

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

EDGEWORTH FAMILY TRUST; AND  
AMERICAN GRATING, LLC

Petitioners,

vs.

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

Respondents.

Supreme Court Case No. 83258  
Consolidated with 83260  
Electronically Filed  
Mar 29 2022 02:05 p.m.  
Elizabeth A. Brown  
Clerk of Supreme Court  
(District Court A-18-767242-C  
Consolidated with  
A-16-738444-C)

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1 Q You think that's a fair statement? You probably have not  
2 talked to him?

3 A It's -- the date. The date you're giving. I'm not positive 100  
4 percent of that date --

5 Q Okay.

6 A -- but in the range of that, yes, I have not spoken to him.

7 Q And from the time you signed the agreement with Mr.  
8 Vannah, you were looking to Mr. Vannah and Mr. Greene for advice as  
9 your lawyer in this case, the case where Danny had been representing  
10 you for the years prior, right?

11 A No. That's incorrect.

12 Q All right. Well, let's --

13 MR. CHRISTIANSEN: Judge, I'd move for admission of  
14 Exhibit 90.

15 THE COURT: Any objection to 90?

16 MR. GREENE: No.

17 MR. CHRISTIANSEN: That's the fee agreement, John.

18 THE COURT: Okay. So, Defense's 90 will be admitted.

19 (Defendant's Exhibit 90 received)

20 MR. CHRISTIANSEN: 43 is next, John.

21 BY MR. CHRISTIANSEN:

22 Q I'm going to show you what's been marked for identification  
23 purposes is Def -- Exhibit 43, and I'll just move it up, so you can -- I  
24 handwrote my exhibits, and it's Bates stamped Simon evidentiary  
25 hearing 420. Is that your signature, sir?

1           A     Yes, it is.

2           THE COURT: And just one second. So, Mr. Christiansen,  
3 what you're showing him is a copy of what the Clerk has?

4           MR. CHRISTIANSEN: Yes, ma'am.

5           THE COURT: Okay. So, the Clerk has that?

6           MR. CHRISTIANSEN: Yes, ma'am.

7           THE COURT: Okay. Just making sure we have it. Okay.

8           MR. CHRISTIANSEN: So, Judge, just by way of  
9 housekeeping, the Clerk has a hard copy of all of our exhibits, with the  
10 exception of Exhibit 80, which is all of those.

11          THE COURT: Okay. That's 80. Okay.

12          MR. CHRISTIANSEN: And we gave you a CD of that. And I  
13 think we gave Mr. Vannah and Mr. Greene copies as well.

14          MR. GREENE: Correct, Your Honor.

15          THE COURT: Okay.

16          MR. GREENE: We have our exhibits also with the Clerk.

17          THE COURT: Okay. Okay.

18 BY MR. CHRISTIANSEN:

19          Q     Mr. Edgeworth, the date on this letter is November the 29th,  
20 2017, correct?

21          A     Correct.

22          Q     And the letters are signed by you and addressed to Mr.  
23 Simon?

24          A     Yes.

25          Q     By November the 29th, 2017, Danny Simon, who had been

1 representing you in the case, either in the claim stage or in the litigation  
2 against Lange Plumbing and Viking -- and there's some entities for  
3 Viking in front of them -- for about 18 months. May of '16 to November  
4 of 17.

5 A 18 months seems correct, if --

6 Q Okay.

7 A -- your math is right.

8 Q And up until this day, November the 29th, 2017, you had  
9 looked to Mr. Simon for advice as your lawyer, correct?

10 A Correct.

11 Q And what this letter says is it tells Mr. Simon that Mr. Vannah  
12 and Mr. Greene -- that you've retained Mr. Vannah and Mr. Greene to  
13 assist in the litigation with the Viking entities. Did I get that first part  
14 right?

15 A Correct, yes.

16 Q And then you instruct Mr. Simon to cooperate with Mr.  
17 Vannah and Mr. Greene in every regard concerning the litigation and any  
18 settlement. Did I get that part right?

19 A Correct.

20 Q You were also instructing Mr. Simon to give them complete  
21 access to the file and allow them to review whatever documents they  
22 request to review?

23 A Yes.

24 Q And, finally, you direct Mr. Simon to allow them to  
25 participate without limitation in any proceeding concerning our case,

1 whether it be at depositions, court hearings, discussions, et cetera. Is  
2 that right?

3 A That is correct.

4 Q Okay. And when you say our case, you mean the case  
5 Edgeworth Family Trust and American Grating v. Lange Plumbing and  
6 Viking?

7 A Yes.

8 Q Fair enough.

9 MR. CHRISTIANSEN: Move for admission of Exhibit 43, Your  
10 Honor.

11 THE COURT: Any objection to 43?

12 MR. GREENE: No, Your Honor. Actually, Jim, Mr.  
13 Christensen and our respective law firms agreed that any  
14 communications going back and forth from the clients to the lawyers and  
15 emails as well are all going to be admitted. We have no issue with the  
16 exhibits that we presented to each other, so I think --

17 THE COURT: Okay.

18 MR. CHRISTIANSEN: I'll move quicker. I'm sorry. I was  
19 unaware of that. Sorry, John.

20 MR. GREENE: No worries.

21 THE COURT: Okay.

22 MR. CHRISTIANSEN: So maybe right now is a good  
23 administrative time to be able to move to admit the respective exhibit --  
24 exhibits, excuse me -- that the parties have presented to the Court at this  
25 time.

1 THE COURT: Okay. And I have Defense Exhibits 1 through  
2 86. But Mr. Christiansen said 80 is that. So, 1 through 86 is what I have  
3 here. And where's 87, 88, 89?

4 MR. CHRISTIANSEN: They're in the last book, Your Honor.  
5 They probably didn't make it to the cover page, because we had some  
6 extra exhibits --

7 THE COURT: Okay. You're right.

8 MR. CHRISTIANSEN: -- and then --

9 THE COURT: They're -- hold on. Let me see if there's  
10 anything. Yeah, I do have -- it just says 1 through 86 on the cover.

11 MR. CHRISTIANSEN: That's right.

12 THE COURT: But I have -- there's nothing under the -- okay. I  
13 have 1 through 89, and then Mr. Christensen just admitted 90.

14 MR. CHRISTIANSEN: That's the fee agreement.

15 THE COURT: So, you have no objection to 1 through 90, Mr.  
16 Greene?

17 MR. GREENE: Provided that we have a reciprocal consent or  
18 stipulation that our exhibits --

19 THE COURT: Right. And then yours --

20 MR. GREENE: -- 1 through 9 --

21 THE COURT: Yeah. I have --

22 MR. GREENE: -- are also to be admitted.

23 THE COURT: -- 1 through 9 on yours. Mr. Christiansen, do  
24 you have any objection to 1 through 9?

25 MR. CHRISTIANSEN: Judge. I think Jim talked to -- I think

1 Mr. Greene spoke to Mr. Christensen, and I --

2 THE COURT: Okay.

3 MR. CHRISTIANSEN: -- and I don't want to speak out of turn.

4 MR. GREENE: I -- let me hold forth on this one, Judge.

5 THE COURT: Okay. Mr. Christensen, do you have any  
6 objection to 1 through 9?

7 MR. CHRISTENSEN: We have no objection to 1 through 9  
8 with the exception of the piece of paper entitled, Howard & Howard fees.  
9 We're going to need some foundation for that.

10 MR. GREENE: Totally understood.

11 THE COURT: Which one?

12 MR. GREENE: There's a --

13 THE COURT: Oh, Howard & Howard fees --

14 MR. CHRISTENSEN: Yeah.

15 THE COURT: -- in Exhibit 9?

16 MR. GREENE: Correct.

17 MR. CHRISTENSEN: Yeah. It's part of 9.

18 THE COURT: Okay.

19 MR. GREENE: So, we'll hold that one in abeyance, Your  
20 Honor. We'll deal with that on direct exam.

21 THE COURT: So, we'll have 1 through 8 going on and then  
22 when we get to 9, we'll deal with 9 when you move for 9?

23 MR. GREENE: Just a portion of 9 has not been stipulated to,  
24 all but --

25 THE COURT: The Howard exhibit.



1 MR. GREENE: -- I think there are three pages of documents  
2 that deal with some fees that Brian will testify to that he's paid at two of  
3 the law firms.

4 THE COURT: Okay. So, we'll -- 1 through 8 and all of 9,  
5 except the Howard & Howard fees has been admitted. And then we will  
6 deal with the remainder of 9 when you get around to that with your  
7 client.

8 (Plaintiff's Exhibits 1-9 (except for Howard & Howard fees)  
9 received)

10 (Defendant's Exhibits 1-90 received)

11 MR. GREENE: Okay. Thank you, Judge.

12 THE COURT: Okay?

13 MR. CHRISTENSEN: That's fine with us, Your Honor.

14 THE COURT: Thank you.

15 MR. CHRISTIANSEN: Judge, maybe the last sort of  
16 housekeeping matter. I spoke to Mr. Vannah and Greene beforehand  
17 and for the sake of expeditiously moving through everything, we agreed  
18 we would both try to get witnesses completed in their entirety, even  
19 though it might be out of order or whatever. So, they'll finished with Mr.  
20 Edgeworth when I'm done and --

21 THE COURT: Okay. Rather than recall him when it's your  
22 turn?

23 MR. GREENE: Yeah.

24 THE COURT: Oh, perfect. Okay.

25 MR. CHRISTIANSEN: I think I got everything, Judge.

1 THE COURT: Okay.

2 MR. CHRISTIANSEN: All right.

3 BY MR. CHRISTIANSEN:

4 Q Now, the Lange case. I want to talk to you about the Lange  
5 case. You have an understanding about the claims that were sort of  
6 derivative in nature that you could have been reimbursed for, should you  
7 have prevailed against the Lange Plumbing Defendant, correct?

8 A I'm sorry. I'm not sure I understood your question.

9 Q Okay. Lange was the plumber that installed the Viking  
10 sprinkler in your house?

11 A Yes.

12 Q Lange and you had a contract?

13 A Correct.

14 Q Under the terms of the contract, which you're very familiar  
15 with, fair? You understand the terms?

16 A Yes.

17 Q Lange, if it failed to pursue a warranty on your behalf and  
18 you had to go do that on your own, like you hired Danny to do, then you  
19 could seek your attorney's fees as reimbursement from Lange?

20 A Yes, that's my understanding. Yes.

21 Q You understood that from talking to Danny.

22 A That's correct. That's what my lawyer told me.

23 Q I'm sorry. I should say Mr. Simon. I apologize. You  
24 should -- you understood that from talking to your lawyer for 18-ish  
25 months, Mr. Simon?

1 A Yes.

2 Q Okay. And then on the 29th of November 2017, you hired  
3 Vannah & Vannah. That's Exhibit 90, the fee agreement we just looked  
4 at.

5 A Yes. I hired them.

6 Q And Vannah & Vannah took over advising you relatively to  
7 the Lange claim, correct?

8 A They provided advice. That's not what they were retained  
9 for.

10 Q Well sir, you quit talking to Mr. Simon after November the  
11 29th, you told me, right?

12 A Correct.

13 Q All right. And you didn't stop -- you continued  
14 communicating with these nice gentlemen?

15 A Correct.

16 Q All right. And they were advising you, as we read, about  
17 things like the settlement, correct?

18 MR. GREENE: Objection, Your Honor. That is -- it's attorney  
19 client privilege of what he retained us to do, in what turned into a slight  
20 adversarial proceeding. So, again, we're going into notes. Like you've  
21 already ruled on before, they're allowed to see our fee agreement.

22 THE COURT: Right.

23 MR. GREENE: But to go into discussions that we had; I think  
24 that's beyond the purview.

25 MR. CHRISTIANSEN: Judge, they -- number one, Mr. Vannah

1 signed, in open court, that settlement in your courtroom with Lange.

2 THE COURT: I remember.

3 MR. CHRISTIANSEN: So, it's nothing that's privileged. They  
4 gave a consent to settle, which Mr. Vannah provided to us, that's -- that  
5 talks about what they advised him on. I'm just talking about that same  
6 stuff.

7 MR. GREENE: I think our issue is what was discussed. It's  
8 not --

9 THE COURT: Oh, and I'm fine with not getting into what was  
10 discussed --

11 MR. CHRISTIANSEN: I'll rephrase. I apologize.

12 THE COURT: -- but I think the issue of the constructive --

13 MR. CHRISTIANSEN: Discharge.

14 THE COURT: -- discharge. I'm sorry. The issue of  
15 constructive discharge is an active issue in this case, so whether or not  
16 Vannah's office advised him in what to do in the Lange settlement is  
17 absolutely relevant, because that came after you guys were already in.  
18 We all did that right here in this courtroom. So in regards to specifics of  
19 what you guys talked to, that's not going to be allowed, Mr. Christiansen.

20 MR. CHRISTIANSEN: Yes, Your Honor.

21 THE COURT: But with regards to who advised him in the  
22 Lange settlement, that's absolutely relevant, and I'm going to allow Mr.  
23 Christiansen to ask him questions about that.

24 MR. GREENE: Thank you.

25 BY MR. CHRISTIANSEN:

1           Q     So, Mr. Edgeworth, I'll try to phrase my questions consistent  
2 with the Court's order. From the time you hired Vannah & Vannah in  
3 Exhibit 90, which is the 29th day of November 2017, until you settled  
4 with Lange, in that window, you never spoke verbally to Danny Simon,  
5 correct?

6           A     In some window. I'm not positive that the window you're  
7 making is the window.

8           Q     Okay. Did you email Mr. Simon between the 29th and the  
9 settlement with Lange?

10          A     I would think so.

11          Q     Did you ask Mr. Simon for legal advice about the settlement  
12 with Lange?

13          A     That was provided through my lawyers.

14          Q     Through Vannah & Vannah?

15          A     No. Simon told them. They told me.

16          Q     So the answer is you only talked to Vannah & Vannah -- I  
17 don't want the substance -- not Danny Simon, between the time you  
18 hired Vannah & Vannah, and you settled with Lange?

19          A     Yeah.

20          Q     Fair?

21          A     They spoke with Simon and --

22          Q     Sir, I just asked you a question. Is that a fair statement?

23                THE COURT: Sir, he's asking you did you speak directly to  
24 Mr. Simon via email -- and I'm concerned. I want to know did you talk to  
25 him via email? Did you call him? Did you text him? Did you have any

1 communication directly between you and Mr. Simon from the date you\  
2 hired Mr. Vannah's office to the date we all signed the Lange settlement  
3 agreements right here?

4 THE WITNESS: Yes, we did.

5 THE COURT: Okay.

6 BY MR. CHRISTIANSEN:

7 Q You talked to him?

8 A I'm sorry. You asked one question, but then the Judge asked  
9 me if I had emailed with Mr. Simon between the date of -- Vannah &  
10 Vannah -- the 29th and later and the answer is yes.

11 THE COURT: You personally?

12 THE WITNESS: Me personally.

13 THE COURT: Okay.

14 BY MR. CHRISTIANSEN:

15 Q Did you -- is it true you did not verbally talk to him? I want to  
16 make sure I'm getting it accurate.

17 A He left me a voicemail.

18 Q But you didn't verbally talk to him?

19 A No. I listened to the voicemail.

20 Q And you were relying on legal advice provided you from  
21 Vannah & Vannah in terms of the Lange settlement? I'm just talking  
22 about that.

23 A They were communicating what his legal advice was,  
24 correct?

25 THE COURT: Who was he?

1 BY MR. CHRISTIANSEN:

2 Q Who was --

3 A The Vannah -- John -- Mr. Greene and Mr. Vannah  
4 communicated to me what Mr. Simon communicated to them about his  
5 advice to proceed in the Lange settlement.

6 Q Okay. Well, let's talk about Mr. Simon. And can we agree,  
7 Mr. Edgeworth, that Mr. Simon's view on what to do with Lange was  
8 different than the Vannah & Vannah lawyer's view with what to do with  
9 Lange?

10 A Yes.

11 Q Different sets of advice. Can we agree on that?

12 A Yes.

13 Q Ultimately, you decided to do what Mr. -- what the Vannah &  
14 Vannah Firm advised you of?

15 A Correct.

16 Q Okay. And that's reflected, sir, in what's now in evidence as  
17 Exhibit 47, which is the consent to settle signed by yourself on December  
18 the 7th, and is that Mrs. Edgeworth -- that's your wife, sir?

19 A That's correct.

20 Q And it's on Vannah & Vannah letterhead, correct?

21 A Correct.

22 Q And this consent to settle reflects the Vannah & Vannah  
23 advice you were receiving in this time frame about what to do with  
24 Lange, correct?

25 A Not all of it, but it does reflect --

1 Q It does --

2 A -- some of their advice, correct.

3 Q It -- it's inconsistent with the advice Mr. Simon was giving to  
4 you about what to do with Lange, correct?

5 A Correct.

6 Q So you chose to disregard Mr. Simon's advice and listen to  
7 these nice gentlemen here?

8 A Correct.

9 Q All right. And, specifically, what you say is EFT, that's the  
10 Edgeworth Family Trust; is that right?

11 A Correct.

12 Q And American Grating v. Lange?

13 A Oh, you're at the top, sir?

14 Q Yeah. I'm sorry, sir. I'm right here at the top.

15 A Oh, that's good. Yeah, if you do the finger, that's good.

16 Q Okay.

17 A Yeah. Yes.

18 Q And you can look at whichever one you want, Mr.  
19 Edgeworth. You don't have to --

20 A Well, this one is easier to read. That's easier to see.

21 Q Okay. This says you and your wife on behalf of the Trust and  
22 American Grating consent to settle all claims against Lange for the gross  
23 amount of \$100,000 minus sums owed to Lange pursuant to the  
24 contract?

25 A Correct.



1           Q     All right. And that was -- that term of the settlement was not  
2 a term Mr. Simon advised you to enter into, correct? It was inconsistent  
3 with his advice about Lange.

4           A     Correct.

5           Q     Okay. And these are my highlights, Mr. Edgeworth, so I  
6 apologize for that. Don't take anything by them. It says, we  
7 acknowledge that our attorneys have advised us that by settling the  
8 outstanding claims with Lange, we will be waiving all claims for  
9 attorney's fees, including any contingency fee that a court may award to  
10 the Law Office of Danny Simon.

11           Did I read that correctly?

12           A     Yes.

13           Q     And before you signed this, did you read it?

14           A     Yes, I sure did.

15           Q     So you know -- you knew back in December the 7th from  
16 listening to your Vannah & Vannah that a court could award Mr. Simon a  
17 contingency fee, correct?

18           A     Pardon me? I'm sorry --

19           Q     I just --

20           A     -- I thought you were going to keep reading, and then --

21           Q     Okay.

22           A     -- I got confused.

23           Q     Well, look up here at me. I'm sorry. That's all right. You  
24 knew from the sentence I just read that a court could award Mr. Simon a  
25 contingency fee award, correct? That's right in the -- I just read it.

1           A     I suppose it's possible.

2           Q     And you chose to settle the Lange case pursuant to the  
3 Vannah & Vannah advice?

4           A     Correct.

5           Q     All right. And what -- it goes down here a little bit. And I'm  
6 just looking at my highlight, Mr. Edgeworth, so you can follow along,  
7 that you acknowledge that Mr. Vannah has also explained that to  
8 continue to litigate with Lange is economically speculative, as we've  
9 already made more than whole with the settlement with the Viking  
10 entities, and Lange may be legally entitled to an offset for the amount of  
11 the settlement paid to us by Viking.

12           Did I read that correct?

13           A     Yes.

14           Q     And so, you agreed when you signed this with Mr. Vannah's  
15 assessment that Danny Simon's representation had made you more than  
16 whole, correct?

17           A     I'm not sure what you mean by more than whole.

18           Q     Well, this is a document you signed sir, not me. It said, we  
19 have already been made more than whole with the settlement against  
20 Viking. Did I read that correctly?

21           A     Yes.

22           Q     And Danny Simon effectuated the settlement against Viking,  
23 correct?

24           A     Effectuated?

25           Q     He was your lawyer --

1 A Correct.

2 Q -- that obtained a --

3 A He was my lawyer --

4 Q -- \$6 million settlement, yes?

5 A Correct.

6 Q And that settlement, according to Mr. Vannah, and you made  
7 you more than whole?

8 A Correct.

9 Q And you chose in this consent to settle, to listen to Vannah &  
10 Vannah, and they had advice. I'm not saying right, wrong or indifferent,  
11 but that advice was different than Danny Simon's advice relative to  
12 Lange?

13 A Correct.

14 Q All right. After you settled with Lange -- and this in the -- sort  
15 of over the holiday times, right. It's like about the Thanksgiving, getting  
16 into Christmas, the times where the settlements are getting done and  
17 people are getting checks and the like?

18 A Can you define what settled means? Does it mean when  
19 they give us the offer, when they send over the --

20 Q Sure. That's actually a fair question, sir. Let me see if -- I'll  
21 be more specific, okay? You sued Danny Simon. Mr. Vannah sued  
22 Danny Simon on your behalf, January the 4th, 2018?

23 A Correct.

24 Q That's about three days shy of a month from when Mr.  
25 Vannah advised you to settle with Lange?

1           A     Correct.

2           Q     And when you sued Mr. Simon, the check for the Viking  
3 money had not been deposited in a bank, correct?

4           A     Correct.

5           Q     Ultimately, Mr. Sim -- Mr. -- sorry -- Mr. Vannah and Mr.  
6 Christensen made an agreement where they were going to open a joint  
7 trust type of an account, Danny and -- I'm sorry -- Mr. Simon and Mr.  
8 Vannah. Those checks would be -- that check -- \$6 million check would  
9 be deposited there. Fair?

10          A     You're wrong. There's two checks. You're right, but you  
11 said that check, the one check. There's two checks.

12          Q     You're right. Thank you for correcting me. Technically -- the  
13 checks totaling \$6 million. One was from Viking, right, or its insurance  
14 company?

15          A     They were from Zurich Insurance, correct.

16          Q     And they totaled 6 million bucks? Before the --

17          A     I have a confidentiality --

18          Q     -- Lange settlement.

19          A     -- agreement about the size of the settlement that I signed.

20               MR. GREENE: I'm sorry, Your Honor. That's kind of an issue  
21 that he's facing. They signed a confidentiality agreement to the amount.  
22 I know that it's just kind of a sticking point with them, so --

23               THE COURT: Okay. Well, this Court is aware of what the  
24 amount is, as I was involved in the settlement. It was \$6 million.

25               THE WITNESS: Correct.

1 THE COURT: So, we can go forward.

2 THE WITNESS: So, I can --

3 THE COURT: I mean, you can abide by your confidentiality  
4 agreement, but I mean, in regards to what the amount is, I mean, I'm  
5 aware of what the amount was.

6 MR. CHRISTIANSEN: Judge, I could be wrong, but there is  
7 no confidentiality agreement as to the Viking settlement. Mr. Simon  
8 negotiated that away.

9 MR. GREENE: As to the amount?

10 MR. CHRISTENSEN: It doesn't exist, right?

11 THE COURT: There's a -- I mean, I was not aware, because I  
12 was here when they brought in the documents and everything on the --  
13 so is there a settlement agreement about the amount? I mean, a  
14 confidentiality agreement? Because I'm not aware of that.

15 THE WITNESS: That's what Ms. Pancoast sent over in the  
16 letter on November 15th, that the confidentiality would be limited to the  
17 settlement amount.

18 THE COURT: Well, I mean, this Court can take judicial notice  
19 of the \$6 million, because, also, it's interesting that that would be  
20 brought up as confidentiality, because it's all littered through these briefs  
21 like there's no tomorrow.

22 So, I'm not really sure, if he's under a confidentiality  
23 agreement, why this office wouldn't be under a confidentiality  
24 agreement, and Mr. Simon clearly didn't know about it, because it's in  
25 these briefs about 800 times that this was \$6 million. And so, I'm very

1 well aware that this was a \$6 million settlement, and you guys have been  
2 writing about it for eight months.

3 So, I mean, sir, you can answer the question, because it's out  
4 in the open that this settlement was \$6 million.

5 BY MR. CHRISTIANSEN:

6 Q So where were we, Mr. Edgeworth, before we -- others  
7 started helping me understand facts that I'm probably not as fluent in as  
8 I should be, is that the lawsuit filed by you against Danny Simon -- filed  
9 by Mr. Vannah on your behalf against Danny Simon was January the  
10 4th, 2018, correct?

11 A Yes.

12 Q And so, you don't have to take my word for it.

13 MR. CHRISTIANSEN: That's Exhibit 19, John.

14 THE COURT: Did you say 19, Mr. Christiansen?

15 MR. CHRISTIANSEN: 19, Your Honor.

16 BY MR. CHRISTIANSEN:

17 Q That's Mr. Vannah and Mr. Greene on your be -- on behalf of  
18 your entity suing Daniel Simon?

19 A Yes.

20 Q And so, you know, I'm being square with you about the date.  
21 It's up there in the right corner. It's January the 4th.

22 A I agree.

23 Q Okay. So, you hadn't verbally spoken to Danny since before  
24 November the 29th, and then you sued him January the 4th, after you  
25 settled the Lange claims, pursuant to Mr. Vannah's advice. Fair?

1           A     Did we settle the Lange before the 4th? Because you guys  
2 didn't --

3           Q     You signed the consent to settle. Remember, I just showed  
4 you.

5           A     Oh, the consent to settle. I thought you said the settlement.

6           Q     All that is fair chronologically --

7           A     Correct.

8           Q     -- for you so far?

9           A     Right. Yes. Yeah.

10          Q     Okay. And when you sued Danny Simon, the checks for the  
11 Viking settlement hadn't even been negotiated. In other words, put into  
12 a bank account?

13          A     Correct.

14          Q     Ultimately, that happened, I think about ten days later,  
15 pursuant to Mr. Vannah and Mr. Christensen having an agreement?

16          A     Correct.

17          Q     All right. So, you quit taking Mr. Simon's advice the end of  
18 November, settled with Lange the 7th of December, and then sued  
19 Danny Simon for his representation of you in the Edgeworth v. Viking  
20 lawsuit January the 4th, fair?

21          A     No. Parts of your sentence are fair, and parts aren't. I didn't  
22 quit taking advice from Mr. Simon.

23          Q     What day did --

24          A     I listened to it.

25          Q     No, you didn't. You just told the Judge you disregarded

1 Danny's advice relative to Lange, and you listened to Vannah & Vannah.  
2 Do you remember telling her that?

3 A I listened to both advices, sir.

4 Q But you followed theirs.

5 A Okay, then I would agree with that statement.

6 Q Okay.

7 A But you didn't say that, sir.

8 Q You didn't follow Danny's advice?

9 A I did not take his advice, correct.

10 Q And then you turned around and sued him January the 4th?

11 A Correct.

12 Q And you sued him for his representation of you in getting the  
13 \$6 million settlement, correct?

14 A I'm sorry?

15 MR. GREENE: Misstates the plain nature of the text of the  
16 complaint, Your Honor. It's not -- he didn't sue his representation of him.  
17 He sued based upon his conduct during the representation, not the way  
18 he was represented.

19 MR. CHRISTIANSEN: I'll rephrase to try to placate Mr.  
20 Greene, Judge, if the Court would allowed me.

21 BY MR. CHRISTIANSEN:

22 Q You sued Danny, arising out of his representation of you?

23 A Well, what he said to us, correct.

24 Q Okay. And you sued him, just chronologically --

25 A Uh-huh.



1 Q -- I just mean in time, before the settlement checks with  
2 Viking had even been deposited?

3 A Correct.

4 Q All right. And you heard Mr. Vannah give an opening  
5 statement today, sir?

6 A Yes.

7 Q Do you recall how he told the Court he wasn't involved in  
8 any of the settlement negotiations?

9 A I don't recall that. I'm sorry. I don't recall everything he said.

10 Q We just -- you and I can agree that he was the one advising  
11 you of the Lange settlement, because you signed on his letterhead to  
12 consent to settle December the 7th.

13 A He advised me why to do that, yes.

14 Q And I have your settlement agreement.

15 MR. CHRISTIANSEN: Which is Exhibit 5, John. And I'm  
16 looking at page 4, Mr. Greene.

17 BY MR. CHRISTIANSEN:

18 Q This is the settlement agreement with Viking?

19 A You just asked about Lange, sir. The --

20 Q I did.

21 A Okay.

22 Q Now, I'm shifting gears. I want to talk to you about Viking,  
23 too, because if you see paragraph E -- do you see that, sir?

24 A Yes, I do.

25 Q Who's the lawyers that advised you? Right in the document

1 you signed about settling with Viking?

2 A It says Robert Vannah, Esquire and John Green, Esquire.

3 Q Show me where it says Danny Simon.

4 THE COURT: This is the Viking settlement?

5 MR. CHRISTIANSEN: It is.

6 THE COURT: Okay.

7 BY MR. CHRISTIANSEN:

8 Q Go ahead.

9 A On the page that I'm looking at, the fractional page, I don't  
10 see it.

11 Q And is that your settlement? You and your wife's  
12 settlement? Sorry, signature?

13 A On the 1st of December, correct.

14 Q All right. So as early as December 1st, according to Exhibit 5,  
15 you were not relying on Danny Simon's advice, but instead relying on  
16 the advice of Vannah & Vannah when settling the Viking claims, correct?

17 A When signing contracts, correct.

18 Q Okay. And I think you've already told me that was the same  
19 situation about five or six days thereafter, when you signed that consent  
20 to settle with Lange on the Vannah & Vannah letterhead, right?

21 A They had advised me of other things than the settlement,  
22 yes.

23 Q Okay. And, sir, let's look at Exhibit 90 again. This is your  
24 retainer with Vannah & Vannah. Did you sign a separate retainer  
25 agreement for the lawsuit, where they sued Danny Simon for you?

1 A This is the retainer agreement.

2 Q I'm sorry?

3 A This is the retainer agreement.

4 Q Well, that's the retainer agreement for the case where you  
5 sued Danny Simon?

6 A Correct.

7 Q Okay. Let's look at the caption of the Danny Simon lawsuit  
8 and see if we can get some clarification. Exhibit 90 says that you are  
9 hiring -- client retains attorneys. I'm looking at the second paragraph,  
10 sir. Here. I'll put my finger on it.

11 A I see, yes.

12 Q To represent him as his attorneys regarding Edgeworth  
13 Family Trust and American Grating et al. v. Viking -- all Viking entities, all  
14 damages, including, but not limited to, and it goes on, correct?

15 A Correct.

16 Q Show me the fee agreement that says -- or show me in here  
17 where it says -- and I'll just show you the title. This is Exhibit 19. This is  
18 your lawsuit against Danny Simon. It's called Edgeworth Family Trust  
19 and American Grating v. Daniel Simon. Where is that in Exhibit 90?

20 A Where is what, sir?

21 Q The fee agreement for the new lawsuit.

22 A What do you mean? I don't understand your question.

23 Q Sure. This fee agreement is for the lawsuit Danny had been  
24 your lawyer on for 18 months, correct?

25 A No.

1 Q It's not?

2 A No. This fee agreement was signed -- am I allowed to say?

3 Q Mr. Edgeworth, don't look at them for answers. Just --

4 THE COURT: Okay, sir. You can't ask them any questions.

5 THE WITNESS: Oh, I'm sorry.

6 THE COURT: You have to answer Mr. Christiansen's

7 question.

8 BY MR. CHRISTIANSEN:

9 Q So sir --

10 A I retained --

11 Q -- just read right here. Edgeworth Family Trust and American  
12 Grating v. all Viking entities. That's the case Danny was your lawyer on  
13 for 18 months, correct?

14 A Correct.

15 Q That's different, do you agree with me, than the case entitled  
16 Edgeworth v. Danny Simon?

17 A Yes.

18 Q And do you agree with me there is no retainer agreement  
19 for --

20 A No, I do not.

21 Q -- Vannah -- or Edgeworth v. Danny Simon contained in  
22 Exhibit 90?

23 A No, I do not.

24 Q Do you see a cap -- do you see Edgeworth v. Danny Simon?

25 A No, I do not see that.

1 Q It's not in there, right?

2 A No.

3 Q All right. And during this time, where you come into court --  
4 we had a bunch of court hearings. Were you present during those court  
5 hearings?

6 A I went to two court hearings during the entire case.

7 Q February 6, 2018 and February 20th, 2018?

8 A Maybe one of those. I went two hearings over the entire 18  
9 months, I believe.

10 Q All right. Sir, can we agree that once you sued Danny Simon,  
11 you no longer were looking to him for legal advice?

12 A I expected him to complete his job.

13 Q That's not my question to you. My question is can we agree  
14 that since you're not verbally communicating with him, you listened to  
15 advice from a different office that's inconsistent with his advice, and you  
16 sued him, and that you have effectively stopped listening to his advice?

17 A No.

18 Q No?

19 A No.

20 Q You just think you can sue lawyers and make them work for  
21 free?

22 A No.

23 Q Well, that's what you put in your affidavit is that Danny was  
24 paid in full as of September of 2017, and you expected him to finish what  
25 you paid him for?

1 A Correct. I did expect him to finish what he was paid for.

2 Q But I thought, sir, you were paying him an hourly rate.

3 A Correct.

4 Q So he was supposed to work those hours for free?

5 A No.

6 Q Sir, you put three different times he was paid in full in  
7 September of 2017.

8 A He was paid in full for every bill he submitted, correct.

9 Q But you expected him to finish the job while you were suing  
10 him?

11 A Yes.

12 Q For free?

13 A No.

14 Q Okay. When -- you're going to pay him?

15 A If he submitted a bill, correct.

16 Q See, that's what I'm trying to figure out, Mr. Edgeworth.

17 What was this agreement you think you had with Mr. Simon? Because  
18 what you put in your affidavits, all of them, is that Mr. Simon was paid  
19 for the hours he captured and put in his will. Captured is my word, not  
20 yours. Right?

21 A Yes, he was paid for all his time.

22 Q But you know darn good and well and have from the outset  
23 of talking to your friend, Danny Simon, who to quote you was going to  
24 do it as a favor, that he wasn't putting all his time in those bills. You  
25 know that?

1           A     No.

2           Q     Sir, you just told the Court Danny took the case as a favor.  
3 Do you remember that?

4           A     Yeah, and a week later, he started billing me.

5           Q     And you -- a week later, he started billing you?

6           A     Yeah. On June 10th, when it became clear that he had to file  
7 a lawsuit, because they weren't going to agree, he phoned me and told  
8 me he was going to incur a bunch of costs and that he would need to  
9 start billing me \$550 an hour, which was his board approved rate, and I  
10 would get it back when I won from the Lange parties and the 550 was  
11 based on his experience in litigation and everything else and was  
12 approved by judges.

13          Q     So now that conversation took place June the 10th. Is that  
14 what your testimony is?

15          A     It always took place June the 10th.

16          Q     No. In all three of your affidavits, it took place at the outset  
17 of your retention, which was May the 27th. We've already determined  
18 that.

19          A     The outset --

20          Q     Sir -- sir --

21          A     -- of the case.

22          Q     -- did you put the --

23               MR. GREENE: May he answer the question, Your Honor? He  
24 just cuts him off.

25               MR. CHRISTIANSEN: It's leading, and it's permissible.

1 THE COURT: Okay. Mr. Christiansen, I want to know what  
2 the answer to this question is, so, sir, answer the question.

3 THE WITNESS: Danny met with me at the 28th at Starbucks  
4 and took the case. He said --

5 THE COURT: 28th of May?

6 THE WITNESS: 28th of May 2016. I emailed him on the 27th  
7 of May 2016, to see if he could help me out with this thing, because  
8 everyone said it's a slam-dunk. They have to pay. They're all liable.  
9 There's a contract, everything else. They're just yanking you around. I  
10 reached out to him. He agreed to meet with me. We met at Starbucks. I  
11 gave him a summary of all the entities involved and who's who, et  
12 cetera. We talked about it.

13 He said that he would write a few letters, which is why when  
14 you asked me when was he retained, he sent letters to these other  
15 people who was Kinsale at the time, Viking, someone else, saying that I  
16 had retained him. That's what the letters said. They were like retention  
17 letters. Then they blew him off back and forth a little bit. Around, I  
18 believe it was the 9th of June, he said they aren't going to settle. They  
19 aren't going to do it. We need to file a lawsuit against them. This is  
20 going to start costing me some money.

21 And he gave me the whole pitch, and I agreed. I said I  
22 accept. That's fine. And on the Tuesday -- that's on a Friday. On the  
23 Tuesday, he filed a lawsuit on June 14th against these entities. It's as  
24 simple as that. That should clarify it.

25 Q Okay. Did I allow you to complete that answer?



1 A I believe so.

2 Q Okay. So, it is true that on May the 27th or the 28th at  
3 Starbucks, Danny never told you his fee was 550 an hour?

4 A No.

5 Q No, he did or no he didn't?

6 A I'm sorry. I'm getting flipped with the way you asked the  
7 question.

8 Q Okay.

9 A No, he never told me that date that his fee -- of May 27th or  
10 28th, that his fee was 550 an hour.

11 Q Nor did he ever tell you his associate's fee was 275 an hour?

12 A Correct.

13 Q And sir, you didn't get a bill from an associate until 14  
14 months after Mr. Simon was retained by you according to your  
15 affidavits. Is that fair?

16 A Likely. I'd need to review the bills to be positive, but likely.

17 Q Okay. You're a smart guy, right? Harvard MBA?

18 A I assume so.

19 Q Got lots of lawyers, right?

20 A What do you mean, lots of lawyers?

21 Q You've hired -- for -- I'll give you a simple example. You  
22 hired a lawyer as an expert in this -- in the underlying case, correct?

23 A Under the advice of my lawyer, yes, I did.

24 Q All right. You hire lawyers. I mean, you have businesses, I  
25 think in China, correct?

1 A Yes.

2 Q All right. You've dealt with lawyers in your life, correct?

3 A Yes, I have.

4 Q In the underlying case, you hired a guy named Crane  
5 Pomerantz, former United States Attorney?

6 A Correct.

7 Q To opine about the conduct of one of the defendants, fair?

8 A I think the scope was broader, but correct, he was hired.

9 Q And can we agree that Mr. Simon never presented you an  
10 hourly retainer fee agreement?

11 A No, he never presented me one.

12 Q And you know what those look like, right?

13 A Somewhat, yes. They look --

14 Q I'll show you --

15 A -- different.

16 Q -- Exhibit 62 and that's your signature, Mr. Pomerantz'  
17 signature. Crane works over at Sklar Williams. Dated September 6,  
18 2017. Fair?

19 A Fair.

20 Q It's an hourly retainer, where it talks about you having to  
21 advance costs, right?

22 A I don't think I advanced Crane costs. He bills me for them in  
23 arrears.

24 Q Monthly?

25 A I don't think he billed monthly, either. He didn't send me the

1 bills, he sent them to Simon.

2 Q Generally monthly? See where I've got my finger?

3 A Maybe they wrote down their agreement. I don't know if  
4 they billed monthly or not. You could find out, because it would be in  
5 the case file.

6 Q When you're late, you have to pay him interest?

7 A Okay.

8 Q Nothing like this was ever presented to you by Mr. Simon,  
9 fair?

10 A Nothing like that was ever presented to me by Mr. Simon.

11 Q And other than yourself and this June phone call, which by  
12 the way, in any of the three affidavits you signed, do you talk about a  
13 June 10th phone call, where Danny told you his rate was 550 an hour?

14 A I don't know.

15 Q What do you mean you don't know?

16 A I don't think so.

17 Q I'm sorry?

18 A I didn't reread these before the case, sir. I'd be more than  
19 happy to read them now and tell you positively. I don't think so.

20 Q You don't think so. So, that's new testimony here mid-  
21 August\ 2018, if it's not in your affidavits.

22 A Okay.

23 Q Correct?

24 A Correct.

25 Q Okay. Because --

1           A     Unless it's been --

2           Q     Unless what?

3           A     Unless it's been presented, and one is -- something that  
4 John's written. I don't know.

5           Q     Okay. Well, you -- I'll show you your affidavit. This is your  
6 first one. Oops, sorry.

7                     MR. CHRISTIANSEN: It's -- sorry, John, 16 -- Exhibit 16.

8 BY MR. CHRISTIANSEN:

9           Q     It is dated the 2nd of February 2018. Is that right?

10          A     Correct. I see it down there.

11          Q     See my finger again?

12          A     Yeah.

13          Q     All right. And that's your signature?

14          A     Correct.

15          Q     Let's just look right above here. You just told the Judge you  
16 didn't think Mr. Simon should have to finish your work for free.  
17 Remember that? Remember just testifying to that?

18          A     Yes.

19          Q     Let's look at paragraph 21. We're not thrilled to have him as  
20 an attorney, but we don't want to pay more than we've already had to  
21 pay to get someone else up to speed. Plus, we've already paid nearly  
22 500,000 to Simon and his change of heart and fee only came about when  
23 the claims in the litigation were, for all intents and purposes, resolved.  
24 Since we've already paid him for this work to resolve the litigation, can't  
25 he at least finish what he's been retained and paid for?

1 Did I read that correctly?

2 A Correct.

3 Q So in this paragraph, under oath, you claim that finishing up  
4 the litigation is something you've already paid Danny in full for, correct?

5 A That doesn't say that.

6 Q He's been retained and paid for. It absolutely says that.

7 A Since we've already paid him for this work to resolve the  
8 litigation, can he at least finish what he's been retained and paid for?

9 Q You've already paid him is what you're telling the Judge  
10 when you --

11 A For all the work he's done to that point.

12 Q Can't he just finish what he's been retained and paid for?  
13 That's what you told the Judge in this affidavit, right?

14 A Correct.

15 Q Okay. That's inconsistent with what you just told me a few  
16 minutes ago, which was that you were still willing to pay Danny.

17 A I don't think it's inconsistent.

18 Q All right. Let's look, sir, if you would --

19 MR. CHRISTIANSEN: -- I'm looking at page 1 of Exhibit 16,  
20 Mr. Greene.

21 BY MR. CHRISTIANSEN:

22 Q Line 3 says, on or about May 27th, on behalf of -- I, on behalf  
23 of Plaintiffs, retained Simon.

24 Did I get that correct?

25 A Correct.

1 Q And if I go down to paragraph 6, it says, at the outset of the  
2 attorney-client relationship, Simon and I orally agreed Simon would be  
3 paid for his services by the hour at an hourly rate of 550. Did I read that  
4 correctly?

5 A Correct.

6 Q That's inconsistent with your testimony today, correct?

7 A I don't think it is.

8 Q Okay. You didn't know what outset meant when you wrote it  
9 back then?

10 A I didn't write it. I signed it, but I don't think it's inconsistent,  
11 regardless.

12 Q Okay. You go on to say, for example, Simon billed us at 550.  
13 His associate billed us at 250 -- 275 --

14 A 275.

15 Q -- an hour. You didn't know Danny Simon was going to  
16 charge you 275 an hour until 14 or 15 months after you retained him,  
17 right?

18 A Correct.

19 Q So, you never had an agreement with Danny Simon about  
20 his associate's bill from the outset of your litigation. That's a fantasy,  
21 correct?

22 A Correct.

23 Q All right. And to imply or tell the Court that you did is very  
24 similar to saying what you did on page 1, that from the outset, Danny  
25 Simon told you he was 550 an hour, right? That's a fantasy, too, because

1 the outset was May 27th or May 28th, right?

2 A That's incorrect.

3 Q Sir, I didn't write these, and I didn't sign them.

4 A Okay.

5 Q Right? You said you retained Danny May 27th, right?

6 A Correct.

7 Q Then you said at the outset, he told you his fee was 550 an  
8 hour and that's what you agreed to, correct?

9 A Correct.

10 Q That's a fantasy. That's not true, correct?

11 A No, it's not. That's ridiculous. The -- it's --

12 Q Mr. Edgeworth --

13 A -- a 24-month case. You're trying to define the outset as one  
14 day and not one week later. It's a general term.

15 Q Sort of like when you write all these affidavits saying that he  
16 told you his associate was going to bill you at 275 an hour, and then hit  
17 the stand and agree in front of Her Honor that you never knew that until  
18 14 or 15 months after he was retained?

19 MR. GREENE: Your Honor, these questions have been  
20 asked --

21 THE WITNESS: Is that a question, sir?

22 MR. GREENE: -- and answered.

23 MR. CHRISTIANSEN: It is.

24 THE COURT: Hold on --

25 THE WITNESS: No.

1 THE COURT: -- sir.

2 THE WITNESS: Is there a question on the end of it?

3 THE COURT: Hold on, Mr. Edgeworth.

4 THE WITNESS: Sorry.

5 MR. GREENE: Your Honor, this is like the fourth or fifth time  
6 this question has been asked and answered. It just keeps getting asked,  
7 Your Honor. We'd ask that he be asked to move on.

8 THE COURT: Well, I mean, he said that 275 was never told to  
9 him until 14 months later, Mr. Christiansen. He's already acknowledged  
10 that, so we can ask another question.

11 MR. CHRISTIANSEN: Okay.

12 BY MR. GREENE:

13 Q Other than yourself, Mr. Edgeworth, did anybody else hear  
14 Danny Simon tell you his rate was 550 an hour at the outset?

15 A I don't know if anybody was on the phone at his end.

16 Q Anybody on your end on the phone?

17 A No.

18 Q Did you record it?

19 A No.

20 Q There's -- Mr. Christensen had some estimation for pages of  
21 emails over here.

22 A How many pages?

23 Q A lot more than I felt like reading this weekend, I can tell you  
24 that much. Did you find a single email from yourself confirming that  
25 rate?



1           A     I didn't look through the emails, sir.

2           Q     Can you point me to a single email confirming that rate?

3           A     Yeah, Danny Simon emailed me bills constantly.

4           Q     That's not what I asked you, sir. I asked you can you point  
5 me to an email of yours confirming the rate of Danny Simon at 550 an  
6 hour from the outset of this litigation that you told the Judge he took as  
7 a favor?

8           A     I don't know. I'd have to look.

9           Q     So, is that a different way of saying you've never been able  
10 to identify an email confirming that in writing?

11          A     I guess so.

12          Q     Okay. Getting a little out of order, which is making Ms. Ferrel  
13 nervous, but let's turn to paragraph 11. As I understand from listening to  
14 Mr. Vannah's opening statement this morning and from reading your  
15 affidavits, it's your contention that Danny -- or that you really did all the  
16 heavy lifting in the case that effectuated or made it worth 6 million bucks  
17 against Viking, correct?

18          A     Definitely.

19          Q     Okay. And sir -- and I mean this not in a pejorative sense, but  
20 you're not a lawyer, fair?

21          A     No, I'm not a lawyer, sir.

22          Q     You can't walk into a courtroom in the 8th Judicial District  
23 Court for the State of Nevada, County of Clark and make an appearance,  
24 correct?

25          A     I don't know. Can I? I don't know.

1 Q You didn't make any court appearances?

2 A No, I did not.

3 Q Didn't argument any motions?

4 A No, I did not.

5 Q Didn't file any motions?

6 A No, I did not.

7 Q You didn't get any experts excluded?

8 A No, I edited those things, but I didn't file them.

9 Q You didn't get evidentiary hearings to strike answers

10 granted?

11 A No.

12 Q You didn't do any of that?

13 A No.

14 Q But your work is what made the case worth 6 million bucks?

15 A Correct.

16 Q Have you ever been qualified to testify as an expert on the

17 value of services rendered by a nonlawyer?

18 A No.

19 Q Right. Because you bill at like a buck-fifty an hour, right?

20 A No.

21 Q You were billing American Grating to be reimbursed for your

22 time, right?

23 A No, I billed during the remediation cleanup.

24 Q All right. How was -- what did you make an hour?

25 A Pardon me?

1 Q What were you billing at per hour?

2 A \$150 --

3 Q That's what I said. I'm sorry, I said buck-fifty.

4 A That's not what you said that I was doing. You said I billed  
5 on the case on \$150 an hour. Just to clarify what I billed on.

6 Q And in fact -- and if you want to look at what you think  
7 attorneys should be paid at, I mean, you're paying very fine lawyers, Mr.  
8 Greene and Mr. Vannah 975 bucks an hour, right?

9 THE COURT: 925, Mr. --

10 MR. CHRISTIANSEN: 925. Sorry. My eyes are terrible,  
11 Judge. I apologize.

12 THE WITNESS: Correct.

13 MR. CHRISTIANSEN: Mr. Vannah wishes it was 975.

14 MR. VANNAH: Probably should be, but I'm not trying to get  
15 quantum meruit here.

16 BY MR. CHRISTIANSEN:

17 Q Now, you're willing to pay lawyers to come sort of button up  
18 a settlement at 925 an hour, fair?

19 A When somebody threatens me, yes.

20 Q Okay. And that wasn't litigating a complex product case,  
21 fair?

22 A Pardon me?

23 Q Mr. Vannah and Mr. Greene didn't come in to litigate a  
24 complex products defect case. Isn't that true?

25 A They're litigating a pretty complicated case.

1 Q And for that they're fudging or disputing with you what Mr.  
2 Vannah's worth. You're willing to pay him 925 an hour?

3 A I had little choice.

4 Q And Mr. Greene as well?

5 A Correct.

6 Q And as I read your first affidavit, Mr. Edgeworth -- because  
7 you took it out of the second two -- in your first affidavit, you told Her  
8 Honor that the case blossomed in the fall of 2017, right?

9 A Late summer.

10 Q I'm sorry?

11 A Yeah, later summer, early fall.

12 Q That's not what you said. You said fall.

13 A Okay.

14 Q Did you say fall, or did you say summer?

15 A I don't know. Why don't we look? I'm not sure.

16 Q I mean, it's convenient today you're trying to make it  
17 summer, because in the affidavit, you said fall, right?

18 A Can I see the words, please?

19 Q Just tell me if you remember what you said.

20 A No, I do --

21 Q I'll show them to you.

22 A -- not remember.

23 Q All right. Paragraph 11, I think is the --

24 THE COURT: And which affidavit, is this Mr. Christiansen.

25 MR. CHRISTIANSEN: This -- the February 2nd one, Your

1 Honor, is Exhibit 16.

2 THE COURT: Okay.

3 BY MR. CHRISTIANSEN:

4 Q It says, s discovery in the underlying litigation neared its  
5 conclusion in late fall, 2017. Let's just stop right there. Was my memory  
6 accurate or yours? You said fall, right?

7 A Can you read back your question, please?

8 Q No. We can't. This isn't a deposition. We can --

9 A Yeah, I believe you said --

10 Q -- you can answer my question.

11 A -- as the case blossomed in the late fall of 2017.

12 Q Okay. We're going to get there.

13 THE COURT: And is that what the document says, sir?

14 THE WITNESS: That's not what he just read. He said as  
15 the -- if I read the document, it says, as discovery in the underlying  
16 litigation neared its conclusion in the late fall of 2017, after the value of  
17 the case blossomed from one of property damage of approximately half  
18 a million to one of significant.

19 It doesn't define when the case blossomed. You put that  
20 before --

21 BY MR. CHRISTIANSEN:

22 Q I didn't write it, man, you did.

23 THE COURT: Okay. So, sir, you dispute that you're saying  
24 that in this affidavit that the case blossomed in the fall of 2017?

25 THE WITNESS: Well, I don't know what he means by

1 blossomed. It really started --

2 THE COURT: Well, that's -- it says blossomed in this  
3 document. Are you looking at it right here. Are you disputing that --  
4 nowhere in there does it say summer. Would you disagree with that  
5 statement?

6 THE WITNESS: Correct.

7 THE COURT: Okay. Mr. Christiansen.

8 BY MR. CHRISTIANSEN:

9 Q All right. Sir, so we're clear, you and/or attorneys working on  
10 your behalf, not employed at Danny Simon's law office wrote this --

11 A Correct.

12 Q -- affidavit?

13 A Correct.

14 Q So to quarrel with me about the word fall or summer makes  
15 very little sense, since I didn't write it. Fair?

16 A Correct.

17 Q Okay. And you say the value of the case -- after the value of  
18 the case blossomed -- that's another term not chosen by me. It's just  
19 simply in your affidavit, correct?

20 A Correct.

21 Q And then you go on to say you wrote an email, right? The  
22 purpose of which was -- the purpose of the email was to make it clear to  
23 Simon and then it says, we'd never had a structured conversation about  
24 modifying the existing fee agreement from an hourly to a contingency  
25 agreement.

1 Did I read that correctly?

2 A Yes, you did.

3 Q Did you mean to say structured conversation?

4 A Oh yeah, I see the typo.

5 Q All right. Now, that email, sir, is dated August the 22nd,  
6 2017, correct?

7 A Correct.

8 Q That email -- is it written -- according to you -- your historical  
9 version of events contained in these affidavits, is that that email was  
10 written at a time after the case had blossomed, correct?

11 A Yes, it was.

12 Q Tell the Judge what the global offer was between all the  
13 Defendants, any of them, the day you wrote that letter? Did you have  
14 one --

15 A Which letter?

16 Q -- dollar on the table for you to accept the day you wrote the  
17 August 22nd email to Danny Simon about a contingency fee?

18 A No.

19 Q Not one dollar?

20 A No.

21 Q Had Mr. Simon filed -- been able to obtain a second 30(b)(6)  
22 deposition?

23 A I don't know what a 30 --

24 Q I know you don't. That's the point. Had Mr. Simon been able  
25 to have experts like Rosenthal [phonetic] precluded by the Court?

1 A By August 22nd?

2 Q Yeah.

3 A I'm not sure.

4 Q Had Mr. Simon moved for summary judgment against  
5 Lange?

6 A He moved for that, yes.

7 Q Before August 22nd?

8 A He --

9 Q I got the registered action, so if you want to bicker with me  
10 about dates --

11 A I'm not bickering with you, sir. I'm -- you're asking me about  
12 a specific date.

13 Q Yeah.

14 A If I'm not sure, I'm just telling you.

15 Q Okay. So, you don't know?

16 A I don't know.

17 Q All right. Had he moved to strike the answer of Viking?

18 A I don't know by that date.

19 Q Had he effectuated a protective order, so that you guys could  
20 receive a document dump from the Viking entities?

21 A I don't know if it was by that date. We did receive documents  
22 and some large dumps well before that date.

23 Q All right. And those documents were received -- when you  
24 told the Court or you heard Mr. Vannah say that you went out and did all  
25 this work, the documents that ultimately you and Mr. Simon's office



1 reviewed were an overwhelming majority of which came from these  
2 document dumps obtained in the litigation, correct?

3 A The key pieces of evidence. Some of it was there. Some of it  
4 was not, correct.

5 Q Okay. It wasn't your efforts that got those documents. It was  
6 Danny's, right?

7 A It was my efforts that got the documents.

8 Q Well, what did you file that got those documents? You're not  
9 a lawyer.

10 A I didn't file something to get documents. I found the  
11 documents.

12 Q No. You looked at documents. Ashley Ferrel put in a  
13 Dropbox link for you --

14 A Correct.

15 Q -- that were obtained by Danny Simon's law office as your  
16 lawyer, correct?

17 A Correct.

18 Q Okay. So, you didn't obtain the documents. Danny did.

19 A That's not exactly true. There was a whole bunch missing,  
20 which he said they weren't missing, and I kept demanding, which  
21 actually became the essential documents in the case, and he had to keep  
22 refiling and refiling and refiling to get the UL documents.

23 Q And those refiling and refiling and refiling, did you do any of  
24 that work?

25 A I edited a lot of the stuff, yes.

1 Q Did you sign any of the pleadings?

2 A No.

3 Q Did you go to court for any of the hearings?

4 A No, I did not.

5 Q Did you obtain favorable rulings on any of it?

6 A No, I did not.

7 Q That was all done by Mr. Simon?

8 A Correct.

9 Q On this case he took as a favor, right? That's what you said,  
10 not me.

11 A Wasn't a --

12 Q Yes or no?

13 A -- favor after half a million dollars of fees were paid.

14 Q Sir, you know, you've done that throughout your affidavits,  
15 and I want to call you on it right now. You haven't paid Danny Simon a  
16 half a million dollars in attorney's fees. That's another one of your  
17 fantasies, correct?

18 A No. What's a fantasy?

19 Q Fake, pretend.

20 A I paid him --

21 Q Conjured out of whole cloth.

22 A I've paid him \$560,000.

23 Q How much in attorney's fees, sir? I know you like to use the  
24 big number, because it makes you feel better. How much in attorney's  
25 fees? Mr. Vannah was candid with the Court this morning, and he told

1 the Judge --

2 MR. CHRISTIANSEN: -- it was like 580, Bob? 380.

3 BY MR. CHRISTIANSEN:

4 Q 380 in attorney's fees, right?

5 A That sounds correct.

6 Q So every time -- just like you did just now, when you're under  
7 oath, in these affidavits and just now on the stand say you've paid him,  
8 as if it's fees, 500,000, that's misleading, right?

9 A It most certainly isn't.

10 Q Because --

11 A I've written checks to Simon for \$560,000, and they've been  
12 cashed and cleared. I don't see how that's misleading, sir.

13 Q Because it presumes those were monies to be kept by him as  
14 opposed to like in a personal injury case, he was fronting your costs to  
15 the tune of 200,000 bucks, right? Because that's the truth, right?

16 A What is the truth, sir?

17 Q Sir, it doesn't seem like you understand it, but isn't it true he  
18 fronted? In other words, he --

19 MR. GREENE: Your Honor, that's just completely  
20 inappropriate to be making that kind of an accusation against a witness.  
21 I mean, we're all getting along here just fine, but he can't say stuff like  
22 that for heaven sakes.

23 MR. CHRISTIANSEN: Judge, he told me he didn't  
24 understand the truth. I don't --

25 MR. GREENE: He just called him a flat-out liar, Judge, and

1 that's just inappropriate. Just -- can we just ask questions and get  
2 answers for heaven's sake?

3 MR. CHRISTIANSEN: I'm trying.

4 THE COURT: Okay, Mr. Christiansen, can we just phrase --

5 MR. CHRISTIANSEN: Sure, Your Honor.

6 THE COURT: -- and ask a question?

7 BY MR. CHRISTIANSEN:

8 Q Isn't it true you have paid Danny Simon attorney fees less  
9 than \$400,000?

10 A That sounds about right.

11 Q So would you agree with me that when you say you've paid  
12 Danny Simon -- and you do it everywhere in these affidavits -- in excess  
13 of \$500,000, you implicitly know that a big chunk of that he paid off to  
14 front your costs, right?

15 A Every business you pay pays something for whatever. It  
16 doesn't deny the fact --

17 Q Sir, that's a yes or no question.

18 A -- you paid the business.

19 Q It's a yes or no question. Every time you wrote, you paid  
20 Danny in excess of 500,000, implying that he kept all that money, you  
21 knew darn good and well, part of what he paid -- close to 200,000 in  
22 costs, he fronted for your case, right?

23 A I know he paid costs, correct.

24 Q And so, every time when you say I paid Danny in excess of  
25 500,000, as if that money Danny kept, you knew that to be misleading,

1 correct?

2 A It's not misleading in the least.

3 Q All right. Let's go back to your affidavit, when this case had  
4 blossomed from all your hard work. And that's your version of events,  
5 sir? Did I get that correct?

6 A Correct.

7 Q All right. The date of your email is August 22nd, 2017,  
8 correct?

9 A Correct.

10 Q Tell the Judge what the offer was from Lange to pay you the  
11 day you wrote that contingency email to Danny Simon.

12 A I don't know that there was one.

13 Q Tell the Judge what the offer was from Viking, the entity that  
14 ultimately paid you \$6 million the day you wrote that email?

15 A Nothing.

16 Q Zero. Right?

17 A Yes.

18 Q So nothing had blossomed, as you wrote in your affidavit. If  
19 the offer is zero, nothing blossomed. Can we agree on that?

20 A I don't agree, but --

21 Q Well, what can you buy with zero?

22 A I agree the offer was zero.

23 Q Okay. This morning, you heard Mr. Vannah tell the Judge  
24 that in your last meeting with Danny Simon, he presented you a contract  
25 and wanted you to sign it. Remember hearing that?

1           A     Yes.

2           Q     That's not true, is it? When you and your wife, Angela, went  
3 to Danny's office November the 17th to meet with him about what was  
4 going on in court that very morning, right, he had to come over here in  
5 front of Judge Jones that morning --

6           A     Correct.

7           Q     -- right? He didn't give you anything and try to force you to  
8 sign it, did he?

9           A     He tried to force us to sign something, yes.

10          Q     He gave you a document.

11          A     No, he wouldn't let us leave with anything.

12          Q     What did he try to force you to sign?

13          A     We don't know. That was such a free for all meeting, where  
14 he was saying you need to sign a fee agreement where I get \$1.2 million.  
15 You need to sign this, so I get one and a half million. That's fair. There  
16 was so much said, even as we left. That's why we asked for something  
17 to leave with. As we drove back, neither one of us could agree on what  
18 he was even asking for.

19          Q     So to date, you don't have any document he supposedly was  
20 trying to force you to sign?

21          A     No. He emailed it on the 27th, when I insisted he put it down  
22 in writing.

23          Q     And that was in response to your November 21st email,  
24 right? Where you were laying out for him what you thought the real  
25 value of your case was?

1           A     I beg your pardon?

2           Q     You wrote an email to him the 21st saying here's the value of  
3 my case. This was after you'd settled it for 6 million bucks. You only  
4 thought the value was 3.8. Remember that?

5           A     No. Danny Simon called me while he was in Machu Picchu  
6 repeatedly after the 17th asking what we were going to agree to on his  
7 bonus fees and insisting we come to an agreement on something, and  
8 then at one point on one of the phone calls he says, give me a list of all  
9 your costs in this case, what you feel your damages, or costs, or  
10 whatever was. I cut and pasted an Excel thing and emailed it to him. A  
11 couple days later, he called. Every time he had cell reception, he'd call  
12 and kept saying well, are you going to give me this? I feel I deserve this.  
13 I feel I deserve this.

14               And then finally, when I said look, I'm not going to keep talking  
15 about this topic until you put something down that is structured in  
16 writing that is cogent, and I can read and understand what you're even  
17 talking about, I'm not going to discuss this anymore. And then on the  
18 27th, he sent the email. So, if that's in response to the 21st, I agree, but  
19 there was other stuff.

20           Q     Let me show you your email from the 21st.

21               MR. CHRISTIANSEN: John, it's 39.

22           BY MR. CHRISTIANSEN:

23           Q     That's your email address at pediped?

24           A     Pediped.

25           Q     I'm sorry. I apologize, pee-dee-ped (phonetic)??

1           A     Everybody says pedi, but it's not a big deal. Pee-dee-ped,  
2     though.

3           Q     Pee-dee-ped. All right.

4           A     The I makes the E long.

5           Q     Okay. This is dated November 21, '17?

6           A     Yes.

7           Q     And this is from you to Danny?

8           A     Yes.

9           Q     And you have line items on this; is that accurate?

10          A     It is very accurate.

11          Q     And you have legal bills, costs not billed yet.

12          A     Correct.

13          Q     That's blank.

14          A     Correct.

15          Q     So you know you owe him money?

16          A     Yeah. His last bill was like September 26th or something like  
17     that. And this is November.

18          Q     So you're aware you owe him money?

19          A     Correct.

20          Q     So when you signed those affidavits that I just showed you,  
21     saying that he'd been paid in full, that wasn't accurate, correct?

22          A     It depends what -- you're twisting words here.

23                 MR. GREENE: How -- Your Honor, how many times are we  
24     going to be asked. I object. Asked and answered. He's already  
25     answered this question. To him, that's not what it means. And he's



1 admitted that he owes more fees. Do we need to go into this again?

2 MR. CHRISTIANSEN: Judge, he sued him, saying he'd been  
3 paid in full, and he was owed nothing else. Do you want me to show the  
4 paragraph in --

5 THE COURT: I mean, he said that in the affidavit, but there's  
6 also this \$72,000 that's undisputed that is like there's a bill, and then it  
7 was submitted, now resubmitted, so I know that that's still an issue. Is  
8 that what you're referring to?

9 MR. CHRISTIANSEN: No, Judge. That's -- those are some  
10 costs. I just want to know whether -- I'll change it around, so nobody can  
11 say I'm taking stuff out of order, Judge.

12 THE COURT: Okay.

13 BY MR. CHRISTIANSEN:

14 Q Do you know, Mr. Edgeworth, one way or another, when you  
15 filed the lawsuit on January the 4th, did -- isn't it true you claimed that  
16 Danny Simon had been paid in full?

17 A No, I don't think that that claim was made.

18 Q You don't think that was made?

19 A Because he was paid in full for every bill he has given us.  
20 That's the claim.

21 Q Okay. I'm looking --

22 MR. CHRISTIANSEN: This Exhibit 19, John.

23 BY MR. CHRISTIANSEN:

24 Q -- at the complaint, Mr. Edgeworth. Are you with me?

25 A Yeah, that's the 4th?

1 Q That's the 1st -- yes, sir, the 4th. I'll show you the date, so  
2 you can --

3 A I see it, yeah.

4 Q Got it? All right. See paragraph 36 and just read along with  
5 me. Simon admitted in the litigation that the full amount of his fees  
6 incurred in the litigation was produced in updated form on or about  
7 September 27, 2017.

8 Did I read that correctly?

9 A Correct.

10 Q The full amount of his fees, as produced, are the amounts set  
11 forth in the invoice that Simon presented to the Plaintiffs and that the  
12 Plaintiffs paid in full.

13 Did I read that correctly?

14 A Correct.

15 Q Then I go down to -- see my highlights there?

16 A Yes.

17 Q That the contract has been fully satisfied by Plaintiffs, that  
18 Simon is in material breach of the contract, and that the Plaintiffs are  
19 entitled to the full amount of settlement proceeds.

20 Did I read that correctly?

21 A Correct.

22 Q So in your law suit, you claim that you're entitled to all the  
23 settlement proceeds and Danny's been paid in full, right?

24 A For everything he's invoiced, yes.

25 Q Did the word invoice appear in any of what you and I just

1 read?

2 A I don't know. I believe you're taking it out of the context,  
3 but --

4 Q Sir, did the word invoice appear in anything I just read?

5 A No.

6 Q That's not what it said, right? You took the position when  
7 you sued your lawyer that got you 6 million bucks, a figure you agree  
8 made you more than whole, that he was entitled to nothing, correct?

9 A That's not the position I took, and it isn't --

10 Q Is that the position that --

11 A -- the position we've ever taken.

12 Q Is that the position I just read for you in the complaint?

13 A I just told you I don't think that's what that means.

14 Q Do you remember saying that the money was solely yours  
15 that was put in this trust account?

16 A It should be solely mine, correct.

17 Q So that means Danny's not entitled to anything, correct?

18 A That's not true. I have money in my Wells Fargo account. If  
19 somebody gives me an invoice, the money in my Wells Fargo account is  
20 still solely mine, but it would still paid their invoice.

21 Q All right. When you hired Danny, did he tell you he didn't bill  
22 clients?

23 A No. He said he's had cases like ours and he repeated this,  
24 that he's billed hourly and got 40 percent contingency at the end of the  
25 case, and he says he infrequently bills, and it's uncomfortable when he

1 has to send bills to people, but he incurs costs when doing, you know,  
2 filings and stuff.

3 Q Okay. So, I think you're missing apples and oranges. Is what  
4 you're trying to explain where Danny told you that at times, he had  
5 prevailed on a thing called an offer of judgment, and then he has to go  
6 and tell a court how much time he put into something, so that attorney's  
7 fees might be awarded? Is that something you're sort of confusing?

8 A No, I don't think I'm confusing. Over the series of the case,  
9 he's told me a lot of things, which I don't know -- I have no -- you know,  
10 I'm not his accountant.

11 Q I didn't hear you. I'm sorry.

12 A I'm not his accountant, so I don't know for a fact anything  
13 about the way he bills or anything else.

14 Q All right.

15 A He's said a lot of things over the course of the case. I don't  
16 know which are true and which are not.

17 Q So let's start back in the beginning now. I've jumped around  
18 a bit. Now I'm going to walk you through some stuff to see if I can use  
19 your words, what you put in emails, and what you received in emails to  
20 refresh your recollection.

21 A Okay.

22 Q All right.

23 MR. CHRISTIANSEN: So, the first is Exhibit 80, Bates stamp  
24 3557, John.

25 THE COURT: And what did you say? Exhibit 80. And then

1 what did you say, Mr. Christiansen?

2 MR. CHRISTIANSEN: Bates stamp 3557.

3 THE COURT: Okay.

4 BY MR. CHRISTIANSEN:

5 Q All right. That's the day you've been talking to us about, Mr.  
6 Edgeworth, when you were emailing and talking to Mr. Simon?

7 A Correct.

8 Q May the 27th?

9 A Correct.

10 Q And emails are goofy things. They go in reverse order, so if I  
11 go to where this string begins, it's from you to Danny. Here, I'll move it  
12 down. I'm sorry, Mr. Edgeworth.

13 A Yeah. You can't see it.

14 Q Is that right?

15 A Correct.

16 Q And it starts actually by -- again, this is just how the threads  
17 work. It says, hey, Danny. This is you sending Danny an email at 9:30  
18 a.m.

19 A Correct.

20 Q I do not want to waste your time with this hassle. And then  
21 in parenthesis, other than to force you to listen to me bitch about it  
22 constantly, close paren. And the insurance broker says I should hire  
23 Craig Marquis and start moving the process forward. So, I just do that  
24 and not bother you with this?

25 Did I read that correctly so far?

1           A     So far.

2           Q     My only concern is that some (sic) goes nuclear, open paren,  
3 with billing and time, close paren, when just a bullet to the head was all  
4 that was needed to end this nightmare, open paren, and I do not know  
5 this person from Adam, close paren.

6           Did I get that all correctly?

7           A     Yes.

8           Q     This is you initiating discussions with a friend of yours or an  
9 acquaintance of yours about helping you?

10          A     Correct.

11          Q     All right. This is during the time he told you it was a favor?

12          A     Correct.

13          Q     But you had no discussion about hourly rates?

14          A     Correct.

15          Q     In response, Danny writes to you, I know Craig. Let me  
16 review the file and send a few letters to set them up.

17          Did I read that correctly?

18          A     Correct.

19          Q     And what you and Danny had talked about was that he didn't  
20 really want the case, right? He wanted to send a few letters to see if  
21 some insurance company would come in, and cover your damages, and  
22 go about and try to redeem their money they pay you from Viking or  
23 whoever else. He's trying to set up an insurance company, right?

24          A     We hadn't spoken about any of that at this point.

25          Q     Okay. Maybe a few letters will encourage a smart decision

1 from them.

2 A Correct.

3 Q If not, I can introduce you to Craig, if you want to use him.

4 By the way, he lives in your neighborhood. Not sure if that's good or  
5 bad.

6 A Correct.

7 Q All right. Somebody had recommended to you to hire Craig;  
8 I think it's Marquis.

9 A Correct.

10 Q And you were reaching out to your friend saying, hey, can  
11 you help me with this, because I don't want to get crushed or -- I don't  
12 want somebody going nuclear, to use your words -- on the bills?

13 A Correct.

14 Q You were looking for a favor, too.

15 A Correct.

16 Q From your friend.

17 A For a referral, correct.

18 Q And he agreed to do you a favor.

19 A Correct.

20 Q No discussion of hourly rate, none?

21 A No.

22 Q And he started working, right, on your case?

23 A Not after this. The next day, maybe.

24 Q All right. He starts -- you brought him -- and I'll find the other  
25 thread, because there's two threads from that day, from the 27th. The

1 other thread is -- you told Danny is it had taken you hours to put together  
2 a summary, and you had read about somewhere between 600 and 1,000  
3 documents?

4 A Correct.

5 Q And you had a box?

6 A Correct.

7 Q Like one of those boxes. Not a Dropbox. Like a box box.

8 A Close enough. It was a plastic box.

9 Q And it was too big, I think, you said to scan, or email, or  
10 something. You wanted to give it to him. You had to physically give it  
11 to him.

12 A Sounds about right.

13 Q All right. And then you say, after Danny emails you about  
14 Craig and his willingness to introduce you to him, okay. I'll type up a  
15 summary with all the documents today and get them to you somehow.  
16 I'd rather pay you and get it resolved than have someone like Craig drag  
17 this on forever.

18 A Correct.

19 Q And Danny says back to you, let's cross that bridge later.

20 A Correct.

21 Q He doesn't say I charge 550 an hour. Fair?

22 A No.

23 Q And this is the outset of your relationship with Mr. Simon in  
24 this case, correct?

25 A Yes. It's --



1 Q The very beginning.

2 A -- it's the beginning, yes.

3 Q And then just so you -- your recollection from that same day,  
4 Mr. Edgeworth, May 27th, you say -- and again, this is one of those goofy  
5 emails that starts with the same exchange down here at the bottom.

6 A Uh-huh.

7 Q And then you -- somehow it becomes a different thread and  
8 that's above my technical skills, but you say, dude, when and how can I  
9 get this to you? Even typing up the summary is taking me all day  
10 organizing the papers. There's at least 600 to 1,000 pages of crap.

11 A Correct.

12 Q And Danny writes, our job is not easy, laugh out loud,  
13 however you want, right?

14 A Correct.

15 Q Too big to scan. I could drop it off at your house or meet you  
16 somewhere tomorrow. I will not be done until very late tonight.

17 A Correct.

18 Q It was an all day project just to summarize?

19 A Yeah, I wrote a two-page summary, so that he wouldn't have  
20 to read through all the junk, yeah.

21 Q Then he agrees on his day off, Saturday, to meet you at  
22 Starbucks, right?

23 A Yeah.

24 Q 28th's a Saturday. I'll just tell you that.

25 A It is a Saturday, correct.

1 Q It is.

2 A I know.

3 Q And he takes time out of his family time to come meet you  
4 Saturday at Starbucks?

5 A Correct. He met me at Starbucks on [indiscernible].

6 Q No discussion of fee?

7 A No.

8 Q It's a favor?

9 A Yes.

10 Q Okay. And that's the outset of your relationship with Danny  
11 Simon?

12 A That's the very start of it, correct.

13 MR. CHRISTIANSEN: I'm sorry, Mr. Greene. I didn't tell you.  
14 That second string is Exhibit 80, Bates stamp 3552 and 3. Sorry, Judge.

15 THE COURT: That's all right.

16 BY MR. CHRISTIANSEN:

17 Q Is it fair, Mr. Edgeworth, that at the time you go to your  
18 friend looking for a favor -- I'll use your words -- you thought maybe a  
19 carefully crafted bullet might get you some results, versus getting billed  
20 a whole bunch by a lawyer you didn't know from Adam?

21 A Yeah. I thought if they -- if a lawyer just sent a letter, that  
22 they would just say okay, we were just seeing if, you know, we could  
23 reject your claim --

24 Q Got it.

25 A -- basically.

1 Q And that's what you were looking to Danny to do.

2 A Correct.

3 Q And you concede to me today, under oath, that you never  
4 codified your relationship via a written agreement?

5 A Correct.

6 Q You never agreed those days, 27, 28 to 550 an hour?

7 A Correct.

8 Q Never agreed to an associate rate?

9 A Correct.

10 Q Never even talked about advancing costs?

11 A No.

12 Q No, you didn't talk about it? Or no, you did talk about it?

13 A No, we did not talk about advancing costs --

14 Q Thank you.

15 A -- on those two dates.

16 Q That was a poorly worded question by me, and I just want  
17 the record to be clear. And so, this favor, for -- to use your words, was at  
18 the beginning and there were no well-defined terms of your relationship.  
19 Fair?

20 A Yeah.

21 Q And an example of that is just June 5th.

22 MR. CHRISTIANSEN: Mr. Greene, Exhibit 80, Bates stamp  
23 3505.

24 BY MR. CHRISTIANSEN:

25 Q Which is June 5th, five days, a week later, maybe, of 2016,

1 when you -- these are those goofy emails again -- you write to Danny,  
2 would you be writing this or do you need -- do I need to get Mark  
3 Gatz -- in parenthesis, estate guy -- to do it? I would like to start moving  
4 money Friday.

5 Did I read that correctly?

6 A Correct.

7 Q I think what you're referring to, Mr. Edgeworth, is like a  
8 promissory note or a loan document?

9 A Correct.

10 Q Danny didn't know how to write a loan document, right?

11 A I don't know if he does or doesn't.

12 Q Well, you asked him if he'd be writing, and he answered you  
13 back, send it to somebody else. That's not -- he said Mark Katz. That's  
14 another lawyer.

15 A Correct.

16 Q Your lawyer?

17 A Correct.

18 Q He wanted you to have your other lawyer do this work?

19 A Correct.

20 Q And you were going to borrow money from -- I think you  
21 borrowed it from your friend, who works at -- works for you and from  
22 your mother-in-law?

23 A Correct.

24 Q And you borrowed money at an interest rate?

25 A Correct.

1 Q Two or 3 percent a month?

2 A Two and -- yeah, 2.65, and then 3 on the next notes.

3 Q So somewhere between 34 and 36 percent a year?

4 A I think -- well, 30 and 37 or something. Correct. Close  
5 enough.

6 Q And those interest rates that you were -- those -- the interest  
7 that you were incurring was in your mind -- and I'll show you how you  
8 break it down here in a minute -- damages you were incurring because of  
9 Viking's faulty sprinkler and/or Lange installing them?

10 A Yeah. The failure for them to pay to repair the damage,  
11 definitely.

12 Q Got it. And it wasn't like at the time you didn't have the  
13 money to finance the litigation different ways. That was just the method  
14 with your Harvard MBA that you chose. Fair?

15 A Yeah, it's prudent.

16 Q It's -- I just didn't hear you.

17 A Prudent.

18 Q Prudent. You chose to borrow other people's money, give  
19 them a big return on their loan or return on their investment, as opposed  
20 to, for example, cashing your Bitcoin out?

21 A Correct. That's very prudent.

22 Q And those interest payments were monies over and above  
23 whatever the hard number, the hard costs of the property damage was  
24 done to your residence. Right? That's how you ultimately list them out?

25 A I'm not sure I understand. They're an expense of the

1 damages. Is that what you mean?

2 Q Yep.

3 A Yes, they're expenses.

4 Q And so everybody -- because you get involved in these cases,  
5 you forget maybe some things aren't super clear when you start, but you  
6 had about \$500,000 in hard cost damage to your house, and then some  
7 future hard card cost damage that you needed to repair, correct?

8 A Yeah. It was between 3 and 8. You know, there was a lot of  
9 different estimates, but that's fair.

10 Q And then ultimately, you had several hundred thousand  
11 dollars' worth of interest you owed?

12 A Highly likely over two years, yes.

13 Q And those future damages, like replacing your kitchen  
14 cabinets?

15 A Yes.

16 Q Have you replaced those kitchen cabinets?

17 A Yes. We've paid -- well, no. They haven't replaced them.  
18 They've been paid to make them. They haven't come back to put them  
19 in.

20 Q So a line item of damages that you collected for haven't been  
21 replaced yet?

22 A No.

23 Q They're on their way, but just not yet?

24 A I don't know. I haven't called the guy.

25 Q All right.

1           A     They better be on their way.

2           Q     And as of June 5th, not even the scope of Mr. Simon's  
3 representation has been determined, because he doesn't know if he's  
4 supposed -- you don't know if he's going to write your loan agreements  
5 or you should have somebody else?

6           A     Correct.

7           Q     Was in flux?

8           A     Correct.

9                     MR. CHRISTIANSEN: And Exhibit 80, Mr. Greene. Bate  
10 stamps 3425 and 6.

11 BY MR. CHRISTIANSEN:

12          Q     And so we're clear, did you get a bill in June for Mr. Simon's  
13 work in May?

14          A     June of 2016, sir?

15          Q     Yes, sir.

16          A     No.

17          Q     Did you get a bill in July for Mr. Simon's work in May or  
18 June?

19          A     No.

20          Q     Did you get a bill in August for May, June or July?

21          A     No.

22          Q     September?

23          A     No.

24          Q     October?

25          A     No.

1 Q December?

2 A Yes.

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

5 A Yes. Correct.

6 Q Seven months after he started representing you?

7 A Correct.

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

10 A I think it was pretty generous.

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

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

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

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

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

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

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

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



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

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

3 THE WITNESS: Oh.

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

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

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

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

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

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

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

14 THE WITNESS: It's fair.

15 THE COURT: -- generous?

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

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

20 THE COURT: Okay.

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

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

23 THE WITNESS: Oh, I'm sorry.

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

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

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

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

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

5 THE COURT: Okay.

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

7 BY MR. CHRISTIANSEN:

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

9 A Uh-huh.

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

12 A Correct.

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

15 A Correct.

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

17 A No idea.

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

19 A A rate of interest?

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

21 A Oh, no.

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

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

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

4 Q No.

5 A -- insure --

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

7 A Correct. Yes.

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

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

11 Q Got it.

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

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

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

19 THE COURT: Okay.

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

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

24 MR. GREENE: Thank you, Your Honor.

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

1 MR. VANNAH: Thank you, Your Honor.

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

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

5 Mr. Christiansen, you may resume.

6 MR. CHRISTIANSEN: Thank you, Your Honor.

7 BY MR. CHRISTIANSEN:

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

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

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

16 A Okay.

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

19 A Okay.

20 Q Make sense?

21 A Okay.

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

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

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

3 A Okay, yes.

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

6 A Okay.

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

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

10 Q You see --

11 A I see, yeah, yeah.

12 Q Here, let me do my --

13 A I found it.

14 Q You've got it now?

15 A Yes.

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

18 A Correct.

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

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

23 Q All right. And --

24 A -- with certain things.

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

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

3 A Correct.

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

5 A Of my time?

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

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

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

12 A Correct.

13 Q All right.

14 A Correct.

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

16 A Correct.

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

23 Did I read that correct --

24 A Correct.

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

1 off, Mr. Edgeworth?

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

4 Q Okay. So --

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

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

10 MR. VANNAH: Yes, it is.

11 BY MR. CHRISTIANSEN:

12 Q Isn't that right?

13 A Pardon me?

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

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

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

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

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

21 BY MR. CHRISTIANSEN:

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

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

1 THE WITNESS: Between 7 and 8.

2 THE COURT: Okay.

3 THE WITNESS: Yeah, I see it.

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

5 THE COURT: Okay.

6 BY MR. CHRISTIANSEN:

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

9 A Uh-huh.

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

13 A Correct.

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

16 A Correct.

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

18 A Correct.

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

21 A Correct.

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

24 A Incorrect.

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



1 at your lawyers for answers, sir, please.

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

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

8 A Can I explain?

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

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

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

12 BY MR. CHRISTIANSEN:

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

15 A Zero.

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

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

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

25 A Okay.

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

4 MR. CHRISTIANSEN: All right.

5 THE COURT: -- in your argument.

6 MR. CHRISTIANSEN: Good enough, Judge.

7 BY MR. CHRISTIANSEN:

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

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

11 BY MR. CHRISTIANSEN:

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

18 Did I read that correctly?

19 A Correct.

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

21 A Yes.

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

23 A No.

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

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

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

5           A     Yes.

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

8           A     Correct.

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

11          A     Correct.

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

14          A     Correct.

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

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

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

19          A     Correct.

20          Q     And you authored this?

21          A     Correct.

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

24          A     Correct.

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

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

3 BY MR. CHRISTIANSEN:

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

6 A No. I put that on after this.

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

9 A Yes, I did.

10 Q You just didn't include it?

11 A Correct.

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

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

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

18 A They were --

19 Q Okay.

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

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

24 BY MR. CHRISTIANSEN:

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

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

4 A Yes, definitely.

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

6 A I can see it.

7 Q Okay.

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

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

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

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

14 A Correct.

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

16 A Correct.

17 Q And no cost for attorney's fees?

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

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

20 A I had no bill.

21 Q No hourly rate, correct?

22 A Correct.

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

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

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

5           A     From Mr. Simon, correct.

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

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

9           Q     True, thank you.

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

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

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

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

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

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

21          A     No.

22          Q     Had you been billed a dollar?

23          A     No.

24          Q     Had you paid any costs?

25          A     No.

1 Q Had you located any experts?

2 A Pardon me?

3 Q Had you located any experts?

4 A No.

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

7 A Fair.

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

10 A Danny Simon.

11 Q Who was the expert?

12 A His brother-in-law.

13 Q And does he live here in Las Vegas?

14 A I do not know.

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

17 A Danny Simon.

18 Q Danny Simon?

19 A Correct.

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

22 A Correct.

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

25 A Correct.

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

5 A Okay, yeah.

6 Q -- that's all I get.

7 A That's right.

8 Q Does that appear about right?

9 A Yes, I seen it.

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

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

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

14 A We can only see --

15 THE COURT: We can only see your hand.

16 THE WITNESS: -- your hand, sir.

17 BY MR. CHRISTIANSEN:

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

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

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

23 A Correct.

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



1 A Yes.

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

3 MR. CHRISTIANSEN: 8.

4 THE COURT: 8.

5 BY MR. CHRISTIANSEN:

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

7 A Correct.

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

9 A Correct.

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

12 A Yes --

13 Q -- in the bill?

14 A -- it was 5/28.

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

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

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

18 A Yeah.

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

20 A Correct.

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

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

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

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

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

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

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

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

9           Q     Okay. All right. All right.

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

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

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

15          Q     You don't see the difference?

16          A     No.

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

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

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

22          A     Yes. But I wrote it all down.

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

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

1 Q Right --

2 A -- your meaning, like --

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

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

6 Q Okay.

7 A So --

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

10 A Craig Marquis, yeah. The guy --

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

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

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

14 A I think he wanted 50 grand, yeah.

15 Q You didn't want to pay that?

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

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

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

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

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

22 MR. CHRISTIANSEN: John, Exhibit 79.

23 MR. VANNAH: Thank you.

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

1 BY MR. CHRISTIANSEN:

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

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

7 Q That's right.

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

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

11 A Correct.

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

15 A Okay.

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

18 A Yes, it is.

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

21 A Yes.

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

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

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

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

5           Q     You never deposited a retainer --

6           A     No.

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

8           A     No.

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

11          A     It depends.

12          Q     All right.

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

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

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

23                THE WITNESS: Oh.

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

25                THE WITNESS: Yeah.

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

2 THE WITNESS: Pay it again.

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

4 THE WITNESS: Yeah.

5 THE COURT: But does that mean something different?

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

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

9 THE COURT: You don't know.

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

11 THE COURT: Okay.

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

13 THE COURT: Mr. Christiansen.

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

15 THE COURT: It's okay, sir.

16 THE WITNESS: Yeah.

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

18 THE WITNESS: Okay.

19 THE COURT: -- you've answered.

20 THE WITNESS: Sorry.

21 BY MR. CHRISTIANSEN:

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

25 A Yeah.

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

2 A No, I don't think so.

3 Q February?

4 A No.

5 Q March?

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

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

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

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

14 A Correct.

15 Q And you got one bill?

16 A Correct.

17 Q No associate time, ever?

18 A I think that's correct.

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

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

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

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

24 THE COURT: 8?

25 MR. CHRISTIANSEN: 8.

1 THE COURT: Okay.

2 BY MR. CHRISTIANSEN:

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

5 A I don't think so, no.

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

9 A Yes.

10 Q And that was to John Olivas?

11 A I believe so.

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

13 A Correct.

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

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

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

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

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

22 THE COURT: Okay.

23 MR. CHRISTIANSEN: March the 6th --

24 THE COURT: Just so we have the record.

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



1 BY MR. CHRISTIANSEN:

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

4 A Yes.

5 Q It says, through December 1 of 2016?

6 A Correct.

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

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

11 Q And --

12 A -- if I was at work.

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

15 A Yes.

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

18 A There's no line item.

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

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

24 Q That's not what I said.

25 A Okay.

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

5 A No.

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

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

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

9 MR. CHRISTIANSEN: This 87, John.

10 BY MR. CHRISTIANSEN:

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

13 A Correct.

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

19 A Correct.

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

23 A I'm sorry?

24 Q Sure. You had a claim against Lange?

25 A Lange Plumbing, yeah. They --

1 Q Yeah --

2 A -- installed it. Yeah, yeah.

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

5 A Correct.

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

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

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

14 A I guess so.

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

18 A Correct.

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

21 A Correct.

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

25 A Correct.

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

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

6           Q     Right.

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

8           Q     Five million bucks?

9           A     Yes.

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

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

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

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

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

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

24          Q     Okay.

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

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

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

3 A Yeah. I'd get my --

4 Q -- in a verdict --

5 A -- legal money back.

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

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

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

11 A Yes.

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

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

18 Q You thereafter in June --

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

20 BY MR. CHRISTIANSEN:

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

23 A Yes.

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

1 becomes more reasonable.

2 Did I read that correctly?

3 A Yes.

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

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

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

9 THE WITNESS: Yes, sorry.

10 BY MR. CHRISTIANSEN:

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

12 A Correct.

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

18 A Yes.

19 Q Did I read that correctly?

20 A Yes.

21 Q You wanted to change your rate?

22 A Yes.

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

1 correct?

2 A Correct.

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

5 A No, it does not.

6 Q Okay, 2.4 million, right?

7 A Correct.

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

12 Did I read that correctly?

13 A Correct.

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

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

16 Q Is that right?

17 A Not technically.

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

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

21 Q Okay.

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

23 Q Yes.

24 A Likely.

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

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

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

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

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

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

9 A Yes.

10 Q Simon had been your lawyer for 13 months?

11 A Correct.

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

13 A In June?

14 Q Yeah.

15 A I'm not sure.

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

18 A Likely.

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

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

23 THE COURT: Yeah, you are.

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



1 his first bill.

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

4 THE WITNESS: December, correct --

5 THE COURT: Okay.

6 THE WITNESS: -- was the first one.

7 BY MR. CHRISTIANSEN:

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

12 A Correct.

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

17 A If you say so, yes.

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

21 A May 3rd, correct.

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

24 A Correct.

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

1 the litigation, correct?

2 A Correct.

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

5 A Correct.

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

8 A No.

9 Q How many pages, in your opinion?

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

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

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

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

14 THE COURT: Okay, 55,000 pages?

15 THE WITNESS: Yeah. But --

16 THE COURT: Okay.

17 THE WITNESS: -- a lot were dups.

18 BY MR. CHRISTIANSEN:

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

21 A Correct.

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

23 A Correct.

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

1 THE COURT: Okay.

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

3 BY MR. CHRISTIANSEN:

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

6 A Correct.

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

9 A Yes.

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

13 A Correct.

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

16 A Correct.

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

20 A Yeah. It's prudent.

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

25 A Huh.

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

3 A Okay.

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

6 A Yes.

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

9 A Correct.

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

13 A Correct.

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

19 A Correct.

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

22 A Correct.

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

25 Did I read that correctly?

1           A     Correct.

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

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

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

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

8           Q     Sure.

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

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

13          A     Correct.

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

16          A     Correct.

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

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

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

20 BY MR. CHRISTIANSEN:

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

1 Did I read that correctly?

2 A Yes, you did.

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

6 A Correct.

7 Q No terms had been reached, correct?

8 A Correct.

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

12 Did I read that correctly?

13 A Correct.

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

18 A Correct.

19 Q So no terms could have been reached?

20 A Correct.

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

1 Did I read that accurately, sir?

2 A Yes, you did.

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

5 A That's Lange's insurance.

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

8 A Correct.

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

12 A Incorrect.

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

16 A Yes, it is.

17 Q Did I read that all correctly?

18 A Correct.

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

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

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

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

2           Q     All right.

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

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

5           A     No.

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

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

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

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

11 BY MR. CHRISTIANSEN:

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

14           A     A lot.

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

17           A     Danny Simon filed them.

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

21           A     His filings in court?

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

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



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

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

5 Q Zurich paid 6 million, right?

6 A Zurich paid \$6 million, correct.

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

10 A Correct.

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

13 A Correct.

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

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

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

22 A Correct.

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

25 A Correct.

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

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

5 Q What don't you know was correct?

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

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

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

15 BY MR. CHRISTIANSEN:

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

17 A Yes.

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

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

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

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

24 Q Did you call --

25 A -- day and night.

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

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

3 Q Weekends?

4 A -- business hours, definitely.

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

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

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

12 A Updated.

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

15 A Correct.

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

18 A It's on the sheet, sir.

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

23 A Oh 31 to 23, correct.

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

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

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

5           A     Correct.

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

9           A     Yes, I was.

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

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

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

20          A     Correct.

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

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

24          Q     October the 20th?

25          A     I think so. I could be wrong.

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

3 A The second one was November 10th?

4 Q That's accurate?

5 A Yes.

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

9 A No, I don't think so.

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

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

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

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

16 THE CLERK: 406.

17 MR. CHRISTIANSEN: 406, sorry.

18 BY MR. CHRISTIANSEN:

19 Q Is this --

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

21 BY MR. CHRISTIANSEN:

22 Q Look like one of your spreadsheets, sir?

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

24 Q This is leading into mediation number one?

25 A Correct.

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

3 A Correct.

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

6 A Correct.

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

8 A Limited tolerance for negotiation, correct.

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

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

12 Q But you figured how much it was?

13 A Correct. Yes, I did.

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

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

18 Q Prejudgment interest?

19 A Correct.

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

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

25 Q Judgment exceeding --

1 A -- for the amount that --

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

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

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

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

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

9 A Yes.

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

12 A I think so.

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

14 A Likely more comment.

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

16 A Correct.

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

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

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

1           A     Other than the line items that are --

2                   THE COURT: Under the line items what?

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

7 BY MR. CHRISTIANSEN:

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

12          A     Insurance carrier.

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

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

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

21          A     Yes.

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

23          A     Correct.

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

25          A     Mr. Simon didn't rebut that.



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

3           A     This is --

4           Q     -- office?

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

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

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

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

10          THE WITNESS: I'm sorry --

11          THE COURT: -- at a time.

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

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

15          MR. CHRISTIANSEN: Thank you, Your Honor.

16 BY MR. CHRISTIANSEN:

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

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

23          Q     Okay. So nominal?

24          A     Nominal, that's one, correct.

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

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

3 A Do I know --

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

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

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

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

10 Q Yeah.

11 A Yes.

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

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

16 [Parties confer]

17 THE CLERK: Exhibit 9.

18 BY MR. CHRISTIANSEN:

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

22 A Yes.

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

25 MR. CHRISTIANSEN: I apologize, an email.

1 BY MR. CHRISTIANSEN:

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

6 A Correct. I was passing on information.

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

9 A No, sir.

10 Q No?

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

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

14 A Okay.

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

16 A Okay.

17 Q -- 15 days earlier than your email?

18 A Correct.

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

20 A Correct.

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

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

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

4 Did I read that correctly?

5 A You read it correctly, yes.

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

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

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

12 A Correct.

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

14 A Correct.

15 Q And the case settled for 6?

16 A Correct.

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

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

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

21 A No, it's not my testimony.

22 Q All right.

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

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

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

4 A Correct.

5 Q Then after the November 10th mediation --

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

7 BY MR. CHRISTIANSEN:

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

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

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

19 A The settlement was offered at 6, correct.

20 Q And that was Danny's suggestion --

21 A It was Floyd --

22 Q -- not yours?

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

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

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

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

7           A     About, yeah.

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

10          A     November 15th.

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

14          A     Yeah. He texted me.

15          Q     And you brought your wife?

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

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

18          A     Correct, yes.

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

20          A     Definitely.

21          Q     Intimidated?

22          A     Definitely.

23          Q     Blackmailed?

24          A     Definitely.

25          Q     Extorted?

1 A Definitely.

2 Q How big are you?

3 A 6' 4".

4 Q How much do you weigh?

5 A Two-eighty.

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

8 A Definitely.

9 Q He threatened to beat you up?

10 A I didn't say that.

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

13 A No.

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

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

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

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

23 Q All right.

24 A It was a very unstructured conversation.

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

1 something, but you don't have it?

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

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

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

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

8 BY MR. CHRISTIANSEN:

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

10 A I'm sorry?

11 Q November 21st --

12 A November 21st, 2017, it says.

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

15 A Correct.

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

17 A Correct.

18 Q That's left open?

19 A Correct.

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

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

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

25 A Correct.



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

3 A The bills were paid in full.

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

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

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

10 A Correct.

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

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

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

16 A Correct.

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

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

21 Q Tell me what --

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

24 Q Okay. I'm with you.

25 A Okay.

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

3 A 3.827147 spot 96.

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

6 A Six million dollars.

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

10 A Correct. They paid me more than.

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

14 A The email you just had right there?

15 Q Yes, sir.

16 A No.

17 Q He didn't write --

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

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

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

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

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

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

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

9 THE WITNESS: No.

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

11 MR. CHRISTIANSEN: Thanks.

12 BY MR. CHRISTIANSEN:

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

15 A Correct.

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

18 A Correct.

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

22 A Correct.

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

1 November --

2 A Correct.

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

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

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

9 A No.

10 Q Because Exhibit 24 --

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

12 BY MR. CHRISTIANSEN:

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

16 A That's not what I said.

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

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

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

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

22 THE COURT: Okay.

23 BY MR. CHRISTIANSEN:

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

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

3 BY MR. CHRISTIANSEN:

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

6 A Correct.

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

10 A Because of the contents of the letter.

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

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

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

16 A Yes.

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

20 A No.

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

24 A I don't believe so.

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

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

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

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

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

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

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

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

17 A None.

18 Q Zero?

19 A Zero.

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

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

24 Q No. Did you not understand the question?

25 A Exactly. I don't --

1 Q Okay.

2 A -- get what you mean.

3 Q Did you understand the question?

4 A No, I did not.

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

8 THE COURT: Okay.

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

10 THE COURT: Okay.

11 MR. CHRISTIANSEN: If it's okay.

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

14 MR. CHRISTIANSEN: Thank you, Your Honor.

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

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

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

22 MR. GREENE: That makes sense.

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

24 MR. GREENE: That's fine.

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

1 MR. GREENE: Makes sense, sure.

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

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

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

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

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

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

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

16 MR. VANNAH: Sure, no.

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

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

21 THE COURT: Okay.

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

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

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



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

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

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

4 [Counsel confer]

5 THE WITNESS: For first thing in the morning?

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

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

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

10 THE COURT: Okay.

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

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

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

17 CRAIG WILLIAM DRUMMOND, PLAINTIFFS' WITNESS, SWORN

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

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

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

23 MR. CHRISTENSEN: Thank you, Your Honor.

24 DIRECT EXAMINATION

25 BY MR. CHRISTENSEN:

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

2 A I'm an attorney.

3 Q Where are you licensed?

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

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

8 A Since 2004 in Missouri.

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

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

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

17 THE WITNESS: Under Mr. Simon, yeah.

18 THE COURT: Okay.

19 BY MR. CHRISTENSEN:

20 Q So --

21 THE COURT: And that's in 2010?

22 THE WITNESS: In 2010.

23 BY MR. CHRISTENSEN:

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

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

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

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

9           Q     What kind of military work were you doing?

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

16          Q     That was after discharge?

17          A     That was after discharge, yes.

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

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

1 they'd rather have a more senior attorney.

2 Q I understand.

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

5 Q How'd you bill on those cases?

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

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

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

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

20 A None.

21 Q -- that you could utilize?

22 A None.

23 Q No.

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

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

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

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

11 Q Where's your office currently?

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

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

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

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

25 A Yes, I am.

1 Q And what is it.

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

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

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

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

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

11 BY MR. CHRISTENSEN:

12 Q Let me ask a couple of foundational questions.

13 THE COURT: Okay, please do.

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

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

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

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

19 MR. CHRISTENSEN: Because that's --

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

21 MR. CHRISTENSEN: We agree.

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

23 MR. CHRISTENSEN: We'll move on.

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

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

1 MR. VANNAH: I thought everybody knew that.

2 THE COURT: I like it. Okay.

3 MR. CHRISTENSEN: All right.

4 THE COURT: Okay.

5 MR. VANNAH: All right.

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

7 MR. CHRISTENSEN: Okay.

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

9 MR. VANNAH: Good.

10 BY MR. CHRISTENSEN:

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

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

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

19 A I was.

20 Q Are you familiar with the Edgeworth case?

21 A I am.

22 Q How are you familiar with the Edgeworth case?

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

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

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

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

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

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



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

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

4 A Only two.

5 Q And who are those?

6 A Daniel Simon, or P. Christiansen.

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

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

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

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

21 A I have.

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

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

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

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

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

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

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

19 Q Okay. Thank you, Mr. Jones.

20 A Thank you, sir.

21 THE COURT: Cross?

22 MR. VANNAH: Yes.

23 CROSS-EXAMINATION

24 BY MR. VANNAH:

25 Q How are you, Mr. Jones?

1           A     Good, sir.

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

4           A     Yes.

5           Q     He does a good job, right?

6           A     Yes.

7           Q     Enjoys a nice reputation?

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

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

11          A     It settled confidentially.

12          Q     Is it over a million dollars?

13          A     Well over.

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

16          A     We did.

17          Q     In writing?

18          A     We did.

19          Q     Are you required to do that?

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

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

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

1 your question. You deserve --

2 Q Let me just ask you to give --

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

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

6 A I have.

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

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

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

15 A Okay.

16 Q And then we'll go.

17 A Okay.

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

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

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

2           Q     All right.

3           A     -- 1.5(b).

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

6           A     Oh, okay.

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

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

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

11          A     I thought you just did?

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

14          A     I don't want to --

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

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

21          Q     Okay.

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

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

25          A     Uh-huh.

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

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

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

8 Q 1.5(b)?

9 A Correct.

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

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

17 Okay?

18 A Yes.

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

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

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

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

1 Q Is it your opinion --

2 A -- signed by the client --

3 Q -- that you can have --

4 A -- it would be right.

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

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

10 Q How many --

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

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

15 A I have not.

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

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

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

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

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

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

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

5           A     I'm aware there are emails.

6           Q     My question --

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

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

12          A     Not in detail, no.

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

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

18          Q     Okay.

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

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



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

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

5 A He's an excellent lawyer.

6 Q And he was busy working the Edgeworth case?

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

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

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

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

16 A In hourly billing?

17 Q Yes.

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

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

21 A Well --

22 Q -- hourly?

23 A And I'll try to answer that.

24 Q Okay.

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

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

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

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

9           A     Thank you, sir.

10          Q     Good luck with your settlement conference tomorrow.

11          A     Thank you.

12               MR. VANNAH: Thank you, Your Honor.

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

15               MR. CHRISTENSEN: No, Your Honor.

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

18               THE WITNESS: Thank you, Your Honor.

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

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

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

25               THE COURT: Okay.

1 MR. CHRISTENSEN: Thank you, Your Honor.

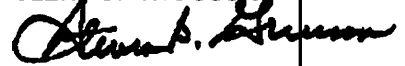
2 THE COURT: See you guys tomorrow.

3 [Proceedings concluded at 4:33 p.m.]  
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19 ATTEST: I do hereby certify that I have truly and correctly transcribed the  
20 audio-visual recording of the proceeding in the above entitled case to the  
21 best of my ability.

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



1 RTRAN

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5 DISTRICT COURT  
6 CLARK COUNTY, NEVADA

7 EDGEWORTH FAMILY TRUST;  
8 AMERICAN GRATING, LLC,

9 Plaintiffs,

10 vs.

11 LANGE PLUMBING, LLC, ET AL.,

12 Defendants.

CASE#: A-16-738444-C

DEPT. X

13 EDGEWORTH FAMILY TRUST;  
14 AMERICAN GRATING, LLC,

15 Plaintiffs,

16 vs.

17 DANIEL S. SIMON, ET AL.,

18 Defendants.

CASE#: A-18-767242-C

DEPT. X

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

21 **RECORDER'S TRANSCRIPT OF EVIDENTIARY HEARING - DAY 2**

22 APPEARANCES:

23 For the Plaintiff:

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

24 For the Defendant:

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

25 RECORDED BY: VICTORIA BOYD, COURT RECORDER

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<u>FOR THE PLAINTIFF</u>	<u>MARKED</u>	<u>RECEIVED</u>
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None		
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<u>FOR THE DEFENDANT</u>	<u>MARKED</u>	<u>RECEIVED</u>
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Las Vegas, Nevada, Tuesday, August 28, 2018

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

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

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

THE COURT: Okay.

MR. CHRISTENSEN: -- Mr. Michael Nunez.

THE COURT: Okay.

MR. CHRISTENSEN: Mr. Nunez.

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

MICHAEL NUNEZ, DEFENDANTS' WITNESS, SWORN

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

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

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

MR. CHRISTENSEN: Thank you, Your Honor.

DIRECT EXAMINATION

BY MR. CHRISTENSEN:

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

A I'm a lawyer.

1 Q How long have you been a lawyer?

2 A Since 1992.

3 Q How long have you practiced in Nevada?

4 A Since 2008.

5 Q Where do you currently work?

6 A Murchison & Cumming.

7 Q And how long have you worked there?

8 A Nineteen years.

9 Q Are you familiar with Mr. Simon?

10 A Yes.

11 Q How are you familiar with Mr. Simon?

12 A In a professional capacity. I've had one or two cases with

13 him through the years.

14 Q Did you work on a case with Mr. Simon that we're just kind

15 of generically calling the Edgeworth v. Viking case?

16 A Yes.

17 Q Are you familiar with that case?

18 A Yes.

19 Q How are you familiar with that case?

20 A I was counsel for R. Giberti, Giberti Construction.

21 Q How was Giberti positioned in the case?

22 A Giberti was brought in as a third party defendant, by Viking.

23 Q And how did it come about that you became their lawyer?

24 A I was assigned counsel by insurance.

25 Q Do you have an understanding of how insurance was



1 triggered in the case for Giberti?

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

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

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

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

10 A Yes, quite late.

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

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

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

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

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

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

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

23 A Yes.

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

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

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

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

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

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

20          A     Yes.

21          Q     What is that email?

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

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

1           A     Absolutely.

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

4           A     Yes.

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

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

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

13          A     Yes.

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

16          A     Yes, I've seen these.

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

21          A     I recall that, yes.

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

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

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

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

6 A Yes, I believe so.

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

10 A Yes, it appears to be.

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

14 A That would be how I would interpret it.

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

17 A Yes.

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

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

22 Q Okay.

23 A It was an issue in the case.

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

1 the case?

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

4 Q Most, but not all?

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

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

8 A Impressions?

9 Q What was his behavior like?

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

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

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

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

24 A Yes.

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

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

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

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

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

10 Q Thank you, Mr. Nunez.

11 MR. CHRISTENSEN: No more questions.

12 THE COURT: Okay. Cross?

13 MR. VANNAH: Yeah.

14 THE COURT: Okay.

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

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

17 MR. CHRISTENSEN: There you go.

18 MR. VANNAH: No problems.

19 CROSS-EXAMINATION

20 BY MR. VANNAH:

21 Q Mr. Nunez?

22 A Yes, sir.

23 Q Mr. Nunez, how are you?

24 A Very good.

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

1 right?

2 A Yes.

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

4 A Yes.

5 Q We both agree on that?

6 A Yes.

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

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

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

13 A In the Las Vegas office, or --

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

15 A Probably about 80.

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

19 A Yes, sir.

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

21 A Yes.

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

24 A Oh, yeah.

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

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

2 MR. CHRISTENSEN: Excuse me, Your Honor.

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

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

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

13 So, I don't like to use the word bulk work, because I think that  
14 kind of talks down a little bit to what the real work this gentleman does,  
15 but he doesn't just get one case, a one-off case --

16 MR. VANNAH: So, this is --

17 MR. CHRISTENSEN: -- from a carrier.

18 MR. VANNAH: -- an argument, Your Honor. This is like  
19 we're now going --

20 MR. CHRISTENSEN: He gets a whole bunch of cases.

21 MR. VANNAH: -- on and on about --

22 THE COURT: No just one second, Mister --

23 MR. VANNAH: -- evidence, sir.

24 MR. CHRISTENSEN: He gets a whole bunch of cases. So,  
25 trying to establish relevancy of what this gentleman does to a rate that



1 could be applied to Mr. Simon, it's just not relevant.

2 THE COURT: Mr. Vannah?

3 MR. CHRISTENSEN: And it's beyond the scope, again.

4 MR. VANNAH: Very well. I mean, we're -- I don't disagree.  
5 We're not taking the position that Mr. Simon didn't do a fine job, I never  
6 said that. Never have said it, never pled it, nor argued it. And I don't  
7 disagree with Mr. Nunez that Mr. Simon did a fine job, and it's not a  
8 malpractice case in any way, shape or form.

9 So, Mr. Simon is billing \$550 an hour in this case, and he's  
10 doing similar work to what Mr. Simon [sic] is doing, I'd like to know how  
11 much he charges with this large firm he works with, on this case.

12 THE COURT: Okay. I'll allow Mr. Vannah to ask the question.  
13 Mr. Christensen, if you want to follow-up on the cross as to the  
14 differences in their work you'll be allowed to do that.

15 MR. CHRISTENSEN: Thank you, Your Honor.

16 THE COURT: Sir, you can answer the questions.

17 THE WITNESS: I don't remember exactly.

18 THE COURT: I thought that might happen.

19 BY MR. VANNAH:

20 Q What amount? You guys have billing rates --

21 A We do have billing rates. It would have been something  
22 between 185 and 225, probably in that range.

23 THE COURT: \$185 and \$225? Okay.

24 BY MR. VANNAH:

25 Q All right. so, it would have been somewhere within a range

1 of \$185 an hour, to \$225 an hour, correct?

2 A I believe so, yes.

3 Q Do you think you did a stellar job on the case?

4 A Yes, I did.

5 Q All right. Was your firm losing money, at 185 to 225 an hour,  
6 are they losing money?

7 MR. CHRISTENSEN: Your Honor, there is a --

8 MR. VANNAH: I'll withdraw --

9 MR. CHRISTENSEN: Not only is this question --

10 MR. VANNAH: -- the question. I mean, the answer is so  
11 obvious.

12 THE COURT: Okay. Ask another question, Mr. Vannah.

13 THE WITNESS: Were we losing money?

14 THE COURT: That's okay, sir. You don't have to answer that  
15 question, he withdrew it.

16 BY MR. VANNAH:

17 Q You had been asked what was their relationship with a  
18 deposition. I've been in a many -- you went to a lot of depositions in  
19 your life, right?

20 A Yes.

21 Q And when you're talking a relationship with a deposition  
22 between a client, the clients usually sit next to their attorneys, right?

23 A No. Usually the Plaintiff doesn't attend the depositions.

24 Q Oh, that's a good point. When a client does attend a  
25 deposition with the attorney, they usually sit next to each other, right?

1           A     Yes.

2           Q     And often times you see people passing notes, the client  
3 usually telling the attorney, hey, dumbass, here's a good question to ask,  
4 right? That's happened to you, right?

5           A     It's happened, yeah.

6           Q     It's happened to me too. It's happened to everybody that's  
7 practiced law, that somebody's saying, hey, you're missing the big point.  
8 So that's -- when you talk about the relationships, how many depositions  
9 did you attend that Mr. Edgeworth was at with Danny Simon?

10          A     At least half a dozen.

11          Q     About six, okay. And so, when you say, what's your  
12 relationship, generally when you went into the deposition and you see  
13 Mr. Simon, and he's sitting next to Mr. Edgeworth, and what you see is  
14 Mr. Edgeworth making notes and passing them over for Mr. Simon to  
15 look at, and to use as he deems appropriate, correct?

16          A     Yes.

17          Q     That's the relationship you observed, right?

18          A     Yes.

19          Q     They weren't yelling at each other, or beating each other up,  
20 or anything like that, right?

21          A     Not on the record. They seemed to have quarrels from time-  
22 to-time in the hallways, or something like that.

23          Q     Oh, okay. So, you observed the times that Mr. Edgeworth  
24 wasn't totally happy with Mr. Simon, they were having a quarrel in the  
25 hallway?

1           A     Not with Mr. Simon. As I said, he was frustrated with the  
2 case. He was a very angry man. He was angry at what had happened to  
3 his house. He was angry that he wasn't getting a response from Lange,  
4 or Viking, and that the case had gone on so long.

5           Q     Did it seem to be inappropriate that he was angry about the  
6 fact that his house had been flooded like this, and they hadn't stepped up  
7 to the plate? Did it seem inappropriate that he was angry about that him  
8 being Mr. Edgeworth?

9           A     Whether it was appropriate or not, he came across to me as  
10 very angry.

11          Q     Okay. And so, in the hallway, this cordial relationship, you  
12 didn't always see that, you saw that they had -- they argued in the  
13 hallway sometimes, Mr. Edgeworth and Mr. Simon, correct? You could  
14 see that?

15          Q     I wasn't eavesdropping on attorney/client communications.  
16 But, typically, when there was testimony that Mr. Edgeworth didn't like,  
17 he would get angry.

18          A     Okay.

19          Q     So you had talked about -- you didn't represent Lange, right?

20          A     No.

21          Q     Now you talk about -- everybody thought Lange owed money  
22 to Mr. Edgeworth. Did the Lange attorneys feel that way too? Did they  
23 say, hey, we think we owe Mr. Edgeworth a lot of money, did they ever  
24 say that to you, or anybody in your presence?

25          A     I'm not sure what you're asking. They didn't share their

1 strategies, thoughts, and impressions with me, if that's your questions.

2 Q The question that's been asked of you, did everybody in the  
3 case think Lange owed Mr. Edgeworth a lot of money? I thought that  
4 was the question that was asked, and you said, Yeah. All the lawyers  
5 thought that.

6 A There was consensus that there was a breach of the  
7 warranty.

8 Q Okay. Is that -- so a consensus, did the Lange lawyers, the  
9 people that are going to spend the money, did the Lange defendants and  
10 the Lange lawyers also agree that they had breached the agreement, did  
11 they say that to you, or in front of you?

12 A It -- I don't remember. I mean, perhaps not directly. It was a  
13 concern. A lawyer is never going to admit that it has no defense, so I  
14 don't really call those type of discussions.

15 Q Okay. So, when you say, it was a consensus among all the  
16 lawyers, the people who had the money that had to pay the claim that  
17 wasn't something they shared with you. We believe that we're going to  
18 have to pay a lot of money some day; they didn't tell you that, right?

19 A I only reported to my carrier, and I reported --

20 Q So the answer is, no, they never told you that? The Lange  
21 lawyers never told you, we think we're in big trouble here, and we're  
22 going to have to pay a lot of money some day; they never said that to  
23 you did they?

24 A Well, sure. Everybody was concerned that there was liability  
25 somewhere. Everybody is aware this is a very expensive home.

1 Everybody was aware that there was massive flooding. My client had  
2 made very large cost estimates as to what it would cost to repair it. We  
3 were aware that an attorneys' fees provision was -- was triggered by the  
4 contract, so there were a lot of pieces in play.

5 Q Here's the question. Did the Lange lawyers, or the Lange  
6 Defendants, ever say to you, or in your presence, that we feel that we are  
7 going to have to pay a lot of money someday to Mr. Edgeworth; did they  
8 ever say that in your presence?

9 A I don't remember if those words, or words to that effect were  
10 used.

11 Q Okay. Now you -- were you aware that there was a  
12 settlement offer by Lange for \$100,000 minus 22,000 that they felt Mr.  
13 Edgeworth paid; were you aware of that?

14 A I think so.

15 Q When there's a settlement offer in a case like this, who is it  
16 that has the decision-making on whether to settle, or eliminate that risk --  
17 and to eliminate the risk or to go forward on a case, who is the person  
18 that makes that decision, ultimately?

19 A Are you talking about from the Plaintiff's side or from the  
20 defense side?

21 Q From the Plaintiff's side? The question from Lange -- Lange  
22 offered settlement to the Edgeworths, right?

23 A Yes.

24 Q Who is it that makes the decision as to whether or not to  
25 continue forward and accept whatever risk, reward there may be in that

1 situation, or to settle the case, who's the person that makes that  
2 decision? Is it the lawyers, or the client?

3 A Ultimately it's the client's decision.

4 Q Okay. The lawyer can advise their client. You've done that  
5 many times, given advice to a client, or to an insurance company, as to  
6 what you think would be a fair settlement, right?

7 A Are you asking --

8 Q Would they put --

9 A -- my opinions?

10 Q Do they always take your opinions?

11 A No. I make recommendations, and ultimately it's the client's  
12 decision.

13 Q So, in this case the decision to accept the Lange settlement,  
14 that would have been Mr. Edgeworth's decision, not Mr. Simon's,  
15 correct?

16 A I would only assume so. I don't know the relationship, I'm  
17 not privy to that.

18 Q Okay. And on the heat defense, can you tell the Court a little  
19 -- you mentioned that you thought there was a good motion on the heat  
20 defense. I'm kind of familiar with it. Can you tell the Court what that  
21 heat defense was?

22 A Sure. A claim against Giberti as the general contractor on  
23 the project was one of sequencing and timing. There was an assertion  
24 that they allowed the sprinklers to be in place during the hot summer  
25 months for too long a period of time, and that may have caused or

1 contributed to the failure.

2 Q And were you aware that Mr. Edgeworth went out and did  
3 considerable research on his own, regarding the heat that would apply to  
4 these sprinkler systems, during manufacturing, and things like that  
5 anyway, and that Mr. Edgeworth is the one that came up with the  
6 scientific part of the argument on that; were you aware of that?

7 A No, not at all.

8 Q Who did that, if it wasn't Mr. Edgeworth; do you know?

9 A I always believed it was Mr. Simons.

10 Q You thought Mr. Simon did all this research on his own?

11 A Yes.

12 Q Oh. What's his educational background in the area of  
13 engineering; do you know?

14 A No.

15 Q How do you know that Mr. Simon went out and did this  
16 scientific research, and looked at all the documents to come up with this  
17 information, as opposed to Mr. Edgeworth, who's very involved in the  
18 case, as you say, doing the research, getting all the information together  
19 and feeding it to Mr. Simon?

20 A I --

21 Q You don't know?

22 A I assumed.

23 Q Okay.

24 A All the discovery, all the communications came from Mr.  
25 Simon's office, so I assumed it was his work.



1 Q Did you think that 184 to 225 an hour was a fair  
2 compensation to be paid to your firm for your time?

3 A No.

4 Q You think it should be higher than that?

5 A Yes.

6 Q We all think that, right?

7 A Insurance companies don't pay their lawyers enough.

8 Q Okay. Fair enough, I don't actually disagree with that, but  
9 that's the amount that was agreed to, and --

10 A Yes.

11 Q Thank you so much.

12 MR. VANNAH: Thank you. I have nothing further, Your  
13 Honor.

14 THE COURT: Redirect?

15 MR. CHRISTENSEN: Thank you, Your Honor.

16 REDIRECT EXAMINATION

17 BY MR. CHRISTENSEN:

18 Q Mr. Nunez, you've been practicing for a long time?

19 A Yes.

20 Q So have you ever done your own research when you had a  
21 case that involves maybe an engineering issue, or a medical issue?

22 A Sure.

23 Q You hit the books?

24 A Absolutely.

25 Q It's not unusual?

1 A No.

2 Q Certainly it's a client's decision to accept it or reject a  
3 settlement. And isn't it also true that it's the lawyer's job to give good  
4 advice to the client to assist in that decision?

5 A I would agree with that.

6 Q I want to -- since the billing issue came up, I know it's a tough  
7 issue, but let's talk about it a little bit. Does your office have billing  
8 software?

9 A Yes.

10 Q It's something that's wired into everybody's computer?

11 A Yes.

12 Q You have folks there at the office who are timekeepers?

13 A Yes.

14 Q You're a timekeeper?

15 A Yes.

16 Q Do you have assistants, for timekeepers, paralegals?

17 A Yes.

18 Q When you -- and Murchison & Cummings is in multiple  
19 jurisdictions?

20 A Yes.

21 Q So, the relationship that firm has with an insurance company  
22 may apply not just to Southern Nevada, but also maybe Southern  
23 California, or maybe Arizona as well?

24 A That's correct.

25 Q So, if you're going to examine what Murchison & Cummings

1 is being paid by an insurance company, you really have to look at the  
2 whole picture, and look at all the cases they're getting from the carrier,  
3 and how that has an impact on the law firm's bottom line, correct?

4 MR. VANNAH: Your Honor, I'm going to have to -- he's  
5 basically testifying. Leading is -- to say he's leading has been an  
6 understatement.

7 MR. CHRISTENSEN: I'm just trying to speed things along.

8 MR. VANNAH: Well --

9 BY MR. CHRISTENSEN:

10 Q Mr. Nunez, have you ever worked as a managing partner at a  
11 firm?

12 A I'm a senior partner, I'm an equity partner.

13 Q Okay. You have a general understanding at least of how the  
14 relationship works between an insurance defense firm and a carrier?

15 A Yes.

16 Q Is it true that the carrier may provide cases in different  
17 jurisdictions?

18 A Yes.

19 Q And is it true that you have to look at the big picture when  
20 you're taking a look at a particular rate?

21 A Yes.

22 Q I mean, you're not just getting one case from the carrier,  
23 you're getting multiple cases?

24 A Yes.

25 Q Okay. And all of that works into the fee calculation?

1           A     Yes.

2           Q     Okay. That's it. Thank you, Mr. Nunez.

3           A     Thank you.

4                 MR. CHRISTENSEN: Thank you, Your Honor.

5                 THE COURT: Okay. Mr. Nunez may be excused?

6                 MR. VANNAH: Certainly.

7                 THE COURT: Sir, you're excused. Thank you very much for  
8 your testimony here today. Do we have anyone else, or are we ready for  
9 Mr. Edgeworth?

10                MR. VANNAH: I think we're ready for Mr. Edgeworth.

11                THE COURT: Okay. He walked out the door.

12                MR. GREENE: I think he might have used the restroom, or  
13 something, Your Honor.

14                THE COURT: Yeah.

15                MR. VANNAH: Can I get set up?

16                THE COURT: Yeah. And he's walking in the door.

17                Mr. Edgeworth, if you could take the witness stand. And, sir,  
18 we'll just re-swear you in, since it's a different day. Thank you.

19                         BRIAN EDGEWORTH, PLAINTIFF, SWORN

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

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

24                THE CLERK: Thank you.

25                THE COURT: Whenever you're ready, Mr. Christiansen

1 MR. CHRISTIANSEN: Thank you, Your Honor.

2 DIRECT EXAMINATION CONTINUED

3 BY MR. CHRISTIANSEN:

4 Q Mr. Edgeworth, I appreciate you're back on the stand today. I  
5 tried to sort of whittle down some of the issues. So, if we can try to  
6 move through it, rapidly. Do you remember -- and get at least my  
7 examination be complete before the lunch hour.

8 Do you remember yesterday discussing with me the term used in  
9 your affidavits about -- the term was the outset?

10 A Yeah. The beginning of the --

11 Q Right. And yesterday you had some challenges with  
12 understanding that the outset meant the very beginning, right? You  
13 thought it meant June 10th, as opposed to the 27th or 28th of May, right?  
14 Now that was your story yesterday on the stand, is that you didn't learn  
15 of Mr. Simon's fee at the outset, you learned of it June the 10th?

16 A Correct.

17 Q Correct, okay. And, sir, when did -- can we agree that that  
18 version of events, so June the 10th, being the date in which you learned  
19 of Mr. Simon's fee of 550 an hour, that that is not contained anywhere,  
20 that date, June the 10th, in any of the three affidavits you signed, or the  
21 complaint you filed in this case, or I'm sorry, Mr. Vannah's office filed on  
22 your behalf?

23 A I believe so.

24 Q That's an accurate statement, correct?

25 A I believe it is.

1 Q And, sir, were you here when Mr. Vannah gave an opening  
2 statement on your behalf, yesterday?

3 A Yes.

4 Q And you know that there's been no discovery in this case,  
5 nobody's had to sit for depositions, this is our hearing, right? We're just  
6 sort of coming into it cold?

7 A Correct.

8 Q Okay. And did you hear -- I went back and listened to it, we  
9 had the CD last night, at 11:16 when Mr. Vannah told the Court that at the  
10 very first meeting, point blank, you were told Danny Simon's rate was  
11 550, and his associate's rate were 275; did you hear him say that?

12 A I'm not sure about that, but I believe you.

13 Q Okay. And that's not your testimony, correct?

14 A No, it's Mr. Vannah's testimony, I guess.

15 Q And he's your lawyer, a very fine lawyer, one of the finest in  
16 Southern Nevada, right?

17 A Right.

18 Q And presumably, without telling the contents of the  
19 conversation, before he gave an opening statement he'd spoken to you,  
20 fair?

21 A Correct.

22 Q And in his presentation he gave a version of events that once  
23 I confronted you with the, we'll cross that bridge later email from Mr.  
24 Simon you had to alter, correct?

25 A No, I've never altered my story.

1 Q You never told that story in any affidavit, that you were told  
2 on 6/10, Danny Simon's right, correct?

3 A Correct.

4 Q In fact, yesterday, after being shown that email and  
5 confronted with the bills, for the very first time you conceded that you  
6 didn't even know what his associates' were for 14 or 15 months, correct?

7 A Correct.

8 Q All right. And June the 10th, in your exhibits I requested for,  
9 I think this is exhibit -- let me ask Mr. Greene.

10 [Counsel confer]

11 BY MR. CHRISTIANSEN:

12 Q This is teeny tiny writing Mr. Edgeworth, so I'm going to --  
13 your Exhibit 9, and I'm just going to put a page, is like a side-by-side  
14 comparison of bills, that looks like somebody must have done in  
15 anticipation for this hearing; is that fair?

16 A Yes.

17 Q You did this?

18 A Yes.

19 Q And you compared the bills?

20 A Correct.

21 Q Okay. And did you find a bill on 6/10, for Danny Simon  
22 talking to on the phone for this new version of when you learned of his  
23 fee? Did he bill you for that phone call?

24 A He didn't put dates on his early bills.

25 Q So that's a no?

1           A     I would assume he billed me for it. There's a block billing on  
2 that date.

3           Q     Right. He -- at your lawyer's request, later submitted a  
4 complete bill for all of his time, correct?

5           A     I'm not sure what you mean. my lawyer's request.

6           Q     You got a bill in December, and I agree with you that for the  
7 first half dozen entries Mr. Simon, in May and June, doesn't put dates for  
8 things he did; that's what you're telling me, fair?

9           A     Fair.

10          Q     Okay.

11          A     There's no dates. I think -- I don't know how far. You  
12 showed me, yesterday, the exhibit.

13          Q     It went about two-thirds of that first page, I think, that you  
14 pointed out to me. But later on, after you hired Vannah & Vannah, and  
15 listened to Vannah -- you know, were getting advice from Vannah &  
16 Vannah, maybe you don't know, but a request was made for a bill, and  
17 then a final bill came in. Did you get that bill?

18          A     We received a final bill with a court filing motion for  
19 adjudication, I believe on January 24, I believe.

20          Q     Okay. January 24, so you prepped well enough for this  
21 hearing to even remember when things were filed, right?

22          A     I remember that date, correct.

23          Q     But you didn't read any of your affidavits in preparation for  
24 testimony today?

25          A     No.



1 Q None of them?

2 A No.

3 Q Okay. Did you see in that court filing for the -- and I agree  
4 with you, that's what it was, it was a bill involving adjudication of the  
5 lien, a bill for June 10th or a phone call, the phone call that you told the,  
6 Judge, for the first time in this litigation that you were informed of Mr.  
7 Simon's rate?

8 A There's no phone calls going back after a certain date --

9 Q So the answer's --

10 A -- he stopped them.

11 Q -- no?

12 A No.

13 Q Okay. And I went and found an email from Mr. Simon, on  
14 that date, it's --

15 MR. CHRISTIANSEN: John, Exhibit 80. Ashley, what's that --

16 MS. FERRELL: 3499.

17 MR. CHRISTIANSEN: 3499. It's too small for me to read.

18 THE COURT: Which Exhibit is it, Mr. Christiansen?

19 MR. CHRISTIANSEN: 80, Your Honor --

20 THE COURT: And this is your 80?

21 MR. CHRISTIANSEN: Yes, ma'am. It's the CD, it's the giant  
22 exhibit.

23 THE COURT: Okay.

24 MR. CHRISTIANSEN: With --

25 THE COURT: With all of the emails and --

1 MR. CHRISTIANSEN: Yeah. You know --

2 THE COURT: -- that were in the chair yesterday.

3 MR. CHRISTIANSEN: -- all the things that were over there.

4 THE COURT: Okay.

5 BY MR. CHRISTIANSEN:

6 Q And I've forgotten which one you like to look on, Mr.  
7 Edgeworth. On the screen in front of you can you see the email I'm  
8 talking about?

9 A Yes, I can.

10 Q And again, these emails go backwards. It looks like you are  
11 asking Mr. Simon, on June the 10th, questions about United  
12 Restorations, and other expenses you're having to incur?

13 A Yes, that's correct.

14 Q All right. And he responds to you on June the 10th. Not sure  
15 on fireplace issue, we can talk about it, I'm out of town until Monday?

16 A Correct.

17 Q So he's answering you -- this is a Friday, June the 10th, 2016  
18 is a Friday. So, he's answering you from out of town, in response to his  
19 friend, who at this time he's doing a favor for?

20 A Correct.

21 Q All right. And, yesterday, do you remember talking about, it  
22 might have been my term, I can't remember who used it first, for things  
23 being in flux between you and Mr. Simon early on?

24 A What do you mean by that?

25 Q Well, at first he was going to represent you as a favor, you

1 told me that?

2 A Correct.

3 Q And then later he was going to charge you?

4 A Correct. Just before the filing of the lawsuit.

5 Q Okay. And I think yesterday I said -- and so at least at that  
6 timeframe, things were in flux, and I think you agreed with me?

7 A Up until the Friday call, I'd agree, but then --

8 Q No argument --

9 A -- on Monday the lawsuit --

10 Q -- I'm saying that's what you said.

11 A -- was sent to me, to ask to read it.

12 Q And so, then clearly things would have been set in stone  
13 about how you two were going to operate, from that point going  
14 forward?

15 A Yes.

16 Q All right. So, when September the 17th of 2017, Exhibit 80,  
17 Bate Stamp 173, maybe, is sent from you to Mr. Simon. This is, I don't  
18 know, 15, 17 months after he's been your lawyer, let me think? Sixteen  
19 months, sorry, my math's not great. Is it fair to say that this email  
20 reflects that you don't even know who's paying the experts; are you  
21 going to pay them, or is he going to pay them?

22 A No, I'm offering to pay upfront.

23 Q No. No, you didn't. Are you paying these guys, or was I  
24 supposed to pay Vollmer [phonetic]. That's the -- I read that, right?

25 A Yeah. He had forward on a bunch of Vollmer bills, and I

1 wanted to know, should I take care of this?

2 Q Right. So, it wasn't set in stone, you didn't know. So that's  
3 all I'm pointing out, you didn't know --

4 A Yeah.

5 Q -- correct?

6 A Okay. Correct.

7 Q And that's consistent with Exhibit 80, Bate Stamp 2148,  
8 which is just a few days later. Hey, should I pay this, or you?

9 A Correct.

10 Q So it's still not set in stone --

11 A Well, that one there was --

12 Q -- September 17?

13 A That one I had signed a retainer agreement, so I assumed  
14 that bills would come to me.

15 Q You were asking, were you not, should I pay this or you?

16 A Correct, of course.

17 Q So, it had not been set in stone. You're asking, you're not  
18 telling him I'm paying it, right?

19 A Correct.

20 Q All right. And yesterday there was some discussions about  
21 after your being advised by Vannah & Vannah, communications relative  
22 to Mr. Simon and Mr. Vannah; do you remember those discussions?

23 A Vaguely.

24 Q And one of them --

25 MR. CHRISTIANSEN: This is Exhibit 53, Mr. Greene.

1 BY MR. CHRISTIANSEN:

2 Q Is an email from Mr. Vannah to Mr. Christensen saying, I  
3 guess you can move to withdraw, however that doesn't seem in his best  
4 interest. I'm pretty sure you can see what would happen if our client has  
5 to spend lots more money bringing someone else up to speed. So, it's  
6 up to him, our client hasn't terminated him. We want this fee matter  
7 resolved by a judge and a jury.

8 Did I read that correct?

9 A Correctly.

10 Q And that's January the 9, 2018?

11 A Correct.

12 Q You sued him five days before that?

13 A Correct.

14 Q You hadn't served him yet, but you sued him. Do you know  
15 one way or another if that's true?

16 A I do not know that.

17 Q Okay. And you had told Mr. Simon in a December 4th email,  
18 don't -- talk to John Greene in Mr. Vannah's office for about things going  
19 forward?

20 A I think December 5th --

21 Q You're right.

22 A -- but I'm not --

23 Q You're right, Mr. Edgeworth, I apologize.

24 A -- not positive of the date.

25 Q And then I guess if on -- I guess it was a little before us. This

1 is Exhibit 48 on your screen. There's another email from Mr. Vannah's  
2 office to Mr. Christensen, where it says that you have lost faith in Mr.  
3 Simon; faith and trust, I apologize. Therefore, they, and that means you  
4 and your wife, I think Mr. Edgeworth, will not sign the checks to  
5 deposited into his trust account.

6 Did I read that accurately?

7 A Yes.

8 Q You didn't want your old lawyer to put his settlement checks  
9 that he had earned for you into his trust account, fair? That's --

10 A I don't think the lawyer earned the checks, but, yes, it's fair, I  
11 didn't want him to deposit into his trust account.

12 Q And you go on to say, Quite frankly, they are fearful -- you  
13 don't say this, this is the lawyers on your behalf, Quite frankly, they are  
14 fearful you will steal the money?

15 A That's correct.

16 Q Okay. And in the course your affidavits and the complaint,  
17 did you read the complaint in this case filed by Vannah & Vannah against  
18 Mr. Simon?

19 A I don't think I did.

20 Q Okay. I won't quarrel with you then about what lawyers  
21 wrote, that's a legal thing that Her Honor can figure that out, but isn't it  
22 true that in all your affidavits you quote a portion of your September  
23 deposition, that Mr. Simon sat through, to stand for the proposition that  
24 you had paid in him full?

25 A Up to that point, correct?

1 Q All right. And it's in every single one of your affidavits, fair?

2 A Fair.

3 Q And it doesn't say in any of the affidavits, paid to in full up to  
4 that point, it just says paid in full, correct?

5 A Correct.

6 Q And you would agree with me that yesterday I showed you,  
7 and I won't get into again with you today, because I'm trying to save  
8 some time and get you off the stand, that at least the lawyers on your  
9 behalf, took the position that Danny had been paid in full, wasn't owed  
10 another dime, and he was trying to convert your money?

11 MR. VANNAH: I'm going to object to that, that's never been  
12 our position. He's not saying to what our position is, in which the only  
13 way he would know that is through a conversation would be. Our  
14 position is we owe Danny Simon money, and that's what you're going to  
15 decide, Your Honor. You're going to decide how much he's owed in  
16 September 22nd until the date that he stopped billing.

17 THE COURT: Right. And are you --

18 MR. VANNAH: There's a bill there.

19 THE COURT: -- referring to the conversion claim? There's a  
20 conversion claim in the lawsuit, Mr. Vannah. Is that what -- that's what I  
21 believe Mr. Christiansen is getting at.

22 MR. VANNAH: No, he's asking -- he keeps asking him over  
23 and over again, if he doesn't owe him any money from September 22nd  
24 to January 8th, that's never been our position, everybody knows that.  
25 And that's why we're here to determine how much money he's owed

1 during that four or five month period. We owe him money; we're going  
2 to have you make that decision.

3 THE COURT: Okay.

4 MR. VANNAH: Whatever it is we're going to write a check for  
5 it, so --

6 MR. CHRISTIANSEN: With all due respect to Mr. Vannah,  
7 Your Honor, it's not his witness, so he shouldn't be making objections.

8 MR. VANNAH: Well, but you're asking the witness, he's  
9 asking the witness, what did you learn from your attorneys.

10 MR. CHRISTIANSEN: No, I'm not. I asked the witness what's  
11 contained in the lawsuit.

12 MR. VANNAH: No. He said he never read the lawsuit.

13 THE COURT: He said he never read the complaint.

14 MR. VANNAH: Right. He never read it.

15 THE COURT: Okay. Mr. Christiansen, can you establish  
16 somehow how he would know this?

17 BY MR. CHRISTIANSEN:

18 Q Do you know there's a claim, that you made a claim against  
19 Danny Simon, through the lawsuit, brought by Mr. Vannah's office, that  
20 he converted your money by filing an attorneys' lien?

21 A Yes.

22 Q You claimed he stole your money?

23 A He was attempting to, yes.

24 Q Right. By filing what you now know to be the ethical  
25 approach to resolving an attorneys' fee dispute, correct?



1 A I don't know that at all.

2 Q You don't?

3 A No one's said that that's the ethical way to proceed.

4 Q Okay. And do you remember in your affidavits, Mr.

5 Edgeworth, saying at that 11/17/17 hearing -- I'm sorry, meeting at Mr.

6 Simon's office, the high pressure one, that's your term not mine, that the

7 sole issue Mr. Simon wanted to talk to you about was his bonus?

8 A Correct.

9 Q That's not true, is it?

10 A Yes, it is.

11 Q He wanted to talk to you about the Lange resolution, correct?

12 A He never brought it up.

13 Q He wanted to talk to you about what he had to go in front of -

14 - he had to come to Court that morning in front of Judge Jones, and he

15 wanted to talk to about that too?

16 A No, he never brought it up.

17 Q He never brought any of that stuff up?

18 A None of it.

19 Q And what you said in your affidavit, and I'll show you, this

20 sort of dovetails back to your deposition, okay, that's what I'm sticking

21 with.

22 MR. CHRISTIANSEN: Sorry, this is Exhibit 16.

23 MR. GREENE: Thank you.

24 MR. CHRISTIANSEN: Yeah. It's the first one, John, and I'm

25 at page 4.

1 BY MR. CHRISTIANSEN:

2 Q The bottom of page 4, and I'll try to point -- do you see where  
3 my finger is at Mr. Edgeworth?

4 A I see your finger.

5 Q Since Simon hadn't presented these quote/unquote: "new  
6 damages" to Defendants in the litigation, in a timely fashion we were  
7 savvy enough to know they would not be able to be presented at trial;  
8 did I read that correctly?

9 A Correct.

10 Q And by savvy enough, you thought that because Mr. Simon  
11 hadn't presented -- well, you thought because you quoted part of your  
12 deposition, where Mr. Simon said he produced all the bills that were  
13 incurred up to May of 2017, that meant he couldn't present any bills  
14 going forward?

15 A Your question was about May of 17 --

16 MR. GREENE: Pete, actually it was September of --  
17 September 22nd of 2000 something, not May.

18 MR. CHRISTIANSEN: It actually is May, and I'll show them to  
19 you in a minute.

20 BY MR. CHRISTIANSEN:

21 Q But you got savvy in these affidavits, to take the position that  
22 Danny, Mr. Simon, was trying to steal your money because you didn't  
23 owe him anymore money, and that's actually what he put, was what's  
24 contained in the body of the complaint, and I'm not going to quibble with  
25 Mr. Vannah or you, we'll just show the judge in an argument that that's

1 right in the complaint, Okay?

2 And what you thought you were savvy about, is that the time had  
3 run to present damages in the Lange litigation, right? That's what you  
4 thought, when you wrote that in this affidavit?

5 A No.

6 Q You didn't think that?

7 A This is stating that you can't just say at the 11th hour, oh,  
8 yeah, my lawyer fees, now that I've one, my lawyer fees are \$2 million  
9 more than we ever told you, through the whole case.

10 Q Right. I agree you can't do that. You were aware, were you  
11 not, that Mr. Parker, Theodore Parker represented Lange at this stage of  
12 the game, correct?

13 A Correct.

14 Q Now Mr. Parker is a very well respected attorney in this  
15 community, fair?

16 A I like him.

17 Q And Mr. Parker came into the case, and once Viking settled  
18 recognized the nature of the case against his client had changed; do you  
19 remember that?

20 A The hearing I went to where Mr. Parker came in, he was  
21 mostly arguing that he had just come on the case, he just landed from  
22 South Carolina --

23 Q He sure does.

24 A -- I haven't really had time to read it all. Your Honor, I believe  
25 before we get it started, I'm not sure that this is a legal contract between

1 my client Lange, and Mr. Edgeworth. That's Mr. Parker.

2 Q You have good memory, that's exactly what Mr. Parker, who  
3 is from Charleston, South Carolina and has --

4 A Yeah. It was South Carolina.

5 Q -- a practice down there. My daughter went to college there,  
6 so I see Teddy, going back and forth all the time. He had just come back  
7 from Charleston and he had -- he wanted to revisit the Lange issue; do  
8 you remember that? He wanted to litigate whether the contract was  
9 enforceable, things of that nature?

10 A I think the term he used was whether it was a legal contract,  
11 yes.

12 Q And when you think you're -- when you use the term in these  
13 affidavits that you're savvy enough to know the damages that weren't  
14 presented can't be sought, recovery for those can't be pursued, fair?

15 A Extreme amounts that were never presented during the time  
16 of the case, they can't just pop up.

17 Q Let me show you Exhibit 80 --

18 MR. CHRISTIANSEN: Bate stamp 4552 through 4555, Mr.  
19 Greene.

20 BY MR. CHRISTIANSEN:

21 Q And this is an email from staff at Mr. Parker's office, Parker,  
22 Nelson, I know Her Honor knows that's where Mr. Parker works, and it  
23 attaches a November 29th letter from Teddy, Mr. Parker, who is new to  
24 the case. Mr. Simon told you about Teddy being new to the case; right  
25 Mr. Edgeworth?

1           A     Yes.

2           Q     Mr. Simon told you that the nature of the case against Lange  
3 had become streamlined and far easier to pursue, because Viking was  
4 out, correct?

5           A     No.

6           Q     Mr. Simon told you that Teddy wanted to extend the  
7 deadlines, and there would be additional time to do discovery, produce  
8 evidence, depose witnesses, et cetera, correct?

9           A     It was going to delay everything, yes.

10          Q     All right. So, when you're savvy about the time having  
11 expired, you remember that's what you put in your affidavit, you sort of  
12 forgot to tell -- put in your affidavit that Mr. Parker is continuing -- asking  
13 Mr. Simon, who's agreed to continue all the cut-offs, so there's plenty of  
14 time to present your lawyer damages. You knew that, didn't you?

15          A     No.

16          Q     You absolutely knew that this agreement between Danny  
17 Simon and Teddy Parker had taken place, and instead of telling the Court  
18 that, you want to tell the Court how savvy you are about knowing Danny  
19 couldn't present any new damages, right?

20          A     I've never seen the letter you've shown me.

21          Q     The guy that micro-manages everything, and that can quote  
22 me the day things were filed in this litigation is telling me he hasn't seen  
23 the email?

24          A     Can you show me the date of email?

25          Q     Sure.

1 A No, I haven't.

2 Q November 29th, 2017.

3 A Did Mr. Simon email me this, because I have no memory of  
4 it.

5 Q You're telling me you didn't see it?

6 A No. I didn't see this.

7 Q Okay. And just to be clear, I don't want to put words in Mr.  
8 Parker's mouth. Additionally, Mr. Simon pointed out that if Plaintiffs go  
9 forward against Lange this case will be different, than the case intended  
10 pursue against the Viking Defendants and Lange Plumbing; that's in Mr.  
11 Parker's letter, correct?

12 A Correct.

13 Q And that's something that Danny also explained to you?

14 A No.

15 Q Okay. This was that same email, or the same affidavit, just a  
16 different copy. We've got so many highlights.

17 MR. CHRISTIANSEN: Paragraph 19, Mr. Greene.

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

19 MR. CHRISTIANSEN: I'm sorry, Your Honor. It is --

20 THE COURT: 16?

21 MR. CHRISTIANSEN: 16, Judge.

22 THE COURT: Okay.

23 BY MR. CHRISTIANSEN:

24 Q This was your affidavit under oath, penalty of perjury, Mr.  
25 Edgeworth? Paragraph 19.

1                   When Simon refused to release the full amount of the  
2                   settlement proceeds to us, we felt that the only reasonable  
3                   alternative available to us was to file a complaint for  
4                   damages against Simon.

5                   Correct?

6                   A       Correct.

7                   Q       You thought you were due the full amount, and he wasn't  
8                   due anything?

9                   A       That's incorrect.

10                  Q       It's incorrect, however, you agree that you accuse Mr. Simon,  
11                  in a cause of action contained in your complaint, of conversion?

12                  A       Correct.

13                  Q       Do you remember sitting for your deposition, Mr.  
14                  Edgeworth?

15                  A       Yes.

16                  Q       Do you remember quoting that portion of deposition where,  
17                  in all your affidavits saying that the bills have been presented?

18                  A       Yes.

19                  Q       Do you remember not quoting? Do you remember  
20                  intentionally omitting from your affidavit, the portion of your deposition  
21                  where Danny Simon asks you questions about your attorneys' fees  
22                  continuing to accrue? You didn't quote that in a single affidavit, did you?

23                  A       No.

24                  Q       You didn't put it in your complaint, did you?

25                  A       No.

1 Q You intentionally omitted it, didn't you?

2 A No.

3 Q Because you knew, darn good and well, that Mr. Simon  
4 asked you questions, and that your damages, or your attorneys' fees  
5 were still accruing.

6 MR. CHRISTIANSEN: I'm looking at page 294, John.

7 THE COURT: And what is the exhibit number?

8 MR. CHRISTIANSEN: It's his deposition, Your Honor, which  
9 is Exhibit 84.

10 THE COURT: 84.

11 BY MR. CHRISTIANSEN:

12 Q Q Those damages are still accruing every day?

13 A Correct.

14 A Correct.

15 THE COURT: And what page is that.

16 MR. CHRISTIANSEN: 84, Your Honor.

17 THE WITNESS: I've always said that. I actually emailed and  
18 asked --

19 THE COURT: Hold on, Mr. Edgeworth --

20 THE WITNESS: Oh, sorry.

21 THE COURT: -- I'm asking a question. So, when I'm talking --

22 THE WITNESS: I'm sorry.

23 THE COURT: -- you're not.

24 THE WITNESS: I beg your pardon.

25 THE COURT: Mr. Christiansen, the Exhibit Number is 84,



1 what's the page number?

2 MR. CHRISTIANSEN: 294, Your Honor.

3 THE COURT: 294, okay.

4 BY MR. CHRISTIANSEN:

5 Q And you also say, sir, at page 289 of your deposition, that  
6 you understand, and it's pretty clear under the contract, that's your  
7 words, pretty clear under the contract, that pursuant to the contract  
8 they're responsible for your attorney's fees and costs; and they being  
9 Lange, correct?

10 A Correct.

11 Q And then at your deposition you say, that's correct, it's pretty  
12 clear in the contract?

13 A Correct.

14 Q You understood it?

15 A Correct. And I hoped a jury would.

16 Q I didn't hear you?

17 A And I hoped a jury would.

18 Q Okay. And it's true, is it not, that neither one of those  
19 sections are contained in any affidavit you signed in this litigation?

20 A It is true.

21 Q It's true, also, is it not, that neither of those sections are  
22 contained in the complaint that was filed, if you know?

23 A I do not know that.

24 Q All right. What you told me, yesterday, sir, is that it was your  
25 hard work that led to the \$6 million settlement with Viking, correct?

1           A     Not completely correct.

2           Q     Well, actually, that's exactly what you said in your second  
3 affidavit, dated the 12th of February. See that little underline in red, at  
4 lines 13 and 14?

5                   MR. CHRISTIANSEN: And I'm sorry, Your Honor, let me tell  
6 you the number. This is Exhibit 17, Your Honor?

7                   THE COURT: 17.

8 BY MR. CHRISTIANSEN:

9           Q     I'm looking at paragraph 11. You're talking about, you were  
10 the one that located the prior case involving Viking?

11          A     Correct.

12          Q     You were the one that dug through thousands of documents  
13 and found a trail?

14          A     Correct.

15          Q     You were the one that did the research and made the calls?

16          A     Correct.

17          Q     This was the work product that caused this case to grow into  
18 the one it did?

19          A     Correct.

20          Q     It's all because of you?

21          A     I didn't say that, no.

22          Q     Do you say in here it was Danny's work that caused the case  
23 to grow what it did?

24          A     No, I do not.

25          Q     You only take credit for your work, it's causing the case to --

1 and I'm just -- this was the work product that caused the case to grow on  
2 the one that it did.

3 A I've never denied he did a good job.

4 Q Right. Because when -- as Mr. Vannah pointed out earlier,  
5 when you -- the lawsuit filed the 4th of January this year against Mr.  
6 Simon doesn't allege legal malpractice, fair?

7 A Fair.

8 Q He did an outstanding job for you. Fair?

9 A Fair.

10 Q He got you a \$6 million settlement on a \$500,000 property  
11 damage claim?

12 A Yes. I think his filings were good, solid.

13 Q But as we approach the hearing to determine to agree again  
14 with Mr. Vannah, the value of Mr. Simon's services, it was your work  
15 product, alone, that caused the case to increase in value; that's what you  
16 put?

17 A Yes.

18 Q And this -- in the second affidavit signed --

19 MR. CHRISTIANSEN: I think it's the 12th, right, Ashley? The  
20 12th of February this year?

21 MS. FERREL: Yes, sir.

22 BY MR. CHRISTIANSEN:

23 Q Remember yesterday, just help me keep the timeline, Mr.  
24 Edgeworth, we were talking about the end of November when Mr.  
25 Vannah sent -- you send the letter to Mr. Simon saying, Vannah &

1 Vannah is involved. Then you told me you didn't think you'd spoken  
2 telephonically to Mr. Simon, but you thought it might have been from a  
3 couple of days past that?

4 A Yes.

5 Q Is that fair?

6 A He left me a voicemail; I believe I said.

7 Q Right. And do you recall actually directing him, after he left  
8 you a voicemail, to just call John Greene?

9 A Correct.

10 Q And you've never spoken to him since?

11 A No.

12 Q All right. And the reason that comes out in your third  
13 affidavit, is that you thought somehow Mr. Simon had said something he  
14 should not have said to a volleyball coach, at your volleyball club?

15 A Correct.

16 Q Is that a fair statement?

17 A It's a very fair statement.

18 Q All right. And so, what you told, as I read your affidavit, I'm  
19 happy to pull it up and show you the whole thing.

20 A That would be helpful.

21 Q Is that you had to explain to -- what's that coach's name, sir?

22 A Coach Herrera.

23 Q Coach Herrera?

24 A Reuben Herrera.

25 Q Herrera?

1           A     Herrera.

2           Q     Herrera, okay. I'm sorry, if I'm getting it wrong.

3           A     H-E-R-R-E-R-A.

4           Q     All right. Coach Herrera, who's a coach at a volleyball club

5     you have a relationship with, fair?

6           A     I'm the founder of the non-profit, he's the --

7           Q     I'm not disputing it.

8           A     I'm sorry.

9           Q     You --

10          A     Clear, yes. I have a relationship --

11          Q     It's your --

12          A     -- with him.

13          Q     It's your club?

14          A     It's a non-profit, again.

15          Q     And this coach and you had to have -- Mr. Simon sent an

16     email, right --

17          A     Correct.

18          Q     -- about his daughter, Sienna [phonetic] leaving the club for

19     knee issues, and then he mentions, generically, problems with the

20     Edgeworth?

21          A     Correct.

22          Q     Plural, Edgeworths?

23          A     Correct.

24          Q     Right. And that, from your affidavit, I gather, that caused you

25     to go talk to Coach Herrera, correct?

1 A Incorrect.

2 Q You spoke to Coach Herrera, right?

3 A After the second email. After Coach Herrera said, I don't  
4 want to know your business. You know, it's none of my business, and  
5 then the follow-up email came.

6 Q And what you told Coach Herrera, not in Court, not in  
7 litigation, not on the stand, not an affidavit, is that Danny Simon was  
8 extorting you, right?

9 A No, I didn't.

10 Q Your words not mine?

11 A No.

12 Q That's what you put in your affidavit. You didn't use that  
13 word in your affidavit. I just want to make sure we're clear, before I  
14 show you?

15 A I might have used the word in my affidavit, that's --

16 Q But you don't want to admit to telling a third party Danny  
17 was extorting you; is that what you're telling me?

18 A I told him the circumstances of --

19 Q Did you --

20 A -- everything going on.

21 Q Did you use the word extortion?

22 A No. I don't believe it did.

23 Q Did you use the word stealing?

24 A No.

25 Q Theft?

1 A No.

2 Q Blackmail?

3 A No.

4 Q Anything else that could be considered criminal?

5 A No. I told him the --

6 Q All right.

7 A -- entire story of the case.

8 Q Because for a guy that's so artfully, or so educated, Mr.

9 Edgeworth, it's pretty clear you don't like to understand what words you  
10 use when they're used against you, like outset right. You didn't like that  
11 word yesterday. Remember, like fantasy --

12 A I have no problem with the word.

13 Q -- I asked you what fantasy mean; you didn't know what it  
14 meant?

15 A I know what it meant. I wanted to know the context you were  
16 using in, so --

17 Q Let's use your words in the context you use them. I read the  
18 email and was forced to have a phone conversation, followed up by a  
19 face-by-face meeting Herrera, where I was forced to tell Herrera  
20 everything about the lawsuit, and Simons' attempt at trying to -- this is  
21 your word, not mine, sir, extort millions of dollars from me. Right?

22 A Correct, that's my word.

23 Q And you used that word when you talked to Mr. Herrera too,  
24 didn't you?

25 A No, I did not.

1           Q     So, you just decided to put it in an affidavit, to color it up a  
2 little bit?

3           A     No. It summarizes the conversation quite well, in my  
4 opinion.

5           Q     You told Coach Herrera, not in litigation, not on the stand,  
6 not in an affidavit that Danny Simon was trying to steal from you?

7           A     No, I explained exactly what happened on November 17th,  
8 and then the letter of the 27th, and why Danny might be saying stuff  
9 about me, that's not true. And that I've never been a danger to children,  
10 and this lie that Simon had produced might be because of that, and no  
11 other reason.

12          Q     Danny Simon never said you were a danger to children in  
13 that email, I got it.

14          A     He most certainly did.

15          Q     You said his daughter had a hurt knee. He wanted to get her  
16 out of the volleyball program. The coach isn't calling him back, and he  
17 wonders if that's because -- the problems with the Edgeworths, the  
18 people that own the place where the coach works?

19          A     We don't own, it's a non-profit, sir.

20          Q     I got you. That's the context of Mr. Simon's conversation.

21          A     No, it's not.

22          Q     We'll let your lawyers try to find words in there, where he  
23 calls you a bad guy to kids, or any of that stuff, because it's not in here.

24          A     Is that a question, do I answer that?

25               THE COURT: No.



1 THE WITNESS: No.

2 BY MR. CHRISTIANSEN:

3 Q And your email, the one we referenced earlier from  
4 December the 5th, I just want to make sure I show it to you so that we  
5 can agree that we have the correct date, where you tell Danny to call Mr.  
6 Greene, that's with this, right?

7 A Correct.

8 Q In response to Danny's voicemail, that he leaves on your cell  
9 phone?

10 A Correct.

11 Q And from that point forward no conversations, verbal  
12 conversations with Danny?

13 A No.

14 Q Never listened to him anymore, right?

15 A I listened to what he told my lawyers.

16 Q Right. Disregarded his advice relative to settling with Lange,  
17 and follow Mr. Vannah's advice, correct?

18 A Yes. I took Mr. Vannah's advice.

19 Q I showed you, yesterday the release for Viking. That was, I  
20 think done the first of December, and that was -- you were advised on  
21 that by Vannah & Vannah, not Danny Simon, correct?

22 A I was advised on both of them.

23 Q You weren't talking to them?

24 A They were passing on his theory of how I get money, and  
25 they were giving their theory, and I took the risk and reward to balance

1       them --

2           Q     Followed Mr. Vannah there?

3           A     I felt that they had a better outcome, actually.

4           Q     All right. I'm not quibbling, and I'm not saying Mr. Vannah  
5       was wrong, I'm just saying it was a different set of advice?

6           A     Correct.

7           Q     Danny had one set of advice, Mr. Vannah and Mr. Greene  
8       had a different set of advice. You disregarded Danny's and followed  
9       theirs?

10          A     That's correct.

11          Q     Their name appears on the Viking release; not Danny  
12       Simon's, correct?

13          A     I don't know that.

14          Q     I showed it to you yesterday, it's right in the body of the  
15       release?

16          A     Well, I'm just telling you I don't remember that, but if you  
17       show me I can --

18          Q     The Court --

19                THE COURT: We have the release Mr. Christiansen.

20                MR. CHRISTIANSEN: Yeah.

21       BY MR. CHRISTIANSEN:

22          Q     And the Vannah firm had you sign that other document, and  
23       said, consent to settle, correct?

24          A     Correct.

25          Q     With Lange?

1 A Correct.

2 Q Danny Simon's name is not on that?

3 A I don't believe it is, no.

4 THE COURT: Mr. Christiansen, before you move on to  
5 another -- I have a question in regard to that. Mr. Greene, I apologize  
6 early if this was a question you were going to ask, and I already asked it.

7 When is the last time you, personally, had contact with Danny  
8 Simon?

9 THE WITNESS: Through email, or telephonically?

10 THE COURT: Any contact at all. Any contact at all between  
11 you and him, that doesn't involve --

12 THE WITNESS: December --

13 THE COURT: -- Mr. Vannah, Mr. Greene, you and Danny  
14 Simon?

15 THE WITNESS: December 5th.

16 THE COURT: December 5th. And what was that contact?

17 THE WITNESS: Danny left a voicemail on my phone saying  
18 something about there was some --

19 THE COURT: Okay. Did you call him back?

20 THE WITNESS: No, I did not.

21 THE COURT: So, you've never spoke to him?

22 THE WITNESS: No.

23 THE COURT: When is the last time you and Mr. Simon  
24 conversed? Like there's something --

25 THE WITNESS: Or email --

1 THE COURT: -- from you, something from him?

2 THE WITNESS: Not just emails back and forth. Because the  
3 5th --

4 THE COURT: I don't care if it's an email. There's  
5 communication, if you communicated with him.

6 THE WITNESS: Yeah.

7 THE COURT: Because if he left you a voicemail, and you  
8 didn't call him back, you didn't talk to him. So, what is the last time you  
9 personally had communication with Mr. Simon?

10 THE WITNESS: I believe that's the December 5th email that  
11 Mr. Johansen [sic] --

12 MR. CHRISTIANSEN: Christiansen, it's okay.

13 THE WITNESS: Christiansen, I apologize.

14 MR. CHRISTIANSEN: Peter's fine, it's okay.

15 THE COURT: Okay. So, the email you sent to Danny Simon?

16 THE WITNESS: Correct.

17 THE COURT: And when's the last time you talked to him?

18 THE WITNESS: Spoke to him was probably November 25th  
19 when I was packing to go to Asia.

20 THE COURT: And you spoke with him on the phone?

21 THE WITNESS: Correct. He called me from --

22 THE COURT: It's okay, sir, I don't need details. Okay. Thank  
23 you. Sorry, Mr. Christiansen.

24 MR. CHRISTIANSEN: You're fine, Your Honor.

25 THE COURT: And, Mr. Greene, like I said I apologize if you

1 were going to clean that up, but that was just confusing to me.

2 [Pause]

3 BY MR. CHRISTIANSEN:

4 Q I'm almost done, Mr. Edgeworth. I apologize for the delay.  
5 Do you remember in your second affidavit, Mr. Edgeworth, Mr. Simon,  
6 and I think you're referencing at his office, that the meeting on the 17th  
7 of November, told you, you had to do this or else?

8 A Correct.

9 Q Did you ever send -- is there an email that I can point Her  
10 Honor to, between that meeting on the 17th, that you and your wife were  
11 present, and today, that says, hey, Danny, why are you trying to threaten  
12 us. I thought we were friends, I thought we had a deal. Why would you  
13 do this?

14 A No.

15 Q Did your wife send an email like that?

16 A No. She had a couple of emails and then telephonically  
17 Simon called me while I was on vacation, I don't know how many times.

18 Q Okay. Ever in the phone call, did she say, hey, Danny, why  
19 are you doing this to me?

20 A Yes. That's what led to the November 27th letter.

21 Q What you told Danny Simon, sir, is that all you were trying to  
22 do is play devil's advocate, and that you knew you didn't have just an  
23 hourly agreement; that's what you told him?

24 A No.

25 Q And your wife's emails -- and you read your wife's emails

1 now, that's how prepared you are for this hearing, right?

2 A Which of my wife's emails?

3 Q The ones you just referenced for me, that after the meeting  
4 she had emails back forth to Danny Simon?

5 A I haven't read them recently, but I know that she had emails.  
6 I was in Asia, so I'm copied on all the emails, I'm reading them while I  
7 was in Asia.

8 Q Okay. Your wife never says, hey, Danny, you threatened us?

9 A No.

10 Q You're extorting us, you're stealing our money?

11 A No.

12 Q Never?

13 A No.

14 Q And all this while you know you owe him money, right?

15 A Correct. I had a requested a bill probably the 15th --

16 Q And rather than --

17 A -- not that long --

18 Q -- work it out you hired a new firm, chose to follow their  
19 advice and then sued Danny?

20 A Correct.

21 Q And I want to understand, I recognize Mr. Vannah's legal  
22 argument, but I want to talk to you about your position. Throughout the  
23 course of this lien adjudication issue hasn't it been your consistent  
24 position, Mr. Edgeworth that Danny Simon has been paid in full for his  
25 work?

1           A     No.

2           Q     Hasn't it been your consistent position in three different  
3 affidavits, Mr. Edgeworth, that Danny Simon was paid through  
4 September, and he should quote/unquote: "finish the work he was paid  
5 to complete"?

6           A     No.

7           Q     I'm going to -- Judge can look at your affidavits, I'm just  
8 trying to summarize.

9           A     Okay.

10          Q     Wasn't it your position when your claim went from \$1 million  
11 in June, to 2.4 million -- 1 million in March, 2.4 million in June, 3.3  
12 million in October, and even after a \$6 million settlement you only  
13 valued your own case at 3.8 million; isn't that all true?

14          A     No.

15          Q     And that's all reflected by emails you created, sir, that we've  
16 gone through in this hearing, in the last two days, right?

17          A     No.

18          Q     Those charts are all yours.

19          A     The charts are mine; they don't reflect what you just stated.

20          Q     They don't reflect an ever-increasing value, Brian  
21 Edgeworth's every-increasing personal evaluation of his \$500,000  
22 property claim; they don't reflect that?

23          A     They reflect that.

24          Q     Okay. Brian Edgeworth's property value claim increased, not  
25 because Brian Edgeworth was his own lawyer, right?

1           A     No, I wasn't my own lawyer.

2           Q     It increased because Mr. Simon pursued a punitive damage  
3 aspect to the case that was never contemplated or discussed between  
4 the parties, correct?

5           A     No. It probably settled -- we'd have to ask Viking exactly why  
6 they settled for that amount. But there's good other reasons.

7           Q     Sir, the punitive emails that I showed you that you wrote  
8 make it unequivocal there was never a meeting of the minds relative to  
9 pursuing a claim for punitive damages, correct? You say that, you could  
10 never have contemplated it. If you couldn't have contemplated it you  
11 couldn't have a meeting of the mind.

12          A     We were pursuing the case, from the start, aggressively, to  
13 its bitter end. I don't --

14          Q     I get confused when you say you were doing things in the  
15 case. Did you ever go to Court and argue?

16          A     No.

17          Q     Did you ever take a deposition?

18          A     No.

19               MR. GREENE: Judge, we already covered this yesterday.

20               THE COURT: We did, Mr. Christiansen.

21               MR. CHRISTIANSEN: All right, Your Honor.

22 BY MR. CHRISTIANSEN:

23          Q     Did you consult with anybody before hiring Vannah &  
24 Vannah?

25               MR. GREENE: What's --



1 MR. CHRISTIANSEN: I just asked if he consulted --

2 MR. VANNAH: Object.

3 MR. GREENE: What's the relevance of that?

4 THE COURT: What's the relevance of that Mr. Christiansen?

5 MR. CHRISTIANSEN: Timing. Constructive discharge and  
6 timing, Your Honor. I just want to know if he talked to another lawyer  
7 before he sought -- he mentioned several times he talked to Mr. Marquis.

8 MR. GREENE: He testified already that he was out of the  
9 country in Asia and --

10 THE COURT: Okay. When did he get back? I mean, he knew  
11 he was out of the country in Asia, at the end of November, but I don't  
12 know when he returned. That hasn't been testified to, that I've heard.

13 THE WITNESS: May I --

14 THE COURT: No. You just wait until we're done. Mr.  
15 Greene?

16 MR. GREENE: I'll ask the question, or John could ask it, I  
17 don't care.

18 MR. CHRISTIANSEN: When he got back. She just wants to  
19 know when he got back from Asia, John?

20 MR. GREENE: When did you get back?

21 THE WITNESS: I flew back after -- I rescheduled flights right  
22 after --

23 THE COURT: Sir, can you just please give us a date?

24 THE WITNESS: Oh, I'm sorry. November 29th, right when I  
25 drove to your office.

1 THE COURT: Okay. Well, that pretty much answers the  
2 question, as well, Mr. Christiansen.

3 MR. CHRISTIANSEN: I just want to make sure. You land the  
4 29th, I think that's the date Mr. Vannah gave me of the fee agreement as  
5 to that. I just don't want to misspeak.

6 MR. VANNAH: It is, you're right?

7 MR. CHRISTIANSEN: Is that right Bob?

8 MR. VANNAH: Yeah.

9 MR. CHRISTIANSEN: It is.

10 BY MR. CHRISTIANSEN:

11 Q That's the date on the Vannah & Vannah fee agreement; is  
12 that right, Mr. Edgeworth?

13 A I landed the same -- same day that I went to their office.

14 THE COURT: Okay. Mr. Edgeworth, if you could just please  
15 just answer Mr. Christiansen's question.

16 THE WITNESS: Oh, I'm sorry.

17 THE COURT: Mr. Greene, as he has clearly demonstrated is a  
18 very fine lawyer, and he's going to have just as much time as Mr.  
19 Christiansen going to have to ask you questions. And you've got to  
20 leave the lawyering to the lawyers, and they're going to -- he's going to  
21 clear up anything he thinks that's unclear for me.

22 THE WITNESS: Okay.

23 THE COURT: You've got some of the finest lawyers in town,  
24 just answer the question.

25 THE WITNESS: Sorry.

1 THE COURT: We could have done with this a lot quicker, if  
2 you'd just answer the question.

3 THE WITNESS: Okay.

4 BY MR. CHRISTIANSEN:

5 Q Sir, do you know one way or another, whether -- I'm not  
6 asking who, I'm not asking contents, one way or another if your wife  
7 consulted with lawyers before Vannah & Vannah, but after Mr. Simon?

8 MR. GREENE: The same objection, and also privileged.

9 MR. CHRISTIANSEN: I don't understand what the privilege  
10 is, Your Honor?

11 MR. VANNAH: Spousal privilege.

12 MR. CHRISTIANSEN: I didn't ask what the communication  
13 was.

14 MR. VANNAH: You asked what the wife told him.

15 MR. CHRISTIANSEN: I did not. I said, if you knew one way  
16 or another --

17 MR. VANNAH: No, you didn't

18 MR. CHRISTIANSEN: -- if she talked to a lawyer.

19 MR. VANNAH: You're not allowed to know what the wife  
20 told him.

21 MR. CHRISTIANSEN: I didn't ask --

22 MR. VANNAH: It's spousal privilege.

23 MR. CHRISTIANSEN: -- if she told him.

24 MR. VANNAH: Well, that's the only way to answer the  
25 question.

1 THE COURT: Well, sir, do you have any independent  
2 knowledge of that, separate and apart from what your wife told you?

3 THE WITNESS: No.

4 THE COURT: Okay. He doesn't know much right now.

5 MR. CHRISTIANSEN: All right. I think that concludes cross,  
6 Judge.

7 THE COURT: Okay.

8 MR. CHRISTIANSEN: Thank you. Mr. Edgeworth.

9 THE COURT: I think that will be a good time to take our  
10 lunch break. Because, Mr. Greene, I don't want to cut you off in anyway,  
11 I want to give you ample time cross-examine him that you need to.

12 We're going to go to break for lunch right now, it's 12:30. So  
13 I'm going to give you guys an hour and a half and we'll be back, or can  
14 you guys do it a little quicker like -- do you guys want a hour?

15 MR. CHRISTIANSEN: Ninety minutes is great, Judge.

16 MR. GREENE: An hour-and-a-half is good. I'd liked the hour-  
17 and-a-half, Your Honor.

18 THE COURT: I just like to leave, and so we'll be back here --  
19 I'm pretty sure my staff likes that too. So, we'll be back here at 2:00.  
20 Yes, I have 2:00. So, we'll return at 2:00. All right.

21 [Recess at 12:26 p.m., recommencing at 2:06 p.m.]

22 THE COURT: -- 444, Edgeworth Family Trust v. Lange Plumbing A-  
23 767242, Edgeworth Family Trust v. Daniel Simon.

24 Mr. Edgeworth, if you could take the stand. And I would just like to  
25 remind you, you are still under oath.

1 THE WITNESS: Yes, ma'am.

2 THE COURT: And, Mr. Greene, whenever you are ready for  
3 cross.

4 MR. GREENE: Thank you, Judge.

5 THE COURT: You're welcome.

6 CROSS-EXAMINATION

7 BY MR. GREENE:

8 Q Brian, let's begin where we left off. Do you remember we  
9 were discussing an email to Coach Reuben, to and from?

10 A Yes.

11 MR. GREENE: And I apologize, I did not write down the  
12 exhibit number that you guys had associated with that. We're happy to  
13 use yours, or we can just start a new off our Exhibit 9, our last in order.  
14 I'm happy to just do that, Judge, so we can speed this up. Our last in  
15 order was Exhibit 9.

16 MR. CHRISTIANSEN: I think ours was 45, Mr. Greene, but  
17 whichever one you prefer.

18 MR. GREENE: 45. Let's just keep it simple.

19 THE COURT: Okay.

20 MR. GREENE: We'll keep it simple stupid is what -- all right.

21 BY MR. GREENE:

22 Q Let me show you this email. Do you remember when Mr.  
23 Christiansen was showing you these emails, how the first series of the  
24 emails is on this second page, and we flip over?

25 A Yes.

1 Q Is that your understanding, as well?

2 A Yes.

3 Q Now regarding this email to Coach Reuben, did you have any  
4 discussions with Coach Reuben, to give you an understanding of what  
5 was being communicated to him from Mr. Simon?

6 A Yes. He telephoned me.

7 Q He telephoned you. Did he mention this series of emails at  
8 all?

9 A Yes. He said he was going to --

10 MR. CHRISTIANSEN: Objection, hearsay, Your Honor.

11 THE COURT: And your response to that?

12 MR. GREENE: Well, it's really good hearsay, Your Honor.

13 MR. VANNAH: Wait a minute, Your Honor.

14 MR. GREENE: I can move on.

15 [Counsel confer]

16 MR. GREENE: Yeah. Just effect on the hearer, Your Honor.

17 THE COURT: Okay. Mr. Christiansen, I'm going to allow it.

18 MR. CHRISTIANSEN: Okay.

19 THE WITNESS: Yes. He telephoned me --

20 THE COURT: There's no question pending, Mr. Edgeworth.

21 He'll get back to you.

22 BY MR. GREENE:

23 Q And when he spoke with you about this email what did he  
24 say?

25 A He phoned and told me he was going to forward an email

1 that was troubling, and that the two of you needed to talk to about it.

2 Q Let's just focus on the important page, okay. I've got on  
3 page 45 of that exhibit; do you see that?

4 A Yes.

5 Q And I've highlighted a portion. Can you read that for us?

6 A As for the other issue with the Edgeworths, just as you, we  
7 believed we were friends. However, as parents we must do everything  
8 in our power to protect our children.

9 Q However, as parents we must do everything in our power to  
10 protect our children. What, if any effect, did that statement in that email  
11 from Mr. Simon have upon you and your wife?

12 MR. CHRISTIANSEN: Objection, relevance.

13 THE COURT: What is the relevance of this, Mr. Greene?

14 MR. GREENE: Look at the timing of this, Your Honor. The  
15 date of this email is December 4, 2007. They've talked about --

16 MR. VANNAH: '17.

17 MR. GREENE: I'm sorry, 2017. They've talked about a  
18 constructive termination. They made Mr. Edgeworth out to be a bad  
19 human being, acting with unilateral steps, doing things to hinder a  
20 relationship with Mr. Simon.

21 And then the relevance is, we have this type of information  
22 being communicated to the coach of the youth volleyball team, to which  
23 I can get more testimony out of it as to whose daughter is playing in it,  
24 and what interactions he was going to have with Coach Reuben, and also  
25 what steps he had to do to protect himself after this email was received

1 and communicated.

2 THE COURT: Okay. I'll allow the email, that sentence.

3 BY MR. GREENE:

4 Q Did you hear that question? I can ask it again for you?

5 A I'm sorry, please.

6 Q Sure, no worries. What impact did this email, from Coach

7 Reuben -- to Coach Reuben from Danny Simon, have upon you?

8 A Complete humiliation and embarrassment, and I ended up  
9 having to expose myself to someone who actually works for the non-  
10 profit I founded, and I financed. I paid for the entire thing, and then I had  
11 to explain to him why it wasn't true, when it was clearly, the email  
12 before, Reuben had said he wanted to know nothing about it.

13 So that the next email came it's obvious, after saying, I don't want  
14 to hear about it, it's none of my business, that there was some serious  
15 implication here.

16 MR. CHRISTIANSEN: Judge, I'm going to object and ask you  
17 to strike the answer. He can't speculate as to what Mr. Simon meant or  
18 thought when he sent the email; which is what he's doing.

19 THE COURT: All right. Mr. Edgeworth, if you could just tell  
20 us the effect it just had on you, and you said that it forced you to say it  
21 wasn't true; what wasn't true?

22 THE WITNESS: That I was a danger to children.

23 THE COURT: Okay. Where does it say that, because I don't  
24 see that in this email?

25 THE WITNESS: It says, as for the other issue with the



1 Edgeworths.

2 THE COURT: Okay.

3 THE WITNESS: So, he's talking about us. Just as you we  
4 believed we were friends. However, as parents, we must do everything  
5 in our power to protect our children. This is why she could not come to  
6 the gym --

7 THE COURT: Okay.

8 THE WITNESS: -- because of the Edgeworths.

9 BY MR. GREENE:

10 Q So what impact did that have on you --

11 A It would --

12 Q -- and this volleyball team, and your interactions with Coach  
13 Reuben?

14 A He made an awkward situation, and I had to explain myself. I  
15 had to explain a bunch of personal business. Then we had to come to a  
16 determination on what to do about it.

17 THE COURT: Who is we?

18 THE WITNESS: Me and Reuben.

19 THE COURT: Okay.

20 BY MR. GREENE:

21 Q What was done about this email?

22 A It was decided that Angela and I should retake our  
23 background checks with USA Volleyball. So, we filled in the forms and  
24 sent in our background checks. Even though we have no contact with  
25 children, it was just a protective measure.

1 Q Do you have any understanding how the board reacted to  
2 this email from Danny Simon?

3 A The board on that point was myself, my wife, Reuben, the  
4 director of volleyball and an attorney.

5 Q And what happened next?

6 A We took the -- we filled in the forms, we paid 140 bucks, or  
7 whatever USA Volleyball charges. They were sent in, of course they  
8 come back all clear. Then I told Mr. Vannah and yourself about this and  
9 you addressed it with Mr. Simon and his attorney, who said it was --

10 MR. CHRISTIANSEN: Objection, hearsay, Your Honor.

11 MR. GREENE: He can most assuredly testify as to what he  
12 has personal knowledge of. Whether it's true or not he understood there  
13 was a communication made between attorneys, and -- as to what the  
14 strategy and response of this email would be.

15 THE COURT: Well, he can testify to what he did in response  
16 to this email. But if there's some communication between some  
17 attorneys as to how they're going to respond, I don't know how he has  
18 personal knowledge of that unless he was there.

19 MR. GREENE: That's fine, Your Honor.

20 BY MR. GREENE:

21 Q What then was done in response to this email?

22 A Basically, I followed up with Reuben a couple of times. It's  
23 something you always -- we sound guilty when you say that it's not that,  
24 it's not true, it just doesn't make sense. And I've asked, has Mr. Simon  
25 ever responded to say, no, this isn't true, that's not what I meant,

1 anything like that. Nothing's ever been sent.

2 Q Did this email have any effect on your relationship with Mr.  
3 Simon?

4 A That pretty much ended any time I'll ever speak to the man  
5 again, because he knew how much the club means to me, and how  
6 much I've put into it, how many years of my life it put into it, to make it  
7 what it is. And it just -- it felt like he was trying to hurt me.

8 Q Do you have an understanding whether Mr. Simon was  
9 made aware of Reuben's concerns, or the board's concerns?

10 A My attorneys told me that they made --

11 MR. CHRISTIANSEN: Objection.

12 THE WITNESS: -- him aware.

13 MR. CHRISTIANSEN: Hearsay, what other people told him.

14 MR. GREENE: And you have to understand the Judge has  
15 already sustained that objection.

16 THE COURT: Okay. Do you know this outside of somebody  
17 else telling you?

18 THE WITNESS: No.

19 THE COURT: Okay.

20 BY MR. GREENE:

21 Q Okay. Brian, let's begin at the beginning, after dealing with  
22 that, and then work our way back to some other comments that were  
23 made, okay. This is your first time you have a chance to introduce  
24 yourself to the Court. Give us a little bit of CliffsNotes version of who  
25 you are?

1           A     Okay. I grew up in Canada. I grew up out in the country,  
2 about 20 miles from the nearest town. I graduated from high school.  
3 We were fairly poor. My dad was an auto worker, and I grew up in the  
4 '80s, which was a bad time in Ontario for auto industry. After high  
5 school I couldn't afford to go to university, and neither could my older  
6 brother, he was a year ahead of me. I had to drop out because we didn't  
7 have enough money.

8           We both worked in factories. I worked in factories for three years,  
9 my brother worked in factories for four years, and helped pay each  
10 other's way through college, and graduated from Western Ontario  
11 School of Business, it's one of the top-ranked undergraduate institutions  
12 in the world.

13           And from there I got a job in Houston working commodity  
14 derivatives with Enron in '94. I worked there for a couple of years and  
15 went to Harvard Business School. After Harvard Business School I  
16 worked in Wall Street, in institutional equity sales for six years, up until  
17 the point where my wife's father got terminal cancer. And she was an  
18 only child, so we moved to Santa Monica to be with him.

19           It wasn't something I could do with the job I did. The job I did I  
20 worked on a trading floor; you can't really do it in Santa Monica. So,  
21 from that point forward we took over her dad's business. Later bought it  
22 when we moved it to Nevada, and we started our own company. We  
23 started pediped footwear. It's a kids' shoe company that makes shoes  
24 up until around seven, eight-years-old, for children.

25           And then after growing that company for a bit we needed more

1 space, and we couldn't find it in California, we moved to Nevada in 2006.

2 Q When did you meet Angela?

3 A We went undergrad together.

4 Q Where did you meet, Western Ontario?

5 A We were in the same business -- Western Ontario, the same  
6 business school class.

7 Q How long have you been married?

8 A Fifteen years.

9 Q Kids?

10 A Yes.

11 Q How many?

12 A I guess 16 years, sorry. Caroline, whose birthday's today. I  
13 appreciate you letting her go. She's 15 today and Lauren, she's 13.

14 Q Sir, we can appreciate that. What do you do for a living now,  
15 Brian?

16 A Just run a bunch of small companies. I have Pediped, which  
17 I manage on a daily basis. American Grating, which I manage, but  
18 somebody who's quite competent runs it. I used to build houses and  
19 stuff. This -- ended that business. I also, in partnership with my brother,  
20 who -- he's been into cryptocurrency forever, so we run some operations  
21 that basically confirm cryptocurrency transactions.

22 Q Brian, why did this lawsuit end your construction business?

23 A Construction is a cash flow business, and basically I needed  
24 the cash from this house to keep building another house. So, when --  
25 when that house became tied up all my capital in the house became tied

1 up too. You can't acquire and start building your next house, unless you  
2 want do leverage with that.

3 Q You were described as being focused in this litigation. So  
4 apart from this litigation do you have hobbies and interests?

5 A My kids and I go skiing. I spend a lot of time with youth  
6 volleyball, travelling around, watching my kids play, and we go on  
7 vacations.

8 Q Brian, this volleyball team was discussed, or described as a  
9 charitable organization, a non-profit. Do you have any other charitable  
10 and non-profit organizations that you and your wife work with in any  
11 capacity?

12 A Well, over the last ten years we've supported numerous  
13 charities, mostly focused on kids. We set up a pediped foundation. That  
14 gave away around \$3 million to children's charities. Make a Wish used  
15 to be a large charity that we did. Every year we would give them  
16 hundreds of thousands of dollars. I also donate to charities, my  
17 interests, like the Folded Flag Foundation, is a big one for us. Local  
18 schools. We give money to -- I think we give about -- small donations to  
19 about 100 schools.

20 And then whenever there's a natural disaster we always send  
21 shoes. We try to -- like in Haiti we connected with a convent down there,  
22 and we shipped them all a whole bunch of shoes, so they can hand them  
23 out, stuff like that.

24 Q Any other charitable organizations or non-profits that you  
25 and Angela are involved with, you'd like to share with the Judge?

1           A     We started Vegas Aces, basically in -- four years ago. There  
2 was a real vacuum for youth sports for girls in the town. Volleyball,  
3 because we don't have middle school here. What wasn't well-done, and  
4 a lot of the girls that had potential to play that sport because they didn't  
5 start young enough they really couldn't compete in a lot the scholarship  
6 market unless you were a super-gifted athlete.

7           So, with the help from the UNLB coaches and the USC coach,  
8 they're very generous with their time, all of these college coaches, they  
9 helped us set up a one-port gym in the back. My wife and I financed it,  
10 we paid for it all. It lost money every year, of course. And then during  
11 this, I had already committed to say we were going to move and build a  
12 large facility, and I started building that during this lawsuit, and it was  
13 finished June of -- a year and a half ago.

14           This is my proudest thing. Like in four years since we built this,  
15 with huge community support, and huge support from the college  
16 community, we've won three national championships, which is  
17 something nobody ever has done in Las Vegas.

18           Q     Thank you, Brian. Let's move to a different topic about how  
19 you became to be friends with and know the Simons. When did that  
20 relationship first form in your recollection?

21           A     Our children went to preschool together, I believe.

22           Q     When was that?

23           A     It was probably ten years ago. It's been awhile. And for a  
24 couple, a couple of years, or three years they attended school together.  
25 And then we went -- our wives planned some vacations together. We've

1 gone away skiing, we went to Bora Bora, and to Ko Samui. They met us  
2 there when Angela and I were there for a wedding.

3 Q When you were on these family trips, or at any time, did you  
4 get to have an understanding as to what Danny did for a living?

5 A He was a lawyer.

6 Q Did you guys talk about your respective careers, to see if you  
7 had an understanding, or just dude talk, or anything like that?

8 A No. Well, we'd talk about stuff, but not a super amount of  
9 work, but I understand he's a personal injury lawyer, yes.

10 Q Let's move on. Again, the Judge is completely familiar with  
11 the facts of this underlying case, so we don't want to spend an inordinate  
12 amount of time discussing the flood. If you give, once again, the Cliff  
13 Note's version to the Judge as to how this happened and how your  
14 concerns were raised?

15 A Basically in 2016, a sprinkler had blew in a house that was  
16 five-weeks from completion. It was a 12,000 square foot spec house I  
17 was building. Because ironically it was the highest point in the entire  
18 house, that's the sprinkler that blew, and flooded the entire house. And I  
19 was in LA, I got the call from Mark Giberti, because he went on Monday  
20 morning, and the water just poured out when he opened the front door.

21 He called me in LA, I drove home, and by the time I got home the  
22 remediation company had already ripped all the drywall down. In a  
23 custom home everything insulated at the -- in the interior and exterior so  
24 there's no sound. So, all the insulation, it was just a disaster.

25 And then we started remediating it. United Restorations Market



1 called them, which is a friend of his son's I guess, running that company,  
2 and they were cleaning it up. In the next three weeks Mark and I spent  
3 12 to 15 hours a day there, just trying to see what we could salvage, and  
4 get out of there, we took dumpsters, and dumpsters and stuff out of the  
5 house. Then I got on with trying to rebuild it, and the rest is history,  
6 that's why we're here.

7 Q Yes, we are. So, you figured out you needed some lawyers  
8 to get through this. And we've already heard you kind of were led to  
9 Danny through your wife, and tell us again, though, with your words,  
10 just yes or no answers, how this decision was reached?

11 A Kinsale asked for the head and everything else, and they had  
12 it tested, that they were going to pay the claim. Like the adjuster was  
13 like, yeah, we just need adjuster's estimates. They got three estimates,  
14 and I think when the size of the estimates came in they just flaked, and  
15 they called and -- actually they sent a letter and said the claim's refused  
16 it's Viking's fault, limited to a manufacturing defect, it's not our problem.

17 And at that point I was told by everybody there, our insurance  
18 adjuster -- or broker, sorry, and everyone else who had experience with  
19 this on the job, that they were responsible. Lange installed it, and they  
20 would inevitably pay. So, I figured, I just need a simple push for them.

21 My insurance broker recommended somebody, whose name was  
22 Craig Marquis, his name's been brought up a couple of times, did a  
23 preliminary call with him. I didn't feel comfortable because of some of  
24 the actions he was going to take against Lange and their contractor's  
25 license, that didn't really make sense to me.

1 I also talked to our Estate attorney, Mark Katz, but he was sick at  
2 the time, and then Angela suggested I call Danny. I sent him an email,  
3 and that was what we've already seen in evidence.

4 Q And you met at Starbuck's didn't you?

5 A On the Saturday. Yeah. He asked me to do a summary of all  
6 the stuff and bring it over. We met on Starbuck's on St. Rose.

7 Q What day?

8 A Saturday, May 28th, 2016.

9 MR. GREENE: I'm going to show Exhibit 5 --

10 THE COURT: 5.

11 MR. GREENE: From his book binder, page number 1.

12 BY MR. GREENE:

13 Q I'm going to show you what's been -- I'm going to admit it  
14 into evidence as -- we called it a super bill but it's a January of 2018 bill.  
15 This is the first page of that. Have you seen this document?

16 A Yes.

17 Q Do you see that date on there; what's the date on top?

18 A 5/27/16.

19 Q What's the description, Brian?

20 A Email chain with client, re: representation.

21 Q Representation of you?

22 A Yes.

23 Q How much were you charged for that?

24 A At this point he was doing it for free, but I actually paid for  
25 this -- well, I've been billed for. And I paid for the days on the original

1 bill; it's \$550 an hour.

2 Q The very first day?

3 A Correct.

4 MR. CHRISTIANSEN: Is that 5, John, I'm sorry.

5 MR. GREENE: I'm sorry?

6 MR. CHRISTIANSEN: Is that Exhibit 5?

7 MR. GREENE: Yes.

8 THE COURT: Yes.

9 MR. CHRISTIANSEN: I apologize, sorry.

10 MR. GREENE: Start on page 1.

11 MR. CHRISTIANSEN: I didn't mean to interrupt, I apologize.

12 MR. GREENE: No worries.

13 THE WITNESS: Yes. I was billed from the first day.

14 BY MR. GREENE:

15 Q And even on Exhibit 2, can we show you that one too, Brian?

16 A Yes, please.

17 MR. GREENE: This will be Exhibit 2, page 1, Judge.

18 THE COURT: Okay.

19 BY MR. GREENE:

20 Q Can you see that?

21 A Yes.

22 Q What does that first line say, Frank?

23 A Initial meeting with client: one and three-quarter hours.

24 Q You have no idea what date that was, at least as far as the  
25 billing is concerned, correct?

1           A     Correct.

2           Q     But was there any other initial meeting, than that initial  
3 meeting at Starbucks?

4           A     No.

5           Q     Did you pay this bill --

6           A     Yes.

7           Q     -- for 100 -- 1.75 hours?

8           A     Yes, I did.

9           Q     We'll get into more in just a little bit, Brian, about what  
10 invoices have been paid, okay. So, Mr. Simon gets involved, but it didn't  
11 settle, correct?

12          A     No.

13          Q     Correct, yes?

14          A     Yes, sorry. It did not settle.

15          Q     I know, sorry. It's about my leading question that I got away  
16 with. I appreciate that. We talked, and you did on cross-examination, I  
17 know a lot of yes and no answers, but do you have a recollection as to  
18 the substance of the conversations you had with Mr. Simon, when the  
19 amount of the fee was discussed?

20          A     Yes.

21          Q     Would you please share that with the Judge?

22          A     Danny called and said, Look, they're not going to settle. This  
23 is not going to be --

24                 THE COURT: Okay. Do you know what date this was?

25                 THE WITNESS: This is June 10th of 2016.

1 THE COURT: Okay.

2 BY MR. GREENE:

3 Q What was said?

4 THE COURT: What did he say?

5 THE WITNESS: He said, they're not going to settle, we're  
6 going to need to file a lawsuit, and I'm going to start incurring expenses.  
7 The rate at which I've been approved by the Court, my court-approved  
8 rate is \$550 an hour, and I hate to charge friends and stuff, but this is  
9 going to start costing money. Do you approve of filing a lawsuit against  
10 them?

11 I approved and accepted his rate, and then on Monday he  
12 emailed me a copy of the lawsuit to read over, and he filed it on  
13 Tuesday.

14 Q There was a discussion about whether or not you had any  
15 idea about what Ms. Ferrel was going to be charging. Did Mr. Simon  
16 discuss at all, in the initial meeting, or that meeting on June 10th,  
17 whether Ms. Ferrel was going to be involved in the handling of your  
18 case?

19 A No, he did not.

20 Q Who did he indicate to you who was going to be doing the  
21 work on your case, when you met with him?

22 A Danny Simon.

23 Q What was your involvement with Mr. Simon, that you recall,  
24 after the Starbuck's meeting, and then you have the telephone  
25 conversation with him about fees and scope of work; what happened

1 next?

2 A I'm sorry?

3 Q No worries. So, we talked about the Starbuck's meeting, we  
4 talked about the telephone conversation you had with Danny about fees.  
5 What happened next with Danny's representation of you, as your  
6 attorney?

7 A He filed a lawsuit on -- on Tuesday, the following Tuesday.  
8 He emailed it to me on a Monday for me to read over. This was -- it was  
9 the Friday of the phone call, there was a weekend in between. And I  
10 read it over on the Monday and then it was filed with the Court on June  
11 14th on the Tuesday.

12 Q Brian, I got a little bit ahead of myself, I apologize. Have you  
13 ever had the opportunity to retain lawyers to represent your business  
14 interests, prior to the time that you were needing to retain Danny?

15 A Yes.

16 Q And describe that, briefly for the Judge, the experience you  
17 had and the reasons why, so we can get a better understanding?

18 A I've had an immigration lawyer. After I left Goldman Sachs I  
19 had to do my own immigration. I -- Pediped, somebody stole our patent,  
20 started counterfeiting our shoes. We had to sue them in the Federal  
21 Court of Southern New York, or the Southern District of New York, I  
22 believe it was called.

23 I've had real estate lawyers. When you do a commercial real  
24 estate transaction, you have to have a real estate lawyer, look over and  
25 do all the documents. I've had an estate attorney, I think it's just a fancy

1 name, he basically did our will, and also did our family trust to pass on  
2 our assets to our children.

3 And then regular day-to-day stuff, we, you know, like States will  
4 send you something saying, hey, you should file income tax, so we have  
5 corporate lawyers that we have to send that stuff to and say, hey, do I  
6 need to do this or not?

7 Q Who was the Law Firm Baker Hostetler?

8 A Baker & Hostetler is the law firm that pediped had used,  
9 American Grating had used them. We had a partner there, Lisa Carteen  
10 that would represent us, and sort of work our way through the other  
11 lawyers, direct us to who was needed for each thing. Like if it was  
12 customs, you know, we need to know what type of duty to pay on the  
13 goods we're importing, or it's a business contract, she would direct it.  
14 We've used them for probably 15 years.

15 Q How about Howard & Howard?

16 A Howard & Howard, a partner from Baker moved there, and  
17 she's at Howard & Howard in the LA office. So, we use them for filing  
18 trademarks. We have a whole bunch of trademarks. We have  
19 intellectual property that need to up-kept. And right now, with the new  
20 sales tax -- Supreme Court judgment about sales tax, we're using them  
21 to guide us through what we're supposed to do as an internet seller in  
22 this new environment.

23 Q Brian, at any time that Danny was talking about his fees,  
24 when you first established a relationship with him until the end, did he  
25 ever discuss with you whether or not his fees a bargain, hourly-wise, in

1 relation to the other lawyers he would hire?

2 A No. He never compared his fees. He basically said, this is  
3 my court-approved rate, and because you've got this clause in your  
4 contract you'll get all the money back when you win, anyway. Baker &  
5 Hostetler, we pay a variety of fees, depending on the lawyer. The same  
6 with Howard & Howard, although we've only used three or four of  
7 Howard & Howard's lawyers so far.

8 Q Thank you. What sorts of fee agreements, Brian, have you  
9 dealt with in your business life?

10 A The Crane Pomerantz one, which I'm not sure if it's a fee  
11 agreement, or an expert witness agreement. I signed that one. Angela  
12 usually deals with the fee agreements. Then some lawyers, you don't  
13 have to have them anyway, and you just call them, and they tell you how  
14 much it is, and they know your bill after they've done the task that was  
15 needed.

16 Q Would you describe the bulk of your hourly -- of your fee  
17 agreements. It is hourly, hybrid contingent, something different, flat fee?

18 A They're all hourly. I've never even got a flat fee one.

19 Q Do you have an understanding as to what Baker Hostetler  
20 charges per hour, amongst their --

21 MR. CHRISTIANSEN: Objection. Relevance --

22 BY MR. GREENE:

23 Q -- partners and attorneys?

24 MR. CHRISTIANSEN: -- Your Honor.

25 THE COURT: Mr. Greene, relevance?



1 MR. GREENE: Well, it's relevant to show that Brian -- well,  
2 actually, I'll withdraw that, forget that.

3 BY MR. GREENE:

4 Q At any time in the beginning of your relationship with Danny,  
5 did he ever ask for a contingency fee agreement?

6 A No.

7 Q Was it ever discussed?

8 A No until we started having the discussion in the airport bar.

9 THE COURT: In where?

10 THE WITNESS: The San Diego --

11 BY MR. GREENE:

12 Q And what date was that?

13 A August 9th, I believe, 2017.

14 Q Did Danny have a structure -- a structured discussion with  
15 you on what the -- what the attorney/client relationship' would be?

16 A No, it was -- you mean in the airport bar --

17 Q No, back up, I'm sorry. I'm sorry to confuse you. Let's go  
18 back to June of 2016. Did he have a structured relationship with you?  
19 There's discussion with as to what the nature of the fee agreement  
20 would be?

21 A Yes. I would pay him \$550 an hour, and he would represent  
22 me in this case. He would file the lawsuit, and follow-up and did  
23 everything that lawyers do in cases.

24 Q I appreciate that.

25 THE COURT: And was this at the bar in San Diego?

1 MR. GREENE: No, Judge, I'm sorry. That was the June 10,  
2 2016 meeting.

3 THE COURT: Okay.

4 MR. GREENE: And telephone conversation that resulted in  
5 the litigation being planned.

6 THE COURT: Okay.

7 BY MR. GREENE:

8 Q Did Danny ever present you with a written fee agreement to  
9 sign?

10 A No.

11 Q I'm going to show you some documents in a few minutes,  
12 one dated November 27th, 2017. It seems to be a several page  
13 document, and what's a document called a retainer agreement, do you  
14 remember receiving that?

15 A Yes. I was in China, I believe.

16 Q Let's cover that in a few minutes, just so we have everything  
17 encapsulated under that certain topic; okay Brian?

18 A Okay.

19 Q When this litigation was filed against Viking and Lange, and  
20 those related entities, did you have an understanding as to what the  
21 nature of that litigation was going to, what it was going to entail?

22 A I was told I could get my legal fees back, and whatever my  
23 costs were to repair the damage. I basically needed the money to repair  
24 the damage, so I could get the house on the market. That was the urgent  
25 part.

1           Q     There've been several questions and answers, it talks about,  
2 about approximately a \$500,000 repair bill. Is that your understanding --

3           A     Yeah. All bills came in around 300,000 to \$800,000, and the  
4 remediation company had billed \$73,000. So, it puts you right in the  
5 500,000 range.

6           Q     What were the circumstances that you remember with Danny  
7 -- Mr. Simon, excuse me, discussing with you about, that you would get  
8 your fees and costs back from the litigation, how was that presented to  
9 you?

10          A     Well, it was during the conversation that he was going to  
11 start incurring costs and needed to bill me. He told me, but in your  
12 contract you're entitled to get all your money back for your legal, so  
13 you'll get this money back.

14          Q     Was that your expectation as well?

15          A     Yes.

16          Q     Do you have a recollection, Brian, what Lange's counsel and  
17 the Lange Defendant took throughout this litigation, as to whether or not  
18 they were willing to pay you attorneys' fees and costs, pursuant to that  
19 agreement?

20          A     I don't have personal knowledge of their conversations at all.

21          Q     Okay. Did you choose to be actively involved in this  
22 litigation, Brian?

23          A     Yes, I did.

24          Q     How come?

25          A     Well, the brunt of the case didn't really begin until January of

1 2017, when Danny was -- Mr. Simon was filing various things, and then  
2 depositions were going to start. From the start of it, just to help  
3 everyone understand construction, some of the technical stuff, I knew a  
4 whole bunch about the sprinkler how it worked, why it went off, you  
5 know, a ton of different stuff, so I started helping out with the  
6 depositions, and then deposition questions.

7 The first person to go was Vince Diorio with Lange, and he sort of  
8 danced around and said a lot of things that just were blatantly untrue, if  
9 you'd ever worked in construction you would know they bordered on the  
10 ridiculous. So, from that day forward, pretty much I was involved in the  
11 case.

12 THE COURT: And just so we're clear, I know a lot of people  
13 are -- we're all kind of struggling with how to refer to Mr. Simon. Mr.  
14 Simon, do you have any objection to some people calling you Danny?

15 MR. SIMON: Call me whatever you want, Judge.

16 THE COURT: Okay. I just want to make sure that the record  
17 is clear, because everybody tries to catch themselves. But just whenever  
18 we say Danny we are talking about Mr. Simon; we're talking about the  
19 same person. But I know everybody has been making conscious efforts  
20 to correct themselves. But I just wanted to know, Mr. Simon, if you had  
21 any preference or any objection?

22 MR. SIMON: No preference, Your Honor.

23 THE COURT: Okay.

24 MR. GREENE: Just don't call you late for dinner.

25 BY MR. GREENE:

1           Q     Describe some of the things that you did, Brian, that you  
2 remember, to uncover the scope of Viking's conduct or omissions in this  
3 case.

4           A     We really didn't know this was a Viking problem until the  
5 Viking's PMK was deposed on May 3rd. It was crystal clear the guy was  
6 lying about a lot of things. And we still didn't know what, but he lied  
7 about ISO procedures, simple factory things that I happened to know  
8 because I worked in factories for so long. And from there I think  
9 everybody was on edge to look for different things.

10           And the first -- they gave us some documents that day. Some of  
11 them were suspicious, some of the power points didn't make sense. It's  
12 clear that they had been presenting that this was an installer's problem.  
13 And if it was so limited world-wide in scope to what the PMK was  
14 claiming, it didn't really make sense that they had executives giving  
15 power points on why this is a problem with the installers and not the  
16 manufacturers.

17           Then when they started dumping documents is the term that we  
18 used, that the first drop of documents was in the thousands after the  
19 ones they had brought to the -- the May 3rd deposition. Those -- those  
20 came in -- I believe the juicy ones came in in July and Ashley put them  
21 up in drop box. She -- she went through the emails that were in there,  
22 which I was told that's a typical place where attorneys go to look for  
23 juices in the emails that are -- are turned over. And she sent a summary  
24 around two weeks later, around the 19th. At that --

25           Q     Of?

1           A     Of all the emails through --

2           Q     The date being? You said the 19th.

3           A     Of June.

4           Q     Okay.

5           A     2016, I think it was. It might have been July. I apologize.

6     July.

7           THE COURT: And who sent the summary?

8           THE WITNESS: Ashley did.

9           THE COURT: Okay.

10          THE WITNESS: And when I went into the drop box and  
11 started going through, it was clear she was never going to get through  
12 all the documents because the emails were only a small portion of what  
13 was dropped. So, then I started going through everything.

14     BY MR. GREENE:

15          Q     Brian, is there a chance you could be confused about the  
16 date of the year? You just said 2016. All the emails we've had back and  
17 forth don't show that, so.

18          A     I apologize. 2017.

19          Q     Okay. So, what did you do once you received that bunch of  
20 information regarding Viking in that July of 2017 email?

21          A     The -- the first things I started doing after I got access to the  
22 drop-off documents was going through them. The one person that was  
23 named in an email from -- there was talking within Viking. They were  
24 talking about a U.K. person which they have different slander laws over  
25 there, apparently, saying that this was a bigger problem in the U.S. than

1 it was in the U.K. And he said he had heard from someone at FSS, which  
2 is Fire Sprinkler Systems, that it -- that there was 93 activations.

3 I started searching under this guy's name, Harold Rogers, until I  
4 found a lawsuit where Viking actually sued Harold Rogers. And I asked  
5 Ashley if she could get me the lawsuit so I could read it, and she did. I  
6 downloaded the lawsuit. I read through it as -- you know, I'm not a  
7 lawyer, but it seemed to indicate that Viking was suing Harold Rogers  
8 and another man named Hallman [phonetic].

9 They own two different companies. They're the largest purchaser  
10 of the V.K. 457 in the entire world. They purchased around 55 percent of  
11 all the heads that were ever installed of this product.

12 Q How many did you learn that that might have been?

13 A Later in the case found out it was 5.5 million have been  
14 installed world-wide.

15 Q So go on with what you did to under -- uncover what you  
16 did.

17 A So then, I wanted to talk to these guys because anytime that  
18 Viking sues their largest customer of a product, obviously there's a  
19 problem. I had sent an email to Mr. Simon and Ms. Ferrel about this.  
20 They attempted to contact -- I gave them Harold's contacting  
21 information. He didn't return their calls.

22 Finally, I believe, I called him July 24th myself. He picked up, a  
23 super nice guy, talked to me for a long time. He was actually right in the  
24 middle of a settlement conference. In his conference room he had  
25 Viking's head counsel there, some of their management, and his

1 attorneys and they were reaching a settlement. And he still spent  
2 probably about an hour talking to me.

3 And then on July 26th, 2017, I sent an email to Mr. Simon and Ms.  
4 Ferrel just documenting what I learned from Harold.

5 Q Did you contact anyone else, additional activations or  
6 anything else that might have affected the value of this case?

7 A Over the case Harold kept leading me to other people and  
8 other people led me to other people and it just kind of grew from there. I  
9 spoke with Keith Rhoades in the U.K., who had activations in the United  
10 Kingdom, which, you know, blows away the heat defense that Viking  
11 was blaming these things were only going off because they were being  
12 exposed to heat.

13 Q Explain that just a bit. Again, give us a summary of why  
14 that's important.

15 A The heat defense by Viking was basically to say if these  
16 heads ever got exposed to over 100 Fahrenheit, 100 Fahrenheit, the -- the  
17 solder link that holds the sprinkler plugged could be damaged and then  
18 at any given time in the future could go off. This was their -- their  
19 defense and their, you know, the hill they wanted to die on.

20 They had a whole bunch of other defenses about heat, but the 100  
21 Fahrenheit was the end and, you know, these -- these things were going  
22 off world-wide. It didn't matter where; they were going in the Pacific  
23 Northwest; they were going off in Pennsylvania.

24 And speaking with Keith, they basically had almost bankrupted  
25 him. They almost bankrupted Nigel Chandler [phonetic] in the U.K.



1 because they spoke up about it. And like I said, my understanding was  
2 they have different slander or libel or whatever it's called laws over  
3 there, and Viking basically threatened them, to sue them, out of  
4 existence.

5 He really helped me. He sent me -- he referred me to James  
6 Carver. James Carver is the El Segundo Fire Marshal. He also sits on  
7 the board of the California State Fire Suppression Council, which deals  
8 with fire suppression, which sprinklers are -- are part of. I called him.  
9 We traded calls back and forth. And he had been given a letter on Viking  
10 letterhead which he shared and was later disclosed and discovered, too,  
11 by the way, that said that there were very few activations. And at the  
12 time, Harold Rogers had documented over a hundred.

13 Q Let's go back for a second. Were you there at the PMK  
14 deposition of Viking in this litigation?

15 A Yes, I was.

16 Q Do you remember the number of activations that he owned  
17 up to?

18 A Forty-six world-wide.

19 THE COURT: Forty-six?

20 THE WITNESS: Forty-six.

21 BY MR. GREENE:

22 Q After you had done this homework, did you gain an  
23 understanding as to a different number of activations world-wide?

24 A By the end of this case, I had 326 with most of them have  
25 addresses, a lot of them have owners at the houses, they have the

1 installers, they had -- if then getting that information if I could find a  
2 discovery document, they would have the bates number of any  
3 document that -- that was applied to that. Mostly what Viking was giving  
4 us was basically a bunch of random pictures. You couldn't tell how  
5 many activations there possibly were. They had no idea of any  
6 addresses, they said. They had no idea of, you know, whether it went off  
7 or not. And I made a large excel spreadsheet documenting I believe the  
8 end count was 326.

9 Q Who did you provide that to?

10 A Danny and Ashley.

11 Q Did they ask for it?

12 A Well, as I kept updating it, they kept asking for it. Once in  
13 this courtroom they asked for it. Her Honor had asked them how many  
14 activations happened before the June 14th filing of your lawsuit. They  
15 didn't know. They didn't have the paper there. They texted me, asked  
16 me, you know, how many had happened. I just pulled out this  
17 spreadsheet. It was all numbered by date. I sorted it all by date. And  
18 you could just run your finger right down and go right across. And I  
19 forget what the number was, a hundred and some odd.

20 Q So over 300 are discovered by you of activations world-wide?

21 A Correct.

22 Q Is that a fair number?

23 A Correct.

24 Q Okay. Is there anything else that you did you'd like to share  
25 with the Judge to help uncover the scope of -- of your claims against

1 Viking in this litigation?

2 A So, when I spoke with James Carver, the Fire Marshal in  
3 California, he was out of budget to open an investigation on them, and  
4 he was hoping to get more budget in the next budget year, whatever. I  
5 guess states give out money every year. He had been told it was a small  
6 problem. Harold had told him it wasn't a small problem. And he asked if  
7 I would share information with him, if he would share information with --  
8 with me. I told him I couldn't share a lot of stuff because it's still under  
9 protective order, but I'd gladly share of anything that wasn't.

10 He sent me an email of six more houses that were never disclosed  
11 by Viking that fire marshals in California had actually investigated,  
12 reported where the sprinkler head was, which is really important  
13 because the heat defense later on claimed oh, all these things happened  
14 in top floors of -- of houses in the desert.

15 So, of course, it's a heat problem. More than half of these things  
16 occurred on -- on the main floor of two story houses. So, it's completely  
17 random. It was obviously a manufacturing defect that went off  
18 randomly.

19 I also had letters that Zurich -- the insurance carrier in this case was  
20 Zurich Insurance. Zurich had tested this product in 2015, '15. Even  
21 though they're still defending my case, Zurich was providing the lawyers  
22 to defend my case. 2015 Zurich went to a lab called Burbone [phonetic].  
23 And they got a report, and the report said this product is a  
24 manufacturing defect. They went back to the lab for rebuttal that it  
25 wasn't, and the lab reiterated it's a manufacturing defect.

1 Q Let's talk about another laboratory. What is Underwriter's  
2 Laboratory to your understanding?

3 A UL is an organization that certifies product -- products, excuse  
4 me. They -- they certify three billion or some unbelievable number of  
5 products. But for fire suppression you have to be UL listed, which  
6 means you have to pass a whole series of 40 tests in order to -- to be  
7 able to stamp it as UL and allow it to be used in -- in building.

8 There's only three people that make sprinklers. It's an oligopoly.  
9 There's Tyco, there's Reliable, and there's Viking. And all of these  
10 products have to be certified UL listed or you can't use them in buildings.

11 Q Do you have any opinion whether or not the Underwriters  
12 Laboratory testing standards or lack thereof had any bearing at all upon  
13 this case?

14 A I --

15 MR. CHRISTIANSEN: Objection. Speculation, Your Honor.  
16 He's not a lawyer.

17 MR. GREENE: I just asked if he knows.

18 MR. CHRISTIANSEN: He's not a lawyer.

19 MR. GREENE: One doesn't need to be a lawyer to be able to  
20 have an understanding. With all the work and scope of work he's done  
21 to research this, one doesn't need to be an expert to go to a class to  
22 determine this. He -- if I can set a foundation, he's spent hundreds upon  
23 hundreds of hours studying this issue, speaking with experts who have  
24 been testifying in other cases, but he has at least as much knowledge  
25 about this as anybody out there.