

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

CASE No. 82058 Filed
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18 **SIMON RESPONDENTS' APPENDIX IN SUPPORT OF ALL**
19 **RESPONDENTS' ANSWERING BRIEFS**

20 **VOLUME IV**

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1 REDIRECT EXAMINATION

2 BY MR. CHRISTENSEN:

3 Q In follow up on our last -- this last discussion that we had,
4 you were able to get cell phone records, at least for a period of time for
5 the entire case?

6 A Yes, sir.

7 Q But no landlines from the office?

8 A That is correct, yes.

9 Q Okay. So, if there was a long conversation between Mr.
10 Simon and Mr. Edgeworth, while Mr. Simon was sitting at his office on
11 his phone, we did not capture that time?

12 A That -- any time with phone calls at the office was not
13 captured, whether it was Mr. Simon, myself, talking to the experts or Mr.
14 Edgeworth, correct.

15 Q Or Mr. Miller?

16 A Or Mr. Miller, yeah. None of the office phones' times was
17 captured.

18 Q That's a good time on talking to experts or witnesses or --

19 A Correct. Anything from -- anything from the office was not
20 captured, yes, sir.

21 Q Okay. So, that's part of the time that is not reflected on the
22 timesheets that the Judge has?

23 A Correct.

24 Q Do you have a ballpark estimate on the amount of time in
25 addition to the phone calls that are not reflected in the timesheets that

1 the Judge has?

2 A I'm sorry, could you say that one more time?

3 Q Do you have an estimate of the number of hours that are not
4 reflected on the timesheets that have been submitted?

5 A Couple -- yeah, a couple hundred probably.

6 Q Okay. That's a ballpark estimate?

7 A Ballpark. I don't know exactly.

8 Q Okay. There were some questioning by Mr. Vannah about
9 deadlines?

10 A Yes, sir.

11 Q We all know about deadlines.

12 A Yes, sir.

13 Q Deadlines get moved sometimes; don't they?

14 A Yes, they do from my experience.

15 Q And when a deadline is moved, then you have more time to
16 produce damage information, correct?

17 A Yes, sir.

18 Q Do you know what was happening to the deadlines in the
19 sprinkler case, or the Edgeworth case?

20 A At the end of the case, or when?

21 Q Correct.

22 A At the end of the case, I know we were extending things. Mr.
23 Parker had just joined the case, and we were extending the deadlines out
24 from there.

25 Q Okay. The number of activations that you found in early

1 July, as I recall, was 80- some, maybe 83 or so, domestically?

2 A Correct.

3 Q And then another 90 or 91 over in the United Kingdom?

4 A 91 in the UK.

5 Q Okay. So, at least right off the bat, you tracked down 170?

6 A Yeah, if that's the math, sir.

7 Q Okay. And certainly Mr. Edgeworth tracked down some of
8 his own?

9 A Yes. Yeah, absolutely.

10 Q Okay. There was some discussion of Mr. Edgeworth's
11 deposition?

12 A Yes.

13 MR. CHRISTENSEN: And, Your Honor, that's in the Law
14 Office exhibits, at Exhibit 84.

15 BY MR. CHRISTENSEN:

16 Q When Mr. Vannah was questioning you, did you have a
17 memory of when Mr. Simon was asking questions in the deposition at
18 pages 293 and 294?

19 A No. Just like I told Mr. Vannah, I read this deposition from
20 front to back a long time ago. I don't remember everything in the
21 deposition.

22 Q Okay. Were you here when Mr. Christiansen was
23 questioning Mr. Edgeworth about what was contained in the -- Mr.
24 Simon's part of his deposition?

25 A Yes, that the damages were still continuing.

1 Q Including attorney's fees?

2 A Yes, sir.

3 Q Okay. So, at least based upon that, that -- I guess it was in
4 the deposition?

5 A It was in there. I -- yeah.

6 Q Okay.

7 A Not that you refreshed my recollection, I do recall that part.

8 Q That's okay. There's a lot of stuff going on. Let's talk about
9 the 22-hour day that was focused on in cross-examination.

10 MR. CHRISTENSEN: And, Your Honor, I'm taking a look at
11 Edgeworth Exhibit 5 that begins at Bate 131 and goes through 134.

12 THE COURT: Okay.

13 BY MR. CHRISTENSEN:

14 Q On this timesheet, there is a bunch of entries that say review,
15 download and save. For example, application for issuance of
16 commission to take out-of-state deposition Tyco (phonetic). Do you see
17 that for example?

18 A Yes, sir.

19 Q Okay. And the review, download and save, what is -- what
20 was that short for?

21 A Those were all WIZnet files. Anywhere it says review,
22 download and save, and then the title of the document.

23 Q Okay. So, I mean, this happened, right?

24 A Correct. There's a hardcopy to tie every single one of these
25 two this time right here on 9/13.

1 Q Every one of these WIZnet filings that are documented --

2 A Yes.

3 Q -- on this exhibit for 9/13 happened in the case, right?

4 A Yes, they did.

5 Q I mean, you went to the register of actions and you went to
6 WIZnet and that's how you got this information, right?

7 A Yes, that's exactly how I got the information.

8 Q Okay. So, someone, I guess it was you, reviewed and
9 downloaded and saved all this work, right?

10 A Yes, it was me. Yes, I did do it.

11 Q I mean, people don't file stuff in a big case and you just
12 ignore it?

13 A Correct. No, you can't ignore it.

14 Q Okay. So, all of this work was done?

15 A Yes.

16 Q Just maybe not on 9/13?

17 A Exactly. Like I said before, it could have been the next day or
18 within two days of that date, correct.

19 Q Okay. And at least as a timesheet that reflects the amount of
20 work that you did on the file, it's accurate?

21 A Correct. Yes. This work did happen.

22 Q Okay. Maybe not on 9/13?

23 A Maybe not on 9/13.

24 Q Maybe some of it on 9/14?

25 A Maybe some of it on 9/14, yes, sir.

1 Q Or 9/15?

2 A Or 9/15, yes, sir.

3 Q Okay. But you weren't in the habit of ignoring WIZnet filings
4 on the case?

5 A I could not ignore WIZnet filings, that is correct.

6 Q Okay. And on the entries that describe emails, those have all
7 been produced, right?

8 A Yes.

9 Q Anybody can go look them up themselves and confirm that
10 they occurred?

11 A Yes, sir.

12 Q Okay. All right. Thank you.

13 A Thank you.

14 THE COURT: Mr. Vannah, do you have any recross?

15 MR. VANNAH: No.

16 THE COURT: No. Okay. This witness may be excused. Ms.
17 Ferrell, thank you very much for being here.

18 THE WITNESS: Thank you.

19 THE COURT: Mr. Christiansen, and I hate to do this to you
20 guys, but I'm going to ask you to put Mr. Simon up today in the interest
21 in making sure we finish tomorrow.

22 MR. CHRISTENSEN: We can get started.

23 THE COURT: I mean --

24 MR. VANNAH: Judge, can we have a two-minute bathroom
25 break?

1 THE COURT: Sure.

2 [Recess at 4:19 p.m., recommencing at 4:29 p.m.]

3 THE COURT: We're back on the record in A767242, A738444,
4 Edgeworth Family Trust v. Daniel Simon dba as the Law Office of Daniel
5 Simon. Mr. Simon is on the witness stand.

6 Mr. Simon, if you can stand and raise your right hand.

7 DANIEL SIMON, DEFENDANT'S WITNESS, SWORN

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

10 THE WITNESS: Daniel Simon, D-A-N-I-E-L S-I-M-O-N.

11 THE COURT: Okay. Mr. Christensen.

12 DIRECT EXAMINATION

13 BY MR. CHRISTENSEN:

14 Q Mr. Simon, did you have an oral agreement to provide legal
15 services to Mr. Edgeworth for \$550 an hour on May 27, 2016?

16 A I did not.

17 Q How about May 28th, 2016?

18 A I did not.

19 Q How about June 10th, 2016?

20 A I did not.

21 Q What do you do for a living?

22 A I'm a lawyer.

23 Q How long have you been a lawyer?

24 A Twenty-six years.

25 Q Where have you practiced?

1 A Las Vegas, Nevada.

2 Q What kind of cases have you done?

3 A Personal injury cases, worker compensation cases.

4 Q Have you done product defect cases?

5 A Yes, sir.

6 Q How would you characterize the, what's been called the
7 Edgeworth or the sprinkler case?

8 A Complex litigation.

9 Q And there was a product defect aspect to it?

10 A There was -- it was complex for several reasons. There was a
11 product defect element to it. There was breach of contract, construction
12 defect, a lot of nuances that related to both aspects of both of those
13 cases.

14 Q Okay. All right. Getting over some of the preliminaries we
15 just had, did you meet Mr. Edgeworth on May 28, 2016 at a Starbucks
16 somewhere in the greater Las Vegas area?

17 A I did.

18 Q What did you talk about?

19 A He wanted me to come review and discuss a case about a
20 flood that he had at his property that has been ongoing, I guess, since
21 April, and he was having difficulty with the insurance company, the
22 plumber, and wasn't getting satisfactory responses and needed some
23 help, and he asked me for -- if I would take a look at it.

24 Q How much information did you know about the flood before
25 you met Mr. Edgeworth on May 28th?

1 A Not much.

2 Q Not a whole lot?

3 A Not a whole lot.

4 Q Okay. I mean, why not? You guys were friends, your
5 families were friends. What was going on?

6 A I basically got an email out of the blue from him. It kind of
7 asked me to do that, and so I responded and said, all right, I'll meet, and
8 I'll take a look at it. I don't know if I had a conversation over the phone or
9 not briefly with him, but the idea was -- is that he was going to bring his
10 problem, and his issues, and file the best he could, and then I would
11 meet with him to chat about the scope of what his problem was and see
12 if I could help him or not.

13 Q Did you ever discuss with him, either verbally or via email at
14 that early stage, at that very outset of some other lawyer handling the
15 case?

16 A Yes. He had mentioned that Craig Marquis, who is a
17 business litigation lawyer who does sprinkler cases, that he was referred
18 there by his own insurance company, because he didn't have course of
19 construction or law, some case with fire or flood, so he didn't have the
20 proper insurance. So, since the plumber wasn't going to pay his claim,
21 his own insurance company, I believe, gave that name to him for him to
22 go visit because he specialized in that.

23 Q Okay. I'd like to show you what's been previously marked as
24 Exhibit 80. I believe it's Bate 3552 through 3553, and it's an email string
25 that's from May 27, 2016.

1 THE COURT: Which exhibit is this, Mr. Christensen?

2 MR. CHRISTENSEN: 80.

3 THE COURT: Okay.

4 MR. CHRISTENSEN: The Law Office Exhibit 80, Bate 3552
5 through 53.

6 BY MR. CHRISTENSEN:

7 Q I'm just showing you the top of the email right now, and of
8 course we have that problem with email strings and how they format
9 when you print them out. Do you recall this string of emails?

10 A Sure. If you can start at the bottom and work your way up,
11 and is there any way I can get my glasses?

12 MR. CHRISTENSEN: If I can approach, Your Honor --

13 THE COURT: Yeah.

14 MR. CHRISTENSEN: --and deliver Mr. Simon his glasses?

15 THE COURT: You know --

16 THE WITNESS: Thank you.

17 MR. CHRISTENSEN: Thank you, Your Honor.

18 THE COURT: -- I think everybody's adjusting their glasses at
19 this point.

20 THE WITNESS: That's old age.

21 THE COURT: I'm wearing contacts. Don't be fooled.

22 BY MR. CHRISTENSEN:

23 Q So, I'm going to destroy my own exhibit. Let's see if we can
24 make this work.

25 THE COURT: Okay.

1 BY MR. CHRISTENSEN:

2 Q So what I'm showing you is the bottom part of 3552 and
3 then the bottom part of 53. That's kind of it. Let's see if I can do a little
4 bit better here. So, what we have here is an email that starts off with
5 Brian saying, hey, Danny. Do you see that part?

6 A I see that.

7 Q And he doesn't want to waste your time?

8 A Yep.

9 Q That is Brian doesn't want to waste your time?

10 A Correct.

11 Q Okay. At this time, did you at least know a little bit about the
12 flood?

13 A Not a whole lot.

14 Q Okay. And he wants to avoid paying a whole lot of money to
15 Craig Marquis; is that a fair summary?

16 A Well, yeah. I mean, you look at the email ,and he starts out, I
17 don't want to waste your time other than force you to listen to me bitch
18 about it. And so, what that means to me is I've got a friend calling me
19 whose got a problem that he's -- you know, in his life, and he wants to
20 tell me about it. He doesn't want to necessarily waste my time
21 professionally, but as a friend, he wanted me to at least listen to him,
22 evaluate it, and probably either refer him to somebody or just get my
23 thoughts on it, which I was happy to do.

24 Q Okay. So, you responded at 12:58. You indicated that you
25 know Mr. Marquis; you know Craig?

1 A I do.

2 Q And you said, let me review file and send a few letters to set
3 them up, and then you go on and say how that might be -- that might get
4 him started. What did you mean when you said that?

5 A Well, he probably told me a little bit about the insurance
6 company was denying it, they weren't responding, so I figured what I
7 could do is at least send some letters to try and trigger coverage, and I
8 think his idea at that time too was, hey, you know, I tried to get them to
9 accept liability; they're not, so maybe if I, you know, send a letter on a
10 lawyer's letterhead, they might change their mind. And so, that was kind
11 of the idea, that I would send some letters, try to trigger coverage.
12 Hopefully, they would jump in and adjust his claim, and pay it, and we
13 would be done.

14 Q You wanted to motivate a claim's adjuster?

15 A Correct.

16 Q And you were willing to do that for your friend?

17 A Correct.

18 Q Did you have it in your mind you were going to charge him?

19 A No.

20 Q This was, as Mr. Edgeworth talked about the first couple of
21 days, a favor?

22 A Yes.

23 Q Okay. When you had your face-to-face meeting with Mr.
24 Edgeworth on May 28th, Saturday, 2016, did you reach -- did you talk
25 about an hourly rate?

1 A No.

2 Q Did you have an hourly rate at that time?

3 A No.

4 Q Had you ever charged or worked an hourly case at that point
5 in time?

6 A No.

7 Q From time-to-time you probably submitted a list of hours if
8 there was a -- you got sanctions against someone, and you spent four
9 hours working for a -- you know, preparing for a hearing or something of
10 that type, or like the *Ash* case where there was a motion for mistrial.
11 Other than that, had you ever put together a bill?

12 A I don't recall putting together a bill, contemporaneous with
13 work that I would bill for in my career. However, there's many times that
14 I might have to go back and try to recreate a bill after a favorable ruling,
15 either by a judge, a jury, sanctions, a jury trial, whatever.

16 Q Okay. I'm going to show you what's been marked as Office
17 Exhibit 80, and this begins at Bate 3557, and continues through 5-A. And
18 this is the odd one we've got down here where this is also part of this
19 last email that we saw. It says, I know Craig. Let me review the file.

20 A Correct.

21 Q Do you see that?

22 A Yes.

23 Q And then we go on up, and we have Mr. Edgeworth types,
24 and he's talking about documents paying you, paying Craig, typing up
25 summaries, all sorts of things, correct?

1 A Yes.

2 Q And you wrote back, let's cross that bridge later?

3 A Yes.

4 Q Do you recall what you meant when you sent that off to Mr.
5 Edgeworth?

6 A Yes. He didn't want to pay Craig. From our meeting, Craig
7 wanted to charge him a nice retainer. He was going to bill him a nice
8 hourly rate. His sense of Craig was that Craig was going to delay the
9 case, bill it out at a huge rate, and at the end of the day he didn't want to
10 pay for that type of lawyer at that time. So, he wanted me to take a look
11 at what --

12 Q Just to get things straight, I mean, was that your impression
13 of Craig?

14 A Mr. Marquis?

15 Q Correct.

16 A I haven't dealt with him professionally.

17 Q Okay.

18 A But if he's a lawyer who's handling these type of cases, I'm
19 sure he's going to bill a hefty fee if that's what he does.

20 Q Okay. Fair enough.

21 A But when he says in his email, I don't want the billing to go
22 nuclear by Craig, I'm assuming he thinks that he's not sure what Craig
23 would do or not do with the billing and he didn't want to get in that
24 situation. But beyond that, I don't know.

25 Q Okay. And you understood that?

1 A Yeah.

2 Q You were willing to send a few letters?

3 A Yeah, of course.

4 Q I'm going to show you -- again, this is Office Exhibit 80, Bate
5 3505. This is an email from Brian, apparently sending to you on a
6 Sunday about a simple loan contract. How did you take this email when
7 you received it? What was your understanding of what was being asked
8 of you here?

9 A I didn't really have an understanding because the whole loan
10 stuff that he was doing was all on his own. He was dealing with all of his
11 repairs. I had really nothing to do with that part of it, so when he was
12 talking about loans, I wasn't going to get involved in that. I don't do
13 promissory notes. I'm not a business lawyer, so I -- he asked me, should
14 I have my lawyer do it, and I didn't want to be involved with that, so I
15 said, yeah, have your lawyer do it.

16 Q Okay. Do you know if you responded to him by email, or did
17 you call him up and talk to him about that? Or do you know?

18 A I think I responded to him in email and said, you know, have
19 Mr. Katz do it.

20 Q Okay. Did you hear the testimony concerning a conversation
21 on June 10, 2016?

22 A Yes.

23 Q You've seen the emails from June 10, 2016 that indicate
24 you're heading out of town?

25 A Yeah, it was a Friday, because he brought that date up for the

1 first time in this adjudication hearing; it just appeared. We went and
2 looked at an email and the email -- basically, I was -- had -- I think I was
3 already out of town is I think the way the email reads, so, yeah.

4 Q Can you say whether or not you actually spoke to him on a
5 telephone on June 10th, 2016?

6 A I cannot.

7 Q Can you tell this Court whether you have a memory of
8 reaching a fee agreement with Mr. Edgeworth for this sprinkler case on
9 June 10, 2016?

10 A I have a memory that I did not have a fee agreement for \$550
11 an hour on June 10th.

12 Q If you don't recall talking to him on the phone, or if you did
13 or if you didn't, how can you have the memory that you did not have a
14 fee agreement with him on June 10th?

15 A Because the evolution of my assistance for this guy, starting
16 from the beginning, was to help him out as a family friend. I treated
17 them like family. And so, when I took it on, I met him at the Starbucks, I
18 said I'll help you out. I wasn't even going to charge him. I was hoping to
19 trigger coverage and hopefully he'd maybe buy me dinner or something.
20 I wasn't even charging him.

21 Then as they denied the claim, we got to the point where, all right,
22 the contract's pretty clear. The facts of the case are pretty clear under
23 this contract, why this plumber and their insurance company is not going
24 to pay his claim. It was virtually ridiculous.

25 So, at that point, because the insurance adjusters sometimes don't

1 make good decisions, like my first email, so then what you do is you file
2 a lawsuit and hopefully lawyers get assigned and you get a lawyer who
3 can look at the coverage issue and hopefully get involved and trigger
4 coverage. And that's all that I was doing is from the very beginning, all
5 the way through the motions for summary judgement, was trying to
6 trigger coverage for his claim so that the insurance company would
7 come in, pay his claim, and then they can go subrogate against Viking if
8 they feel it's appropriate. And that was my mindset and everything that I
9 was doing from the day I was first contacted by Brian Edgeworth
10 through the time of motion for summary judgment.

11 Q So, what's the deal with the bill in November of 2016?

12 A Because we filed the lawsuit in June. As you know, it takes a
13 little while to get through the court system to set it up. By the time you
14 get through exemptions and everything else, now we have an ECC
15 coming up in November.

16 As part of the contract with Lange, there's an attorney's fees
17 provision, and so I knew that since I did a breach of contract against
18 Lange, as well as a product's liability claim against Viking, that I had to
19 come up with some damages for his benefit to produce in the Lange
20 litigation. Just like any other damage that I would have to do. His cost
21 of repairs, the interest on his loans that he was claiming.

22 So, any item of damage that we would come up with, we'd have to
23 present, and so because the ECC, I knew that that obligation was going
24 to start soon, and so now I'm in the position of I guess I have to produce
25 a bill for the ECC, which is a miserable process. So, I went back and

1 recreated the best bill that I possibly could, knowing that it didn't capture
2 a lot time because I'm recreating it six months later. And everybody
3 knows you can't capture time if you're doing billing that way.

4 Q You're not going to get it?

5 A And that's why I -- there was no agreement because I wasn't
6 billing him, but once we were in a position where I had to actually create
7 a bill, I had to go back and recreate it six months later.

8 Q Did you have a conversation with Mr. Edgeworth at any point
9 in that six-month period about, hey, let's do an hourly case?

10 A No.

11 Q Did you ever have an agreement with him to do an hourly
12 case?

13 A No.

14 Q How did you come to choose the number \$550 to use as your
15 rate in the November bill?

16 A Because I knew I was using it as an item of damage in the
17 case. I knew that lawyers would be scrutinizing it from the defense side
18 because, you know, what's a reasonable damage. So, I had some
19 discussions with Ashley and said, hey, you know, let's talk about an
20 hourly rate. What hourly rate is fair? And then she kind of came up with,
21 well, the court approved 600 in that case, why don't we just go with that,
22 and said -- I said, okay, and then we'll reduce it a little bit, so it's
23 bulletproof.

24 Q Is that so unusual for you to walk around and bounce ideas
25 off your associates and ask for input?

1 A Not at all. I bounce ideas off of Ashley, Ben, Janelle,
2 Jennifer, everybody in the office I do.

3 Q Okay.

4 A Because everybody has different perspectives, and they've
5 been with me a long time and I value -- and they remember cases, they
6 remember stuff that I don't.

7 Q What was your expectation when the bill was served on the
8 Defense via the ECC?

9 A Well, the bill wasn't served until --

10 Q And let me stop you there because that was an absolutely
11 horrible question. Let me ask a couple of setup questions. Did you ever
12 send that bill to Mr. Edgeworth or -- and I'm using Edgeworth
13 generically; you understand that, right? That means the trusts, American
14 Grating, right?

15 A Okay. Fair enough.

16 Q Okay. So, did you ever attach a cover letter to it and send it
17 to them and say, hey, here's the bill, please play within 30 days, you
18 know, anything like that?

19 A I don't recall.

20 Q Do you have a typically billing letter like that that you send
21 out?

22 A I don't have a typical billing letter, because I don't typically
23 bill.

24 Q Okay. So, what was your expectation vis-a-vis the
25 Edgeworths and that bill when it was created in November?

1 A The first bill, my expectation was I'm going to send it to him
2 so he can see what we're creating as a damage in his case, number one.
3 I wanted to show him what costs were expended up to that point
4 because I advanced them. And at that point, we were still -- well,
5 actually, it didn't get sent to him until December, and then I was filing a
6 motion for summary judgment in January to be heard in March.

7 And so, the idea was hopefully it seemed pretty clear that the
8 judge should give me MSJ on that contract issue as to liability only, and
9 then hopefully that would trigger coverage and then whatever that bill
10 would be, whether he paid it or did not pay it, hopefully would be picked
11 up by Lange.

12 Q So, the idea was you got the lawyers to look at it, they didn't
13 bite, so then you were going to file the MSJ and compel them to bite, so
14 to speak?

15 A Right.

16 Q I understand there was a little bit of -- did you have a
17 substitute judge, or the judge had left the bench? Or what did -- what
18 was the lead up? How --

19 A Judge --

20 Q So, who heard the MSJ?

21 A Judge Walsh -- Jessie Walsh left the bench. Judge Barker
22 came in as -- to take over her calendar while she was gone until they
23 selected a new judge at some point. And so, he basically said, you
24 know, I can see where you're going with this. It seems pretty clear to
25 me. And at that time, we didn't have American Grating in there, only

1 Edgeworth Family Trust, so he said amend your complaint, bring them --
2 bring in the other plaintiff, because they're the party to the contract, even
3 though they were the beneficial owner of the property, and I did that
4 immediately.

5 I brought in American Grating. It might have been -- I amended the
6 complaint the same day; I'm not sure. And then refiled my motion
7 immediately and then it was heard on April 25th. And at that point, we
8 had a new judge, Judge Bonaventure, and so Judge Bonaventure just
9 said, hey, listen, you haven't started discovery yet. I don't like granting
10 summary judgment motions until discovery is completed, so go do
11 discovery and come back.

12 Q Okay. While we still have a little bit of time today, I want to
13 jump ahead on our timeline and move to the meeting of November 17,
14 2018 [sic].

15 THE COURT: 2017?

16 MR. CHRISTENSEN: Oh, I'm sorry, 2017.

17 THE COURT: That's okay.

18 MR. CHRISTENSEN: Yeah, I actually wrote '18.

19 THE COURT: That's okay. It hasn't happened yet, Mr.
20 Christensen.

21 MR. CHRISTENSEN: Thank you, Your Honor.

22 BY MR. CHRISTENSEN:

23 Q Mr. Simon, you heard the testimony of Mr. Edgeworth
24 concerning your actions in that meeting, and I'd like to go on over them.

25 A Sure.

1 Q Did you ever threaten Mr. Edgeworth?

2 A I did not.

3 Q Did you ever complain about Angela's presence at the
4 meeting?

5 A I did not.

6 Q How do you know Angela?

7 A I've known Angela a long time. I thought I had a very close
8 relationship. I always like to see Angela. My wife loves Angela. They're
9 considered sisters; at least Angela has said that many times. My wife felt
10 very close to them. We felt very close to them. You know, I guess I felt
11 differently about Brian than he felt about me, but I generally considered
12 them close family friends and I was willing to do a lot for them, and
13 apparently that was a mistake.

14 Q Okay.

15 MR. VANNAH: Move to strike that that was a mistake as non-
16 responsive to the question.

17 THE COURT: Mr. Christensen.

18 MR. CHRISTENSEN: I'll just ask a new question.

19 THE COURT: Okay.

20 BY MR. CHRISTENSEN:

21 Q Did you feel that it was a mistake how you felt about them?
22 How do you feel now about them?

23 MR. VANNAH: That's irrelevant, how -- whether he thinks it
24 was a mistake and how he felt or not. I mean, let's get to the case.

25 THE COURT: Well, I mean, I think it's relevant how he feels

1 now.

2 Mr. Simon, you can answer the question.

3 THE WITNESS: I feel duped right now. As I sit here today,
4 that's how I feel.

5 THE COURT: Okay.

6 BY MR. CHRISTENSEN:

7 Q Did you use any -- what are we saying? Did you use any F
8 bombs during the meeting?

9 A I did not. I did not.

10 Q Did you direct any harsh language towards anyone?

11 A I did not.

12 Q Did you have a written fee agreement in your possession on
13 November 17, 2017?

14 A I did not.

15 Q You set one later on --

16 A Correct.

17 Q -- on the 27th?

18 A Correct.

19 Q When did you create that?

20 A When I got back from my vacation.

21 Q So, that would have been after -- about the 25th or so?

22 A Yeah.

23 Q Okay. Did you have one -- had you ever put pen to paper, so
24 to speak, or I guess these days it's fingers to the keyboard, on November
25 17, 2017 or any time before that to create a fee agreement?

1 A I did not.

2 Q Did you ever threaten that bad things would happen to the
3 case if the Edgeworths didn't sign the fee agreement that day?

4 A No.

5 Q Did you ever threaten with withdraw?

6 A No.

7 Q What is your memory of what was done and said at that
8 meeting of November 17, 2017?

9 A I specifically remember that day. I had a lot going on. I had
10 a lot on the calendar. I had motions on calendar. There was so much
11 going on in the case that the mediator proposal came in on a
12 Wednesday. This was, I believe the next day, that -- well, the mediator
13 proposal came in earlier. We kind of ignored it for a few days, and then I
14 got a call from Mr. Hill saying, hey, you going to accept that?

15 And I kind of knew what that meant, so I called up Brian and said is
16 this something you want to do and, you know, he says in theory, the
17 number, yeah.

18 And so, what ends up happening is I have all this stuff on calendar.
19 I call him in the morning. I talk to him. I say, hey, can you come on
20 down? And he says, well, is it for court or something? That -- he knew
21 we had court. And I said, no, you don't need to do the court thing unless
22 you want to, but, you know, come on down, we have a lot to talk about,
23 you know, the Viking sale, right, and the case status. And so, he said, all
24 right, I'll meet you at your office before court.

25 Q Let's talk a little bit about that mediator proposal. As I

1 understand it, it had some additional clauses or contingencies in it; is
2 that correct?

3 A Correct. It wasn't just \$6 million, hey, the case is over. They
4 had stipulations attached to the \$6 million. They wanted a confidentiality
5 clause. They wanted a motion for good faith settlement, and there was a
6 lot to talk about in regard to the settlement itself because it wasn't a
7 done deal just because they said \$6 million. And Brian didn't want a
8 confidentiality. I mean, that was a deal breaker for him the whole way
9 through this case. And every mediation, I'm not signing a
10 confidentiality. So, when that came in with that requirement, it's kind of
11 a problem.

12 Q It's something you had to talk to him about?

13 A Yeah, he wanted to understand how it would affect him, why
14 he would want to do it, why he wouldn't want to do it, and that was just
15 one of the many things that we talked about on November 17th in my
16 office.

17 Q I mean, the \$6 million offer, that's not peanuts.
18 Confidentiality seems like a small thing.

19 A I don't know if it's a small thing or not. I know I don't like
20 confidentiality. I know that as a routine basis, I don't sign off on
21 releases with confidentiality, because with confidentiality comes a lot of
22 invitations for lawsuits. It can create exposure to clients beyond that
23 particular deal.

24 Q Did the settlement agreement with Viking have a
25 confidentiality provision in it in the -- in its final form when it was

1 signed?

2 A It did not.

3 Q Why not?

4 A Because I negotiated that out of there.

5 Q And that was at Brian's request? As well as being your
6 opinion of what should happen?

7 A Yeah.

8 Q So, we talked about the mediator proposal. Was that
9 discussed at the meeting of November 17th?

10 A Yes.

11 THE COURT: And, I'm sorry, Mr. Christensen, but I am the
12 finder of facts, so I have some questions.

13 Mr. Simon, you said that you basically negotiated the
14 removal of the confidentiality agreement you all agreed with because
15 normally you don't do it and Mr. Edgeworth didn't want it, so together
16 you guys agreed to do this. Do you remember when Viking agreed to
17 remove that?

18 THE WITNESS: I do not.

19 THE COURT: Okay.

20 THE WITNESS: But I think it was prior to the final release, so
21 I think it would have been --

22 THE COURT: Was it prior to you going on vacation?

23 THE WITNESS: It would not have been prior. It probably
24 would have been right when I got back.

25 THE COURT: Okay.

1 BY MR. CHRISTENSEN:

2 Q And your vacation was right over Thanksgiving?

3 A Correct.

4 Q Okay.

5 A So, technically, I was back in the office on that Monday.

6 THE COURT: Which is the 27th? Monday is -- of November?

7 THE WITNESS: Yeah.

8 THE COURT: Yeah, Thanksgiving would have been the 23rd,
9 so that following Monday is the 27th.

10 THE WITNESS: Okay. So, when I got back from that,
11 obviously I went -- hard to work on all aspects of the Edgeworth case. I
12 was, you know, negotiating that out, and then obviously preparing my
13 letter and the proposed retainer that I sent to them attached to the letter.

14 THE COURT: Okay. But at this point, you have not had any
15 contact with the Edgeworths since the 17th?

16 THE WITNESS: I never -- no, I think -- I've had some phone
17 call -- I had some -- I had this meeting and I had a few phone calls after
18 this meeting, and then I tried to iron this out a few times over my
19 vacation with him.

20 I think the last full communication ever with -- verbally with
21 either one of them was the 25th when I was boarding a plane, because I
22 never had a lot of time to be available because I was always -- you know,
23 if I was on a plane for five hours, I'm unavailable.

24 So, I tried to get a hold of him, you know, when I could, and I
25 think the last time was when I was boarding the plane to come home.

1 THE COURT: And I think that's what he testified to is that it
2 was the 25th.

3 THE WITNESS: 25th, sounds right.

4 THE COURT: But when you are negotiating the removal of
5 this confidentiality agreement in the Viking settlement, you have no --
6 had you been made aware at that point that they had spoken with Mr.
7 Vannah's office?

8 THE WITNESS: No.

9 THE COURT: Okay. And, I'm sorry, Mr. Christensen, that
10 was just my question.

11 MR. CHRISTENSEN: It's your courtroom, Your Honor. You
12 have a question, you ask it.

13 THE COURT: I think it's just a little different than a jury trial,
14 because if I have a question then --

15 MR. CHRISTENSEN: Absolutely, Judge.

16 BY MR. CHRISTENSEN:

17 Q What else did you talk about, if anything, at the November 17
18 meeting?

19 A We talked about quite a bit. We talked about the motions
20 that were on the calendar. We had a motion to compel. There was a
21 motion to de-designate all of these documents that they were trying to
22 make confidential in the case. We talked about the pending evidentiary
23 hearing, how that would be affected. We had all these notices of
24 depositions. We had depositions in Chicago of this United Laboratories
25 already set. We had depositions that were noticed by the defense that

1 were on calendar of all our experts. We had basically a ton of stuff going
2 on.

3 And then, as far as the -- we talked about the settlement. We
4 talked about what the motion for good faith determination means, how
5 that affects the settlement. About the Lange claim. And that was
6 another provision where they tried to include the Lange claim as part of
7 the global settlement from Viking, and I excluded that as well. So, I was
8 able to preserve the Lange claim with the Viking settlement.

9 So, at that time, I talked to them also about the Lange claim and
10 the application of that and how we would proceed forward. I told them
11 that I already had discussions with Mr. Parker, that we were going to
12 continue to the case because the posture of the case was now changing.
13 It was now defined in a very narrow scope, which was really just the
14 recovery of the attorney fees provision. And, basically, then I asked -- I
15 told him about now it's time to settle up the fee because now we know
16 the outcome, and so I just wanted to determine what a fair fee would be.

17 And in response to that, Brian said absolutely nothing. Angela --
18 and he was sitting in my -- in front of my desk to the right of me, and
19 Angela was in the left, and she just kind of looked at Brian, looked back
20 and goes, we'll talk about it. And then at that point, I gave them a -- the
21 cost, the outstanding cost, which is about \$72,000, which is the printout
22 of all the costs that he's seen before on many occasions, which we've
23 showed him at mediation, so he always knew what his costs were.

24 I handed him a copy of that and said this is your outstanding costs
25 as of today. And then get back to me on what your thoughts are on the

1 fee.

2 Q Did you --

3 A And I told him -- and I did tell them that my normal fee in this
4 type of case, you know, on a regular fee if it was a contingency would --
5 my normal fee would be at \$2.4 million for this settlement, but you
6 know, you guys talk about it and tell me what you think is fair, and I'll tell
7 you what I think is fair and obviously I'm willing to come off of that and
8 do what's fair, and that's how we left it and they left.

9 Q The breakdown of cost is what your office calls a case
10 expense summary?

11 A Yes.

12 Q Okay. And that was about \$72,000 or so?

13 A Yes.

14 Q Were tensions high during that meeting?

15 A No.

16 Q Did you get the perception that anyone was feeling scared or
17 intimidated?

18 A No, there was nothing to be scared or intimidated about. I
19 wasn't demanding anything from them. I explained everything about the
20 case because the settlement wasn't even necessarily agreed to. Brian
21 still was confused as to how the confidentiality was going to work. And
22 so, that's why I had later discussions with him, even that evening, talking
23 about how the confidentiality would work.

24 Q I mean, the -- so the -- you hadn't struck a deal yet on the \$6
25 million.

1 A It wasn't -- yeah, it wasn't an official deal. The number was
2 okay, but the remaining terms that they were requiring were still not
3 agreed to by the Edgeworths.

4 Q As Judge Earl used to say, the devil is in the details, right?

5 A Yeah.

6 Q Okay.

7 A I mean, there's deal breakers all the time.

8 Q Yeah.

9 A Just when you get a good number, it doesn't mean people
10 are going to go through with it.

11 Q So, at the time that you told them what your normal fee
12 would be in that type of a situation, that was preliminary?

13 A Right.

14 Q Okay.

15 THE COURT: And if -- yeah, we were just going to finish up
16 with the 11/17 meeting --

17 MR. CHRISTENSEN: Okay.

18 THE COURT: -- if you were finished.

19 BY MR. CHRISTENSEN:

20 Q Let's finish with 11/17. Was that the end of the meeting?

21 A That was the end of the meeting, and then I was headed off
22 to court. They left. Then I basically went over to court and took off the
23 motion because we weren't going to proceed at that time. I think we
24 worked on continuing it, kind of keeping it on, in case we needed to
25 come back for it, in case the settlement didn't get ultimately finalized.

1 Q You wanted to keep that, sort of hanging over their head
2 while you worked out the details of this settlement?

3 A Correct.

4 Q Okay. Did you have conversations later that day with Brian
5 on the telephone?

6 A I did. So later that day we talked about, a) the confidentiality,
7 how that would work again. We kind of went over a little bit of the same
8 stuff because they were confused about all of the information that I gave
9 them, and then we started talking about the fee and what a fair fee would
10 be, and he was always just, well, I'm just trying to figure this out. I
11 mean, he was kind of just, you know, very cagy about it all, right.

12 And so, you know, what's there to figure out? What's your
13 questions? Help me explain it to you. You know, what -- I don't
14 understand why he was playing -- he was playing a little dumb at that
15 point, where I just don't get it. I'm just not sure. And I'm like, okay, well,
16 what's there not to get?

17 And that was basically -- we had multiple conversations, I guess at
18 that point, and I said, well, talk to your wife and let me know.

19 Q Okay.

20 A And I was leaving out of town, 6:00 a.m. the next day, so I
21 was hoping to get an answer from them. I don't know what would be
22 too difficult about it. I mean, here we are at the end of the case. I've got
23 an amazing result, and now it's time to figure out a fair fee, so here's my
24 regular rate. Give me something that you think is fair. And that's all I
25 was asking for.

1 Q You were just looking for a number back?

2 A Yeah.

3 Q Okay.

4 A Yeah. Tell me what your thoughts are that's fair. And then if
5 it was something that I was -- I didn't think was fair, then we'd have a
6 discussion. But they would never give me a number. He would never,
7 ever say what he thought was fair. And then ultimately, I know we're
8 still at the 11/17, but fast-forward, I had a discussion with him, I think on
9 my trip or something and I said, send me that -- your cost.

10 Tell me what you're real -- what you believe are your out-of-pocket
11 damages so I can really come up in my mind with a fair number that
12 you're going to be happy with and be excited and that's fair to me so I'm
13 not losing too much money on this case. And that's why he sent me the
14 11/21 email.

15 Q During this time, did you also have conversations about the
16 added dynamic of the potential for recovery against Lange?

17 A Yeah, definitely.

18 Q Did you explain that all to him?

19 A Yeah, because before that, Teddy Parker came in here and
20 brought this motion about the contractor license thing. And that
21 definitely freaked Brian out. I mean, he was freaked out. He was like, oh,
22 my God, I did something wrong. I -- I'm not a contractor, but I'm
23 building houses. And he wasn't sure really of the legal ramifications of
24 that.

25 And so, as we know, Teddy likes filing similar motions because he

1 has a construction defect background, but ultimately we went back to the
2 office and researched it and I forward him the cases, and there's a
3 controlling case, MGM, that says, sorry, Teddy, your analysis is -- it's a
4 good try, but other people have tried it when they were building the
5 MGM hotel back in the day and it didn't work.

6 And so, I'm not a construction lawyer, and so I didn't want to take
7 any chances with the issue, so I outsourced the legal issue to George
8 Oligopoly and -- who's an expert in that, and ultimately he came back
9 with the same exact conclusion that I did, which I had already explained
10 to Brian.

11 And so, as far as the attorney fee provision, in my mind, whatever
12 they were going to pay me, that we came to a number that was fair for
13 what I did for them, we would turn around and go seek reimbursement
14 from Lange, and it was a -- seemed like a very simple trial to just prove
15 up, A, what you paid me. Here's the contract revision; that's what you
16 should get back.

17 Q In the depositions of Lange employees, what was -- how did
18 the testimony come out about whether they complied with our contract
19 terms or whether they were in breach?

20 A I took four or five depositions of all the Lange employees,
21 including the PMK and the owner, Bernie and his wife, who are the
22 principles. I got everybody to agree in their deposition that they
23 breached the agreement and that their product was defective and that all
24 damages or attorneys' fees that he's seeking for enforcement of their
25 warranty are covered under the contract.

1 Q What was their policy on that?

2 A \$2 million.

3 Q Had you made demands upon the carrier to come in and
4 adjust the loss prior to this time? Multiple times?

5 A Yeah. And in March, when we were trying to trigger
6 coverage, we sent an offer of judgment for \$1 million. They didn't accept
7 it and so the -- there was no policy in affect. They blew it.

8 Q There is no policy limit?

9 A There's no policy limit, correct.

10 Q The insurance company had bought that risk?

11 A Correct.

12 Q Okay.

13 THE COURT: Okay. I think that's a good place for us to break
14 for the evening.

15 So, Mr. Simon, we'll re-swear you in tomorrow, but I'll just remind
16 you you're still under oath.

17 So, we're going to break for the evening. We'll be back tomorrow
18 morning at 9:00, and I don't have a calendar, so we can get started at
19 9:00.

20 MR. CHRISTENSEN: Thank you, Your Honor.

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MR. VANNAH: Thank you, Your Honor.

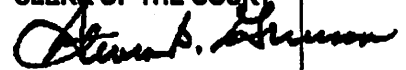
THE COURT: Thank you.

[Proceedings concluded at 4:29 p.m.]

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



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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
THURSDAY, AUGUST 30, 2018

20 **RECORDER'S TRANSCRIPT OF EVIDENTIARY HEARING - DAY 4**

21 **APPEARANCES:**

22 For the Plaintiff:

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

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, Thursday, August 30, 2018

[Case called at 9:05 a.m.]

THE COURT: We're on the record in A738444, Edgeworth Family Trust vs. Daniel Simon. Mr. Simon, we're going to re-swear you in just because it's a different day, so if you could stand up and raise your right hand.

MR. SIMON: Yes.

DANIEL SIMON, DEFENDANT'S WITNESS, SWORN

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

THE WITNESS: Daniel Simon, S-I-M-O-N.

THE COURT: Okay. Whenever you're ready, Mr. Christensen.

MR. CHRISTENSEN: Thank you, Your Honor.

Before I get started with Mr. Simon, I have a couple of housekeeping matters. One, I'd like to move to admit the Office's Exhibit Number 91. That was the Ashley Ferrel summary of emails that we talked about yesterday.

THE COURT: Okay. Any objection to that?

MR. GREENE: No, no objection.

THE COURT: Okay.

MR. CHRISTENSEN: Thank you.

THE COURT: That will be admitted.

[Defendant's Exhibit 91 received]

1 MR. CHRISTENSEN: The second thing is, during the hearing
2 of April 3rd, 2018, I have to apologize to Mr. Vannah, he did not talk
3 about dreaming up numbers around a conference table. What he said
4 was, how do you keep the time records, did you keep them in time
5 matters, one of those programs, or was it just something that came up
6 with, you know, in a prayer session sitting around your table pulling
7 hands one night. So, my memory was faulty on that. Here's a copy of
8 the transcript.

9 MR. VANNAH: It was the prayer session, yes, that's
10 what I said.

11 MR. CHRISTENSEN: Okay.

12 THE COURT: And --

13 MR. CHRISTENSEN: I wanted to clean it up from yesterday.

14 THE COURT: Okay. And while we are talking about exhibits,
15 another thing, when you guys -- Defense's -- I mean Plaintiff's 9, when
16 we talked about it in the beginning, you guys said that the Howard
17 portion would not be admitted, so it has not been admitted.

18 MR. GREENE: That is correct.

19 THE COURT: Okay.

20 MR. GREENE: That wasn't something that I --

21 THE COURT: Okay. Okay. I just wanted to make sure that
22 we were all still on the same page with that.

23 MR. GREENE: There was also another law firm mentioned. I
24 can't think of the name off the top of my head, but we can certainly take
25 those probably three pages of exhibits out of Exhibit 9.

1 THE COURT: Okay. I just wanted to make sure that you
2 didn't forget that because I didn't know if there was going to be another
3 witness who could bring that in or if you just didn't do that. Okay.
4 You're on top of it, Mr. Greene.

5 Thank you. Mr. Christensen, whenever you're ready.

6 MR. CHRISTENSEN: Thank you, Your Honor.

7 THE COURT: Mr. Christiansen and Ms. Ferrel, I apologize.
8 We were just, you know, just rolling.

9 MR. CHRISTENSEN: Sorry, Judge, the elevator lines kept us
10 for a bit.

11 THE COURT: No. We're so good about that in the RJC.

12 CONTINUED DIRECT EXAMINATION

13 BY MR. CHRISTENSEN:

14 Q Mr. Simon, we left off yesterday discussing the brief
15 telephone call you had with Mr. Edgeworth on November 25, 2017; do
16 you recall that testimony?

17 A I do.

18 Q And that was the last time you spoke to Mr. Edgeworth?

19 A Yes.

20 Q There's a letter that's been discussed that was sent to Mr.
21 Edgeworth and Angela Edgeworth on November 27, 2017?

22 A Yes.

23 Q Do you recall drafting that letter?

24 A Yes.

25 Q And you mailed that letter?

1 A Emailed it.

2 Q Okay. We're going to use the Edgeworth Exhibit Number 4.
3 It's bated three of Exhibit 4 of the Edgeworth exhibit. Sorry.

4 THE COURT: It just takes a minute to warm up, Mr.
5 Christensen.

6 MR. CHRISTENSEN: Yes. I forgot to press auto tune. There
7 we go.

8 THE COURT: There we go.

9 MR. CHRISTENSEN: There we go.

10 BY MR. CHRISTENSEN:

11 Q Is this the -- do you recognize the header of the letter on the
12 first page?

13 A Yes.

14 Q Okay. I want to go to the -- well, let's talk a little bit about
15 this letter first. Why did you send the letter?

16 A Number one, they requested it.

17 Q Anything else?

18 A Well, they requested it. We got to the point where they were,
19 for lack of a better word, playing dumb, acting like they didn't
20 understand what I was communicating to them. I wanted to make it
21 crystal clear what I was communicating to them. And I took a great deal
22 of time to draft a five page letter.

23 And what my thought process was, to be honest with you, is
24 that because Brian was being very cagey, acting like he didn't
25 understand anything I was talking about, and since Angela really wasn't

1 involved in this very much, at least from my perspective, I don't know
2 what Brian was telling her, but I had the sense that Brian really wasn't
3 giving her all the information about my scope of involvement, because
4 as you heard here today, he still thinks that this case was all him. And I
5 wanted to communicate to Angela through this letter and let her know
6 exactly what I did; because my sense of Angela is that once she read
7 this, she would understand, hopefully, what would be fair.

8 Q Okay. Did you --

9 A But I also wanted to summarize the relationship to make sure
10 it was crystal clear in everybody's mind what my position was.

11 Q Okay. And just jumping back for a second to the meeting of
12 11-17, did Mr. Edgeworth or Mrs. Edgeworth ever have any significant
13 discussion with you over fee, how to arrive at a fee, what your position
14 was, what their position was?

15 A No. They said they would just talk about it and let me know.

16 Q Okay. Attached to this letter that is within the Edgeworth
17 exhibits an Exhibit 4, re bate 008 is a Retainer Agreement.

18 A Correct.

19 Q Did you draft this Retainer Agreement?

20 A I did.

21 Q When did you draft the Retainer Agreement?

22 A When I returned from vacation on or about the Sunday or
23 Monday that I sent it on the 27th, so it would have been the 26th or the
24 27th.

25 Q So this would have either been the day you sent it or maybe

1 the day before?

2 A Correct.

3 Q Had you ever drafted any written retainer agreements
4 previously?

5 A Not for the Edgeworth case.

6 Q There was some testimony, I think it was yesterday,
7 concerning the proposal that -- were some words to the effect that you
8 were going to charge 550 an hour and get a contingency; do you recall
9 that testimony?

10 A I recall it.

11 Q What I'd like you to do is take a look at numbered paragraph
12 one on the first page of Exhibit 4, re bate 008.

13 A Yes.

14 Q And the highlighted line says, The above sum will be
15 reduced by all payments already made toward the attorney's fees. Was
16 that your proposal?

17 A It was. There's no way that I could charge a 40% contingency
18 and an hourly fee on top of that. And that's never what I communicated
19 to them. I've never told him that, ever. Never told any client that. It
20 doesn't make any sense. And when I drafted this, you know, he acted
21 like he didn't understand this document, which it's crystal clear.

22 I was proposing this amount of money, which was 1.5 total, which
23 is only 25%, number one, which I thought was extremely reasonable
24 because it's \$900,000 off the usual and customary fee for this type of
25 case. And I arrived at that sum, because I thought it would be a no

1 brainer, that they would say of course that's fair, of course we got a great
2 result, of course you did an amazing job for us. And I made it crystal
3 clear that anything that they already paid me would be even deducted
4 from that. So, I'm at a loss for why Mr. Edgeworth would suggest that
5 he didn't understand what this document meant.

6 Q And this -- to be clear, this was provided to them as a
7 proposal before they sued you personally?

8 A That is correct.

9 Q Okay. There was some discussion about how the Lange
10 Plumbing case worked into this fee agreement. The line just before the
11 highlighted line says, however, all past services performed prosecuting
12 Lange Plumbing will be included in the above fee. What did you mean
13 by that line?

14 A That the payments that he's already paid, including this new
15 1.5, everything would be satisfied up until this date. We would finalize
16 the Viking settlement, we would take my fee of whatever we determined,
17 hopefully I thought it would be this fee, and then we would work out a
18 new fee agreement to prosecute reimbursement of attorney's fees under
19 the Lange contract.

20 Q So at least at that time that you wrote this on November 27th
21 or so you were contemplating what in essence would be a separate
22 action against Lange for recovery of the attorney's fees?

23 A Yeah. And the separate action against Lange for the
24 recovery of attorney's fees is always a separate action for the entire -- it's
25 always been a separate action during the entire time.

1 Q Okay. Now, on the last page of the fee agreement, which is
2 Edgeworth Exhibit 4, Bate 009, you've got a signature line for Brian
3 Edgeworth and you have a signature line for Angela Edgeworth; is that
4 correct?

5 A Correct.

6 Q Why did you have a signature line for Angela Edgeworth?

7 A Because Angela would have to be included, obviously, in any
8 settlement. She's a 50% owner on all of the Edgeworth Family Trust and
9 American Grating.

10 Q So she would have to be involved in any agreement that was
11 reached on fees?

12 A Correct.

13 Q Whether that agreement was reached on November 17th,
14 November 27th, or any other date?

15 A Correct.

16 Q What's the next contact that you had from Brian and Angela
17 Edgeworth?

18 A I never had any contact with them again, other than a few
19 emails from Angela after that.

20 Q Well, I hate to take issue with you, but I'd like to show you
21 what's been marked as the Office Exhibit 43. Do you recall this fax of
22 November 29, 2017?

23 A I do.

24 Q And this is signed by Brian Edgeworth?

25 A Yes.

1 Q This was entitled Letter of Direction?

2 A Yes.

3 THE COURT: What exhibit is that, Mr. Christensen?

4 MR. CHRISTENSEN: That's the Office Exhibit 43.

5 THE COURT: 43. And what is the date on that? Can you
6 push it down a little bit? Okay, thank you.

7 MR. CHRISTENSEN: Woops. November 29, 2017.

8 THE COURT: And this is a fax? Okay, I see it at the top.

9 MR. CHRISTENSEN: It has a fax header on it.

10 THE COURT: Yeah, I see it at the top. Okay.

11 BY MR. CHRISTENSEN:

12 Q The fax header actually indicates that it was sent on
13 November 30, 2017, at 9:35 a.m., assuming that was calibrated correctly.
14 Mr. Simon, what did you think this letter meant when you read it?

15 A I was fired.

16 Q Why did you think that?

17 A Because in the practice of law when your clients go and meet
18 with other attorneys and then you get a letter saying hey, the other
19 attorney is involved in this case, it pretty much means that I'm not the
20 attorney anymore.

21 Q I'd like to show you what's been marked as Office Exhibit 90.
22 This has been previously discussed. This is the fee agreement between
23 Vannah and Vannah and Brian Edgeworth. I don't see Angela's
24 signature on here, but at least Brian signed it. The highlighted
25 paragraph indicates, client retains attorneys to represent him as his

1 attorneys regarding Edgeworth Family Trust and American Grating, The
2 All Viking Entities, all damages, including, but not limited to, all claims in
3 this matter and empowers him to do all things, and it goes on, to effect a
4 compromise in said matter or to institute such legal action as may be
5 advisable in their judgment and agrees to pay them on some conditions.

6 The sprinkler case that we've been referring to, the case in which
7 there's an offer for \$6 million from Viking, that was the American Grating
8 versus all Viking entities case, correct?

9 A Yes.

10 Q When you saw this, what did this do to your belief of what
11 the November 29th letter meant?

12 A This made it crystal clear that I was fired as of November
13 30th when I received notice of his Letter of Direction, because he's now
14 retained these lawyers for the exact action in which I was representing
15 them for.

16 Q Now, there were still a lot of things going on in the case at
17 this time; is that correct?

18 A A lot.

19 Q Well, for example, we're not going to spend a whole lot of
20 time on it, but Office Exhibit 80, re bate 4552, is an email from Mr.
21 Nelson that seems to be sent to you, lead counsel, at least he thought,
22 for the Edgeworth's and Janet Pancoast, who was lead counsel for
23 Viking at the time?

24 A Yes.

25 Q And attached to this was Mr. Parker's letter of November 29,

1 again addressed to the same parties, re bate 4553, and this was a letter
2 addressing discovery and some other issues?

3 A Yes.

4 Q Can you sum up that letter and --

5 A This letter basically confirms that Mr. Parker and myself, ever
6 since his appearance, have been talking about this case and how we're
7 going to proceed with him and his client, Lange Plumbing. From day
8 one of his coming into the case, he wanted to extend the trial, continue
9 the trial, extend discovery, so he could get (a) caught up. He's made that
10 argument and, you know, representation to the Court on a few
11 appearances.

12 And I've known Teddy for 20 plus years. I've worked with him on
13 many cases. We have mutual respect for each other. And as far as us
14 reopening discovery, now that we were finalizing the Viking settlement,
15 that's what we were going to do. And it only benefitted my claim and
16 Mr. Edgeworth's claim against Lange Plumbing if we decided to pursue
17 it.

18 Q Now, even though in your mind you'd been fired, that puts
19 you in a tough position with the client, correct?

20 A Yes.

21 Q You can't do anything to torpedo the settlement, for
22 example?

23 A Obviously.

24 Q I mean you're going to have to carry on to a certain extent,
25 correct?

1 A Correct.

2 Q Okay. There was a Settlement Agreement between
3 Edgeworth Family Trust, American Grating, LLC, and Viking?

4 A Yes.

5 Q That's Office Exhibit Number 5. This is the lead page, which
6 is bated -- I believe the Bate is 36; do you see that?

7 A Yes.

8 Q Now, on page 4 of the release, which is bates number 39 of
9 Exhibit 5, there's a paragraph E. Obviously, that paragraph mentions
10 Vannah and Vannah as attorneys for the Edgeworth's; fair to say?

11 A Yes. Can you show me the date of this release? I think it's
12 December 1st, but I just want to confirm.

13 Q On page 42 of Exhibit 5 -- I'm sorry, bated 42 of Exhibit 5, I
14 can show you the dates that both Brian and Angela signed the release,
15 December 1 of 2017; is that correct?

16 A Yes.

17 Q So after that -- and that's after the date you felt -- after the
18 date that you felt you had been fired, correct?

19 A Yeah. So, if I can just explain briefly. I get back on 9-20 -- or
20 11-27. I am basically negotiating, not torpedoing any settlement, not
21 making any threats. I'm basically getting this release where they omitted
22 the confidentiality clause and preserved the Lange claim, and I get the
23 Edgeworths, which is a very uncommon term, as a mutual release
24 because this case was so contentious, all right?

25 And Mr. Edgeworth was I'm going to use the word scared,

1 nervous, you know, whatever you want to use, he was very nervous that
2 Viking was ultimately going to come after him if they had some type of
3 opportunity. So that's why the confidentiality clause was not a good
4 idea, and we wanted to preserve the Lange claim, as well, and I got a
5 mutual release, I think, for them, on or about 11-27.

6 THE COURT: And you got the mutual release on 11-27?

7 THE WITNESS: Right in that range, yeah. It was -- it was
8 before I got the Letter of Direction, and I was out of the case.

9 BY MR. CHRISTENSEN:

10 Q Did Mr. -- a Viking sprinkler flooded Mr. Edgeworth's house
11 that he was building as an investment, and he thought Viking was going
12 to sue him?

13 A If they had -- if they had some type of basis, they probably
14 would have.

15 Q Okay. Now, you did reach out to Mr. Edgeworth on
16 December 5?

17 THE COURT: Okay, and I'm sorry, Mr. Christensen, before
18 you move on, on December 1, when that Settlement Agreement is
19 signed, the one that's Exhibit 5, how did you -- when's the first time you
20 saw that document?

21 THE WITNESS: That was a prior one that was proposed.

22 THE COURT: That had the confidentiality and all that?

23 THE WITNESS: Yeah, it had all of that.

24 THE COURT: Okay.

25 THE WITNESS: And so, you know, the Edgeworth's were

1 pressing me, right. There's an email from -- while Brian's in -- well,
2 Brian's in China, unavailable, no phone calls, no emails with me. He now
3 has Angela stepping up, typing all these emails, saying hey, where's the
4 Viking Settlement Release, where is it, where is it, where is it, get it to us.
5 And I just got back in town from a vacation over Thanksgiving.

6 So right when I get back there was probably the, you know,
7 proposed release. And so, I went over to the office with Mr. Henriod,
8 who was Viking counsel, and I have a great relationship with him, and
9 we basically just hammered out the terms of the release right there. And
10 then I was done, I was out of it.

11 THE COURT: Okay. But you hammered out the terms of the
12 release of that final agreement?

13 THE WITNESS: Before I was fired, yeah.

14 THE COURT: Okay. So, this is before 11-30?

15 THE WITNESS: Yes.

16 THE COURT: And then were you present when the
17 Edgeworth's signed that document?

18 THE WITNESS: Nope.

19 THE COURT: Okay. So, when did you see the signed copy?

20 THE WITNESS: When Mr. Vannah's office delivered it to me
21 to then forward it to Viking counsel.

22 THE COURT: But you received it from Vannah's office?

23 THE WITNESS: Correct.

24 THE COURT: Okay.

25 THE WITNESS: And just one other note. I didn't explain any

1 of the terms of the Viking release to the Edgeworth's because they
2 weren't talking to me anymore, and Mr. Vannah was their counsel.

3 THE COURT: Okay. So how did they get that document to
4 sign?

5 THE WITNESS: I had forward it to him.

6 THE COURT: Okay. So, you forwarded it to the
7 Edgeworth's?

8 THE WITNESS: No. I forwarded it to Mr. Vannah's office.

9 THE COURT: You forwarded that document to Vannah after
10 you got it from Viking's lawyers?

11 THE WITNESS: Yeah.

12 THE COURT: You forward it to Vannah. And then the next
13 time you saw it, it had the Edgeworth's signature on it being hand-
14 delivered to you to go back to Lange?

15 THE WITNESS: Correct.

16 THE COURT: Okay.

17 BY MR. CHRISTENSEN:

18 Q And just so that I understand this, a lot of times when you
19 were negotiating a release, you sent back proposed versions all the time
20 on email and people could track changes and all that stuff on it. What I
21 seemed to hear you say is that you actually physically went to Mr.
22 Henriod's office, Joel's office, sat down with them and went through it
23 right there?

24 A Correct.

25 Q Okay. And as a result of that meeting, that's what resulted in

1 what appears to be this document?

2 A Yes.

3 Q But someone put in paragraph E, right?

4 A Yep.

5 Q Okay. Later on --

6 THE COURT: So, paragraph E wasn't in there when you got
7 it?

8 THE WITNESS: What's that?

9 THE COURT: Paragraph E was not in the document that you
10 forwarded to the Edgeworth's?

11 THE WITNESS: That I don't know if E was in there or not.

12 THE COURT: Okay.

13 THE WITNESS: But I don't know if E was in there. All I know
14 is I hammered out some of the major terms, which were the mutual
15 release, if that's in that document, confidentiality, and preserving the
16 Lange claim; because those were some issues of contention.

17 BY MR. CHRISTENSEN:

18 Q And whenever section E was put in, that was accurate
19 because you didn't get the -- I mean normally you sit down with a client
20 and you're going over the release kind of paragraph by paragraph or
21 section by section, correct?

22 A Yeah.

23 Q And you didn't have that opportunity?

24 A No. And I didn't even know of Vannah's involvement at that
25 time, so, you know, paragraph E must of potentially come later. I don't

1 know the exact timing of all E, but it was -- you know, it was at the point
2 in time where Vannah was obviously involved because he was known to
3 the Defendants. And I wasn't at that point, you know, involved in the
4 case where I was even able to explain the release.

5 Q In fact, even in this courtroom when the Lange release was
6 presented, you declined to sign it?

7 A Correct. I mean I can't sign off on a release, I can't have my
8 name in a release if I'm not the one advising the client about the release.
9 So, at some point in time, whether this was the actual document that
10 was finalized with me and Mr. Henriod or just before their signing, I
11 wasn't representing them at that point in time because I didn't explain
12 the release to them.

13 Q That doesn't mean a client doesn't get the money or that the
14 settlement is blown up or anything, correct?

15 A Correct.

16 Q It just means you don't sign the release?

17 A Correct.

18 MR. CHRISTENSEN: Any other questions, Your Honor, on
19 the --

20 THE COURT: No.

21 MR. CHRISTENSEN: Thank you, Your Honor.

22 BY MR. CHRISTENSEN:

23 Q You did reach out once on -- on or about Tuesday, December
24 5 to Brian Edgeworth; is that correct?

25 A Yes.

1 Q I'd like to show you what's been marked as and admitted as
2 Office Exhibit 80, which is an email from Mr. Edgeworth. It's Bate 1657
3 of Exhibit 80.

4 A Okay.

5 Q And this is Mr. Edgeworth saying I have not received your
6 voicemail yet, but please get John Greene. If Vannah and Vannah call, if
7 you need anything done on the case, I'm sure they can handle it. So,
8 first of all, why were you calling Brian? You'd been fired. Why are you
9 calling him?

10 A Because Teddy Parker --

11 MR. VANNAH: I'm going to object. He has never been fired.
12 He's never been fired in this case. He keeps saying that over and over
13 and leading the witness on that regard. He's never been fired in this
14 case. He's still counsel of record.

15 MR. CHRISTENSEN: Well --

16 MR. VANNAH: That's just an absolute total -- and he's
17 leading, and he's leading, and he's leading. And I object to it.

18 MR. CHRISTENSEN: Is the object -- I'm sorry, Your Honor.

19 MR. VANNAH: Leading.

20 MR. CHRISTENSEN: Leading.

21 THE COURT: Leading. A leading objection. Can you
22 rephrase the question?

23 MR. CHRISTENSEN: I certainly can, Your Honor.

24 THE COURT: Okay. And then, Mr. Vannah, your objection is
25 that Mr. Simon has never been fired.

1 MR. VANNAH: Of course, he's never been fired. He's still
2 counsel of record. He's never been fired. There's no -- in fact, there's an
3 email telling him that you are still on the case, do a good job.

4 THE COURT: And I've seen that email, Mr. Vannah. So, I
5 mean, we're going to -- I know Mr. Simon's characterization of what
6 happened is he believed he was fired and that is the reason -- based on
7 the reasons that he's already testified to here this morning. But the
8 constructive discharge issue is still an issue that's before this Court that I
9 have yet to decide on.

10 MR. CHRISTENSEN: Correct, Your Honor. And perhaps it
11 was inartful phrasing of the question, but Mr. Simon has already testified
12 that he felt he had been fired --

13 THE COURT: I understand. He testified to the --

14 MR. CHRISTENSEN: -- so that was the gist in which the
15 question was -- was made.

16 THE COURT: Right. And he testified the reasons for which
17 he felt that way.

18 MR. CHRISTENSEN: However, I just for the record I do
19 disagree with Mr. Vannah's characterization.

20 THE COURT: And I know. I mean that's an issue that I'm
21 going to decide as part of what we're having this hearing about, but I
22 understand Mr. Simon believed he was fired, he testified to it, as well as
23 he testified to the reasons for which he was fired. So that's based on Mr.
24 Simon's understanding.

25 BY MR. CHRISTENSEN:

1 Q Mr. Simon, why did you leave a voicemail for Mr. Edgeworth
2 and then send a follow-up email on December 5 at, I don't know, about
3 3:00 in the afternoon?

4 A With regard to Mr. Edgeworth, I think I don't know 100% sure
5 if I called Mr. Greene or not and left a message, but Mr. Parker had
6 contacted me about negotiating the Lange claim and presented an offer.
7 And so that offer needed to be communicated immediately because we
8 had a lot of matters that were pending that were coming up.

9 And so, Mr. Parker says you need to get back to me on short order.
10 So, I called Mr. Edgeworth and left a -- he didn't pick up. I left a
11 voicemail can you please call me.

12 And then within, I don't know, minutes, he sent this email that he
13 didn't even listen to my voicemail, he just kind of saw that I called on his
14 Caller ID, probably, and said, you know, just contact Mr. Greene at
15 Vannah and Vannah, I'm sure they'll be able to handle whatever you're
16 calling about.

17 THE COURT: And did you just say that you weren't sure if
18 you called Mr. Greene first?

19 THE WITNESS: Yeah. Mr. Greene was -- obviously they
20 were involved at that point --

21 THE COURT: Right.

22 THE WITNESS: -- since, you know, November 30th. So, I'm
23 trying to communicate this to whoever. And so, I mean technically his
24 letter didn't say don't call him at that point, so even though I felt like all
25 right, you're out of the case, these are the guys, he didn't say don't call

1 him. So, I kind of wanted just to call him and let him know.

2 THE COURT: And had he have answered; I mean what was
3 your intentions; were you going to talk to him or were you still planning
4 on talking to Mr. Greene? But hypothetically had Mr. Edgeworth had
5 answered the phone, what were you going to discuss with him?

6 THE WITNESS: I was just going to let him know that Mr.
7 Parker put an offer on the table.

8 THE COURT: Okay.

9 BY MR. CHRISTENSEN:

10 Q Just so I can clear up something here, I mean you received a
11 Letter of Direction from Mr. Edgeworth. Did you ever receive any
12 communication from Vannah and Vannah saying hey -- let's go back to --
13 to their fee agreement. Hang on just a second. Which is Exhibit 90.
14 Had you ever received communication from Vannah and Vannah saying
15 that they wanted to see portions of the file so that they could do all
16 things to effect a compromise in some manner?

17 A I'm sorry, could you repeat that?

18 Q Sure. In the second paragraph of the fee agreement between
19 Vannah and Vannah and Brian Edgeworth, that was entered into on
20 November 29, 2017, that's Law Office Exhibit 90, a third reading of that is
21 that they're going to wrap up to settlement.

22 A That's what it says.

23 MR. VANNAH: Object to his leading.

24 THE COURT: Can you rephrase the question, Mr.
25 Christensen, as an open ended question Mr. Simon can answer?

1 BY MR. CHRISTENSEN:

2 Q What is your interpretation of that paragraph, Mr. Simon?

3 A I think it's pretty clear what it says, is that the Edgeworth's
4 are retaining Mr. Vannah regarding the American Grating versus all
5 Viking entities. And then it talks about the scope of the representation
6 and that it empowers them to do all things to effect a compromise of the
7 case. And they're referring to the underlying case of Edgeworth Family
8 Trust, American Grating, versus Lange and Viking. Or specifically,
9 Viking, not Lange.

10 Q There's a lot of stuff on the front burner at this time in this
11 case, right?

12 A Yes.

13 Q Can you --

14 MR. VANNAH: Again, leading.

15 MR. CHRISTENSEN: That was a setup question, Your Honor.

16 THE COURT: Okay.

17 BY MR. CHRISTENSEN:

18 Q What was going on?

19 A In the underlying case?

20 Q In the underlying case in this late November, early December
21 time period.

22 A We had multiple motions on calendar. We had, I don't know,
23 half a dozen depositions on calendar, another half a dozen to a dozen
24 depositions that everybody wanted to schedule. We had multiple
25 motions on calendar. We had an evidentiary hearing set. We had

1 pending motions for summary judgment and counter summary
2 judgment. I mean there was just so much going on it was crazy.

3 Q What kind of contact did you receive from Vannah and
4 Vannah to become involved in that process to effect a compromise?

5 MR. VANNAH: Your Honor, let me object again as leading. I
6 never called him to effect a compromise. It's leading. He's testifying as
7 to his theory of the case. He's leading every single question.

8 THE COURT: Well, I mean, I think the -- I mean if he gets to
9 change the first word of that to did, did you receive any communication
10 from Vannah and Vannah?

11 BY MR. CHRISTENSEN:

12 Q Did Vannah and Vannah call?

13 A No.

14 Q Did you receive requests for the file?

15 A Didn't receive a request for the file. I think we had our first
16 meaningful discussion on a conference call with Mr. Vannah, Mr.
17 Greene, yourself, and myself, on December 7th.

18 Q Okay.

19 A I'm sure I had prior conversations, I think you did, too, with
20 Mr. Greene, but they weren't too meaningful because he always had to
21 check with Mr. Vannah.

22 Q What were you doing during that period with regard to the
23 underlying case?

24 A What I was expected to do.

25 MR. VANNAH; I'm sorry --

1 BY MR. CHRISTENSEN:

2 Q Were you going to abandon the case?

3 A I was not going to abandon the case. And I didn't abandon
4 the case.

5 Q You mentioned December 7th. I'm going to show you what
6 the office marked as Exhibit 47 that's been admitted, but the date is 4-26.
7 This is the Consent to Settle?

8 A Yes.

9 Q And this followed up on -- was sent and followed up with a
10 conference call of December 7th?

11 A I believe so, yes.

12 THE COURT: What is this exhibit, I'm sorry, Mr. Christensen?

13 MR. CHRISTENSEN: It's our Office Exhibit 4-7, 47.

14 THE COURT: Okay.

15 BY MR. CHRISTENSEN:

16 Q Now, after November 25, did you ever have a conversation
17 with Mr. Edgeworth or Angela Edgeworth concerning the Lange claim or
18 any settlement offers?

19 A No. I explained the Lange claim in our 11-17 meeting, but
20 that was it.

21 Q What did you take this Consent to Settle to mean when you
22 read it?

23 A I was clearly not their lawyer. This was completely opposite
24 of the advice that I provided them. And --

25 THE COURT: Did you provide that advice to them at the 11-

1 17 meeting?

2 THE WITNESS: Yes.

3 THE COURT: Okay. So, at the 11-17 meeting there was a
4 discussion and both the Edgeworth's were there?

5 THE WITNESS: Correct.

6 THE COURT: So, there was a discussion between you and
7 them about how you thought they should settle the Lange claim?

8 THE WITNESS: Yeah. How we should proceed with the
9 Lange claim.

10 THE COURT: Okay. Yeah, because there's just been a lot of
11 talk about they didn't follow your advice, they followed Mr. Vannah's. I
12 just wanted to know when you gave that advice.

13 THE WITNESS: Yeah. I -- there wasn't really any discussion
14 about settlement of the Lange claim because Mr. Parker wasn't really
15 talking settlement at that point.

16 THE COURT: Okay.

17 THE WITNESS: We were talking about after we resolved the
18 Viking claim how we're going to proceed on a separate claim against
19 Lange. And that was discussed in our 11-17 meeting.

20 THE COURT: Okay. But did you ever advise them one way
21 or another on the Lange settlement, like you should do this; did you ever
22 tell them that?

23 THE WITNESS: No.

24 THE COURT: Okay.

25 THE WITNESS: They weren't talking to me.

1 THE COURT: Okay.

2 BY MR. CHRISTENSEN:

3 Q If they were, what would you have said?

4 MR. VANNAH: Objection, irrelevant, what he would
5 have said.

6 THE COURT: Well, I think it's relevant, Mr. Vannah, I'll let
7 him answer.

8 MR. CHRISTENSEN: At a minimum it's a hypothetical, Your
9 Honor.

10 THE COURT: I'll let him answer.

11 THE WITNESS: My position on the Lange claim was that this
12 seemed to be a fairly clear-cut claim. And I'm listening to everybody talk
13 about it, I've been listening to their pleadings, I've seen the lawsuits
14 against me, and I still don't think anybody understands how the Lange
15 claim works.

16 And so, my approach and position on this Lange claim is
17 whatever attorney's fees they paid me and whatever costs were
18 incurred, could have been more likely than not recovered from a later
19 proceeding.

20 BY MR. CHRISTENSEN:

21 Q Let's take a look at when this Consent to Settle was signed.
22 According to page 2 of the Exhibit 47, it was signed on December 7th,
23 2017; is that correct?

24 A Yes.

25 Q And both Brian and Angela signed it, correct?

1 A It appears to be so.

2 Q At some point the -- did Viking move forward?

3 A Yes.

4 Q Checks were issued?

5 A Yes.

6 Q What happened following that?

7 A The Edgeworths, via Mr. Vannah, sued me.

8 Q A couple things happened before that, correct?

9 A Well --

10 Q Again, I don't want to disagree with you, Mr. Simon, but I'm
11 going to. Let's take a look at what the office has marked as Exhibit 48, a
12 number of emails. The one that I'm going to ask you about is from Mr.
13 Vannah. It's dated December 26th, 2017, it's at the top of page 428 of
14 Exhibit 48.

15 A Yes.

16 Q The highlighted portion says; however, they have lost all
17 faith and trust in Mr. Simon, therefore they will not sign the checks to be
18 deposited into his trust account. Quite frankly, they are fearful that he
19 will steal the money. That was cc'd to you according to the exhibit?

20 A It appears so.

21 Q Did you read that language?

22 A I did.

23 Q What was your interpretation of that?

24 A Obviously, I'm not their lawyer anymore. If you lose that
25 much faith in your lawyer, where you think he's going to steal the

1 money, and you're preventing him from doing any acts to consummate
2 the settlement, I deposit the money in your trust account, there's clearly
3 no attorney/client relationship at that point in time, which just
4 reconfirmed all of the other prior events.

5 Q You mentioned lawsuit?

6 A Yes.

7 Q Office Exhibit 19, re: Bate 370 is the complaint in case
8 number A-18-767242, and file stamp up there at the top, and the case
9 was filed January 4, 2018. Have you seen Exhibit 19 before?

10 A I have.

11 Q And what's your understanding of the complaint? What is
12 alleged against Daniel S. Simon?

13 A One of the causes of action as for conversion, somehow that
14 I was stealing their money from the settlement, the money that wasn't
15 even received yet; that was one of the causes of action. Just a simple
16 review of that knows that that's an impossible event to even have
17 occurred, at that point in time.

18 They've alleged breach of contract that I've testified here today,
19 that didn't exist. Those are all made up facts about a 550 an hour.
20 Among other things, alleging malice and punitive damages, and a whole
21 list of things that simply aren't supported by anything that I believe that I
22 did.

23 Q What was your feeling about any attorney/client relationship
24 between you and the Edgeworths when you saw Exhibit 19, the
25 complaint?

1 A I think it's pretty clear that I'm not their attorney anymore. I
2 think the overwhelming law supports that when you sue your lawyer, the
3 attorney/ client relationship is sufficiently severed.

4 Q Do you recall what the position of Vannah & Vannah and the
5 Edgeworths were, concerning your continuation as counsel of record in
6 the Edgeworth case, around that period of time in January of 2018?

7 A Yes.

8 Q What was it?

9 A They wanted me to continue to stay on the case and work for
10 free.

11 Q I'm going to show you what the Office has marked and has
12 been admitted as Exhibit 53, re: Bate 450. I'm going to concentrate on
13 the lead, or top email, at least as we see it on the screen, from Mr.
14 Vannah, January 9/18 to myself, cc'd to Mr. Greene. Mr. Vannah
15 discusses that you could move to withdraw. How did you take that
16 email, how did you interpret that when you read it?

17 A I interpreted that he's forcing me to do something, when it's
18 pretty clear that I've been fired. And he's basically threatening me that if
19 I do withdraw there will be adverse consequences.

20 Q Did you draw that from, however that doesn't seem in his
21 best interest --

22 A Yes.

23 Q -- and then the following language? And in fact, you haven't
24 withdrawn. You haven't filed the motion have you?

25 A No.

1 Q Have you received any requests to sign a substitution of
2 counsel?

3 A No.

4 Q Let's move past the constructive discharge issues and move
5 on back to a little bit of a timeline. You had touched on this some or got
6 started on it some. I think where we left off yesterday was, some
7 motions for summary judgment were denied by, what was that, a senior
8 judge --

9 A Yes. In --

10 Q -- at the time?

11 A -- April 25th.

12 Q Okay. So, we're not describing every motion or pleading
13 that's been filed in this case. What happened after that point in time?

14 A After that point in time I think we had already taken quite a
15 few of the Lange employees, and proved up the breach of contract. Got
16 them to admit that this was a defective product. We even had a report
17 done by their insurance company, that confirmed that it was defective
18 product.

19 So, every element of the breach of contract for Lange was
20 established at that point in time, now the focus was directed at Viking.
21 So, after that motion for summary judgment against Lange in April, the
22 judge basically said at that point, at the request of the Defendant,
23 because I was being so aggressive with my motions for summary
24 judgment, they asked him for a moratorium on me filing anymore
25 motions for summary judgment until experts were disclosed, and

1 rebuttal experts, in fact, and allow discovery.

2 Q And the goal of the motion for summary judgments against
3 Lange was what?

4 A To trigger coverage. So, if I got a summary judgment ruling
5 as to liability only, you know, Lange, you would think would pick up the
6 claim, pay Mr. Edgeworth then and there, and then continue to
7 subrogate against Viking. Which is why we offered to settle for a million
8 dollars on our offer of judgment, which was done in March of '17.

9 Q That was one part of that multiple attack on Lange?

10 A What's that?

11 Q That was one part of the positioning against Lange?

12 A Yes.

13 Q Do you have any understanding of the potential impact of
14 that offer on insurance coverage?

15 A If they have sufficient information to make a responsible
16 claims' decision, they deny the offer and accept the risk of any offer over
17 and above that, then potentially the effects of the policy limit are no
18 longer in place, and you can seek the full value of your claim.

19 Q Is that what's commonly referred to as uncapping, or
20 opening a policy?

21 A Yes.

22 Q What happened when you turned your attention to Viking;
23 start off with the on or about date?

24 A Well, May 3rd was the first 30(b)(6) deposition. I had already
25 been fighting with Viking a little bit, just to get this stuff on calendar and

1 getting their 30(b)(6) to even come in town, who -- his name is Scott
2 Marano, and he's apparently their main guy who testifies in all of their
3 cases. So, I took his deposition on May 3rd. Quite a lengthy deposition,
4 I don't know, six -- five, six hours, maybe more, and basically learned his
5 information at that time, based on what I knew at the time.

6 The problem was is that we didn't have a protective order in place,
7 so I didn't have all of the documents that were under the protective
8 order, and so that came later. But I still like moving forward with
9 depositions of 30(b)(6)'s early on, because I have a document production
10 attached to the subpoena that forces them to come, and if they don't
11 show up at those depositions, I'm pretty confident the Discovery
12 Commissioner is going to give me another depo anyway, to cover all
13 those documents.

14 So, what I did I got him to commit to a lot of things in that
15 deposition, which ultimately we used later to prove to the Court, how
16 they rely on them.

17 Q Did he commit to a number of activations?

18 A He committed to 46 nationwide.

19 Q There's been discussion of the July 6 document dump from
20 Viking?

21 A Yes.

22 Q Can you tell us a little bit about that document dumping?

23 A Well, we finally got the protective order signed on June, I
24 believe 29th, after fighting with them about it, about the terms. There
25 were some terms in there that we had to fight about, particularly on how

1 they were going designate documents confidential. We ultimately
2 prevailed on that issue. We finally got it signed, and then, following that,
3 they produced a lot of confidential documents.

4 Q So that was in early July?

5 A Yes. I believe Ms. Ferrel testified to July 6, and I have no
6 reason to dispute it.

7 Q There were some -- there's discussion of a trip down to San
8 Diego to visit experts?

9 A Yes.

10 Q When did that occur?

11 A I believe it was August 9th; 8th or 9th.

12 Q What was the purpose of going to San Diego to visit with the
13 experts?

14 A The purpose of the trip was to educate our experts a little bit,
15 and streamline and learn what their position was, and how they were
16 going to approach the case. Educate them a little bit from our position
17 and what we recently learned. We had expert disclosures that were
18 coming up fairly quick and there was a lot of information that was just
19 dumped on us, obviously July 6, that they needed to review.

20 So, we wanted to kind of understand how they were going to
21 approach this type of case, have some good discussions with them, and I
22 would obviously educate them a little bit on the legal aspect of it, what
23 they needed to put the reports, from a legal basis.

24 Q Is that an unusual practice for you, to visit an expert in
25 person?

1 A No.

2 Q Could you explain a little bit about that?

3 A In important cases, especially complex litigation cases, even
4 really kind of very complex high-dollar medical malpractice cases, or any
5 cases I'm doing, I want to go meet with the experts, because experts,
6 they don't take the time to really look at the issues in the case. And so, I
7 want to have a face-to-face, I think it's very meaningful, it's worth every
8 penny to actually have a discussion with them, and if they're not going
9 to agree with me then I want to know -- I want to know that upfront.

10 If they do agree with me, but just don't understand the issues, I
11 want to have that discussion so they can agree or disagree with me.

12 And if they -- the other side of it too is, oftentimes in those
13 meetings you have a discussion and they say, well, you know, it would
14 be interesting to have this information, or these documents, or this, and
15 then I can have time to get that to them before they issue their final point
16 -- report and render final opinions.

17 Q By the time you went -- and Mr. Edgeworth went with you?

18 A He did.

19 Q Okay. By that time, by August of 2017, can you describe the
20 effort your office was putting in on this case?

21 A What time?

22 Q August of 2017?

23 A Yeah. Things were starting to ramp up in a big way, because
24 now these documents were coming in. We had the 30(b)(6), we're
25 having to get all of these experts lined up for expert disclosures, this was

1 a very expert, intensive type of case. We had to hire engineers, we had
2 to hire metallurgists.

3 The Defense had multiple experts. Ultimately we ended up hiring
4 weather experts, other engineers that were familiar with weather, then
5 we had to hire experts, we didn't have to, but we did, regarding the loss
6 of value of the house, which was another expert.

7 They had plenty of experts on their side because we were dealing
8 with two defendants, and they all had engineers, and they all had
9 metallurgists, they had weather experts. They had --

10 Q When was the Defense expert disclosure?

11 A I believe it was in August.

12 Q Was it staggered?

13 A I don't think so.

14 Q Okay.

15 A I don't allow that, typically.

16 Q All right.

17 A I don't think it was this time.

18 THE COURT: And, Mr. Simon, you hired all these experts in
19 August?

20 THE WITNESS: Yes.

21 THE COURT: Okay.

22 THE WITNESS: Well, not every expert was in August. After
23 we got some reports, I went and retained some rebuttal experts a little
24 bit later, but --

25 THE COURT: A little bit later in '17?

1 THE WITNESS: Yeah.

2 THE COURT: And Mr. Edgeworth, based on everything I've
3 gathered from your testimony and his, he was actively involved in this
4 case. Were you and him discussing how much you were paying these
5 experts, during this time?

6 THE WITNESS: No.

7 THE COURT: Okay. So, there was no discussion had about
8 that, at all?

9 THE WITNESS: I mean, I told him, you know, experts are
10 very expensive.

11 THE COURT: Okay.

12 THE WITNESS: And -- but as far as the experts were costing,
13 I mean, they were what they were. I don't know if he asked for fee
14 sheets or whatever, but as far as invoices coming in I would just pay the
15 experts.

16 THE COURT: So, you were paying the experts?

17 THE WITNESS: Yeah. I was advancing all the costs on this
18 case.

19 THE COURT: But there was no discussion with Mr.
20 Edgeworth, like, hey, dude I'm pay all these experts, like what are we
21 doing? Did you have that discussion with him at all?

22 THE WITNESS: No.

23 MR. VANNAH: Okay. Let me object, Your Honor. I'm sorry,
24 I've got to object.

25 THE COURT: To my question, Mr. Vannah?

1 MR. VANNAH: I guess I'm objecting to -- my client paid
2 every single expert bill.

3 MR. CHRISTENSEN: Well, Your Honor, that's not --

4 MR. VANNAH: So, when he said he paid the experts, my
5 client reimbursed him for those.

6 THE COURT: Well, I understand that. Mr. Vannah, you can
7 ask him about that, but I'm asking him specifically during this
8 timeframe, what is going on?

9 MR. VANNAH: Okay, I see.

10 THE COURT: And, I mean, yeah, you can clear all that up
11 when you get up here on cross, but I'm asking him during the specific
12 timeframe, because he and Mr. Edgeworth are travelling to San Diego,
13 they're hiring these people; what is going on with the money?

14 MR. VANNAH: Yeah. So, I guess I was just -- I didn't want it
15 to be ambiguous. Mr. Simon might have written a check, but then he'd
16 sent a bill to the client, the client will pay him back.

17 THE COURT: No. And, I mean, I've seen these bills, I've
18 looked them over, but I'm just asking him specifically between him and
19 Mr. Edgeworth, what is being said at this time?

20 MR. VANNAH: A good point. And I'm curious myself, so --

21 THE COURT: Okay. So, I mean, you -- these experts are
22 billing you, you're paying the bills, but you and Mr. Edgeworth are
23 having no conversations, and I'm talking about this timeframe of
24 approximately August of '17. You guys are not having any
25 conversations about, hey, I'm fronting all these calls. Are we just waiting

1 on the settlement, you know, nothing about that?

2 THE WITNESS: Well, the extent of any conversations about
3 the cost of experts are -- these guys are expensive.

4 THE COURT: Okay.

5 THE WITNESS: This is an expensive case, but they're
6 necessary, if you want to prove your case you need experts, and these
7 are what's required. And as far as the actual cost of them, or what it was
8 going to cost, nobody knew. I mean, this was -- these experts had a lot
9 of information to review.

10 THE COURT: Uh-huh.

11 THE WITNESS: I mean, the metallurgist alone, you know,
12 they would do testing in their lab of sprinklers. We had to bring them all
13 here for a test in June that was like a ridiculous thing.

14 THE COURT: I recall hearing all about this at the hearing.

15 THE WITNESS: Yeah. I mean, sadly, you know they required
16 this -- they wanted to perform all those tests, and we had multiple
17 experts from Lange, multiple experts from Viking, and then we had to
18 bring our experts out, because that's what you have to do, it was very
19 costly day.

20 THE COURT: Okay.

21 THE WITNESS: Yeah.

22 THE COURT: No. I remember hearing about the day in
23 June --

24 THE WITNESS: Yeah.

25 THE COURT: -- where everybody went to the house, I recall

1 that.

2 THE WITNESS: Yeah. So regardless of what the expert fees
3 were, they were billed, and when they came in they paid and advanced
4 those costs.

5 THE COURT: Okay.

6 THE WITNESS: And at some point in time, yeah, Mr.
7 Edgeworth did reimburse me. He didn't reimburse me very quickly on
8 the last 70,000, but that's, you know, a different issue. But most of
9 them, when I would send him the bills, whatever they were, after four
10 months, you know, those were the costs that accumulated up to that
11 date; yeah, he would reimburse those costs.

12 THE COURT: Okay. And just briefly on the bills, I have a
13 question about that too. And you might get to this Mr. Christensen, and I
14 apologize to you and Mr. Vannah if I'm asking your questions, but I just
15 have some questions to help me understand what's going on.

16 MR. VANNAH: No, that's great.

17 THE COURT: These bills, yesterday you testified that
18 basically there is the attorney's fees provision in the Lange insurance
19 policy, and that was the reason that the bill started being generated?

20 THE WITNESS: Correct.

21 THE COURT: And then you sent them to Mr. Edgeworth, and
22 he paid them. When he paid the first one did you and him have a
23 discussion, like, hey, I don't want you to pay these, I'm just generating
24 these for the Lange insurance settlement, or was there ever any
25 discussion between you and him when he paid the first bill, that you sent

1 to him?

2 Because I got the impression, and correct me if I'm wrong,
3 you were kind of drafting these -- you testified you were kind of drafting
4 these for later down the road, if there's a settlement with Lange and
5 there's an attorney's fee provision in their policy?

6 THE WITNESS: Yeah.

7 THE COURT: And so, when you forwarded them to
8 Edgeworth was it more informational, or was it forwarding like, you need
9 to pay these?

10 THE WITNESS: No. I expected costs to be reimbursed, I
11 didn't expect the actual attorney's fees part of it to be paid, but I wanted
12 to show him what I was producing, and he was creating the calculation
13 of damages on his spreadsheet --

14 THE COURT: Right.

15 THE WITNESS: -- that kept going.

16 THE COURT: Right.

17 THE WITNESS: So, and obviously, we gave him a ton of
18 information on this case, I mean, pretty much everything that --
19 information that that was being generated we were giving it to him. So,
20 yeah, I sent it to him. We didn't have a discussion; I want this paid. But
21 when he got it, he did pay it, I did put, you know, some good amount of
22 work into it at that point. But I thought with that bill being generated
23 Lange was going to trigger coverage, and I could have just -- really just
24 forwarded it to Lange.

25 So, I didn't really expect payment on the first one for that

1 attorney's fees, because I was expecting to forward it onto Lange
2 anyway.

3 THE COURT: Okay. But when you got the check from Mr.
4 Edgeworth, did you and him ever -- because this is in 2017?

5 THE WITNESS: Yeah.

6 THE COURT: Did you and him ever have any discussion
7 about, you know, I'm just drafting these, so down road when we settle
8 with Lange, or did you -- I mean, did you guys have any discussion about
9 you not wanting him to pay these bills?

10 THE WITNESS: No, I mean, it's not that I didn't want him to,
11 it was one of those that I didn't really expect him to, because I was going
12 to hand it off to Lange; at least the first one.

13 THE COURT: Okay.

14 THE WITNESS: I wasn't even thinking about it at that point, I
15 was waiting to get this summary judgment finalized. But all the bills after
16 that, Mr. Edgeworth wanted to pay, that was part of his little strategic
17 plan to give credibility to his -- to give credibility to his damages, and
18 justify his loans that he was taking out, and earning all this interest on.

19 And just so Your Honor knows, there was -- his deposition
20 was coming up in September, and he wanted me to create a bill. And
21 I'm starting -- I'm in the middle of this case, I don't have time to create
22 these bills. And at that point in time I didn't want to create this bill,
23 because I really virtually started to abandon the billing on Lange at that
24 point, because I'm focused on Viking.

25 And I don't think what anybody understands, still, in this

1 courtroom, is that all of those bills are for the Lange claim, and I had to
2 produce them to show Lange, and we wanted to be able to negotiate
3 with Lange, and say, hey Lange, your damages are accruing. But once
4 we started focusing on Viking the Lange bills are not important anymore,
5 because now I'm focused on Viking.

6 Viking doesn't have to pay attorney's fees and costs, that's
7 not part of the damages that they would ever have to pay in a trial. The
8 only reason the bills were created is because Lange is obligated under
9 the contract to reimburse them for whatever attorney's fees Mr.
10 Edgeworth was incurring, to enforce the warranty, which was against
11 Viking.

12 THE COURT: Okay.

13 THE WITNESS: And so just to finish up that point, is that his
14 September deposition was coming up, September 27th, he wanted me to
15 get him a bill, and is begging me for a bill. So, I said -- because he
16 wanted to pay it before his deposition, so he could go into his
17 deposition and say, I paid this bill.

18 And the reason for that is, because he wants to basically say
19 how damaged he is, and how he's incurring all these loans because he
20 has to pay all these fees. If he wasn't paying my bills he wouldn't be
21 able to justify all of his loans, and all of the high interest that he was
22 creating as damages in his case.

23 THE COURT: Done?

24 THE WITNESS: All right.

25 BY MR. CHRISTENSEN:

1 Q San Diego Airport, in the bar, after visiting experts, what
2 happened?

3 A At that point in time, because there was a data dump, and
4 the documents were getting very voluminous, Ashley spent an incredible
5 amount of time at this point. I am, we're getting experts, we're talking a
6 ton of experts. I mean, this is becoming a very involved case, and now
7 spending a whole day traveling to try and, you know, educate experts, I
8 say to him, listen, man, this isn't kind of working out.

9 This is now, you know, we're kind of past the favor mode, where
10 it's a little too voluminous and a burden on my office, I'm a small office.
11 I'm losing money on your case, working on it. I have a lot of other cases.
12 I don't do hourly cases, this isn't an hourly case, you know that.

13 And so, he basically said, so, you know, what can we do; how can
14 we move forward?" And then he started talking about well, punitive
15 damages, can we do kind of a hybrid, he started offering these things,
16 and he did say, you know, "I just want to maybe pay my mother-in-law
17 back, and at this point none of it makes sense, right? Because this is the
18 type of case that it just doesn't make sense.

19 And I just said, listen, we're just getting all the documents, we
20 don't even have experts' disclosures. Let's just move forward, we're just
21 going to do whatever's fair, let's just see how it starts to turn out. And
22 from that point on we never had a -- he sent that email, but that email
23 was meaningless to me, and I'm entrenched in the case, and we never
24 had another discussion about fees.

25 Q Until later on?

1 A Yeah. Until 11/17.

2 Q When he raised the issue about paying back the mother-in-
3 law, how did you understand that?

4 A I didn't really understand it other than he just wanted to pay
5 his mom back. I mean, I'm not going to give him more than I even put in
6 any bills; I'm not going to give him money back. I mean, I don't know
7 what lawyer on the planet would give a client money back, after you've
8 been in a case for a year.

9 Q Is that the way you took it --

10 A Yeah.

11 Q -- that he wanted money back?

12 A It seemed, yeah. I mean, that was one of his options, I guess.

13 Q Okay. There was some discussion about who is paying who
14 was paying whom on experts. I want to run through a couple of emails
15 fairly quickly. The first one I'll show you is Office Exhibit 80, re: Bate
16 2173. This is an email from -- I guess originally from you on September
17 17th with some information about an expert. And then Brian emails you
18 September 17, 2017 at 12:44, and what does the highlighted line say?

19 A Are you paying all these guys, or was I supposed to pay
20 Vollmer [phonetic]?

21 Q And your response is to indicate what?

22 A I'm paying them, and then that will be on my cost with my
23 bill. I just want to let you know when I get the bills, and then I will have
24 Ashley look for his request for a subs' report, which was one of the other
25 sides' experts.

1 Q Okay. And then again, Exhibit 80, re: Bate 2148. There's
2 another email, this is dated September 20, 2017. What's Brian's question
3 on this one?

4 A He was still not understanding, should I pay this, or you?

5 Q Okay.

6 A And then he saw the actual bill, it says, not that bad. So, I
7 mean, he understood that experts were expensive. He understood that I
8 was expending all these costs in advance, which were substantial.

9 Another part of the reason, you know, too, is that these -- when I'm
10 retaining these experts, Brian didn't retain these experts, I found all
11 these experts, I retained them, and they have the attorney on the hook, if
12 these bills aren't paid. Right? I mean, ultimately the client has to pay it,
13 but a lot of these experts, you know, bind the attorney, because I'm
14 working with them, so I got to pay them.

15 Q I think we've seen at least one agreement here that Mr.
16 Edgeworth signed?

17 A Yes.

18 Q Do you recall that expert?

19 A I think it's Mr. Pomerantz.

20 Q Okay. What was his role in the case?

21 A Mr. Pomerantz was an expert that I found and retained, to try
22 and prove up the punitive damages on the case, and he brought a
23 special -- a specialty of -- he used to be a U.S. Attorney Prosecutor and in
24 the fraud division and was able to hopefully opine to some of the fraud.
25 And I educated him on what fraud meant within the meaning of punitive

1 damages. And he looked at the facts of the case and formulated some
2 opinions that supported that; and we disclosed that. And that was a big
3 element of punitive damages, and --

4 Q How did it come about that Brian's signature was on
5 agreement with Mr. Pomerantz?

6 A Mr. Pomerantz wanted his signature on it; that's just the way
7 he operated.

8 Q Is that an unusual thing to happen?

9 A Well, Mr. Pomerantz is a lawyer, number one. Mr. Pomerantz
10 is not a professional expert like an engineer, or somebody else. And to
11 be honest, I don't even know if he's ever acted as an expert in a private
12 capacity before.

13 Q Okay.

14 A So he basically just gave Brian his standard, you know,
15 retainer, and that's was what he was billing as an expert, his standard
16 retainer agreement.

17 Q So between following the August contingency email, up to
18 the office meeting, were there any discussions concerning reaching a fee
19 agreement, with Mr. Edgeworth?

20 A From what time?

21 Q August, after the -- let's take it from the meeting in the San
22 Diego Airport bar, up to your November meeting?

23 A No.

24 Q I'd like to change gears a little bit and go over the Brunzell
25 Factors with you.

1 A Sure.

2 Q Are you familiar with Brunzell?

3 A I am.

4 Q So the first factor is qualities of the advocate. I'm just going
5 to talk about the lead ones, instead of all the following language. Mr.
6 Simon, could you give us a little bit of background on some of your trial
7 success?

8 A Well, I've had many multi-million dollar verdicts. I've had a
9 lot of success in the courtroom. I've had many, many jury trials, had
10 many, many million dollar plus settlements, over the last 26 years.

11 Q The second Brunzell Factor is the character of the work to be
12 done, and the still required, responsibility, things of that type. Can you
13 talk a little bit about the character of the work that had to be done in the
14 Edgeworth case?

15 A Yeah. This was a complex litigation case. It had to be paid
16 full attention to. We had a lot of lawyers, we had lawyers from Los
17 Angeles, Pearl Hawkins [phonetic], who were very skilled in defending
18 Viking on these particular sprinkler claims. We had Ms. Pancoast who's
19 been a lawyer for 25, 30 years. We've had Ms. Dalacas and her firm,
20 they are seasoned lawyers as well.

21 And the issues were very complex because not only do we
22 have a kind of construction defect, products' liability contract
23 interpretation, there were a lot of intricacies to the particular claim. And
24 even though it's a property damage claim, you know, how are you going
25 to prove that up to get the full value of the claim.

1 So, we had to look at the damages' aspect, and then we also had to
2 look at the Defense arguments to rebut them, so it was very involved,
3 and very intricate of all the legal issues. And as you even see down the
4 stretch of all the legal issues, like I said, I still don't think anybody
5 understands the Lange claim.

6 Q The third one, is the work actually performed by the lawyer?
7 How would characterize the work by yourself and by your office, in this
8 case?

9 A I would say my work on this case, Ms. Ferrel's work on this
10 case, my entire staff's work on this entire case was exceptional.

11 Q Would you agree with the characterization of Mr. Nunez
12 concerning the work of yourself and your firm on this case?

13 A Yes. Mr. Nunez has told me several times that he
14 appreciated how I was methodically setting everybody up in place, with
15 my discovery requests, my depositions, and how I was moving forward
16 with the case and my motions.

17 Q The fourth and last factor on Brunzell is the result. Tell us
18 about the result?

19 A This result in the legal community; I've spoken to the best
20 lawyers in the city who are astonished that this result occurred. This is
21 considered the highest settlement in State of Nevada ever, for a single
22 family property damage case.

23 Q Are you familiar with Rule 1.5?

24 A I am.

25 Q I'm sure Mr. Vannah will ask you about 1.5(b), I'm not going

1 to steal his fire. I'm going to ask you about 1.5(a).

2 A Very good.

3 Q The factors to be considered in determining the
4 reasonableness of the fee include the following: Number 1. Time and
5 labor required. Novelty and difficulty of the questions involved, and the
6 skill requisite to perform the legal service properly. Can you tell us
7 about that in connection with your work, and your office's work on the
8 Edgeworth case?

9 A There was a lot involved. You saw all those boxes, 100,000
10 plus documents that had to be managed. It doesn't even include all the
11 service of the pleadings. The motion work, the legal intricacies of it all;
12 you see all those emails, the work was enormous.

13 Q The second factor: The likelihood, if apparent to the client,
14 that the acceptance of the particular employment will preclude other
15 employment by the lawyer.

16 Can you tell us about that factor?

17 A Yes. Because when I focused on the Edgeworth case I wasn't
18 working on any other cases. All of the other cases, big cases, that I was
19 working on were put on the back burner. A lot of the discovery was
20 continued. And so instead of working other valuable cases, where you
21 heard Mr. Drummond, the cases that I lost the opportunity to work on
22 there.

23 And Mr. Edgeworth knew this, we had plenty of conversations with
24 him about this, that; a) where's this case going, what are we doing, and
25 you know, it's time consuming it's taken up my whole office, it's eating

1 up my whole office, and I'm not working on these other cases.

2 Q What's the effect of being precluded from working on cases,
3 on an office -- on your office?

4 A A lot of effects. Number one, our profession is very stressful,
5 it's very deadline oriented, and the Court is very -- can be very harsh on
6 deadlines, and not so forgiving. And so, when your entire staff and
7 office is focused to one case, we are now in a position to be more
8 vulnerable of not working other files, and not doing -- meeting the
9 deadlines that you need to meet.

10 So, number one, it's very stressful, and number two, instead of
11 doing a -- you know, having the time to spend on these other cases, to
12 turn them into something special.

13 THE COURT: Mr. Simon, how many people work at your
14 firm? I know you and Ms. Ferrel; do you have any other lawyers?

15 THE WITNESS: I do. I have Mr. Miller, who's sitting right
16 there.

17 THE COURT: Yes. And did hear that Mr. Miller had done
18 some work.

19 THE WITNESS: So, I have two lawyers that help me out.

20 THE COURT: Okay.

21 THE WITNESS: And my staff over there, is here, and I have
22 two other -- two other girls, assistants. A runner and another legal
23 assistant.

24 THE COURT: So, you have two lawyers, a runner, a legal
25 assistant, and those two lovely ladies in the back, what do they do?

1 THE WITNESS: One is my paralegal/legal assistant for 20
2 years and --

3 THE COURT: Okay.

4 THE WITNESS: -- the other one is her sister who --

5 THE COURT: I don't see the family resemblance at all --

6 THE WITNESS: You don't? You don't?

7 THE COURT: -- with those two ladies, no.

8 THE WITNESS: And then the other one helps run the office,
9 the administrative stuff.

10 THE COURT: Office manager, okay.

11 BY MR. CHRISTENSEN:

12 Q The third factor is, the fee customarily charged in the locality
13 for similar legal services.

14 Can you tell us about that factor?

15 A The factor on this case, at this settlement, is \$2.4 million for
16 Viking settlement; that's the fee customarily charged in this community,
17 for --

18 THE COURT: And is that pursuant to Mr. Kemp's affidavit?

19 THE WITNESS: He's one element of that.

20 THE COURT: Okay.

21 BY MR. CHRISTENSEN:

22 Q Any other elements?

23 A I've talked to other experienced products liability lawyers in --
24 in town, to run it by them, and the conclusions seemed to be all the
25 same.

1 Q Fourth factor, the amount involved, and the results obtained?

2 A Okay. Well, we have a \$500,000 property damage claim, and
3 we have a \$6 million settlement. So, I think that the results obtained
4 were pretty substantial.

5 Q Number 5. "The time limitations imposed by the client or by
6 the circumstances"?

7 A Well, you know the timeline in this case speaks for itself. It
8 was a very fast moving case, basically starting in, I don't know, May,
9 May on. And then here we fast forward to 11, you know, November, the
10 middle of November. So, we went from zero to \$6 million in four
11 months.

12 Q Were there time limitations imposed --

13 A Or six months, I'm sorry.

14 Q -- by the client?

15 A About six months.

16 Q Okay. Let me start over. Were there time limitations
17 imposed by the client?

18 A Yeah. He didn't want anything continued. He didn't want the
19 trial continued; he didn't want depositions continued. He was pushing,
20 pushing, pushing, pushing. Because -- and the primary reason for that,
21 all of his interest kept accruing at big, big numbers, right. So, he had
22 these kind of moving, accruing damages that were putting a lot stress on
23 the case, to move it forward.

24 Q Factor number 6 is the nature and length of the professional
25 relationship with the client. Had you ever done any other work for either

1 Brian or Angela, for any of their affiliated companies, or trusts, or
2 charities, or what have you?

3 A Nothing of a significant, just probably a couple of favors,
4 whether it's parking -- or a speeding ticket, or giving them some advice
5 on something, informally, but nothing of a litigated matter.

6 Q Nothing where you opened up a formal file?

7 A No, never.

8 Q Okay. Number 7. The experience, reputation and ability of
9 the lawyer or lawyers performing the services? That kind of requires you
10 to toot your own horn, but what's your understanding, or your standing
11 among the legal community?

12 A It's not my nature to toot my own horn. But I think that I
13 enjoyed a good reputation, leading up to this.

14 Q Number 8. Whether the fee as fixed are contingent? What's
15 your response to that one?

16 A That doesn't apply in this case.

17 Q What do you believe your fee was?

18 A Reasonable value of my service the entire time, based on the
19 outcome of the case.

20 Q I'd like to touch on one thing that happened with the result
21 obtained, this is Office Exhibit 36, it's an email, the Bate of 409. Let me
22 see if I can get this. So, Mr. Hale sent -- as I understand it, he sent a
23 mediator proposal on November 10, in the afternoon, it looks like? If you
24 look at the bottom of the exhibit as it appears on the screen?

25 A Yes.

1 Q Okay. That was -- you forwarded that to Mr. Edgeworth, of
2 course?

3 A Yes.

4 Q And what was his response?

5 A He agreed to the mediator proposal for 6 million, which is
6 basically all that's said, and the mediator proposal was the number.
7 However, later we learned that the mediator proposal didn't have the
8 acceptance from the defendants that had a bunch of contingencies, like
9 including the Lange claim, including confidentiality clauses, motions for
10 good faith determinations, those types of things. So, he looked at that
11 for the 6 million and said, we agree to the 6 million, and then he said he
12 should have proposed 5.

13 Q Who handled the negotiations in the case?

14 A I did.

15 Q How did it come about that the mediator proposed 6 million?

16 A When we were at the November 10th mediation we were
17 basically negotiating all day. They weren't offering really anything
18 significant, where we were even close. I have a good relationship with
19 Mr. Hale over the years. He respects me and my evaluations of cases.
20 And he came in at the very end as we were wrapping things up, and
21 says, I want to send a mediator proposal. Brian was in the room, Ashley
22 was in the room, I was in the room, Mr. Hale was in the room. He said,
23 Danny give me authority to settle it for five, 5 million.

24 And I said, no, Floyd, you can settle it for 6, but not 5. So, initially,
25 he wanted to settle it for 5, I told him just to settle it for 6, and for me he

1 agreed to do that.

2 Q And the case resolve for 6?

3 A And the case resolved for 6, within a week.

4 MR. CHRISTENSEN: One moment, Your Honor.

5 THE COURT: Sure.

6 MR. CHRISTENSEN: Thank you, Your Honor. That's the end
7 of direct.

8 THE COURT: Okay. Cross?

9 MR. GREENE: A little break, Your Honor?

10 THE COURT: Yes. So, we'll take a 15 minute break --

11 MR. GREENE: Thank you.

12 THE COURT: -- we're back at 10:40.

13 MR. CHRISTENSEN: Thank you, Your Honor.

14 [Recess at 10:28 a.m., recommencing at 10:43 a.m.]

15 THE COURT: We're back in A-738444, Edgeworth Family
16 Trust v. Daniel Simon. Mr. Vannah, your witness.

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

18 THE COURT: Hold on just one second, Mr. Vannah.

19 [Pause]

20 THE COURT: Whenever you're ready, Mr. Vannah.

21 MR. VANNAH: Let me just ask you, Your Honor, and I don't
22 like to use the F-word, especially in a courtroom, but I'm going to have to
23 use it here, because it was what was said.

24 THE COURT: Okay. I'm not offended, and it's not --

25 MR. VANNAH: I want to tell you that upfront. I'm not --

1 THE COURT: -- offending. If there's been testimony that it
2 was said, so you would be repeating what's already been testified to.

3 MR. VANNAH: All right.

4 THE COURT: Well, not quite, Mr. Edgeworth, did not say the
5 word, but I understand.

6 MR. VANNAH: Well, we're going to talk about some things.

7 CROSS-EXAMINATION

8 BY MR. VANNAH:

9 Q So I want to take you to November 16, and we were talking --
10 and we're going to spend a considerable time for the Judge, because I
11 want the Judge to know about this settlement with Viking, okay, so
12 really detailed. I have some documents we haven't talked about yet, or
13 seen, so we'll talk about it.

14 THE COURT: And this is November 16 of 2017, Mr. Vannah?

15 MR. VANNAH: Yes

16 THE COURT: Okay.

17 MR. VANNAH: So, we're going to start -- we're going to start
18 there.

19 BY MR. VANNAH:

20 Q And we -- you had talked a little bit about a mediator
21 proposal, and that you would ask for \$6 million. And --

22 THE COURT: Mr. Vannah, I don't mean to cut you off, but
23 there was a November 17th meeting. Are you specifically referring to
24 the day before, or are you referring to that meeting?

25 MR. VANNAH: No, I'm talking about 16.

1 THE COURT: Okay. Just making sure.

2 MR. VANNAH: November 16th, 2017.

3 BY MR. VANNAH:

4 Q So you received a letter, I think we have that somewhere
5 here, from Mr. Hale, about --

6 MR. VANNAH: No, so where's that letter from?

7 THE COURT: Is this the one that was attached to email that
8 we just saw?

9 MR. VANNAH: The letter from Mr. Hale, I don't have that
10 blown up here.

11 [Counsel confer]

12 MR. VANNAH: Okay. And let me restate that.

13 BY MR. VANNAH:

14 Q So what I do is, I have a letter that you obviously had in your
15 hands --

16 MR. VANNAH: Can you help me, John, here, please, sir. I
17 don't know how to do this thing. And I'm going to tell you, we're going
18 to slow down a little bit here, so you get --

19 THE COURT: Is this admitted, Mr. Vannah?

20 MR. VANNAH: I don't know yet, but we're going to move for
21 its admission.

22 MR. GREENE: We marked it as Plaintiff's 09-014, it is --

23 THE COURT: That's the Bate stamp, right?

24 MR. GREENE: Correct. If it's handwritten it's an ad-on, Your
25 Honor.

1 THE COURT: Oh, so it's an add-on, so it's not in your binder.
2 MR. GREENE: May I approach, Your Honor?
3 THE COURT: Thank you. Okay.
4 MR. VANNAH: All right. So --
5 MR. CHRISTENSEN: Excuse me, Your Honor, when do I get a
6 copy?
7 MR. VANNAH: Right now.
8 MR. GREENE: You should have one.
9 THE COURT: I'm sorry, Mr. Christensen.
10 MR. VANNAH: Okay.
11 THE COURT: Okay. So, just so we're clear, the numbers on
12 the bottom of mine appear to be 09-013 and 09-014?
13 MR. GREENE: Correct. Your Honor.
14 MR. VANNAH: Right.
15 THE COURT: Okay. As soon as we're done, if these are
16 admitted, then I will give the clerk my copies.
17 MR. VANNAH: Right. And we've agreed in principle, all
18 these things will be admissible.
19 THE COURT: Okay. So, this is admitted?
20 MR. VANNAH: We'll still have you admit it, because I haven't
21 formally done that, yet.
22 MR. GREENE: Your Honor, Here's the agreement that was
23 clearly reached. And it was reached before the hearing, but all
24 communications between the clients are admissible, and this is -- it's
25 attached. Maybe you ought to do the text first, Bob. This is a

1 communication between the clients that we agreed to, beforehand, are
2 all going to be admissible.

3 MR. VANNAH: Yeah, that's fine.

4 MR. CHRISTENSEN: Your Honor, can I be heard, please.

5 Because I haven't objected yet. I don't know why everybody is getting so
6 riled up, this stuff was just handed to me.

7 THE COURT: Okay.

8 MR. CHRISTENSEN: Gee-golly-whiz.

9 THE COURT: And so, I believe Mr. Vannah says he's going to
10 lay the foundation for this to come in, so, we're going to see --

11 MR. CHRISTENSEN: Well, yeah. I mean, one thing seems to
12 be a letter from Janet Pancoast in the litigation.

13 MR. VANNAH: Well, we're going to explain what it is -- I
14 don't want you to tell her what I'm going to do here.

15 MR. CHRISTENSEN: Well, I --

16 THE COURT: Well, I think he's making a record, Mr. Vannah,
17 as to whether or not he objects. Because if he doesn't object to it that's
18 going to make this a lot easier.

19 MR. CHRISTENSEN: It sure is. So, I don't object to the letter.

20 THE COURT: Okay.

21 MR. CHRISTENSEN: The only comment on the -- this is
22 apparently a text message. I mean, I don't -- is 279-7246, is that you, Mr.
23 Simon?

24 THE WITNESS: Yeah.

25 MR. CHRISTENSEN: Okay. I guess I don't have an objection

1 to that, either.

2 THE COURT: Okay.

3 MR. CHRISTENSEN: I just wanted to confirm that.

4 THE COURT: Thank you.

5 MR. VANNAH: All right. So, are these both -- the exhibits
6 will be admissible?

7 THE COURT: They'll be admitted.

8 MR. CHRISTENSEN: No objection.

9 MR. VANNAH: I appreciate that.

10 MR. CHRISTENSEN: Wow.

11 THE CLERK: That will be Exhibit 10.

12 THE COURT: Yeah. We'll admit this as Plaintiff's 10.

13 MR. VANNAH: All right.

14 THE COURT: Since we already have 9. Okay. So, we'll just
15 admit as Plaintiff's 10.

16 MR. GREENE: Thank you, Your Honor.

17 [Plaintiff's Exhibit 10 received]

18 THE COURT: Okay.

19 MR. VANNAH: So, all right, John. Help me here then. Let
20 me --

21 [Counsel confer]

22 MR. VANNAH: Is that focused in then? Can you see that,
23 Judge?

24 THE COURT: I can.

25 MR. VANNAH: Because I can't tell this close, my eyes aren't

1 that good.

2 BY MR. VANNAH:

3 Q So, Mr. Simon, this is a letter that you actually received, but
4 it's a letter that was written by Janet Pancoast to Mr. Hale; do you see
5 that?

6 A I see that.

7 Q And that was given to you -- I assume that was forwarded to
8 you by Mr. Hale?

9 A Possibly, yeah.

10 Q So it reads -- it's all part of that mediator proposal, right?

11 A Part of it.

12 Q Right. So, what it reads is:

13 Dear Mr. Hale, please be advised that the Viking Corporation
14 and Supply Network herein after Viking, will agree to your
15 mediator's proposal of \$6 million. However, Plaintiffs will
16 only be advised of Viking's willingness to meet mediator's
17 proposal if Plaintiffs also agree to that number.

18 Do you see that?

19 A Yes.

20 Q And the Judge may or may not know a lot about these
21 mediator proposals, but what happens --

22 MR. CHRISTENSEN: I object, Your Honor --

23 BY MR. VANNAH:

24 Q I'm a question --

25 MR. CHRISTENSEN: Your Honor, that's --

1 BY MR. VANNAH:

2 Q Isn't it true that what happens --

3 MR. CHRISTENSEN: If I can finish my objection, please?

4 MR. VANNAH: All right. All right.

5 THE COURT: Okay.

6 MR. CHRISTENSEN: That was not a question, it was a
7 statement directed to the Court --

8 MR. VANNAH: I am --

9 MR. CHRISTENSEN: -- if he would like to ask --

10 MR. VANNAH: No, I didn't ask the Judge a question. I'm
11 saying, I'm talking to Mr. Simon.

12 THE COURT: Only one of you can speak at any given time.
13 We're making a record --

14 MR. VANNAH: But I --

15 THE COURT: -- about what's going on.

16 MR. VANNAH: But can I finish the question --

17 THE COURT: Just a minute, hold on.

18 MR. VANNAH: -- before he makes the objection, that's all I'm
19 asking. He gets up -- I don't mean that to be mad, I'm really happy with
20 Jim, but can we -- I didn't get to finish the question I was asking Mr.
21 Simon.

22 MR. CHRISTENSEN: Your Honor, my objection was that the
23 lead was a specific introduction to the Court, saying, as the Court wants
24 to know, and Mr. Vannah was addressing the Court. That was not a
25 question. This is the time for his cross-examination questions of the

1 client.

2 MR. VANNAH: It was a question.

3 MR. CHRISTENSEN: So, it's not the time --

4 MR. VANNAH: I wasn't talking to the Judge. I was talking to
5 Mr. Simon.

6 MR. CHRISTENSEN: This is not time for argument. Thank
7 you.

8 MR. VANNAH: I'm not arguing, I'm asking Mr. Simon a
9 question.

10 THE COURT: Okay. Mr. Vannah, ask the question.

11 BY MR. VANNAH:

12 Q Mr. Simon, I don't know if the Judge is totally familiar with
13 what's meant by a mediation, a mediator's proposal; you are, right?

14 A Yes.

15 Q All right. So, my understanding what Mr. Hale does, and
16 other mediators when they do that, is they say, look, here's the deal, I'm
17 going to make a mediator's proposal. So, for example I'm going to
18 propose in this case to Viking, that they agree to pay \$6 million.

19 A Right.

20 Q And I'm going to make a proposal to you that you accept \$6
21 million.

22 A Right.

23 Q And then so what happens, because everybody gets
24 concerned over posturing, that if Viking comes back and says we are
25 willing to pay the 6 million, Mr. Hale doesn't necessarily tell you that

1 they said that, unless you say to Mr. Hale, we are willing to accept 6
2 million, concurrently, right?

3 A Correct.

4 Q So if Viking says we're willing to pay 6 million, and then Mr.
5 Hale says, what is your response, he doesn't tell you about that, he says,
6 what's your response to the 6 million, and you say, we wouldn't take less
7 than 7, then he doesn't share with you that Viking had accepted his
8 proposal, correct?

9 A Right.

10 Q All right. So, I just want to make that -- so when it says,
11 however, Plaintiffs will only be advised of Viking's willingness to meet
12 mediator's proposal if Plaintiffs also agree to that number, that's kind of
13 what we're just talking about, right?

14 A Right.

15 Q All right.

16 As stated in your proposal this settlement must be subject to
17 the Court approving a motion for a good faith settlement,
18 and dismissing any claims being asserted against the Viking
19 entities by Lange Plumbing. Further this settlement would
20 also include any claims against Viking Group as well.

21 And that reads, and we talked about this earlier:

22 A material term of this willingness to resolve this case for \$6
23 million is that this settlement shall be subject to a
24 confidentiality agreement. If Plaintiffs agree to the
25 parameters as stated, then all matters now pending are to be

1 immediately taken off calendar.

2 Right, that's what it says?

3 A Yeah.

4 Q All right. So, November 16th --

5 THE COURT: Just so I'm clear, Mr. Simon, you got this letter
6 from Mr. Hale?

7 THE WITNESS: At some point in the future. Can I see the
8 date, please?

9 BY MR. VANNAH:

10 Q Sure.

11 A So this a day -- a letter that's offered by Ms. Pancoast --

12 THE COURT: I see that, right.

13 THE WITNESS: -- through Mr. Hale --

14 THE COURT: Right.

15 THE WITNESS: -- many days before I ultimately saw it, I
16 believe. But let's see the -- if you can show me the date of the letter.

17 BY MR. VANNAH:

18 Q Well, it's --

19 THE COURT: I don't see a date on the letter, so I'm just
20 wondering --

21 BY MR. VANNAH:

22 Q And the reason you don't, this is what you texted, and you
23 didn't text the date.

24 A Okay. But --

25 Q I'm just showing you; this is out of your text?

1 A Right. But I'm just trying to clarify a timeline --

2 Q No, I understand.

3 A -- for everybody.

4 Q And I just don't have that.

5 THE COURT: Okay. Do you know when you received the
6 letter, Mr. Simon?

7 THE WITNESS: Yeah. So, how this letter is going to come
8 about, just so the Court and Mr. Vannah understands the mediator
9 proposal, so Mr. Hale sends the mediator proposal to both parties at the
10 same time.

11 THE COURT: Right.

12 THE WITNESS: Ms. Pancoast then responded at some point
13 in time to Mr. Hale only.

14 THE COURT: Okay.

15 THE WITNESS: She doesn't copy me on that.

16 THE COURT: Right.

17 THE WITNESS: Right. And so, she has these conditions
18 attached, in addition to his mediator's proposal.

19 THE COURT: Okay.

20 THE WITNESS: Right. So then at some point in the future
21 Mr. Hale calls me up and says, hey, did you get my mediator's proposal?
22 What do you want to do with that? Which kind of gives me the big red
23 flag that Viking's going to do it. So, when I let Mr. Hale know that we're
24 going to move forward on that, there was no discussion really about
25 confidentiality clauses and all this other stuff with the Lange claims stuff.

1 So, I said I didn't understand all that, so I think he forwarded me
2 Ms. Pancoast's stipulations to accepting the mediator proposal.

3 THE COURT: Okay.

4 THE WITNESS: So, she's only accepting the mediator
5 proposal technically in theory, with some additional terms.

6 THE COURT: Okay. But this proposal --

7 THE WITNESS: Is that fair?

8 THE COURT: -- when did you receive this letter from Floyd
9 Hale, do you know?

10 THE WITNESS: It would have been after we agreed in
11 principle, to the number.

12 THE COURT: Okay.

13 THE WITNESS: Because there were additional terms that
14 were a lot different, I think than what was suggested. And so, I wanted
15 Brian to know immediately --

16 MR. VANNAH: Well, let me -- there's no question --

17 THE WITNESS: -- about the confidentiality stuff.

18 MR. VANNAH: -- pending at this time, right? I've got some
19 questions.

20 THE WITNESS: Okay. Fair enough.

21 THE COURT: Okay. Go ahead, Mr. Vannah. I just wanted to
22 know, because I believe you were about to talk about something that
23 occurred on the 16th, and I didn't know that they were related.

24 MR. VANNAH: They are. Well, they are, Judge.

25 BY MR. VANNAH:

1 Q What we do know --

2 A Okay.

3 Q -- is that you had this letter in your hands at least by
4 November 16th at 5:13 p.m., right?

5 A Okay. I don't disagree with you, if that's what your text
6 shows?

7 Q Let's look at the text. So, I'm now showing you Exhibit 09-
8 0133.

9 MR. GREENE: It's probably going to be 10, though, correct,
10 Madam Clerk.

11 THE COURT: It's Exhibit 10. That's just the Bate Stamp
12 number, Mr. Vannah.

13 MR. VANNAH: Oh, I'm sorry. So, Exhibit 10. So, what --

14 THE COURT: Yeah.

15 MR. VANNAH: All right.

16 BY MR. VANNAH:

17 Q Now, if you look at Exhibit 10, the letter that you texted to
18 him, above, that we just looked at, that's that letter above, and that's why
19 I don't have that date, it just didn't show up, right here?

20 A Yeah.

21 Q Your response -- well, what you texted to Brian was, Floyd
22 fucked us.

23 A Yeah.

24 Q Case is back on.

25 A Yeah.

1 Q And then Brian, did he not text you back saying, that line is
2 fine, the settlement is the only thing that is confidential. I assume that
3 means the amount; do you see that?

4 A Yeah.

5 Q So that was his response to his -- to any concerns that he
6 had about the confidentiality; that's how he responded in that text,
7 right?

8 A In that text.

9 Q Okay. All right. Now, let's just finish up with this whole
10 Viking settlement and how it went down, because I have those
11 documents. So, what occurred -- well, first of all, you -- the first time --
12 when's the first time you ever saw my fee agreement with the client?
13 That's this week, right?

14 A Correct.

15 Q Now you didn't have that when you made any decisions to
16 quote/unquote: "Whether you'd been terminated or not." You didn't
17 have my fee agreement?

18 A I did not have your fee agreement before this week.

19 Q Okay. Now, so --

20 [Counsel confer]

21 MR. GREENE: So, the next in order would be Plaintiff's 10-
22 003.

23 THE COURT: Well, see, that's just the Bate stamps, that's not
24 going to be the exhibit numbers.

25 MR. VANNAH: Okay.

1 THE COURT: So, I mean, what is this.

2 MR. VANNAH: Do you want to just make that 11?

3 THE COURT: Is it somehow related to these texts?

4 MR. VANNAH: It is sort of. It's about the settlement, the
5 actual consummation of the settlement, which deals with --

6 THE COURT: The Viking settlement?

7 MR. VANNAH: Yes.

8 THE COURT: Well, I think it needs to be Plaintiff's 11.

9 MR. VANNAH: Okay.

10 MR. GREENE: Okay.

11 THE COURT: Because if it was somehow related to this text
12 we could add it to 10.

13 MR. VANNAH: No, that's fine, Your Honor.

14 THE COURT: But I think it needs to be 11.

15 MR. VANNAH: Yeah. I don't know why we're trying to save
16 numbers; we've got lots of numbers.

17 THE COURT: Yeah. Mr. Christensen, have you seen this?

18 MR. CHRISTENSEN: It was just handed to me.

19 MR. VANNAH: So, the answer is, yes?

20 [Counsel reviews document]

21 MR. CHRISTENSEN: I don't have an objection to this
22 document. I would ask the Court to inquire of Mr. Vannah and Mr.
23 Greene if they have any more, just produced exhibits, because we had a
24 deal to exchange exhibits --

25 THE COURT: Well, I mean, yeah. And I would like to

1 resolve--

2 MR. CHRISTENSEN: -- last week.

3 THE COURT: -- that issue now, if we could, so that we don't
4 have to keep stopping before you proceed to every section of
5 questioning. Do you guys have anything else that is not in this binder,
6 that you intend to admit?

7 MR. VANNAH: Yes.

8 THE COURT: Okay. Well, we're going to need to see those.
9 So then hopefully we can get those issues resolved now, because I
10 know there was a stipulation to admit certain things, and then we don't
11 have to keep stopping. And I'm also going to need copies of those.
12 Because if they're not in the binder -- but we actually need two copies,
13 because my clerk needs one too.

14 MR. GREENE: I'm sure that we have. Let me find the other
15 one, Your Honor, as well --

16 THE COURT: Okay.

17 MR. GREENE: That's the --

18 MR. VANNAH: And we'll make sure the clerk gets one.

19 THE COURT: Is this Number 11?

20 MR. GREENE: Yes, Your Honor.

21 MR. VANNAH: It is.

22 THE COURT: Okay.

23 [Court and Clerk confer]

24 MR. VANNAH: And is 11 -- there's another one, right?

25 MR. GREENE: We're going to have one other email between

1 the parties that Mr. Simon originated. And that will 12, I presume?

2 THE COURT: Yes. And, Mr. Christensen, you have no
3 objection to 11, correct? That was the one we just discussed.

4 MR. CHRISTENSEN: I think that's right, Judge. I believe
5 that's right.

6 THE COURT: Okay. So, no objection to 11, and then you
7 have 12; I don't know what 12 is?

8 MR. VANNAH: Okay. It's an email between --

9 MR. CHRISTENSEN: Let me just get through this.

10 MR. VANNAH: Okay.

11 [Counsel reviews document]

12 MR. CHRISTENSEN: Okay.

13 THE COURT: Do you have any objection to 12?

14 MR. CHRISTENSEN: No, Judge.

15 THE COURT: Okay. So, 11 and 12 are in.

16 [Plaintiff's Exhibits 11 and 12 received]

17 THE COURT: Okay. All right. Mr. Vannah.

18 MR. VANNAH: All right.

19 BY MR. VANNAH:

20 Q So we had some -- you wouldn't answer some questions
21 earlier, and that's what brought this out, is about when -- you pointed
22 out that you went over to, I think his name is Joel Henriod, I don't know
23 him, but a defense lawyer, I take it?

24 A Yeah.

25 Q And you had actually hammered out with him, the release

1 agreement regarding Viking, right?

2 A Yeah.

3 Q Okay. And there -- the Judge had questions of when all that
4 occurred, and how that occurred, how certain language ended up in
5 there. And so, I think this is -- I hope this helps clarify it. So, if you take a
6 look at 11-01, the first page of 11. So that is -- you'll see what that is, that
7 is an email from you on November 30th, and the timing is important,
8 November 30th at 8:38 a.m., to Mr. Brian Edgeworth; do you see that?

9 A Yes.

10 Q Now when did you first learn that Mr. Edgeworth had asked
11 us to be independent counsel to him?

12 A It must have been after that.

13 Q The next day or so, right?

14 A I never learned that you were independent counsel, but after
15 that is when I got your letter of direction.

16 Q Okay. So, this -- so November 30th, 2017 you sent to Mr.
17 Edgeworth, and I'll read what it says, and then I'll show the Court what
18 you actually included. It says, attached is the proposed settlement
19 release. And just so we're clear on that, that's the proposed settlement
20 release on the Viking settlement, right? You had reached one I think?

21 A I don't -- yeah, I would assume, yeah.

22 Q Well --

23 A Yes.

24 Q Thank you.

25 A Yes. I get you.

1 Q And it says, please review and advise when you can come in
2 to discuss. I'm available today anytime from 11:00 to 1:00 p.m., 11:00
3 a.m. to 1:10 p.m., to meet with you at my office. Do you see that?

4 A Okay.

5 Q All right. Then what you attached to that -- now let's put the
6 first page on there, I need to get some context of where we're going
7 here. But what you attached to that was this 11-02, the settlement
8 agreement and release between the Edgeworth and Viking it proposed,
9 right?

10 A Okay.

11 Q I mean, that's what you sent to him, right?

12 A I don't know if that's the document that's attached in there,
13 but I don't have any reason to dispute you.

14 Q Okay. And so that's 11-02. Now looking at 11-03, the way it
15 was sent. I don't totally understand how you guys do that, but you have
16 these changes, over here to the right, under settlement terms, on 11-03.
17 How do you do that, I'm just curious. I'd like to learn how to do that,
18 where you can send somebody something and show what the changes
19 are?

20 A I don't do that.

21 THE COURT: It's called -- you can edit documents in Word --

22 MR. VANNAH: Okay.

23 THE COURT: -- Mr. Vannah --

24 MR. VANNAH: All right.

25 THE COURT: -- and you click the corrections, it's corrections

1 is what it is.

2 BY MR. VANNAH:

3 Q It looked like one of the edited things is on the settlement
4 terms. The check to be made payable to the Edgeworth Family Trust and
5 its Trustees, Brian Edgeworth, and Angela Edgeworth, American Grating,
6 LLC, and this added part, and Law Office of Daniel S. Simon.

7 Did you -- were you the one that requested that your name be
8 added to the check?

9 A Be added to the check?

10 Q Yes. That's -- we're talking about the checks --

11 A Oh.

12 Q -- who's going to be on the check? It looks like there as a
13 request to add your name on the check.

14 A Okay.

15 Q Okay?

16 A I don't disagree with that.

17 Q All right. That's typically something that you would do,
18 right?

19 A Right. Because I'm still their attorney, I think at 11/29.

20 Q No, I --

21 A I didn't get your letter of direction until the following day.

22 Q Yeah, 11/30. Okay. That is on 11/30, at 8:38 a.m. All right.

23 A I'm sorry, what?

24 Q It's 11/30, November 30th, to make that simple, at 8:38 a.m. is
25 when this was sent?

1 A No, no, no. the correction, as you noted is 11/29, the day
2 before.

3 Q Oh, right. Well, these are the corrections that you were
4 suggesting?

5 A Yes.

6 Q All right. I appreciate that, I'm just trying to understand it.
7 So, the corrections you were proposing were on 11/29, right?

8 A I guess so.

9 Q Okay. All right. So, let me show you 11-3 it's part of the
10 same release. If you go down to paragraph D, D like in David, the
11 bottom of the page.

12 A I'm with you.

13 Q It says:

14 Plaintiffs represent their counsel of record, as explained, the
15 effect of a release of any and all claims known, or unknown,
16 and based upon that explanation and their independent
17 judgment by their reading of this agreement, Plaintiffs
18 understand and acknowledge the legal significance and the
19 consequences of the claims be released by this agreement.

20 That was -- well, then to be fair, let me put the next page up,
21 because it continues that paragraph. And it reads -- that's 11-04.

22 Plaintiffs further represent that they understand and
23 acknowledge the legal significance and consequences of a
24 release of unknown claims against the settling parties, set
25 forth in, or arising from the incident, and hereby assume full

1 responsibility for any injuries, damages or losses or liabilities
2 that hereafter may occur with respect to the matters release
3 by the agreement.

4 Did I read that right?

5 A You did.

6 Q Okay. And then on the same page, if you go down to -- my
7 name is not mentioned in this, right, this release? You can look at the
8 whole thing, but it's talking about the counsel of record, right?

9 A This is 11/29, you're right. You haven't sent me your letter
10 yet.

11 Q Right. No, I agree. You do down to "confidentiality" and it
12 reads: B. Confidentiality. And it reads:

13 The amount of this agreement shall remain confidential and
14 the settling parties and their counsel, Daniel Simon, agree
15 not to make any statement to anyone, including the press
16 regarding the amount of this settlement, except to the extent
17 that it may be disclosed to their respective attorneys.

18 Rather than just read on, and on, it's the typical confidentiality
19 agreement, agreed?

20 A Yeah.

21 Q Okay.

22 A Just like your prior provision that you read, it's very
23 standard.

24 Q Got you. So --

25 [Counsel confer]

1 MR. VANNAH: So, what is the exhibit number?

2 MR. GREENE: It's Number 12, page 1.

3 THE COURT: Okay. So, Exhibit 12, Mr. Vannah.

4 MR. VANNAH: Thank you.

5 BY MR. VANNAH:

6 Q On Exhibit 12, this is from Daniel Simon to John Greene at
7 my office. John Greene who is standing here, right? Are you with me, it
8 is, right? I'm just looking at the stuff above.

9 A Can you slide it over just a hair?

10 Q I sure can, I'm sorry.

11 A There we go.

12 Q Yeah.

13 A Yeah. It looks like it.

14 Q All right. I'm not sure how much of this is -- let's see if I
15 could --

16 A What day is that? Oh, November 30th.

17 Q That is dated November 30th --

18 A Oh, okay. You're involved now.

19 Q -- 5:30, right.

20 THE COURT: And I think there might be a zoom out button,
21 Mr. Vannah, so that you can make it a little bit --

22 MR. VANNAH: Help me.

23 THE COURT: Mr. Greene, can you assist. You can make it a
24 little smaller so we can see the whole thing?

25 MR. CHRISTENSEN: Your Honor, may I approach the

1 witness and provide him with my copy of Exhibit 12 --

2 THE COURT: Okay.

3 MR. CHRISTENSEN: So that he can read the whole thing
4 easily.

5 THE COURT: Sure.

6 MR. VANNAH: That's a great idea. Thank you. Thank you
7 very much.

8 UNIDENTIFIED SPEAKER: Almost there? Oh, yes.

9 THE COURT: This might assist you.

10 MR. GREENE: That's all of it. Okay.

11 THE COURT: Okay. It looks like it's all on there now.

12 MR. GREENE: All right. Beautiful.

13 MR. VANNAH: We're probably all looking at the regular
14 document.

15 BY MR. VANNAH:

16 Q So what do you say to, and I think mainly this is Mr. Greene,
17 but you do -- you do carbon, cc Brian Edgeworth and Angela Edgeworth
18 in this too, right?

19 A Yes.

20 Q All right. And it says: Please find attached, the final
21 settlement agreement.

22 A Correct.

23 Q And that's forwarded to -- all right, it says: Please have
24 clients sign as soon as possible to avoid any delay in processing
25 payment. This shall also confirm that your office -- that would be

1 Vannah and Vannah, right?

2 A Right.

3 Q Is advising them about the effects of their release and
4 representing them to finalize settlement through my office. We're going
5 to explain the effects of release to them. Because you're not going to
6 talk to them, right? And you're saying that we're going to represent
7 them to finalize settlement through your office.

8 Right? Is that what you're saying?

9 A Through your office.

10 Q No, it says -- I'll read it to you again.

11 A Oh, through my office, okay.

12 Q Through your office.

13 A Oh, yes. Okay.

14 Q We're going to finalize --

15 A I'm with you.

16 Q -- the settlement through your office. Also, I first received a
17 call from you this morning advising the clients wanted to sign the initial
18 draft of the settlement agreement as is.

19 So, what that meant was, that morning, we had advised you that,
20 you know what, the settlement agreement is fine as is, the way it is,
21 they're willing to sign it as is, but you made some modifications, right?

22 A Yep.

23 Q All right. And you -- and you state: Since, this time, and that
24 would -- when I say since this time, that would be on November 30th,
25 from that morning, you had gotten involved and made some

1 modifications, right?

2 You said: Since that time, I spent substantial time negotiating
3 more beneficial terms to protect the clients. Specifically, I was able to
4 get the Defendants to agree to omit the confidentiality provision
5 providing mutual release and allow the opportunity to avoid a good faith
6 determination of the Court if the clients resolve the Lange claims,
7 providing Lange will dismiss his claims against Viking. Just so we are
8 clear, your office did not ask for these substantial additional beneficial
9 terms to protect the client.

10 Do you see that? Did I read that right?

11 A Yep.

12 Q So, what you're saying is, look, this morning, you told me
13 that the clients were ready to sign the agreement as it is, but guess what,
14 I did a great job. I spent substantial time -- and that's fine -- I spent
15 substantial time working on the case, meeting with the other side, and
16 getting them to take some provisions out of the original settlement
17 agreement that you were already willing to sign. I got them to take the
18 confidentiality agreement out. I got a mutual release. And I got in a
19 position where everybody's going to agree to waive the good faith
20 settlement if you -- if we settle with Lange, right? And that was
21 beneficial to the clients, right?

22 A I guess, based on

23 Q What --

24 A Yeah, based on this email that's -- the email says what it
25 says.

1 Q Well, it says here, this is very beneficial. You guys didn't ask
2 for it. I went and did it and I did a great job, and I got a better deal on the
3 release on the one you were willing to sign, right? And that's what
4 you're saying?

5 A Yep.

6 Q Okay. Additionally, this morning -- and that would be the
7 morning of November 30th -- you asked me to approach Lange to accept
8 the \$25,000 offer from mediation.

9 Do you see that?

10 A Yes.

11 Q All right. So there had been an offer from Lange for 25,000 at
12 the mediation, and your recollection of the conversation, I'm not
13 disputing it, was that we had said look, we want the Lange case settled,
14 take the 25,000, we want the Lange case settled, right?

15 A Yep.

16 Q All right. And by the way, don't let me -- I don't want to
17 digress yet. All right. Since this time, now that would be the same
18 morning, right, the same day, because that morning I said, go ahead and
19 accept it if that's what you do. Do better, do better, but whatever, we'll
20 accept it if that's what it is. Since that time, and that -- that would be the
21 same day, I was able to secure a \$100,000 offer, less all money Lange is
22 claiming they are owed.

23 Do you see that?

24 A Yes.

25 Q Lange would then dismiss their claims against Viking,

1 allowing the client to avoid the motion for determination of good faith
2 settlement as part of the settlement. Please advise if the clients want me
3 -- that's you, right, Danny Simon -- to move forward to finalize the
4 settlement with Lange pursuant to these terms.

5 So, you're saying, please advise me, Mr. Vannah or Mr. Greene if
6 the clients want me, Danny Simon, to move forward to finalize the
7 settlement with Lange pursuant to these terms.

8 Do you see that?

9 A Yes.

10 Q All right. And when the -- and the answer was, yes, move
11 forward and do it. You moved forward and you settled it, right?

12 A Based on your direction, yes.

13 Q All right. Now, let's talk about the clients' rights, okay? And
14 when a lawyer's handling in their case. Would you agree with me that
15 often times clients actually make decisions about settlement or not to
16 settle, that really are against the attorney's beliefs and
17 recommendations, agreed?

18 A It's the decision of the client to resolve the claim ultimately,
19 after they've been informed about it.

20 Q Yes. And often times, at least maybe you're better at
21 persuasion than I am, but often times, even though you feel like the
22 client's making a mistake by accepting something or rejecting a
23 settlement. It is the client's right because it's their risk, their life, it's their
24 case. They retain that right to say, you know what, I appreciate your
25 advice, but I want to do it this way. Agreed?

1 A It's always the client's ultimate decision, correct.

2 Q And in the Lange case, it was ultimately the decision of the
3 Edgeworth's whether to accept the \$100,000 with the payback or to allow
4 you to proceed forward with the case, correct? It was their decision to
5 make?

6 A Ultimately, if they were properly informed, yes.

7 Q Well, I take it you -- you've -- and I don't take it as criticism,
8 how much construction, large construction defect litigation have you
9 ever been involved in?

10 A None.

11 Q Who probably is the biggest firm in town doing that? It
12 would be my firm with Cann IP and I. Wouldn't you agree on the
13 construction defect area?

14 A I guess back in the day. I think you've been -- you and Mr.
15 Cann IP have split up a long time ago, fair?

16 Q Right, but I'm talking about during that ten year period, we
17 settled up a quarter of a billion dollars' worth of cases. We were like
18 the --

19 A How long ago was that, just so --

20 Q It's been ten years.

21 MR. CHRISTENSEN: Your Honor, I'm going to object
22 because there's no foundation Mr. Vannah's claims. And, in fact, Mr.
23 Grant's firm -- because I did a lot of CD, Mr. Grant's firm was the biggest
24 one in town, so.

25 MR. VANNAH: Are we now having testimony from

1 everybody? I'm not trying to get into that, Judge.

2 MR. CHRISTENSEN: What's good for the goose is good for
3 the gander.

4 THE COURT: Okay. Okay. There's only one of you who can
5 talk. Mr. Vannah, is your question who's the biggest firm in town doing
6 CD work?

7 MR. CHRISTENSEN: No. It was -- it was, during a period of
8 time, you -- you would agree that -- that, as far as construction defect
9 during the ten years that Cann IP and I were partners, we were probably
10 the premier construction firm in town.

11 BY MR. VANNAH:

12 Q If you don't think that, that's fine.

13 A No, no, no. I know --

14 THE COURT: Mr. Vannah, you've got to let him answer your
15 before you start talking.

16 MR. VANNAH: Oh, sure.

17 THE COURT: Mr. Simon?

18 THE WITNESS: To the extent you were involved in that, I'm
19 not sure if you were, then great, you guys made a ton of money. Mr.
20 Cann IP is the -- definitely the name on the construction defect side that
21 I'm aware of. You may have, you're a great lawyer, Mr. Vannah, I don't
22 dispute that.

23 BY MR. VANNAH:

24 Q So let me ask you this, the Judge asked you a question,
25 and it was -- the question, unfortunately contained a conclusion that

1 wasn't accurate. What she had asked you was did the Lange insurance
2 policy contain a provision in the policy to reimburse the Edgeworth's for
3 any fees, and the answer to that would be that wasn't in the policy of
4 insurance, right?

5 A I can't tell you that one way or another as I sit here today.

6 Q What there was, was there's an agreement between the
7 Edgeworth's and Lange, that, in that, there was an indemnity agreement
8 between Lange and the Edgeworth's, correct?

9 A In the construction agreement, yes.

10 Q But not necessarily in the policy.

11 A Okay. Coverage determination on that, Mr. Vannah, in all
12 fairness, was never made during the course of the case. That was never
13 indicated to me that there was a reservation of rights based on that, and
14 the claims were advanced throughout the entire litigation with that in
15 mind.

16 Q I get that. And so, the only reason I brought up the
17 construction defect experience, and I'll -- you're a great lawyer, but
18 construction defect or major litigation just wasn't an area that you
19 normally got involved in, agreed?

20 A I concede.

21 Q All right. So, did you know that one of the -- let me back up.
22 So, let's assume that you got a judgment against Lange for the 1.5
23 million dollars that you wanted them to pay, and let's assume that they
24 paid you the 1.5 million dollars and you were able to get a judgment
25 against Lange for 1.5. million dollars under that contract.

1 That doesn't necessarily mean that the insurance company is
2 going to pay any part of that, does it, if there's no -- in other words, the
3 insurance company can certainly come in and say look, we're here to
4 provide you coverage for negligence or installing something badly, but
5 we're not here to, as a guarantor of any contractual obligations that you
6 voluntarily entered into with the Edgeworth's. You know that could be a
7 defense they can certainly raise, agreed?

8 A They never raised that in this case so I'm unaware of that at
9 this point.

10 Q Well, you don't know if they raised it with their client or not.
11 You have no idea what Mr. Parker and what coverage counsel for
12 Lange's insurance company, you have no idea what they all talked about
13 behind closed doors, right?

14 A Coverage counsel never brought that up to me, if that was an
15 issue in the case, and I had --

16 Q Who was coverage counsel for -- for them?

17 A Adam Springel.

18 Q And coverage counsel doesn't necessarily have to tell you
19 what their positions are in respect to the insured. They don't have to tell
20 you that, do they?

21 A They don't have to tell me that.

22 Q So, in reviewing this, if, in fact, the one reviewed the
23 insurance contract and concluded that that was going to be a major
24 defense from the insurance company as, look, we're not a guarantor of
25 any agreement between Lange and Edgeworth, and they're correct about

1 that, there's nothing in that policy that provides that, and then there's no
2 insurance that would cover whatever judgment you got against Lange,
3 that you know of, correct?

4 A We didn't evaluate the policy issues.

5 Q My question is, isn't that true? Isn't that true, if, in fact --

6 A I don't --

7 Q -- if, in fact, there's no coverage. If, in fact, it is determined
8 by a court in the DEC action, for example, declaratory relief action. If it's
9 decided that, look, there is no coverage under the insurance policy that
10 would cover an indemnity agreement, a contractual indemnity
11 agreement between the insured and some other party, that would be
12 determined, and there's no insurance that you know of that would cover
13 any kind of a judgment that you ended up getting against Lange for
14 indemnity, correct?

15 MR. CHRISTENSEN: Objection, Your Honor. Incomplete
16 hypothetical.

17 MR. VANNAH: I can't make it clearer than that.

18 MR. CHRISTENSEN: There's also a lack of foundation.

19 THE COURT: Okay.

20 Mr. Simon, do you know the answer to that question?

21 THE WITNESS: All I can say in response to that, Your Honor,
22 it is --

23 MR. VANNAH: No, my question is --

24 THE COURT: Okay, hold on, Mr. Vannah. You've got to let
25 him answer.

1 MR. VANNAH: Well, you know what, when Mr. Christensen,
2 in all due respect, when doing his cross-exam, I thought it was a yes or
3 no question, and either it's a very specific question, and --

4 THE COURT: Well, I was a little confused, Mr. Vannah, so
5 there was a lot that you said, so it was --

6 MR. VANNAH: Can I ask a little more -- can I ask it again,
7 then and just withdraw that question?

8 THE COURT: I would absolutely appreciate that.

9 MR. VANNAH: Okay.

10 THE WITNESS: Mr. Vannah, I'll give you the answer you
11 want.

12 THE COURT: Hold on, Mr. Simon. It's okay, he's going to
13 withdraw the question.

14 Okay, Mr. Vannah, your next question.

15 BY MR. VANNAH:

16 Q Assuming that Lange's insurance carrier have filed a -- filed a
17 declaration, a declaratory relief action, and then it had been determined
18 that they had no responsibility to guarantee or pay any part of a
19 judgment that arose out of an indemnity agreement between Lange and
20 a third party, the Edgeworth's, do you know of any other insurance
21 coverage that would provide money to pay that 1.5 million dollar fee that
22 you wanted to charge?

23 A My answer to that would be if there's no insurance coverage
24 that's going to cover it, then the insurance company may not have to
25 cover it.

1 Q Okay. And you heard Mr. Edgeworth say that he did not
2 want to go after Lange personally, and you heard him say that, right?

3 A Oh, I heard him say it.

4 Q Okay. And also, do you have -- did you ever do an asset
5 check on Lange to see if they would even be able to pay 1.5 million
6 dollars in damages out of their own pocket?

7 A Not at that stage, no.

8 Q All right. Have you ever done that at this stage?

9 A No.

10 Q Okay. So, I understand, and I conveyed to the clients the
11 thought that you felt that you still wanted to pursue the Lange case, but
12 they have the right to listen to both of us, do their own independent
13 analysis and then decide what to do about settlement of the Lange case,
14 correct; that's their job?

15 A If they have all the facts, yes.

16 Q And there could be many reasons people settle, maybe
17 they're just tired of the litigation and they're bored, or they want
18 something else in their lives, right?

19 A Whereas you mentioned in your consent to settle, they were
20 made more than whole, and they just had enough.

21 Q Okay.

22 A I get it.

23 Q All right.

24 A I'm with you.

25 Q Now let me talk about something else. I guess I, like the

1 Judge, may not totally understand it, but I think you explained it pretty
2 well. You meet with the clients, you meet with Mr. Edgeworth,
3 who's the principle of the trust, and you meet with Mr. Edgeworth, and
4 obviously, you felt Mr. Edgeworth certainly had the agency necessary to
5 instruct you to go ahead and file a lawsuit, you didn't need Angela's
6 permission to do that, because you went and did it with Brian's, right?

7 A Yes.

8 Q Okay. And I'm not disputing that. So, you, you have this
9 meeting with them. I know you had the meeting at Starbucks and
10 not -- you know, you guys just talked about doing the friend and family
11 things, and I understand that. And then later, it became clear to you, did
12 it not, that these people aren't going to settle the case, they're just not
13 going to take it seriously, and that the only way to get their attention is to
14 file a lawsuit. Is that fair to say?

15 A It's fair to say that the adjusters were not truly understanding
16 the legal issues to accept the claim at that point.

17 Q All right. Now -- and I understand what you're saying, and
18 we'll go back over that later, but you're saying that there was absolutely
19 no discussion -- or maybe there was. Are you saying that in June, that
20 the discussion about fees was look, Mr. Edgeworth, or Brian, I guess you
21 call him Brian. You probably said, Brian, we'll worry about fees at the
22 end of the case, and I know you will be reasonable. Is that what you said
23 to him or did you even discuss fees at all?

24 A I don't recall discussing fees at all.

25 Q Okay, and that's fair. So, your recollection is that you had

1 this meeting. He instructs you to go ahead and file the lawsuit, and
2 there's absolutely no discussion about fees whatsoever, right?

3 A I don't recall talking about fees.

4 Q Okay. And then later, you determined, that it being in the
5 best interest of the client, on the Lange portion of the indemnity, to
6 prepare a bill for your time in the case, when you do that first invoice,
7 and you determined that that would be a good thing to do is prepare a
8 bill and give that to the Lange people so they can see that you're
9 spending a lot of time on the case, and ultimately, they're going to have
10 to pay this, right?

11 A Yes.

12 Q All right. It was -- you presented a bill to Mr. Edgeworth,
13 right, but you didn't expect him to pay the bill. Is that -- that was your
14 testimony, you didn't expect him to pay the bill, he wasn't required to,
15 and you didn't expect him to pay the bill? Is that fair? That's what you
16 said yesterday.

17 A Yeah, and I said that -- oh, yeah, the initial bill that was sent
18 was generated for the Lange case, and I sent it to him so he could see
19 what was going on, and he just turned around and paid it right away.

20 Q But you didn't expect him to pay it?

21 A Not that quickly, and we never had a discussion, and if he
22 didn't pay it, I didn't expect him to pay it, but he paid it and so, okay.

23 Q All right. Then -- I want to go into a lot of detail, and you
24 remember how you came up with the 550 because you got -- Judge
25 Gisel [phonetic] said 600 would be reasonable in a mistrial, and you took

1 a few dollars off and said let's just make it 550 and -- right?

2 A Yes, yes.

3 Q All right. I remember that. So, then you generated a second
4 invoice, right?

5 A Correct.

6 Q That was also, I take it, submitted to Lange, his -- whoever
7 did the damages, correct?

8 A Yes.

9 Q And you sent a copy of that to Mr. Edgeworth and he paid
10 that bill, did he not?

11 A He did.

12 Q And before this meeting in August, that you guys had in the
13 bar, you know, in the airport, did you ever have a conversation, you,
14 personally, with Mr. Edgeworth or Angela, where you said look, I don't
15 know why you guys are paying these bills. I didn't really mean for you to
16 pay them. I'm going to have you pay me my fee at the end of the case.
17 Did you ever tell them that before this meeting, any time before this
18 meeting in San Diego, that we're going to go to?

19 A The entire term of our relationship, from day one throughout
20 the process, was we will just continue to do what is fair. I created the
21 bills so he could see what was going on as far as his damages and they
22 would turn around and pay it, and that was part of what he started to
23 want to do because he wanted -- he was taking out these loans.

24 So, he wanted to pay these bills, for whatever reason. We didn't
25 have a specific conversation to pay them, but he did want them to see

1 what I was doing so he could increase his damages.

2 Q So, you know, so you surely recognize that he's borrowing
3 money at a pretty high interest rate to pay these bills, right?

4 A Yes.

5 Q And I assume that you recognized that coming before
6 Judge Jones, here one day, and having her rule on whether or not
7 paying 30 percent interest on the loans, the interest, itself, was really a
8 reasonable element of damages, even if the Court were to determine
9 that the legal fees were reasonable. Do you see what I'm saying?

10 In other words, Judge Jones, you surely recognize at Lange, if they
11 were still in the case, would say wait a minute. Yeah, I mean you went
12 out and borrowed money at 30 percent interest. Maybe the legal fees -
13 maybe we owe the legal fees, maybe we don't, but, but we certainly --
14 where you got the money and the fact you paid 30 percent interest, did
15 you not recognize that certainly would be an issue that would be hotly
16 contested, that the interest and the -- on those loans, or did you know
17 that?

18 A Are you talking about the Lange, because you said you
19 were --

20 Q I meant Lange.

21 A -- digressing into being reimbursed by Lange under the
22 attorney fee provision.

23 Q That's --

24 A Did you mean Viking, also?

25 Q No, no. Viking doesn't owe you any money.

1 A Okay.

2 Q Viking doesn't --

3 A So your question is what?

4 Q Let me back up. Well, Viking doesn't have an indemnity
5 agreement with you, right?

6 A Right.

7 Q Lange did.

8 A Right.

9 Q So my question was really simple. Didn't it occur to you that
10 if Mr. Edgeworth is arguing in his computation of damages that you're
11 using, he's arguing that one of those damages are these enormous
12 interest rates that he's racking up to borrow money to pay your fees?
13 You recognize that was what he was arguing would be a damage, right?

14 A Not necessarily with the Lange claim, but that was definitely
15 a part of his damage.

16 Q So, you can't -- there is no indemnity with the Viking claim,
17 right?

18 A I don't think -- I think you're not getting the reasons for the
19 loan.

20 Q No, I'm not asking you for the reasons for the loan, I'm
21 asking you a very specific question. As a lawyer, a very bright lawyer,
22 wasn't it obvious to you that the Lange Defendants were certainly going
23 to bring up and argue, hey, even if you can argue that the attorney fees
24 were covered under the indemnity agreement, you did see they were
25 going to argue we're not responsible, nor is it foreseeable that these

1 enormous interest rates are going to be something that you can get, that
2 was going to be the argument to Judge Jones. You saw they were going
3 to argue that, right? You knew that?

4 A I can't answer that because you're not understanding the
5 purpose of the loans.

6 Q Okay, you can't answer, that's fine. I'll go to the next
7 question then.

8 A I'm happy to explain it for you.

9 Q No, no. If you can't answer the question, I'll just go to
10 another question.

11 A Okay.

12 Q So then -- then there's this meeting, the August meeting in
13 San Diego. I forgot the date, but it's -- everybody else --

14 THE COURT: I forgot the date, too, Mr. Vannah. We know
15 what you're talking about.

16 MR. VANNAH: Well, we all know the meeting.

17 BY MR. VANNAH:

18 Q So -- and we all understand you went down to have a -- sort
19 of a -- I use the word prayer session, but a meeting with the experts to
20 talk about, hey, you guys may not understand everything here and we
21 want to educate you. Is that fair to say?

22 A From our perspective, to see if everybody's on the same
23 page, we're understanding, we have the facts correct, yeah.

24 Q Sure. No, I get that. I mean, you know, you're saying to the
25 expert, and you want to know what you're going to say, too, right?

1 A Right.

2 Q I mean if they -- you don't want to be surprised at a
3 deposition, like where did that come from, right?

4 A I don't want to be surprised in their expert report that was
5 due the following week.

6 Q And so that's a good thing to do, is go down, meet with the
7 expert, and say are we all on the same page, right?

8 A Yep.

9 Q And you're going to help us, right? You're going to help us
10 or hurt us because you can change the experts if you have to.

11 A Fair enough.

12 Q Had to do that before, I have. Where you get an expert and
13 they sit there and say I'm not going to help you, and you need to
14 scramble and get a new expert. That happens, right?

15 A On occasion.

16 Q Okay. So how come you didn't -- and you guys are going to
17 go back on the airplane and -- I've been to San Diego, there's a bar there
18 you can sit down and have a drink and talk, right? And then, obviously,
19 what was it, Brian that brought up the conversation about the fee or did
20 you bring it up? In other words, about hey, you know what, this -- how
21 much is this all going to run eventually, and can we do something
22 different. Did you bring that up or did he bring that up?

23 A I can't tell you who brought it up. From my perspective, the
24 reason the discussion was being had is because the case was becoming
25 consuming and, you know, this is just starting to be a burden on my

1 office, consuming my office, and so he started to understand that, with
2 all these data dumps coming in. And so, we, you know, talked about
3 these other activations a little bit, but, you know, to the extent how that
4 was going to play out, that was it.

5 Q Okay. So, it sounds like it was a fairly unstructured
6 conversation, whatever that means. In other words, you guys are -- he's
7 saying well, maybe we can do this, maybe we can do this, maybe we can
8 do this, and -- but it sounds like no meeting of the mind at that point, to
9 say the least, right?

10 A Agreed.

11 Q Okay. So, eventually, then he sent you an email that
12 referenced that conversation. Do you remember that? I can -- I'll show it
13 to you because that's -- we'll look at it together.

14 A Okay.

15 Q But do you remember that there came an email, and I think it
16 was entitled contingency or something, but what -- there's no reason to
17 guess at it because I want to go through it anyway.

18 A Sure.

19 Q So that's Exhibit 3, Page 1. Are you with me there, Buddy?
20 Okay.

21 So, the email, it looks like it was sent on -- up above is when
22 -- that's when you sent it to Mr. Christenson. So down below, from Brian
23 to you, it appears to be August 22nd, 2017 to you, and it says Subject,
24 Contingency. Do you see that?

25 A I do.

1 Q All right. And if when you got this email, did you sort of
2 recognize that as sort of a follow up to your discussion in San Diego?

3 A I guess, yes and no.

4 Q Okay. Well, let's just go through it. He says, we really never
5 had a structured discussion about how this might be done. And you
6 agree with that, there was no meeting of the minds, and certainly in San
7 Diego, agreed?

8 A Agreed.

9 Q All right. And then so this is what he writes. I am more than
10 happy to keep paying hourly.

11 Do you see that?

12 A Yes.

13 Q But if we are going for punitives, we should probably explore
14 a hybrid of hourly on the claim, and then some other structure that
15 incents both of us to win and go after the appeal that these scumbags
16 will file, et cetera. Scumbags would be Lange and Viking, the lawyers,
17 right?

18 A Fair.

19 Q We don't like to refer to our colleagues that way, but
20 sometimes we feel that way.

21 All right. So that's how you understood the scumbags, to be the
22 people on the other side? I'm not saying you're endorsing that, but
23 that's how you understood scumbags?

24 A Viking would be the scumbag reference.

25 Q Okay. So then at that point in time, you had pretty much

1 reached the same opinion that Brian had, that they actually were less
2 than candid with the court and with you, and had withheld evidence
3 from you, right?

4 A I mean --

5 Q I'm not attacking your lawyers I'm talking about -- I'm talking
6 about Viking.

7 A What we knew at that point, Mr. Marano, [phonetic] the 30
8 (b)(6), was not candid in his deposition about his knowledge of
9 activations. Then as we go down, we get the data dump in July, and as
10 you can see, Ms. Ferrel, you know, reviewed the file pretty thoroughly,
11 and we knew of a lot of other activations. So, at that point, that's what
12 we knew.

13 Q Okay. So, let's talk about that. So -- and that's -- so he's
14 probably referring to Viking, and that's how you understood the
15 scumbags, right?

16 A Yes.

17 Q All right. Obviously, that could not have been done earlier,
18 since who would have thought this case would meet the hurdle of
19 punitives at the start. And this is the part I wanted to focus on, I could
20 also swing hourly for the whole case, unless I am off what this is going
21 to cost. I would likely borrow another \$450,000 from Margaret. That's
22 his mother-in-law, you knew that, right?

23 A Yes.

24 Q And \$250,000 and \$200,000 increments, and then either I
25 could use one of -- I could use one of the house sales for cash, or if

1 things really get bad, I still have a couple of million dollars in Bitcoin I
2 could sell.

3 Do you see that?

4 A Yes.

5 Q I doubt we could get Consoli [phonetic sic throughout] to
6 settle for enough to really finance this, since I would have to pay the first
7 \$750,000 back to Colin and Margaret, and why would Consoli settle for
8 one million dollars when their exposure is only one million? Do you see
9 that?

10 A Yes.

11 Q And so of context, Consoli, were they the insurer for the
12 plumbing company, Lange.

13 A Lange Plumbing, yes.

14 Q Okay. So, when you -- reading this email, you can see
15 that -- that he's got a little stress about where am I going to get the
16 money to pay hourly, but I'm going to make it happen, but he's telling
17 you here, I could also swing hourly for the whole case. I would like --
18 and then he tells you how he's going to do it. I'm going to borrow some
19 more money, sell my Bitcoin if I have to, sell the house if I have to, but I'll
20 get the money and I'll make sure you get paid. That's what he's telling
21 you, right?

22 A He's suggesting that.

23 Q Okay. So, did you respond with an email to this email?

24 A No.

25 Q Okay. In fact, you sent another invoice, right?

1 A Probably.

2 Q For what, a couple hundred-thousand? A couple hundred-
3 thousand dollars, do you remember that?

4 A Is that for the September?

5 Q Yes.

6 A Yeah, he asked me for it.

7 Q And did you respond in an email saying, hey, Brian, I see
8 you're stressed in trying to get the money to pay me, but I don't know
9 why you're paying me anyway. I never asked to be paid. Did you ever
10 write an email and say that to him?

11 A I did not write an email and say that to him.

12 Q Did you ever call him up and say Brian, I'm just sending you
13 these invoices. I didn't expect you to pay them in the first place. I see
14 you're stressed. You don't need to pay this invoice. Did you say that to
15 him about the third invoice you sent. Did you say that to him?

16 A I did not say that.

17 Q Okay.

18 THE COURT: And, Mr. Vannah, are you finished questioning
19 about the email, the 8/22?

20 MR. VANNAH: I am.

21 THE COURT: Okay. No, I'm just saying we're going to break
22 for lunch if you are --

23 MR. VANNAH: Oh.

24 THE COURT: -- before you move to your next topic. I didn't
25 want to stop you in the middle of a topic, though, if you still have a

1 question about the email.

2 MR. VANNAH: And just that one last question, I think.

3 THE COURT: Okay.

4 BY MR. VANNAH:

5 Q Then there was a fourth invoice, right, that you sent to him.
6 Did you ever send him an email on the fourth invoice, and say, look,
7 Brian, you don't need to pay this. You don't need to stress over this and
8 borrow the money to pay it. You don't need -- did you ever send him an
9 email and say you don't need to pay it?

10 A The last invoice he sent that he paid was September 22nd, I
11 believe, which he wanted to pay before his deposition, so he could get in
12 his deposition and say I paid all the invoices.

13 Q Okay.

14 MR. VANNAH: It will be a good time for a break, Your Honor.

15 THE COURT: Okay. So, we'll break for lunch right now.
16 We'll be at lunch for an hour-and-a-half, like we have been doing. So, we
17 will be back at 1:15.

18 MR. CHRISTENSEN: Thank you, Your Honor.

19 THE COURT: Thank you. I just didn't want to cut you off in
20 the middle of a topic, Mr. Vannah. I don't know about you, but it's hard
21 for me to come back.

22 MR. VANNAH: I know about that. I appreciate that, and we
23 double-downed, so.

24 [Recess at 11:46 a.m., recommencing at 1:16 p.m.]

25 THE COURT: 38444, Edgeworth Family Trust; American

1 Grating vs. Daniel Simon d/b/a Simon Law.

2 Mr. Simon, I'll just remind you that you are under oath. You
3 can have a seat. You don't have to be sworn again. We just do it by the
4 day in this -- by the day.

5 MR. SIMON: Thank you, Your Honor.

6 THE COURT: Mr. Vannah, whenever you are ready.

7 MR. VANNAH: I am ready.

8 BY MR. VANNAH:

9 Q Before the break, I just had a couple things I just wanted to
10 wrap up and so -- because the Judge had asked about them yesterday, to
11 make it clear.

12 Going back to the two settlements. I call it the Viking settlement
13 and the Lange settlement. You're familiar with who I'm talking about,
14 right?

15 A Yes, sir.

16 Q That's where all that money came from, right? Those two
17 people?

18 A Yes.

19 Q All right. With the emails that we went through, you were
20 first notified by my office that we were going to assist the clients with
21 their personal questions on November 30th, that's when we first told
22 you that, right?

23 A Correct.

24 Q That morning, before you found out that they had come to
25 see us, that morning, you had gotten a -- sort of a draft of a settlement

1 agreement with Viking and presented it to the client. Do you remember
2 that?

3 A Correct.

4 Q And then that same day, the first -- the day that you said
5 here's the settlement agreement, you presented it and then that's after
6 you presented the settlement agreement, you found out that we were
7 going to be participating with giving them advice, right?

8 A Correct.

9 Q Then, at that point in time, when you realized we were going
10 to be participating, the first thing we told you is, hey, you know what,
11 that proposed settlement agreement's fine, wrap it up, right? The Viking
12 settlement agreement. We don't have any objections to it. I can go back
13 over that, but I mean I just want to make sure that's clear with the Judge.

14 A You had no objections to it?

15 Q Yeah. I can show you. I said to you, clients are agreeable,
16 wrap it up. I'll show it to you.

17 THE COURT: And that's in an email, right, Mr. Vannah?

18 MR. VANNAH: Yes.

19 THE COURT: Yeah, that we saw earlier this morning.

20 Do you remember the email we saw earlier right before we
21 went to lunch?

22 THE WITNESS: I understand. The Gmail email?

23 THE COURT: Yes.

24 BY MR. VANNAH:

25 Q Yeah. Well, whatever it is, yeah.

1 A Okay. All right.

2 Q I call it the email, but it's Gmail. Is that fair to say?

3 A That's fine.

4 Q All right. So, you get a proposed settlement agreement, you
5 show it to the clients, you don't know we have any involvement at that
6 point. We had been retained the day before, I think. Well, that's the 29th.
7 Is that all -- that's all in 29, so I guess we were retained that day.

8 THE COURT: The email's on the 30th, Mr. Vannah.

9 MR. VANNAH: We were retained the day before, the 29th.

10 THE COURT: Yes.

11 MR. VANNAH: Thank you, Judge.

12 BY MR. VANNAH:

13 Q So we were retained on the 29th, the 30th, you don't know
14 we're retained yet because you haven't gotten a retainer -- you haven't
15 gotten our email from us yet, or whatever it is. We, however, we
16 communicated with you.

17 When you first went over and got the settlement agreement with
18 the Viking and presented it to the client, it was after that we called and
19 said, hey, we're going to be helping the client execute this settlement
20 agreement, right?

21 A You confirmed that you were going to advise the client about
22 the terms of the settlement.

23 Q Right.

24 A And the release.

25 Q Right. So, what happened is right after that, after we got the

1 settlement agreement that you had negotiated, the first one, I said, the
2 clients are fine with it. They don't care about the -- just go ahead, they're
3 willing to sign it as is, right? I told you that?

4 A I guess I would like to see the email.

5 Q I have no problem with that.

6 A Just so we know what we're talking about.

7 Q Yeah. No, because it seems to be a point that the Court
8 intervened, so I'm going to make sure we're clear on the time, so.

9 A You have to hunt it down. I'm sorry about that.

10 Q No, that's no problem.

11 A You want to move on to something else, I'll photograph that.

12 Q No, I don't. I want to wrap this -- I want to nail this thing
13 down.

14 THE COURT: It's the Gmail, it's going to be your 12.

15 MR. GREENE: It is. It is, Your Honor, and I'm trying to find
16 out where in the heck it was stashed. We had that from last year.

17 THE COURT: Well, I have mine. Mr. Vannah, do you want to
18 just approach and get mine?

19 MR. VANNAH: Do you mind?

20 THE COURT: That will be easier.

21 MR. VANNAH: Yeah, if you don't mind. Thanks, Judge.

22 THE COURT: Uh-huh.

23 MR. GREENE: Like I said --

24 THE COURT: Sorry, I think our equipment took a lunch
25 break, too, so it has to warm up.

1 MR. VANNAH: Okay.

2 MR. GREENE: I think goes together.

3 MR. VANNAH: It just zooms in [indiscernible] now.

4 THE COURT: It usually starts after it warms up, Mr. Vannah.

5 MR. VANNAH: That's how I feel in the morning, actually. It's
6 pretty much what I see.

7 THE WITNESS: Is it out of focus, Your Honor?

8 MR. VANNAH: You have no idea. So, I'm stepping aside
9 there.

10 MR. GREENE: You're not pushing anything?

11 MR. VANNAH: I'm touching nothing. I'm sorry I'm spending
12 a lot of time on this, but I just want to get it straight as --

13 MR. GREENE: Okay.

14 MR. VANNAH: -- so we're once and for all clear.

15 BY MR. VANNAH:

16 Q All right. So, stay with me here a minute.

17 MR. GREENE: You have to push up that minus so the full
18 page can get in, and that will --

19 MR. VANNAH: Just stay here. Just stay here, don't go away.

20 MR. GREENE: Okay.

21 BY MR. VANNAH:

22 Q So this is from Danny Simon to John Greene, and to Brian
23 and Angela Edgeworth. Remember? All right. And this is dated
24 November 30th at 5:30 p.m., right?

25 A I'm with you.

1 Q All right. I know you are. Okay. I just want to -- I want to get
2 to a question. That's when you say, please find attached the final
3 settlement agreement. Please have clients sign as soon as possible to
4 avoid any delay. And it was signed the next day, right, December 1st? I
5 would show it to you, but it was.

6 A Yes.

7 Q Okay. So, you sent over the final at 5:30 in the afternoon on
8 November 30th. The next day we got the clients to sign it, and they
9 sent -- we sent it back to you, right?

10 A Yes.

11 Q All right. At that point, Viking's -- that is a completed
12 settlement agreement, right?

13 A On December 1st?

14 Q December 1st.

15 A Yes.

16 Q Okay. And that's when it says, this shall confirm that your
17 office is advising them about the effects of the release and representing
18 them to finalize settlement through my office. Also, I first received a call
19 from you this morning, advising the clients wanted to sign the original
20 draft of the settlement agreement as is.

21 Do you see that?

22 A Yes.

23 Q So on the morning of November 30th, our office said, look,
24 you know what? Our clients don't care, they will sign the original draft,
25 so send it over. Then you went out and were able to secure what you

1 felt were better terms.

2 A Correct.

3 Q And sent it over and said, I even did a better job. Here it is,
4 get them to sign it. And the next day it's signed and returned to you,
5 right?

6 A Yep.

7 Q Okay. There was a Paragraph E in there.

8 A Yes.

9 Q And paragraph E talked about the fact that Vannah and
10 Vannah, instead of personal counsel, is advising the clients on the effects
11 of the settlement and they understand it, right?

12 A Correct.

13 Q I had nothing to do with any part of drafting the settlement
14 agreement to your knowledge, right? I mean I didn't even know who
15 Joel Henriod was. You did that, you and Mr. Henriod put that paragraph
16 in there?

17 A Right. You were new counsel of record and you had to go in
18 there.

19 Q Yeah. Well, I don't have a problem with that --

20 A Okay.

21 Q -- but I didn't put it in there?

22 A No. I don't think you put it in there.

23 Q Okay. I mean I --

24 A But you reviewed it when they signed it.

25 Q Sure. No, I reviewed the first one and said they will sign it.

1 You sent another one, I said fine, they will sign that one, too.

2 A Yeah.

3 Q But either one, we signed it and sent it back.

4 A Well, I know, but all in fairness, the release --

5 Q But knowing what I meant. I just want to get answers --

6 A Okay.

7 Q -- to my questions.

8 A Fair enough.

9 Q So you know how that works.

10 A I get it. Go ahead.

11 Q Okay. I just want to kind of move on to the next stop.

12 A Very good.

13 Q Okay. Now -- so let's now talk about Rule 1.5. Were you
14 familiar with Rule 1.5 before you met with the client?

15 A Yes.

16 Q Mr. Edgeworth, right?

17 A Yes.

18 Q All right. And you knew at the time that you met with Mr.
19 Edgeworth, that you cannot, you absolutely cannot enter into a
20 contingency fee with a client in Nevada unless it's in writing, agreed?

21 A Agreed.

22 Q So you do not and never had a contingency fee with Mr.
23 Edgeworth, correct?

24 A That is correct.

25 Q In fact, the only fee agreement you ever presented to the

1 Edgeworth's was the one that you emailed to them in November of 2017,
2 that we've looked at, correct?

3 A Correct.

4 Q And that one, basically what it says is I want you to pay me
5 for my work up to date, of essentially 25 percent of \$6 million, which is
6 1.5 million dollars, which you said I think is fair, right?

7 A Well, I didn't say 25 percent.

8 Q But that's how you calculated it.

9 A Well, if you do the math, it comes out to 25 percent, correct,
10 but --

11 Q And you --

12 A -- but the -- it's not a contingency fee agreement saying 25
13 percent, it's -- that's the reasonable number that I came up with, yes.

14 Q Right. And how many times have you come up with a
15 contingency fee agreement after the case has settled? How many times
16 have you done that in your career in how many years?

17 A Twenty-six years.

18 Q Yeah, in 26 years, how many times have you met with a
19 client after the case is settled and then drafted a contingency fee for
20 them to sign at that point?

21 A Never.

22 Q Never, okay. So, you stated in one of your pleadings -- let
23 me be very specific because I don't want to misrepresent anything. I
24 marked it down here. I'm not going to ask you all these questions
25 because we covered most of them, so. I just want to make sure I pick up

1 the ones I forgot.

2 [Counsel confer]

3 MR. GREENE: Your Honor, would you like us to mark the
4 pleadings as exhibits or just take judicial notice as to what is already in
5 the court filings in this case?

6 THE COURT: I'll take judicial notice if it's already filed.

7 MR. VANNAH: It has.

8 THE COURT: Okay. It's one of the --

9 [Counsel confer]

10 BY MR. VANNAH:

11 Q So it's on Page 11 of the --

12 THE COURT: Just tell me which pleading it is, Mr. Vannah?

13 MR. VANNAH: Yeah, it's called -- so what -- how would you
14 define the pleading?

15 MR. GREENE: It's the motion to adjudicate the initial --

16 THE COURT: The motion to adjudicate the lien? Okay.

17 BY MR. VANNAH:

18 Q I'm just going to focus on one thing. It says, Danny Simon
19 did not have a structured discussion with Brian Edgeworth about the fee
20 for the case.

21 Do you see that?

22 A I see it.

23 Q Now, I know you didn't write it, but do you -- and it said, Mr.
24 Simon worked without a written fee agreement. Do you see that? Do
25 you agree with what's said there, let's start with that?

1 A Yes.

2 Q Okay. Now -- so it says clearly you didn't have a structured
3 discussion about the fee for the case. Now I want to go to Rule 1.5.

4 MR. GREENE: Same question, would you want judicial
5 notice of the rule, Your Honor, or do you want it to be marked --

6 THE COURT: No.

7 MR. GREENE: -- as exhibit?

8 THE COURT: No, no. I'll take judicial notice of it.

9 MR. VANNAH: Okay.

10 [Counsel confer]

11 BY MR. VANNAH:

12 Q We've already agreed that there cannot be a contingency fee
13 because it would have to be in writing, right?

14 A Agreed.

15 Q Okay. And then it talks about -- I think it's 1.5(b). The scope
16 of the representation and the basis for a rate of the fee and expenses for
17 which the client will be responsible shall be communicated to the client,
18 preferably in writing, before or when within a reasonable time after
19 commencing the representation.

20 Do you see that?

21 A I do.

22 Q And then there's an exception which doesn't apply here,
23 agreed?

24 A Agreed.

25 Q All right. So, it states here very clearly that the scope of the

1 representation and the basis for a rate of the fee. How you're going to
2 determine the fee and expenses. Shall be communicated to the client
3 before or within a reasonable time after commencing the representation,
4 preferably in writing.

5 Right? We know you didn't do it in writing, right?

6 A Agreed.

7 Q And when you look at what you told the Court, what you told
8 the Court was Danny Simon did not have a structured discussion with
9 Brian Edgeworth about the fee for the case. Right? That's what you said
10 here?

11 A That's what Mr. Christiansen wrote.

12 Q And you agreed with it?

13 A To a certain extent, yes.

14 Q Well, if you don't agree with it, now is your time to tell me
15 Mr. Christiansen was wrong.

16 A I'm not saying he was wrong.

17 Q Okay. So, if you didn't have a structured discussion with
18 Brian Edgeworth about the fee in the case, you certainly didn't comply
19 with Rule 1.5(b), where it states that the basis or rate of the fee and
20 expenses for which the client will be responsible, shall be communicated
21 to the client before or within a reasonable time after commencing the
22 representation, correct? You didn't comply with that rule?

23 A I disagree to a certain extent. I don't have a written fee
24 agreement. The discussion was we'll do what's fair from the very
25 beginning. We'll work it out and we'll do what's fair, and that's what's

1 continued throughout the entire case.

2 Q All right. So, you do a lot of contingency fee work, right?

3 A Correct.

4 Q Just like I do.

5 A Yeah.

6 Q How often do you do a contingency fee case, say in a
7 personal injury suit that goes on for years that you don't have the client
8 sign an agreement?

9 A If I'm doing a contingency fee case? Probably never.

10 Q All right. So, but you've stated, and it says right here, that
11 within a -- they made this be very specific, the basis or rate of the fee and
12 expenses for which the client will be responsible shall be communicated
13 to the client, preferably in writing, before or within a reasonable time
14 after commencing their representation.

15 So, did you ever tell the client what you were going to bill him on
16 an hourly basis at any time?

17 A No.

18 Q And it wouldn't have mattered if you told him that you were
19 going to do it on a contingency fee, because that wouldn't be valid
20 anyway, to have an agreement like that orally, correct?

21 A I didn't -- correct. I didn't initially take this case on a
22 contingency. I agree.

23 Q So your agreement with the client, if I understand it, is
24 there's not a rate I'm coming up with, there's no method I'm coming up
25 with. I'm going to take your case. I'm going to work on it for years, and

1 at the end of the case, you need to pay me what you and I think is
2 reasonable. Is that fair?

3 A As the case has progressed, it was always: a) I'm going to
4 help you out for free; then it changed a little bit when things couldn't get
5 done, and it was always we're going to just do what's fair because the
6 case doesn't make any sense to do it any other way.

7 Q Well, no, it makes sense to do it another way. If you were
8 going to charge 1.5 million dollars flat fee, you could have said it at the
9 outset, listen, Mr. Edgeworth, at the end of this case, I'm going to charge
10 you one-million-five-hundred-thousand-dollars flat fee, that's what I'm
11 going to charge. I think that's reasonable. Are you agreeable to that?
12 And put it in writing. You could have done that, right?

13 A No.

14 Q Pardon me?

15 A No, I couldn't have done that.

16 Q Couldn't have put it in writing? You had --

17 A To have one of 1.5 from the very beginning?

18 Q You just -- right, that's what you -- that's what you told him at
19 the end, you wanted 1.5 million, right?

20 A That's because we had --

21 Q Well, let me just ask you. At the end of the case, you told
22 him I want you to pay me \$1,500,000, giving you credit for what you've
23 already paid.

24 A Yes.

25 Q Correct?

1 A Yes. I thought that was fair and reasonable at -- for my
2 services at that time.

3 Q Do you see why -- are you able to see why we have this rule?
4 So that we're not in a situation here, where at the end of a case, you tell
5 the client, I, Danny Simon, is going to -- I'm going to tell you what I
6 think's reasonable, and if you don't pay that amount, we're going to just
7 have a Judge decide it. Do you see the reason for this rule?

8 A Mr. Vannah, you are absolutely correct that I should not have
9 taken this case for a friend on a family basis and continued to work on it
10 to the degree I did, but you're right, that's my mistake. I thought he
11 would be fair at the end and that's why we're here.

12 Q All right. When you initially looked at the case -- let's talk
13 about that a little. You admit you looked at the case. I understand that
14 damage has changed a little bit, but at that point, you initially looked at
15 the case, you were looking at a case that probably had, soaking wet, I
16 call it, damages somewhere between 500 and \$750,000, right? And
17 we've -- I think during this whole litigation, we all agree that the house
18 could have been repaired for around a half-a-million-dollars or so.

19 A Sure. Let's just use that number, 500,000.

20 Q All right. So, when you took this case, I want you to think
21 about this. If -- Mr. Kemp's going to testify next and he's going to tell us
22 what we all should know anyways, that nobody in their right mind would
23 take this case. No good attorney in their right mind would take this case
24 on a 40 percent contingency at the time that you embarked on this case.
25 If you realized all the hours you were going to put in, if you thought that

1 the end result, at best, would be five, \$600,000. Agreed? For 40 percent.

2 A I would have never taken this case at the beginning on a
3 contingency fee basis.

4 Q And --

5 A And I don't think anybody else would, including yourself.
6 Fair?

7 Q You're absolutely right.

8 A Okay.

9 Q No, no. And in fact, if you think about it, it's really kind of
10 interesting by -- by August, or by the time he was deposed in September
11 2017. He had already paid --

12 THE COURT: And when you say he, you're talking about
13 Mr. --

14 BY MR. VANNAH:

15 Q Mr. Edgeworth had already paid out in attorney's fees at that
16 point, 387,000, plus over 100,000 in cost. He's already into the case well
17 over 400,000 on a case that early on, had a value of maybe 500,000,
18 right?

19 A That's exactly my point. Nobody but a friend or family would
20 ever represent this guy and he would never be able to have a lawyer in
21 this case.

22 Q And I will see -- and I will buy everything you're saying,
23 except for one thing, you billed them, and you billed them --

24 A Yeah.

25 Q -- and you billed them, and you billed them, and you

1 collected on the bills, 400 -- over \$400,000, which I recognize is not all
2 legal fees, but you collected your costs back and you collected your -- the
3 fees you put in up to September. I think it was \$387,000 in fees, right, by
4 September.

5 A You see those?

6 Q No, not -- see, I'm not --

7 A Okay.

8 Q I've got to --

9 A Yes, all right. I'm with you. Go ahead.

10 Q Jim will get up here and you guys can do --

11 A Okay, fair enough.

12 Q -- the song and dance about the empty boxes, okay.

13 A You're right. Yes, I sent him some invoices, and yes, he did
14 pay them.

15 Q Okay. So, if this case had gone to trial, I mean just
16 hypothetically. Let's say that it didn't settle, and Viking turned out to be
17 just totally stonewalled if it goes to trial and you lose, are you giving all
18 this money back to the client? Did you have some agreement saying
19 hey, if we lose this case, I'm going to write you a check and give you
20 back all those fees, all those costs, everything that you paid me to date.
21 Did you have an agreement to do that?

22 A We didn't have any agreements in this case, Mr. Vannah.

23 Q Would you have done that? Would you have given all his
24 money back?

25 A I would have done what was fair at the end of the case,

1 depending on what we went through.

2 Q I see.

3 A I mean that was the whole idea. We're going through this
4 big battle now that I'm entrenched in this thing, and so the idea was just
5 to do what was fair at the end, because I'm helping them.

6 Q But they are -- and I know that may not mean much money to
7 you, but they have, by September, he has paid you \$387,000 at \$550 per
8 hour, and you're telling him I'm losing money, right? That's what you're
9 telling him, I'm losing money at this \$550 an hour rate? You're telling
10 him that?

11 A Yeah.

12 Q Okay. That's fine. I just want to be square on that. All right.
13 I'm going to look through my notes here and see if I've got any other
14 areas I missed.

15 Oh, by the way, when you did go -- and I want to make -- I don't
16 want to spend a lot of time on it. We've gone over and over and over it.
17 When you went to the deposition with Mr. Edgeworth, there was just
18 that one deposition, right?

19 A Of Mr. Edgeworth?

20 Q Yeah.

21 A Correct.

22 Q And without bringing up all the documents again, I know
23 there were some questions by the Viking attorneys, and even the Lange
24 attorneys, asking him, point blank, are these the bills that you got billed
25 from the Simon office, and are these bills, have they been paid? Do you

1 remember that?

2 A Yes.

3 Q And then you, at one point, they were asking, are there any
4 other bills? And you said, look, all of the bills -- and I can show you that,
5 but you said, all the bills have been produced over and over and over
6 again, right?

7 A All the bills that have been created in the case that he's paid
8 were produced -- that were produced in the case, have been provided to
9 the Defense.

10 Q All right. And you understood, you clearly understood, that
11 under the -- I always get confused by the calculation of damage, or
12 whatever that thing is we do, 16.1. I think it's called calculation of
13 damage. That you need to put those damages in there and supplement
14 that on a frequent basis, correct? As the damages become -- as they
15 increase, agreed?

16 A The rule says that, yes.

17 Q All right. Computation of damages.

18 A Yes.

19 Q Okay. And you did that. You put -- you put his bills in there
20 continually, the four that, up to the time of the deposition, you had
21 included all four of those bills, and not only that, but the interest that he
22 had incurred borrowing money to pay those bills, correct?

23 A Again, the loans -- I don't think you're getting it, are not just
24 for the bills.

25 Q Well, they might have used the money --

1 A Their interest is an item of damage, in addition to the
2 attorney's fees and costs.

3 Q Money's fungible, right? It's a fungible item. You can take
4 money; you can buy a hamburger with it. You can take some money;
5 you can pay your attorney.

6 A Sure.

7 Q If you have a fungible sum of money, it's hard to know
8 whether you use the loan money to live with and then pay the attorney
9 out of -- you understand my concept.

10 A Well, not with the calculation of damages, because the items
11 of damages are identified right there on a list.

12 Q Well, that's a good point, and he identified on the list that he
13 had borrowed money --

14 A Right.

15 Q -- and paid interest to borrow money to pay your fees,
16 and also to do some remediation on the house, right?

17 A Cost of repairs are 500,000, and we discussed is what all that
18 loan was taken out for some of it to pay all -- to pay that.

19 Q And he told you in August that he was going to borrow more
20 money.

21 A He did.

22 Q I'm going to borrow more money to pay your bills, right? He
23 told you that.

24 A He said he could, yeah.

25 Q And he did.

1 A Potentially, to some extent, yeah.

2 Q And --

3 A I don't know whether he used the money that he borrowed
4 for that purpose, but presumably.

5 Q But he's telling you that he's a little strapped and doesn't
6 want to sell his Bitcoin, and he explained why, because he's going to get
7 a long term -- he's going to get a capital gain if he sells his Bitcoin. Did
8 he tell you that? He can sell the Bitcoin and get a gain and pay you, but
9 then he would end up with a tax obligation. Did you guys discuss that?

10 A The Bitcoin in the year of 2017, if you had a million dollar
11 investment in January, it was likely worth 15 million at the end of '17.

12 Q Okay.

13 A Right? He didn't have to sell any Bitcoin.

14 Q He never did. He could have.

15 A Well, he could have, but his investment stayed intact.

16 Q I understand that.

17 A Right? Because --

18 Q I'm not disagreeing with you.

19 A All right.

20 Q That's why he borrowed the money. He borrowed the
21 money because he felt that selling the Bitcoin, incurring the Federal
22 increase, taxes on the increase and getting out of the investment, he
23 would be better off borrowing the money at 30 percent. That's obviously
24 what he thought, right?

25 A Listen, he is --

1 Q He's a smart guy.

2 A He's a smart guy when it comes to finance, and yes.

3 Q All right. So, when he -- when he's telling you in August, I
4 just am having a hard time, he's telling you in August, look, I can go out
5 and borrow more money and just keep paying you hourly and I'm willing
6 to do that. Then you sent him an hourly bill after that, right?

7 A Yeah.

8 Q And he pays it.

9 A He wanted a bill so he could pay it for his depo, so he didn't
10 have to -- he had to justify his loans, Mr. Vannah. If he goes into a
11 deposition and he's -- and they say how much have you paid, right, and
12 he says nothing, but it's owed in the future, then they're going to say
13 well, what's all this interest on these loans that you took out allegedly for
14 these bills?

15 Q Can you answer my question?

16 A Oh, I'm sorry. Go ahead.

17 Q My question was simple. When he -- after the meeting in
18 August, when he's -- since the email, and he's basically saying I can
19 borrow money to continue paying your bills. He tells you I can borrow
20 money to pay your bills, you send him another bill, right?

21 A Another bill was sent after that, yes.

22 Q And it's like for \$220,000 or so, right?

23 A I don't know about that.

24 Q Well, I can show you.

25 A There's a lot of costs going on at that time, so, you know,

1 that I advanced, so it was a big part of it for costs.

2 Q Okay.

3 A And a lot of work, so sure.

4 Q So I'm just -- I hate to ask opening -- oh, never mind, I'm not
5 going to ask you. But what --

6 A No, go ahead.

7 Q No, no. I'm going to let it go.

8 A I would love it.

9 Q No, that's okay.

10 A Okay.

11 Q All right.

12 [Counsel confer]

13 MR. VANNAH: Can I have just a couple minutes, Your
14 Honor?

15 THE COURT: Sure.

16 [Counsel confer]

17 BY MR. VANNAH:

18 Q When you go back to that email --

19 A Which one are we referring to?

20 Q The email after the August meeting in San Diego. The one
21 where you said --

22 A Okay. August 22nd. I'm with you.

23 Q Haven't heard back from you, but, you know, there's ways to
24 do this. Why be it that email? I mean it's saying this is stressful for me
25 to have to go out and get this money to keep paying your hourly bills.

1 You don't read it that way? You don't see where he's saying there's
2 ways for me to get money and I can go get it and I'll give it and I'll pay
3 your hourly bills if that's what you want to do.

4 But then you see in there that he's saying yeah, I can do it, but it's
5 kind of stressful. I would sure like to work something different out. Did
6 you not read it that way?

7 A Mr. Vannah, he was whining about the cost of repair from
8 day one. He was whining about what this is going to take and how
9 everybody's not stepping up to the plate to satisfy this claim. That was
10 from day one. He was whining all the way up through August, and that's
11 why all of those things weren't billed in all my bills either, because he
12 was always complaining about how much things cost.

13 So, this email was just some more reiteration of what he's been
14 whining about the entire time. And I know it was stressful for him. I had
15 to talk him off the ledge many times because he was so stressed out
16 about what does this mean, what does that mean. And he had -- it was
17 very stressful this litigation for him. No doubt about it, and I was there
18 to help him through that process.

19 Q I appreciate that, and you're billing him \$550 an hour to do
20 so, right?

21 A We created bills for \$550 an hour, correct, that didn't include
22 a fraction of my time, correct.

23 Q And when you're working for somebody, regardless of how
24 you're being paid, you're going to do the best job you can do because
25 that's who you are; isn't that true?

1 A Yes.

2 Q I mean as a lawyer, and a good lawyer, with a good
3 reputation in the community, what you expect with good trial lawyers,
4 would like to think that there's several in this room. Those lawyers have
5 a reputation. They want to be recognized as being good lawyers, and
6 just whether you're getting paid hourly or on a contingency fee, you're
7 still going to do the best job you can do, right?

8 A Yes.

9 Q All right. Now let's talk about that letter that you sent them,
10 them being the Edgeworth's, in November, after that meeting.

11 A Yes.

12 Q Where you actually attached a proposed fee agreement.
13 Okay?

14 A Yes.

15 THE COURT: Now what exhibit is that, Mr. Vannah?

16 MR. VANNAH: That is Exhibit 4.

17 THE COURT: Okay.

18 MR. VANNAH: The beginning of Page 3.

19 THE COURT: It's Plaintiff's 4?

20 MR. VANNAH: It is, Your Honor.

21 THE COURT: Okay. Beginning on page 3?

22 MR. VANNAH: That is where the exhibit starts, apparently.

23 Why that is, I have no idea. Is there a one and two?

24 THE COURT: It starts on page 1, Mr. Vannah, but I think the
25 letter that you're referring to --

1 MR. VANNAH: It's page 3.

2 THE COURT: -- starts on page 3.

3 MR. VANNAH: Yeah, that's my --

4 BY MR. VANNAH:

5 Q Let's just go through this letter. The -- on the first page, you
6 talked about -- you have headings. I helped you with your case and went
7 above and beyond for you because I considered you close friends and
8 treated you like family, right?

9 A Yes.

10 Q And then that, you talk about what a -- well, on Page 4 of that
11 exhibit, you talk about, I was an exceptional advocate for you. I was an
12 exceptional advocate for you. It is my reputation with the judiciary, who
13 know my integrity, as well as my history of big verdicts, that persuaded
14 the Defense to pay such a big number. Did you write that?

15 A Yes.

16 Q And I don't like to talk braggy about yourself, but here we
17 are, right? Your bragging a little here?

18 A I'm bragging to the extent that --

19 Q I'm not saying that's bad. I'm just saying you -- but you're
20 surely touting yourself as you've got big verdicts, a history of big
21 verdicts. You've got a great reputation with the Judges. They know how
22 honest you are, and no other lawyer would give you this attention. Do
23 you see that a little further down?

24 A I definitely agree with that.

25 Q Do you think Mr. Kemp wouldn't have given him this

1 attention if he was paying Mr. Kemp hourly?

2 A Mr. Kemp wouldn't have been the idiot that I was, to give this
3 guy full access to me 24/7, and if you would just start reading those
4 emails, it tells the entire story, Mr. Vannah.

5 Q All right.

6 A And if you want me to continue, because --

7 Q No.

8 A -- I feel so bad right now for my entire staff, to even let this
9 guy invade my office and abuse our time the way he did, and then treat
10 us like this at the end of the case. Mr. Kemp would have never ever let
11 that happen.

12 Q No, he would have had a written fee agreement, so would
13 Mr. Vannah, and so would Mr. Christiansen, so would Mr. Christensen.

14 A Well, I don't know that.

15 Q Okay. Well --

16 A Because they -- I'm sure they treat friends and family similar
17 to me.

18 Q Okay. You violated the Bar Rules by not doing what they
19 asked you to do on the fee agreement, right? You just flat out and do it,
20 right?

21 MR. CHRISTENSEN: Objection, Your Honor. There's no
22 foundation for that. There's been no Bar complaint.

23 MR. VANNAH: I'm not doing a Bar complaint, it's a Bar rule.

24 THE COURT: Hold on. Only one of you is speaking at any
25 given time. Mr. Vannah, is there a question included in that?

1 MR. VANNAH: There was. I said you had violated the Bar
2 rules, Section 1.5, when you didn't have a clear understanding of where
3 the client is to what the fee was going to be, correct?

4 THE COURT: Well, I mean, Mr. Vannah, I think that those are
5 allegations that I don't want Mr. Simon answering that question at this
6 point in time, because if there was some Bar complaint or something out
7 there, which I know absolutely nothing about, I don't want him
8 answering that question.

9 Mr. Simon, don't answer that question.

10 THE WITNESS: All right.

11 THE COURT: Mr. Vannah, can you ask him another
12 question?

13 MR. VANNAH: I will.

14 BY MR. VANNAH:

15 Q Going on further with this, it says, one major reason they are
16 likely willing to pay the exceptional result of six million, is that the
17 insurance company factored in my standard fee of 40 percent, 2.4
18 million, because both the mediator and the Defense have to presume the
19 attorney fees so it can get settled. Do you see that?

20 A I do.

21 Q Well, you know, that's interesting. Why would they presume
22 that, that you earn 40 percent, when you are submitting invoice after
23 invoice after invoice after invoice totaling your hourly fee? You're telling
24 them you're charging hourly at 550 an hour. Isn't that what those fee
25 invoices show to the other side?

1 A Okay. So --

2 Q Answer the question.

3 A I understand, but you've got one question on the front end
4 and one question on the back end.

5 Q I'll make it one question.

6 A Okay.

7 Q I appreciate that. I don't want it to get complicated.

8 A Fair.

9 Q The invoices that you presented to the people on the other
10 side were hourly invoices at \$550 an hour with very discreet amount of
11 billing, and actually right down to the penny, right? Agreed?

12 A For the Lange claim, correct. And they all understood the
13 issue, as Mr. Nunez testified.

14 Q No, there's no question pending.

15 A Okay.

16 [Counsel confer]

17 BY MR. VANNAH:

18 Q So let's take a look at Plaintiff's 2, Page 1. The very first bill
19 that you submitted and gave to the Defendant's. If you look down, there
20 is a billing, for the very first billing having to do with -- anything to do
21 with communication with the Defendants, it says letter to Viking, with
22 exhibits, and you billed 3.25 hours at \$550 an hour for that letter to
23 Viking, right?

24 A Yeah.

25 Q That doesn't say anything about 40 percent on there, does it?

1 A No, it doesn't.

2 Q And that's what you gave to Viking, you gave them these
3 invoices, right?

4 A Viking was a -- no, these invoices were supplemented in
5 discovery. That was a demand letter with exhibits for Viking.

6 Q No, I didn't mean you gave that, you gave them the invoices
7 showing what you had done on the case and why they should be
8 concerned about your bills, right?

9 A No.

10 Q They, being the Defendants.

11 A All right. I'm sorry, but all parties were served. My ECC
12 disclosures, which this was part of, solely to prove the Lange contract
13 damages.

14 Q In speaking of you earlier, it talked about opening the policy.
15 Are you familiar with the *Seminole* case in Nevada on extracontractual
16 damages as a result of an excess verdict? *Miller v. Allstate*?

17 A Okay.

18 Q I'm just asking if your familiar with that case or not?

19 A At some point I probably reviewed it.

20 Q All right. That's my case, right?

21 A I don't know, you have a lot of cases, Mr. Vannah.

22 Q But it sounds familiar. That's -- that is the very first case in
23 Nevada that recognized in writing that you can have bad faith toward
24 your insured, exposing you to extracontractual damages if you
25 unreasonably refuse to pay an offer of judgment or to settle the case

1 within the policy. Did you understand that?

2 A Yes.

3 Q All right. And the term of art there is unreasonable. In other
4 words, the insurance company can come in and say well, we may not
5 have paid that, and we may have -- we could have paid it, but we didn't
6 pay it, but we weren't unreasonable at the time with the information we
7 had. You're familiar with that concept of a --

8 A Yes.

9 Q -- used as a defense?

10 A Of course.

11 Q All right. And as we said in this case, if Lange comes in and
12 says we don't even have a provision in the policy that would allow us to
13 pay for contractual damages on a contract between the two parties, there
14 would be no bad faith because they -- if they weren't obligated to pay it,
15 they're not obligated to pay it, correct?

16 MR. CHRISTENSEN: Objection. Foundation.

17 MR. VANNAH: Well, I don't understand then. I don't know
18 how to respond to that.

19 THE WITNESS: Well, I guess in --

20 THE COURT: Can he answer the question?

21 THE WITNESS: Can I answer?

22 THE COURT: Do you know the answer, Mr. Simon?

23 THE WITNESS: Well, I just wanted to clarify. Is this a
24 hypothetical or are you talking about the evidence in the Edgeworth
25 case?

1 MR. VANNAH: You know what, I'll just withdraw the
2 question. We've covered it before.

3 THE WITNESS: Okay.

4 MR. VANNAH: I think I got my point out before. But I want
5 to kind of move along, because I do want to get Mr. Kemp on the stand.
6 All right.

7 BY MR. VANNAH:

8 Q One of the things I wanted to ask you about, is, you said you
9 included this fee agreement, the first one you ever drafted, this retainer
10 agreement. I'm going to show it to you. This is Exhibit 48 and 49. This
11 is the retainer agreement that you sent with the letter saying that you
12 want them to sign this, right?

13 A Yes.

14 Q And this is the first written agreement you ever asked them
15 to sign, right?

16 A Correct.

17 Q And this is days after you'd reached, in principle, a
18 settlement for \$6 million, correct?

19 A It was November 27th.

20 Q Right.

21 A And the final agreement wasn't reached until after that.

22 Q December 1st. That's why I said --

23 A Right. December 1st, so, yeah.

24 Q You settled the case, in principle, for \$6 million?

25 A Yeah. But there was still some things to work out, and

1 whether or not it was going to be a done deal or not, that wasn't, you
2 know, a 100 percent confirmed. The number was, in principle, but the
3 remaining terms still had to be worked out.

4 Q It settled three days later, right, in writing?

5 A Yes.

6 Q Okay.

7 A Fair enough.

8 Q All right.

9 A Yeah.

10 Q Now you point out here, the fee for legal services shall be the
11 sum of \$1,500,000 for services rendered to-date; do you see that?

12 A Yes.

13 Q All right. And then you say I'm going to give you credit for
14 what you've already paid --

15 A Right.

16 Q -- I see that. But then you say, for the future, for any future
17 fees with Lange, I thought I read that, any future fees in pursuing the
18 Lange case, we're going to have to have a different agreement for that.

19 A Correct.

20 Q Now they never signed this agreement, right?

21 A Correct.

22 Q And you tell them, see this, you tell them at this meeting and
23 in writing, if you think I'm wrong about this, why don't you go talk to
24 some other attorneys and ask them, people you may trust, and see if I'm
25 right or wrong. You tell him that, right, go ask someone else?

1 A I always encourage anybody who has questions who wants
2 to see other counsel, feel free to see him, and I'm happy to talk to him,
3 and explain things to him at any point in time.

4 Q So you can't be offended that they took you up on that, and
5 came to my office and said, what do you think about this? That doesn't
6 offend you, does it, that they did that?

7 A I'm not offended.

8 Q And, certainly, there was an email I sent you, I don't want to
9 go back over it, but after -- the Lange case settled on the same day of
10 December 1st. They hadn't signed a release yet, but you had accepted
11 the \$100,000 offer, pursuant to our request that you wrap that up; you
12 accepted it, correct?

13 A I think that --

14 Q The one that Teddy Parker offered?

15 A I think that was all still pending around December 7th.

16 Q No. Because you wrote a letter on December 1st and said, I
17 accepted it, I accepted your offer. I can show you to it, do you really
18 want to see it? I'll show it to you.

19 A Yeah. I mean, the timing is I guess somewhat important.

20 Q Yeah. I know, I have no problem with that.

21 [Counsel confer]

22 MR. GREENE: The Judge has it.

23 MR. VANNAH: Judge, do you have that -- oh, I need to give
24 you back the one you gave me.

25 THE COURT: Oh, no, Mr. Greene gave it back already, Mr.

1 Vannah. It's one of the ones you admitted today?

2 MR. VANNAH: Yeah. I'm sorry, I guess we gave you our
3 copy, so --

4 THE COURT: Okay. Let's see, 10 is Mr. Hale's letter, 11 is the
5 original settlement agreement, and then 12 is the Gmail?

6 MR. VANNAH: That might be, Your Honor.

7 THE COURT: I think that's it; I think it's 12.

8 MR. VANNAH: I think it is.

9 THE COURT: I gather you're referring to the second part of
10 12.

11 MR. VANNAH: Yes, I am, Your Honor.

12 BY MR. VANNAH:

13 Q So showing you Exhibit 12 again. This is dated November
14 30th, not even December 1st; this is November 30th. At the very same
15 day, on the very same day that you filed for the first time that the clients
16 had taken up your suggestion, and just come over consulted me. That's
17 the first day you learned that, right, November 30th?

18 A Yes.

19 Q And on November 30th, you're right, we'll just go down to
20 the last part.

21 Additionally, this morning, you asked me to approach Lange
22 to accept the 25,000 offer from the mediation. Since this
23 time, I was able to secure a \$100,000 offer, less all monies
24 Lange is claiming they are owed. Lange, within this missed
25 their claims against Viking, allowing the client to avoid the

1 motion for determination of a good faith settlement, as part
2 of the settlement. Please advise that the clients want to
3 move forward do finalize a settlement with Lange pursuant
4 to these terms.

5 And then you say, let's move quickly. And then we communicated
6 with you that we did want to settle that, wrap it up, right?

7 A All right. The timing of this, so just we're clear, Mr. Vannah,
8 because I know you want to be clear on this.

9 Q I do.

10 A All right. So, there's the \$25,000 offer, right?

11 Q Right.

12 A On November 30th, Teddy and I talked over the phone, he
13 offered a 100 grand, but he also wanted his clients, Lange Plumbing paid
14 back for what was outstanding, were due at the Edgeworth house during
15 the construction, which was 22,000.

16 Q And that all happened, didn't it, the settlement --

17 A Eventually. But the timing of all this is, that was the offer
18 that was communicated to you, and then -- right, and then you had to go
19 talk, take that offer to the clients who wouldn't talk to me, and then that's
20 what ultimately led to the consent to settle.

21 Q No. I had already authorized you on behalf of the clients to
22 take 25,000 for -- do you see that right here? It says right here --

23 A Yeah --

24 Q This morning -- let me read it. This morning you asked me to
25 approach Lange to accept the \$25,000 offer for remediation?

1 A Agreed, it says that.

2 Q I said, take it, take the 25,000. So, you went back to him and
3 talked, and listen, I'm grateful for you, and you used your skills, which
4 are legendary. You've got good skills. You will use your skills, and not
5 only did you get 25 you got it up to a 100, and they had to pay back 22,
6 but they still -- now they're getting 75 instead of 25, which means you've
7 done better than what all authority you had.

8 So, basically, on that day, and that turned out to be exactly what
9 was eventually signed and settled, right?

10 A Yes.

11 Q And when we came to Court, I mean, I want to -- because Mr.
12 Christensen who maybe wasn't here that day, and I don't want to
13 impugn him, but at Court you point out, oh, I'm not, Mr. Vannah is the
14 one that's on that settlement document; he's the one that signed it, not
15 me.

16 Well, that's because, when we're standing here, and I can pull that
17 document out, you said, I don't want to sign, I don't want to sign it
18 because Mr. Vannah has talked to these people, and the judge said, Mr.
19 Vannah, do you have any trouble signing this? I'm like, I'm not even in
20 this case. Now, I have that, I could read that transcript, but if you doubt
21 me, we can --

22 A I know exactly what the transcript says.

23 Q Yeah. And I said, I'm not even in that case, but if you want
24 me to sign it, fine, I'll sign it, because I want this thing to wrap up, and
25 it's not a big deal to me, and I remember I said, it's trivial, is the words I

1 used, it's trivial, whether I sign it, or you sign it. But if you want me to
2 sign it, I'll sign it. Even though it wasn't my name on it, it was yours.

3 A What you quoted was, I don't know anything about the
4 underlying case, but I'm happy to sign it.

5 Q Okay. And that's how I ended up signing that, right?

6 A Right. Because I'm not -- I didn't feel like I was their lawyer
7 anymore.

8 Q Okay.

9 A But I'm coming to these appearances because --

10 Q Because? When did you withdraw?

11 A I've never --

12 Q When did you -- you've never withdrawn.

13 A I've never withdrawn.

14 Q If you feel like that you can't wrap -- you had this case
15 wrapped up on December 30th -- by December 1st. By December 1st
16 you had a signed agreement with Viking, and you had accepted the
17 \$100,000, you had 40, and you accept 25 and you got a 100, and that
18 turned out to be the amount. I mean, that all happened on November
19 30th, frankly, right here.

20 MR. CHRISTENSEN: Objection. Foundation and compound.

21 THE WITNESS: The Viking settlement was --

22 THE COURT: Hold on just one second --

23 THE WITNESS: Sorry.

24 THE COURT: -- Mr. Simon. Mr. Vannah?

25 MR. VANNAH: Yes.

1 THE COURT: What is your response to the objection?

2 MR. VANNAH: Well, it's not compound. And I don't know
3 what lack of foundation we're talking about. I mean, he's the person that
4 did it. I'm just asking --

5 MR. CHRISTENSEN: May I respond, Your Honor?

6 MR. VANNAH: -- did this happen that way?

7 THE COURT: Mr. Christensen?

8 MR. CHRISTENSEN: It's compound because of all the
9 information in there. There's two or three different questions, I actually
10 lost track. There's a lack of foundation because although Mr. Vannah
11 keeps on saying you accepted. There's no evidence that backs that up.

12 THE COURT: Okay.

13 BY MR. VANNAH:

14 Q Well, you were told to accept it.

15 THE COURT: Well, hold on --

16 BY MR. VANNAH:

17 Q You were --

18 THE COURT: -- Mr. Vannah, I haven't ruled yet.

19 MR. VANNAH: Oh, I'm sorry.

20 THE COURT: I'm still here.

21 MR. VANNAH: I was just going to try to make it easier.

22 THE COURT: Well, Mr. Vannah, re-ask the question. I mean,
23 is the question, did Mr. Simon wrap the Lange and the Viking
24 settlements on November 30th?

25 MR. VANNAH: He wrapped up -- he did.

1 THE COURT: But, I mean, is that the question?

2 MR. VANNAH: Yeah.

3 THE COURT: Okay. Mr. Simon, can you answer that
4 question?

5 THE WITNESS: Yeah. The Viking settlement was December
6 1st, and your Lange settlement was December 7th.

7 BY MR. VANNAH:

8 Q That's when you signed, the documents were signed for
9 Lange.

10 A Right. That's when the settlement was done. I'm
11 communicating to you this better offer that you're going to go take to the
12 clients, which led to a discussion for a consent to sell on December 7th.

13 Q I didn't take it to the clients, because it was more than the
14 authority I had. It said, oh, if we have more authority do it.

15 A Well, the consent to settle that is from -- drafted by your
16 office has both of their signatures saying that you advised them.

17 Q I did.

18 A About the 100,000?

19 Q I did that too. But I already had authority at 25.

20 A Oh, okay, well, I just heard you say that you --

21 THE COURT: Okay, you guys. I don't really know what's
22 happening here, but there's not any questions being asked. You two are
23 having some sort of conversation.

24 THE WITNESS: Fair enough.

25 MR. VANNAH: I know.

1 THE COURT: Can we get back to the question section.

2 BY MR. VANNAH:

3 Q November 30th, I told you. Clients have authorized a
4 settlement for \$25,000 with Lange.

5 A That's what the email says, yes.

6 Q Go do it. That's what it's --

7 A Yes.

8 Q -- saying, go take it?

9 A Right.

10 Q They had authority at 25, so when he came back and said, I'll
11 pay you a 100, even though you got to pay 22 back, that's certainly better
12 than 25, right?

13 A Right.

14 Q I mean, haven't you ever had authority from a client, where
15 the client says, I'll take a million dollars, and you came back, and you
16 said, guess what, I got you a million-one, did you think you had to go
17 back and talk to him about that?

18 A This particular deal, yes.

19 Q All right.

20 A Because Teddy Parker was requiring 22 be paid back to
21 Lange Fleming, who that man over there despised at the time.

22 Q All right. In any event the Lange Plumbing settlement
23 documents were all signed by December 7th, with exactly what we
24 talked about, the 100,000 --

25 A Yes.

1 Q -- minus the 22?

2 A Agreed.

3 Q And got paid?

4 A Agreed.

5 Q Okay. And the rule is if you -- anyway, you didn't withdraw
6 from the case, you're still attorney of record. I am not attorney of record,
7 am I?

8 A No. You never provided a substitution attorney, correct?

9 Q I didn't sub --

10 A And you didn't associate-in either?

11 Q I didn't substitute-in, I didn't associate-in, and I even -- when I
12 came to Court I clearly said I can show you that, to the Judge. I don't --
13 I'm not here representing them on this case as Mr. Simon, he's attorney
14 of record. Do you want me to sign a document? I'll sign anything you
15 want to get the case to go down, but at no time did you ever withdraw
16 from the case or become not the attorney of record, correct?

17 A Correct.

18 Q Okay.

19 MR. VANNAH: Let me see if there's anything else.

20 [Counsel confer]

21 MR. VANNAH: One second, Your Honor, if you don't mind?

22 THE COURT: No problem.

23 MR. VANNAH: I don't have any further questions. Thank
24 you.

25 THE COURT: Okay. Mr. Christensen, do you have any

1 redirect?

2 MR. CHRISTENSEN: I do, Your Honor.

3 THE COURT: Do we need to get Mr. Kemp on now, or -- Mr.
4 Kemp do you --

5 MR. KEMP: I'm here all day, Your Honor

6 THE COURT: Okay. Sorry, I didn't if you have another
7 scheduling issue and you had to leave or --

8 MR. KEMP: Thank you, Your Honor

9 THE COURT: Okay. I just saw him here. So, I didn't know if
10 you guys told him to be here at a certain time.

11 MR. CHRISTENSEN: We did. Mr. Vannah was kind enough
12 to let him sit in here, as opposed lonely out in the hallway.

13 [Pause]

14 REDIRECT EXAMINATION

15 BY MR. CHRISTENSEN:

16 Q I'd like to follow-up on the last line of questioning, by Mr.
17 Vannah, about the timing of the Lange settlement.

18 A Okay.

19 Q I'm not going to put up that Google email again, Edgeworth
20 Exhibit 12, but I do want to put up Office Exhibit 46. This is has been
21 seen before. On December 7th was there a conference call between
22 yourself and Mr. Vannah? I'm not sure if Mr. Greene was on the phone; I
23 know I was by that point?

24 A Yes.

25 Q During that conversation was there some discussion of the

1 potential for the attorney fee claim against Lange, based upon a breach
2 of their contract?

3 A It was very limited, but there was a little bit of it.

4 Q Okay. And later on, the consent to settle came in on
5 December 7th, and expressly stated, or directed you to go on out and
6 accept that 100,000 from Lange?

7 A Correct.

8 Q And that was against your advice?

9 A It was against my advice, that's not what I advised, though.

10 Q What was your advice?

11 A My advice was that that was a very valuable claim,
12 depending on whatever the total attorney's fees and costs would be in
13 the case, and that's a valid, viable claim that could have been pursued in
14 a separate proceeding.

15 Q There's been an issue raised, time and time again, where you
16 have to disclose all these bills. And setting Mr. Parker's agreement to
17 extend discovery, that wouldn't necessarily get rid of that argument. Did
18 you have another way to look at that claim?

19 A Yeah. This is why nobody is understanding this claim. All
20 right. There's a contract between the Edgeworths and Lange Plumbing.
21 If they put in a defective product in the house, and it's within the scope
22 of the work, which it was, and it's defective, and he has to go out and
23 enforce that warranty to get paid, because they won't step up and do it,
24 initially, like they didn't, anything that he incurs as far as attorney's fees
25 and costs under Section 18, he can go recover that for.

1 So technically, I could have dismissed all of the claims against
2 Lange, without prejudice, finished up the Viking claim, and refiled that
3 claim, because I had six years to do it, and I could then say, this is all the
4 attorney's fees that Edgeworths incurred, and paid to enforce your
5 warranty against the product manufacturer, and then just brought a
6 straight breach of contract they need. Because they didn't enforce the
7 warranty they get repaid all the attorney's fees and costs.

8 So as far as this silliness about you had to produce everything in
9 discovery, otherwise it's going to be barred, it's just simply not the case,
10 and that's not how it would go; there were many different ways to do it.
11 Of course, we were going to keep them in the case and try, because
12 you're already a year down the line, right?

13 So, when you got trial dates getting bumped out that would have
14 been the quickest way, because Mr. Parker was going to reopen
15 discovery. We were going supplement whatever they ultimately paid,
16 and then you go to trial and have a jury decide if they breach that
17 provision, and what they're entitled to. It seemed like a pretty simple
18 straightforward case to me.

19 Q There was some back and forth about reasonableness of
20 insured conduct?

21 A Yeah.

22 Q When did you take the depositions of the Lange employees?

23 A I took those in April.

24 Q And what did they say? They admitted to the breach of
25 contract. They admitted to the fact that there was a defective product,

1 that they installed it and they were responsible. They admitted to the
2 fact that they already had their own independent review by an engineer,
3 determining that the product was defective.

4 I showed them all of that. I married them all to that. They all
5 admitted basically to the breach of contract of a defective product that
6 they installed, and that they didn't follow what they were supposed to do
7 under the provision to enforce the warranty.

8 Q Who's the lawyer defending Lange at these depositions?

9 A Ms. Dalacas.

10 Q And who was paying him, was he --

11 A It was a her.

12 Q Oh, I'm sorry.

13 A And that was Kinsale Insurance.

14 Q Did Kinsale ever come back and say, we're really sorry that
15 we rejected that million dollar offer, let's talk?

16 A No.

17 Q Did they ever make any efforts to resolve the case within
18 policy limits, until the Teddy Parker letter, or efforts --

19 A No, they offered --

20 Q -- in December?

21 A They offered 25,000 at the first mediation in October, that
22 was their first dollar offered on the case.

23 Q Did they ever disclose a reservation of rights letter?

24 A They never disclosed a reservation of rights letter.

25 Q Did they ever file a declaratory relief action?

1 A Not to my knowledge, not in our case.

2 Q Do you have any opinion on the success of a post-verdict
3 declaratory relief action, when they haven't reserved rights during the
4 underlying claim?

5 MR. VANNAH: It's an expert opinion; a) he has no
6 qualification for that; b) he's not here as an expert, he's here to testify
7 about the factual background of the case.

8 MR. CHRISTENSEN: This is redirect. Mr. Vannah tried to
9 established that there was some sort of an out for this insurance
10 company, went down this road with Mr. Simon, he opened the door, I'm
11 just --

12 THE COURT: Well, I mean --

13 MR. CHRISTENSEN: -- going through it.

14 THE COURT: -- I don't think Mr. Simon can give an opinion
15 as to whether or not that would have been successful. I mean, I don't
16 think he laid any foundation as to how he's qualified to do that, as to
17 what their success would have been post-judgment.

18 MR. CHRISTENSEN: Fair enough.

19 BY MR. CHRISTENSEN:

20 Q Have you ever dealt with insurance companies?

21 A Yes.

22 Q Have you ever litigated bad faith cases?

23 A Yes.

24 Q Made bad faith claims?

25 A Yes.

1 Q Consulted with insurance experts?

2 A Yes.

3 Q Read insurance policies?

4 A Have I written an insurance policy?

5 Q Read.

6 A Oh, I've read one. I definitely have not written one.

7 Q You have not written an insurance policy?

8 A No.

9 Q Do you at least consider yourself familiar with the case law?

10 A To some degree.

11 Q Okay. Are you aware of any post-verdict declaratory relief
12 actions that have been successful for an insurance company without a
13 reservation of rights letter?

14 A I've never seen that, and I would expect that if there was an
15 insurance coverage issue in our case I would see a reservation of rights
16 letter, and I would assume that the counsel for the carrier would let me
17 know that.

18 Q So there really wasn't an insurance issue in the case as far as
19 Lange was concerned?

20 A Not that I was ever aware of. If there was, it would be news
21 to me.

22 Q How much money has Mr. Edgeworth received already?

23 A He's deposited close to \$4 million cash.

24 Q Mr. Vannah indicated that you wouldn't have taken this case
25 on a 40 percent, at the beginning of the case, at the outset; is that true?

1 A That's true.

2 Q Did the economics of the case make any sense at \$550 an
3 hour, at the outset?

4 A No.

5 Q Why not?

6 A Because it's a \$500,000 property damage claim. And if you
7 read my first email chain, I make it abundantly clear that this case did not
8 make any sense to me. I didn't really want to be involved, and he
9 wanted -- he met with Mr. Marquis, but he didn't want to pay Mr.
10 Marquis. Mr. Marquis wanted a lot of money, and he knew that he was
11 going to go off to the races and start billing him a lot of money, which
12 didn't make sense for this type of case. And so that's why I got involved.

13 Q So if it didn't make sense from either the client's perspective,
14 or the lawyer's perspective to pursue the case if Mr. Edgeworth didn't
15 have a friend to turn to, there's no \$4 million recovery so far, correct?

16 A I would agree with that.

17 Q Well, what was your risk of loss?

18 A Substantial.

19 Q Can you explain that?

20 A My lost opportunity to work on other cases, which could
21 have yielded cumulatively probably more than I'm asking for here in this
22 court. My risk of loss is proven in those binders right there, that are
23 emails, over 2,000 emails that Mr. Edgeworth was just peppering our
24 office with, all day, all night, all weekends, all holidays. It was a
25 relentless -- a relentless abuse of our time. And those were not included,

1 and that represents my risk of loss right there.

2 Because during the pendency of the case -- I mean, there's at least
3 200 hours that could not be recovered in trying to recreate the bills in
4 this super bill, to show this Court our time expended, and that was not
5 included. And even at 550 an hour, that's \$700,000 that Mr. Edgeworth
6 was not billed for during the case. That's some skin in the game, that's
7 risk of loss to me. Because if this case doesn't turn out, that's time I ate.

8 But now that there is a recovery I expected to be paid a reasonable
9 value of my service, which they refuse to do, which is why we're here
10 today.

11 Q Let me give you a hypothetical. If you had fully billed Mr.
12 Edgeworth for all the time expended in the case, including emails, what
13 have you, at \$925 an hour, would you have suffered a risk of loss?

14 MR. VANNAH: Object as irrelevant, at \$925 an hour? There's
15 been no evidence that he had an agreement for that amount.

16 MR. CHRISTENSEN: Judge, we're trying to set a reasonable
17 fee here. We already have evidence in the case that the client's willing to
18 pay 925. We have evidence in the case from their fee agreement, that
19 working on the case, at least from some, at least from one point-of-view
20 is worth 925 an hour, and I'm asking a question of Mr. Simon to
21 determine where his risk of loss would end; 925 is a --

22 MR. VANNAH: And my --

23 MR. CHRISTENSEN: -- fair number.

24 MR. VANNAH: My objection, 925 an hour, there's been no
25 evidence whatsoever --

1 THE COURT: Well, they have in evidence that they're paying
2 925.

3 MR. VANNAH: Yeah. They're paying me 925 an hour, and
4 I'm not Danny Simon.

5 THE COURT: Right.

6 MR. VANNAH: And I'm not doing what Danny Simon was
7 supposed to be doing. I'm in a completely different situation. There's
8 lots of reasons my hourly fee is what it is, and it has nothing to do with
9 him.

10 THE COURT: Okay.

11 MR. VANNAH: Whatever I'm charging, and why I'm charging
12 that, and whatever -- you know, for example, it's not great being here,
13 Mr. Simon is a friend of mine, I've always considered him a friend. I
14 don't think that -- I think our friendship has been damaged by this. I get
15 referrals from other lawyers. I doubt I'd ever get a referral from Mr.
16 Simon, they never would have anyway, but bottom line is, there are
17 reasons I charge what I charge.

18 So, to take my fee, in this case, which shouldn't have been
19 given to him anyway, but taking my fee in this case and saying that's a
20 reasonable fee, because that's what I charge, I'm in a totally different
21 situation. And it just it's -- it is not relevant to anything. There's no
22 evidence that he ever was billing 925 an hour.

23 THE COURT: Right.

24 MR. VANNAH: He's --

25 THE COURT: He billed 550 an hour.

1 MR. VANNAH: Yeah. So, the idea to get my fee agreement
2 was to show when they hired me, and now I see it being used in every
3 way possible, that's way beyond what was relevant.

4 THE COURT: Okay.

5 MR. VANNAH: I meant, it's just not relevant. Why not pick
6 \$10,000 an hour, what maybe O.J. Simpson might have paid for
7 somebody to get him off from killing somebody. Why not pick any
8 number at all? But the bottom line there's no relevancy to those
9 numbers, the number is 550 an hour, that's the only number we've got to
10 work with.

11 THE COURT: Okay.

12 MR. CHRISTENSEN: May I, Your Honor?

13 THE COURT: Yes.

14 MR. CHRISTENSEN: Thank you, Your Honor.

15 It's not only Mr. Vannah being paid at 925 an hour, it's also
16 Mr. Greene. So, it's a little bit broader than what he says. The issue
17 concerning the relevancy at the outset upon production was that it had
18 to do with timing and the issue of constructive discharge. Now that the
19 document is produced and we were able to read the document, it's now
20 apparent that the document has broader relevancy.

21 Because the agreement states that they were going to work
22 on the Viking case. It's not just suing Danny Simon, and as a matter of
23 fact that's not even mentioned in the agreement.

24 THE COURT: I've read the agreement.

25 MR. CHRISTENSEN: What's mentioned in the agreement is

1 working on the Viking case, and that's what we're here to talk about.

2 THE COURT: Okay. I'll allow it. Mr. Vannah, your objection
3 is overruled. Mr. Simon, do you remember what the question was?

4 THE WITNESS: He was referencing what my risk of loss
5 would be if I was able to apply the 925 an hour.

6 BY MR. CHRISTENSEN:

7 Q May I repeat it?

8 A You may.

9 Q Okay. If you had fully billed your time, all of your time,
10 including late night phones that weren't captured, emails, everything, at
11 the rate of \$925 an hour, would you have suffered a risk of loss?

12 A I think if I was able to include my time, even the several
13 hundred hours that I could not have recovered, it would be well over \$2.4
14 million.

15 Q Would you have suffered a risk of loss?

16 A No.

17 Q Okay. There was some confusing questions concerning a
18 Federal tax burden that might be placed on any liquidation of Bitcoin
19 holdings by Mr. Edgeworth; do you recall that?

20 A I recall the question.

21 Q Are you familiar with the long-term capital gains' rate?

22 A Not so much.

23 Q Okay. The interest rate was 30 percent on the loans taken
24 out by Mr. Edgeworth?

25 A Closer to 35, 36 percent.

1 Q If I told you the long-term capital gains rate, assuming a max
2 rate, that Mr. Edgeworth would fall into the max rate, was 20 percent.
3 That would mean that the tax burden was less than the interest level,
4 correct?

5 MR. VANNAH: Two --

6 THE WITNESS: Makes sense.

7 MR. VANNAH: Two objections.

8 THE COURT: Okay.

9 MR. VANNAH: One, I don't remember qualifying him as a
10 finance expert, a); b) what is the relevance? My client decided to borrow
11 the money and he thought it was a better deal than a bit. Why are we
12 getting into long-term, short-term capital gain, long-term capital gain,
13 with an expert who has no familiarity that I know of. He's never offered
14 as an expert. He's a fact witness. Why are we going there?

15 THE COURT: Mr. Christensen?

16 MR. CHRISTENSEN: Well, we're going there, because Mr.
17 Vannah went there --

18 THE COURT: No.

19 MR. CHRISTENSEN: -- and he opened the door and I --

20 THE COURT: And I understand. But the line of questioning
21 was, was there a reason, and Mr. Simon explained that basically the
22 loans were taken out for other reasons besides just to pay his fees. And I
23 think that was the clarification I was going after. So, as far as what the
24 tax burden stuff is, I don't think that's relevant, so I'm going to ask you to
25 move on.

1 MR. CHRISTENSEN: Thank you, Your Honor.

2 BY MR. CHRISTENSEN:

3 Q Were the loans ever used for the cost to repair?

4 A I would assume so.

5 Q And what's your assumption based upon?

6 A His deposition testimony.

7 Q Anything else?

8 A That he took out a loan -- his first loan in I think June, for
9 2016.

10 Q When?

11 A So shortly after that. I'm sure he was using some of his own
12 money for cost to repairs, but the loan was -- there wouldn't be any use
13 for legal fees and costs in June of 2016, because I didn't bill him until
14 December of '16.

15 Q There was an issue concerning your billing on the Lange
16 claim versus Viking, and Mr. Vannah declined to allow you to provide a
17 further answer, and this was in relationship to a Edgeworth Exhibit 2, on
18 the 3.25 hour entry for the demand letter to Viking; do you recall that?

19 A Yes.

20 Q If Mr. Vannah had given you leave to provide a further
21 response, what would that -- what was that response?

22 A Well, he showed me an entry which was a letter that I sent to
23 Viking attorneys with all the exhibits, basically demanding that they pay.
24 And I don't know what it had to do with the Viking claim. It was basically
25 showing, here we are enforcing the warranty for the defective product

1 that Lange was supposed to pay, just further evidence of the attorney fee
2 provision.

3 MR. CHRISTENSEN: Your Honor, I'm going to -- this is from
4 Office Exhibit 56, Bate 468, the construction agreement between
5 American Grating and Lange.

6 THE COURT: Okay.

7 BY MR. CHRISTENSEN:

8 Q Is this essentially the clause you're talking about here, Mr.
9 Simon?

10 A Yes.

11 Q Contractor shall also assume full responsibility for enforcing
12 manufacturer's warranty on all products provided and/or installed by
13 contractor?

14 A Correct.

15 Q This provision shall survive the completion of the project and
16 contractor's work?

17 A Yes.

18 Q And ten in italics, *only for Lange Plumbing scope of work*?

19 A Correct.

20 Q Who installed the defective Viking fire sprinkler?

21 A Lange Plumbing.

22 Q So it was within their scope of work?

23 A Correct.

24 Q So in essence you were doing Lange's work for them?

25 A That's the premise of the entire claim.

1 Q We have a little bit of a timeline issue, that I'd like to address,
2 if I could. I believe this is the Edgeworths' new Exhibit 11. This is the
3 email where you send the release?

4 A Yes.

5 Q And the time and date on that is November 30, 2017 at 8:38
6 a.m.?

7 A Yes.

8 Q And then you receive notice, I'm going to show the Court
9 exhibit -- Office Exhibit 43, Bate 420. This is the, as you can see from
10 here, this is the fax from Brian Edgeworth, saying he's hired Vannah &
11 Vannah?

12 A Yes.

13 Q And this fax came in at -- boy, it says 11/30/2017, 9:35 a.m.?

14 A Yes.

15 Q Do you get all the faxes immediately upon them hitting your
16 office?

17 A When I -- they come in immediately, but whether I look at
18 them immediately is another question.

19 Q Right. Well, take a look at Exhibit 12. It indicates later on
20 throughout that day at some point in time you got some better terms for
21 the Edgeworths?

22 A Yes.

23 Q Despite maybe any conversations that you had with Mr.
24 Greene, or that fax that you received; is that correct?

25 A Right.

1 Q When you receive that fax and/or when you received the call
2 did you just drop everything on the file?

3 A What do you mean?

4 Q Did you stop work on the file?

5 A No, of course not.

6 Q Could stopping work place the clients in jeopardy?

7 A It depends on the situation.

8 Q But at any rate you continued to do some work on the file
9 and actually increased offers for them, correct?

10 A Yes.

11 Q Now that work all occurred on November 30th, correct?

12 A Yes.

13 Q We were shown, this is Edgeworth Exhibit 3, this is Bate 1,
14 this is that infamous contingency email of August 22, 2017?

15 A Yes.

16 Q And the forward on this indicates that you sent it to me on
17 December 1, 2017?

18 A Yes.

19 Q So you went out and consulted your own lawyer?

20 A Yes.

21 Q Why did you do that?

22 A Because I felt that I was terminated, when he's meeting with
23 other lawyers, and I'm getting letters that I'm supposed to be talking to
24 other lawyers about a case that I had been representing on for a
25 substantial time and did amazing work on and gave amazing advice.

1 And the only reason for that would -- for another law firm to get involved
2 is if I'm out.

3 Q And you were in an awkward position, weren't you? As I
4 think Mr. Vannah made abundantly clear you never did move to
5 withdraw?

6 A Right.

7 Q Why not.

8 A Number one, I'm not going to just blow up any settlements,
9 number one. I've never done that, never will. I continue to work, and I
10 always put the client's interest above mine, which I did in this case, even
11 after I'm getting all of these letters.

12 Number two, even later, Mr. Vannah was making it abundantly
13 clear that they were coming after me, if I decided to do something that
14 might even remotely be considered adverse to the client.

15 So, I'm in an awkward position, I'm going to fulfill my duties
16 regardless, and it was clear they didn't want to pay me. But I'm still
17 going to do it, and do my job for the client regardless, and payment is
18 going to be an issue that we deal with later.

19 Q And that's the same day I believe you filed your first
20 attorney's lien?

21 A Yes.

22 THE COURT: And what was the first day you consulted with
23 Mr. Christensen to represent you? Do you remember?

24 THE WITNESS: I don't , but it would have been around that
25 time, or a few days or more, before, when I felt that I wasn't getting

1 appropriate responses from clients that I've had communication with at
2 all hours a day for the last six months, who stopped communicating with
3 me.

4 THE COURT: So around that November 30th timeframe?

5 THE WITNESS: Probably.

6 MR. CHRISTENSEN: Just one moment, Your Honor.

7 THE COURT: Okay.

8 MR. CHRISTENSEN: We're through, Your Honor.

9 THE COURT: Okay. Mr. Vannah, do you have any follow-up
10 recross?

11 MR. VANNAH: Briefly.

12 RECROSS-EXAMINATION

13 BY MR. VANNAH:

14 Q So you took that letter, we talked about it, the one where you
15 told me, go to talk to other attorneys, that you thought it was fair, that
16 they should sign this new fee agreement, right?

17 A Sure.

18 Q What was the date of that?

19 A November 27.

20 Q Now you had talked to Mr. Christensen, and got your
21 attorney, Mr. Christensen not long necessarily, but before you ever
22 heard from me, right?

23 A Possibly, yeah. I don't disagree with it.

24 Q So --

25 A I don't have exact timeframes.

1 Q That's okay. But I'm just pointing out, before you ever heard
2 from me, or ever heard that I'd been asked to be independent counsel
3 and give them advice, whatever you want to call it, you can call it
4 whatever you want to.

5 A Yeah.

6 Q But before you heard from me that I was going to be
7 assisting as him an attorney, at your suggestion, you had already
8 contacted Mr. Christensen to ask his advice to represent you, give you
9 attorney advice on this whole issue?

10 A Probably right around the same time.

11 Q All right. One of the reasons for that, when you wrote that
12 letter, when you wrote -- let me see the bottom part of that letter, that
13 you wrote to them.

14 THE COURT: This is the November 27th letter Mr. Vannah?

15 MR. VANNAH: Yeah. Yeah. I mean, there's -- so it's page 7,
16 Exhibit 4.

17 THE COURT: Okay.

18 MR. VANNAH: Are you with me, Judge, you're right there?

19 THE COURT: Yes.

20 BY MR. VANNAH:

21 Q You wrote: If you were not agreeable. And I assume
22 agreeable to sign the agreement, right, if you're not agreeable?

23 A Yes.

24 Q Then I cannot continue to lose money to help you. Do you
25 see that?

1 A Yes.

2 Q I will need to consider all options available to me.

3 A Okay.

4 Q So what you're telling him, I mean, as I'm reading the letter,
5 if I were a client, I'm reading the letter and it says, if you're not
6 agreeable to signing this fee agreement, then I cannot continue to lose
7 money to help you, to me that would say, I can't continue to work on
8 this case because I'm losing money; is that what you're telling him?

9 A Unless we work something out.

10 Q And then you say, I will need to consider all options available
11 to me?

12 A Yeah.

13 Q One of those is to withdraw from the case, right?

14 A I don't know. I didn't know what my options were at that
15 time.

16 Q Well, you talked to Mr. Christensen by then, hadn't you?

17 A Around that time, I guess, yeah.

18 Q Okay.

19 A Because I needed to learn my options, because I haven't had
20 any communication with them, verbally, since November 25th, and
21 they're promising to meet with me, and they were being cagey about it,
22 and, you know, so I needed to figure out what my options were.

23 Q I understand. But when you make the statement, if you were
24 not agreeable, then I cannot continue to lose money to help you, I will
25 need to consider all options available to me. Did that not dawn on you

1 when you wrote that in there, that that probably -- that they're probably
2 going to take up your suggestion that they might want to confer with
3 someone else? Because at that point in time you two have a little bit of
4 disagreement here, right?

5 A Oh, yeah.

6 Q You want him to sign this new fee agreement -- or not a new
7 one, you want him to sign a fee agreement, first time ever --

8 A Yeah.

9 Q -- and they are obviously balking at doing that, right?

10 A As we're talking about money, right?

11 Q Right.

12 A Yeah.

13 Q So you're --

14 A We're talking about what's fair, and we're having that
15 discussion back and forth, and they weren't giving me a number that
16 they even thought was fair.

17 Q No, and I appreciate -- not only that, sir, you actually said,
18 here's what I want you to sign?

19 A Yeah.

20 Q I mean, you no longer -- nobody is pussyfooting around, you
21 are saying, I want you to pay me \$1,500,000 right now --

22 A Yeah.

23 Q -- giving you credit for what you've paid, I want \$1,500,000
24 and then I want to have an agreement with what we're going to do with
25 Lange in the future; that's what you're telling him?

1 A Yes.

2 Q And you say, if you're not going to agree, then I can't
3 continue losing money on a case, which is a veiled threat, that I'm going
4 to withdraw, that's a veiled threat, right?

5 A No. It's not a veiled threat, because if you look at my actions
6 afterwards I didn't do anything of the sort.

7 Q But we're not looking at your actions afterwards, we're
8 looking at your actions on the date that the client is receiving this letter.

9 A Right.

10 Q Well, the date the client is receiving the letter they don't
11 know what you're going to do, because you're telling them that I can't
12 continue to lose money on this case if you don't sign this agreement.
13 What does that mean to client when you say, I can't continue? Doesn't
14 that mean to the client that they should be concerned as to whether or
15 not you're going to wrap this thing up or not?

16 A They should have come -- they should have had a
17 conversation with me, which they were refusing to have.

18 Q Or follow your advice. Your other advice was, you know
19 what, you can go out and talk to any other attorney in town and they'll
20 tell you the same thing I'm telling you, this is fair?

21 A Absolutely.

22 Q Well, then they took up your advice and they came and
23 talked to me.

24 A And I guess --

25 Q I guess they got the one guy that didn't think it was fair.

1 A Well, the one guy who didn't think it was fair, I think if you
2 were sitting in my seat you'd have a different opinion.

3 Q Well, I'm not, so.

4 A I get it.

5 Q And then when you said, I will need to consider all options
6 available to me. I guess they should consider all option available, they
7 don't care; is that fair?

8 A I guess so.

9 Q And obviously they shouldn't be coming to you to get advice
10 as to whether or not this fair or not, because you guys, at this point have
11 -- you want them to sign the agreement, and they don't want to. So, at
12 that point they probably should get independent advice, right?

13 A I don't know that they didn't want to. After this agreement
14 was sent to them Mr. Edgeworth sent an email to me, saying, hey,
15 thanks for the agreement. Brian is on his way back; we are going to
16 meet with our attorney before we sign.

17 Q Yeah.

18 A Right?

19 Q They did.

20 A So that seemed they were considering signing it --

21 Q Oh, I --

22 A -- but then wanted just to double check with an attorney, and
23 that's when I guess you told them not to and decided to take the path
24 that we took.

25 Q I suppose that would be true. I think that's pretty

1 straightforward. Okay.

2 A All right.

3 Q All right. Thank you.

4 A You're welcome. Thank you.

5 THE COURT: Not so quick, Mr. Simon. Mr. Christensen, did
6 you have any follow-up?

7 MR. CHRISTENSEN: Yes, Your Honor.

8 THE COURT: I assume you do, you're at the podium.

9 FURTHER REDIRECT EXAMINATION

10 BY MR. CHRISTENSEN:

11 Q Nevada has an option for an attorney to secure a fee in a
12 case? Do you know --

13 THE COURT: Who has the option, I'm sorry?

14 MR. CHRISTENSEN: To secure a fee in a case.

15 THE COURT: But you said -- who --

16 MR. CHRISTENSEN: An option, Nevada does.

17 THE COURT: Nevada, okay. I was just was, what's the first
18 name.

19 THE WITNESS: What do you mean by "secure"?

20 BY MR. CHRISTENSEN:

21 Q Protect, perceive?

22 A Oh, yeah.

23 Q What is that?

24 A That is the Attorney Lien Statute 18.015.

25 Q And when did you file an attorney's lien?

1 A I think the first one was December 1st.

2 Q That was your option?

3 A That was my option too.

4 MR. CHRISTENSEN: Thank you, Your Honor. Nothing
5 further.

6 MR. VANNAH: Nothing further, Your Honor.

7 THE COURT: Okay. I have a couple of questions. In the
8 Lange settlement, there's been a lot of talk at how the Edgeworths did
9 not follow your advice, they had followed some other. What did you
10 advise them to do with Lange settlement; what was your advice to them?

11 THE WITNESS: My advice, when they came in on 11/17 was,
12 we're settling with Viking. I wanted to determine the fee, so we learned
13 now what my true fair and reasonable fee would be, as well as all the
14 costs. That attorney fee and cost, whatever they paid me, would be then
15 to resolve the Viking and then pursue the breach of contract and attorney
16 fee provision with Lange.

17 THE COURT: Okay. So that was the advice you gave them
18 on Lange?

19 THE WITNESS: Yeah.

20 THE COURT: And then after that you get communication
21 from Mr. Vannah that they'll take the 25,000, which was offered by Mr.
22 Parker?

23 THE WITNESS: Yeah. That was offered back even in
24 October.

25 THE COURT: In October.

1 THE WITNESS: Yeah. Yeah. Yeah.

2 THE COURT: That's what was offered in October. So, you
3 get communication from Mr. Vannah, hey, they'll take the 25,000, but
4 then you still go negotiate for the 100,000 with Lange?

5 THE WITNESS: Yeah.

6 THE COURT: And when you get Lange to agree to the
7 100,000, what was your advice to the Edgeworths?

8 THE WITNESS: I didn't have any advice to the Edgeworths.

9 THE COURT: So, you didn't talk to them at that point.

10 THE WITNESS: No. And kind of how the 100 came about is
11 that me and Mr. Parker had already in engaging, you know, in
12 conversations. Just leaving Court, hey, what can we do this case? You
13 know, before Viking, or, you know, that was all finalized. We just always
14 had discussions, you know, because that's what we do; how are we
15 going to resolve this?

16 And they wanted to get some money paid back to their people.
17 And so, Mr. Parker and I kind of worked that out, how we could do that.

18 THE COURT: Okay.

19 THE WITNESS: And that's what changed from the 25 to the
20 100. Because --

21 THE COURT: When you say they, you mean Lange.

22 THE WITNESS: Yeah. Because 25 minus 22 isn't a whole lot.

23 THE COURT: Right.

24 THE WITNESS: Right, so -- but he was willing to extend a
25 100, and I thought they would be ecstatic, here's an extra \$78,000, you

1 know, free money.

2 THE COURT: Okay. Okay. Mr. Christensen, do you have any
3 questions based on my follow-up question?

4 MR. CHRISTENSEN: None, Your Honor.

5 THE COURT: Mr. Vannah?

6 MR. VANNAH: Just one.

7 THE COURT: Okay.

8 FURTHER RECROSS-EXAMINATION

9 BY MR. VANNAH:

10 Q And they were ecstatic, right. They were happy to get the
11 100, more than 25?

12 A I have no idea.

13 Q Well, they were happy, I was happy.

14 A Okay.

15 Q It's four times what we gave the authority for.

16 A Good to hear.

17 Q Bottom line. I mean, let's just get to the -- I want to make
18 sure the Judge -- it doesn't matter whether you, or I think the settlement
19 should be more, or less, or whatever, it's up to the client who takes the
20 risk, who takes -- it's their asset, their case, they absolutely have the
21 absolute right to settle a case, for whatever reason they want to on the
22 Lange case. It's up to them to do that, right, it's their choice?

23 A It's the client's decision to settle in a case.

24 Q Now I don't think anybody's taking my advice, or taking your
25 advice, but they're certainly getting your advice through me. They're

1 hearing my advice, for whatever reason, and then they make the
2 decision. It may not be to take yours or my advice, or maybe do
3 something down the middle. They could go back and say we're not
4 taking a dime less than 500,000. They can do all sorts of things, right?

5 A What's abundantly clear, Mr. Vannah, is they were taking my
6 advice, because I didn't have any communication with them about the
7 Lange settlement.

8 Q You understood that I --

9 A Other than what --

10 Q Fine.

11 A -- we discussed about how that claim could proceed.

12 Q But you were --

13 A When it came to settlement time that was all you.

14 Q Except that you remember me telling you, telling you on the
15 phone, along with Mr. Christensen, that I had passed on to the best of
16 my ability, your advice. You put that on piece of paper saying --

17 A Yeah. Yeah. Yeah.

18 Q -- I told what --

19 A I tried to lay out the risks and the alternatives and everything,
20 right?

21 Q And there's risks in doing what you want to do, and there's a
22 reward for potentially doing what you want to do, right?

23 A In life, yes.

24 Q Yeah. Life's that way.

25 A Yes.

1 Q Everything, we do there's a risk reward. Even -- that's what
2 golf is all about?

3 A That's right.

4 Q You're going to try to go over the water, or you go around it.
5 And bottom line is, I just want to make it so clear, is that the decision to
6 accept the Lange settlement, the 100 percent not my decision. It's my
7 choice or your choice, it's up to them, right?

8 A Like I said, before, yes.

9 Q Thank you.

10 A You're welcome.

11 THE COURT: Anything else Mr. Christensen?

12 MR. CHRISTENSEN: No, Your Honor.

13 THE COURT: Okay. Mr. Simon, you may be excused.

14 THE WITNESS: Thank you, Your Honor.

15 THE COURT: Thank you very much. And we're going to
16 take a 15 minute recess, and then Mr. Kemp we'll put you on the stand
17 when we come back. So, we'll be back at 3:00

18 [Recess at 2:46 p.m., recommencing at 3:02 p.m.]

19 THE COURT: Okay, you guys. Are you ready?

20 MR. CHRISTENSEN: Yes, Your Honor.

21 THE COURT: Okay. We're back on the record A-767242 and A-
22 738444, Edgeworth Family Trust v. Daniel Simon. Mr. Christensen, your
23 next witness.

24 MR. CHRISTENSEN: Thank you, Your Honor. We'd like to call Mr.
25 Kemp to the stand.

1 THE COURT: Okay. Mr. Kemp, if you can approach the witness
2 stand.

3 MR. KEMP: Yes, Your Honor.

4 WILLIAM KEMP, DEFENDANT'S WITNESS, SWORN

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

7 THE WITNESS: William Kemp, K-E-M-P.

8 THE COURT: Okay. Mr. Christensen.

9 MR. CHRISTENSEN: Thank you, Your Honor.

10 DIRECT EXAMINATION

11 BY MR. CHRISTENSEN:

12 Q Mr. Kemp, can you give us a rundown of your legal
13 background and experience?

14 A Well, I started clerking here in '76 for the AG's office, in '77 I
15 clerked for Jones, Jones, Close & Brown. In '78 I was admitted to
16 practice here. I started doing personal injury work and commercial
17 litigation at that firm. In '80 I got on the MGM case, which I was on until
18 about '87, '88, on Plaintiff's legal committee. Let's see what happened
19 after that. Then in '86 or '87, I went down, and I was on the DuPont Plaza
20 case, a hotel fire in Puerto Rico where 97 were killed.

21 After that I did another fire case, in Atlanta, the Peachtree 25th
22 case, where five people were killed. I've been on the fen-phen case, that
23 was the diet drug case that was a \$28 billion settlement. I was on the
24 Castano case, that's the tobacco litigation where we ultimately
25 negotiated a \$370 billion national settlement, which got recrafted into a

1 \$200 billion settlement. But I was on the fee committee on that case.

2 And along with others, I have like, I think either the top three, or
3 the top four verdicts in Nevada history, in products' cases, two of the
4 three products cases. So, I pretty much specialized in product liability
5 litigation and -- there used be in the emphasis with fire litigation, but
6 there's so many sprinklers now there's really not that many fires.

7 Q Okay. Can you tell the Court a little bit more about your
8 experience with working on fee committees, and determining fees for
9 lawyer's work on product liability cases?

10 A Well, on the *MGM* case I drafted the motion for the
11 committee fee, and then I testified at the fee hearing in front of the
12 Federal judge. We were represented by Arthur Miller, he presented -- he
13 did the argument. The *DuPont* case, I also drafted the fee petition, and
14 argued that. And in the *DuPont* case, you know, it's kind of a fight
15 between the lawyers as to how much fees the committee should have,
16 and the individual lawyers.

17 So, we had two appeals on that, that went up to the 1st Circuit and
18 I did the briefing on those, and I did the arguments on both of those, and
19 that's In re 19 Appeals, and In re 13 Appeals, they're two published 1st
20 Circuit decisions.

21 I was also on the fee committee in the tobacco case where our
22 group got \$1.3 billion in fees, and I was on the A-person committee that
23 divided it among, you know, the 63 biggest Plaintiffs' firms in the
24 country, which was not a lot of fun. But in any event we did that, and I'm
25 generally familiar with, you know, attorney's fees in general

1 Q Could you tell the Court a little bit more about the division of
2 fees in the tobacco settlement. What were you looking at, how were you
3 making breakouts?

4 A Well, in the tobacco case there were 63 firms. And the way
5 that case started is in 1993 we filed a national class action, and they had
6 ultimately spawned the State cases, and you know, the insider, and the
7 whistleblowers and all kinds of stuff.

8 But in any event, at the end of the day we had to sit down and
9 decide, based upon, you know, the amount of work each person did,
10 what results they achieved, what their particular skillset was, how many
11 points they would get out of a 100 points.

12 So, we took a 100 points, which was the 1.3 billion, and some
13 people got 2 points, some people got 2 points, some people got .25
14 points, but they each came in and made a fee presentation and written
15 materials, and we had to evaluate it. Which took eight weeks, they
16 locked us up in a hotel down in New Orleans for eight weeks, but --

17 MR. CHRISTENSEN: Your Honor, I'd like to submit Mr. Kemp as an
18 expert on not only product liability cases, but also on the reasonableness
19 of fees in product liability cases.

20 MR. VANNAH: Oh, no.

21 THE COURT: Any objection to that?

22 MR. VANNAH: None whatsoever.

23 THE COURT: Okay.

24 BY MR. CHRISTENSEN:

25 Q Mr. Kemp, what is your opinion?

1 A My opinion is that a reasonable fee for a case of this sort
2 would be about 2.44, and I take that by taking the -- I did that by taking,
3 you know, playing the Brunzell factors, as well as -- I could go into more
4 detail, but that's the general opinion.

5 Q Okay.

6 A Which I set forth in the declaration that we filed--

7 THE COURT: I have read that, Mr. Christensen.

8 THE WITNESS: -- on or about January 31st.

9 BY MR. CHRISTENSEN:

10 Q Can you turn to page 5 of your declaration, which is marked
11 as the Office Exhibit 1.

12 MR. CHRISTENSEN: Your Honor, do you have courtesy copy?

13 THE COURT: And this is your motion to adjudicate?

14 MR. CHRISTENSEN: Yes.

15 THE COURT: In your brief I know there's an affidavit from Mr.
16 Kemp that's attached.

17 MR. CHRISTENSEN: Right.

18 THE COURT: Yes. And this is the one that's attached to your
19 Defense brief, right?

20 MR. CHRISTENSEN: Correct, Your Honor.

21 THE COURT: Okay, yes.

22 MR. CHRISTENSEN: It's been submitted several times, so --

23 THE COURT: Yes, it has, I've read it.

24 MR. CHRISTENSEN: They're all the same.

25 BY MR. CHRISTENSEN:

1 Q All right. It looks like you start to address the Brunzell factors
2 at paragraph 15 --

3 A Right.

4 Q -- page 5 of your report?

5 A Right. You know, Brunzell is kind of a funky case, it's really
6 kind of an off-chute V-case. So, when you read Brunzell they really don't
7 elaborate on these factors much, but these are the four factors.

8 Q And it sounded like at least in general the four Brunzell
9 factors were very similar to the factors that you applied in the tobacco
10 litigation and maybe in other contexts?

11 A Yeah. What happened in, you know, the old days, and Mr.
12 Vannah will remember too, we used to call this the Lindy Lodestar
13 factors after the Lindy case, and then that kind of got changed, and then
14 each State court had their case, and so it's now the Brunzell cases, but
15 basically the Lindy Lodestar factors.

16 Q Okay. So, the first one is the qualities of the advocate?

17 A Right.

18 Q So what is your opinion concerning the qualities of Mr.
19 Simon and the rest of his office?

20 A You know, I really started with 4, results, so can we start --

21 Q Okay.

22 A -- there perhaps. You know, there --

23 Q Let's start with number 4.

24 A Yeah. the result of this case, I don't think anybody involved
25 can dispute it's amazing. You know, that we have a single house that

1 has a defective sprinkler that has flooding; as I understand it the house
2 wasn't occupied at the time, they were building it. But we don't have
3 any personal injury, we don't have any death, we have property damage.

4 You know, we can get into the amount of property damage, but, I
5 mean, you know, like I say in my affidavit, we probably wouldn't take this
6 case unless it was a friends and family situation, which I understand to
7 be the case here.

8 But we probably wouldn't take this case because it -- it is really
9 hard to do a products liability case and make everything add up, if you
10 have a limited amount of damages in one point. So, the result in this
11 case, you know, when you have this kind of property damage, 500 to
12 750, you know, depending on how you want to characterize it, and they
13 get \$6 million, 6.1, it's just -- it's just phenomenal.

14 You know, I'm not saying it was all Mr. Simon. It sounds like they
15 had a pretty bad sprinkler. You know, Mr. Edgeworth obviously
16 contributed, he did a lot of work, but it is a pretty fantastic result for what
17 they did.

18 Q What's the highest trial verdict that you've been involved in?

19 A A verdict? Well, we got 505 million in the hepatitis case,
20 which was tried in this courtroom, by the way. We got five hundred
21 twenty-four and twenty-eight in an HMO case, and then I think we got
22 205 in some other case.

23 Q Okay.

24 A So those are the three highest, and two out of three were
25 products' cases.

1 Q Have you ever heard of a \$6 million verdict off of a \$500,000
2 property loss case?

3 A No.

4 Q I'm sorry, settlement?

5 A Yeah. And the problem in the case, is one of the early emails
6 form Edgeworth kind of points it out, which is I guess, Mr. Marquis,
7 who's a good attorney, you know, I Mr. Marquis, he wanted 50,000
8 down, and that really wouldn't have been an unreasonable thing to ask
9 for if you were in his position, because you've got to remember at the
10 beginning of the case he would have had to retain experts, get this
11 product tested, do some investigation. You know, because you don't
12 know, just because the sprinkler started leaking, you don't know that
13 there's defective product there, going into this case.

14 And so now he's got to pay 50,000 and he's got total damages of, I
15 don't know if he knew what they were at that time, but even he knew
16 they were 500 million [sic], you know, you're kind of throwing good
17 money after bad. It's just hard to imagine that this case would have got
18 off the ground, if it hadn't been a friends and family situation.

19 Q I guess number 3, really kind of -- the work actually
20 performed kind of encompasses the result, pretty close?

21 A Well, not really. I mean, you know, you got to take -- you
22 know, maybe they -- you always hear these stories that someone files a
23 complaint, the next day they get a lot of money. I've never seen it
24 happen; it's never happened to me.

25 But, you know, you got to look at what happened. I went through

1 all the emails between Mr. Edgeworth and Mr. Simon, which were pretty
2 extensive, you know, four binder set.

3 THE COURT: Was it something like that, what's over there in
4 those chairs?

5 THE WITNESS: Yeah. Yeah. And I went through every one,
6 Your Honor, I went one-by-one. It was just -- it was -- you know, it kind
7 of fast, and then I was kind of intruding on their relationship, like, you
8 know. See, I would have answered the question this way, Mr. Simon
9 answered it that way. You know, it was kind of interesting in a way. It
10 wasn't that -- I wouldn't do it again.

11 But anyway, I did go through all the emails and I went through the
12 pleadings, and I looked at the expert reports more out of professional
13 curiosity, because given my background in fire litigation I was interested
14 in sprinklers. And, also, we thought, gee, you know, if Danny got \$6
15 million on this little case, maybe there's an opportunity here for us to do
16 a class action somewhere. But so far that opportunity --

17 THE COURT: Wheels always turning, Mr. Kemp.

18 THE WITNESS: -- hasn't materialized.

19 BY MR. CHRISTENSEN:

20 Q What did you think about the stigma damage claim?

21 A I thought that was very creative, you know. I mean, I can see
22 cases where you would have stigma damages in a house, you know,
23 Charlie Manson murders people in the house, so I can see that being
24 stigma. A flooding, I think -- that was very creative. I don't know
25 whether Mr. Edgeworth came up with that, or Mr. Simon or both, but

1 that was a very creative claim.

2 I didn't -- you know, I broke this down into hard damages and soft
3 damages. And hard damages I would call the ones that are more
4 commonly accepted, and soft damages I put the stigma on that. I don't
5 know that that would have gotten by a 50(b) motion. I definitely don't
6 think the Supreme Court would have let that one go, but you know, it's
7 creative.

8 Q Okay. Do you have opinions on the quality of the advocate,
9 the first Brunzell factor?

10 A I thought Mr. Simon who I actually knew Mr. Simon back
11 before he was an attorney, believe it or not, and I don't know why he
12 became an attorney, but in any event, yeah, I thought the quality was
13 good. I went through the pleadings. You know, they -- basically they
14 caught the company understating the number of the incidents, and they
15 had a motion to strike. And I don't know what Your Honor would have
16 done, but I would have stricken it. But in any event I thought the quality
17 is very good.

18 Q Okay. On a character of the work?

19 A The same, you know. I mean, I don't think there's any
20 argument about factors 1 and 2 here.

21 Q And the work actually performed?

22 A You know, I was amazed at the number of emails. You know,
23 I think Mr. Simon made some kind of crack that I wouldn't have
24 responded to all the emails, I probably wouldn't have, you know,

25 Q Okay.

1 A I mean, it was productive, don't get me wrong, they had a
2 productive relationship for some reason, but there were a lot of emails.

3 Q What happens when an attorney doesn't have an express
4 contract with the client; either oral or written?

5 A You've got to determine the reasonable value of the work.

6 Q So it's commonly called quantum meruit?

7 A Yeah. Quantum meruit.

8 Q Okay.

9 A Which I was trying to remember my Latin the other day, as to
10 -- forget that.

11 Q No express written contract in this case?

12 A You know, it was interesting, because at the very beginning,
13 and this is why I say it was a friends and family case, Mr. Edgeworth
14 writes a memo, which I have up here somewhere, which I think is May
15 27th, and he says, Mr. Marquis, who I don't know, wants 50 grand. You
16 know, I don't want to go there. Why don't I just pay you hourly, and
17 Danny writes back and said something to the effect of, I don't want to do
18 that at this point, or -- you know, let's decide that later, or something?

19 So, I mean, it did start out as classic friends and family case, you
20 know, I'll write you a couple of letters, then apparently a complaint got
21 filed, and then somehow or another, around August of -- this was August
22 2017, they must have -- something good must have happened, because
23 all of a sudden I'm seeing emails from Mr. Edgeworth about a punitive
24 damages claim, and we've got to a contingent fee. So obviously they
25 found something good.

1 Q Okay. Did you see an express oral contract on an hourly
2 rate?

3 A No. And, you know, there's at least three emails that I think
4 are significant on that. There's the one I just alluded to, where they
5 started, and Mr. Simon says, let's cross that bridge later, this is the May
6 27th email. And then later on Mr. Edgeworth writes an email where he
7 wants to -- where he says, hey, let's go for punitive damages in this case.

8 And, you know, like I say in my affidavit, they must have got --
9 there is -- there's a large component here, in addition to what the hard
10 and sought damages are. So, it's either fees or punitives, it's one of the
11 two, or both. And so, he says, let's do some kind of contingency, you
12 know. I think that was back in November.

13 But in any event that kind of indicated that at least for what they
14 wanted to do after that point in time, if it didn't, they didn't think they
15 had an agreement that was -- or they thought they should refine an
16 agreement. I don't know, I would say they didn't have an agreement.

17 Q What was your opinion of the hard damages?

18 A I talked about that in my affidavit, and I thought I put the
19 figure at seven-something.

20 Q If you could turn to page 3 --

21 A Seven-thirty-one, yeah.

22 Q Yeah. Paragraph 10?

23 A Uh-huh. And I think I put the interest in too. Although I don't
24 think they would have gotten the interest rate that he was actually
25 paying. You know, I think they might have got stuck with a legal rate,

1 but in any event I think that's included in the hard damages, the 731.

2 Q Okay. That was the, oh body the -- approximately --

3 A Oh, no. The interest is 285, I'm sorry, I'm mistaken.

4 Q Was that the interest rate on the personal loans taken up by
5 Mr. Edgeworth?

6 A Right. As I understand it Mr. Edgeworth had some sort of
7 family member that was giving him loans, and the rate might have been
8 a little higher than you would ordinarily see.

9 Q Okay. And what were the soft damages?

10 A The soft damages were the cost of repair, the cost still to be
11 repaired, which I think I broke down here; 512,000 for repairs, 24,000 for
12 the money they owed for future repairs, and 194 still to repair. So that
13 was the hard damages.

14 Q And then you go on in paragraph 11 on page 4, you address
15 damages again?

16 A Yeah. I think I start talking about the email at that point in
17 time, and you know, in the email I go through it, and we have Mr.
18 Edgeworth, I think he was saying in August that his total damages were
19 -- or his walkaway figure was about 3 million for the mediation. So
20 obviously they got a lot of extra money. And I -- either it's punitive or
21 attorney's fees, you know --

22 Q That's the extra money?

23 A Right, yeah. I come to find out it's at least 2.4 is attorney's
24 fees, but in any event it is extra money over and above the hard and soft
25 damages.

1 Q Okay.

2 A And I put the stigma in there too.

3 Q Okay.

4 A Right.

5 Q I think you've made your feelings clear on the stigma. You
6 know, it's very creative, I will say that.

7 A Okay.

8 Q Did you review any other factors, say Lindy Lodestar factors,
9 in connection with this case?

10 A You know, being old fashion, when you start reviewing it one
11 way, that's the way you always review it, whether you call it Brunzell
12 later on or not. So, yes --

13 Q Okay.

14 A -- I did.

15 Q Is result a big factor under --

16 A Result's a big factor in the Lindy format.

17 Q Okay. Did you also take a look at the 1.5(a) factors?

18 A I did. I have 1.5, I have here.

19 Q Okay. The result obtained is also a factor under this?

20 A Right. Uh-huh.

21 Q Now are those factors weighted in either Brunzell, Lindy
22 Lodestar or 1.5?

23 A No. They're not weighted.

24 Q Okay.

25 A It's pretty much they give the Trial Court, or the District Court

1 judge pretty liberal discretion.

2 Q In your opinion what's the most important factor in all three
3 of those different methods of calculation?

4 A I think result's important, and then the amount of work you
5 did is important. And like I said before, if you'd gotten the same result
6 the day after this thing started, I wouldn't say that the reasonable fee is
7 2.4, okay. If you'd gotten the same result with half as much work I
8 probably would cut it down one more, but I think result and the amount
9 of work is most important.

10 Q How did you reach the number of 2.4?

11 A I just take the 40 times the ultimate recovered. You know,
12 like I say in my affidavit, if we had taken this case we would have taken it
13 under -- first of all he wouldn't have got in the door unless he knew
14 somebody at the office, okay, or he was a good friend. And even then I
15 don't think -- you know, we might have started getting interested in the
16 case when we found out about the other accidents, but it is hard to
17 imagine getting \$6 million on this kind of case.

18 Q Okay. Why did you use 40 percent?

19 A That's just the customary figure we use for products' cases.
20 We used 40, and then --

21 Q Is that the market?

22 A -- if goes up on appeal, we usually kick it up a little bit.

23 Q Okay. Anyone else in this market use 40 percent?

24 A Pretty much everybody uses 40 percent.

25 Q Okay.

1 A I mean, you've got to remember, you can't do a product's
2 case nowadays for, you know, using the case we just got done, the bus
3 case. You know, you've six to \$800,000 worth of just expert fees in the
4 case.

5 So, you've got to be able to get a meaningful recovery. And that
6 was the other problem with this kind of case, so even you got it out of 40
7 percent, and your total damages are 750, so the attorney's going to make
8 what; what's 40 percent of 750, it would be 300?

9 Q Yes.

10 A It's like having two malpractice cases, two medical
11 malpractice cases. Why would you want two of those, you got the cap.
12 You know, it's the same kind of problem.

13 Q So you didn't like the economics from at least your point-of-
14 view?

15 A The economics are difficult to justify if you do it on a
16 contingent fee basis.

17 Q As for the -- you understand that Mr. Simon did not have a
18 written contingency fee agreement?

19 A I do.

20 Q Does that affect your market rate analysis?

21 A No.

22 Q Why?

23 A I mean, we look at the fair value of what he did, you know.
24 So, I've got to look at that.

25 Q Okay.

1 A And I'm not looking at the fair value of what he did between
2 X date and Y date, I'm looking at the fair value.

3 Q Of the overall case?

4 A Of the overall case.

5 Q Including the result?

6 A Including the result. Now --

7 Q Well --

8 A -- I do think that if he got money paid by Mr. Edgeworth,
9 aside from the 2.4, that he should get it -- Mr. Edgeworth should get a
10 credit for that.

11 Q Sure.

12 A I don't think -- okay.

13 Q I don't think anybody is arguing that.

14 A Yeah.

15 Q Okay. Did you -- are you aware, or did you do any work in
16 respect to this case, to determine whether 40 percent is kind of the
17 prevailing market rate in Southern Nevada, for a product case?

18 A It is the prevailing market rate, because we are out there
19 doing contingent fee cases every day. We just got done -- well, we didn't
20 just get done, but we did the hepatitis cases. I'm familiar with what our
21 contract was, what everybody else's contract was. And the 40 percent is
22 a prevailing rate for a product's case. It may be low. It probably is going
23 to go up one more.

24 Q How many of the lawyers were operating in the hepatitis
25 case --

1 A Hundreds.

2 Q -- or active?

3 A Hundreds. On the plaintiff side probably 35, 40.

4 Q The rates were all 40 percent?

5 A Some were lower, some were lower. They had, I think there
6 was a firm out of Oklahoma or somewhere that was charging a little bit
7 lower.

8 Q Okay.

9 A And I think those clients got what they paid for.

10 Q How about the Southern Nevada attorneys.

11 A The Southern Nevada attorneys were by and large charging
12 40 percent.

13 Q Okay. Well, Mr. Kemp, are there any other factors which
14 support your opinion?

15 A Well, I went and talked to a mediator, because I just didn't
16 understand how they got \$6 million in a case like this. And so, he's in
17 the same building as I'm in.

18 MR. VANNAH: Wait a minute, excuse me. I have -- I
19 appreciate, I have this report, but it doesn't talk anything about any
20 conversation -- are you talking about Floyd Hale?

21 THE WITNESS: Yeah.

22 MR. VANNAH: Yeah. I don't have any -- okay. I have an
23 objection about that. Nothing's ever been disclosed that he went to talk
24 to Floyd Hale about this case. It's just -- here I am.

25 THE COURT: Okay. So, it's not in his report. Mister --

1 MR. VANNAH: There's nothing in the report about any
2 discussion with Floyd Hale. I just don't feel that would appropriate to
3 bring up that as any part of this; that's wrong. Considering it's never
4 been disclosed to me. If it had been disclosed I'm not going to -- no
5 problem.

6 THE COURT: Yes.

7 MR. VANNAH: But that did not get disclosed to me.

8 THE COURT: Okay. Mr. Christensen, I don't see that in the
9 report that I have, that I've read.

10 BY MR. CHRISTENSEN:

11 Q May I ask a couple of foundational questions?

12 A Yeah.

13 Q Did your conversation with Mr. Hale change or alter your
14 opinion in anyway?

15 A No. The reference to what Mr. Hale said is in Mr. Simon's
16 letter, dated November 27th, where he says that the mediator gave 2.4
17 million for fees. It says that on page 2 of the letter, in the middle. So
18 that's the only point that I was going to make that the mediator
19 confirmed. This in Mr. Simon's letter, it's not --

20 MR. VANNAH: Well, I don't have any problem talking about
21 whatever documents you reviewed, just conversations --

22 THE COURT: Okay.

23 MR. VANNAH: -- that I wasn't privy to that --

24 THE WITNESS: Let's --

25 MR. VANNAH: -- had never been disclosed.

1 THE WITNESS: Let's just put it this way. It was my
2 understanding that the mediation 2.4 million was for fees. Is that --

3 THE COURT: Okay.

4 THE WITNESS: -- fair?

5 MR. VANNAH: No, I don't understand that. I actually don't
6 understand that, what does that mean?

7 THE COURT: Okay. Mr. Kemp, what does that mean?

8 THE WITNESS: That means that the mediator threw in an
9 extra 2.4 for fees out of the 6 million, because he wanted to get
10 Edgeworth 3 million, plus some money for costs, and they knew that Mr.
11 Simon, like most people, typically have around 40 percent, so that's why
12 it's 6 million, not 3.6 million, or something like that.

13 MR. VANNAH: Thank you.

14 THE WITNESS: Yeah.

15 MR. VANNAH: That makes no sense.

16 THE COURT: Okay. Mr. Christensen.

17 BY MR. CHRISTENSEN:

18 Q Mr. Kemp, did we cover your opinions?

19 A Give me one second.

20 Q I think I referenced it, but there were a lot of emails, you
21 know. A lot of communication with the client, so I got to commend Mr.
22 Simon for, you know, responding. You know, sometimes he responds
23 in a minute, it's unbelievable. And I don't want to make it sound like Mr.
24 Edgeworth was being frivolous. I mean, there was a lot of important
25 emails from him. You know, he had a list of questions that I thought

1 were great, for a sprinkler expert or something. So anyway, it was a
2 productive relationship, but there was obviously a lot of work done in the
3 case.

4 Q Okay. One follow-up. Is it hard to find a lawyer here in
5 Southern California -- or Southern Nevada, excuse me, or in the Western
6 United States, generally, for complex product cases?

7 A I would say so, because -- you know, there's more to product
8 cases than people understand, you know. First of all, the average juror
9 doesn't understand what product liability is. You know, you tell them
10 that it, you know, it doesn't matter, there's no negligence, they still think
11 they need some negligence.

12 A lot of the judges haven't really tried product's cases, so they
13 don't need all the defendants always coming in, and they talk about this,
14 that and the other thing, and sometimes the judge goes down that rabbit
15 hole. So, there's really not that many people who do product's cases
16 here. So, I would say, yeah, it is hard.

17 Q Well, any other reasons why a product case is different from
18 say a typical injury case?

19 A Well, I mean, first of all you have to have a defective product,
20 okay. Just because the sprinkler broke and there was a flood, it doesn't
21 mean that the product was defective. But first of all, you have to have a
22 defective product. And I think what really makes the product case
23 different is it's pretty expert heavy. You know, you've got to spend a lot
24 of money on the experts.

25 Q Can --

1 A And I think this case is a good example. You know, they had
2 like all kinds of different experts. They had a weather expert, because
3 the sprinkler company said that there was -- you know, because it was
4 hot that's why the sprinkler failed, which I think is really ridiculous, you
5 know.

6 Q Uh-huh.

7 A I mean, what are you supposed to finish the house and turn
8 the air conditioner before you put the sprinklers in? You know, what a
9 ridiculous defense. But in any event, so in this case you had a
10 weatherman defendant, you had engineering defendants. It's tough to
11 win a product's case.

12 Q Well, in this case there are couple hundred thousand dollars
13 in costs, ballpark?

14 A Yeah. That's pretty low, I'm surprised they got it done for
15 that much.

16 Q Okay. Do you have hourly clients?

17 A We do.

18 Q Do they email you as much as Mr. Edgeworth emailed Mr.
19 Simon?

20 A I'm not a big email guys so the answer's no. Even if I was a
21 big email guy, I think the answer would still be no. But I'm not saying
22 Mr. Edgeworth -- you know, he was a stern taskmaster, and you know, I
23 can't say -- I mean a lot of productivity I think came out of this. You
24 know, I mentioned the one about the three and a half pages of
25 questioning. In fact, I've left that up here just in case.

1 I mean, this is the email he wrote. I mean, I've had associates who
2 can't come up with something this good. You know, you should talk to
3 Underwriters Laboratory about this, and about -- yeah. So, I think it was
4 a productive relationship, you know.

5 Q Okay. Well --

6 A The Beatles -- the Beatles broke up too, so --

7 Q Were the opinions that you provided here to a reasonable
8 degree of certainty?

9 A Yes.

10 Q And that covers everything in your declaration as well?

11 A Yes.

12 Q Okay.

13 MR. CHRISTENSEN: No further questions, Your Honor.

14 THE COURT: Cross?

15 MR. VANNAH: Certainly, Your Honor.

16 CROSS-EXAMINATION

17 BY MR. VANNAH:

18 Q Will, we've probably known each other longer than anybody
19 else in the courtroom have known each other right?

20 A I would say that is absolutely true. I used to work out with
21 Mr. Vannah at the health club, and he was diligent coming Sunday
22 nights, I'll say that.

23 Q And we worked -- not against -- well, we worked on the MGM
24 fire --

25 A Correct.

1 Q -- we were on that case together? And we worked on the
2 Puerto Rico fire together, and Dupont Plaza and those were all product
3 liability cases, as I recall?

4 A Yeah. Part negligence, part product.

5 Q You took the smart side, the plaintiff side, ended up doing
6 defense. But I'm still --

7 A You know, who knows. At the end of the case it seemed like
8 the smart side, but during the case it seemed like you were on the smart
9 side.

10 Q Because I was getting paid?

11 A Yeah, right.

12 Q I'd send a bill to get paid. So, you know, let me talk about
13 that. How many cases have you been involved in, when you've been
14 lead counsel, where you took at case, and at the end of the case you
15 asked 40 percent and didn't have a written contingency fee agreement at
16 the beginning of the case?

17 A That precise fact pattern, I don't think any. There are cases
18 where we had -- we're producing a better than average result, where
19 went to the client or the group of attorneys and said, hey, you know, this
20 turned out better than everybody thought, you should pay us more.

21 Q A bonus?

22 A Yeah.

23 Q They don't have to pay the bonus, but they can agree --

24 A Well --

25 Q -- or not agree?

1 A -- if they want to work with us again they do. But, yeah --

2 Q No, I understand that. But there's no --

3 A There's no --

4 Q There's no legal obligation?

5 A No, there's no legal obligation.

6 Q So just I'm clear, so you've been practicing with -- did you
7 get admitted in '76 or '78?

8 A '78.

9 Q Okay. I was in '76, so --

10 A Okay.

11 Q And almost --

12 A But you take more vacations than me, so I practiced longer
13 that you.

14 Q Plus you work harder than I do?

15 A Right.

16 Q I've never met anybody that works any harder than you, and I
17 mean that.

18 A Thank you.

19 Q I have nothing but the highest respect. We've had a lot of
20 fun together. And I think that's -- you answered my question, not once in
21 40 years --

22 A No.

23 Q -- have you ever taken a case, and at the end of the case you
24 just took it and said, gee whiz, let's see happens at the end of the case.
25 And at the end of the case you said, you know what, I want 40 percent,

1 right; that just never happened?

2 A Well, that's a little different question. You asked me if had a
3 fee agreement, and then I wanted more than 40 percent.

4 Q But let me ask that question, all right?

5 A Okay.

6 Q I guess my question is, have you ever taken a case and had
7 no fee agreement, whatsoever, a large case, you know, something that's
8 in the \$6 million range, or above and you've had lots of those. Have you
9 ever taken a case that's in the \$6 million range or above, no fee
10 agreement whatsoever, and at the end you told the client, you need to
11 pay me a contingency of 40 percent?

12 A I would say, no. But I would also say that in the '70s --

13 Q But that --

14 A Okay. Go ahead.

15 Q -- that was a good answer, though. That's the answer to my
16 question, right?

17 A Uh-huh.

18 Q All right. And they'll get a chance to ask you, I'm sure.

19 A I'm sure they will.

20 Q Well, go ahead, they're going to ask you anyway. Just tell
21 me what think?

22 A I was just going to say, things were a little looser in '70s or
23 '80s, so you would take cases and people would say, oh, it's a third or 40
24 percent. And, you know, we didn't have the bar breathing down our
25 neck as much.

1 Q But we have the bar now.

2 A We do. Well, we had it then, but it just wasn't breathe down
3 our neck, as much of it.

4 Q Well, those days were kind of wild and -- those were wild
5 days, right? A little wilder than now?

6 A I think I saw you at my cottage ranch a couple of times, I
7 would agree.

8 Q Which, by the way, was a big ranch at the corner of what
9 Rainbow and --

10 A Oakey, I think.

11 Q Oakey, which was out in the -- I thought that was --

12 A That was a --

13 Q -- so far out.

14 A -- great party.

15 Q That was a great party.

16 A Uh-huh. I never woke up in the stalls in those days. Some
17 people did.

18 Q The parties for those who weren't there were for the new
19 admittees.

20 A Stipulated that it was wilder back in the day.

21 Q All right. I would agree with that. All right. But we do have
22 the bar and the bar's got a rule called Rule 1.5, you're familiar with that
23 rule?

24 A That's right, I have it right here.

25 Q Right. And it says very clear, does it not, that you can't have

1 an oral contingency fee, and have it be valid, agreed?

2 A Not truly agreed, no. It says that it shall be in writing, and it
3 should be done as soon as practicable, or practical or something -- hang
4 on, let me find it. I thought I had it.

5 Q I have it.

6 A I think I have it.

7 Q It's okay. I can give you a copy if you want.

8 THE COURT: Can you just put it on the overhead, Mr.
9 Vannah?

10 BY MR. VANNAH:

11 Q Yeah. I'll put it on the overhead, how about that, Will?

12 THE COURT: Yeah. And then he can see it.

13 BY MR. VANNAH:

14 Q Here we go, we can look at it together, with mine.

15 THE COURT: It's on the screen in front of you, if that would
16 help you, Mr. Kemp.

17 THE WITNESS: Oh, great.

18 BY MR. VANNAH:

19 Q It's right there, do you see it?

20 A Thank you.

21 Q So I think you misspoke a minute ago. Let me back you up a
22 little bit.

23 MR. CHRISTENSEN: Your Honor, could I approach the
24 witness, so I have an easier to read copy of 125.

25 THE COURT: Okay.

1 MR. CHRISTENSEN: Mr. Vannah, is this okay?

2 MR. VANNAH: Oh, yeah, sure.

3 MR. CHRISTENSEN: If I hand it to him. It's a little bit easier
4 to read that.

5 MR. VANNAH: I'd be delighted. Thanks for helping me, I
6 appreciate it.

7 BY MR. VANNAH:

8 Q All right.

9 A Okay. I got it here.

10 Q So I think you misspoke a little, let me just back up, and I
11 don't think you meant to, misspeak. But what you said was -- well, let
12 me back up. So, whether the fee is fixed or contention --

13 A Uh-huh.

14 Q No, no, that's not how it starts, it says this: The scope of the
15 representation and the basis or rate of the fee and expenses for which
16 the client will be responsible shall be communicated to the client,
17 preferably in writing, before or within a reasonable time after
18 commencing their representation. Do you see that?

19 A Right.

20 Q And then there's an exception that doesn't apply?

21 A Right.

22 Q All right. So --

23 A So what I said is that it can be oral, but the bar advises you to
24 put it, preferably in writing, and you should do it within a reasonable
25 time after you start working on the matter.

1 Q Now, actually, I want -- with all due respect, take a look at (c).

2 A Okay.

3 Q That -- (c) is a little more detailed. A fee may be contention,
4 okay?

5 A Uh-huh.

6 Q Only the outcome of the matter --

7 A -- shall be in writing, right.

8 Q For which the service is rendered, except in a matter in which
9 a contingent fee is prohibited?

10 A Right.

11 Q A contingent fee agreement shall be in writing?

12 A Right.

13 Q Signed by the client?

14 A Right.

15 Q And shall state in boldface type, that is at least as large as the
16 largest type used in a contingency agreement:

17 1. The method by which the fee is to be determined, include the
18 percentage, or percentages that shall accrue to the lawyer, in the
19 event of settlement, trial or appeal.

20 2. Whether litigation and other expenses are to be deducted from
21 the recovery, and whether such expenses are to be deducted
22 before or after the contingency fee is calculated.

23 3. Whether the client is liable for expenses, regardless of outcome.

24 4. That in the event of a loss to client, may be liable for the
25 opposing parties' attorney fees, and will be liable for the opposing

1 parties' costs as required by law.

2 5. That a suit brought solely to harass or to coerce a settlement,
3 may result in liability for malicious prosecution or abuse of
4 process.

5 Do you see that?

6 A Yes.

7 Q So if you're going to have a contingency fee agreement, the
8 bar requires, pursuant to this rule, that contingency fee agreement, that's
9 not a choice, where there's oral or written, it is to be in writing, and has
10 to contain these five items, correct; you agree with that?

11 A I don't want to quibble, and I don't know that it's applicable
12 to this case, but I can see a circumstance where you have an oral
13 agreement, and for some reason or another, such as the trial starting the
14 next day, you don't reduce it to writing, and then the trial is over with,
15 and the client would still be responsible for it then.

16 Q On a contingency basis?

17 A Yeah. Because that's really what C says. It says: It shall be
18 communicated to the client; it doesn't say it shall be communicated in
19 writing. In other words, if you and I agree that, okay, I'm going to try
20 your case the next day for a third, and for some reason or another we
21 just don't get the fee agreement done, and I win the case and you get a
22 hundred -- well, 6 million, let's say 6 million, I should get my third.

23 Q Well, let me -- that didn't apply in this case anyway, did it?

24 A You know, it doesn't --

25 Q I mean, I don't --

1 A -- but it --

2 Q -- want to -- I don't want to quibble with you, I actually
3 disagree with you. I think the rule say something different, because
4 that's the way I read it, and the way the bar reads it, is a fee may be
5 contingent on the outcome of the matter for which its service is
6 rendered?

7 A I don't think it applies to the issues we have in front of us.

8 Q Okay. So, what --

9 A But I would say that here we got Mr. Edgeworth proposing a
10 contingent fee right in the thick of things. You know, he writes this letter
11 August 22nd, 2017, and I say this is in the thick of things, because all of a
12 sudden I see all these memos about punitives and something happened,
13 okay. Some -- they must have had a great deposition or something.

14 Q They did.

15 A And, you know, so the real issue is, should this have been
16 formalized --

17 Q Formalized.

18 A -- between the two of them, you know, before they went to
19 the mediation. I would say, yeah, it should have been formalized, okay.
20 But, you know, there's a little bit of fault on both sides here.

21 Q Really? I mean, formalize, being put it in writing --

22 A Right, that's what I mean.

23 Q -- like the law requires?

24 A Right.

25 Q I mean, it's not like a -- the word shall is in there. Now shall

1 means what it means. But, I mean, here it is, it's saying: A fee may be
2 contingent on the outcome of the matter for which the service is
3 rendered.

4 A Let me answer it this way.

5 Q Well, let me just finish, though. It says, a contingent fee shall
6 be in writing, signed by the client, and shall state in boldface print,
7 boldface print, that it's as large as anything else, these five things,
8 including do you apply the 40 percent on the gross settlement, do you
9 apply the 40 percent after you take out expenses. I mean these are
10 things the bar requires, and they're kind of serious about it, when it
11 comes down to fee disputes, right?

12 A Yeah. Well, first of all you're confusing what the bar requires
13 with contract law. So, let's say Mr. Edgeworth in this August 22nd email
14 had proposed to Mr. Simon, let's do 40 percent above my \$500,000 cost,
15 and Mr. Simon has sent back an email saying I agree. We're done, we're
16 done under contract law, okay, it doesn't matter what Rule 1.5 says. That
17 would be an enforceable agreement.

18 Q It could happen that way?

19 A Obviously that didn't happen here.

20 Q It didn't happen?

21 A No.

22 Q All right. So rather than talk about what could have
23 happened, and I -- because we could go, it would be a lot of fun, we
24 could give --

25 A Right.

1 Q -- we could give a CLE seminar on this. But the point is, that
2 didn't happen, and in this case you have never been provided a written
3 contingency fee agreement signed by the client at all, much less
4 containing these five items that the bar said should be in that, right?

5 A I have not.

6 Q Okay. In fact, I don't know if you realize this, I think you
7 probably do, my client testified that there was a conversation in June of
8 2016, a very explicit conversation, where after the friends and family
9 efforts failed, that Mr. Simon said, this is going to be a labor intensive
10 case, I'm getting involved here, I've got to come up with a cost, so I'm
11 going to charge you \$550 an hour, that'll be my fee --

12 A Uh-huh.

13 Q -- and so -- and of course you're going to have to pay the
14 costs. You understand that's what -- that's the testimony?

15 A I haven't -- been not -- had not been provided Mr.
16 Edgeworth's testimony.

17 Q Okay. Well, let's assume that that's what the testimony is.
18 Okay. That's the testimony that they had this meeting, shortly before
19 they filed the complaint the following week, and that there was an oral
20 conversation. And Danny said, I'm going to charge you \$550 an hour.
21 I'll advance the cost, but when I send you a bill you need to reimburse
22 me. That would be under contract law an oral agreement that's binding,
23 correct?

24 A Well, except we have this email that says, we never had a
25 structured discussion about how this should be done. So, you're telling

1 me there was a structured discussion about how it would --

2 Q You're about eight questions ahead of me.

3 A Okay. Fine.

4 Q I don't think I asked that question. I thought you were --

5 A Okay. Assuming for the sake of argument that they had an
6 oral agreement, and that they had talked about everything, you know,
7 that we're going to go for punitives. We're going to -- this is going to
8 cost X amount of money. You know, I would agree with you that that
9 would probably be binding under contract law.

10 Q All right. Yes.

11 A I mean, if that's the question.

12 Q All right. August, the email you're looking at.

13 A Yes.

14 Q Do you know what was the genesis of that email, about the
15 meeting in San Diego. Just yes, or no, have you been told that?

16 A I've been told they had some meeting in San Diego, and they
17 had some --

18 Q So let me tell you what happened?

19 A Okay.

20 Q Okay. I want you to assume that this is what happened.

21 They went to San Diego to meet with some experts. They go back to the
22 airport, same day. They drop off, they have a little adult beverage in a
23 bar, waiting for the plane, chat, and somehow the conversation --

24 A Is there any other kind of beverage in a bar?

25 Q I don't know which kind they had, but -- I don't know if they

1 were having beer, or margaritas or what, but they're having some sort of
2 -- whatever people drink in a bar, they're having some drinks.

3 A Okay.

4 Q In the midst of that, the conversation comes up, hey, is there
5 any possibility, and they start discussing whether or not they can move
6 this from an hourly agreement, to maybe a hybrid, like you talked
7 about --

8 A Uh-huh.

9 Q -- where we've already paid some fees, maybe the
10 contingency above a certain amount, and I get the first 2 million, you get
11 30 percent above that, or, you know --

12 A Which is very common when a case goes forward.

13 Q No, I agree.

14 A Yeah.

15 Q I've done that myself.

16 A Uh-huh. Uh-huh.

17 Q So that could have -- that could have happened, and they
18 could have reached an agreement, and they could have memorialized
19 that. That didn't -- you don't see where that ever happened, right?

20 A No. It just says, we should explore it but then later on I think
21 there's a memo where they're going for punitive and he wants a 100
22 million punitives or something.

23 Q Well, you know what, let me stick with one thing at a time.

24 A Okay.

25 Q If you jump ahead of me three months that doesn't --

1 A Okay.

2 Q -- help me any. Are you ready?

3 A Yeah. I'm ready.

4 Q We'll skip back where we were.

5 A Okay.

6 Q So the testimony's been that they had this conversation, and
7 if you read that memo when he says, look, or that email, he says, look, if
8 I need to I can borrow more money.

9 A Uh-huh.

10 Q I can borrow money from my mother-in-law, I can borrow
11 money from an old high school friend. I can sell some of my bitcoin, I've
12 got a couple of million dollars in bitcoin. I mean, I can get the money, so
13 if we're not going to be able to reach an agreement on a sort of a hybrid
14 contingency fee, fixed fee, whatever, I -- he says there very clearly, I'm
15 able to pay you hourly to finish the case. Do you remember reading
16 that? I hope you have it in front of you, if you do, you'll see it.

17 A I could also swing hourly for the whole case --

18 Q Right.

19 A -- is what he says.

20 Q And I don't know if you realize, but after that meeting the
21 response by Danny was to send another hourly bill, which my client
22 paid; were you aware of that?

23 A I think I was aware of that, because I think it came up with
24 Mr. Simon's testimony, while I was watching.

25 Q Okay. So, if in fact --

1 A What this says to me is that the arrangement between them
2 was in a state of flux, because they both fell in love with the case, down
3 in San Diego, for some reason.

4 Q Well, what it tells me is something totally different. But let
5 me ask you, can it also tell you that they never reached an agreement.
6 What he's saying now, we never reached an agreement on whether or
7 not we can do a hybrid agreement, but if we can't I'll just continue
8 paying you hourly. That certainly is consistent with that, right?

9 A I think I would go even farther, in saying this is consistent
10 from what I said originally, if they never had any agreement of any sort.

11 Q What he says, we've never had instructions, agreement on
12 the contingency portion --

13 A No --

14 Q But --

15 A -- he says --

16 Q But --

17 A -- about how this might be done.

18 Q Why, when they're talking about -- you have to look at the
19 background, what can be done?

20 A I would assume that means --

21 Q But you're assuming, I don't want you to assume.

22 A No, he says -- right now they are thinking that they have to
23 try the case and go appeal it, and then give punitives in addition to the
24 hourly. And so, he's trying to come up with some kind of formula to do
25 it.