see that Mr. Simon, again,
20 raised that issue because there was a lot more money being spent on
21 the case, there was a lot more time being devoted to the case. He
22 wanted to tie up that lose issue because, you know, he agreed to take
23 the case and send some letters, you know, for a long family friend and
24 didn't think it was going to be that big of a deal and now suddenly it is.

25 And it's dominating time at the law office, he's not working on

1 other files, it's become an issue. So he tries to address it. There's not
2 that much documentation of his attempts to --

3 THE COURT: Well, that's --

4 MR. CHRISTENSEN: -- address it.

5 THE COURT: -- was going to be my next question because I
6 have --

7 MR. CHRISTENSEN: There are --

8 THE COURT: -- the e-mail here from Brian Edgeworth, but
9 did Danny Simon respond to this e-mail or what did he do to address this
10 issue?

11 MR. CHRISTENSEN: My understanding of that e-mail is that
12 it's a standalone e-mail. In other words, it wasn't pulled out of a string of
13 e-mails --

14 THE COURT: Okay.

15 MR. CHRISTENSEN: -- back and forth. I can't answer the
16 question concerning whether there were other e-mails that addressed
17 that. The e-mails literally are a stack -- how high? This high?

18 MR. SIMON: Higher.

19 MR. CHRISTENSEN: Higher. I did not go through them. At
20 least not yet. Hopefully I won't have to.

21 But this one e-mail that we pulled out appears to address that
22 issue on the head and that's why we attached it. It's Exhibit B to the
23 Reply.

24 THE COURT: Yes.

25 MR. CHRISTENSEN: It's in the other -- attached to the other

1 documents.

2 And a reasonable inference that you can draw from that e-mail
3 is that there really wasn't a firm agreement. It's stated right out that we
4 never had a structured discussion and that seems to match the conduct
5 of the parties. So, even if we're going to go down the road to an implied
6 contract, that matches the conduct of the parties. Not all things were
7 getting billed, there were costs being fronted.

8 That's very rare for an hourly lawyer to do. And there were
9 large amounts of costs being fronted. As a matter of fact, there are still
10 some \$71,000 in costs outstanding. That's not typical behavior of an
11 hourly lawyer and that's because Mr. Simon does not take hourly cases
12 as a rule. You know, he takes cases where there -- where you address
13 the fee at the end of the case and that's what we have here.

14 So and all of those facts -- to kind of segway back to the
15 Motion to Consolidate, all of those issues are at play on the Motion for
16 Adjudication. So there are common issues of fact and law that relate to
17 that contract.

18 And there's another issue here that I wanted to bring up and
19 that is the basic legal premise and the public policy against multiplicity of
20 suits. It's enshrined in Rule 13, it's expressed in other ways through the
21 law, and it's actually dug into by Leventhal where Leventhal cited the
22 Gee case out of Colorado. And it talked about the problem of creating
23 multiple suits when there is a lien adjudication.

24 And it addresses it from the standpoint of judicial economy
25 and it says -- the Gee case quotation that was cited by Leventhal, our

1 Supreme Court case says: To restrict the means of enforcement of an
2 attorney's liens solely to independent civil actions would be a waste of
3 judicial time, as well as contrary to the legislative intent reflected by the
4 statutory language.

5 And it goes on to say: The trial judge heard the proceedings --
6 Your Honor -- which gave rise to the lien is in a position to determine
7 whether the amount asserted as a lien is proper and can determine the
8 means for the enforcement of the lien.

9 And that dovetails exactly with our statutory language. The
10 statute says the Court -- the statute says that the Court shall adjudicate
11 the lien. There's no discretion in the word shall. Certainly there's
12 discretion in the question of consolidation, that's a maybe question. But
13 the question of adjudication I shall. So, this Court is going to have to
14 address those issues.

15 Under the *Verner* case, which was cited by the Edgeworths,
16 it's very interesting that was kind of an opposite fact scenario where a
17 case was split up and the Supreme Court said no, you shouldn't have
18 done that. And one of the reasons why is they said that there must be a
19 demonstration that a bifurcated trial is clearly necessary to lessen costs
20 and expedite litigation. That's not going to happen.

21 That's why all of this should be consolidated in one court
22 because the case law is clear that Your Honor is the most
23 knowledgeable that will promote judicial economy and we shouldn't lose
24 on that. If we have two cases running on parallel tracks, there's going to
25 be a lot of duplicity of effort, we're going to lose judicial economy.

1 Now, the most natural reply for the Edgeworths is to say well,
2 wait a second, under the Constitution we have a right to jury trial and
3 that's true. There's nothing in consolidation that would prevent the
4 proceeding of their action. That would have to be done by something
5 else; by say a Motion to Dismiss. And there is nothing in the statute that
6 prevents the proceeding of their contract claim, if they decide to do so
7 after adjudication of the lien.

8 In fact, the statute, subsection 7, although it's looking at it from
9 the attorney's point of view says this is not an exclusive remedy, you can
10 file an independent action. There's nothing in the law that says that a
11 lien cannot be adjudicated and then there can't be an independent
12 action that addresses those same facts and law.

13 As a practical matter, obviously it may have an impact on the
14 damages in the breach of contract case, depending upon how far we go
15 in determination of facts and law in the adjudication process that could
16 have fact or issue preclusion in the contract case, depending how it all
17 works out; how the findings come out.

18 But that doesn't mean that both of these things can't operate
19 at the same time. That doesn't create mutual exclusivity. Both of these
20 remedies are available at the same time. By consolidating it, we can
21 save a lot of time and effort. We don't have to go over tilled ground
22 again. So, that's the argument on consolidation.

23 I -- if you'd like me to I can address some of the other factors
24 that maybe lead to why we should either adjudicate today or set it for an
25 evidentiary hearing to adjudicate in the near future.

1 THE COURT: Yeah. And if you could do that because when
2 Mr. Vannah responded he responded to both, so I'm going to give him
3 an opportunity to respond to both, based on the Opposition that he filed.

4 MR. CHRISTENSEN: Okay. Very good, Your Honor.

5 So, I'm going to dip back into the well-known facts, just
6 because I think it's necessary for a brief review so that we have a
7 common ground of understanding.

8 So, Plaintiffs were building a house as an investment. Lange,
9 the plumber installed Viking fire sprinklers, it was within the contracted
10 work of the plumber and one of those sprinklers experienced a
11 malfunction, flooded the house, damaged the house. All -- there is a
12 contract between Lange and American Grating. Some of the terms of
13 the contract same things like Lange has to assert warranty rights if there
14 is a malfunction in an item installed in the home, things of that type and
15 there's also an attorney fee provision and that becomes important as the
16 case progresses.

17 At the early stage Lange said we're not going to do anything,
18 it's Viking's fault. Mr. Edgeworth had not purchased any course of
19 construction coverage or anything else that would have covered an
20 incident like this. So, because of that decision he was obligated to go
21 through this claims process against Viking and/or Lange. He was
22 bumping his head up against the wall, started reaching out for legal
23 assistance. Reached out to his friend. We saw the e-mail from Blake
24 May.

25 The case obviously grew into a major litigation, contentious,

1 even. Lots of motion practice, lots of things going on. Around the
2 middle of 2017, Mr. Simon approached Mr. Edgeworth and tried to get a
3 resolution on this fee issue. He had a lot of costs fronted, he was eating
4 up a lot of time at the office. They are not hourly billers, they do not
5 have the standard hourly billing programs. It was a problem.

6 Mr. Edgeworth is a principal of two companies with an
7 international footprint. He has another revenue stream from investment
8 homes. He apparently has another revenue stream from various
9 investments. He's experienced hiring and paying lawyers. I know that
10 they done work in the IP, the intellectual property area, with copyrights
11 for some of those companies, et cetera. He's not a typical lay person.
12 He has dealt with lots of attorneys in the past.

13 And his response of August of 2017 has to be looked at in that
14 light. This is not some guy who's getting bullied into something, here's a
15 guy who's looking at it from a business perspective and sending out
16 options. Well, we could do this. I could take out a loan and pay hourly
17 on the whole case, which implies that he was not or else he wouldn't
18 have brought it up. Discusses a hybrid, discusses a contingency, makes
19 it clear that there's an open question on fees.

20 As the case moved on in November, after more motion
21 practice, Mr. Simon has positioned the case well for success at trial.
22 Mr. Simon has a meeting with Mr. Edgeworth prior to the mediation and
23 shows him the amount of costs outstanding, which at the time were in
24 the neighborhood of 76,000. I believe Mr. Edgeworth receive a copy of
25 that, although that is portrayed by the Plaintiffs in their Opposition.

1 Discussion was also raised about the fees, it was impressed
2 that that's -- that issue, there was this mediation to take care of. After,
3 as a result of the mediation a settlement is reached with Viking, for six
4 million dollars. The total cost of the build was 3.3, including land
5 acquisition, HOA fees and taxes. So that is an amazing recovery on a
6 case where the property damage loss, depending upon how you look at
7 it, between the hard and soft damages as Mr. Kemp went through that
8 analysis in his declaration, you know, range from three quarters of a
9 million to a million and a half or thereabouts, in that range. That's an
10 amazing result.

11 As a result of that amazing result, Mr. Simon again returned to
12 that fee discussion and at that time client communication started to
13 break down.

14 THE COURT: This is November of 2017, right?

15 MR. CHRISTENSEN: Correct, Your Honor.

16 The culminated in -- at the end of November there was a fax
17 sent from Mr. Vannah's office signed by Mr. Edgeworth saying -- in
18 essence, talk to Mr. Vannah, he's now in power to do whatever on the
19 case. The following day in response to that letter the law firm filed its
20 first attorney's lien and soon perfected it under the statute.

21 We then come to an issue that's been raised because of a
22 factual argument made by the Plaintiffs and it has to deal with the
23 attorney fee claim that existed under contract against Lange. By its very
24 nature that claim was not set until the Viking resolution was made
25 because arguably under that contract, if Lange is supposed to pursue

1 remedy against Viking for the Edgeworths and Lange says we're not
2 going to do that, Mr. Homeowner, you have to do that and the
3 homeowner expends fees and costs to do that job, then under that
4 contract he -- the homeowner is due those fees and costs because
5 Lange said I know we have this contract term, we're not going to abide
6 by it.

7 So, it doesn't really matter if a December billing is incomplete
8 because the story is -- isn't ended, the story's still ongoing. There was
9 an argument that because Mr. Simon didn't do complete billings as the
10 case went along that somehow he had damaged the case -- the value of
11 the case. Hard to imagine with the result, but that argument is made.
12 And that's simply not true because of that underlying contract.

13 There was a potential for a claim against Lange to recover
14 every penny spent. Now, Lange would have argued, well, some of that
15 is not reasonable or it's due to a different claim or whatever, but there
16 was a potential for a great case against Lange under that contract and
17 that was not ripe and that number was not certain until the settlement
18 with Viking occurred.

19 So as a result those -- if those attorney's fees had been
20 settled in a timely manner, as requested by Mr. Simon, then they would
21 have had that number as a sum certain to pursue against Lange.

22 To understand that little bit further you have to go back into
23 this whole thing about how you get attorney's fees, so, you know, we got
24 the English rule that loser pays. Well, we don't follow that, we follow the
25 American rule that everybody bears their own fees and costs. That's

1 changed by certain things. For example, if you have an offer of
2 judgment and you're able to go through all the *Batey* factors and all that
3 stuff, that's a tough road to go for fees. It's rarely granted.

4 The other one is if you have a right for fees under a contract
5 and in a claim against Lange, because those would be damages under
6 the contract, you've got a direct claim. That's not something that's, you
7 know, handled by the Court at the end of the case under a fee-shifting
8 statute, like you might have a consumer protection statute or a civil
9 rights statute or something of that type. That's a direct claim and it's not
10 ripe until the case against Viking is settled.

11 So as a practical matter what would have happened in the
12 case in this court is there would have been the resolution with Viking and
13 then if they decided to pursue that contract claim there would have had
14 to been disclosure of the sum certain that would have had to been
15 added to damages. Undoubtedly that would have been bumped the trial
16 date because Lange would have said wait a second, we need to
17 respond to this, we want to explore these damages and then that case
18 would have progressed.

19 That's important because, one, either because of a
20 misunderstanding or a misstatement that takes away this whole
21 Edgeworth argument that Mr. Simon somehow prejudiced the client. But
22 secondly, that was all explained via new Counsel, Mr. Vannah, to the
23 clients. And on December 7th, there's a writing from the clients directing
24 Mr. Simon to settle the case against Lange for 100,000 minus an offset.

25 So, they made the decision to knowingly abandon that

1 contract claim that would have encompassed those fees against Lange.
2 Having made that based upon the advice of Counsel, Mr. Vannah, they
3 can't now bring it up as a shield to either adjudication or to the existence
4 of contract.

5 What started then was kind of a cat and mouse game by the
6 Edgeworths. For example, on December 18th, when the Viking checks
7 were available, that same day the law office picked up the checks, Mr.
8 Simon got on the phone, sent an e-mail, checks are ready, come on
9 over, endorse them. Sent that to Mr. Greene of Mr. Vannah's office.

10 Mr. Greene called him back promptly and what the
11 conversation was, was Mr. Simon said come on over and sign them
12 because Friday, we're heading out of town for the holidays and we won't
13 be back until after the New Year. Mr. Greene said well, the Edgeworths
14 are out of town and won't be back until after the New Year. Okay.
15 Everybody leaves town.

16 The day after Mr. Simon left town for Christmas a new e-mail
17 comes in Saturday of the Christmas weekend and says, you know, we're
18 not putting up with any more delay, get these checks signed. Well, they
19 already knew he was out of town and he gave them an opportunity.
20 Then we go into the back and forth and they accuse Mr. Simon that he's
21 going to steal the money, put it in his pocket, and run off somewhere.

22 Seemingly we work through that, an agreement is made to
23 open up an interest-bearing trust account at the bank with the interest
24 inuring to benefit of the clients. On January 2nd, 2018, an amended
25 attorney lien was filed. On January 4, the contract claim was filed

1 against Mr. Simon. On January 8th, the checks were endorsed and
2 deposited. The following day the law firm was signed -- served. And on
3 January 18th, which is soon as the funds cleared, the clients received
4 their undisputed amount, which is the total amount in the Trust account,
5 minus the amount of the lien of January 2nd.

6 So, at the current time there's money sitting in a Trust account
7 that can't go anywhere unless they are co-signed by Mr. Simon and Mr.
8 Vannah and the client is getting the benefit of the interest on that
9 account. At the current time the costs outstanding are \$71,794.93. A
10 Memorandum of Costs was filed and that number is reflected in the two
11 liens. It's actually slightly lower than the number in the two liens
12 because subsequently a rebate was obtained from one --

13 THE COURT: Right.

14 MR. CHRISTENSEN: -- of the experts.

15 The total fee claim outstanding is under the market approach
16 to calculation of fees, which is allowed under quantum meruit, which you
17 can do clearly in absence of contract. The claim is for \$1,977,843.80.

18 The Declaration of Mr. Kemp is attached. Mr. Kemp is
19 obviously one of the top attorneys in the country. One of the top product
20 defect attorneys in the country. He went through the *Brunzell* factors in
21 the case and found the value -- the market value of the fee to be
22 \$2,444,000 before offset for money already paid, which is a little bit
23 higher than the second lien amount.

24 We then get into lien law. So, the issue presented under the
25 Motion to Adjudicate Lien, it's just that. And the statute says the Court

1 shall adjudicate the lien. The statute does not have any exception to
2 jurisdiction of this Court or the obligation of this Court to adjudicate that
3 lien, it says shall. The case law lays out and we laid it out in the motion,
4 all the cases that say the Court has adjudi -- has jurisdiction over this fee
5 dispute.

6 And by the way, that jurisdiction continues even if the
7 Defendants are dismissed. There's absolutely no case law anywhere
8 that indicates that somehow that would magically end the jurisdiction of
9 the Court. And in fact, that would cut against the public policy behind
10 that statute because then you'd be playing a game of keeping
11 Defendants who have walked their peace in a case while you're trying to
12 adjudicate a lien.

13 So that would go against the public policy of settlement and
14 allowing these folks out and would allow just another whole level forum
15 shopping and game playing on the part of client, who may be wanting to
16 avoid paying an attorney their just fees. There's also no case law
17 anywhere that says that and it's certainly not stated in the statute.

18 So we have a lien that's been served, it's been perfected,
19 there's no argument that it hasn't. Money has been paid, it's sitting in
20 trusts, so adjudication is ripe. There are some cases that say well, wait,
21 we're not going to adjudicate a lien before money has been paid, that's
22 been -- that's happened. It's sitting in Trust. If that is the proper
23 procedure to be followed under the rules of ethics, that's the proper
24 procedure to be followed under the statute, the statute has been
25 followed each and every point, exactly.

1 There's some claim that adjudication of the lien at this point
2 would be improper[sic]. I think that addressed that through the
3 Declaration of David Clark, who is State Bar Counsel in the state for
4 many years. His opinion addresses two things, one, does an attorney
5 break and ethical rule by asserting an attorney lien? And the answer is
6 no. In fact, that's what you're supposed to do.

7 And the second thing is does an attorney commit conversion
8 when settlement money is placed in a trust account, interest inuring to
9 the benefit of the client and there's then a Motion to Adjudicate over the
10 disputed amount in that Trust account. And again, the answer is no.

11 We address some of the other conversion law in the motion
12 practice. They can't establish exclusive dominion and a right to possess
13 that money in the Trust account because that claim is based on contract.
14 We cited a California case directly on point. And the Restatement 237,
15 that addresses that. The contract isn't enough. A lien would be enough,
16 but a contract is not a sufficient basis in which to bring a conversion
17 claim.

18 Even if it was, we cited Restatement Section 240 and the
19 other cases. It has to be wrongful dominions in order to serve as a basis
20 for our contract. So they fail on two parts. One, it's not wrongful, in fact,
21 it's encouraged under the law. And two, it's not dominion because it's in
22 a Trust account, Mr. Vannah has signing authority on that account.

23 It's not like they took a cow and put the wrong brand on it and
24 wouldn't release it, it's different. It's in a Trust account with the interest
25 inuring to the benefit of the clients. The reason I raise that is because

1 it's seemingly brought forth by the clients that because they have this
2 claim in another case or another case until the Court addresses the
3 Motion to Consolidate that that divests the Court of jurisdiction.

4 Now, they don't put it in those terms, but that's the gist of it
5 and that's incorrect. There's nothing in the statute provides an exception
6 to jurisdiction. This Court shall adjudicate that lien. The only possible
7 exception is mentioned in dicta, in an Argentina case, which they don't
8 even address. They don't even raise that in their Opposition. They raise
9 some rhetorical questions, they raise cases that don't apply, but they
10 don't address that core question of whether it's appropriate for this Court
11 to adjudicate the lien. Clearly, it is.

12 When we get into adjudication, then we're going to get into the
13 impact of the contract, whether it's best to go under the market rule, an
14 hourly basis, a hybrid, somewhere in the middle, that's up to the
15 discretion of the Court, the method of calculation. The only requirement
16 is that whatever fee is arrived at is fair and reasonable under the
17 *Brunzell* factors and of course there have to be findings applying
18 *Brunzell* to the fee awarded.

19 That's how the case should proceed. That's an orderly
20 presentation and that's the process of the case that's called for under
21 the statute and cases. And frankly, the Edgeworths haven't provided
22 anything that says different. Certainly they're going to come up and
23 argue and they're going to make an equity argument and that's fine, but
24 that has to fail in the face of the statute and case law. The Court doesn't
25 have discretion to go beyond the confines of that statute. Thank you,

1 Your Honor.

2 THE COURT: Okay. Thank you.

3 MR. CHRISTENSEN: Unless you have any questions, I'll --

4 THE COURT: No, I do not.

5 Mr. Vannah?

6 MR. VANNAH: Thank you, Your Honor.

7 The procedural history is fairly accurate so -- but here's
8 what -- here's how we perceive what actually happened. They were
9 friends, the client and Mr. Simon and naturally went to him and said hey,
10 I've got this situation going on, I have a flooded house, I'd like you to
11 represent me. Whatever reason, Mr. Simon never does what a good
12 lawyer should do is prepare a written fee agreement.

13 So for a year and a half they have an oral under -- not an oral
14 understanding, they actually have an oral agreement. Mr. Simon says I
15 will work for you and I will bill you \$550 per hour and my associate will
16 bill at a lower rate, I think it was \$275 an hour.

17 THE COURT: And I do have a question about that because --

18 MR. VANNAH: Yes.

19 THE COURT: -- you put that in your Opposition, but in your
20 Opposition you keep referring to -- you referred to Mr. Simon's Exhibit 19
21 and Exhibit 20 that's attached to their motion. And every -- and unless I
22 had -- the copies that I have and that's why I hold them in here and I
23 brought them just to make sure I wasn't wrong, but -- well, Exhibit 19
24 and Exhibit 20 in the motion -- the original motion that was filed says it's
25 \$275 an hour.

1 MR. VANNAH: For his associate.

2 THE COURT: Okay. So these are for the associate.

3 MR. VANNAH: Right. And he --

4 THE COURT: Okay.

5 MR. VANNAH: And Mr. Simon billed 550 an hour.

6 THE COURT: Okay, but where is that because in your --
7 when you motion you keep referring to Exhibit 19 and Exhibit 20 at the
8 550 an hour. Where is that --

9 MR. VANNAH: It's in the --

10 THE COURT: -- because they both say 275.

11 MR. GREENE: Your Honor, it's been undisputed Mr. Simon
12 billed 550 per hour. We just put it as simple math and it was up to Mr.
13 Simon to put the amounts in the invoices and bill them to the clients.
14 That's what they paid Mr. Simon, no one's contested that --

15 MR. VANNAH: So for --

16 MR. GREENE: -- at 550 an hour.

17 MR. VANNAH: Yeah, for a year and a half we put all -- for
18 one and half years --

19 THE COURT: Right. And I was just wondering how you did
20 math because you know we're all lawyers and --

21 MR. VANNAH: That's what Mr. Simon --

22 THE COURT: -- none of our math is as good as we would like
23 it to be. But I was just wondering because you were referring to Exhibit
24 19 and Exhibit 20 in those amounts you estimate at being at 550 an hour
25 and that's how we come to those amounts and I just saw it as 275 and

1 when I did the math it was 275, so I didn't understand where the 550
2 came from.

3 MR. VANNAH: It's 275 for her.

4 THE COURT: Right. And that's just what's in 19 and 20 and
5 that is what you referenced in your motion as to how they got to the 550
6 figure.

7 MR. GREENE: It's our understanding in the first portion of the
8 exhibits show Mr. Simon's billings at 550 an hour and then as we dive
9 deeper it's 275. Maybe the copies weren't made in the order that they
10 should have been, but Mr. Simon's time was billed at 550 per hour.

11 MR. CHRISTENSEN: Your Honor, If I can clear this up. I
12 apologize, Mr. Vannah, but --

13 MR. VANNAH: Sure.

14 MR. CHRISTENSEN: So that you can move forward.

15 MR. VANNAH: Sure.

16 MR. CHRISTENSEN: Mr. Simon's billing appears first in
17 Exhibit 19.

18 THE COURT: 19, okay.

19 MR. CHRISTENSEN: And if you look at the bottom it's
20 paginated.

21 THE COURT: Uh-huh.

22 MR. CHRISTENSEN: If you go to page 79 --

23 THE COURT: Okay.

24 MR. CHRISTENSEN: -- that has the total and his fees.
25 Perhaps we should have broken it up into 19A and 19B.

1 THE COURT: I'm sorry. I just thought it was tabulated at the
2 end.

3 MR. CHRISTENSEN: Yeah. If you go to the --

4 THE COURT: Okay. Okay, I see it.

5 MR. CHRISTENSEN: Okay.

6 THE COURT: I see it. Okay, thank you, Counsel.

7 MR. CHRISTENSEN: Thank you, Your Honor.

8 THE COURT: Thank you.

9 MR. VANNAH: But -- no, thanks, Counsel, I appreciate it.

10 THE COURT: And I'm sorry, I just thought it was all tabulated
11 at the end when I read it so I was looking at the 275 and I just wanted to
12 make sure my math was right.

13 MR. VANNAH: No, no, that's fine. And I don't think anybody
14 disagrees.

15 THE COURT: Okay.

16 MR. VANNAH: So for a year and a half, Mr. Simon billed his
17 time in detail at \$550 an hour for his time and then 275 for his associate
18 for one and a half years. And on each and every billing -- and also
19 included all the costs and my client paid each and every invoice within
20 five to seven days, including the costs.

21 So, when they're talking about Mr. Simon advanced all these
22 costs, you may have paid the costs just like you would if you're working
23 for an insurance company, which I used to do you'd pay the costs out of
24 your general account, you'd send the insurance company a bill and say
25 this is what I spent for court reporters and this is how much my time's

1 worth and they send you a check.

2 And for a year and a half he paid my -- the Edgeworths paid
3 almost \$500,000, almost half a million dollars for a year and a half. So
4 what happened was in May about two -- nobody's saying anything about
5 any contingency fee. Now, what they want to get is a contingency fee,
6 that's what they really want, that's what Mister -- Mr. Kemp is excellent
7 and I love him to death, he's a good friend of mine.

8 Mr. Kemp said well, if our firm had done it on a contingency
9 fee we would have charged 40 percent. Certainly they could have done
10 that, but the rule -- Supreme Court Rule 1.5 makes it abundantly clear
11 that you can't have a contingency fee unless you have it in writing and a
12 client signs it and it also has to have various paragraphs in it that are
13 required by the State Bar in order to even have a contingency fee.

14 There is no contingency fee in this case, nobody disagrees
15 with that. The agreement was to pay 550 an hour and 275 for the
16 associate. The bills came over and over and over again, including the
17 costs and my client paid each and every bill as they came, no
18 discussion.

19 Then in May of last year or so, in a bar -- they were sitting in a
20 bar, I think it's down in San Diego and they started talking about how this
21 case is getting a little larger, the -- you know, a little bigger. You know --
22 and the thoughts -- the discussion came about maybe a hybrid, maybe
23 finishing off the case in some sort of a hybrid and maybe that might be
24 something they would consider a contingency fee, which would still
25 require a written contingency fee. You can't have a contingency fee

1 oral -- orally.

2 After that conversation, Your Honor -- and in that e-mail what
3 my client said is I would be -- I would like at something like that if you
4 propose it, but you know what, bottom line is, I can certainly go ahead
5 and keep paying you hourly, I'll have to borrow the money, sell some
6 Bitcoin, do whatever I have to do. After that, another bill came, this was
7 after this conversation --

8 THE COURT: The e-mail from August?

9 MR. VANNAH: Right. This e-mail I'm looking at is -- yes,
10 August 22nd --

11 THE COURT: Okay.

12 MR. VANNAH: -- 2017.

13 THE COURT: Okay.

14 MR. VANNAH: After that e-mail, another bill came in
15 September, hourly, a substantial bill and my client paid that bill and that
16 was the end of the discussion until when the case obviously was settling,
17 Mr. Simon said hey, I want you to come into my office, we need to talk
18 about the case.

19 My client goes into the office, brings his wife, and when he
20 goes in there there's -- Mr. Simon's visibly -- and uses the F word a little
21 bit saying why did you bring her? Why did you effing bring her? Why
22 are you bringing her making this complicated? And he's saying well, my
23 wife's part of this whole thing.

24 And then Mr. Simon says well, you know what, I deserve a
25 bonus. I deserve a bonus in this case, I did a great job, don't you want

1 to -- I don't really work at 550 an hour, I'm much greater than that. \$550
2 an hour to me is dog food. It's dog crap. It's nothing. So why don't you
3 give me a big bonus. You ought to pay me a percentage of what I've
4 done in the case because I did a great job.

5 Now, nobody's going to quarrel that it wasn't a great result.
6 There's certainly some quall as to why the result was done, my client
7 was very, very involved in this case, but I don't want to get into all of that
8 and I'm certainly not criticizing Mr. Simon for anything he did, other than
9 on the billing situation.

10 At that time Mr. Simon said well, I don't know if I can even
11 continue in this case and wrap this case up unless we reach an
12 agreement that you're going to pay me some sort of percentage, you
13 know, I want a contingency fee and I want you guys to agree to sign
14 that. My client said no, we're not doing that. You didn't take the risk.
15 I've paid you hourly, I've paid you over a half a million dollars. I'm willing
16 to continue finishing up paying you hourly.

17 So, Mr. Simon said well, that's not going to work, I want a
18 contingency fee. They came to us, we got involved, we had a
19 conversation with all of us, and at that point in time everybody agreed,
20 he cannot have a contingency fee in this case because there's nothing in
21 writing. You don't even have an oral agreement, much less in writing.

22 So what happened is -- and this is an amazing part, Judge --
23 and not at the time that Mr. Simon goes to one of the depositions, we
24 quoted that, the other side said to him how much are fees in this case,
25 have they actually been paid. And Mr. -- and that's the point of that. Mr.

1 Simon then pipes up and says listen, I've given that to you over and over
2 and over again, you guys know what our fees are.

3 I have supplied that to you over and over and over again and
4 you know what the fees are and those were the fees that he gave them
5 were the amount that my clients had paid over the year and a half. And
6 he said these are the fees that have been generated and paid. So he's
7 admitting right there that, you know, this is the fee, you guys have got it.

8 As the case got better and better and better, Mr. Simon had
9 buyer's remorse, you know, I probably could have taken this on a
10 contingency fee. Gee, that would have been great because 40 percent
11 of six million dollars is 2.4 million and I only got half a million dollars by
12 billing at \$550 an hour and I'm worth more than that; I'm a better lawyer
13 than that. That's what he's saying.

14 So he said to -- so you guys need to pay me a contingency fee
15 until that didn't work out so he then said well, you know, I didn't really bill
16 all my time. All that time I billed that you paid -- by the way that's an
17 accord and satisfaction, I sent you a bill, you pay the bill. And this
18 happened like five or six invoices. Here's the bill, bill's paid. Here's the
19 bill, bill's paid. Detailed time.

20 So Mr. Simon has actually gone back all that time and he has
21 actually now added time. Added other tasks that he did and increased
22 the amount of the time to the tune of what, almost a half a million dollars
23 or so. An additional over hourly over that period of time. And then he
24 went and he got Mr. Kemp, who is a great lawyer, who said well, you
25 know what, a reasonable fee in this case, if there is no contract would be

1 40 percent, that's 2.4 million dollars, it doesn't take a genius to make
2 that calculation.

3 So really, under this market value what should happen is Mr.
4 Simon should get 2.4 million dollars, a contingency fee, even though he
5 didn't have one and even though that would violate the State Bar rules,
6 he actually should in essence get a contingency fee and give my client
7 credit for the half million dollars he's already paid. That's what this is
8 about.

9 When we realized that this wasn't going to resolve, I mean,
10 we're not doing that -- we're not agreeably going to do that because
11 there's an agreement already in place, we filed a simple lawsuit in
12 saying that we want a declaratory relief action; somebody to hear the
13 facts, let us do discovery, have a jury, and have a determination made
14 as to what was the agreement. That's number one.

15 And number two, it's our position that by and is fact intensive,
16 we believe that the jury is going to see and Trier of Fact would see that
17 Mr. Simon used this opportunity to tie up the money to try to put
18 pressure on the clients to agree to something that he hadn't agreed to
19 and there never had been an agreement to.

20 So based on that we argue that that's a conversion and we
21 think that's a factually intensive issue. None -- we don't expect -- it's not
22 a summary judgment motion on that today, just that's the thinking that
23 we use when we came up with that theory and we think it's a good
24 theory.

25 So what I don't -- and, Your Honor, I have no problem with you

1 being the judge and I have no problem with the other judge being the
2 judge, that's never been an issue in the case. What we do have a
3 problem with is -- and I don't understand and maybe Mr. Christensen
4 can clear that up. He's saying well, we can go ahead and have you take
5 this case and make a ruling without a jury; that you can go through here
6 and have a hearing and make a decision on what the fee should be.
7 And then we can have the jury make a decision as to what the fee
8 should be, but the problem is if you make a decision on what the fee
9 should be that's issue preclusion on the whole thing and it ends up with
10 being a preclusion.

11 So, we want this heard by a jury and no disrespect to the
12 judge, but we'd like a jury to hear the facts, we'd like to hear the jury
13 hear Mr. Simon get up and say to him \$550 an hour is dog meat, you
14 know, he can't make a living on that and I would never bill at such a
15 cheap rate and he's much greater than that. And I'd like to hear the jury
16 hear that, people making \$12 an hour hear that kind of a conversation
17 that Mr. Simon is apparently going to testify to.

18 So there -- so bottom line, we get right down -- I -- so what
19 we're asking, it's -- what we'd like you to do -- this case over. The
20 underlying case with the sprinkler system and the flooding of the house,
21 it's over. In re has nothing to do with determining what the fee should
22 be. The fee -- whole issue is based on what was the agreement. I don't
23 know much about the underlying case and I'm not having a problem
24 understanding the fee dispute. This is a fee dispute.

25 We're just -- and if you want to hear it -- I don't think there's

1 anything to preclude you, but I don't think that there's commonality of all
2 this -- all this commonality that they're talking about. The underlying
3 case about a broken sprinkler head, flooding, what's the value of the
4 house, all those disputes they had going on. That's got nothing to do
5 with the fee dispute. And --

6 THE COURT: But you would agree, Mr. Vannah, that's it's the
7 underlying case with the sprinkler flooding the house, who's responsible,
8 the defective parts, that's how you get to the settlement that leads us to
9 the fee dispute.

10 MR. VANNAH: You did that, but the settlement's over.

11 THE COURT: Right, but it --

12 MR. VANNAH: It's a done deal.

13 THE COURT: But the fee dispute --

14 MR. VANNAH: I mean, we're not --

15 THE COURT: -- is about the settlement.

16 MR. VANNAH: That's going to be a ten-minute discussion
17 with the jury. Hey, this is what happened; it was a settlement.

18 So the question is, is what -- were the fee reasonable -- I
19 mean, there was an agreement on the fee. I don't think -- it boggles my
20 mind that we've even gotten -- we're even discussing this because when
21 a lawyer sends for a year and a half a detailed billings at a detailed rate
22 and the client pays it for a year and a half and suddenly say well, we
23 never had a fee agreement, that's really difficult at best. That's almost
24 summary judgment for us.

25 I mean, here's the bill, here's the check, and there's no

1 discussion and he even gets up and tells the other side, I've been paid
2 for all my fees. So what I don't want to happen is I don't want -- I want
3 my client to just have the right to have this case heard by a jury, that's
4 all.

5 THE COURT: And you believe that there would be an issue --
6 preclusion issue if that -- the new case was consolidated into this case
7 when you go to jury trial on the new case?

8 MR. VANNAH: No. Here's where I think the issue preclusion
9 is -- and -- no, if you want to keep the case and, you know -- if it was me,
10 I was judge, I would say I already did one case, I don't need to do
11 another one. I don't have a problem if you want to keep the case, all I'm
12 asking if you keep the case is that you don't -- the money's tied up.

13 THE COURT: The money's in a Trust account, right?

14 MR. VANNAH: Nobody's taking the money, nobody's -- and I
15 don't -- I've never accused Mr. Simon of going to steal -- my client's
16 got -- my client's more concerned because they thought it was dishonest
17 what he did and I said my client's don't want the money in your Trust
18 account, you don't want it in my Trust account, I -- no problem --

19 THE COURT: Right, but the e-mail --

20 MR. VANNAH: -- let's set up a --

21 THE COURT: -- said they didn't want it in Mr. Simon's Trust
22 account. Isn't that what the e-mail said?

23 MR. VANNAH: Right. So we set up a Trust account
24 elsewhere and Mr. Simon and I have -- so the money is tied up, neither
25 one of us are going to try to take the money. The money's going to sit

1 there. Mr. Simon's lien, whatever it's worth, is totally protected.

2 What I don't want you to do is have you do an adjudication on
3 some kind of a summary proceeding where we don't get to do discovery
4 and everything else and we -- you hear the case without a jury and make
5 a determination because I do think that that is the issue preclusion. That
6 precludes -- and so if you want the case, I mean, we'd love have you.
7 We don't have a problem with that.

8 All I ask, if you're going to have the case is, let's have the
9 case, let's have a jury trial on this matter, let's discovery done on a
10 normal course. The money's tied up, it's there and then at the end of the
11 trial let the jury decide and we get a judgment. If you want to keep it.

12 On the other hand, I mean, if you don't want to keep it, you
13 simply say I don't want to consolidate it and the other judge does it. So
14 either one's fine, I mean, we don't have any -- we do want a jury trial
15 though. We don't want it to be heard without a jury.

16 THE COURT: Right.

17 MR. VANNAH: It's two million dollars.

18 THE COURT: Right. But what you're saying -- so just so I'm
19 clear as to what you're saying is if the case consol -- because I don't
20 think it's a matter of do I want it, do I not want it, I think I got to follow
21 Rule 42.

22 MR. VANNAH: Then --

23 THE COURT: I think I got to go along with what Rule 42 says.
24 It doesn't -- nobody cares what I want Mister -- sir, nobody cares. I
25 mean, I think I have to follow Rule 42, but what -- just so I'm clear on

1 what you're saying, what you're saying is if the case were to stay here
2 you would want the lien not to be adjudicated until after the jury trial is
3 heard on the second portion.

4 MR. VANNAH: Exactly right. So that the jury --

5 THE COURT: Okay.

6 MR. VANNAH: -- makes the findings of facts of whether there
7 was a contract; if so, how much was it and what's due.

8 THE COURT: Okay.

9 MR. VANNAH: And they can have -- and we can all do
10 discovery because they've got two excellent experts. I mean, so we
11 need to get experts. It means we need to sit down and I need to take
12 Mr. Simon's deposition, I need to take his associate's --

13 THE COURT: Let me ask you this, Mr. Vannah, because
14 you've been doing this for a long time, you have a lot of experience.
15 Hypothetically, if there were to happen, I haven't ruled on anything, but if
16 that were to happen, how long do you think it would take for your jury
17 trial to go forward on the second portion?

18 MR. VANNAH: Oh, we're -- we would -- we could expedite the
19 discovery and get that done. I mean, that's not a problem if for some
20 reason you want to expedite it. On the other hand, it can go forward on
21 the normal course, you know, a year from now or so, have a jury.

22 THE COURT: Okay. Okay. And I just wanted to make sure I
23 was clear on what your point was so that if I had any questions, I could
24 ask you while you were standing here and not later on, oh, I should have
25 asked him this, you know?

1 MR. VANNAH: Well, you know, you asked some good
2 questions of which I didn't -- there's nobody disputing the 550 and the
3 275 --

4 THE COURT: Right.

5 MR. VANNAH: -- an hour and nobody's disputing that the bills
6 were sent and nobody is disputing the bills were paid.

7 And by the way we do owe -- we just got the bill last week, we
8 definitely clearly owe a cost bill that came in and that can be paid out of
9 the Trust account and we're ready to release that funds and both Mr.
10 Simon and I can sign the check and pay that expert. That's never been
11 an issue.

12 THE COURT: So the money's going to an expert?

13 MR. VANNAH: That's the -- there's some money -- there's --
14 we just got a bill, we --

15 THE COURT: But it's for an expert?

16 MR. VANNAH: Yeah, there's an expert that needs to be paid.

17 THE COURT: Oh, okay.

18 MR. VANNAH: I don't have problems paying -- and I don't
19 have problems paying Mr. Simon any costs that he's incurred either, but
20 at this point -- what would have normally happened, we would have
21 gotten the last bill and we would have paid it. Nobody's ever questioned
22 a single bill that came in and that's what would have normally -- if he'd
23 sent the last bill saying here you go.

24 So they had a mediation or something and Mr. Simon had
25 some kind of a bill there, but he took it with him out of the mediation for

1 whatever reason. I don't -- nothing nefarious, it just didn't -- my client
2 didn't have bill and has requested it several times. It came last week.

3 THE COURT: Okay.

4 MR. VANNAH: No question we owed a cost and we're willing
5 to pay. We've always paid the costs. So one thing when Mr.
6 Christensen said all this time Mr. Simon's been paying all the costs, that
7 is -- I don't know what he means by that. He might have advanced the
8 costs, but my client has reimbursed him for every dime of costs, other
9 than this last bill. And certainly that's not going to be an issue, we're
10 ready to do that.

11 THE COURT: Okay. Thank you, Mr. Vannah.

12 Mr. Christensen, your response.

13 MR. CHRISTENSEN: Your Honor, I warned the Court that Mr.
14 Vannah was going to come up and make an equity argument against the
15 legal enforcement of the statute and the word shall and he did that, but
16 he didn't state any basis for it. The statute says you shall do it and
17 you're supposed to do it within five days.

18 Now, there is some apparent discretion that the Supreme
19 Court provides, for example, in the *Hallmark* case that we cited. The
20 case went up and was sent back down and the Supreme Court said hey,
21 there's an issue of alleged billing fraud, you need to address that at the
22 adjudication hearing.

23 I cited to all of the other cases from Nevada State Court in the
24 recent time period and from Federal Court where the Court has
25 addressed the issues of billing fraud, disputed costs, disputed fees all at

1 an adjudication hearing pursuant to the law. That's the obligation of this
2 Court is to enforce the law.

3 When Mr. Vannah comes up with his equity position, it's
4 certainly enticing on a certain level, but it's not legally permissible. It'd
5 be a violation of the statute. And it was interesting in his equity position
6 how the facts kind of changed. It was he paid less than a half a million
7 in fees and by the end of it he was above a half million dollars.

8 You saw the deposition transcript, Mr. Simon never said that
9 all the bills were paid, he said this is what's been paid. You know, the
10 bills that come in and Mr. Edgeworth pays them, that's kind of a two-
11 edged sword. Mr. Edgeworth knows that there are items that haven't
12 paid, he knows that he's been calling Mr. Simon and sending e-mails
13 and getting responses, they know the work's being done.

14 He's so heavily involved in the case he can't not know. He
15 knows because he was on the other end of the phone, he knows
16 because he was on the other end of the e-mail. He knows that there are
17 items that aren't being paid. And by the way, there's nothing in the law
18 that says that someone can't correct the bill. It's not an accord and
19 satisfaction if you pay a bill, that's completely different.

20 An accord and satisfaction is a separate agreement that's
21 reached when it is over a dispute and typically accord and satisfactions
22 are written. So tomorrow if they reach a deal, maybe that's an accord
23 and satisfaction, but it's not accord and satisfaction when you pay a bill,
24 especially when you know it's not a complete bill and it's not an accurate
25 bill.

1 So, at the current time adjudication is proper because that's
2 what the statute is, that's what the law says. We know that there's still
3 71,000 in costs outstanding and the Edgeworths have been aware of
4 that since November and that number was contained in the two liens.
5 One was filed in December, one was filed in January, and now we're in
6 February and that has not been paid.

7 We know that there are, at a minimum, applying the contract
8 rate of 550 an hour, assuming that's the way the Court decides to go at
9 the adjudication hearing. There's fees outstanding on that. So even
10 taking their best case scenario, there are fees and costs outstanding that
11 need to be reached by the Court in an adjudication.

12 To address this whole market value issue, that's getting into
13 the manner of calculation of a fee that the Court makes at the
14 adjudication hearing. That's an accepted manner of a calculation of a
15 fee. It's endorsed by the restatement of the law governing lawyers,
16 which our Nevada Supreme Court cites to repeatedly. In fact, they just
17 did it back in December on a fee issue. That's an accepted manner of
18 determining a fee.

19 Now, the Court doesn't have to accept that. There's the
20 *Marquis Aurbach Tompkins* line of cases, which I don't know if that was
21 cited --

22 THE COURT: It was not.

23 MR. CHRISTENSEN: -- but in that case Marquis Aurbach did
24 some good work for a client, the client passed away, and then there was
25 an estate. Marquis Aurbach had a written contingency fee agreement.

1 The estate and the law firm agreed to put the matter before a fee dispute
2 committee, even though the amount was in excess of the agreed
3 amount, but they stip'd around it.

4 And without going through the whole tortuous procedural
5 history because it went up to Judge Denton a couple of times, it went to
6 the Supreme Court, et cetera, at various times the fee was found to be
7 either the hourly, which was some \$28,000, the contingency of 200,000
8 or a hybrid, the quantum meruit, which was in the middle at about 75.
9 That's just kind of an illustration of the options that are available to the
10 Court.

11 In *Tompkins*, the Supreme Court eventually said that's a
12 contingency fee in a domestic case, you can't do that so you get
13 quantum meruit and sent it back down for them to determine whether
14 quantum meruit was the 75 number or the 28 number and that's where
15 the case law ends. We don't know the ultimate resolution. But that's an
16 example of what the Court does.

17 So under the law, and the Edgeworths have not cited an
18 authority contrary, this Court adjudicates the lien, states a basis in its
19 findings, puts the numbers in there, and then after that point, if the
20 Edgeworths or maybe Mr. Simon wants to, there's some sort of a
21 counterclaim or whatever, then they can fight over the remains. But Mr.
22 Vannah was correct that this is a fee dispute.

23 We have a statute specifically designed with a public policy of
24 resolving fee disputes quickly, with judicial economy. This Court has
25 jurisdiction to do it, this Court has a mandate, the law telling the Court to

1 do it. Let's do it, let's hold an evidentiary hearing, let's flush this out, let's
2 get a number, and then these folks can decide if they want to continue
3 banging their heads against that wall.

4 Thank you.

5 THE COURT: Thank you, Mr. Christensen. And thank you
6 guys very much for the argument on this and I know this I not what you
7 guys want to hear, but I'm going to continue this to Thursday and make
8 a decision on this in chambers. If I choose to consolidate this case, then
9 we can address anything after that at the hearing that's going to be held
10 in two weeks in regards to the status check on the settlement
11 documents.

12 If I do not consolidate this case, then we will still address
13 everything involving this particular case at that hearing and then the
14 other case would be addressed in front of Judge Sturman.

15 MR. CHRISTENSEN: Yes, Your Honor.

16 THE COURT: So I'll have a written decision for you guys
17 Thursday from chambers.

18 THE CLERK: February 8th at no appearance.

19 THE COURT: Thank you.

20 MR. VANNAH: Thank you, Your Honor.

21 MR. CHRISTENSEN: Thank you, Your Honor.

22 THE COURT: Thank you.

23 MS. PANCOAST: Your Honor, is there any reason I need to
24 come to that Thursday hearing?

25 THE COURT: No, it's not a hearing, I'm going to of it from

1 chambers.

2 MS. PANCOAST: Okay, great.

3 THE COURT: Yeah, I'll do it from chambers.

4 And thank you, Mr. Parker.

5 MR. CHRISTENSEN: Teddy's gone.

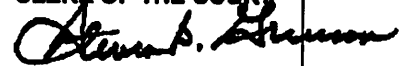
6 THE COURT: Teddy's been gone.

7 [Hearing concluded at 10:55 a.m.]

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21 ATTEST: I do hereby certify that I have truly and correctly transcribed
22 the audio/video proceedings in the above-entitled case to the best of my
23 ability.

24 
25 Brittany Mangelson
Independent Transcriber



1 RTRAN

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5 DISTRICT COURT
6 CLARK COUNTY, NEVADA

7 EDGEWORTH FAMILY TRUST;
8 AMERICAN GRATING, LLC,

9 Plaintiffs,

10 vs.

11 LANGE PLUMBING, LLC, ET AL.,

12 Defendants.

CASE#: A-16-738444-C

DEPT. X

13 EDGEWORTH FAMILY TRUST;
14 AMERICAN GRATING, LLC,

15 Plaintiffs,

16 vs.

17 DANIEL S. SIMON, ET AL.,

18 Defendants.

CASE#: A-18-767242-C

DEPT. X

19 BEFORE THE HONORABLE TIERRA JONES, DISTRICT COURT JUDGE
20 MONDAY, AUGUST 27, 2018

21 **RECORDER'S TRANSCRIPT OF EVIDENTIARY HEARING - DAY 1**

22 APPEARANCES:

23 For the Plaintiff:

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

24 For the Defendant:

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

25 RECORDED BY: VICTORIA BOYD, COURT RECORDER

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Las Vegas, Nevada, Monday, August 27, 2018

[Case called at 10:44 a.m.]

THE COURT: -- Family Trust, American Grating, LLC v. Daniel Simon Law, Daniel Simon, d/b/a Simon Law. Okay.

So, this is the date and time set for an evidentiary hearing. Can we have everyone's appearances for the record?

MR. VANNAH: Yes. Robert Vannah and John Greene on behalf of the Edgeworth Trust and the Edgeworth family.

Mr. CHRISTENSEN: Jim Christensen on behalf of Mr. Simon and his law firm.

MR. CHRISTIANSEN: Peter Christiansen as well, Your Honor.

THE COURT: Okay. So, this is the date and time set for the evidentiary hearing in regards to the lien that was filed in this case, but I also have Mr. Simon's Law Office filed a trial brief regarding the admissibility of a fee agreement. Did you guys get that?

MR. VANNAH: Yes, Your Honor.

THE COURT: Okay. Are you guys prepared to respond to that or --

MR. VANNAH: We are, Your Honor.

THE COURT: Okay. And I have had an opportunity to review it while we were waiting.

Mr. Christensen, do you have anything you want to add?

Mr. CHRISTENSEN: Just a couple of thoughts, Your Honor. Last week, we requested that Mr. Vannah voluntarily produce the fee

1 agreement. He declined to do so. So, late last week a subpoena was
2 served duces tecum. The trial brief lays out the reasons why that fee
3 agreement is relevant and also lays out the law on why, in this situation,
4 it's not privileged, and it can be introduced.

5 To the extent that there were any particular attorney-client
6 communications made to Mr. Vannah, which were memorialized in some
7 fashion in the fee agreement, like he wrote in the margins or something,
8 those could, of course, be redacted. So, I don't think there's any true
9 defense to the subpoena. Constructive discharge is an issue, and part of
10 the evidence of construction discharge is the fact the clients went to a
11 new lawyer while the underlying litigation was still pending.

12 THE COURT: And correct me if I'm wrong, but I remember --
13 and correct me because this was a few hearings ago. I remember there
14 was a discussion in regards to -- at some point, was there a discussion
15 between Mr. Vannah and Mr. Simon that Mr. Vannah told Mr. Simon that
16 he was still counsel of record?

17 MR. VANNAH: Correct.

18 Mr. CHRISTENSEN: There was several --

19 THE COURT: Okay. I vaguely remember that, so can
20 somebody just enlighten me as to the status of that, because I remember
21 that about two to three hearings ago --

22 Mr. CHRISTENSEN: There were --

23 THE COURT: -- there being a discussion about that.

24 Mr. CHRISTENSEN: There were several evolving
25 discussions, and it's important to keep the timeline in your mind. At

1 approximately November 30th or so, there was a communication from
2 the clients to Mr. Simon saying Mr. Vannah is now my lawyer -- or it
3 might have come from Mr. Vannah's office, saying Mr. Vannah is now
4 my lawyer, do not communicate directly.

5 THE COURT: Okay.

6 Mr. CHRISTENSEN: That led to the following day. That was
7 -- the first lien was filed to protect Mr. Simon's and his law office's
8 interest.

9 Subsequent to that, there were email communications
10 mainly between Mr. Vannah and myself, some letter communications, in
11 which, for example, I raised the issue of constructive discharge and the
12 fact that Mr. Simon is no longer able to talk to his clients, and we had the
13 important issue, the pending contract claim for recovery of attorney's
14 fees expended against Lange Plumbing.

15 THE COURT: Right.

16 Mr. CHRISTENSEN: That led to a conference call between
17 the parties, and then we had a consent to settle provided to Mr. Simon
18 that was signed by both clients and said, upon the advice of Mr. Vannah,
19 you know, blah, blah, blah, we're not going to pursue this claim.

20 At one point, I sent an email on over there and I said, look,
21 you know, we got to make a decision whether Mr. Simon is still going to
22 be counsel of record here. He can't talk to the clients. They're not
23 following his advice. He's not able to explain to them the importance
24 and the significance of that contract claim against Lange Plumbing that's
25 not subject to offset or any other reduction because of monies recovered

1 by -- from Viking. And that fell on deaf ears, and I said, well, we're going
2 to have to think about this next step.

3 And then there was a back and forth on an email or two that
4 said something to the extent of, if you withdraw, that's going to increase
5 our damages. So, in other words, there was a constructive discharge of
6 Mr. Simon, and then there was either a direct or indirect threat,
7 depending on how you want to read it, that if he actually withdrew,
8 because of the constructive discharge, that would increase the claims
9 against him. So, that put Mr. Simon in kind of, you know, darned if you
10 do, darned if you don't situation, where he couldn't talk to the clients, but
11 he was being threatened that if he withdrew, bad things would happen
12 to him.

13 Then, of course, they sued him for conversion before he had
14 any funds to convert and now we're here today.

15 At the current day, there has not been a motion to withdraw.
16 It would have been filed before Your Honor.

17 THE COURT: Right.

18 Mr. CHRISTENSEN: However, the underlying case has been
19 wrapped up based upon the advice from Mr. Vannah to settle that lien
20 claim for 100,000. So, to a certain extent, that -- there's no longer an
21 underlying case for Mr. Simon to represent them in; however, for our
22 purpose here today, the issue of constructive discharge is important.

23 We have a difference of opinion on whether there was an
24 expressed contract and whether there was a meeting of minds on the
25 payment term.

1 THE COURT: Right.

2 Mr. CHRISTENSEN: We also -- secondarily, we also have a
3 difference of opinion on whether the conduct of the parties could
4 establish an implied agreement on payment terms. We say it's clear, it's
5 not. And we think as you hear the evidence, you're going to understand
6 why we're saying that.

7 But even if a payment term is determined expressly or
8 impliedly, it doesn't matter if there is constructive discharge, because if
9 there's constructive discharge, then there's no contract. And under the
10 law in the State of Nevada, Mr. Simon gets a quantum meruit recovery
11 or a reasonable fee.

12 So, in fact, you could almost reverse the analysis and just
13 take a look at whether there was constructive discharge first because if
14 there is, it really doesn't matter if there is a meeting of the minds or not
15 on a payment term because the contract has been blown up. So, then
16 you go to QM, quantum meruit.

17 So, that's kind of why the fee agreement is important,
18 because it shows that, while Mr. Simon was involved in active litigation
19 in the underlying case, and although, there's a seven-figure claim against
20 Lange pending, and when there's still details to be worked out on the \$6
21 million Viking settlement, the clients have gone to another lawyer, hired
22 another lawyer, taken advice from that other lawyer, and told Mr. Simon
23 not to talk to them.

24 So, we think the fee agreement is going to be another piece
25 of substantial evidence that would lead this Court to find a constructive

1 discharge. So, we'd like to see it and see what it says.

2 THE COURT: Okay. Mr. Vannah, Mr. Greene.

3 MR. VANNAH: Thank you, Your Honor. Sort of a revision of
4 his history. Here's what happened. The case had settled. The big case
5 has settled for 600,000, everybody agreed on that. Mr. Simon had a
6 meeting in mid-November and told the clients he wanted a larger fee
7 than what they were going to pay. He then said to the clients, you need
8 to go out and get independent counsel to look at this for you, which is
9 what he had to do anyway. He just wants them -- he had a new fee
10 agreement for them to sign or a fee agreement, and then told them you
11 need to get independent counsel to look at it and told them that. He said
12 that's -- that was the --

13 THE COURT: To look at the fee agreement?

14 MR. VANNAH: Yeah, to look at the whole thing.

15 THE COURT: Okay.

16 MR. VANNAH: I mean, he comes up with the fee agreement
17 and -- after the case settled and has a fee agreement prepared for them,
18 gives it to them, said here's the fee agreement, I want you to sign in mid-
19 November 2017, after the \$600,000 settlement took place.

20 And the fee agreement he wanted them to sign said,
21 basically --

22 THE COURT: And this is the \$6 million settlement that you're
23 talking about?

24 MR. VANNAH: Yes, that had already happened.

25 THE COURT: Right, but you keep saying 600,000, so I'm just

1 making sure --

2 MR. VANNAH: You know what? It's hard to spit the big
3 numbers out.

4 THE COURT: It's all right, but you're talking about the \$6
5 million settlement?

6 MR. VANNAH: I am, and I --

7 THE COURT: Okay.

8 MR. VANNAH: So, the \$6 million settlement had occurred,
9 was over with. Mr. Simon had the clients, both Mr. and Mrs. Edgeworth,
10 come to his office, and he had prepared a fee agreement saying, look, I
11 want to be fair about this to myself and this is what I want you guys to
12 sign. I want you to sign this fee agreement that gives me basically a \$2
13 million bonus. And he showed it to them, and then he said -- they said,
14 well, you know, we're not prepared to -- for you to bring us in out of the
15 blue and show us this. And we're not at all happy about it, but having
16 said that, he said, well, then you need to get independent counsel.
17 That's me. I'm the independent counsel.

18 So, they obviously retained me, and I did a get written fee
19 agreement. Of all cases, this is the one I'm going to get a written fee
20 agreement on. I have a written fee agreement. There's nothing in the
21 margins, but in the subpoena, it said to bring everything with me, which
22 would have included my notes that day. Those are attorney-client notes.
23 He's, obviously -- he's not entitled to even that, but it's his fee agreement
24 where I got retained.

25 I don't -- there's no constructive discharge. So, the only

1 thing left in the case, at that point, was to do the releases. They looked
2 at the release and signed them, the case was settled, so I --

3 THE COURT: But this is prior to the Lange settlement, but
4 this is the settlement with --

5 MR. VANNAH: But there was an offer --

6 THE COURT: -- Viking?

7 MR. VANNAH: -- there was an offer on the table in Lange.

8 THE COURT: Okay. So, the offer was still pending, but
9 Lange had -- Lange hadn't settled?

10 MR. VANNAH: It hadn't settled.

11 THE COURT: Okay.

12 MR. VANNAH: It was on the table, and there was an offer.
13 The clients asked me to look at it. Mr. Simon gave me the information.
14 We talked. I looked at it and I concluded that the best interests in the
15 clients, in my opinion, was -- my advice to them was, you know what, if I
16 were you, rather than to continue with Danny on this case and bring in
17 somebody else, just take the settlement; accept it. That was it, that was
18 my advice, accept the settlement. They wanted me to put that in writing,
19 I put it in writing, and I explained it to the client and, based on everything
20 we're looking at, they wanted to accept it; please accept the settlement.

21 The communication had broken down really badly between
22 the clients, you know, the client and the other lawyer. So, I said, look,
23 you know, it doesn't seem to me a great idea for you guys to be having
24 meetings and stuff. My clients don't want to meet with you anymore,
25 but you are counsel of record, go ahead and finish it up, do the releases,

1 and sign whatever you have to do to get the Lange settlement done.
2 Just accept it. Accept it and whatever you have to do, that's it. Do what
3 you have to do with the Judge, and you do that.

4 I'm not -- I'm not substituting in as counsel. I'm not
5 associating as counsel. I made that very clear. You guys are counsel of
6 record. If you want to withdraw -- if that's your threat, you're going to
7 withdraw from the case, you can withdraw, but if you withdraw from the
8 case at the last minute, and I have to come into the case because you
9 withdraw and spend 40, 50 hours bringing myself up to speed, you
10 know, I -- the client is not going to be very happy about that. And I'm not
11 even sure Your Honor would allow them to withdraw with that going on.
12 The case was over. I mean, the \$600,000 settlement had been made. It
13 was over, signed and gone --

14 THE COURT: Six million, Mr. Vannah? Six million?

15 MR. VANNAH: Six million, I'm sorry. And the settlement for
16 the 100- was on the table, and my sole part in that was to say my clients
17 want to accept it, do whatever you got to do to accept it, which is his
18 obligation. And he did, accepted it, and then we came to court because
19 you wanted me to be in court when this thing went down to just express
20 our opinions that we're happy with that. We had that settlement
21 agreement with Teddy Parker who was hearing everybody, and then I
22 wasn't going to say anything, but I asked to say that -- stand up and say
23 that's what the client wants to do, and I said, yeah, I'm communicating,
24 they're here too, but that's what they want to do. They want to settle the
25 case. Now that's it.

1 So, my fee agreement it's -- there's no relevance to it. It's --
2 I'm -- it's just a fee agreement with a client, and it's a fee agreement I had
3 that Mr. Simon suggested that they do, to go out and hire somebody to
4 be independent counsel and to -- you know, he's trying to get them to
5 sign some fee agreement they don't want to sign, and they want to know
6 what their rights are. So, he said get independent counsel. They did,
7 and here I am, and that's how they got to where they got to. So, I don't
8 see any relevance whatsoever to this fee agreement between me and the
9 Edgeworths. That's the bottom line.

10 THE COURT: Okay. Well, I mean, this issue of constructive
11 discharge, the issue that's hanging there, and I agree with Mr.
12 Christensen's legal analysis of, if there is constructive discharge, then we
13 have a whole completely different discussion in regards to the contract.
14 So, based upon this Court having to make that determination, Mr.
15 Vannah, I believe that the fee agreement is relevant, but only the fee
16 agreement itself. No notes, no notes you took that day, no
17 conversations, just the fee agreement itself. So, I'm going to order you
18 to provide a copy of that to Mr. Christensen. Can you --

19 MR. VANNAH: I got it right now.

20 THE COURT: Okay. I was going to say; I know you have
21 people at your office who work there --

22 MR. VANNAH: No, no, we brought it.

23 THE COURT: -- you can -- okay. So --

24 MR. CHRISTENSEN: Have his people do it.

25 THE COURT: Okay. So, can you just make sure he has that

1 by the -- is that going to become relevant to someone's testimony today?

2 MR. VANNAH: I'll have it to him right now. It's just going to
3 take a second. I have it.

4 THE COURT: Okay.

5 MR. VANNAH: So, we can get that over with and --

6 THE COURT: And then we'll be ready.

7 MR. VANNAH: I think it's one page, right?

8 THE COURT: Because it's just the agreement. It's no notes
9 or anything --

10 MR. VANNAH: No, no, no, just a one-page agreement. So,
11 when they hired me, they paid me so much dollars per hour, and that's
12 it.

13 THE COURT: Okay.

14 MR. VANNAH: Simple as that.

15 THE COURT: Okay. So, this is the motion to -- in regards to
16 adjudicating the lien. The motion was filed by you Mr. Christensen. Are
17 you ready to call your first witness?

18 MR. CHRISTENSEN: Your Honor, if you could just -- I'm not
19 quite as fast a reader as I used to be.

20 THE COURT: It's okay. Me either.

21 [Pause]

22 MR. CHRISTENSEN: Okay. We do have an opening
23 PowerPoint --

24 THE COURT: Okay.

25 MR. CHRISTENSEN: -- that we'd like to go through --

1 THE COURT: Okay.

2 MR. CHRISTENSEN: -- if that's acceptable to the Court?

3 THE COURT: Sure. Any objection, Mr. Vannah?

4 MR. VANNAH: I don't care.

5 THE COURT: Okay. And I was wondering if this was a
6 PowerPoint or if this was going to be demonstrative to like share photos.

7 MR. CHRISTENSEN: Right.

8 THE COURT: I wasn't sure.

9 MR. CHRISTENSEN: Okay. Okay.

10 DEFENDANT'S OPENING STATEMENT

11 BY MR. CHRISTENSEN:

12 Your Honor, we believe that the theme of this case is no
13 good deed goes unpunished. What you see is, this is a --

14 MR. VANNAH: I'm not sure whether that's evidence, Your
15 Honor, so are we going to have evidence like an opening statement or
16 are we going to have argument? I mean --

17 THE COURT: Counsel?

18 MR. VANNAH: -- this is clearly argument; no good deed goes
19 unpunished. That's -- is this going to be an opening argument or is this
20 an opening statement, I guess?

21 THE COURT: Well, it's going to be an opening statement and
22 we're going to get to what they -- what the evidence is going to show.

23 Mr. Christensen?

24 MR. CHRISTENSEN: Your Honor, we believe the evidence
25 will show that no good deed goes unpunished. What you see here is a

1 street-side picture of the house where the flood occurred. This is
2 available on the internet. This is one of those pictures that was made
3 available when the house was being marketed for sale.

4 THE COURT: And this is 2017, so this is after the flood, right?

5 MR. CHRISTENSEN: Correct, that's a post-flood picture.
6 That's after the certificate of occupancy has been issued. All original
7 construction and any repair and remediation after the fire sprinkler flood
8 has already been taken of.

9 That's a picture of the interior. That's essentially the area
10 where the flood occurred. Of course, water goes where water goes, so.
11 There was also damage in the kitchen area. The cabinets in that area are
12 quite expensive. They're several hundred thousand dollars, and they
13 sustained some damage in the flood. This is another picture, another
14 angle of that same general area of the home. The costs to repair, for the
15 flood, as you can see, it's quite a nice home with very nice finishes, was
16 approximately in the ballpark of a half a million dollars.

17 So as things developed, Mr. Edgeworth tried to handle the
18 claim on his own, didn't reach much success. He probably should have
19 been able to, truth be told, be able to handle it on his own, but he was
20 dealing with a plumber that was being rather recalcitrant and he -- Viking
21 wasn't stepping up. He didn't have course of construction coverage. He
22 didn't have any other route of recovery, so he first asked Mr. Simon to
23 give him some suggestions as to attorneys who could help him out.
24 Those attorneys all quoted very high numbers to him. He didn't want to
25 lay out \$50,000 for a retainer or something of that sort.

1 So, there was a meeting at Starbucks and in connection with
2 that, Mr. Simon agreed to send a few letters. I think that's actually the
3 quote from the email. And that was in May of 2016. And from then on,
4 the case progressed until it was filed in June, and then when it became
5 active really in late 2016 through 2017 before Your Honor.

6 So, we are here because, of course, there was a very large
7 settlement. Mr. Simon got a result, and there's a dispute over the fees.
8 So, the first question we have is whether there was an expressed
9 contract to the fees or expressed contract regarding the retention. We all
10 know, and we all agree, there was no expressed written contract. It
11 started off as a friends and family matter. Mr. Simon probably wasn't
12 even going to send them a bill if he could have triggered adjusters
13 coming in and adjusting the loss early on, after sending a letter or two.

14 So, the claim of Mr. Edgeworth is that, in the -- as stated in
15 the complaint, is that there was an expressed oral contract formed in
16 May of 2016 to pay Mr. Simon \$550 per hour. So, a meeting of the
17 minds exist when the parties have agreed upon the contract's essential
18 terms.

19 MR. VANNAH: I'm sorry, Your Honor, this isn't facts
20 anymore. Now, we're arguing the law. We're getting beyond what -- I
21 mean, I thought this was going to be a fact -- opening statement is
22 supposed to be the factual presentation. This is an argument of the law.
23 If we're going to do that, that's fine, I guess, but I don't think it's proper.

24 THE COURT: Mr. Christensen?

25 MR. CHRISTENSEN: Your Honor, the evidence is going to

1 show that there was no meeting of the minds in May of 2016, that the
2 parties agree that Mr. Simon was going to work on this friends and
3 family matter for 550 an hour.

4 MR. VANNAH: That's not what --

5 MR. CHRISTENSEN: The evidence is going to show
6 otherwise, that there was no expressed payment term reached in May of
7 2016, or at any time.

8 MR. VANNAH: Again, here's my problem. I mean, the
9 evidence isn't going to show citations, and this is a statement of law,
10 citations. I mean, he wouldn't do this in front of a jury, he wouldn't do
11 this in a bench trial. This is argument, pure and simple. Now, we're
12 even arguing what the law is in the case. I thought this was going to be
13 a factual presentation of what the facts were going to show. We're way
14 beyond all that.

15 MR. CHRISTENSEN: Your Honor, if I could. First of all, we're
16 not arguing what the law is. The law is the law, but I mean, we might be
17 arguing over its application of the case, but that's a whole other issue.

18 Secondly, this is a lien adjudication hearing. This is not
19 opening statement. We don't have a jury. This is being presented to the
20 Court in order for the Court to have a full understanding of the facts as
21 they come in. We believe this is useful and will be helpful to the Court.
22 There's really no rules governing what you can say or can't say in an
23 introductory statement to a court in an adjudicatory -- in a adjudication
24 hearing. I mean, when we submitted our briefs to you, we submitted
25 law, and we submitted facts, and we argued the application of the law to

1 the facts submitted. And this is an extension of that and that's what
2 we're doing here.

3 I understand Mr. Vannah's objections. I understand what
4 goes on in jury trials, when you're presenting things to the jury and
5 when the Judge is going to present the law to them at the end of the
6 case through the jury instructions. That ain't what we got here. This is
7 different.

8 So, you know, I can get on through this, and we can move on
9 or, you know, Mr. Vannah can --

10 THE COURT: Well, I mean --

11 MR. CHRISTENSEN: -- continue to object.

12 THE COURT: -- Mr. Christensen --

13 MR. CHRISTENSEN: This law -- you're going to get this law
14 sooner or later anyway, so let's --

15 THE COURT: Right. And, I mean, that's what I'm saying. I
16 don't --

17 MR. CHRISTENSEN: -- get it done now so that you
18 understand what's going on.

19 THE COURT: Right, and I mean, I -- and I hate to sound frank
20 about this, but I've been presiding over this case almost the entire time
21 I've been on the bench, so there's not a lot of things about the law of this
22 case that I think I'm confused about. I mean, I would hope I could at
23 least earn that much credit, as well as I was up late last night reading all
24 the briefs that you guys submitted in this case, and I have five binders
25 worth of stuff.

1 So, if we could just get to the facts of this case and get to the
2 evidentiary part, and I will let you argue this case until there's no
3 tomorrow at the end, but I've already read like all the stuff because this
4 is absolutely in the trial brief that was submitted, and I have read that.

5 MR. CHRISTENSEN: Okay. Well, I guess I'll abandon the
6 PowerPoint and finish up pretty --

7 THE COURT: Okay. And, I mean, I --

8 MR. CHRISTENSEN: -- quickly.

9 THE COURT: -- just the legal portion of it. I mean, because I
10 think this -- and this is a fact-finding hearing. I'm going to have to make
11 legal determinations at the end, but I have to give everyone the credit
12 that they're due, that you guys have spent massive amounts of times
13 thoroughly briefing this case.

14 MR. CHRISTENSEN: That's true, Your Honor. So, what
15 you're going to find, as the evidence is presented, is that the claim made
16 in the complaint, that there was an expressed agreement in 2016,
17 doesn't hold up. What you're going to find is that there was never a firm
18 agreement on the payment term. That issue was always in flux. There
19 was debate that came up at various times, including in August of 2017,
20 which you've seen the email concerning what are the payment terms for
21 this.

22 And you're -- it's also important to pay attention to the
23 timeline of the evolution of the case, of when it moves from a friends
24 and family matter to there being litigation, and then when the thing
25 really blows up and things are really flying, and that's when there's more

1 effort to reach a term and that fails. So, at the end of the day, there's no
2 expressed term on the payment and there's no implied term.

3 Now, of course, they're going to point to the bills. Bills were
4 sent and paid, that's not the end of the story. That's more the beginning
5 of the story on the bills. What you're going to hear is evidence
6 concerning the reason why the bills were sent. That the bills were sent
7 to bolster the contract claim against Lange and also to put Lange on
8 notice of the existence of that significant claim that was later waived.

9 You'll hear testimony concerning how the \$550 number was
10 reached, and it certainly, from our position, wasn't reached as a result of
11 the meeting of the minds. And then you're also going to see evidence
12 concerning the actual content of the bills, the knowledge of Mr.
13 Edgeworth, and then how no reasonable person in his position could --
14 should not be able to argue that these bills were both the beginning and
15 the end of the story.

16 What you're going to hear is that there was a tremendous
17 amount of work that was done in this file that was not billed for. That's
18 part of the reason why we had these bills that were submitted as part of
19 the adjudication process. That was done for several reasons. One of the
20 reasons is that it's well-known, if you go on over the case law, my
21 apologies to Mr. Vannah, that sometimes the courts like to see an overall
22 listing of time because that's evidence of work. Whether or not they get
23 paid on an hourly or on quantum meruit.

24 So, we provided it for that reason. We also provided it so
25 that you have a good look of what's going on and in case the worst case

1 scenario, from our point, comes true.

2 What's important to understand about those bills is that Mr.
3 Simon's firm is not an hourly firm. They don't have regular timekeepers.
4 They don't have regular billing or timekeeping software. They don't
5 even have the old books that we used to use. They don't have any of
6 that stuff. So not only were there bills that were sent during the
7 underlying litigation incomplete, sometimes grossly so, but when they
8 went through and tried to do a listing of the time spent for the
9 adjudication hearing, they made some errors. And when they'd go on in,
10 what they do is, they would look at a landmark date. So, for example,
11 the date that something was filed and that's what they would key the
12 billing off of.

13 Now, not necessarily all the hours were done that day, but in
14 going back, they wanted to make sure that they got the dates right. As a
15 result of this process, they know that there is a document with a date for
16 every single billing entry. That also means that they didn't capture a lot
17 of their work in those bills because if they couldn't find a piece of paper
18 with a date on it, they didn't bill for it.

19 And before I turn this over to Mr. Vannah, if he cares to make
20 a statement, I do just want to impress on the Court the evidence that
21 you're going to see about the amount of work that was done on this file,
22 that was not reflected on those initial billings and try to give Your Honor
23 an idea of the scale of this litigation and the fact that it dominated the
24 time of this law firm. And what we've done is, there was an awful lot of
25 email correspondence between Mr. Simon, his staff, and Mr. Edgeworth.

1 Mr. Edgeworth really dominated their time, which is fair to do if you pay
2 for it.

3 What we did was, we printed out the emails between these
4 folks during the time the underlying litigation was going, just so that you
5 understand the scale of it. I think a standard banker's box has -- if you
6 don't have any binders in it, it has 5,000 sheets of paper in it. This is
7 obviously a little bit more than that -- or a little bit less than that because
8 we've got binders in here. Just a couple more.

9 THE COURT: These are just the emails?

10 MR. CHRISTENSEN: These are just the emails, Your Honor.
11 Normally, I would carry two at a time, but while I'm not seeking
12 sympathy, I did kind of tweak a muscle in my back a couple days ago.

13 THE COURT: Tell them downstairs, we prefer safety in
14 Department 10.

15 MR. CHRISTENSEN: Yeah, safety first.

16 [Pause]

17 MR. CHRISTENSEN: Now, in full disclosure, Your Honor,
18 there are two of these binders of about this size that are attachments that
19 were, you know, hooked to whatever it linked to the email, but of course,
20 those were -- oh, and there's more. Those were done over and
21 discussed in the context of many of the emails, so we included them as
22 well. So that just gives you a little bit of scale. Later on, we're going to
23 be demonstrating to you the size of the actually underlying file. We're,
24 of course, not going to copy it and bring it all in because it's dozens and
25 dozens of banker's boxes, and we wanted to save a few trees.

1 But at the end of the day, we think that the Court should find
2 -- should reach a fee for Mr. -- a reasonable fee for Mr. Simon and his
3 law firm pursuant to quantum meruit. Thank you.

4 THE COURT: Okay. Thank you. Mr. Vannah, would you
5 wish to make an opening?

6 MR. VANNAH: Yes, Your Honor. Thank you.

7 THE COURT: Okay.

8 PLAINTIFFS' OPENING STATEMENT

9 BY MR. VANNAH:

10 A lot of things here we agree on. So, there was a bad flood,
11 and it was a sprinkler system that was in the house. And so, in May of
12 2016 -- Mr. Edgeworth's wife is good friends with Mrs. Simon and said,
13 you know, why don't you talk to Danny and see what he can do for you?
14 So, Mr. Edgeworth met with Danny. They had a meeting and Danny
15 said, I'll send him some letters and see what we can do. So, he sends
16 him the letters. Didn't do any good, which is not surprising to either one
17 of them, I'm sure.

18 So, what happened is Danny then says to him, look, I'll
19 represent you. I can do your case. I'm going to bill you \$550 an hour.
20 Tells him that point blank. That's what we charge \$550, and then my
21 associate will charge \$275 an hour. And they have an understanding on
22 that. You're going to learn that Mr. Edgeworth was a little concerned
23 about the fee, because that's about twice what he ended up paying his
24 firm that he uses out in California.

25 We brought some of those bills to prove that. But he had a

1 large firm that he used out of California that has done some patent work
2 for them, at a much lesser fee. But he actually ended up having a
3 conversation with his wife and says, I'm thinking about using somebody
4 else. Danny had written the letters and the wife said that might be a
5 problem. Why don't you just use Danny and pay him the higher fee?
6 And against his better judgment, he agreed to do that, but he told Dany
7 all right, fine. I'll hire you, and I'll pay you. Send me the bills.

8 So, Danny does the work, does a fine job. We're not
9 complaining about the work. He files the complaint. He goes forward,
10 and he sends -- he starts sending bills. Now, this is the interesting part.
11 His bills just through September 22nd, which is where the last bill ended
12 that was paid, the bills that were sent were four invoices. They added up
13 to almost \$400,000 in attorney fees. Now this is over a case that
14 everybody suspected had a maximum value between 500 and \$750,000.

15 So, Mr. Kemp -- I like what Mr. Kemp said. Mr. Kemp said, I
16 would have never, under any circumstances, taken this case under a
17 contingency fee. I just wouldn't have done it. It doesn't pencil out. So, I
18 mean, you know, frankly, to be honest with you, I'm looking at my client
19 thinking you know, here's a guy with a Harvard MBA, but he's paid out --
20 and I'm not talking about costs. There's another \$111,000 in costs.

21 By September the 22nd, he had paid out -- just paid out up to
22 that date over \$500,000 in attorney fees and costs on a case that
23 probably did have a value between 500 and \$750,000, so that doesn't
24 make a lot of sense, to be honest with you, from a standpoint of just
25 economic law.

1 And it's not surprising why Mr. Simon -- he apparently
2 agrees with Mr. Kemp that this would be a bad case to take on a
3 contingency, because if you did it at 40 percent, I mean, your -- 40
4 percent of \$750,000 is I think 300,000, and he's already billed \$387,000.
5 So, what happened was -- is -- up through this meeting that took place in
6 San Diego -- so what happened is they went to San Diego, because they
7 weren't happy with the expert. The expert had done a really lousy job,
8 billed a lot of money, and so they both agreed let's just go to San Diego,
9 meet with the experts, talk to them and say what are you doing here? I
10 mean, this isn't a very good job you're doing.

11 So, they go down. That was the purpose of their meeting.
12 So, at this point in time -- and this is really important. This is in August
13 of -- I wrote down the date. August 8, 2017, I believe is the date that they
14 had the meeting in San Diego. That's the critical -- up to that point,
15 everything is pretty clear. I mean, there's been an express
16 understanding that the billing's going to be 550 an hour and 275 with the
17 associate. Two bills had come in at this point in time, and they're paid.

18 So, on August 8th, they go to a bar. They're waiting for the
19 plane back to Las Vegas, and they go have a couple drinks together in a
20 bar, and they get into a discussion about you know what -- you know,
21 this is really expensive. The client saying, well, I'm paying a lot of
22 money out. I wonder if there's some kind of a hybrid kind of thing we
23 could come up with maybe that I wouldn't -- I -- because this is becoming
24 very expensive.

25 So, what happened -- Mr. Edgeworth was borrowing money

1 to pay the legal fees. Generally, I wouldn't recommend that. That's
2 probably not a really great idea to go out and borrow money to pay legal
3 fees, but that's what he had done. He'd gone and borrowed money from
4 his mother-in-law, high interest loans and was paying legal fees with
5 borrowed money. Mr. Simon understood that and realized that.

6 So, on August 8th, they had a discussion in the bar and the
7 discussion was -- I mean, is there a possibility that my future billings
8 would be a little less or maybe even give some of the money back that
9 I've billed and do this case on a contingency, because the case -- Mr.
10 Edgeworth thought the case had more value than Mr. Simon did at that
11 time, but they had that discussion.

12 So, it ended up with Mr. Edgeworth saying to Mr. Simon --
13 now, keep in mind, nobody had ever reduced anything to writing. I'll get
14 back to you about that, and I'll tell you what I'm willing to do. So, Mr.
15 Edgeworth said all right. You make me a proposal, if you want to. Well,
16 that's not what happened. So, what happened, Mr. Simon goes back to
17 his office. A couple weeks go by, some time goes by, doesn't hear
18 anything -- Mr. Edgeworth doesn't hear anything about any proposal.

19 What does Mr. Simon do? He prepares another hourly bill
20 and sends another hourly bill out. My client finally writes an email --
21 that's the one that you read -- saying, look, I mean, if you want, I can pay
22 you hourly, if that's what you want me to do. I'm just going to have to
23 go out and borrow money. I might have to sell some of my Bitcoin. He
24 was investing in Bitcoin. He thought it was a good investment. I can
25 borrow more money. You know, whatever it's going to cost. I'll do

1 whatever it takes. And that email says that if you want to do it hourly, I'll
2 just continue paying you hourly.

3 Mr. Simon's response to all that was to send an hourly bill,
4 send another bill. Mr. Edgeworth borrowed the money, paid the bill in
5 full. After that, Mr. Simon sends another hourly bill. That takes it right
6 up to September 26th, is another hourly bill. Mr. Edgeworth goes out
7 and borrows money. No further discussion. The way he sees it, I guess,
8 Mr. Simon is talking with the bill, do you want to do something different?
9 Mr. Simon just continues sending two more bills.

10 Those bills add up to -- those four invoices that were paid, all
11 of them paid, added up to \$387,000 in attorney fees, almost \$400,000 in
12 attorney fees and over \$100,000 in costs that Mr. Simon -- Mr. Edgeworth
13 paid, all four of those invoices. You're going to also learn in this case
14 that when Mr. Simon -- and I don't want to denigrate Mr. Simon's efforts.
15 I mean, it was a good result, but I want to tell you something.

16 Mr. Edgeworth, as you'll learn from the testimony, is a bright
17 guy. Harvard MBA. Intelligent. He's very involved in the case. He's the
18 one that went out -- and so essentially what had happened is Viking had
19 been dishonest with the Court and with them about how many of these
20 sprinkler systems had malfunctioned in the past. What you're going to
21 learn is that my client -- he's a very -- he micromanages things, and he
22 went on his own and started going on the internet, looking up Viking,
23 finding out that other people had these problems.

24 He went and contacted originally other lawyers in California
25 that had -- were handling these cases, other litigants, had conversations

1 with them, and then learned from them that they're -- a lot more about
2 Viking and about these failures than Viking had admitted. In other
3 words, they had just not been candid about that. And I'm sure Your
4 Honor remembers all that stuff. So that's -- my client goes and does all
5 that and provides all that stuff to Danny's office. Now, you know, I'm not
6 denigrating Danny's efforts or Mr. Simon's efforts. I mean, he's a good
7 lawyer, but my client went out a dug all that stuff up.

8 So, then they had this mediation. And the first mediation,
9 didn't do it, but at the second mediation, they reached a settlement for
10 \$6 million. Right after that happened, there's a meeting -- Danny calls a
11 meeting -- Mr. Simon calls a meeting in the office and that's November
12 17th, 2017, another big day. Mr. and Mrs. Edgeworth go to the meeting,
13 and they're like wow, what's this all about? They're thinking maybe this
14 is some really great meeting.

15 Well, what it's all about is Mr. Simon has now prepared this
16 letter, prepared this fee agreement and tells them, you know what, I want
17 you guys to do the right thing. I understand we had an hourly
18 agreement. I understand you paid all your bills one after another after
19 another, but, you know, nobody expected this case to do as well as it's
20 doing. I'm losing money at \$550 an hour, because my time's worth a lot
21 more than \$550 an hour and, you know, I'm losing money. I'm losing
22 money. Now, let's do the case for 25 percent.

23 So, then he presents this agreement to him saying I want you
24 to pay me 25 percent of the \$6 million. I want 25 percent of that as a fee,
25 and I will give you back credit for the money you've already paid in, the

1 \$400,000 you've already paid in. So -- and on the Lange case, that's
2 going to be separate. We'll work out something different on that, but I
3 want 25 percent of that \$6 million settlement we got. That's \$1.5 million.
4 I'll give you -- but I'll give you credit for what you've already paid in.
5 That's what happened here. So, they're stunned. They're actually
6 stunned. And the words -- conversation wasn't particular friendly.

7 So, Mr. Simon said you need independent counsel. You
8 ought to do that, is what he's supposed to be doing anyway. The rules
9 are very clear that when you start entering into an agreement with your
10 client halfway through the litigation, you want to change the terms, you
11 need to advise them to get an independent counsel. That's what they
12 did. They came to my office. Came to my office and laid out the thing
13 and that's where we are now. That's basically where we are. There was
14 no constructive discharge. There wasn't a discharge at all.

15 So, you know, I -- we had a communication. It was a nice
16 communication with Mr. Simon and Mr. Christensen. We talked on the
17 phone. I made it clear that look, we want you to finish the case off, wrap
18 up the -- all you gotta do is do the release. That's the only thing that was
19 left to do on the \$6 million is sign the release and get the terms down,
20 you know, confidentiality, some things you've got to deal with. Wrap it
21 up. Do that. But, by the way, you guys have reached a point here where
22 the words in the last meeting were pretty bad. If you want, I'll stay in
23 between.

24 You know, I'll -- tell me what you want me to tell them, and I
25 will tell them and vice versa, or we can all have a meeting together.

1 What do you want to do? But I think it ought to be civil. I just didn't
2 want it to become uncivil and -- you know, a screaming match and all
3 that. I don't like all that kind of stuff. I didn't want that to happen, so I
4 said you're not being fired. I'm not coming in on this case. No way I'm
5 going to associate on the case. I'm not going to substitute in on the
6 case. I don't want anything to do with the case. This is all about the fee.
7 The case is over.

8 And he said what about the Lange case? What do you want
9 to do about that? Well, why don't you just give me the proposal? I
10 looked at the proposal. I looked at Mr. Simon's idea, and I ran it by the
11 client, and they said what do you think? I said you know what, you
12 already got \$6 million. You got another 100 on the table. Take it. Just
13 take the money and call it a day. Just wrap it up. Accept the offer as is,
14 and they did. And that was -- that's it. So, I made it clear to Mr. Simon,
15 you know -- I talked to Mr. Christensen, you know. I don't -- nobody
16 needs to do anything.

17 Just wrap this thing up, and we'll deal with the fee issue later
18 with the Judge. We'll deal with that, but right now, let's get the case
19 wrapped up. I mean, you can't hold the clients up on a case, because
20 you're -- it becomes extortion. Then here comes the money. And so, the
21 bottom line was like what are we going to do with this money and look, I
22 made it clear. I said I know Mr. Simon's not going to steal the money.
23 I'm not worried about that. I know he would honor everything. The
24 clients are concerned.

25 So why don't we just go open a trust account? Eventually,

1 that's what we did. Open a trust account. You and I will be the trustee
2 on the trust account. Let's open a trust account, put the \$6 million into
3 the account, let it clear, and then I think at that point, you're obligated to
4 give the clients anything that's not disputed. I mean, you can't hold the
5 whole \$6 million. We all agreed on that and that's what we're here for.
6 There's been no constructive discharge. In fact, Mr. Simon never
7 withdrew from the case.

8 And I don't want to call it a veiled threat. I just said look, if
9 you withdraw from the case, and I've got to spend 50, 60 hours bringing
10 it up to speed and going through all these documents, and then advising
11 the client and doing this, I mean, you know, that's not fair to them.
12 You've already -- you can wrap this case up in an hour. It would take me
13 50 hours to do that, and I don't think that's a particularly good idea.

14 So that's why we're here and that's what the whole case is
15 about. I look at it this way is that you know, it was great for Mr. Simon to
16 get his 550 an hour and the 275 and to bill \$400,000, but when suddenly
17 he realized -- one day it just dawned on everybody, wow, with all this
18 new information, my client dug up, this may be a -- you know, why did
19 Viking settle for that amount of money? They didn't settle for that
20 amount of money, because they thought they were going to have to pay
21 for the house, because that was 500 to 750.

22 They settled for that amount of money, basically, because
23 they recognized and realized that this would be a really, really bad case
24 to go in front of the jury with when it became so obvious that they had
25 been so deceptive and that they knew that these were defective sprinkler

1 systems, and the case just blew up from there. And they were willing to
2 pay whatever to get out of this case, whatever it cost to get away from all
3 this. And the law firm might have had some serious problems, too, in
4 this case, because they were all signing all these agreements, and
5 they're a captive firm.

6 I don't know why, but all I know is that it got really ugly really
7 fast, and they decided, you know, let's just pay whatever it takes to get
8 out of this. They have other cases litigating all over the country right
9 now, class actions and everything else on this and that was -- that's why
10 the case settled. But at the very end, it's just not fair. If my clients agree
11 to pay an hourly fee, and they pay an hourly fee, you can't have the
12 lawyer at the end say you know what, I deserve a bonus. You can say I
13 deserve a bonus; I'd like a million-five bonus.

14 You can say that, but there's no obligation to pay a bonus.
15 And they don't want to pay a bonus. They got that he got paid fairly.
16 And that's what this case is all about is -- oh and going back on the other
17 thing. So, what they did is they -- you know, they hedged their bets.
18 They went back, and they took all those bills that they had billed out
19 \$387,000 on and what did they do? They've gone back and added a
20 couple hundred thousand dollars here and there. We're going to talk
21 about some of that.

22 Some of those days they added -- on some of those days
23 they're billing 21, 22 hours a day. I'll show you that bill, and we'll have
24 an associate on the stand explaining what she added time on days now
25 that add up to 22 hours a day. That's a lot of time. A lot of people sleep,

1 they eat, they take showers. They do other things. So, I'm going to
2 show you that bill, where they -- I'll show you those -- some of those
3 days where they've added days up to where we've got one person
4 working 22 hours in a day on a bill on a normal day.

5 The other thing that happened in this case that's really
6 interesting is the deposition of my client. He's at this deposition. And
7 when he's there, in two different sections of the deposition, two different
8 sections, when Viking is asking -- they ask him -- they don't believe he
9 paid the bill. I know what happened. I do this work.

10 So, the Viking guy is saying well, you've got all these legal
11 billings that you've accumulated. You put that in as a cost and what it's
12 going to cost us eventually under the indemnity agreement to pay you
13 for these legal fees. Okay. Well, we're looking here at \$500,000 or so.

14 I mean, they were -- they misadded it, but it's like -- it was
15 closer to -- it was over 500, but they were a little off. But she was
16 saying -- one of the things was like you've got a 500 and some odd
17 thousand dollar bill. You haven't paid this, have you? You haven't paid
18 this, have you? And my client said, yeah, I have paid it. I've paid every
19 single bill that's on there. I've paid all this. All these bills have been
20 paid. And I can see the stunned silence. You know, you don't usually
21 have clients that pay those kind of bills.

22 And they've all been paid. And then the question was asked
23 right there in the deposition. Mr. Simon's there and he said, well, is this
24 all of the billing? And Mr. Simon says, yeah, I've given this stuff to you
25 over and over and over again. He was kind of irritated that they're

1 asking. He said, I've given you guys this over and over again. This is the
2 billing. This is all the billing. So, the new story is that Mr. Simon -- I
3 mean, the story -- I guess, in -- nobody -- this will be a secret intention
4 that nobody told my client. So, Mr. Schoenstein (phonetic), he had this
5 secret idea and that only he knew.

6 Only he knew this, that he would just bill a lesser billing at
7 \$550 an hour and 275, submit those billings to the client. And the reason
8 he's doing that is so he can show these bills to Lange and say to Lange,
9 oh, look, this is how much money you guys are going to be stuck on the
10 hook for. But he never tells my client that he's got this secret intent, but
11 in reality, his real intent is to do this on a percentage. Well, the problem
12 with that is -- and that's why they can't go there, and they know that.
13 You can't do a contingency fee orally. That's Bar rule. Not -- it's not
14 maybe, maybe not. It says flat-out, if a client's going to enter --

15 MR. CHRISTENSEN: I thought we weren't going to talk about
16 the law, Mr. Vannah.

17 MR. VANNAH: We are -- we did a little bit, yes.

18 THE COURT: Okay. Well, Mr. Vannah, we're going to get to
19 the loan. We're going to litigate all this stuff.

20 MR. VANNAH: Well, I'm going to be asking Mr. Simon this
21 question.

22 THE COURT: Right. And we're going to get --

23 MR. VANNAH: I'm going to --

24 THE COURT: -- to that when you ask him.

25 MR. VANNAH: Right. So, you'll hear the evidence. I'm

1 going to ask Mr. Simon did you not know, did you not read the Bar
2 rules? Were you not familiar with the fact, Mr. Simon, that you cannot
3 enter into a contingency fee with a client that's oral? Did you not know
4 that? I'm going to be asking him that question.

5 THE COURT: Okay.

6 MR. VANNAH: I presume he's going to say he read those
7 rules, he knew that, and he knew that when he entered into it. And I'm
8 going to also ask him about the rule that says at the bottom of the rule,
9 the 1.5(b), I think it is, that says if you're going to have a fee with a
10 client --

11 MR. CHRISTENSEN: Same objection to the argument.
12 What's good for --

13 MR. VANNAH: So, this is --

14 MR. CHRISTENSEN: -- the goose is good for the gander. If I
15 can't talk about those rules, Mr. Vannah can't either, because I was going
16 to talk about 1.5(a) and 1.5(b), but --

17 THE COURT: And we're going to --

18 MR. CHRISTENSEN: -- but I was foreclosed by Mr. Vannah.

19 THE COURT: Right. We're going to get into all of those
20 when we get into the argument section. This is just simply the facts and
21 as I've already restated, you guys have argued this stuff 80 times.

22 MR. VANNAH: You know what, Your Honor, you're right as
23 rain, and you've read all this. It's all been read.

24 THE COURT: I have. I've read everything --

25 MR. VANNAH: I know you've read everything.

1 THE COURT: -- in this case.

2 MR. VANNAH: So, with that, let's hear the case.

3 THE COURT: All right. Mr. Christensen, your first witness?

4 MR. CHRISTENSEN: Judge, it'll be handled by Mr.
5 Christiansen.

6 THE COURT: Christiansen. Okay. And just so you two know.
7 I'm going to apologize ahead of time, if I mix you up.

8 MR. CHRISTENSEN: I'm fine with Jim, Your Honor.

9 THE COURT: Okay. And who's first Mr. Christiansen?

10 MR. CHRISTIANSEN: Brian Edgeworth, please, Your Honor.

11 THE COURT: Okay. Mr. Edgeworth. And just so you guys
12 know, I'm going to probably go for like an hour, and then me and my
13 staff have to have a break. We've been on the bench since 8:30. So
14 then, we'll go to lunch, and then we'll come back.

15 MR. CHRISTIANSEN: Why don't I have sort of a short portion
16 of the cross --

17 THE COURT: Okay.

18 MR. CHRISTIANSEN: -- and then I'll stop.

19 THE COURT: Okay.

20 MR. CHRISTIANSEN: The lengthier stuff I'll keep for after
21 lunch.

22 THE COURT: That would be perfect, Mr. Christiansen.

23 MR. CHRISTIANSEN: Is that okay with you?

24 BRIAN EDGEWORTH, PLAINTIFF, SWORN

25 THE CLERK: Please be seated, stating your full name,

1 spelling your first and last name for the record.

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

4 THE COURT: Okay. And nobody has problems hearing him?

5 MR. VANNAH: No.

6 THE COURT: Okay. Mr. Christiansen, your witness.

7 MR. CHRISTIANSEN: May I proceed, Your Honor?

8 DIRECT EXAMINATION

9 BY MR. CHRISTIANSEN:

10 Q Mr. Edgeworth, you are the Plaintiff, or you're the principal,
11 the Plaintiff in the case proceeded against Viking and Lange that Mr.
12 Simon represented you on. Is that fair?

13 A Is that a legal term? I think I am, but I don't know if that's a
14 legal term, being the principal.

15 Q Okay. Did you sit as the principal for a department for those
16 two --

17 A The PMK?

18 Q -- entities?

19 A Like the person most knowledgeable? I think so.

20 Q Are you represented today by Mr. Vannah?

21 A Yes, I am.

22 Q Okay. You're not represented by Mr. Simon today. You're
23 represented by Mr. Vannah, correct?

24 A I still retain Simon on the case, though.

25 Q Okay. In this matter, who's your lawyer?

1 A I don't under -- I'm sorry. I just understand --

2 Q This fine gentleman --

3 A -- the question.

4 Q -- here is representing you today, correct?

5 A Is this evidentiary hearing --

6 Q Yes.

7 A -- about your lien, right?

8 Q Yes.

9 A Correct? Yes. Mr. Vannah is my lawyer.

10 MR. CHRISTIANSEN: Permission to treat as an adverse
11 witness and lead, Your Honor.

12 THE COURT: Okay.

13 MR. CHRISTIANSEN: Judge, this new Elmo's got me fooled.

14 THE COURT: You and me both, Mr. Christiansen, so I won't
15 be of any assistance to you. I would hope, you know, my Marshal could
16 help you.

17 UNIDENTIFIED SPEAKER: Oh, I think we have to disconnect
18 over here.

19 THE COURT: Oh, okay.

20 MR. CHRISTIANSEN: I just don't want to break it.

21 THE COURT: I don't know that we've ever used the new one.
22 We just recently got our JAVS upgrade, so I'm not confident. As you
23 see, I --

24 MR. CHRISTIANSEN: It's got like some free download sticker
25 on it.

1 THE COURT: I peeled the plastic off my screen when we
2 started this hearing, so I'm not confident.

3 [Pause]

4 THE COURT: Can you call IT?

5 MR. CHRISTIANSEN: Maybe we'll break before I get started,
6 then.

7 THE COURT: Yeah. Can you get IT in here?

8 THE CLERK: Yeah.

9 THE COURT: Okay. We'll contact IT and get them over here,
10 Mr. Christiansen.

11 MR. CHRISTIANSEN: Judge, I'm happy if you want to take
12 your lunch break now, and then IT can come.

13 THE COURT: Yeah. Are you guys okay with that?

14 MR. CHRISTIANSEN: Whatever's convenient to Mr. Vannah.
15 I don't -- whatever --

16 MR. VANNAH: Whatever works is fine.

17 THE COURT: Okay. So, let's do that. Let's just break, so that
18 we make sure --

19 MR. CHRISTIANSEN: Okay.

20 THE COURT: -- all the stuff works. We'll get IT up here.

21 MR. CHRISTIANSEN: Okay.

22 MR. VANNAH: Sure.

23 THE COURT: So --

24 MR. CHRISTIANSEN: Thank you, Your Honor.

25 THE COURT: -- we'll come back at 1:00. So, Mr. Edgeworth,

1 we'll come back at 1:00. I'll remind you, sir, that you are still under oath.
2 So, we'll come back at 1:00. We'll get IT here and hopefully get all this
3 worked out. I apologize.

4 MR. CHRISTIANSEN: That's fine. That's great, Judge.

5 MR. CHRISTENSEN: See you at 1:00, Your Honor. Thank
6 you.

7 THE COURT: Okay. 1:00. Okay.

8 MR. CHRISTIANSEN: Thank you, ma'am.

9 MR. VANNAH: Thank you, Your Honor.

10 [Recess at 11:42 a.m., recommencing at 1:02 p.m.]

11 MR. CHRISTIANSEN: Judge, I don't recall. I asked for
12 permission to treat as an adverse witness, and then we got sort of
13 sidetracked with the Elmo, but may I treat as an adverse --

14 THE COURT: Yes.

15 MR. CHRISTIANSEN: -- witness and lead?

16 DIRECT EXAMINATION CONTINUED

17 BY MR. CHRISTIANSEN:

18 Q Mr. Edgeworth, what that -- Her Honor's ruling means is I'm
19 going to ask questions that call for yes or no answers and expect you to
20 respond accordingly. Is that fair?

21 A Yes.

22 Q Okay. Great. You are Canadian?

23 A Yes.

24 Q All right. You are not an American Citizen?

25 A All right.

1 Q Is -- parts of Canada are French Canada and English Canada.
2 Is English your first language?

3 A Yes.

4 Q And I heard Mr. Vannah tell Her Honor this morning that at
5 this initial meeting you had with Danny Simon on or about the 27th or
6 28th of November 2000, and -- I'm sorry -- May 2016, you were told that
7 Danny's rate was 550 an hour. Is that fair? Is that your testimony?

8 A No.

9 Q It's not your testimony?

10 A No.

11 Q You heard your lawyer tell the Judge that, right?

12 A Yes, I believe so.

13 Q And similarly, it's not your testimony that at this initial
14 meeting, Danny Simon ever told you that Ashley Ferrel was going to get
15 275 an hour --

16 A No.

17 Q -- correct?

18 A Correct.

19 Q That was never discussed at your initial meeting?

20 A No.

21 Q Sir, do you know what perjury is?

22 A Yes.

23 Q Do you know when you sign an affidavit under -- it's the
24 same as -- in a court of law, and you submit it to a judge, the oath you
25 take is the same oath you took when you came in her court?

1 A No, but I believe you.

2 Q Okay. You signed three affidavits relative to this proceeding
3 and the other case in which you sued Danny Simon leading up to this
4 hearing. Is that fair?

5 A I think so.

6 Q Okay. You signed one on February the 2nd, correct?

7 A If you show them to me, I can confirm.

8 Q You signed one on the 12th, correct?

9 A I don't know. I think so.

10 Q Okay. And you signed one on March the 15th, correct?

11 A I do not know, but I think so.

12 Q In all three affidavits, you told Her Honor, because that's who
13 the -- they were sent to, that at the outset -- that's the word you used --
14 the outset, Mr. Simon told you his fee would be 550, correct? That's
15 what you put in --

16 A Correct.

17 Q -- all three affidavits, correct?

18 A Correct.

19 Q That's not your testimony today, is it?

20 A Yes, it is.

21 Q I just asked you, sir, did Mr. Simon at the initial meeting at
22 the outset tell you his rate was 550, and you just told me no, correct?

23 A Correct.

24 Q Okay. So, in all three of your affidavits, when you say Dan
25 Simon told me, Brian Edgeworth, at the outset, his rate was 550, all three

1 of those statements in all three affidavits are false, correct?

2 A I don't think so.

3 Q English is your first language, right?

4 A Correct.

5 Q Outset means the beginning, correct?

6 A The beginning of the case, correct.

7 Q Beginning of the case would be when you say you retained
8 Mr. Simon, correct?

9 A Yes.

10 Q And your position is you retained him the 27th of May 2016,
11 correct?

12 A No, not correct.

13 Q When did you retain him?

14 A On June 10th, he called me, when they had to file a lawsuit,
15 because nobody responded.

16 Q Sir, tell me when you put in all three affidavits --

17 MR. VANNAH: Excuse me, Your Honor. He just interrupted
18 the answer. I don't know why he's doing that. It's rude for one thing and
19 wrong.

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

21 MR. VANNAH: Can I hear the answer?

22 BY MR. CHRISTIANSEN:

23 Q Go ahead. Do you have anything else, sir?

24 A Can you restate your question, please?

25 Q Sure. I'll restate it.

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

2 BY MR. CHRISTIANSEN:

3 Q In all three of your affidavits, sir, didn't you tell the Judge
4 under oath, under penalty of perjury, that you hired Danny Simon -- you
5 used the word retained -- May the 27th, 2016?

6 A I don't know. It might have been in there. It might be a typo.
7 I don't know. I --

8 Q Did you --

9 A -- if you show it to me, I can tell you.

10 Q Sir, I get to decide how I conduct cross-examination.

11 A I understand that.

12 Q Okay. All right.

13 A I just asked you --

14 Q Did you read the affidavits before you signed them?

15 A Yes.

16 Q And in all three affidavits, isn't it true you said you retained
17 Danny Simon May the 27th, 2016?

18 A Probably.

19 Q Yes or no?

20 A I don't know.

21 Q What do you mean, you don't know?

22 A I mean, if you show it to me, I can read it and tell you yes --

23 Q Did you read them --

24 A -- or no.

25 Q Did you read them in preparation of today?

1 A No, I did not.

2 Q Okay. And so, your testimony here under oath is that you
3 didn't retain Danny Simon May the 27th, 2016. Is that -- do I understand
4 that correctly?

5 A On that date --

6 Q Sir, that's a yes or no question. Is that your testimony that
7 you did not retain Danny Simon May the 27, 2016?

8 A No.

9 Q Poorly worded question. So, the record is clear, is it your
10 testimony under oath that Danny Simon was retained by Brian
11 Edgeworth on behalf of American Grating and the Edgeworth Family
12 Trust May the 27th or the 28th, 2016?

13 A Yes.

14 Q That is your testimony?

15 A Yes.

16 Q Well, I just asked you five seconds ago.

17 A You said it wasn't your testimony. You're confusing me with
18 the different questions. He --

19 Q Well sir, do you understand that perjury as a non-American
20 citizen is a deportable offense?

21 A Yes.

22 MR. VANNAH: Your Honor, I've got to object --

23 THE WITNESS: This is --

24 MR. VANNAH: -- to this whole thing. This thing about
25 talking about he's a foreign -- that he's not a -- first of all, it's against the

1 rules, and it's against the law --

2 MR. CHRISTIANSEN: It's not.

3 MR. VANNAH: -- to bring up anybody's ethnicity or their
4 citizenship. That's the rule in this state and that everybody's treated the
5 same, whether they're a citizen or not a citizen in a courtroom. Why are
6 we talking about whether he's a Canadian citizen or not and whether it is
7 a deportable offense? He's not perjuring himself, for one thing.

8 MR. CHRISTIANSEN: Judge, that's a speaking --

9 THE COURT: Okay.

10 MR. CHRISTIANSEN: -- objection, but.

11 MR. VANNAH: No, it's not a speaking objection. It's an
12 objection about ethnicity and citizenship, and it's absolutely improper to
13 bring that up.

14 THE COURT: Mr. Christiansen, your response?

15 MR. CHRISTIANSEN: As the Court knows, I do a
16 considerable amount of criminal defense work and when the witness
17 tells me that three times he put something in an affidavit that he then
18 backs away from, I feel compelled to inform the witness that, you know,
19 changing your story under oath can have ramifications, if you're not an
20 American citizen. That was it. I intend to move on --

21 THE COURT: Okay.

22 MR. CHRISTIANSEN: -- from it.

23 THE COURT: We can move on, Mr. Christiansen.

24 MR. VANNAH: We don't need the legal advice to my client.

25 Thank you, though.

1 MR. CHRISTIANSEN: And, Judge, just so we're clear going
2 forward, it's my understanding this is Mr. Greene's witness and so in the
3 future, I think it's probably appropriate one lawyer, one witness.

4 THE COURT: Okay. This is Mr. Greene's witness?

5 MR. CHRISTIANSEN: That's my understanding, Your Honor.

6 MR. VANNAH: That's correct.

7 THE COURT: Okay.

8 MR. CHRISTIANSEN: Okay.

9 THE COURT: Okay.

10 BY MR. CHRISTIANSEN:

11 Q All right. So, Mr. Edgeworth, I'm just trying to understand
12 what your testimony is. Okay. What your version of events are. When I
13 started out, I asked you did you hire Danny Simon May the 27th. You
14 told me no, correct?

15 A I believe what you said, did I hire him at \$550 an hour on
16 May the 27th, sir. I believe that's what you said. I might be mistaken,
17 but I believe that's what you said, and I said no.

18 Q Okay. Did you retain him May the 27th?

19 A Correct. Yes, I did.

20 Q And at that outset, the day you retained him, did he tell you
21 his rate was 550 an hour?

22 A No. He said he would do me a favor.

23 Q And at the outset, the say you retained him, did he tell you
24 what his associate's fee was going to be?

25 A No, he did not.

1 Q He said he would do you a favor?

2 A Yes.

3 Q Because he was your friend?

4 A Our wives were friends, correct.

5 Q And you guys had traveled together?

6 A Correct.

7 Q And his wife, Elaina [phonetic] had done things for your wife.
8 Fair?

9 A Perhaps, yes.

10 Q Like organ -- I mean, simple stuff. Like she organized a
11 birthday party, I think, for your wife. Helped with a funeral. Things of
12 that nature. Social things.

13 A You could ask my wife. I -- likely.

14 Q Okay. When you signed all three of those affidavits, did you
15 read them before you signed them?

16 A Yes.

17 Q Did you write them?

18 A No.

19 Q All right. I want to work with you -- backwards with you, sir,
20 a little bit. Mr. Vannah was nice enough this morning to give us the
21 retainer agreement. And I'll have it marked. What's the next in line,
22 Ash?

23 MS. FERREL: Our number 90.

24 MR. CHRISTIANSEN: I'll mark it as 90, John, if that's okay.

25 (Defendant's Exhibit 90 marked for identification)

1 BY MR. CHRISTIANSEN:

2 Q And I'll just put it up for proposed Plaintiff's (sic) Exhibit 90.
3 Is that the retainer agreement that you saw Mr. Vannah give us this
4 morning?

5 A Yeah. I think so. I can't see it. Can I see it on this monitor
6 here?

7 Q If it's on you can.

8 THE COURT: You can't see it.

9 MR. CHRISTIANSEN: May I approach, Judge? I'll help him.

10 THE COURT: Yes, please. Is there nothing on your monitor?

11 THE WITNESS: No, it's just blank.

12 MR. CHRISTIANSEN: There's not judge. Just blank.

13 THE COURT: Okay.

14 THE WITNESS: Should I move this microphone then?

15 THE COURT: Sure.

16 MR. CHRISTIANSEN: Tell me when -- if it comes on, Mr.
17 Edgeworth.

18 THE WITNESS: No.

19 MR. CHRISTIANSEN: There.

20 THE WITNESS: Okay.

21 THE COURT: And can you see the document or no?

22 THE WITNESS: It's just booting up.

23 THE COURT: Okay.

24 MR. CHRISTIANSEN: Judge, are these Elmo screens such
25 that he can touch it?

1 THE COURT: You can't do that anymore, Mr. Christiansen.

2 MR. CHRISTIANSEN: Can't do that anymore?

3 THE COURT: They took that away from us. You get 1 plus
4 and three minuses. No, apparently you can't.

5 BY MR. CHRISTIANSEN:

6 Q I'll try to put it in the middle, Mr. Edgeworth, and if you tell
7 me you can't see it, I'll try to blow it up.

8 A Mine's out of focus, is yours?

9 THE COURT: Yeah, mine is a little blurry too, Mr.
10 Christiansen, but I don't think there's anything you can do.

11 MR. CHRISTIANSEN: Oh, let me see if I can zoom in, Judge,
12 and then I'll hit auto focus or auto --

13 THE COURT: There we go.

14 MR. CHRISTIANSEN: Oh, got a little crazy.

15 THE COURT: Okay. Is that clear enough?

16 THE WITNESS: Yeah, that's good. That's very good.

17 THE COURT: Okay.

18 BY MR. CHRISTIANSEN:

19 Q Is that the fee agreement you executed, Mr. Edgeworth?

20 A Yes.

21 Q And you see how it says down here on behalf of the
22 Edgeworth Family Trust and American Grating?

23 A Yes.

24 Q You were acting as --

25 A Correct.

1 Q -- as an agent, correct?

2 A Correct.

3 Q You understood that when you signed the fee agreement,
4 right?

5 A Yes.

6 Q Okay. Just checking. And this was entered into July the 29th
7 of 2017?

8 A Yes, I believe so.

9 THE COURT: November 29th, Mr. Christiansen?

10 MR. CHRISTIANSEN: Did I say July?

11 THE COURT: Yeah.

12 MR. CHRISTIANSEN: I'm sorry, Judge. November.

13 BY MR. CHRISTIANSEN:

14 Q I misspoke. I apologize. November the 29th, 2017. Is that
15 fair?

16 A Yes.

17 Q Was this your first meeting with Mr. Vannah, the day -- I
18 mean, is this the date of the meeting with -- first meeting with Mr.
19 Vannah?

20 A Yes.

21 Q And this is the day you hired him?

22 A Yes.

23 Q Okay. And from November the 29th forward in time, you
24 have not spoken verbally to Danny Simon, correct?

25 A I don't know. I don't think so.

1 Q You think that's a fair statement? You probably have not
2 talked to him?

3 A It's -- the date. The date you're giving. I'm not positive 100
4 percent of that date --

5 Q Okay.

6 A -- but in the range of that, yes, I have not spoken to him.

7 Q And from the time you signed the agreement with Mr.
8 Vannah, you were looking to Mr. Vannah and Mr. Greene for advice as
9 your lawyer in this case, the case where Danny had been representing
10 you for the years prior, right?

11 A No. That's incorrect.

12 Q All right. Well, let's --

13 MR. CHRISTIANSEN: Judge, I'd move for admission of
14 Exhibit 90.

15 THE COURT: Any objection to 90?

16 MR. GREENE: No.

17 MR. CHRISTIANSEN: That's the fee agreement, John.

18 THE COURT: Okay. So, Defense's 90 will be admitted.

19 (Defendant's Exhibit 90 received)

20 MR. CHRISTIANSEN: 43 is next, John.

21 BY MR. CHRISTIANSEN:

22 Q I'm going to show you what's been marked for identification
23 purposes is Def -- Exhibit 43, and I'll just move it up, so you can -- I
24 handwrote my exhibits, and it's Bates stamped Simon evidentiary
25 hearing 420. Is that your signature, sir?

1 A Yes, it is.

2 THE COURT: And just one second. So, Mr. Christiansen,
3 what you're showing him is a copy of what the Clerk has?

4 MR. CHRISTIANSEN: Yes, ma'am.

5 THE COURT: Okay. So, the Clerk has that?

6 MR. CHRISTIANSEN: Yes, ma'am.

7 THE COURT: Okay. Just making sure we have it. Okay.

8 MR. CHRISTIANSEN: So, Judge, just by way of
9 housekeeping, the Clerk has a hard copy of all of our exhibits, with the
10 exception of Exhibit 80, which is all of those.

11 THE COURT: Okay. That's 80. Okay.

12 MR. CHRISTIANSEN: And we gave you a CD of that. And I
13 think we gave Mr. Vannah and Mr. Greene copies as well.

14 MR. GREENE: Correct, Your Honor.

15 THE COURT: Okay.

16 MR. GREENE: We have our exhibits also with the Clerk.

17 THE COURT: Okay. Okay.

18 BY MR. CHRISTIANSEN:

19 Q Mr. Edgeworth, the date on this letter is November the 29th,
20 2017, correct?

21 A Correct.

22 Q And the letters are signed by you and addressed to Mr.
23 Simon?

24 A Yes.

25 Q By November the 29th, 2017, Danny Simon, who had been

1 representing you in the case, either in the claim stage or in the litigation
2 against Lange Plumbing and Viking -- and there's some entities for
3 Viking in front of them -- for about 18 months. May of '16 to November
4 of 17.

5 A 18 months seems correct, if --

6 Q Okay.

7 A -- your math is right.

8 Q And up until this day, November the 29th, 2017, you had
9 looked to Mr. Simon for advice as your lawyer, correct?

10 A Correct.

11 Q And what this letter says is it tells Mr. Simon that Mr. Vannah
12 and Mr. Greene -- that you've retained Mr. Vannah and Mr. Greene to
13 assist in the litigation with the Viking entities. Did I get that first part
14 right?

15 A Correct, yes.

16 Q And then you instruct Mr. Simon to cooperate with Mr.
17 Vannah and Mr. Greene in every regard concerning the litigation and any
18 settlement. Did I get that part right?

19 A Correct.

20 Q You were also instructing Mr. Simon to give them complete
21 access to the file and allow them to review whatever documents they
22 request to review?

23 A Yes.

24 Q And, finally, you direct Mr. Simon to allow them to
25 participate without limitation in any proceeding concerning our case,

1 whether it be at depositions, court hearings, discussions, et cetera. Is
2 that right?

3 A That is correct.

4 Q Okay. And when you say our case, you mean the case
5 Edgeworth Family Trust and American Grating v. Lange Plumbing and
6 Viking?

7 A Yes.

8 Q Fair enough.

9 MR. CHRISTIANSEN: Move for admission of Exhibit 43, Your
10 Honor.

11 THE COURT: Any objection to 43?

12 MR. GREENE: No, Your Honor. Actually, Jim, Mr.
13 Christensen and our respective law firms agreed that any
14 communications going back and forth from the clients to the lawyers and
15 emails as well are all going to be admitted. We have no issue with the
16 exhibits that we presented to each other, so I think --

17 THE COURT: Okay.

18 MR. CHRISTIANSEN: I'll move quicker. I'm sorry. I was
19 unaware of that. Sorry, John.

20 MR. GREENE: No worries.

21 THE COURT: Okay.

22 MR. CHRISTIANSEN: So maybe right now is a good
23 administrative time to be able to move to admit the respective exhibit --
24 exhibits, excuse me -- that the parties have presented to the Court at this
25 time.

1 THE COURT: Okay. And I have Defense Exhibits 1 through
2 86. But Mr. Christiansen said 80 is that. So, 1 through 86 is what I have
3 here. And where's 87, 88, 89?

4 MR. CHRISTIANSEN: They're in the last book, Your Honor.
5 They probably didn't make it to the cover page, because we had some
6 extra exhibits --

7 THE COURT: Okay. You're right.

8 MR. CHRISTIANSEN: -- and then --

9 THE COURT: They're -- hold on. Let me see if there's
10 anything. Yeah, I do have -- it just says 1 through 86 on the cover.

11 MR. CHRISTIANSEN: That's right.

12 THE COURT: But I have -- there's nothing under the -- okay. I
13 have 1 through 89, and then Mr. Christensen just admitted 90.

14 MR. CHRISTIANSEN: That's the fee agreement.

15 THE COURT: So, you have no objection to 1 through 90, Mr.
16 Greene?

17 MR. GREENE: Provided that we have a reciprocal consent or
18 stipulation that our exhibits --

19 THE COURT: Right. And then yours --

20 MR. GREENE: -- 1 through 9 --

21 THE COURT: Yeah. I have --

22 MR. GREENE: -- are also to be admitted.

23 THE COURT: -- 1 through 9 on yours. Mr. Christiansen, do
24 you have any objection to 1 through 9?

25 MR. CHRISTIANSEN: Judge. I think Jim talked to -- I think

1 Mr. Greene spoke to Mr. Christensen, and I --

2 THE COURT: Okay.

3 MR. CHRISTIANSEN: -- and I don't want to speak out of turn.

4 MR. GREENE: I -- let me hold forth on this one, Judge.

5 THE COURT: Okay. Mr. Christensen, do you have any
6 objection to 1 through 9?

7 MR. CHRISTENSEN: We have no objection to 1 through 9
8 with the exception of the piece of paper entitled, Howard & Howard fees.
9 We're going to need some foundation for that.

10 MR. GREENE: Totally understood.

11 THE COURT: Which one?

12 MR. GREENE: There's a --

13 THE COURT: Oh, Howard & Howard fees --

14 MR. CHRISTENSEN: Yeah.

15 THE COURT: -- in Exhibit 9?

16 MR. GREENE: Correct.

17 MR. CHRISTENSEN: Yeah. It's part of 9.

18 THE COURT: Okay.

19 MR. GREENE: So, we'll hold that one in abeyance, Your
20 Honor. We'll deal with that on direct exam.

21 THE COURT: So, we'll have 1 through 8 going on and then
22 when we get to 9, we'll deal with 9 when you move for 9?

23 MR. GREENE: Just a portion of 9 has not been stipulated to,
24 all but --

25 THE COURT: The Howard exhibit.

1 MR. GREENE: -- I think there are three pages of documents
2 that deal with some fees that Brian will testify to that he's paid at two of
3 the law firms.

4 THE COURT: Okay. So, we'll -- 1 through 8 and all of 9,
5 except the Howard & Howard fees has been admitted. And then we will
6 deal with the remainder of 9 when you get around to that with your
7 client.

8 (Plaintiff's Exhibits 1-9 (except for Howard & Howard fees)
9 received)

10 (Defendant's Exhibits 1-90 received)

11 MR. GREENE: Okay. Thank you, Judge.

12 THE COURT: Okay?

13 MR. CHRISTENSEN: That's fine with us, Your Honor.

14 THE COURT: Thank you.

15 MR. CHRISTIANSEN: Judge, maybe the last sort of
16 housekeeping matter. I spoke to Mr. Vannah and Greene beforehand
17 and for the sake of expeditiously moving through everything, we agreed
18 we would both try to get witnesses completed in their entirety, even
19 though it might be out of order or whatever. So, they'll finished with Mr.
20 Edgeworth when I'm done and --

21 THE COURT: Okay. Rather than recall him when it's your
22 turn?

23 MR. GREENE: Yeah.

24 THE COURT: Oh, perfect. Okay.

25 MR. CHRISTIANSEN: I think I got everything, Judge.

1 THE COURT: Okay.

2 MR. CHRISTIANSEN: All right.

3 BY MR. CHRISTIANSEN:

4 Q Now, the Lange case. I want to talk to you about the Lange
5 case. You have an understanding about the claims that were sort of
6 derivative in nature that you could have been reimbursed for, should you
7 have prevailed against the Lange Plumbing Defendant, correct?

8 A I'm sorry. I'm not sure I understood your question.

9 Q Okay. Lange was the plumber that installed the Viking
10 sprinkler in your house?

11 A Yes.

12 Q Lange and you had a contract?

13 A Correct.

14 Q Under the terms of the contract, which you're very familiar
15 with, fair? You understand the terms?

16 A Yes.

17 Q Lange, if it failed to pursue a warranty on your behalf and
18 you had to go do that on your own, like you hired Danny to do, then you
19 could seek your attorney's fees as reimbursement from Lange?

20 A Yes, that's my understanding. Yes.

21 Q You understood that from talking to Danny.

22 A That's correct. That's what my lawyer told me.

23 Q I'm sorry. I should say Mr. Simon. I apologize. You
24 should -- you understood that from talking to your lawyer for 18-ish
25 months, Mr. Simon?

1 A Yes.

2 Q Okay. And then on the 29th of November 2017, you hired
3 Vannah & Vannah. That's Exhibit 90, the fee agreement we just looked
4 at.

5 A Yes. I hired them.

6 Q And Vannah & Vannah took over advising you relatively to
7 the Lange claim, correct?

8 A They provided advice. That's not what they were retained
9 for.

10 Q Well sir, you quit talking to Mr. Simon after November the
11 29th, you told me, right?

12 A Correct.

13 Q All right. And you didn't stop -- you continued
14 communicating with these nice gentlemen?

15 A Correct.

16 Q All right. And they were advising you, as we read, about
17 things like the settlement, correct?

18 MR. GREENE: Objection, Your Honor. That is -- it's attorney
19 client privilege of what he retained us to do, in what turned into a slight
20 adversarial proceeding. So, again, we're going into notes. Like you've
21 already ruled on before, they're allowed to see our fee agreement.

22 THE COURT: Right.

23 MR. GREENE: But to go into discussions that we had; I think
24 that's beyond the purview.

25 MR. CHRISTIANSEN: Judge, they -- number one, Mr. Vannah

1 signed, in open court, that settlement in your courtroom with Lange.

2 THE COURT: I remember.

3 MR. CHRISTIANSEN: So, it's nothing that's privileged. They
4 gave a consent to settle, which Mr. Vannah provided to us, that's -- that
5 talks about what they advised him on. I'm just talking about that same
6 stuff.

7 MR. GREENE: I think our issue is what was discussed. It's
8 not --

9 THE COURT: Oh, and I'm fine with not getting into what was
10 discussed --

11 MR. CHRISTIANSEN: I'll rephrase. I apologize.

12 THE COURT: -- but I think the issue of the constructive --

13 MR. CHRISTIANSEN: Discharge.

14 THE COURT: -- discharge. I'm sorry. The issue of
15 constructive discharge is an active issue in this case, so whether or not
16 Vannah's office advised him in what to do in the Lange settlement is
17 absolutely relevant, because that came after you guys were already in.
18 We all did that right here in this courtroom. So in regards to specifics of
19 what you guys talked to, that's not going to be allowed, Mr. Christiansen.

20 MR. CHRISTIANSEN: Yes, Your Honor.

21 THE COURT: But with regards to who advised him in the
22 Lange settlement, that's absolutely relevant, and I'm going to allow Mr.
23 Christiansen to ask him questions about that.

24 MR. GREENE: Thank you.

25 BY MR. CHRISTIANSEN:

1 Q So, Mr. Edgeworth, I'll try to phrase my questions consistent
2 with the Court's order. From the time you hired Vannah & Vannah in
3 Exhibit 90, which is the 29th day of November 2017, until you settled
4 with Lange, in that window, you never spoke verbally to Danny Simon,
5 correct?

6 A In some window. I'm not positive that the window you're
7 making is the window.

8 Q Okay. Did you email Mr. Simon between the 29th and the
9 settlement with Lange?

10 A I would think so.

11 Q Did you ask Mr. Simon for legal advice about the settlement
12 with Lange?

13 A That was provided through my lawyers.

14 Q Through Vannah & Vannah?

15 A No. Simon told them. They told me.

16 Q So the answer is you only talked to Vannah & Vannah -- I
17 don't want the substance -- not Danny Simon, between the time you
18 hired Vannah & Vannah, and you settled with Lange?

19 A Yeah.

20 Q Fair?

21 A They spoke with Simon and --

22 Q Sir, I just asked you a question. Is that a fair statement?

23 THE COURT: Sir, he's asking you did you speak directly to
24 Mr. Simon via email -- and I'm concerned. I want to know did you talk to
25 him via email? Did you call him? Did you text him? Did you have any

1 communication directly between you and Mr. Simon from the date you\
2 hired Mr. Vannah's office to the date we all signed the Lange settlement
3 agreements right here?

4 THE WITNESS: Yes, we did.

5 THE COURT: Okay.

6 BY MR. CHRISTIANSEN:

7 Q You talked to him?

8 A I'm sorry. You asked one question, but then the Judge asked
9 me if I had emailed with Mr. Simon between the date of -- Vannah &
10 Vannah -- the 29th and later and the answer is yes.

11 THE COURT: You personally?

12 THE WITNESS: Me personally.

13 THE COURT: Okay.

14 BY MR. CHRISTIANSEN:

15 Q Did you -- is it true you did not verbally talk to him? I want to
16 make sure I'm getting it accurate.

17 A He left me a voicemail.

18 Q But you didn't verbally talk to him?

19 A No. I listened to the voicemail.

20 Q And you were relying on legal advice provided you from
21 Vannah & Vannah in terms of the Lange settlement? I'm just talking
22 about that.

23 A They were communicating what his legal advice was,
24 correct?

25 THE COURT: Who was he?

1 BY MR. CHRISTIANSEN:

2 Q Who was --

3 A The Vannah -- John -- Mr. Greene and Mr. Vannah
4 communicated to me what Mr. Simon communicated to them about his
5 advice to proceed in the Lange settlement.

6 Q Okay. Well, let's talk about Mr. Simon. And can we agree,
7 Mr. Edgeworth, that Mr. Simon's view on what to do with Lange was
8 different than the Vannah & Vannah lawyer's view with what to do with
9 Lange?

10 A Yes.

11 Q Different sets of advice. Can we agree on that?

12 A Yes.

13 Q Ultimately, you decided to do what Mr. -- what the Vannah &
14 Vannah Firm advised you of?

15 A Correct.

16 Q Okay. And that's reflected, sir, in what's now in evidence as
17 Exhibit 47, which is the consent to settle signed by yourself on December
18 the 7th, and is that Mrs. Edgeworth -- that's your wife, sir?

19 A That's correct.

20 Q And it's on Vannah & Vannah letterhead, correct?

21 A Correct.

22 Q And this consent to settle reflects the Vannah & Vannah
23 advice you were receiving in this time frame about what to do with
24 Lange, correct?

25 A Not all of it, but it does reflect --

1 Q It does --

2 A -- some of their advice, correct.

3 Q It -- it's inconsistent with the advice Mr. Simon was giving to
4 you about what to do with Lange, correct?

5 A Correct.

6 Q So you chose to disregard Mr. Simon's advice and listen to
7 these nice gentlemen here?

8 A Correct.

9 Q All right. And, specifically, what you say is EFT, that's the
10 Edgeworth Family Trust; is that right?

11 A Correct.

12 Q And American Grating v. Lange?

13 A Oh, you're at the top, sir?

14 Q Yeah. I'm sorry, sir. I'm right here at the top.

15 A Oh, that's good. Yeah, if you do the finger, that's good.

16 Q Okay.

17 A Yeah. Yes.

18 Q And you can look at whichever one you want, Mr.
19 Edgeworth. You don't have to --

20 A Well, this one is easier to read. That's easier to see.

21 Q Okay. This says you and your wife on behalf of the Trust and
22 American Grating consent to settle all claims against Lange for the gross
23 amount of \$100,000 minus sums owed to Lange pursuant to the
24 contract?

25 A Correct.

1 Q All right. And that was -- that term of the settlement was not
2 a term Mr. Simon advised you to enter into, correct? It was inconsistent
3 with his advice about Lange.

4 A Correct.

5 Q Okay. And these are my highlights, Mr. Edgeworth, so I
6 apologize for that. Don't take anything by them. It says, we
7 acknowledge that our attorneys have advised us that by settling the
8 outstanding claims with Lange, we will be waiving all claims for
9 attorney's fees, including any contingency fee that a court may award to
10 the Law Office of Danny Simon.

11 Did I read that correctly?

12 A Yes.

13 Q And before you signed this, did you read it?

14 A Yes, I sure did.

15 Q So you know -- you knew back in December the 7th from
16 listening to your Vannah & Vannah that a court could award Mr. Simon a
17 contingency fee, correct?

18 A Pardon me? I'm sorry --

19 Q I just --

20 A -- I thought you were going to keep reading, and then --

21 Q Okay.

22 A -- I got confused.

23 Q Well, look up here at me. I'm sorry. That's all right. You
24 knew from the sentence I just read that a court could award Mr. Simon a
25 contingency fee award, correct? That's right in the -- I just read it.

1 A I suppose it's possible.

2 Q And you chose to settle the Lange case pursuant to the
3 Vannah & Vannah advice?

4 A Correct.

5 Q All right. And what -- it goes down here a little bit. And I'm
6 just looking at my highlight, Mr. Edgeworth, so you can follow along,
7 that you acknowledge that Mr. Vannah has also explained that to
8 continue to litigate with Lange is economically speculative, as we've
9 already made more than whole with the settlement with the Viking
10 entities, and Lange may be legally entitled to an offset for the amount of
11 the settlement paid to us by Viking.

12 Did I read that correct?

13 A Yes.

14 Q And so, you agreed when you signed this with Mr. Vannah's
15 assessment that Danny Simon's representation had made you more than
16 whole, correct?

17 A I'm not sure what you mean by more than whole.

18 Q Well, this is a document you signed sir, not me. It said, we
19 have already been made more than whole with the settlement against
20 Viking. Did I read that correctly?

21 A Yes.

22 Q And Danny Simon effectuated the settlement against Viking,
23 correct?

24 A Effectuated?

25 Q He was your lawyer --

1 A Correct.

2 Q -- that obtained a --

3 A He was my lawyer --

4 Q -- \$6 million settlement, yes?

5 A Correct.

6 Q And that settlement, according to Mr. Vannah, and you made
7 you more than whole?

8 A Correct.

9 Q And you chose in this consent to settle, to listen to Vannah &
10 Vannah, and they had advice. I'm not saying right, wrong or indifferent,
11 but that advice was different than Danny Simon's advice relative to
12 Lange?

13 A Correct.

14 Q All right. After you settled with Lange -- and this in the -- sort
15 of over the holiday times, right. It's like about the Thanksgiving, getting
16 into Christmas, the times where the settlements are getting done and
17 people are getting checks and the like?

18 A Can you define what settled means? Does it mean when
19 they give us the offer, when they send over the --

20 Q Sure. That's actually a fair question, sir. Let me see if -- I'll
21 be more specific, okay? You sued Danny Simon. Mr. Vannah sued
22 Danny Simon on your behalf, January the 4th, 2018?

23 A Correct.

24 Q That's about three days shy of a month from when Mr.
25 Vannah advised you to settle with Lange?

1 A Correct.

2 Q And when you sued Mr. Simon, the check for the Viking
3 money had not been deposited in a bank, correct?

4 A Correct.

5 Q Ultimately, Mr. Sim -- Mr. -- sorry -- Mr. Vannah and Mr.
6 Christensen made an agreement where they were going to open a joint
7 trust type of an account, Danny and -- I'm sorry -- Mr. Simon and Mr.
8 Vannah. Those checks would be -- that check -- \$6 million check would
9 be deposited there. Fair?

10 A You're wrong. There's two checks. You're right, but you
11 said that check, the one check. There's two checks.

12 Q You're right. Thank you for correcting me. Technically -- the
13 checks totaling \$6 million. One was from Viking, right, or its insurance
14 company?

15 A They were from Zurich Insurance, correct.

16 Q And they totaled 6 million bucks? Before the --

17 A I have a confidentiality --

18 Q -- Lange settlement.

19 A -- agreement about the size of the settlement that I signed.

20 MR. GREENE: I'm sorry, Your Honor. That's kind of an issue
21 that he's facing. They signed a confidentiality agreement to the amount.
22 I know that it's just kind of a sticking point with them, so --

23 THE COURT: Okay. Well, this Court is aware of what the
24 amount is, as I was involved in the settlement. It was \$6 million.

25 THE WITNESS: Correct.

1 THE COURT: So, we can go forward.

2 THE WITNESS: So, I can --

3 THE COURT: I mean, you can abide by your confidentiality
4 agreement, but I mean, in regards to what the amount is, I mean, I'm
5 aware of what the amount was.

6 MR. CHRISTIANSEN: Judge, I could be wrong, but there is
7 no confidentiality agreement as to the Viking settlement. Mr. Simon
8 negotiated that away.

9 MR. GREENE: As to the amount?

10 MR. CHRISTENSEN: It doesn't exist, right?

11 THE COURT: There's a -- I mean, I was not aware, because I
12 was here when they brought in the documents and everything on the --
13 so is there a settlement agreement about the amount? I mean, a
14 confidentiality agreement? Because I'm not aware of that.

15 THE WITNESS: That's what Ms. Pancoast sent over in the
16 letter on November 15th, that the confidentiality would be limited to the
17 settlement amount.

18 THE COURT: Well, I mean, this Court can take judicial notice
19 of the \$6 million, because, also, it's interesting that that would be
20 brought up as confidentiality, because it's all littered through these briefs
21 like there's no tomorrow.

22 So, I'm not really sure, if he's under a confidentiality
23 agreement, why this office wouldn't be under a confidentiality
24 agreement, and Mr. Simon clearly didn't know about it, because it's in
25 these briefs about 800 times that this was \$6 million. And so, I'm very

1 well aware that this was a \$6 million settlement, and you guys have been
2 writing about it for eight months.

3 So, I mean, sir, you can answer the question, because it's out
4 in the open that this settlement was \$6 million.

5 BY MR. CHRISTIANSEN:

6 Q So where were we, Mr. Edgeworth, before we -- others
7 started helping me understand facts that I'm probably not as fluent in as
8 I should be, is that the lawsuit filed by you against Danny Simon -- filed
9 by Mr. Vannah on your behalf against Danny Simon was January the
10 4th, 2018, correct?

11 A Yes.

12 Q And so, you don't have to take my word for it.

13 MR. CHRISTIANSEN: That's Exhibit 19, John.

14 THE COURT: Did you say 19, Mr. Christiansen?

15 MR. CHRISTIANSEN: 19, Your Honor.

16 BY MR. CHRISTIANSEN:

17 Q That's Mr. Vannah and Mr. Greene on your be -- on behalf of
18 your entity suing Daniel Simon?

19 A Yes.

20 Q And so, you know, I'm being square with you about the date.
21 It's up there in the right corner. It's January the 4th.

22 A I agree.

23 Q Okay. So, you hadn't verbally spoken to Danny since before
24 November the 29th, and then you sued him January the 4th, after you
25 settled the Lange claims, pursuant to Mr. Vannah's advice. Fair?

1 A Did we settle the Lange before the 4th? Because you guys
2 didn't --

3 Q You signed the consent to settle. Remember, I just showed
4 you.

5 A Oh, the consent to settle. I thought you said the settlement.

6 Q All that is fair chronologically --

7 A Correct.

8 Q -- for you so far?

9 A Right. Yes. Yeah.

10 Q Okay. And when you sued Danny Simon, the checks for the
11 Viking settlement hadn't even been negotiated. In other words, put into
12 a bank account?

13 A Correct.

14 Q Ultimately, that happened, I think about ten days later,
15 pursuant to Mr. Vannah and Mr. Christensen having an agreement?

16 A Correct.

17 Q All right. So, you quit taking Mr. Simon's advice the end of
18 November, settled with Lange the 7th of December, and then sued
19 Danny Simon for his representation of you in the Edgeworth v. Viking
20 lawsuit January the 4th, fair?

21 A No. Parts of your sentence are fair, and parts aren't. I didn't
22 quit taking advice from Mr. Simon.

23 Q What day did --

24 A I listened to it.

25 Q No, you didn't. You just told the Judge you disregarded

1 Danny's advice relative to Lange, and you listened to Vannah & Vannah.
2 Do you remember telling her that?

3 A I listened to both advices, sir.

4 Q But you followed theirs.

5 A Okay, then I would agree with that statement.

6 Q Okay.

7 A But you didn't say that, sir.

8 Q You didn't follow Danny's advice?

9 A I did not take his advice, correct.

10 Q And then you turned around and sued him January the 4th?

11 A Correct.

12 Q And you sued him for his representation of you in getting the
13 \$6 million settlement, correct?

14 A I'm sorry?

15 MR. GREENE: Misstates the plain nature of the text of the
16 complaint, Your Honor. It's not -- he didn't sue his representation of him.
17 He sued based upon his conduct during the representation, not the way
18 he was represented.

19 MR. CHRISTIANSEN: I'll rephrase to try to placate Mr.
20 Greene, Judge, if the Court would allowed me.

21 BY MR. CHRISTIANSEN:

22 Q You sued Danny, arising out of his representation of you?

23 A Well, what he said to us, correct.

24 Q Okay. And you sued him, just chronologically --

25 A Uh-huh.

1 Q -- I just mean in time, before the settlement checks with
2 Viking had even been deposited?

3 A Correct.

4 Q All right. And you heard Mr. Vannah give an opening
5 statement today, sir?

6 A Yes.

7 Q Do you recall how he told the Court he wasn't involved in
8 any of the settlement negotiations?

9 A I don't recall that. I'm sorry. I don't recall everything he said.

10 Q We just -- you and I can agree that he was the one advising
11 you of the Lange settlement, because you signed on his letterhead to
12 consent to settle December the 7th.

13 A He advised me why to do that, yes.

14 Q And I have your settlement agreement.

15 MR. CHRISTIANSEN: Which is Exhibit 5, John. And I'm
16 looking at page 4, Mr. Greene.

17 BY MR. CHRISTIANSEN:

18 Q This is the settlement agreement with Viking?

19 A You just asked about Lange, sir. The --

20 Q I did.

21 A Okay.

22 Q Now, I'm shifting gears. I want to talk to you about Viking,
23 too, because if you see paragraph E -- do you see that, sir?

24 A Yes, I do.

25 Q Who's the lawyers that advised you? Right in the document

1 you signed about settling with Viking?

2 A It says Robert Vannah, Esquire and John Green, Esquire.

3 Q Show me where it says Danny Simon.

4 THE COURT: This is the Viking settlement?

5 MR. CHRISTIANSEN: It is.

6 THE COURT: Okay.

7 BY MR. CHRISTIANSEN:

8 Q Go ahead.

9 A On the page that I'm looking at, the fractional page, I don't
10 see it.

11 Q And is that your settlement? You and your wife's
12 settlement? Sorry, signature?

13 A On the 1st of December, correct.

14 Q All right. So as early as December 1st, according to Exhibit 5,
15 you were not relying on Danny Simon's advice, but instead relying on
16 the advice of Vannah & Vannah when settling the Viking claims, correct?

17 A When signing contracts, correct.

18 Q Okay. And I think you've already told me that was the same
19 situation about five or six days thereafter, when you signed that consent
20 to settle with Lange on the Vannah & Vannah letterhead, right?

21 A They had advised me of other things than the settlement,
22 yes.

23 Q Okay. And, sir, let's look at Exhibit 90 again. This is your
24 retainer with Vannah & Vannah. Did you sign a separate retainer
25 agreement for the lawsuit, where they sued Danny Simon for you?

1 A This is the retainer agreement.

2 Q I'm sorry?

3 A This is the retainer agreement.

4 Q Well, that's the retainer agreement for the case where you
5 sued Danny Simon?

6 A Correct.

7 Q Okay. Let's look at the caption of the Danny Simon lawsuit
8 and see if we can get some clarification. Exhibit 90 says that you are
9 hiring -- client retains attorneys. I'm looking at the second paragraph,
10 sir. Here. I'll put my finger on it.

11 A I see, yes.

12 Q To represent him as his attorneys regarding Edgeworth
13 Family Trust and American Grating et al. v. Viking -- all Viking entities, all
14 damages, including, but not limited to, and it goes on, correct?

15 A Correct.

16 Q Show me the fee agreement that says -- or show me in here
17 where it says -- and I'll just show you the title. This is Exhibit 19. This is
18 your lawsuit against Danny Simon. It's called Edgeworth Family Trust
19 and American Grating v. Daniel Simon. Where is that in Exhibit 90?

20 A Where is what, sir?

21 Q The fee agreement for the new lawsuit.

22 A What do you mean? I don't understand your question.

23 Q Sure. This fee agreement is for the lawsuit Danny had been
24 your lawyer on for 18 months, correct?

25 A No.

1 Q It's not?

2 A No. This fee agreement was signed -- am I allowed to say?

3 Q Mr. Edgeworth, don't look at them for answers. Just --

4 THE COURT: Okay, sir. You can't ask them any questions.

5 THE WITNESS: Oh, I'm sorry.

6 THE COURT: You have to answer Mr. Christiansen's

7 question.

8 BY MR. CHRISTIANSEN:

9 Q So sir --

10 A I retained --

11 Q -- just read right here. Edgeworth Family Trust and American
12 Grating v. all Viking entities. That's the case Danny was your lawyer on
13 for 18 months, correct?

14 A Correct.

15 Q That's different, do you agree with me, than the case entitled
16 Edgeworth v. Danny Simon?

17 A Yes.

18 Q And do you agree with me there is no retainer agreement
19 for --

20 A No, I do not.

21 Q -- Vannah -- or Edgeworth v. Danny Simon contained in
22 Exhibit 90?

23 A No, I do not.

24 Q Do you see a cap -- do you see Edgeworth v. Danny Simon?

25 A No, I do not see that.

1 Q It's not in there, right?

2 A No.

3 Q All right. And during this time, where you come into court --
4 we had a bunch of court hearings. Were you present during those court
5 hearings?

6 A I went to two court hearings during the entire case.

7 Q February 6, 2018 and February 20th, 2018?

8 A Maybe one of those. I went two hearings over the entire 18
9 months, I believe.

10 Q All right. Sir, can we agree that once you sued Danny Simon,
11 you no longer were looking to him for legal advice?

12 A I expected him to complete his job.

13 Q That's not my question to you. My question is can we agree
14 that since you're not verbally communicating with him, you listened to
15 advice from a different office that's inconsistent with his advice, and you
16 sued him, and that you have effectively stopped listening to his advice?

17 A No.

18 Q No?

19 A No.

20 Q You just think you can sue lawyers and make them work for
21 free?

22 A No.

23 Q Well, that's what you put in your affidavit is that Danny was
24 paid in full as of September of 2017, and you expected him to finish what
25 you paid him for?

1 A Correct. I did expect him to finish what he was paid for.

2 Q But I thought, sir, you were paying him an hourly rate.

3 A Correct.

4 Q So he was supposed to work those hours for free?

5 A No.

6 Q Sir, you put three different times he was paid in full in
7 September of 2017.

8 A He was paid in full for every bill he submitted, correct.

9 Q But you expected him to finish the job while you were suing
10 him?

11 A Yes.

12 Q For free?

13 A No.

14 Q Okay. When -- you're going to pay him?

15 A If he submitted a bill, correct.

16 Q See, that's what I'm trying to figure out, Mr. Edgeworth.

17 What was this agreement you think you had with Mr. Simon? Because
18 what you put in your affidavits, all of them, is that Mr. Simon was paid
19 for the hours he captured and put in his will. Captured is my word, not
20 yours. Right?

21 A Yes, he was paid for all his time.

22 Q But you know darn good and well and have from the outset
23 of talking to your friend, Danny Simon, who to quote you was going to
24 do it as a favor, that he wasn't putting all his time in those bills. You
25 know that?

1 A No.

2 Q Sir, you just told the Court Danny took the case as a favor.
3 Do you remember that?

4 A Yeah, and a week later, he started billing me.

5 Q And you -- a week later, he started billing you?

6 A Yeah. On June 10th, when it became clear that he had to file
7 a lawsuit, because they weren't going to agree, he phoned me and told
8 me he was going to incur a bunch of costs and that he would need to
9 start billing me \$550 an hour, which was his board approved rate, and I
10 would get it back when I won from the Lange parties and the 550 was
11 based on his experience in litigation and everything else and was
12 approved by judges.

13 Q So now that conversation took place June the 10th. Is that
14 what your testimony is?

15 A It always took place June the 10th.

16 Q No. In all three of your affidavits, it took place at the outset
17 of your retention, which was May the 27th. We've already determined
18 that.

19 A The outset --

20 Q Sir -- sir --

21 A -- of the case.

22 Q -- did you put the --

23 MR. GREENE: May he answer the question, Your Honor? He
24 just cuts him off.

25 MR. CHRISTIANSEN: It's leading, and it's permissible.

1 THE COURT: Okay. Mr. Christiansen, I want to know what
2 the answer to this question is, so, sir, answer the question.

3 THE WITNESS: Danny met with me at the 28th at Starbucks
4 and took the case. He said --

5 THE COURT: 28th of May?

6 THE WITNESS: 28th of May 2016. I emailed him on the 27th
7 of May 2016, to see if he could help me out with this thing, because
8 everyone said it's a slam-dunk. They have to pay. They're all liable.
9 There's a contract, everything else. They're just yanking you around. I
10 reached out to him. He agreed to meet with me. We met at Starbucks. I
11 gave him a summary of all the entities involved and who's who, et
12 cetera. We talked about it.

13 He said that he would write a few letters, which is why when
14 you asked me when was he retained, he sent letters to these other
15 people who was Kinsale at the time, Viking, someone else, saying that I
16 had retained him. That's what the letters said. They were like retention
17 letters. Then they blew him off back and forth a little bit. Around, I
18 believe it was the 9th of June, he said they aren't going to settle. They
19 aren't going to do it. We need to file a lawsuit against them. This is
20 going to start costing me some money.

21 And he gave me the whole pitch, and I agreed. I said I
22 accept. That's fine. And on the Tuesday -- that's on a Friday. On the
23 Tuesday, he filed a lawsuit on June 14th against these entities. It's as
24 simple as that. That should clarify it.

25 Q Okay. Did I allow you to complete that answer?

1 A I believe so.

2 Q Okay. So, it is true that on May the 27th or the 28th at
3 Starbucks, Danny never told you his fee was 550 an hour?

4 A No.

5 Q No, he did or no he didn't?

6 A I'm sorry. I'm getting flipped with the way you asked the
7 question.

8 Q Okay.

9 A No, he never told me that date that his fee -- of May 27th or
10 28th, that his fee was 550 an hour.

11 Q Nor did he ever tell you his associate's fee was 275 an hour?

12 A Correct.

13 Q And sir, you didn't get a bill from an associate until 14
14 months after Mr. Simon was retained by you according to your
15 affidavits. Is that fair?

16 A Likely. I'd need to review the bills to be positive, but likely.

17 Q Okay. You're a smart guy, right? Harvard MBA?

18 A I assume so.

19 Q Got lots of lawyers, right?

20 A What do you mean, lots of lawyers?

21 Q You've hired -- for -- I'll give you a simple example. You
22 hired a lawyer as an expert in this -- in the underlying case, correct?

23 A Under the advice of my lawyer, yes, I did.

24 Q All right. You hire lawyers. I mean, you have businesses, I
25 think in China, correct?

1 A Yes.

2 Q All right. You've dealt with lawyers in your life, correct?

3 A Yes, I have.

4 Q In the underlying case, you hired a guy named Crane
5 Pomerantz, former United States Attorney?

6 A Correct.

7 Q To opine about the conduct of one of the defendants, fair?

8 A I think the scope was broader, but correct, he was hired.

9 Q And can we agree that Mr. Simon never presented you an
10 hourly retainer fee agreement?

11 A No, he never presented me one.

12 Q And you know what those look like, right?

13 A Somewhat, yes. They look --

14 Q I'll show you --

15 A -- different.

16 Q -- Exhibit 62 and that's your signature, Mr. Pomerantz'
17 signature. Crane works over at Sklar Williams. Dated September 6,
18 2017. Fair?

19 A Fair.

20 Q It's an hourly retainer, where it talks about you having to
21 advance costs, right?

22 A I don't think I advanced Crane costs. He bills me for them in
23 arrears.

24 Q Monthly?

25 A I don't think he billed monthly, either. He didn't send me the

1 bills, he sent them to Simon.

2 Q Generally monthly? See where I've got my finger?

3 A Maybe they wrote down their agreement. I don't know if
4 they billed monthly or not. You could find out, because it would be in
5 the case file.

6 Q When you're late, you have to pay him interest?

7 A Okay.

8 Q Nothing like this was ever presented to you by Mr. Simon,
9 fair?

10 A Nothing like that was ever presented to me by Mr. Simon.

11 Q And other than yourself and this June phone call, which by
12 the way, in any of the three affidavits you signed, do you talk about a
13 June 10th phone call, where Danny told you his rate was 550 an hour?

14 A I don't know.

15 Q What do you mean you don't know?

16 A I don't think so.

17 Q I'm sorry?

18 A I didn't reread these before the case, sir. I'd be more than
19 happy to read them now and tell you positively. I don't think so.

20 Q You don't think so. So, that's new testimony here mid-
21 August\ 2018, if it's not in your affidavits.

22 A Okay.

23 Q Correct?

24 A Correct.

25 Q Okay. Because --

1 A Unless it's been --

2 Q Unless what?

3 A Unless it's been presented, and one is -- something that
4 John's written. I don't know.

5 Q Okay. Well, you -- I'll show you your affidavit. This is your
6 first one. Oops, sorry.

7 MR. CHRISTIANSEN: It's -- sorry, John, 16 -- Exhibit 16.

8 BY MR. CHRISTIANSEN:

9 Q It is dated the 2nd of February 2018. Is that right?

10 A Correct. I see it down there.

11 Q See my finger again?

12 A Yeah.

13 Q All right. And that's your signature?

14 A Correct.

15 Q Let's just look right above here. You just told the Judge you
16 didn't think Mr. Simon should have to finish your work for free.
17 Remember that? Remember just testifying to that?

18 A Yes.

19 Q Let's look at paragraph 21. We're not thrilled to have him as
20 an attorney, but we don't want to pay more than we've already had to
21 pay to get someone else up to speed. Plus, we've already paid nearly
22 500,000 to Simon and his change of heart and fee only came about when
23 the claims in the litigation were, for all intents and purposes, resolved.
24 Since we've already paid him for this work to resolve the litigation, can't
25 he at least finish what he's been retained and paid for?

1 Did I read that correctly?

2 A Correct.

3 Q So in this paragraph, under oath, you claim that finishing up
4 the litigation is something you've already paid Danny in full for, correct?

5 A That doesn't say that.

6 Q He's been retained and paid for. It absolutely says that.

7 A Since we've already paid him for this work to resolve the
8 litigation, can he at least finish what he's been retained and paid for?

9 Q You've already paid him is what you're telling the Judge
10 when you --

11 A For all the work he's done to that point.

12 Q Can't he just finish what he's been retained and paid for?
13 That's what you told the Judge in this affidavit, right?

14 A Correct.

15 Q Okay. That's inconsistent with what you just told me a few
16 minutes ago, which was that you were still willing to pay Danny.

17 A I don't think it's inconsistent.

18 Q All right. Let's look, sir, if you would --

19 MR. CHRISTIANSEN: -- I'm looking at page 1 of Exhibit 16,
20 Mr. Greene.

21 BY MR. CHRISTIANSEN:

22 Q Line 3 says, on or about May 27th, on behalf of -- I, on behalf
23 of Plaintiffs, retained Simon.

24 Did I get that correct?

25 A Correct.

1 Q And if I go down to paragraph 6, it says, at the outset of the
2 attorney-client relationship, Simon and I orally agreed Simon would be
3 paid for his services by the hour at an hourly rate of 550. Did I read that
4 correctly?

5 A Correct.

6 Q That's inconsistent with your testimony today, correct?

7 A I don't think it is.

8 Q Okay. You didn't know what outset meant when you wrote it
9 back then?

10 A I didn't write it. I signed it, but I don't think it's inconsistent,
11 regardless.

12 Q Okay. You go on to say, for example, Simon billed us at 550.
13 His associate billed us at 250 -- 275 --

14 A 275.

15 Q -- an hour. You didn't know Danny Simon was going to
16 charge you 275 an hour until 14 or 15 months after you retained him,
17 right?

18 A Correct.

19 Q So, you never had an agreement with Danny Simon about
20 his associate's bill from the outset of your litigation. That's a fantasy,
21 correct?

22 A Correct.

23 Q All right. And to imply or tell the Court that you did is very
24 similar to saying what you did on page 1, that from the outset, Danny
25 Simon told you he was 550 an hour, right? That's a fantasy, too, because

1 the outset was May 27th or May 28th, right?

2 A That's incorrect.

3 Q Sir, I didn't write these, and I didn't sign them.

4 A Okay.

5 Q Right? You said you retained Danny May 27th, right?

6 A Correct.

7 Q Then you said at the outset, he told you his fee was 550 an
8 hour and that's what you agreed to, correct?

9 A Correct.

10 Q That's a fantasy. That's not true, correct?

11 A No, it's not. That's ridiculous. The -- it's --

12 Q Mr. Edgeworth --

13 A -- a 24-month case. You're trying to define the outset as one
14 day and not one week later. It's a general term.

15 Q Sort of like when you write all these affidavits saying that he
16 told you his associate was going to bill you at 275 an hour, and then hit
17 the stand and agree in front of Her Honor that you never knew that until
18 14 or 15 months after he was retained?

19 MR. GREENE: Your Honor, these questions have been
20 asked --

21 THE WITNESS: Is that a question, sir?

22 MR. GREENE: -- and answered.

23 MR. CHRISTIANSEN: It is.

24 THE COURT: Hold on --

25 THE WITNESS: No.

1 THE COURT: -- sir.

2 THE WITNESS: Is there a question on the end of it?

3 THE COURT: Hold on, Mr. Edgeworth.

4 THE WITNESS: Sorry.

5 MR. GREENE: Your Honor, this is like the fourth or fifth time
6 this question has been asked and answered. It just keeps getting asked,
7 Your Honor. We'd ask that he be asked to move on.

8 THE COURT: Well, I mean, he said that 275 was never told to
9 him until 14 months later, Mr. Christiansen. He's already acknowledged
10 that, so we can ask another question.

11 MR. CHRISTIANSEN: Okay.

12 BY MR. GREENE:

13 Q Other than yourself, Mr. Edgeworth, did anybody else hear
14 Danny Simon tell you his rate was 550 an hour at the outset?

15 A I don't know if anybody was on the phone at his end.

16 Q Anybody on your end on the phone?

17 A No.

18 Q Did you record it?

19 A No.

20 Q There's -- Mr. Christensen had some estimation for pages of
21 emails over here.

22 A How many pages?

23 Q A lot more than I felt like reading this weekend, I can tell you
24 that much. Did you find a single email from yourself confirming that
25 rate?

1 A I didn't look through the emails, sir.

2 Q Can you point me to a single email confirming that rate?

3 A Yeah, Danny Simon emailed me bills constantly.

4 Q That's not what I asked you, sir. I asked you can you point
5 me to an email of yours confirming the rate of Danny Simon at 550 an
6 hour from the outset of this litigation that you told the Judge he took as
7 a favor?

8 A I don't know. I'd have to look.

9 Q So, is that a different way of saying you've never been able
10 to identify an email confirming that in writing?

11 A I guess so.

12 Q Okay. Getting a little out of order, which is making Ms. Ferrel
13 nervous, but let's turn to paragraph 11. As I understand from listening to
14 Mr. Vannah's opening statement this morning and from reading your
15 affidavits, it's your contention that Danny -- or that you really did all the
16 heavy lifting in the case that effectuated or made it worth 6 million bucks
17 against Viking, correct?

18 A Definitely.

19 Q Okay. And sir -- and I mean this not in a pejorative sense, but
20 you're not a lawyer, fair?

21 A No, I'm not a lawyer, sir.

22 Q You can't walk into a courtroom in the 8th Judicial District
23 Court for the State of Nevada, County of Clark and make an appearance,
24 correct?

25 A I don't know. Can I? I don't know.

1 Q You didn't make any court appearances?

2 A No, I did not.

3 Q Didn't argument any motions?

4 A No, I did not.

5 Q Didn't file any motions?

6 A No, I did not.

7 Q You didn't get any experts excluded?

8 A No, I edited those things, but I didn't file them.

9 Q You didn't get evidentiary hearings to strike answers

10 granted?

11 A No.

12 Q You didn't do any of that?

13 A No.

14 Q But your work is what made the case worth 6 million bucks?

15 A Correct.

16 Q Have you ever been qualified to testify as an expert on the

17 value of services rendered by a nonlawyer?

18 A No.

19 Q Right. Because you bill at like a buck-fifty an hour, right?

20 A No.

21 Q You were billing American Grating to be reimbursed for your

22 time, right?

23 A No, I billed during the remediation cleanup.

24 Q All right. How was -- what did you make an hour?

25 A Pardon me?

1 Q What were you billing at per hour?

2 A \$150 --

3 Q That's what I said. I'm sorry, I said buck-fifty.

4 A That's not what you said that I was doing. You said I billed
5 on the case on \$150 an hour. Just to clarify what I billed on.

6 Q And in fact -- and if you want to look at what you think
7 attorneys should be paid at, I mean, you're paying very fine lawyers, Mr.
8 Greene and Mr. Vannah 975 bucks an hour, right?

9 THE COURT: 925, Mr. --

10 MR. CHRISTIANSEN: 925. Sorry. My eyes are terrible,
11 Judge. I apologize.

12 THE WITNESS: Correct.

13 MR. CHRISTIANSEN: Mr. Vannah wishes it was 975.

14 MR. VANNAH: Probably should be, but I'm not trying to get
15 quantum meruit here.

16 BY MR. CHRISTIANSEN:

17 Q Now, you're willing to pay lawyers to come sort of button up
18 a settlement at 925 an hour, fair?

19 A When somebody threatens me, yes.

20 Q Okay. And that wasn't litigating a complex product case,
21 fair?

22 A Pardon me?

23 Q Mr. Vannah and Mr. Greene didn't come in to litigate a
24 complex products defect case. Isn't that true?

25 A They're litigating a pretty complicated case.

1 Q And for that they're fudging or disputing with you what Mr.
2 Vannah's worth. You're willing to pay him 925 an hour?

3 A I had little choice.

4 Q And Mr. Greene as well?

5 A Correct.

6 Q And as I read your first affidavit, Mr. Edgeworth -- because
7 you took it out of the second two -- in your first affidavit, you told Her
8 Honor that the case blossomed in the fall of 2017, right?

9 A Late summer.

10 Q I'm sorry?

11 A Yeah, later summer, early fall.

12 Q That's not what you said. You said fall.

13 A Okay.

14 Q Did you say fall, or did you say summer?

15 A I don't know. Why don't we look? I'm not sure.

16 Q I mean, it's convenient today you're trying to make it
17 summer, because in the affidavit, you said fall, right?

18 A Can I see the words, please?

19 Q Just tell me if you remember what you said.

20 A No, I do --

21 Q I'll show them to you.

22 A -- not remember.

23 Q All right. Paragraph 11, I think is the --

24 THE COURT: And which affidavit, is this Mr. Christiansen.

25 MR. CHRISTIANSEN: This -- the February 2nd one, Your

1 Honor, is Exhibit 16.

2 THE COURT: Okay.

3 BY MR. CHRISTIANSEN:

4 Q It says, s discovery in the underlying litigation neared its
5 conclusion in late fall, 2017. Let's just stop right there. Was my memory
6 accurate or yours? You said fall, right?

7 A Can you read back your question, please?

8 Q No. We can't. This isn't a deposition. We can --

9 A Yeah, I believe you said --

10 Q -- you can answer my question.

11 A -- as the case blossomed in the late fall of 2017.

12 Q Okay. We're going to get there.

13 THE COURT: And is that what the document says, sir?

14 THE WITNESS: That's not what he just read. He said as
15 the -- if I read the document, it says, as discovery in the underlying
16 litigation neared its conclusion in the late fall of 2017, after the value of
17 the case blossomed from one of property damage of approximately half
18 a million to one of significant.

19 It doesn't define when the case blossomed. You put that
20 before --

21 BY MR. CHRISTIANSEN:

22 Q I didn't write it, man, you did.

23 THE COURT: Okay. So, sir, you dispute that you're saying
24 that in this affidavit that the case blossomed in the fall of 2017?

25 THE WITNESS: Well, I don't know what he means by

1 blossomed. It really started --

2 THE COURT: Well, that's -- it says blossomed in this
3 document. Are you looking at it right here. Are you disputing that --
4 nowhere in there does it say summer. Would you disagree with that
5 statement?

6 THE WITNESS: Correct.

7 THE COURT: Okay. Mr. Christiansen.

8 BY MR. CHRISTIANSEN:

9 Q All right. Sir, so we're clear, you and/or attorneys working on
10 your behalf, not employed at Danny Simon's law office wrote this --

11 A Correct.

12 Q -- affidavit?

13 A Correct.

14 Q So to quarrel with me about the word fall or summer makes
15 very little sense, since I didn't write it. Fair?

16 A Correct.

17 Q Okay. And you say the value of the case -- after the value of
18 the case blossomed -- that's another term not chosen by me. It's just
19 simply in your affidavit, correct?

20 A Correct.

21 Q And then you go on to say you wrote an email, right? The
22 purpose of which was -- the purpose of the email was to make it clear to
23 Simon and then it says, we'd never had a structured conversation about
24 modifying the existing fee agreement from an hourly to a contingency
25 agreement.

1 Did I read that correctly?

2 A Yes, you did.

3 Q Did you mean to say structured conversation?

4 A Oh yeah, I see the typo.

5 Q All right. Now, that email, sir, is dated August the 22nd,
6 2017, correct?

7 A Correct.

8 Q That email -- is it written -- according to you -- your historical
9 version of events contained in these affidavits, is that that email was
10 written at a time after the case had blossomed, correct?

11 A Yes, it was.

12 Q Tell the Judge what the global offer was between all the
13 Defendants, any of them, the day you wrote that letter? Did you have
14 one --

15 A Which letter?

16 Q -- dollar on the table for you to accept the day you wrote the
17 August 22nd email to Danny Simon about a contingency fee?

18 A No.

19 Q Not one dollar?

20 A No.

21 Q Had Mr. Simon filed -- been able to obtain a second 30(b)(6)
22 deposition?

23 A I don't know what a 30 --

24 Q I know you don't. That's the point. Had Mr. Simon been able
25 to have experts like Rosenthal [phonetic] precluded by the Court?

1 A By August 22nd?

2 Q Yeah.

3 A I'm not sure.

4 Q Had Mr. Simon moved for summary judgment against
5 Lange?

6 A He moved for that, yes.

7 Q Before August 22nd?

8 A He --

9 Q I got the registered action, so if you want to bicker with me
10 about dates --

11 A I'm not bickering with you, sir. I'm -- you're asking me about
12 a specific date.

13 Q Yeah.

14 A If I'm not sure, I'm just telling you.

15 Q Okay. So, you don't know?

16 A I don't know.

17 Q All right. Had he moved to strike the answer of Viking?

18 A I don't know by that date.

19 Q Had he effectuated a protective order, so that you guys could
20 receive a document dump from the Viking entities?

21 A I don't know if it was by that date. We did receive documents
22 and some large dumps well before that date.

23 Q All right. And those documents were received -- when you
24 told the Court or you heard Mr. Vannah say that you went out and did all
25 this work, the documents that ultimately you and Mr. Simon's office

1 reviewed were an overwhelming majority of which came from these
2 document dumps obtained in the litigation, correct?

3 A The key pieces of evidence. Some of it was there. Some of it
4 was not, correct.

5 Q Okay. It wasn't your efforts that got those documents. It was
6 Danny's, right?

7 A It was my efforts that got the documents.

8 Q Well, what did you file that got those documents? You're not
9 a lawyer.

10 A I didn't file something to get documents. I found the
11 documents.

12 Q No. You looked at documents. Ashley Ferrel put in a
13 Dropbox link for you --

14 A Correct.

15 Q -- that were obtained by Danny Simon's law office as your
16 lawyer, correct?

17 A Correct.

18 Q Okay. So, you didn't obtain the documents. Danny did.

19 A That's not exactly true. There was a whole bunch missing,
20 which he said they weren't missing, and I kept demanding, which
21 actually became the essential documents in the case, and he had to keep
22 refiling and refiling and refiling to get the UL documents.

23 Q And those refiling and refiling and refiling, did you do any of
24 that work?

25 A I edited a lot of the stuff, yes.

1 Q Did you sign any of the pleadings?

2 A No.

3 Q Did you go to court for any of the hearings?

4 A No, I did not.

5 Q Did you obtain favorable rulings on any of it?

6 A No, I did not.

7 Q That was all done by Mr. Simon?

8 A Correct.

9 Q On this case he took as a favor, right? That's what you said,
10 not me.

11 A Wasn't a --

12 Q Yes or no?

13 A -- favor after half a million dollars of fees were paid.

14 Q Sir, you know, you've done that throughout your affidavits,
15 and I want to call you on it right now. You haven't paid Danny Simon a
16 half a million dollars in attorney's fees. That's another one of your
17 fantasies, correct?

18 A No. What's a fantasy?

19 Q Fake, pretend.

20 A I paid him --

21 Q Conjured out of whole cloth.

22 A I've paid him \$560,000.

23 Q How much in attorney's fees, sir? I know you like to use the
24 big number, because it makes you feel better. How much in attorney's
25 fees? Mr. Vannah was candid with the Court this morning, and he told

1 the Judge --

2 MR. CHRISTIANSEN: -- it was like 580, Bob? 380.

3 BY MR. CHRISTIANSEN:

4 Q 380 in attorney's fees, right?

5 A That sounds correct.

6 Q So every time -- just like you did just now, when you're under
7 oath, in these affidavits and just now on the stand say you've paid him,
8 as if it's fees, 500,000, that's misleading, right?

9 A It most certainly isn't.

10 Q Because --

11 A I've written checks to Simon for \$560,000, and they've been
12 cashed and cleared. I don't see how that's misleading, sir.

13 Q Because it presumes those were monies to be kept by him as
14 opposed to like in a personal injury case, he was fronting your costs to
15 the tune of 200,000 bucks, right? Because that's the truth, right?

16 A What is the truth, sir?

17 Q Sir, it doesn't seem like you understand it, but isn't it true he
18 fronted? In other words, he --

19 MR. GREENE: Your Honor, that's just completely
20 inappropriate to be making that kind of an accusation against a witness.
21 I mean, we're all getting along here just fine, but he can't say stuff like
22 that for heaven sakes.

23 MR. CHRISTIANSEN: Judge, he told me he didn't
24 understand the truth. I don't --

25 MR. GREENE: He just called him a flat-out liar, Judge, and

1 that's just inappropriate. Just -- can we just ask questions and get
2 answers for heaven's sake?

3 MR. CHRISTIANSEN: I'm trying.

4 THE COURT: Okay, Mr. Christiansen, can we just phrase --

5 MR. CHRISTIANSEN: Sure, Your Honor.

6 THE COURT: -- and ask a question?

7 BY MR. CHRISTIANSEN:

8 Q Isn't it true you have paid Danny Simon attorney fees less
9 than \$400,000?

10 A That sounds about right.

11 Q So would you agree with me that when you say you've paid
12 Danny Simon -- and you do it everywhere in these affidavits -- in excess
13 of \$500,000, you implicitly know that a big chunk of that he paid off to
14 front your costs, right?

15 A Every business you pay pays something for whatever. It
16 doesn't deny the fact --

17 Q Sir, that's a yes or no question.

18 A -- you paid the business.

19 Q It's a yes or no question. Every time you wrote, you paid
20 Danny in excess of 500,000, implying that he kept all that money, you
21 knew darn good and well, part of what he paid -- close to 200,000 in
22 costs, he fronted for your case, right?

23 A I know he paid costs, correct.

24 Q And so, every time when you say I paid Danny in excess of
25 500,000, as if that money Danny kept, you knew that to be misleading,

1 correct?

2 A It's not misleading in the least.

3 Q All right. Let's go back to your affidavit, when this case had
4 blossomed from all your hard work. And that's your version of events,
5 sir? Did I get that correct?

6 A Correct.

7 Q All right. The date of your email is August 22nd, 2017,
8 correct?

9 A Correct.

10 Q Tell the Judge what the offer was from Lange to pay you the
11 day you wrote that contingency email to Danny Simon.

12 A I don't know that there was one.

13 Q Tell the Judge what the offer was from Viking, the entity that
14 ultimately paid you \$6 million the day you wrote that email?

15 A Nothing.

16 Q Zero. Right?

17 A Yes.

18 Q So nothing had blossomed, as you wrote in your affidavit. If
19 the offer is zero, nothing blossomed. Can we agree on that?

20 A I don't agree, but --

21 Q Well, what can you buy with zero?

22 A I agree the offer was zero.

23 Q Okay. This morning, you heard Mr. Vannah tell the Judge
24 that in your last meeting with Danny Simon, he presented you a contract
25 and wanted you to sign it. Remember hearing that?

1 A Yes.

2 Q That's not true, is it? When you and your wife, Angela, went
3 to Danny's office November the 17th to meet with him about what was
4 going on in court that very morning, right, he had to come over here in
5 front of Judge Jones that morning --

6 A Correct.

7 Q -- right? He didn't give you anything and try to force you to
8 sign it, did he?

9 A He tried to force us to sign something, yes.

10 Q He gave you a document.

11 A No, he wouldn't let us leave with anything.

12 Q What did he try to force you to sign?

13 A We don't know. That was such a free for all meeting, where
14 he was saying you need to sign a fee agreement where I get \$1.2 million.
15 You need to sign this, so I get one and a half million. That's fair. There
16 was so much said, even as we left. That's why we asked for something
17 to leave with. As we drove back, neither one of us could agree on what
18 he was even asking for.

19 Q So to date, you don't have any document he supposedly was
20 trying to force you to sign?

21 A No. He emailed it on the 27th, when I insisted he put it down
22 in writing.

23 Q And that was in response to your November 21st email,
24 right? Where you were laying out for him what you thought the real
25 value of your case was?

1 A I beg your pardon?

2 Q You wrote an email to him the 21st saying here's the value of
3 my case. This was after you'd settled it for 6 million bucks. You only
4 thought the value was 3.8. Remember that?

5 A No. Danny Simon called me while he was in Machu Picchu
6 repeatedly after the 17th asking what we were going to agree to on his
7 bonus fees and insisting we come to an agreement on something, and
8 then at one point on one of the phone calls he says, give me a list of all
9 your costs in this case, what you feel your damages, or costs, or
10 whatever was. I cut and pasted an Excel thing and emailed it to him. A
11 couple days later, he called. Every time he had cell reception, he'd call
12 and kept saying well, are you going to give me this? I feel I deserve this.
13 I feel I deserve this.

14 And then finally, when I said look, I'm not going to keep talking
15 about this topic until you put something down that is structured in
16 writing that is cogent, and I can read and understand what you're even
17 talking about, I'm not going to discuss this anymore. And then on the
18 27th, he sent the email. So, if that's in response to the 21st, I agree, but
19 there was other stuff.

20 Q Let me show you your email from the 21st.

21 MR. CHRISTIANSEN: John, it's 39.

22 BY MR. CHRISTIANSEN:

23 Q That's your email address at pediped?

24 A Pediped.

25 Q I'm sorry. I apologize, pee-dee-ped (phonetic)??

1 A Everybody says pedi, but it's not a big deal. Pee-dee-ped,
2 though.

3 Q Pee-dee-ped. All right.

4 A The I makes the E long.

5 Q Okay. This is dated November 21, '17?

6 A Yes.

7 Q And this is from you to Danny?

8 A Yes.

9 Q And you have line items on this; is that accurate?

10 A It is very accurate.

11 Q And you have legal bills, costs not billed yet.

12 A Correct.

13 Q That's blank.

14 A Correct.

15 Q So you know you owe him money?

16 A Yeah. His last bill was like September 26th or something like
17 that. And this is November.

18 Q So you're aware you owe him money?

19 A Correct.

20 Q So when you signed those affidavits that I just showed you,
21 saying that he'd been paid in full, that wasn't accurate, correct?

22 A It depends what -- you're twisting words here.

23 MR. GREENE: How -- Your Honor, how many times are we
24 going to be asked. I object. Asked and answered. He's already
25 answered this question. To him, that's not what it means. And he's

1 admitted that he owes more fees. Do we need to go into this again?

2 MR. CHRISTIANSEN: Judge, he sued him, saying he'd been
3 paid in full, and he was owed nothing else. Do you want me to show the
4 paragraph in --

5 THE COURT: I mean, he said that in the affidavit, but there's
6 also this \$72,000 that's undisputed that is like there's a bill, and then it
7 was submitted, now resubmitted, so I know that that's still an issue. Is
8 that what you're referring to?

9 MR. CHRISTIANSEN: No, Judge. That's -- those are some
10 costs. I just want to know whether -- I'll change it around, so nobody can
11 say I'm taking stuff out of order, Judge.

12 THE COURT: Okay.

13 BY MR. CHRISTIANSEN:

14 Q Do you know, Mr. Edgeworth, one way or another, when you
15 filed the lawsuit on January the 4th, did -- isn't it true you claimed that
16 Danny Simon had been paid in full?

17 A No, I don't think that that claim was made.

18 Q You don't think that was made?

19 A Because he was paid in full for every bill he has given us.
20 That's the claim.

21 Q Okay. I'm looking --

22 MR. CHRISTIANSEN: This Exhibit 19, John.

23 BY MR. CHRISTIANSEN:

24 Q -- at the complaint, Mr. Edgeworth. Are you with me?

25 A Yeah, that's the 4th?

1 Q That's the 1st -- yes, sir, the 4th. I'll show you the date, so
2 you can --

3 A I see it, yeah.

4 Q Got it? All right. See paragraph 36 and just read along with
5 me. Simon admitted in the litigation that the full amount of his fees
6 incurred in the litigation was produced in updated form on or about
7 September 27, 2017.

8 Did I read that correctly?

9 A Correct.

10 Q The full amount of his fees, as produced, are the amounts set
11 forth in the invoice that Simon presented to the Plaintiffs and that the
12 Plaintiffs paid in full.

13 Did I read that correctly?

14 A Correct.

15 Q Then I go down to -- see my highlights there?

16 A Yes.

17 Q That the contract has been fully satisfied by Plaintiffs, that
18 Simon is in material breach of the contract, and that the Plaintiffs are
19 entitled to the full amount of settlement proceeds.

20 Did I read that correctly?

21 A Correct.

22 Q So in your law suit, you claim that you're entitled to all the
23 settlement proceeds and Danny's been paid in full, right?

24 A For everything he's invoiced, yes.

25 Q Did the word invoice appear in any of what you and I just

1 read?

2 A I don't know. I believe you're taking it out of the context,
3 but --

4 Q Sir, did the word invoice appear in anything I just read?

5 A No.

6 Q That's not what it said, right? You took the position when
7 you sued your lawyer that got you 6 million bucks, a figure you agree
8 made you more than whole, that he was entitled to nothing, correct?

9 A That's not the position I took, and it isn't --

10 Q Is that the position that --

11 A -- the position we've ever taken.

12 Q Is that the position I just read for you in the complaint?

13 A I just told you I don't think that's what that means.

14 Q Do you remember saying that the money was solely yours
15 that was put in this trust account?

16 A It should be solely mine, correct.

17 Q So that means Danny's not entitled to anything, correct?

18 A That's not true. I have money in my Wells Fargo account. If
19 somebody gives me an invoice, the money in my Wells Fargo account is
20 still solely mine, but it would still paid their invoice.

21 Q All right. When you hired Danny, did he tell you he didn't bill
22 clients?

23 A No. He said he's had cases like ours and he repeated this,
24 that he's billed hourly and got 40 percent contingency at the end of the
25 case, and he says he infrequently bills, and it's uncomfortable when he

1 has to send bills to people, but he incurs costs when doing, you know,
2 filings and stuff.

3 Q Okay. So, I think you're missing apples and oranges. Is what
4 you're trying to explain where Danny told you that at times, he had
5 prevailed on a thing called an offer of judgment, and then he has to go
6 and tell a court how much time he put into something, so that attorney's
7 fees might be awarded? Is that something you're sort of confusing?

8 A No, I don't think I'm confusing. Over the series of the case,
9 he's told me a lot of things, which I don't know -- I have no -- you know,
10 I'm not his accountant.

11 Q I didn't hear you. I'm sorry.

12 A I'm not his accountant, so I don't know for a fact anything
13 about the way he bills or anything else.

14 Q All right.

15 A He's said a lot of things over the course of the case. I don't
16 know which are true and which are not.

17 Q So let's start back in the beginning now. I've jumped around
18 a bit. Now I'm going to walk you through some stuff to see if I can use
19 your words, what you put in emails, and what you received in emails to
20 refresh your recollection.

21 A Okay.

22 Q All right.

23 MR. CHRISTIANSEN: So, the first is Exhibit 80, Bates stamp
24 3557, John.

25 THE COURT: And what did you say? Exhibit 80. And then

1 what did you say, Mr. Christiansen?

2 MR. CHRISTIANSEN: Bates stamp 3557.

3 THE COURT: Okay.

4 BY MR. CHRISTIANSEN:

5 Q All right. That's the day you've been talking to us about, Mr.
6 Edgeworth, when you were emailing and talking to Mr. Simon?

7 A Correct.

8 Q May the 27th?

9 A Correct.

10 Q And emails are goofy things. They go in reverse order, so if I
11 go to where this string begins, it's from you to Danny. Here, I'll move it
12 down. I'm sorry, Mr. Edgeworth.

13 A Yeah. You can't see it.

14 Q Is that right?

15 A Correct.

16 Q And it starts actually by -- again, this is just how the threads
17 work. It says, hey, Danny. This is you sending Danny an email at 9:30
18 a.m.

19 A Correct.

20 Q I do not want to waste your time with this hassle. And then
21 in parenthesis, other than to force you to listen to me bitch about it
22 constantly, close paren. And the insurance broker says I should hire
23 Craig Marquis and start moving the process forward. So, I just do that
24 and not bother you with this?

25 Did I read that correctly so far?

1 A So far.

2 Q My only concern is that some (sic) goes nuclear, open paren,
3 with billing and time, close paren, when just a bullet to the head was all
4 that was needed to end this nightmare, open paren, and I do not know
5 this person from Adam, close paren.

6 Did I get that all correctly?

7 A Yes.

8 Q This is you initiating discussions with a friend of yours or an
9 acquaintance of yours about helping you?

10 A Correct.

11 Q All right. This is during the time he told you it was a favor?

12 A Correct.

13 Q But you had no discussion about hourly rates?

14 A Correct.

15 Q In response, Danny writes to you, I know Craig. Let me
16 review the file and send a few letters to set them up.

17 Did I read that correctly?

18 A Correct.

19 Q And what you and Danny had talked about was that he didn't
20 really want the case, right? He wanted to send a few letters to see if
21 some insurance company would come in, and cover your damages, and
22 go about and try to redeem their money they pay you from Viking or
23 whoever else. He's trying to set up an insurance company, right?

24 A We hadn't spoken about any of that at this point.

25 Q Okay. Maybe a few letters will encourage a smart decision

1 from them.

2 A Correct.

3 Q If not, I can introduce you to Craig, if you want to use him.

4 By the way, he lives in your neighborhood. Not sure if that's good or
5 bad.

6 A Correct.

7 Q All right. Somebody had recommended to you to hire Craig;
8 I think it's Marquis.

9 A Correct.

10 Q And you were reaching out to your friend saying, hey, can
11 you help me with this, because I don't want to get crushed or -- I don't
12 want somebody going nuclear, to use your words -- on the bills?

13 A Correct.

14 Q You were looking for a favor, too.

15 A Correct.

16 Q From your friend.

17 A For a referral, correct.

18 Q And he agreed to do you a favor.

19 A Correct.

20 Q No discussion of hourly rate, none?

21 A No.

22 Q And he started working, right, on your case?

23 A Not after this. The next day, maybe.

24 Q All right. He starts -- you brought him -- and I'll find the other
25 thread, because there's two threads from that day, from the 27th. The

1 other thread is -- you told Danny is it had taken you hours to put together
2 a summary, and you had read about somewhere between 600 and 1,000
3 documents?

4 A Correct.

5 Q And you had a box?

6 A Correct.

7 Q Like one of those boxes. Not a Dropbox. Like a box box.

8 A Close enough. It was a plastic box.

9 Q And it was too big, I think, you said to scan, or email, or
10 something. You wanted to give it to him. You had to physically give it
11 to him.

12 A Sounds about right.

13 Q All right. And then you say, after Danny emails you about
14 Craig and his willingness to introduce you to him, okay. I'll type up a
15 summary with all the documents today and get them to you somehow.
16 I'd rather pay you and get it resolved than have someone like Craig drag
17 this on forever.

18 A Correct.

19 Q And Danny says back to you, let's cross that bridge later.

20 A Correct.

21 Q He doesn't say I charge 550 an hour. Fair?

22 A No.

23 Q And this is the outset of your relationship with Mr. Simon in
24 this case, correct?

25 A Yes. It's --

1 Q The very beginning.

2 A -- it's the beginning, yes.

3 Q And then just so you -- your recollection from that same day,
4 Mr. Edgeworth, May 27th, you say -- and again, this is one of those goofy
5 emails that starts with the same exchange down here at the bottom.

6 A Uh-huh.

7 Q And then you -- somehow it becomes a different thread and
8 that's above my technical skills, but you say, dude, when and how can I
9 get this to you? Even typing up the summary is taking me all day
10 organizing the papers. There's at least 600 to 1,000 pages of crap.

11 A Correct.

12 Q And Danny writes, our job is not easy, laugh out loud,
13 however you want, right?

14 A Correct.

15 Q Too big to scan. I could drop it off at your house or meet you
16 somewhere tomorrow. I will not be done until very late tonight.

17 A Correct.

18 Q It was an all day project just to summarize?

19 A Yeah, I wrote a two-page summary, so that he wouldn't have
20 to read through all the junk, yeah.

21 Q Then he agrees on his day off, Saturday, to meet you at
22 Starbucks, right?

23 A Yeah.

24 Q 28th's a Saturday. I'll just tell you that.

25 A It is a Saturday, correct.

1 Q It is.

2 A I know.

3 Q And he takes time out of his family time to come meet you
4 Saturday at Starbucks?

5 A Correct. He met me at Starbucks on [indiscernible].

6 Q No discussion of fee?

7 A No.

8 Q It's a favor?

9 A Yes.

10 Q Okay. And that's the outset of your relationship with Danny
11 Simon?

12 A That's the very start of it, correct.

13 MR. CHRISTIANSEN: I'm sorry, Mr. Greene. I didn't tell you.
14 That second string is Exhibit 80, Bates stamp 3552 and 3. Sorry, Judge.

15 THE COURT: That's all right.

16 BY MR. CHRISTIANSEN:

17 Q Is it fair, Mr. Edgeworth, that at the time you go to your
18 friend looking for a favor -- I'll use your words -- you thought maybe a
19 carefully crafted bullet might get you some results, versus getting billed
20 a whole bunch by a lawyer you didn't know from Adam?

21 A Yeah. I thought if they -- if a lawyer just sent a letter, that
22 they would just say okay, we were just seeing if, you know, we could
23 reject your claim --

24 Q Got it.

25 A -- basically.

1 Q And that's what you were looking to Danny to do.

2 A Correct.

3 Q And you concede to me today, under oath, that you never
4 codified your relationship via a written agreement?

5 A Correct.

6 Q You never agreed those days, 27, 28 to 550 an hour?

7 A Correct.

8 Q Never agreed to an associate rate?

9 A Correct.

10 Q Never even talked about advancing costs?

11 A No.

12 Q No, you didn't talk about it? Or no, you did talk about it?

13 A No, we did not talk about advancing costs --

14 Q Thank you.

15 A -- on those two dates.

16 Q That was a poorly worded question by me, and I just want
17 the record to be clear. And so, this favor, for -- to use your words, was at
18 the beginning and there were no well-defined terms of your relationship.
19 Fair?

20 A Yeah.

21 Q And an example of that is just June 5th.

22 MR. CHRISTIANSEN: Mr. Greene, Exhibit 80, Bates stamp
23 3505.

24 BY MR. CHRISTIANSEN:

25 Q Which is June 5th, five days, a week later, maybe, of 2016,

1 when you -- these are those goofy emails again -- you write to Danny,
2 would you be writing this or do you need -- do I need to get Mark
3 Gatz -- in parenthesis, estate guy -- to do it? I would like to start moving
4 money Friday.

5 Did I read that correctly?

6 A Correct.

7 Q I think what you're referring to, Mr. Edgeworth, is like a
8 promissory note or a loan document?

9 A Correct.

10 Q Danny didn't know how to write a loan document, right?

11 A I don't know if he does or doesn't.

12 Q Well, you asked him if he'd be writing, and he answered you
13 back, send it to somebody else. That's not -- he said Mark Katz. That's
14 another lawyer.

15 A Correct.

16 Q Your lawyer?

17 A Correct.

18 Q He wanted you to have your other lawyer do this work?

19 A Correct.

20 Q And you were going to borrow money from -- I think you
21 borrowed it from your friend, who works at -- works for you and from
22 your mother-in-law?

23 A Correct.

24 Q And you borrowed money at an interest rate?

25 A Correct.

1 Q Two or 3 percent a month?

2 A Two and -- yeah, 2.65, and then 3 on the next notes.

3 Q So somewhere between 34 and 36 percent a year?

4 A I think -- well, 30 and 37 or something. Correct. Close
5 enough.

6 Q And those interest rates that you were -- those -- the interest
7 that you were incurring was in your mind -- and I'll show you how you
8 break it down here in a minute -- damages you were incurring because of
9 Viking's faulty sprinkler and/or Lange installing them?

10 A Yeah. The failure for them to pay to repair the damage,
11 definitely.

12 Q Got it. And it wasn't like at the time you didn't have the
13 money to finance the litigation different ways. That was just the method
14 with your Harvard MBA that you chose. Fair?

15 A Yeah, it's prudent.

16 Q It's -- I just didn't hear you.

17 A Prudent.

18 Q Prudent. You chose to borrow other people's money, give
19 them a big return on their loan or return on their investment, as opposed
20 to, for example, cashing your Bitcoin out?

21 A Correct. That's very prudent.

22 Q And those interest payments were monies over and above
23 whatever the hard number, the hard costs of the property damage was
24 done to your residence. Right? That's how you ultimately list them out?

25 A I'm not sure I understand. They're an expense of the

1 damages. Is that what you mean?

2 Q Yep.

3 A Yes, they're expenses.

4 Q And so everybody -- because you get involved in these cases,
5 you forget maybe some things aren't super clear when you start, but you
6 had about \$500,000 in hard cost damage to your house, and then some
7 future hard card cost damage that you needed to repair, correct?

8 A Yeah. It was between 3 and 8. You know, there was a lot of
9 different estimates, but that's fair.

10 Q And then ultimately, you had several hundred thousand
11 dollars' worth of interest you owed?

12 A Highly likely over two years, yes.

13 Q And those future damages, like replacing your kitchen
14 cabinets?

15 A Yes.

16 Q Have you replaced those kitchen cabinets?

17 A Yes. We've paid -- well, no. They haven't replaced them.
18 They've been paid to make them. They haven't come back to put them
19 in.

20 Q So a line item of damages that you collected for haven't been
21 replaced yet?

22 A No.

23 Q They're on their way, but just not yet?

24 A I don't know. I haven't called the guy.

25 Q All right.

1 A They better be on their way.

2 Q And as of June 5th, not even the scope of Mr. Simon's
3 representation has been determined, because he doesn't know if he's
4 supposed -- you don't know if he's going to write your loan agreements
5 or you should have somebody else?

6 A Correct.

7 Q Was in flux?

8 A Correct.

9 MR. CHRISTIANSEN: And Exhibit 80, Mr. Greene. Bate
10 stamps 3425 and 6.

11 BY MR. CHRISTIANSEN:

12 Q And so we're clear, did you get a bill in June for Mr. Simon's
13 work in May?

14 A June of 2016, sir?

15 Q Yes, sir.

16 A No.

17 Q Did you get a bill in July for Mr. Simon's work in May or
18 June?

19 A No.

20 Q Did you get a bill in August for May, June or July?

21 A No.

22 Q September?

23 A No.

24 Q October?

25 A No.

1 Q December?

2 A Yes.

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

5 A Yes. Correct.

6 Q Seven months after he started representing you?

7 A Correct.

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

10 A I think it was pretty generous.

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

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

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

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

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

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

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

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

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

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

3 THE WITNESS: Oh.

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

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

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

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

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

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

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

14 THE WITNESS: It's fair.

15 THE COURT: -- generous?

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

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

20 THE COURT: Okay.

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

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

23 THE WITNESS: Oh, I'm sorry.

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

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

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

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

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

5 THE COURT: Okay.

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

7 BY MR. CHRISTIANSEN:

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

9 A Uh-huh.

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

12 A Correct.

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

15 A Correct.

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

17 A No idea.

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

19 A A rate of interest?

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

21 A Oh, no.

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

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

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

4 Q No.

5 A -- insure --

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

7 A Correct. Yes.

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

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

11 Q Got it.

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

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

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

19 THE COURT: Okay.

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

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

24 MR. GREENE: Thank you, Your Honor.

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

1 MR. VANNAH: Thank you, Your Honor.

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

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

5 Mr. Christiansen, you may resume.

6 MR. CHRISTIANSEN: Thank you, Your Honor.

7 BY MR. CHRISTIANSEN:

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

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

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

16 A Okay.

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

19 A Okay.

20 Q Make sense?

21 A Okay.

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

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

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

3 A Okay, yes.

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

6 A Okay.

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

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

10 Q You see --

11 A I see, yeah, yeah.

12 Q Here, let me do my --

13 A I found it.

14 Q You've got it now?

15 A Yes.

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

18 A Correct.

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

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

23 Q All right. And --

24 A -- with certain things.

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

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

3 A Correct.

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

5 A Of my time?

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

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

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

12 A Correct.

13 Q All right.

14 A Correct.

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

16 A Correct.

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

23 Did I read that correct --

24 A Correct.

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

1 off, Mr. Edgeworth?

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

4 Q Okay. So --

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

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

10 MR. VANNAH: Yes, it is.

11 BY MR. CHRISTIANSEN:

12 Q Isn't that right?

13 A Pardon me?

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

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

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

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

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

21 BY MR. CHRISTIANSEN:

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

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

1 THE WITNESS: Between 7 and 8.

2 THE COURT: Okay.

3 THE WITNESS: Yeah, I see it.

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

5 THE COURT: Okay.

6 BY MR. CHRISTIANSEN:

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

9 A Uh-huh.

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

13 A Correct.

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

16 A Correct.

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

18 A Correct.

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

21 A Correct.

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

24 A Incorrect.

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

1 at your lawyers for answers, sir, please.

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

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

8 A Can I explain?

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

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

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

12 BY MR. CHRISTIANSEN:

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

15 A Zero.

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

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

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

25 A Okay.

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

4 MR. CHRISTIANSEN: All right.

5 THE COURT: -- in your argument.

6 MR. CHRISTIANSEN: Good enough, Judge.

7 BY MR. CHRISTIANSEN:

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

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

11 BY MR. CHRISTIANSEN:

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

18 Did I read that correctly?

19 A Correct.

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

21 A Yes.

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

23 A No.

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

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

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

5 A Yes.

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

8 A Correct.

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

11 A Correct.

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

14 A Correct.

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

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

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

19 A Correct.

20 Q And you authored this?

21 A Correct.

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

24 A Correct.

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

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

3 BY MR. CHRISTIANSEN:

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

6 A No. I put that on after this.

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

9 A Yes, I did.

10 Q You just didn't include it?

11 A Correct.

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

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

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

18 A They were --

19 Q Okay.

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

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

24 BY MR. CHRISTIANSEN:

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

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

4 A Yes, definitely.

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

6 A I can see it.

7 Q Okay.

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

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

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

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

14 A Correct.

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

16 A Correct.

17 Q And no cost for attorney's fees?

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

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

20 A I had no bill.

21 Q No hourly rate, correct?

22 A Correct.

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

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

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

5 A From Mr. Simon, correct.

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

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

9 Q True, thank you.

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

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

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

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

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

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

21 A No.

22 Q Had you been billed a dollar?

23 A No.

24 Q Had you paid any costs?

25 A No.

1 Q Had you located any experts?

2 A Pardon me?

3 Q Had you located any experts?

4 A No.

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

7 A Fair.

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

10 A Danny Simon.

11 Q Who was the expert?

12 A His brother-in-law.

13 Q And does he live here in Las Vegas?

14 A I do not know.

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

17 A Danny Simon.

18 Q Danny Simon?

19 A Correct.

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

22 A Correct.

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

25 A Correct.

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

5 A Okay, yeah.

6 Q -- that's all I get.

7 A That's right.

8 Q Does that appear about right?

9 A Yes, I seen it.

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

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

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

14 A We can only see --

15 THE COURT: We can only see your hand.

16 THE WITNESS: -- your hand, sir.

17 BY MR. CHRISTIANSEN:

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

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

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

23 A Correct.

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

1 A Yes.

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

3 MR. CHRISTIANSEN: 8.

4 THE COURT: 8.

5 BY MR. CHRISTIANSEN:

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

7 A Correct.

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

9 A Correct.

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

12 A Yes --

13 Q -- in the bill?

14 A -- it was 5/28.

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

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

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

18 A Yeah.

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

20 A Correct.

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

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

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

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

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

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

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

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

9 Q Okay. All right. All right.

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

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

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

15 Q You don't see the difference?

16 A No.

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

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

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

22 A Yes. But I wrote it all down.

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

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

1 Q Right --

2 A -- your meaning, like --

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

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

6 Q Okay.

7 A So --

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

10 A Craig Marquis, yeah. The guy --

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

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

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

14 A I think he wanted 50 grand, yeah.

15 Q You didn't want to pay that?

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

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

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

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

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

22 MR. CHRISTIANSEN: John, Exhibit 79.

23 MR. VANNAH: Thank you.

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

1 BY MR. CHRISTIANSEN:

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

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

7 Q That's right.

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

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

11 A Correct.

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

15 A Okay.

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

18 A Yes, it is.

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

21 A Yes.

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

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

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

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

5 Q You never deposited a retainer --

6 A No.

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

8 A No.

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

11 A It depends.

12 Q All right.

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

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

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

23 THE WITNESS: Oh.

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

25 THE WITNESS: Yeah.

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

2 THE WITNESS: Pay it again.

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

4 THE WITNESS: Yeah.

5 THE COURT: But does that mean something different?

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

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

9 THE COURT: You don't know.

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

11 THE COURT: Okay.

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

13 THE COURT: Mr. Christiansen.

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

15 THE COURT: It's okay, sir.

16 THE WITNESS: Yeah.

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

18 THE WITNESS: Okay.

19 THE COURT: -- you've answered.

20 THE WITNESS: Sorry.

21 BY MR. CHRISTIANSEN:

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

25 A Yeah.

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

2 A No, I don't think so.

3 Q February?

4 A No.

5 Q March?

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

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

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

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

14 A Correct.

15 Q And you got one bill?

16 A Correct.

17 Q No associate time, ever?

18 A I think that's correct.

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

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

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

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

24 THE COURT: 8?

25 MR. CHRISTIANSEN: 8.

1 THE COURT: Okay.

2 BY MR. CHRISTIANSEN:

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

5 A I don't think so, no.

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

9 A Yes.

10 Q And that was to John Olivas?

11 A I believe so.

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

13 A Correct.

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

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

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

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

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

22 THE COURT: Okay.

23 MR. CHRISTIANSEN: March the 6th --

24 THE COURT: Just so we have the record.

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