

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 02:06 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 THE COURT: And what was your question again; what did
2 you ask him to say?

3 MR. GREENE: If he had -- yes, I'm sorry. If he had an opinion
4 whether the Underwriters Laboratory testing or lack thereof had any
5 bearing upon the value of this case; if he had an opinion about it.

6 MR. CHRISTIANSEN: My objection is speculation. He can no
7 more guess what Underwriter, the UL, had a value on this case, if he
8 complied -- it's a guess. It's speculation.

9 MR. GREENE: And maybe I asked a horrible question.

10 THE COURT: Because I mean he can talk about the research
11 and everything he did, but I don't know how he could say what the
12 Underwriters value -- what the Underwriters did, how that added value
13 to this case. I think only the people from Viking and Lange can come in
14 on that.

15 MR. GREENE: Then I asked an absolutely horrible --

16 THE COURT: Okay. Because the way I read the question, I
17 think we would have to have somebody here from Viking or somebody
18 here from Lange to say how they valued the case and what they paid,
19 because I don't know how he would know.

20 MR. GREENE: Then I apologize for asking a bad question.

21 BY MR. GREENE:

22 Q Do you have an understanding whether this sprinkler
23 product, if installed in your home, underwent any Underwriter
24 Laboratory testing?

25 A Yes. In order to be installed in a home it has to be UL listed.

1 Not to be mistaken with an underwriter of an insurance policy. It's a
2 laboratory. It's on your lightbulbs, it's on everything. It has to be UL
3 listed; it has to pass the test. This product was never tested by
4 Underwriters Laboratory, and thus it never should have been listed for
5 sale.

6 Q How did you learn that, Brian?

7 A Over the course of a long period of finding the documents
8 were missing. Within discovery, the Underwriter Lab documents were
9 never there. When we kept asking for them, they gave us the wrong
10 documents.

11 At one point they -- when I had asked for I need the actual test data
12 on this head, because the actual test data that they had provided was on
13 all different heads. But it had a whole bunch of mechanical properties of
14 the heads, and I clearly didn't believe what they were saying that 100
15 degree Fahrenheit heat exposure would set this thing off.

16 And the UL testing would prove that it didn't. They never gave us
17 the actual test results. They kept refusing, they kept refusing, up until
18 late in the trial they started admitting -- I think Pancoast first admitted in
19 September that some of the tests may not have been done on the actual
20 product, but UL Laboratories allows you to grandfather in if products are
21 substantially similar.

22 And to answer your question, Mr. Simon, here's the heat test that
23 you're asking for. I was always asking for this heat test. The heat test
24 she attached was for cover plates. That's the little white plate right there
25 up on the ceiling that falls off when it gets to 135 and exposes the

1 sprinkler. It had nothing to do with the VK 457 at all.

2 When we kept pushing on this, she admitted that it's never been
3 tested, and it was grandfathered in because of the VK 456. The -- the
4 thing that sets a sprinkler off is the fusible link. And when the solder
5 melts, these arms pop and all the water comes out. It just opens a hole
6 in it.

7 The VK 456 has about a half dollar size fusible link. The VK 457 has
8 a fusible link that looks like this [indicating]. If you hold your two fingers
9 together, it's two soldered joints, completely different surface area,
10 completely different heat rating, too. There's no way that you can --

11 THE COURT: Okay, Mr. -- I'm sorry. What is the question?

12 MR. GREENE: It was back, I know, kind of coming on.

13 THE COURT: I don't mean to interrupt, counsel, but I've sat
14 through every one of these arguments. When I struck the heat expert,
15 that was me. That wasn't Bonnie, that was me. So, I've heard all of it,
16 but I'm just -- I mean I'm lost. I don't know what the question is that he's
17 supposed to be answering.

18 MR. GREENE: Well, we asked about whether this -- this
19 product that was -- basically, his understanding of this product that was
20 installed in his home underwent any of these Underwriter Laboratory
21 testing, tests, and what effect is his understanding that had on the
22 damages in this case. That's what we're hoping to get at.

23 THE COURT: Oh, okay, I'm sorry. I just -- I just had no idea
24 what the question was that he was answering.

25 THE WITNESS: So, basically, to sum it up and be quicker,

1 I'm sorry --

2 MR. CHRISTIANSEN: Judge, and I renew my objection. As
3 the Court's pointed out, unless they've got somebody from Viking or
4 Lange here to say how they valued the Underwriter Laboratories testing
5 or lack thereof and factored it into what they put a value on the case, this
6 witness doesn't know. He's just guessing. Speculation.

7 THE COURT: Well, I mean like I previously said, Mr. Greene, I
8 mean he can't talk about what to put to the value of this case. I don't
9 know how he would know that.

10 MR. GREENE: I'm only asking him what his understanding is
11 after his voluminous research as to the defective nature of these
12 sprinklers, what Viking knew or didn't know, what they disclosed and
13 didn't know ultimately, how he understood the defected -- the posture of
14 this case.

15 THE COURT: Okay. But how would he understand that,
16 because I'm pretty sure that calls for some sort of hearsay statement as
17 to something that somebody told him.

18 So, how is it that he would understand that; because
19 somebody from Viking or Lange would have had to have told him that,
20 how they -- because how -- how this affects how they value the case
21 because I'm 110 percent aware of Viking and the discovery violations.
22 And we were one step away from having a hearing about striking that
23 answer when this case settled.

24 So, I'm aware of all that, but that -- what Pancoast admitted
25 and everything down in front of the Discovery Commissioner, that all

1 goes into Viking's understanding of what this case is worth. How does
2 he know that without saying Pancoast told him?

3 MR. GREENE: Judge, and I'm happy to move on. I originally
4 started with the scope of his work, what they had done, so.

5 THE COURT: Yeah. And I mean he can discuss that, but I
6 just wasn't sure what the question was. That's the reason I stopped the
7 -- he can discuss that, but when we jump to how that made Viking and
8 Lange value this case, I don't know how he would know that without
9 Viking or Lange telling him that.

10 MR. GREENE: Gotcha.

11 BY MR. GREENE:

12 Q We'll go right back to where we started then. We're kind of
13 going on what work you had performed in this case to assist in its
14 prosecution. Is there anything else that you've not talked about that you
15 did to help uncover the number of activations globally?

16 A I think I've covered a lot of it. I spoke to people in the U.K., I
17 gathered documents from them. Some of the documents have been
18 shredded, apparently. None of them were in the discovery. They -- like I
19 said, they stated the product was defective, and they were paid for by
20 the insurance company. I spoke with Harold. I knew what was going on
21 with his settlement, and how he was removing and replacing all of the
22 existing VK 457's in -- in southern California as fast as humanly possible.
23 Thorpe Design was doing the exact same thing.

24 I also made an analysis of how much it would cost to recall
25 five-and-a-half million based on what they were doing when they're

1 changing them out because five-and-a-half million VK457's is about
2 110,000 homes.

3 Q How did you gain an understanding as to what costs it would
4 take even to replace one of those sprinklers like the one that failed in
5 your home?

6 A Replacing one is fairly easy to figure out. Their list price is
7 like \$80, but the ball price of them is only about \$10. When you get into
8 a scale of five-and-a-half million that are defective, though, \$10 is a lot.
9 And then there was bids on other companies that were doing the
10 removal and replacement had set rates for houses. It was like \$1700.

11 You had to pull a permit, get the fire department out there, put in
12 plans that the new sprinkler heads that Viking had created could be
13 replaced and do just as well as the old, the 457's, and you had to get the
14 homeowners to agree to let you in their house. It wasn't as simple as the
15 original installation, but it was still fairly cheap. And --

16 Q What's the bottom line number you came to?

17 A About \$25 million to -- well, if it was a forced recall, it could
18 be as high as \$200 million, but if they kept going through, the entire --
19 the entire process the way they were doing, it'd be around \$25 million a
20 year. And it's going to take years.

21 Q Did your research indicate or your discussions with any of
22 these other individuals you've talked about indicate that any other entity,
23 other than Viking, was the manufacturer of these sprinkler heads?

24 A This wasn't happening to anyone else. In Harold's trial --

25 MR. CHRISTIANSEN: Objection. Hearsay.

1 BY MR. GREENE:

2 Q It's okay. Just -- you can just give the Judge an
3 understanding as to whether you became aware of whether any other
4 entity, corporate entity, other than Viking was found in your research to
5 be responsible for these failures, other than with Viking?

6 A No. Viking was the manufacturer, and Viking was involved in
7 the entire cover-up.

8 Q Did you have the opportunity, then, to send an email to -- to
9 Danny Simon? Look at this -- this Exhibit 9 on page 1 of Plaintiff's. This
10 is the email dated July --

11 THE COURT: It's Plaintiff's 9, counsel?

12 MR. GREENE: Yes, Judge.

13 THE COURT: Okay.

14 BY MR. GREENE:

15 Q And that's Page 1. We've seen this under a different number.
16 Can you take a glance at this email, Brian. You've seen this before;
17 haven't you?

18 A Yes.

19 Q We talked about this earlier, correct?

20 A Yes.

21 Q Would it be a fair statement that this is the email you sent to
22 Mr. Simon and copied Ms. Ferrel about what you had uncovered?

23 THE COURT: Okay. And this is -- oh, never mind. All right,
24 keep going.

25 THE WITNESS: Yes, I sent this to Mr. Simon and Ms. Ferrel.

1 BY MR. GREENE:

2 Q Would it be a fair statement, too, this contains a good
3 summary of -- a complete summary of what you did?

4 A No. This is a good summary of what I did up until July 25th.

5 Q Sure.

6 A This mess got bigger and bigger and bigger as we
7 progressed. But this showed what I had found out and obviously the 46
8 activations are completely false because on this page you have 157 listed
9 and you have the U.K.

10 Q Do you have an understanding, Brian, that before this -- this
11 email was sent in July of 2017 from the first bit of work that Mr. Simon
12 did on your case until this email, what efforts he had undertaken to
13 undercover the scope of these activations or failures?

14 A None.

15 Q And how do you know that?

16 A He never told me about any. I was keeping the spreadsheet
17 of all the activations. I was adding them that we were using in court. He
18 never added any.

19 Q What information did he share with you, if any, about what
20 he was doing to undercover the scope of these activations or failures of
21 Viking's product?

22 A Nothing.

23 Q How about Ms. Ferrel, the same -- the same question.

24 What is your understanding of what she did to undercover the scope of
25 these failures or activations?

1 MR. CHRISTIANSEN: Judge, I'm just going to object. I don't
2 understand the question; what did they do to undercover? He's asked it
3 three or four times to undercover something.

4 THE COURT: I think he means to uncover; is that what you
5 mean?

6 MR. GREENE: Undercover? Oh, my goodness. Sorry,
7 Judge.

8 THE COURT: Yeah. Did you mean what did they do to
9 uncover?

10 BY MR. GREENE:

11 Q What did they do to discover it?

12 A Ashley summarized the emails prior to this email that had
13 somebody insinuating that there was 93 in California. After this she
14 helped out. When I was looking for documents, she would point me in
15 the right direction of where they were in drop box or a lot of times they
16 weren't in drop box, maybe they didn't upload on the computer or
17 whatever. And then she would -- when I wanted more documents, I
18 would email her about hey, this is missing, we need this. She also
19 helped with some of the motions.

20 When the bigger data dumps came, I kept complaining that the
21 documents were the same with different bates numbers, and it was very
22 confusing to go through them, Mr. Simon and Ms. Ferrel asked me to
23 prove it.

24 I put together a bunch of them that were the exact same
25 documents in different positions. And they started protesting about this.

1 And there was further and further protests ending with Ms. Pancoast
2 actually redoing the documents. And Ms. Pancoast in mid-September
3 said hey, here's the new redone documents with the nice easy
4 searchable list. There used to be 67,000, now there's 40,000 unique
5 ones, that the other 27,000 were duplicates. So, she helped with a lot of
6 that stuff.

7 THE COURT: And when you said she helped with the
8 motions, what motions?

9 THE WITNESS: Well, when they start -- when I first started
10 finding stuff missing in this discovery, they would solicit it back from
11 Viking. Motion's probably the wrong word. Interrogatory, is it, I think is
12 the correct word. I can't say --

13 THE COURT: Interrogatory?

14 THE WITNESS: I'm sorry, I can't say the word properly.

15 THE COURT: Okay. So, you don't mean that you have any
16 knowledge of her filing any motions?

17 THE WITNESS: No, she didn't file. Danny Simon filed the
18 motions.

19 THE COURT: Okay.

20 THE WITNESS: She typed them up. And we edited them
21 together lots of times.

22 THE COURT: And you would what?

23 THE WITNESS: We would edit them together a lot of times.
24 They would send them to me. I would correct any malapropisms or
25 typos. There was a lot of technical terms in this that all the lawyers on

1 the case kept confusing. The biggest one was load versus strength,
2 which is a really important --

3 THE COURT: Okay, Mr. Edgeworth, we don't need to get into
4 that.

5 You edited some motions that were typed by Ms. Ferrel?

6 THE WITNESS: When they were filing stuff with the Court,
7 they would send it to me to see if it was proper what they were saying.

8 THE COURT: Okay.

9 THE WITNESS: I would add things, I would supplement, I
10 would give them listings of houses. I gave them tons of PDF's showing
11 the whole duplicated document thing. And then the worst part that they
12 had done is not just did they duplicate documents, but in -- in series of
13 documents that appeared to be duplicates, there was one document
14 missing from the other discovery dump, which was serious in some
15 cases.

16 The picture that I found that was missing from one bates
17 number dump from the other bates number dump actually had a picture
18 that they were using to show bad insulation as the reason for the
19 activation, and there was a message saying Adrienne moved aside all
20 the insulation to take this photograph. And that wasn't in the other
21 series. It was tons of little stuff like this that came up. I wrote
22 summaries and emailed.

23 BY MR. GREENE:

24 Q All right. Let's move to a different topic for a few minutes,
25 okay? The case settles November 15th of 2017 against Viking. What led

1 up to you as the client deciding to settle that claim?

2 A Just there was -- the whole case was overwhelming. The
3 number was good, it was fair. And I just wanted the whole thing to end,
4 you know. Right after I said I'd accept, I had remorse. I thought we
5 could get them to pay fifteen million because they had subrogated the
6 326 claims that I found and stuffed other insurance companies with the
7 payments.

8 So that alone to them is worth 25 million that they're covering up
9 just from the spreadsheet; because they made all the homeowners'
10 insurance pay for it and then they would pay the fee that you pay with an
11 insurance company, you know; what's it called? You pay like \$1,000 and
12 then the insurance company fixes your house, pays for the rest of it.

13 THE COURT: A deductible?

14 MR. GREENE: Is that deductible?

15 THE WITNESS: Deductible. I'm sorry, I couldn't think of the
16 term. Viking and Zurich would pay the deductibles and then leave the
17 other insurance companies with all the damage. And I've been told that
18 that would --

19 MR. CHRISTIANSEN: Objection. Hearsay.

20 THE COURT: Okay. Sir, can we get back to the point?

21 THE WITNESS: Sorry.

22 THE COURT: The question was, how did you settle this case?

23 MR. GREENE: Yeah.

24 BY MR. GREENE:

25 Q What were the primary considerations and what went

1 through your mind as a client to settle this case?

2 A I wanted it over. I just wanted to put it behind me, just get
3 on, you know, back to construction and do what I wanted to do.

4 Q Because Mr. Simon had given you good counsel to settle for
5 six million; hadn't he?

6 A Yes, definitely.

7 Q Followed that counsel?

8 A Yes, I did.

9 Q Glad you followed that counsel?

10 A Yes, I am.

11 Q This case was your life; wasn't it?

12 A For that period, yes.

13 Q Closure's good; isn't it?

14 A I don't know. I'll let you know when I have closure, but yes,
15 closure's good.

16 Q Let's talk about the invoices for a moment now that the
17 primary case is settled. We'll get into Lange again in a few moments.
18 What role did you have in paying the invoices in this case, Brian?

19 A I looked them over, I signed off on them, and I gave them to
20 our accountant, and he would cut the check; everything except the first
21 invoice I just cut the check myself.

22 Q So, Brian, the Judge has seen evidence who knows how
23 many times and at this hearing, as well, that there were four invoices for
24 fees and costs presented to you beginning in December of 2016 going
25 through September of 2017. Do you have an understanding whether any

1 other -- during that timeframe were there any other invoices sent to you
2 from Mr. Simon's office for you to pay?

3 A No.

4 Q Did you review those invoices before you paid them?

5 A Yes.

6 Q Did you pay them in full?

7 A Yes, I did.

8 Q How long did it take for you to pay those after you received
9 them?

10 A Sometimes the same day.

11 Q Did you have an opportunity to review those invoices, Brian,
12 what the hourly rate was for Danny?

13 A Yes.

14 Q Sorry. Mr. Simon.

15 A Yes.

16 Q And what was that each time?

17 A Five hundred and fifty dollars an hour.

18 Q Did you ever see any of Mr. Simon's entries in which he
19 billed anything other than \$550 per hour?

20 A No, I did not.

21 Q Did you ever get bored and count the number of billing
22 entries that Mr. Simon put on those first four invoices?

23 A No, I did not.

24 Q Okay. Did you get an understanding as to what Ms. Ferrel's
25 hourly rate was in each of those invoices where her time was contained?

1 A Two hundred and seventy-five dollars an hour.

2 Q Every entry?

3 A Every entry.

4 Q Did you pay that invoice in full, all those invoices in full in
5 which her time was on?

6 A Yes.

7 Q How about Ben Miller, he hasn't been all that involved in the
8 handling of this case, so he prepared almost \$6,000 worth of time; is that
9 your understanding, as well?

10 A Yes.

11 Q Did you gain an understanding as to what his hourly rate
12 was?

13 A Two hundred and seventy-five dollars an hour.

14 Q Did he ever bill at any other rate?

15 A No.

16 Q Did you pay those invoices in full?

17 A Yes.

18 Q Brian, we talked about this Exhibit 5. Again, the Judge has
19 seen this a bazillion times. That's the invoice that was produced towards
20 late January of 2018. Did you take the opportunity to review that
21 invoice?

22 A I'm sorry, I don't know which invoice it was. Can I just see it?

23 Q Of course you can. It's kind of thick. I'm not sure if we have
24 the witness binder up there, but.

25 A Oh, is this --

1 Q This is what we -- this is the January 24, 25 --
2 A 24th. I'm sorry. I thought you said January 5th.
3 Q No, I just said January of 2018.
4 A Okay. I apologize. Yes, I know this invoice.
5 Q You've reviewed it front to end?
6 A Not really.
7 Q Okay.
8 A I scanned it.
9 Q Did you gain an understanding after reviewing this exhibit,
10 which is Plaintiff's -- I'm sorry, the Edgeworth Exhibit 5, beginning at
11 page 1, going all the way through page 183? Did you get an
12 understanding as to what Mr. Simon's hourly rate was that he billed on
13 Exhibit 5?
14 A Five hundred and fifty dollars per hour.
15 Q Did you see any, any entry on this invoice regarding Mr.
16 Simon's time in which he billed any other rate than \$550 per hour?
17 A No.
18 Q What's your understanding as to the first date that Mr. Simon
19 had a billing entry in this Exhibit 5?
20 A Can I just see the first page again, please?
21 Q Sure. That's page 1 of it.
22 A May 27th of 2016.
23 Q Do you have a remembrance as to what the last date for his
24 billing entry was or would you care if I showed you that instead?
25 A I'd appreciate the same.

1 Q I'll do that.

2 THE COURT: Are you just referring to Mr. Simon, counsel?

3 MR. GREENE: Yes, right now, Judge.

4 THE COURT: Okay.

5 MR. GREENE: This is page 79 of Exhibit 5. Sticky fingers.

6 BY MR. GREENE:

7 Q In reviewing that, Brian, what's your understanding as the
8 client is the last day that you were billed by Mr. Simon?

9 A It's a little confusing because there's a line item for 135.8
10 hours that has no date, but it appears to be January 8th, 2018, the last
11 dated entry.

12 Q Did Mr. Simon ever explain to you what date this one
13 hundred and thirty-five hours and eight tenths of a minute were spent
14 reviewing these emails?

15 A No. That's actually something I went looking for through
16 the filings and I haven't found how that breaks up at all. It has no date.
17 It's just a line item for 135 hours. I can find no other explanation.

18 Q In your review of the four invoices you paid, do you recall
19 being billed for and paying for review of emails?

20 A It's listed in many, many of the invoices already paid, yes.

21 Q But no explanation?

22 A No, sir.

23 Q Did you gain an understanding after reviewing Exhibit 5,
24 turning to Ms. Ferrel now again --

25 A Okay.

1 Q -- when her work on this case began?

2 A If I could see the document, it would help me.

3 Q Of course. Not a memory test, except when it is. I'm trying
4 to find that.

5 A December 20th of 2016.

6 Q Do you remember speaking with Ms. Ferrel back in
7 December of 2016 about her involvement in this case?

8 A No.

9 Q Was it ever communicated to you as to when she began
10 working on your case?

11 A No, I don't remember. The first time I met her, probably in
12 January, I would think.

13 Q Nonetheless, she did good work --

14 THE COURT: January of what year?

15 THE WITNESS: I apologize. 2017.

16 BY MR. GREENE:

17 Q Nonetheless, she did good work, too, for you; didn't she?

18 A Yeah. I think she did a very admirable job.

19 Q Do you know when the last day she pulled on your file as a
20 client?

21 A If I could see the invoice.

22 Q Of course you can.

23 A I'm sorry, I went over these and I just don't remember the
24 last days. January 2nd of 2018.

25 Q Brian, last off, did you ever have any communications with

1 him about his involvement in your case?

2 A No. I was forwarded an email of research that he did,
3 though, in August 1st of 2017 it was a Word document about punitive
4 damages, and Mr. Simon asked me to look at a page on it and see if I
5 had evidence on three factors; oppression, malice, and fraud, I believe it
6 was. And that was Mr. Miller had -- his name was on that document.

7 Q Do you know Mr. Miller personally?

8 A I think I spoke with him. I think he's the guy that's a Batman
9 fan. He had an office with a lot of Batman stuff, I believe.

10 Q Well, that's quite a way to be known. He billed about \$5995;
11 is that correct?

12 A Yes.

13 Q You don't have any beef with the work that Ben did; do you?

14 A No, not at all.

15 Q He did a good job; didn't he?

16 A No. Or yes, he did a good job. I have no complaints.

17 Q Brian, we talked a little bit earlier under cross-examination
18 the choices you made to pay these legal fees not out of your own pocket,
19 but by getting loans. You said that was prudent.

20 A Yes.

21 Q I'm financially dumb, so help us out. Is the -- what was your
22 decision-making process to determine that that was -- that was prudent?

23 A There's concepts in finance that you should match your -- the
24 debt that you take out with the asset that it is. You know, I think the
25 simplest explanation of this is, should I mortgage my house to buy a car?

1 And the answer's no. The two assets don't match in duration, the car
2 doesn't last, you know, 30 to 100 years, the house does. And you put
3 your house at risk of being homeless.

4 So that would be a non-prudent decision. So, it is prudent to
5 basically match the debt with the purpose of the debt. In this case the
6 purpose of the debt was to repair the house and pursue the claim.

7 Q So you had choices how to get loans. Tell the Judge briefly,
8 because again she's familiar with this case, who were the choices that
9 you went to for loans to pay your fees and costs?

10 A I went to Wells Fargo. They originally -- they've been our
11 bank for 20 years in business. We've been a great client. And I told my
12 personal banker the entire situation, and he said this will never get
13 through underwriting, don't even bother.

14 My other choices were to sell long-term investments, some of
15 which were tied up in partnerships with my brother and another minority
16 investor. He was a smaller investor, but still a partner in the business.
17 And asking them to dividend me out my money or I could take debt.
18 And I borrowed money from my mother-in-law and from my high school
19 friend who runs American Grating, Colin Kendrick.

20 Q Were these loans or did the interest you were paying on
21 them have any impact upon your wellbeing during the litigation?

22 A The loans would be paid back at the end of the litigation.
23 And if the litigation failed, obviously I would be scrounging around to
24 figure out how to pay them off. But it created a lot of stress, yes.

25 Q Did the existence of these loans or maybe the existence of

1 the specific lenders of the loans have any bearing upon your decision as
2 the client to resolve your claim against Viking -- I'm sorry, Viking.

3 A Yes. Sorry. Yes. Yes, they did.

4 Q And how so?

5 A Well, it was causing stress and tension and it was something
6 overhanging me, and it was one reason that the relief of the settlement I
7 could pay them all off.

8 Q When the case did settle and undisputed funds were released
9 to you, did you pay these loans off?

10 A Yeah. Wells Fargo released the funds the same day. I
11 believe it's called Bank of Nevada the check was written on and Wells
12 Fargo said we would -- they would release it the same day. I paid both
13 my mother-in-law and Colin off the same day with all the interest
14 accrued on the loans.

15 Q Brian, let's shift gears.

16 MR. GREENE: Would now be a good time to shift gears? Do
17 you need to take a break, Judge?

18 THE COURT: Probably. We should probably just take our
19 afternoon recess at this time. Okay. So, we're going to just take our
20 afternoon recess for 15 minutes and we will be back at 20 to, okay?

21 COUNSEL: Thank you, Your Honor.

22 THE COURT: Okay.

23 [Recess at 3:25 p.m., recommencing at 3:43 p.m.]

24 THE COURT: All right. So, we'll go back on the record in
25 Edgeworth Family Trust v. Lange Plumbing and Edgeworth Family Trust

1 vs. Daniel Simon.

2 Mr. Greene, whenever you're ready.

3 MR. GREENE: Thank you, Judge. Yes, thank you.

4 BY MR. GREENE:

5 Q I need to go back to your -- these invoices that you paid and
6 the ones that were presented, as well, and wrap up on that, okay, Brian?

7 A Yes.

8 Q Do you have an understanding as to how much you paid Mr.
9 Simon in attorney's fees in the original first four invoices that were
10 presented to you throughout the litigation of those -- we'll call them the
11 four?

12 A Three hundred and eighty-seven thousand.

13 Q And change?

14 A And some change, yeah.

15 Q Okay. Were any other invoices for fees ever presented to
16 you by Mr. Simon?

17 A At the mediation, November 10th, the second mediation, I
18 was given an invoice for approximately \$72,000 that was for fees. And
19 then when we left mediation, I couldn't find it. I assume somebody just
20 picked it up with all the papers on the table.

21 Q I'm going to show you Exhibit -- Plaintiff's Exhibit 9. And that
22 is page 2 of 9. It's an email to you -- from you, excuse me, to Danny
23 Simon copying Peter Shin. Who's Peter Shin?

24 A He's an accountant that pays invoices for my companies.

25 Q Let me show you this exhibit. Do you recognize this email,

1 Brian?

2 A Yes, I do.

3 Q Describe this email to the Judge. First read it for her, if you
4 would, please, and then describe the circumstances.

5 A I know I have an open invoice that you were going to give me
6 at a mediation a couple weeks ago and then didn't leave with me. Could
7 somebody in your office send Peter [copied here] any invoices that are
8 unpaid, please.

9 Q So, as of November 15th, you acknowledge you owed more
10 fees to Mr. Simon, correct?

11 A Yes, correct.

12 Q Has that always been your position?

13 A Yes.

14 Q What does November 15th coincide with ,Brian?

15 A That night is when the mediator's settlement agreement,
16 Floyd Hale, the mediator, said the whole settlement was -- the mediator's
17 agreement was settled on by both parties. So, it's basically the Viking
18 settlement day.

19 Q Did Mr. Simon ever hit reply and type in a response to you?

20 A No.

21 Q Did Mr. Shin, your accountant, ever receive another invoice?

22 A No.

23 Q Did you ever receive another invoice in November from Mr.
24 Simon?

25 A No.

1 Q December of 2017, either?

2 A No.

3 Q If you would have received one as you had asked, what
4 would you have done?

5 A I would have checked it over. If everything was in order I
6 would have scribbled my signature on it and give it to Peter to pay.

7 Q Which you had done each of the four times previously?

8 A Correct.

9 Q Paid it?

10 A Correct.

11 Q In full?

12 A Correct.

13 Q I'm going to look at Exhibit 9, pages 7 through 12, Your
14 Honor, and Brian.

15 THE COURT: Okay.

16 BY MR. GREENE:

17 Q Brian, this is a side-by-side comparison of new bills, new bill
18 hours, paid bills hours, daily total. Do you recognize this document if I
19 just put it on here?

20 A Yes, I do.

21 Q And how do you recognize this document?

22 A I scanned the bills that were presented in late January of
23 2018 attached to a motion of some sort. I scanned them in and then I
24 summed them and then I sorted them by date.

25 Q Would it be a fair assessment to -- to say that you compared

1 the entries on the original four invoices that you had paid with the
2 entries on the new invoice that was attached to Mr. Simon's motion to
3 adjudicate?

4 A Yes. I took the hours that had appeared on the motion to
5 adjudicate in January of 2018. I put them all in the column that says
6 New Bill Hours. And then the bills I had paid previously, the four bills
7 that we had discussed, is in the next column. And then I just summed
8 them by date how many hours for each lawyer. I did it for Daniel Simon,
9 and I did it for Ashley Ferrel.

10 Q Brian, how long did it take you to do this comparison
11 contrast and to prepare this document that's now Exhibit 9?

12 A Probably 20 or 30 hours because the problem was it was just
13 scanned in a lawsuit instead of presented in a way that you could get the
14 data out. So, in hindsight I shouldn't have tried to salvage the
15 document, I should have just hand-typed them all in, but I tried to
16 change the PDF back into an excel file.

17 Q In comparing the invoices, the four that you had been
18 presented by Mr. Simon and paid in full for his fees and the costs
19 reimbursed, did you make any comparisons at all as to what these -- this
20 new invoice from January of 2018 did or didn't do in relation to all those
21 prior billing dates that had been covered on those four invoices?

22 A Yes. The original invoices that have already been paid
23 summed around \$387,000. For those same days, the new bill was
24 adding around another \$300,000, approximately. And then from the date
25 of the last bill I received in late September 2017 through the end of this

1 billing statement there's about \$400,000 in new additional fees, including
2 that one huge one for 135.8. I put that in the new date billing because it
3 didn't have a date on it.

4 Q So just to be clear, was the 135 hours reviewing emails
5 without a date, was that in the original four emails -- I mean, sorry, the
6 four invoices or was that in the new superbill?

7 A That was in the new superbills.

8 Q In looking at this document, I'd like to highlight a few of the
9 days that -- that you also highlighted, okay?

10 A Okay.

11 Q Going to page 10 of Exhibit 9, so just to get a roadmap, fair
12 to say that this column on the left pertains to Danny Simon, Daniel
13 Simon?

14 A Yes.

15 Q The one on the right Ashley Ferrel? Sorry, I'll bring that
16 down.

17 A Correct.

18 Q Okay. So, let's look at Mr. Simon's hours for August 15th. In
19 preparing this did you review August 15th on both the original invoices, I
20 guess the original invoice --

21 A Correct.

22 Q -- for this date, together with the new January of 2018 bill?

23 A Yes, I did.

24 Q And what did you notice on August 15th, 2017, Mr. Simon
25 did?

1 A I noticed that day he had already billed and been paid for
2 seventeen and a half hours. And then on the new bill that was submitted
3 on 2018, January, there was another hour, almost two hours, 1.9 hours.

4 Q Did Mr. Simon ever give you an explanation on August 15,
5 2017, or any day thereafter as to why he was adding another 1.9 hours to
6 the 17.5?

7 A No.

8 Q The next date, a couple of dates, August 20th of 2017 and
9 August 21 of 2017, do you see those?

10 A Yes.

11 Q On the August 20 of 2017 there is nothing -- nothing charged
12 on the original invoice, correct?

13 A Correct.

14 Q That's what the middle column represents?

15 A Correct.

16 Q And then on that -- on that left-hand new bill hours, that's
17 5.65; do you see that?

18 A Yes.

19 Q Off to the left it says same work; do you see that?

20 A Yes.

21 Q Explain that to the Judge, please.

22 A The descriptions on those two days, if you look at the 5.65,
23 that's on the new January 2018 presented bill. And the 675 on the old
24 already paid bill, the descriptions are quite similar, so to me it looks like
25 a dup. I don't know.

1 THE COURT: Well, the 675 goes with August 21st, right?
2 That's a different day.

3 THE WITNESS: Yes, ma'am.

4 THE COURT: Okay. I'm confused.

5 BY MR. GREENE:

6 Q So, yeah, make sure that's not unclear for us. Are you saying
7 that the entry for -- the new entry for 8/20/2017 looks the same as the one
8 that was previously billed and paid for 8/21/2017?

9 A Yes. The second column is the previous paid bill. So, if you
10 look at the description of the work on the bill, it seems quite similar to
11 the description of the work on the new bill on the previous day. So, it
12 seems like it's been -- it's the same work already been billed for, but it's
13 being billed again in the January 2018 bill.

14 THE COURT: So, it appears to be the same work?

15 THE WITNESS: The descriptions are very similar.

16 THE COURT: Okay.

17 BY MR. GREENE:

18 Q Let me move this page aside, this document aside, Brian, and
19 just go ahead and take a look at this is --

20 THE COURT: Well, before you do that, Mr. Greene --

21 MR. GREENE: I'm sorry, Judge.

22 THE COURT: -- I do have a question. Why do some of these
23 have boxes around them and other ones don't?

24 THE WITNESS: I just put boxes around the ones where I
25 actually searched through the bills to get the description of the work

1 performed. On the new bill that was attached to the lawsuit and the old
2 bills that were already paid; because this new bill that was presented
3 in --

4 THE COURT: No, I understand that, Mr. Edgeworth. What's
5 the purpose of the boxes? So that's the ones where you actually looked
6 into the purpose of the work?

7 THE WITNESS: Yes.

8 THE COURT: Okay.

9 And then how -- what is day two, what does that mean?
10 Because some of these there's like a one day difference, some of them
11 there's a couple days difference from day one and day two on the same
12 line. What is the purpose of day two?

13 THE WITNESS: Of why I boxed them, Your Honor?

14 THE COURT: No. Like if you look at the one from July 9th,
15 there's July 9th on date one and then on date two it says July 10th. Mr.
16 Greene, can you move that down so he can see that?

17 MR. GREENE: You bet.

18 THE WITNESS: July 9?

19 THE COURT: See on July 9, right next to it, it says July 10th.
20 But then the next line underneath July 9th also says July 10th. What is
21 the purpose for the dates that are in the box labeled day two?

22 THE WITNESS: Yes, Your Honor. On some of the bills,
23 the old bills, it had from 7-9 to 7-10. In this case, the one you inquired
24 about, there's a range on the bills of dates. It doesn't define the exact
25 date that the hours were performed. So, I put in just to match up with

1 the actual descriptive bills where they have all the line items of the
2 hours.

3 THE COURT: But then on 7-10 there's a new entry, the
4 box -- the line right underneath that?

5 THE WITNESS: Yes. Yes. On the bill it says 7-9 to 7-10. So,
6 I assume it's work performed on those two days.

7 THE COURT: Right. But if you look right below the 7-9, you
8 have another line for 7-10. So, is there a different bill that only describes
9 7-10?

10 THE WITNESS: There might be, or it might be a typo on my
11 part, ma'am.

12 THE COURT: No, but I mean you do that a lot because on the
13 7-11, 7-12 you do the same thing. So, what does that mean? Like what
14 is the difference I guess is my question? See, you got 7-11 to 7-12 and
15 then right by 7-11 you got 7-12 again.

16 THE WITNESS: It might be a merging problem when I
17 merged the sheets together because the one sheet might have had the
18 range of dates and then the new bill might have only had a single date.
19 And so, it put in an additional line where I should have moved it back up.
20 It's probably an error.

21 THE COURT: So, but I mean that's done several times
22 throughout this document. So, is it an error on all those lines?

23 THE WITNESS: On all the lines that would be duplicated
24 problems in error, yes, Your Honor.

25 THE COURT: Okay. And then my next question -- sorry, Mr.

1 Greene, but I just have some questions about this.

2 Like for instance if you look at the line at the top that says
3 630, you have paid bills, 4.25 hours, new bills 1.35. Is that 1.35 extra or
4 does the new bill have 1.35 and then the bill that you paid had 4.25 for
5 the same work?

6 THE WITNESS: The old bill that I already paid at 4.25, the
7 new bill presented in January of 2018 was putting an additional 1.35 on
8 that same date.

9 THE COURT: So, everything under the new bill hours is
10 additional time that was on the January bill that you got?

11 THE WITNESS: Yes, Your Honor.

12 THE COURT: Okay.

13 MR. GREENE: Any other questions, Judge?

14 THE COURT: No, no. I just had that.

15 MR. GREENE: Okay.

16 BY MR. GREENE:

17 Q Let's put a couple of these side-by-side, Brian, okay? We're
18 looking at that August 20 and August 21, those two dates, okay?

19 A Okay.

20 Q This is Exhibit 5, page 38. That is the August 20 day. You
21 can see that the entries start a little bit above that punch hole in the
22 middle of the page, correct?

23 A Yes.

24 Q Does this particular --

25 THE COURT: Can you move that down a little bit, Mr.

1 Greene --

2 MR. GREENE: Of course.

3 THE COURT: -- because mine starts at 8/18, and he can't see
4 that?

5 MR. GREENE: Sure.

6 THE COURT: Okay. There you go.

7 BY MR. GREENE:

8 Q It starts right up there --

9 MR. GREENE: I'm sorry. The actual date for the 20th,
10 Judge --

11 THE COURT: Okay. I thought -- I thought you were talking
12 about the whole page. I'm sorry.

13 MR. GREENE: I'm sorry.

14 MR. VANNAH: What are we looking at? I'd like to know what
15 we're looking at. I have no idea.

16 THE COURT: I think we're starting on August 20th.

17 MR. VANNAH: Of what? What is this, a new bill, the old bill?

18 THE COURT: Exhibit 5, Mr. Vannah.

19 MR. GREENE: Exhibit 5 is the new bill.

20 MR. VANNAH: Thank you.

21 MR. GREENE: You bet.

22 MR. VANNAH: New bill meaning the one from January 2018.

23 THE COURT: Yes.

24 MR. GREENE: Exactly.

25 MR. VANNAH: In addition to what the old bill was?

1 MR. GREENE: Exactly.

2 MR. VANNAH: All right.

3 BY MR. GREENE:

4 Q Brian, in looking at this -- at this bill and nicely cross-
5 examined by your boss, in looking at this exhibit on this page, do you
6 see that duplication that you had mentioned in your prior testimony to
7 the Judge with the same work versus old, new?

8 A Yeah. The descriptions you'd have to hold the two bills side
9 by each, the old one that's already paid. The descriptions seem very
10 similar in my opinion to the ones that were already paid.

11 MR. GREENE: Judge, I brought by a witness binder just
12 because we have limited space on this Elmo.

13 THE COURT: Okay.

14 MR. GREENE: Do you think we could give him the witness
15 binder that I'm hoping that my office staff dropped by?

16 THE COURT: Do we have a witness binder? I know we got
17 the admitted version and then we got a copy. Is it supposed to be my
18 copy?

19 MR. GREENE: Well, yes, you have one. I thought we left one
20 for the --

21 THE COURT: Right. We got one delivered for me and one
22 delivered that you guys wanted admitted. I don't think we got an
23 additional one.

24 MR. GREENE: This is -- this is Plaintiff's or the Edgeworth's
25 exhibit binder.

1 THE COURT: Okay.

2 MR. GREENE: It has the Exhibits 2 and 5 that we're looking
3 at and 9.

4 THE COURT: Okay.

5 MR. GREENE: Any objection to having --

6 THE COURT: Mr. Christensen, any objection to him giving
7 the witness this binder?

8 MR. CHRISTENSEN: No, ma'am.

9 THE COURT: Okay. That would actually help. Thank you,
10 Mr. Greene. Sorry, I just didn't realize. I just didn't know we had one.

11 MR. GREENE: So many pages going about.

12 BY MR. CHRISTENSEN:

13 Q So listen to the page numbers that are given to you, Mr.
14 Edgeworth, and then we can go from there, okay?

15 A Yes.

16 Q So we're looking at Exhibit 5 of the new bill. And we're
17 looking at pages 38 and 39. Those are the two pages of Exhibit 5 that
18 cover the billing entries on -- that are listed for August 20th and August
19 21st.

20 [Pause]

21 Q And then if you look at Exhibit 2, Brian --

22 A Exhibit 2.

23 Q -- at page 24, that's the only page of that original invoices
24 that has an entry for August 21st.

25 A I'm sorry, I can't find the page numbers.

1 Q They're so small, it's annoying, I know.

2 MR. GREENE: May I approach, Judge?

3 THE COURT: Yes, please.

4 THE WITNESS: Okay. So, this is the page here?

5 BY MR. GREENE:

6 Q Yeah. You're in Exhibit --

7 A 24, Exhibit 2?

8 Q Uh-huh. And you can look off to the side with the dates.

9 A Can I open the binder and take the page out?

10 Q Of course you can. Make sure you don't get them out of
11 order.

12 A Okay. Okay.

13 Q So, you indicated on Exhibit 9, page 10, that there was the
14 same work on the August 20th line and then old/new on the August 21
15 line. And we're curious as to what duplicative old or same or new work
16 that you had seen that were included on the new January 2018 bill that
17 you'd already paid from the prior invoice.

18 A Yes. If you look on Exhibit 5, page 38, you can see that on
19 the 20th all of the descriptions are reviewing and -- receiving, reviewing,
20 and analyzing emails from client. And then if you look back to the
21 already paid bill, it just appears that it was already billed for. It says on
22 8-21, finalize, reply to opposition to motion to compel client emails,
23 Pancoast emails, discussion with client.

24 THE COURT: What is the already paid bill, what exhibit
25 number is that?

1 MR. GREENE: Judge, that is Exhibit 2 --

2 THE COURT: 2.

3 MR. GREENE: -- page 24.

4 MR. VANNAH: Can you show what he's talking about so we
5 can all look at it together, the right date and the right entry?

6 THE COURT: Can you put that -- can you put that on the
7 screen, Mr. Greene?

8 MR. GREENE: I just did, Judge, yes.

9 THE COURT: Okay. Okay. So, on the 20th -- the 21st, you
10 mean? I'm sorry, what page, did you say 24?

11 MR. GREENE: Yes, Judge.

12 THE COURT: In Exhibit 2?

13 MR. GREENE: Yes.

14 THE COURT: Mine doesn't have an entry for 8-20. It goes to
15 8-21.

16 MR. GREENE: Correct. And that's what Mr. Edgeworth is
17 telling you, that the entry that was put on 8-20 --

18 MR. CHRISTIANSEN: Objection to counsel testifying, Judge.
19 He can ask a question.

20 MR. GREENE: Well, if you want it clarified for me, Judge, if
21 you want to ask the witness, that's fine. I'm just trying to help out here.

22 THE COURT: Okay, I see it. So, he -- on 8-21 the finalized
23 reply to the opp to the motion to compel client emails, Pancoast emails,
24 discussion with client, and then you have him review the file is what he
25 took to be duplicative of something on 8-20? Of what on 8-20, Mr.

1 Edgeworth?

2 THE WITNESS: Of the new bill --

3 THE COURT: Of the new bill.

4 THE WITNESS: -- that was presented.

5 THE COURT: Where does that duplicate what's in the old
6 bill?

7 THE WITNESS: All the new entries are received, reviewed,
8 and analyzing from client or the vast majority, draft and sending note to
9 client, receive, review, analyzing from client.

10 THE COURT: Okay. So, you think that that's a duplicate of
11 client emails?

12 THE WITNESS: It appears to be.

13 THE COURT: Okay.

14 THE WITNESS: But I can't know for sure.

15 THE COURT: Okay.

16 MR. CHRISTIANSEN: I'm sorry, Judge, I just didn't hear the
17 last part of what he said.

18 THE COURT: He said he can't know for sure.

19 THE WITNESS: I cannot know for sure.

20 MR. CHRISTIANSEN: Oh, thank you. That's what I
21 suspected.

22 BY MR. GREENE:

23 Q Brian, looking down at Exhibit 9, your summary, the easier
24 way to look at these, page 10, there's an entry of 9-11-2017.

25 MR. VANNAH: Can't see it.

1 BY MR. GREENE:

2 Q Do you see that?

3 A Yes.

4 Q You also have a note in the margin; you're referencing with
5 the same notes, question mark.

6 A The similar situation to as above. I just audited random
7 things, and it appears that the two of these, if you look kitty-corner, the
8 540 on 9-11, seems to have the very similar notes to the already paid
9 portion on 9-12 of 2017 on the other bill.

10 Q Did Mr. Simon ever explain to you why on his original
11 invoice for this date that you had paid four hours and seventy-five
12 minutes' worth of time -- sorry -- 4.75 hours' worth of time, why an
13 additional 5.4 hours were added to that date that weren't on the original
14 invoice?

15 A When the new invoice was submitted, there really was no
16 information provided whatsoever, so you couldn't reference anything.
17 That's why I'm saying I don't know. The same notes, it seems very
18 similar. I'd like to know more. You know, this is generally when you get
19 a bill and you see stuff like this, you'd say hey, I think you might have
20 made a mistake here, guys, and then they would come back to you and
21 say oops, sorry, we did, or no, no, we didn't, that's separate.

22 Q Just while we're on this, Brian, we've heard that Mr. Simon's
23 office doesn't have billing software. We get that. They're not an
24 insurance defense firm. You didn't think they were; did you?

25 A No.

1 Q But did he take notes at the depositions in which you were
2 present with him on?

3 A Yes.

4 Q Did he take notes in court?

5 A Yes.

6 Q What other opportunities did he take notes with you when
7 you were present?

8 A Sometimes in his office when he was on a call with the other
9 attorneys he would write on a pad or in a book.

10 Q Was he making notes of things as they were said?

11 A I believe so.

12 Q Did you ever try to get a challenge doing that?

13 A No. No information was provided on the new bill or the
14 sources of how they compiled it or anything. The most information we
15 ever got was about the costs. When I asked for the old invoices of the
16 costs, you informed me that -- well, you forwarded Mr. Christensen's
17 email saying that when we went to get the invoices that you requested,
18 we discovered a \$2750 error, the new costs are 68,800 and change.

19 But then he wouldn't tell us what the \$2750 were, which made
20 reconciling the costs even difficult. And just last week I found an invoice
21 for \$1700 of the costs that had already been paid that has another case's
22 name on it and it's addressed to Ben Miller, not to Daniel Simon, who we
23 already paid that. So, when you don't get clarification or a little bit of
24 guidance or notes on how you do stuff, you can only assume.

25 Q Thank you. Let me turn to page 11 of Exhibit 9, the next --

1 the next three boxes that you have highlighted regarding Mr. Simon.

2 You see the October 17, 2017 date?

3 A Yes.

4 Q How much did he bill you originally on that -- on that date?

5 A I'll never know. The bill that I was presented at the mediation
6 to was never given back to me when I requested it, so I'll never know
7 what he billed me originally.

8 Q Would it be fair to say did anything happen -- tell me, what is
9 your understanding as to the last billing entries that was included in the
10 invoice that you would pay for Mr. Simon?

11 A I'd have to look at the final bill because they didn't match
12 attorneys, so that the September, the late September bill, will have a
13 couple different dates on it.

14 Q Do you remember when you paid that late September of
15 2017 bill?

16 A No, but I would have paid it immediately. It was a large one.

17 Q There have been some representations and court filings that
18 that included time through November 22nd, 2017. Do you have any
19 reason to dispute that that's the last billing date for one of the original
20 four invoices that you had paid Mr. Simon in full for?

21 A I believe you misspoke. I think you meant September that
22 had billing entries. You said November.

23 MR. GREENE: If I said November, Your Honor --

24 THE COURT: You did.

25 MR. GREENE: -- sorry. Sorry, Judge.

1 THE COURT: You did. I was confused, as well.

2 THE WITNESS: So, no, I don't have any reason to dispute
3 that the last billing entry was probably September 22nd. We could
4 actually look at this because you just find where the zeros end and that's
5 where it would be.

6 THE COURT: And that was going to be my question --

7 MR. GREENE: Sure.

8 THE COURT: -- Mr. Edgeworth. It appears that about
9 September 20th you start putting zeros. And you just testified that you
10 don't know how much you were billed for October 17. So, when you put
11 a zero in here, where did that number come from?

12 THE WITNESS: Well, because I didn't have a bill --

13 THE COURT: Okay.

14 THE WITNESS: -- so the left column is --

15 THE COURT: No, I get that Mr. Edgeworth. Can you -- Mr.
16 Edgeworth --

17 THE WITNESS: Yes.

18 THE COURT: -- we're asking very simple questions --

19 THE WITNESS: Okay. Sorry, ma'am.

20 THE COURT: -- if you could just stick to that, otherwise we're
21 going to be here until Friday with you testifying. So, when you put a
22 zero, that's because you don't know because you never got a bill?

23 THE WITNESS: Well, I did receive a bill for that date,
24 but --

25 THE COURT: October 17th?

1 THE WITNESS: Yes. And the mediation, the second
2 mediation on November 10th I was given a bill at the start of the
3 mediation to put in the damages spreadsheet, but at the end of the day it
4 wasn't there. That's the bill I'm emailing Mr. Simon and Ms. Ferrel about
5 on the 15th of November saying hey, you gave me a bill a couple weeks
6 ago at the mediation, I don't have it, can you please send it to Peter.

7 THE COURT: Okay. So, you have never -- so the reason you
8 have zero in here is because that was on the bill you got at the
9 mediation, but you didn't receive it?

10 THE WITNESS: No. I received a bill at the mediation. When
11 I left, it wasn't with my papers.

12 THE COURT: Okay. So, you don't know what happened to
13 it?

14 THE WITNESS: Exactly. So, I have no idea on that date what
15 might have been there.

16 THE COURT: So, when you put zeros, though, on these
17 columns leading all the way to January 8th of 2018, when did the bill that
18 you gave at the mediation, when did it stop?

19 THE WITNESS: I think it stopped, I don't know, like a few
20 days before the mediation is usually -- the earlier mediation I got a bill
21 just before, too. Usually when I got a bill --

22 THE COURT: Okay. Do you know what date it stopped, Mr.
23 Edgeworth?

24 THE WITNESS: No, no.

25 THE COURT: You don't know. Okay. So, when you put

1 these zeros in here, it is possible that this bill that was handed to you at
2 the mediation had some time on it for these days, but you don't know
3 where the bill is and it never got duplicated, so that's why there's zeros
4 here?

5 THE WITNESS: Yes, ma'am.

6 THE COURT: Okay.

7 BY MR. GREENE:

8 Q It never got duplicated, Brian, because you asked for it, it's
9 Exhibit 9, page 2, you asked for it and it wasn't given to you; was it?

10 A No. Nobody replied to me, no.

11 Q Okay. Let's take a look at some of Ms. Ferrel's time on
12 this -- on this Exhibit 9, okay?

13 A Okay.

14 Q Hers is now on this right-hand portion of this; would you
15 agree?

16 A Yes.

17 Q When did you first meet Ms. Ferrel; do you know?

18 A No, I do not.

19 Q Again, we talked about this, but any reason to dispute that
20 the first billing entry that she included on this, on this new invoice of
21 January 2018, was dated, backdated to December 20th of 2016?

22 A That is correct.

23 Q So Ashley could have been working -- I'm sorry -- Ms. Ferrel
24 could have been working for Mr. Simon at this time, you just don't know,
25 correct?

1 A Correct.

2 Q Obviously, she was because she's billing with him; can we
3 make that assumption?

4 THE COURT: Can you make that assumption, Mr.
5 Edgeworth?

6 THE WITNESS: Yes.

7 BY MR. GREENE:

8 Q Let's go to a couple of the boxed out items. And, again, this
9 is going to be page 10 of Exhibit 9.

10 THE COURT: Page 10, counsel?

11 MR. GREENE: Yes. Yes, Your Honor.

12 BY MR. GREENE:

13 Q Do you see what we're looking at in this portion? You have
14 three dates highlighted, the 14th, 15th, and 16th of July?

15 A Yes.

16 MR. VANNAH: August.

17 MR. GREENE: August. Golly.

18 BY MR. GREENE:

19 Q And what caused you to pay attention to these particular
20 three dates in August of 2017?

21 A It's just -- it's another anomaly. The new bill is almost
22 doubling the already paid bill. So, you're claiming that you didn't bill
23 half of the hours that date, it seems like an anomaly. And three days in a
24 row.

25 Q Brian, in your time spent at the law firm of Daniel S. Simon,

1 how would you describe your interactions with Ms. Ferrel once you did
2 get introduced to her; any issues working on your case?

3 A I think we had a good interaction.

4 THE COURT: What did you say, Mr. Edgeworth?

5 THE WITNESS: I think we had a good interaction.

6 THE COURT: Okay.

7 BY MR. GREENE:

8 Q At any time you were interacting with Ms. Ferrel in that good
9 way, did she ever indicate to you, Brian, why she was able to keep track
10 of seven hours of her time on that August 14, 2000 invoice that you paid
11 in full, but was unable to keep track of 8.6 hours that then added to the
12 December -- I'm sorry, the January of 2018 invoice?

13 A No.

14 MR. CHRISTIANSEN: Well, Judge, I'm going to object. He
15 keeps asking why nobody from Mr. Simon's office explained in January
16 of 2018 to the witness a bill. It's because Mr. Greene sent Mr. Simon's
17 office an email saying don't talk to him ever again.

18 MR. GREENE: That's also a speaking objection. That's not
19 what I asked him. Your Honor knows that. I'm asking at any time did
20 Ms. Ferrel ever explain to him in their interactions why she was unable
21 to originally write the time down and why she chose to add it on.

22 THE COURT: Well, I think you have to rephrase the question,
23 Mr. Greene because they have -- there is the letter that says only
24 communicate to you and Mr. Vannah that surfaced in late November --
25 I'm sorry, I'm mixing up the dates -- between November 27th and

1 December 7th at this point. But there's that letter that surfaced. So, we
2 can all agree, everybody in this room, that there's been those
3 communication directly.

4 As a matter of fact, I asked your client about it. There's been
5 no communication between Mr. Simon or any member of his firm and
6 your client that day. So, if you could reask the question as to if she told
7 them that when they were still talking to them without you and Mr.
8 Vannah.

9 MR. GREENE: That's really where I'm going, Your Honor.

10 THE COURT: Okay.

11 MR. GREENE: So, I'll try and speed it up.

12 THE COURT: Okay. Yeah, if you could just rephrase the
13 question.

14 MR. GREENE: Sure.

15 BY MR. GREENE:

16 Q So let me go on to the next entry. You already answered
17 that, the communications you had regarding the August 14, two
18 thousand -- how about August 2015 date, originally paid how much,
19 Brian?

20 THE COURT: August 15th you mean?

21 MR. GREENE: Yes, Judge.

22 THE COURT: Okay. You said 2015.

23 MR. GREENE: Oh, man, I --

24 THE COURT: It's okay. It's late, Mr. Greene.

25 MR. GREENE: What a day, what a day.

1 THE COURT: August 15, Mr. Edgeworth.

2 THE WITNESS: Originally, I paid eight and a quarter hours.

3 BY MR. GREENE:

4 Q Did Ms. Ferrel ever explain to you why she was unable to
5 keep full track of her time for tasks allegedly performed that day?

6 A No.

7 Q What about August 16, 2017, we have -- how much did you
8 pay originally?

9 A Originally, I paid six and a half hours for that day.

10 Q And did she ever tell you why she was unable to keep track
11 of that additional 8.05 hours that she added in the January 2018 invoice?

12 A No.

13 Q So we have the next entry of September 8, 2017.

14 A Could you just move the page up on the projector, please?

15 Q Of course I can. See that better?

16 A Yes, sir.

17 Q Originally paid Mr. Simon for how much of Ashley's time
18 that date?

19 A Seven and a quarter hours.

20 Q And the new entry is for the January of 2018 bill?

21 A Thirteen and -- a little bit more than thirteen and a half more
22 hours.

23 Q For a total of?

24 A 20.80 hours.

25 Q Did Ms. Ferrel ever explain to you at any time why she was

1 unable to properly account for all of her time from September 8, 2017?

2 A No.

3 Q Did she ever tell you at any time before December of 2017,
4 hey, you know, and I have to add some time because I was unable to
5 capture some of my time for September 8, 2017?

6 A No.

7 Q What if she had said something like that?

8 A If it seemed like an honest mistake, I would have told them to
9 bill me for it.

10 Q How about July -- I'm sorry, September 13, 2017, that's the
11 bottom entry on this, originally paid how much, Brian?

12 A Eight and three-quarter hours.

13 Q And the new invoice from January of 2018 contained what?

14 A 14.1 hours.

15 Q For a total of what?

16 A 22.85 hours.

17 Q Did you have any concerns about 22.85 hours billed in one
18 day?

19 A Yes. That's why I circled it.

20 Q How so? What raised your ire?

21 A It's just -- it's beyond improbable that that's possible for you
22 to have that many billable hours in a day, let alone be at work for that
23 many hours in a day. It's very improbable.

24 Q Did she explain to you any time when you were
25 communicating with her why that happened?

1 A No.

2 Q That she had any difficulties keeping track of her time then?

3 A No.

4 Q When you were -- did Ms. Ferrel come with you to -- and Mr.
5 Simon to these depositions or court appearances?

6 A Many of them. Not all of them, but many of them.

7 Q Did she have any trouble that you could see with taking
8 contemporaneous notes?

9 A No. She seemed to be an excellent note taker.

10 Q Pretty thorough; isn't she?

11 A Yes.

12 Q In looking at page 11 of Exhibit 9, what's your understanding
13 as to the last time that Ms. Ferrel billed on the original four invoices that
14 you paid in full?

15 MR. CHRISTIANSEN: What was the date, John? I'm sorry.

16 MR. GREENE: I'm sorry, Pete. That's -- I'm just asking --

17 THE COURT: I think that he asked him for the date, Mr.
18 Christiansen.

19 MR. CHRISTIANSEN: Oh, I apologize. I just got lost on the
20 chart. Those numbers are tiny.

21 THE COURT: Yeah, we're just on page 11, but he's asking the
22 witness --

23 THE WITNESS: It appeared --

24 BY MR. GREENE:

25 Q If I scoot it down, if I do it -- leave it solid and move it down,

1 would it be easier for you?

2 A It appears in Ms. Ferrel's last billing date on the bills that I've
3 received and paid it's September 19, 2017.

4 Q Okay. Do you believe that it's fair that Ms. Ferrel likely
5 worked on your case beyond that date?

6 A Most definitely.

7 Q Do you believe that she's entitled to a reasonable fee?

8 A Most definitely.

9 Q You didn't include Ben Miller on this, on this flow chart. Any
10 reason why?

11 A It was just too much work, and I was already buried, and
12 there was only so many entries for Mr. Miller, it just didn't seem worth
13 my time.

14 Q Okay. Let's talk about San Diego. We're going to spend
15 some time on what the Judge wanted to start with and maybe even
16 finish with. But explain to the Judge in your words, not by yes or no
17 answers, what the circumstances were that led to you, and Mr. Simon
18 meeting in San Diego in early August of 2017.

19 A After we started uncovering a bunch of this stuff and Mr.
20 Miller had sent the hurdles for punitive damages instruction to the jury
21 and I responded, that was August 1st I responded, and I felt --

22 THE COURT: I'm sorry, Mr. Miller had sent what?

23 THE WITNESS: He sent a large document and Mr. Simon
24 had asked me to look at a subsection of the document which was the
25 hurdles to get an instruction for punitive damages to a jury. It had

1 oppression, fraud, and malice.

2 THE COURT: Okay. This is Ben Miller that works for Mr.
3 Simon?

4 THE WITNESS: Correct.

5 THE COURT: Okay.

6 THE WITNESS: Danny Simon forwarded the email. Mr.
7 Miller was the author of it.

8 THE COURT: Okay.

9 THE WITNESS: And he had asked, can we meet this, do we
10 have evidence of all this? That was August 1st. Then the discussion
11 started a little bit more about hey, maybe we could change this
12 agreement from 550 an hour to something else that would be in both our
13 interests. I was completely open to it.

14 I think Mr. Simon was completely open to it. We never really
15 had a discussion about it. When I kept asking when we would, we were
16 going to have it on the trip when we went to visit the experts down in
17 San Diego, which was the 9th of August of 2017.

18 BY MR. GREENE:

19 Q What was going on with the experts down in August -- down
20 in San Diego in August that you needed to go pay a visit?

21 A I was frustrated with this particular expert, as was Mr. Simon.
22 Lange had a far better expert on the same topic. And the guy just didn't
23 seem to understand how the sprinklers functioned, like some basic stuff
24 you would expect out of an expert. And we just went down and gave a
25 presentation how to cut away of the sprinkler or cut into. We just gave

1 him a presentation to make sure he had a thorough understanding of the
2 product and everything related to the product.

3 Q So, you dealt with that meeting. How long did that take?

4 A We were probably there five hours, something like that. His
5 senior partner was in the room with us and some manufacturing expert
6 was also there.

7 Q Is this a one day trip to San Diego, a longer business
8 meeting, what was it?

9 A Yes.

10 Q Yes, what? I'm sorry, it was compound.

11 A We went down and back the same day.

12 Q How did you get there?

13 A Southwest Airlines.

14 Q So we've heard some discussion about a meeting in a bar
15 over some adult beverages. Tell us about that.

16 A Well, we still hadn't discussed, you know, how we could
17 change the contract to something better that would, you know, be a
18 good risk reward for me, maybe put more risk on Mr. Simon. And if we
19 prevailed, maybe he had more upside, but at least, you know, he'd have
20 downside, also. We --

21 Q What risk did Mr. Simon have with the hourly fee
22 agreement?

23 A None whatsoever.

24 Q How so?

25 A He was getting paid \$550 an hour for every hour that he

1 worked on the case. It's risk free.

2 Q How about invoices? You heard Mr. Christiansen talk about
3 how Danny, Mr. Simon fronted his costs. You heard that; didn't you?

4 A Yes.

5 Q Did you have an understanding about how a typical personal
6 injury case works when the term fronting costs is utilized?

7 A I wasn't familiar with the term fronting. When he used that, I
8 figured he means pay, pay up front in full the bill.

9 Q Okay. And that's what you did, paid the bills that they
10 presented; didn't you?

11 A Yes. Whenever the bills were presented, they were paid
12 almost immediately.

13 Q Did he have any risk of loss with the invoices for the experts
14 or the costs in this case?

15 A No. He could have submitted cost bills, as frequently as he
16 wanted. And like I said, they were paid very quickly.

17 Q So you're in this bar in the airport in San Diego. You're
18 sitting there waiting for your flight. Tell the Judge in detail everything
19 that was discussed.

20 A Well, we discussed well, what else can we do; if this goes to
21 a punitive case where we can get a big judgment, what can we change it
22 to? You know, I gave some of my parameters.

23 Q Which are -- which were?

24 A I wanted to pay my mother-in-law back, number one. So, I
25 wanted some of these fees back in exchange for whatever the

1 percentage was. But I was also willing to entertain any combination of
2 the three levers so long as they worked out to reduce my exposure, my
3 risk.

4 THE COURT: What's the three levers?

5 THE WITNESS: That would be the hourly billing rate. It
6 could be anywhere from zero to whatever the --

7 THE COURT: I understand the hourly billing rate.

8 THE WITNESS: Yeah. The percentage of the judgment.

9 THE COURT: Okay.

10 THE WITNESS: And then whether I get money back or not of
11 fees I already paid.

12 THE COURT: Okay.

13 THE WITNESS: Those were my three levers of risk reward.
14 Mr. Simon said well, typically I get 40%. I said that's never going to
15 happen, it's not a personal injury case. I've got some real expenses
16 here. We bounced around a bunch of ideas. Like I said, hey, I'd be
17 willing to explore even caps, you know, floors, caps, whatever you
18 wanted where I get this amount and then we share above that amount or
19 a cap, you know, nothing above this amount. I was willing to explore
20 any options. Nothing really structured came out of the conversation.

21 Q What proposals, other than a straight PI contingency 40%
22 rate did Mr. Simon present to you as you were sitting there in the bar in
23 San Diego?

24 A He didn't present anything else. He asked me, well, have you
25 -- I asked him, how much is this going to cost to the end, like how much

1 more? And --

2 Q In what ways? What kind of costs --

3 A The 550 an hour fees, how much is this going to accumulate
4 to through the end of the trial? I needed an estimate. I needed to keep
5 borrowing money, plus I needed an estimate to figure out whether I'm
6 getting a better deal or not if we did change off the hourly fee
7 agreement.

8 It -- you know, unless I know what I'm remaining to pay, I can't tell
9 what I should really give up. He said, well, have you done a case like this
10 before? I'm like nothing like this. And he's like have you ever gone to
11 trial before? I said yeah, we went to trial, on the pediped intellectual
12 property in New York. I told him about that case. He said how much did
13 that cost? I said three times the last bill you just sent for the entire case
14 and all costs, all the way to the judgment. And then he never responded.
15 He never said much more. Started shooting the breeze about stuff and
16 I --

17 Q As a -- as a consumer and with your education, did you have
18 an understanding as to risk of loss; what that means?

19 A Not exactly. I understood probably around this point that I
20 might not get all my money back from my legal fees. It was right around
21 this time that I found out that just because you have a contract when you
22 get a judgment, it doesn't mean you get all the money back that you paid
23 for the lawyer. Up until near this point I was assuming that that's a done
24 deal.

25 Q Did you have any conversations with Mr. Simon at that

1 facility in San Diego before you caught your flight as to what changes
2 could be made to the agreement you had?

3 A He didn't really reveal his cards that much. I told him that I
4 was open to almost anything as long as he took on some of the risk and
5 had downside. That would align our interests through the case. If we
6 both had downside, it would also make us focus in laser like on all of the
7 big things coming up.

8 Q Did you ever hammer out a lower hourly rate or a hybrid or a
9 straight contingency while you're sitting there in the bar in San Diego?

10 A No.

11 Q Did Mr. Simon get back to you in the next week, two weeks,
12 with the proposal you had asked for?

13 A No. He never -- he didn't reply. I didn't hear anything else
14 about it and I sent an email on the 22nd.

15 Q Let's take a look at that right now if we can, okay? This is
16 Exhibit -- Plaintiff's Exhibit 3.

17 MR. GREENE: The first page, Judge. There's only one page
18 of that.

19 THE COURT: Yeah. Let me just get back to it, Mr. Greene,
20 okay?

21 BY MR. GREENE:

22 Q So I'm at -- I'm at techno dummy, at best. Up at the top left
23 there's FW colon. What's your understanding of what that means in
24 email terminology?

25 A It means he's forwarded the email.

1 Q To you?

2 A No. Out of -- my guess would be to James Christensen.

3 Q No, no, no.

4 THE COURT: That's what that means, Mr. Greene.

5 MR. GREENE: No. I'm am dumb, not quite that dumb.

6 BY MR. GREENE:

7 Q But is this the label that you had put on this email when you
8 sent it to Mr. Simon?

9 A Yeah. I wrote Contingency in the subject line.

10 Q Right there?

11 A Correct.

12 Q What did Mr. Simon communicate with you, if anything, at
13 the bar in San Diego until August 22nd of 2017 following your discussion
14 in the bar about a contingency fee --

15 A About this --

16 Q -- or anything fee related?

17 A He hadn't -- he hadn't explained anything about this topic.

18 And I was coming up to the point where I needed to think about how to
19 get more money, what options I was going to -- going to have to take.

20 And so, I thought I'd email him and see if this a dead deal or not.

21 Move on. If I can't do it, that's fine, I don't care. I would just keep paying
22 the 550. I'd borrow the money. I'd likely have to sell some assets if the
23 bills kept accumulating, but nothing was responded to.

24 Q First line, We never really had a structured discussion about
25 how this might be done. Do you read that?

1 A Yes.

2 Q What were you talking about? Tell the Judge.

3 A We had a free form discussion in the airport. I wanted a
4 structured discussion, something like this with the levers that you could
5 change different amounts up and down to make the same end result. I
6 just wanted something in writing. Just put it down on the table, and we
7 would start negotiating. As soon as I see what you are interested in, it
8 might just be no way, we'll never come to agreement, your value is too
9 low compared to my risk reward, but at least it would start a
10 conversation and get this to a head.

11 Q If Mr. Simon would have presented something in writing to
12 you that said 250 an hour and 25 percent contingency on the outcome of
13 the case, what would have been your response?

14 A No, that's not the right lever. For me the risk reward at that
15 point's not good. Give me something where I can pay more of it back is
16 what I would have replied. But it would just start a conversation. And,
17 you know, if we can't, we would just move on, it's fine.

18 Q You were willing to do something, were you not, if
19 something that was palpable would have been proposed?

20 A Definitely. Any -- anything. I was open to discussion on it.

21 Q But what was proposed?

22 A Nothing.

23 Q Do you -- have you heard the arguments that have been
24 made, Brian, by very good lawyers on the other side that have portrayed
25 this statement as meaning that you never had a structured discussion

1 about attorney's fees to begin with; have you heard that?

2 A Yes.

3 Q What's your response to that?

4 A I don't really follow their logic, but we have disagreements
5 with almost every sentence. The sentence to me clearly says one thing.
6 They're interpreting it -- I don't even see how you get that from those
7 words.

8 Q Did you ever have -- what, if any, structured discussion did
9 you have with Mr. Simon about fees ever?

10 A At the start of the case we had a very -- a very simple
11 agreement that had been ongoing for two years, 550 bucks an hour, as
12 simple as could be. This was going to be more complicated and require
13 some negotiation and may or may not have ever got done, but I was
14 open to negotiating.

15 Q The next sentence, I am more that -- It looks like you're
16 having a day then like I'm having today. I am more than happy -- you
17 probably meant to say than, right?

18 A Yes.

19 Q I am more than happy to keep paying hourly. Is that a true
20 statement?

21 A Yes.

22 Q Is that what happened?

23 A Yes, it is.

24 Q But if we are going for punitive, we should probably explore
25 a hybrid.

1 A Yes.

2 Q What did you mean by that?

3 A Some combination of three leaders -- levers that worked for
4 him and worked for me that, you know, get some downside if we don't
5 get what we all would think that we got or if we had vastly different
6 opinions on what the outcome was, that would be very valuable
7 information for me to know because I was dumping so much money into
8 this lawsuit, I was getting very nervous.

9 So, if my lawyer wasn't willing to do something like this, that
10 would tell me about what he thought the judgment could be in the best
11 case scenario. That's information, too. I was just looking for a proposal.

12 Q What kind of hybrid were you looking for; what would have
13 tickled your fancy? Not using the word levers, that's not -- I mean that's
14 just maybe not as common to us in this courtroom. Do you have other
15 words that would describe a satisfactory hybrid that would have worked
16 if Danny would have ever proposed it back then?

17 A Something that got me out of Margaret's first loan would
18 have been very, very interesting to me.

19 Q And then what?

20 A And then what? Some percentage on the back end. I'd
21 rather pay no fees going forward so that it would take any burden off,
22 and it would continue to keep him involved in the case in exchange for
23 some percentage of the judgment.

24 Q How much did you owe Margaret, your mother-in-law, when
25 this contingency subject was brought up in San Diego?

1 A Three hundred and something with interest.

2 Q So how was she going to be paid back through this hybrid
3 agreement that you would have -- that you had at least entertained for
4 Mr. Simon?

5 A Well, he would give me some money back, and I would take
6 whatever I was stealing in the kitty from my working capital, and I would
7 pay her right off and get rid of one of the loans.

8 Q The sentence goes on, Probably explore a hybrid of hourly
9 on the claim and then some other structure that incents both of us to go
10 after the appeal that these scumbags will file. What did you mean by
11 that, Brian?

12 A I was told around this time that most large judgments would
13 be appealed, which scared the daylights out of me because I had no idea
14 how long that takes. And this whole thing was timely. I needed cash to
15 keep building houses. The whole thing with construction is you need
16 cash; you need to convert stuff into cash.

17 So, this would get me out of the cash flow disaster of the lawsuit,
18 paying for the lawsuit, and all the way through the appeal, which could
19 be a year or two years. It could be anything. It would just give me a lot
20 of financial flexibility.

21 Q As a consumer and as the client who owns the case and the
22 settlement, did there come a time in this case where you believed that
23 the value of the case had increased?

24 A Yes.

25 Q When was that?

1 A Right after talking to Harold Rogers I found it had gone up
2 substantially.

3 THE COURT: When is that, sir?

4 THE WITNESS: July -- July 26, two thousand -- or I spoke
5 with him on the 24th, July 24th, 2017.

6 BY MR. GREENE:

7 Q Did that have anything to do with the number of activations,
8 initial activations, that were revealed?

9 A Yeah. I didn't have evidence of each of them, but I had his
10 numbers of how many were out there, and I had a clear path on how I
11 was going to start tracking them down to make that spreadsheet that I
12 made.

13 Q So when you put in here, Obviously that could not have been
14 done earlier, since who could have thought this case would meet their
15 hurdle of punitives at the start, what did you mean by that?

16 A That was -- the hurdle of punitives was the email on August
17 1st of 2017 that he had forwarded saying do we meet -- and I
18 misunderstood it. I thought we had to meet all three hurdles; the malice,
19 the oppression, and the fraud, I believe they were.

20 Q Are you saying Ben Miller's email?

21 A Correct. Ben Miller's email of August 1st. And we had it on
22 -- I had evidence on all three of them, so I felt yeah, this can meet the
23 hurdle because I didn't know it was an or between each one. I thought it
24 was an and. Just my mistake.

25 Q Okay. But things changed value-wise?

1 A Definitely.

2 Q As you were evaluating what to do as a consumer in this
3 case, did those additional activations have any kind of a swaying factor
4 with you on what to do?

5 A As we gathered more and more evidence of the wrongdoing,
6 it made my percentage in my head, the percentage I put on the chance of
7 me winning, go higher and higher and higher. And then it gave a lot of
8 credibility to at this point maybe we can get punitive damages, how are
9 they valued, everything else, or we can force a settlement.

10 Q Did these increased number of activations and therefore
11 meeting the burden of punitives, did that have any bearing upon you as
12 a consumer on what you would have been willing to entertain from Mr.
13 Simon in this hybrid fee agreement that you asked him to give to you?

14 A You know, on this date he would have gotten a much better
15 deal out of me. As the avalanche of evidence against them kept coming,
16 and then I just wouldn't have given up as much because I -- you know, at
17 that point you paid more in the kitty, there's -- to Mr. Simon there's less,
18 you know, fees left until the light at the end of the tunnel, so why would
19 you give up more; you've taken all the risk.

20 Q You mean who?

21 A Me as Brian Edgeworth, why would I give up more of the
22 settlement? Every day that goes by, this deal would get a little bit worse
23 for Mr. Simon because a lot of the risk in the deal has been abated.

24 Q Finishing up with this email, beginning with "I could," do you
25 see that?

1 A Yes.

2 Q I could also swing hourly for the whole case unless I am off
3 what this is going to cost. What did you mean before the paren, I could
4 also swing hourly for the whole case?

5 A Don't worry about it, keep working on my case, I can get the
6 money and keep paying you as our original agreement.

7 Q And did you?

8 A Yes, I did.

9 Q Did you have to get additional loans from the date of this
10 email forward to pay Mr. Simon's invoices?

11 A Yes, I did.

12 Q About how much?

13 A After this date I think I took one more for 200 out.

14 Q Did you use that money to pay his invoice in full?

15 A Yes, I did. I received an invoice approximately a month after
16 this email for \$255,000, some of which were costs and the rest of which
17 were fees. I don't know the breakdown. And I paid it in full.

18 Q Let's cover that now before we finish up with this email. Did
19 Mr. Simon ever provide you with the proposal that you asked for, hybrid
20 or otherwise?

21 A Never.

22 Q What did you get instead?

23 A A bill -- an hourly bill of \$550 an hour and \$275 per hour for
24 his associate.

25 Q Looking at the new superbill of January 2018, what was

1 every entry of that billed out? We already talked about that, 550?

2 A Five fifty an hour for Mr. Simon and \$275 an hour for Mr.
3 Miller and Ms. Ferrel.

4 Q Any hybrid language in the invoice that you paid?

5 A No.

6 Q Any hybrid invoice in the superbill?

7 A No.

8 Q Any hybrid email that was sent to you?

9 A No.

10 Q Any hybrid letter that was sent to you?

11 A No.

12 Q What did you mean by unless I am off what this is going to
13 cost; what were you concerned about there?

14 A That's my biggest frustration. He didn't answer the one
15 question that would allow me to plan or even evaluate if he gave me a
16 proposal how much more is this going to cost at 550 bucks an hour? I
17 need to know. I need to plan cash flow because I'm running businesses
18 that have to keep the working capital above a certain level. I need to
19 plan in advance. I can't be surprised, especially at this point in time
20 where I was already stretched.

21 Q How many employees were you employing at the time that
22 this contingency email was sent to Mr. Simon?

23 A Two hundred and ten world-wide.

24 Q Did their wellbeing factor in at all about your concerns for
25 knowing what this litigation was going to cost?

1 A Yes.

2 Q How so?

3 A Whenever you pull down your working capital to a certain
4 point, you put your risk of bankruptcy very high. Most companies go
5 bankrupt not because they had a big loss that year, it's because they ran
6 out of money. And you can run out of money in a lot of ways. Mostly
7 it's when you're draining your working capital. That's when you get low
8 on working capital, you need to do detailed planning to make sure you
9 don't run out of cash. And that's what I was trying to do. I just needed --
10 that's why I kept asking him for bills, too, because I couldn't have
11 surprises. I couldn't just get a huge bill and then not have the money in
12 the bank.

13 UNIDENTIFIED SPEAKER: Can I go to the restroom?

14 MR. GREENE: Sure.

15 BY MR. GREENE:

16 Q You talked about borrowing some more money, the next line
17 down, you went to borrow another 450 from Margaret. Did you read
18 that?

19 A Yes.

20 Q Is that what happened?

21 A Yeah, except not in the order I wrote. I borrowed -- I signed a
22 new contract for 200 and 200 for 400 total and I took the first 200 on it.

23 Q Okay. How about sell the house to pay these fees?

24 A I listed both the houses. The house that I was living in -- the
25 house that I was living in is on the same street as the house that's the

1 spec building. They're two doors apart. So, I listed both houses. The
2 house with no flood problems overhanging it, I was told would be likely
3 to sell quicker. We moved out of that house to stage it and get it ready
4 for sale and moved into the new house.

5 And I had both of them listed. I believe Mr. Simon knew. I'm
6 basically saying I can get cash from one of these house sales to keep
7 financing the -- the lawsuit, too. I'm just giving him an open look at my
8 sources to pay him. And I'm giving him from a negotiation standpoint
9 where I want to be negotiating another deal, I'm giving him a great look.
10 I'm laying all my cards on the table. I should be the easiest person to
11 negotiate whatsoever because you know the other steps I'm going to
12 take if I don't get a deal with you.

13 Q Finally, well, did you sell any of those two houses?

14 A I sold the 637 St. Croix house in December of 2017 after this.
15 I sold it for cash because the guy would close in six days and this had
16 started, and I needed cash.

17 Q This wasn't the flood house you sold, correct?

18 A No. I sold the older house, which is 637. It's two doors down
19 from the flood house.

20 Q If it had come to that, what would have been involved in
21 selling the Bit Coin investment to be able to pay Mr. Simon's hourly
22 fees?

23 A I had already gone to Roger, which was my partner and my
24 brother and told them that I needed out. I couldn't keep on with them.
25 And I had already taken my share out, and I sold a bunch to start

1 building the volleyball club. So that money it's like selling a stock, you
2 can get it within days.

3 Q Is there anything else in this contingency email, Brian, that
4 was submitted, and you communicated to, Brian, that you hoped for a
5 response for -- that you were communicating to Mr. Simon hoped to get
6 a response for and didn't?

7 A The last line basically I'm saying I doubt we'll get Kinsale to
8 settle for enough to really finance this. I had a theory like maybe we can
9 squeeze Kinsale to settle because we're doing all their subrogation work
10 for them. They're not even putting up a fight in this.

11 So, they're paying nothing to subrogate the claim that everyone's
12 saying they're responsible for and we're suing and enforcing the
13 warranty for them on my dime.

14 So maybe I can squeeze them, get them to settle, and use that
15 money to pay back some of the loans, but I'm just saying it's not enough
16 to finance the rest of the hourly agreement because the first 750 I pay
17 Colin and Margaret back and get rid of the two loans and Kinsale, why
18 would they settle to us for more than a million? I believe their insurance
19 policy was like a million bucks. It just -- it seemed unlikely.

20 Q Brian, at any time during your relationship as a client of Mr.
21 Simon, the attorney, did he ever advise you that he wasn't billing or
22 including all of his invoices all of the time that he was working on your
23 case?

24 A No. That really wouldn't make sense because part of the
25 claim against Lange was for attorney's fees. So, this is where it just

1 completely defies logic. Why would you under-bill on every bill when
2 the claim file is being presented again and again and again to the court
3 with attorney's fees listed on it every time it's getting submitted to the
4 court. It doesn't make sense. It's a total opposite.

5 What you'd really do is you'd give me a bill and say that you don't
6 have to pay it. And then the fight would be in my deposition would have
7 been, but you haven't paid these bills. No, but I owe them, so they're
8 true costs and damages. The exact opposite is being argued, which is
9 counterintuitive. It's to my detriment, not to my advantage. It doesn't
10 make sense at all.

11 Q In English, if Danny's -- Mr. Simon's invoices had been for
12 more money and those had been produced to Lange as a consumer, as
13 the owner of this claim, what do you believe it would have done to the
14 value of it?

15 A The value of the claim goes up because my attorney's fees
16 listed on the claim are higher.

17 Q At any time did Mr. Simon tell you during your course of
18 attorney client relationship with him, that Ms. Ferrel's entries, her time in
19 the original four invoices, were incomplete?

20 A No.

21 Q That they were going to be adding to those?

22 A No.

23 Q That more was to come?

24 A No.

25 Q Any words to that effect?

1 A No.

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

6 A No.

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

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

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

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

23 A Probably every spreadsheet.

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

1 that come about?

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

6 Q You followed his advice?

7 A Correct.

8 Q You did that?

9 A Correct.

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

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

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

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

17 MR. CHRISTIANSEN: What date?

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

19 MR. CHRISTIANSEN: Thanks.

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

24 THE COURT: This is Plaintiff's 8?

25 MR. GREENE: Yes.

1 THE COURT: Okay.

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

4 THE COURT: Okay.

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

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

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

11 [Counsel confer]

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

14 [Counsel confer]

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

17 THE COURT: How much more do you have?

18 MR. GREENE: More than the five minutes.

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

21 MR. GREENE: Okay.

22 THE COURT: -- it's okay

23 MR. GREENE: Sorry, Your Honor.

24 [Counsel confer]

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

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

3 THE COURT: Okay.

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

5 THE COURT: Okay.

6 MR. CHRISTENSEN: Edgeworth Exhibit 8.

7 THE COURT: 8. Okay.

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

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

12 MR. CHRISTENSEN: True.

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

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

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

22 THE WITNESS: Exhibit 08 --

23 THE COURT: Yes.

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

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

1 binder.

2 THE WITNESS: In this binder, yes.

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

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

7 THE COURT: No, no. Okay.

8 THE WITNESS: Exhibit 08.

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

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

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

16 MR. CHRISTENSEN: Yes. Yes, Judge.

17 THE COURT: Okay.

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

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

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

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

3 THE COURT: Okay.

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

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

8 MR. GREENE: Of course.

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

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

12 THE COURT: Okay.

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

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

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

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

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

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

2 UNIDENTIFIED SPEAKER: Yes, Your Honor.

3 THE COURT: My criminal calendar will be over.

4 UNIDENTIFIED SPEAKER: See you tomorrow morning.

5 Thank you, Judge.

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

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

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

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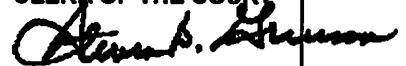
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1 RTRAN

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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 WEDNESDAY, AUGUST 29, 2018

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

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 DEFENDANT</u>	<u>MARKED</u>	<u>RECEIVED</u>
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None

<u>FOR THE LAW OFFICE</u>	<u>MARKED</u>	<u>RECEIVED</u>
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133133
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1 Las Vegas, Nevada, Wednesday, August 29, 2018

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

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

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

8 Please raise your right hand.

9 BRIAN EDGEWORTH, PLAINTIFF, SWORN

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

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

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

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

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

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

20 THE MARSHAL: Well, we'll see.

21 MR. GREENE: Okay.

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

24 THE CLERK: Hold on.

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

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

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

3 MR. GREENE: Yes, Your Honor.

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

5 MR. GREENE: Yes.

6 THE COURT: Okay.

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

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

11 MR. GREENE: Perfect.

12 CROSS EXAMINATION CONTINUED

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

15 A Yes.

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

18 A Yes.

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

21 A Through September 22nd, 2017.

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

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

3 Q I do.

4 A -- after the highlights?

5 Q I do.

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

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

12 A It's possible.

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

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

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

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

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

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

7 Q What do you mean by the Contractor's Board? That wasn't --
8 THE COURT: I was just about to ask that same thing, Mr.
9 Greene.

10 BY MR. GREENE:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

23 THE WITNESS: Correct.

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

1 THE WITNESS: December 7th of 2017.

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

4 THE WITNESS: Yes.

5 THE COURT: Okay.

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

13 THE COURT: Okay.

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

17 THE COURT: Okay.

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

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

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

23 BY MR. GREENE:

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

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

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

11 MR. GREENE: That's correct.

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

14 THE COURT: That you relayed to him?

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

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

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

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

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

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

8 MR. CHRISTENSEN: Well, I am.

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

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

13 MR. CHRISTENSEN: Sure.

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

16 MR. VANNAH: That's fine.

17 BY MR. GREENE:

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

20 A Yes.

21 Q What led to that, briefly?

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

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

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

9 Q What happened next?

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

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

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

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

1 letter, just with a lot harder language.

2 Q And we need to hear that, Brian.

3 A Yes.

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

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

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

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

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

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

1 you've paid me.

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

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

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

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

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

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

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

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

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

22 A No, he swore, like --

23 Q What was his demeanor?

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

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

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

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

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

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

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

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

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

9 A Correct.

10 Q Fair summary?

11 A Correct.

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

14 A No.

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

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

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

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

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

6 Q Stop for a minute. After hours?

7 A Yeah, after hours.

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

10 A I know.

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

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

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

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

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

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

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

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

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

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

24 THE COURT: Okay.

25 MR. CHRISTIANSON: Okay.

1 BY MR. GREENE:

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

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

9 Q Okay.

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

11 MR. GREENE: Correct, Your Honor.

12 THE COURT: Okay.

13 BY MR. GREENE:

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

15 A Yes.

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

20 A Yes.

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

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

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

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

6 A No.

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

11 A I'm sorry.

12 Q Sure. Another of my many bad questions?

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

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

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

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

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

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

5 A Yes.

6 Q Did either you or Angela sign this?

7 A No.

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

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

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

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

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

21 A Yes.

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

24 THE COURT: This is the letter, right?

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

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

2 THE COURT: Okay.

3 BY MR. GREENE:

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

5 A I don't know, no one.

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

7 A Yes.

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

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

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

17 A Yes, I remember the line.

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

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

1 determination of what it's actually saying.

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

4 MR. GREENE: It is, Your Honor.

5 THE COURT: Where is it in this letter?

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

7 [Pause]

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

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

14 MR. GREENE: It is, Your Honor.

15 THE COURT: I see it.

16 MR. GREENE: Yeah.

17 THE COURT: Okay, I see it.

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

19 BY MR. GREENE:

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

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

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

4 Q Well, is there anything about --

5 A It's not true.

6 Q -- those statements that are true?

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

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

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

15 THE COURT: 7?

16 BY MR. GREENE:

17 Q Do you recognize that signature, Brian?

18 A Yes.

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

20 A Danny Simon.

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

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

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

1 documents been signed yet?

2 A No.

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

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

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

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

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

18 A No.

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

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

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

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

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

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

10 THE COURT: No problem.

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

13 THE COURT: Okay. Mr. Christiansen.

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

15 REDIRECT EXAMINATION

16 BY MR. CHRISTIANSEN:

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

18 A Yes.

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

22 A Yes.

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

1 MR. GREENE: I object, Your Honor.

2 BY MR. CHRISTIANSEN:

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

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

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

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

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

10 MR. CHRISTIANSEN: Sure.

11 BY MR. CHRISTIANSEN:

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

17 A Yes.

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

21 A No.

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

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

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

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

4 MR. GREENE: Coaching?

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

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

12 BY MR. CHRISTIANSEN:

13 Q Mr. --

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

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

16 BY MR. CHRISTIANSEN:

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

19 A Correct.

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

22 A No.

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

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

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

5 A Correct.

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

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

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

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

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

15 THE WITNESS: The truth is not --

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

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

20 BY MR. CHRISTIANSEN:

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

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

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

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

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

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

7 A That's correct.

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

9 A That's incorrect.

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

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

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

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

16 MR. CHRISTIANSEN: Well --

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

18 MR. CHRISTIANSEN: -- fair enough.

19 BY MR. CHRISTIANSEN:

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

23 A No, I don't remember.

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

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

3 A Correct.

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

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

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

11 A I believe so.

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

15 A No.

16 Q You always knew about it, correct?

17 A Yes.

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

21 A Correct.

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

24 A Correct.

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

1 25th of 2017, correct?

2 A Correct.

3 Q And from that point on --

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

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

6 THE WITNESS: Oh, I'm sorry.

7 THE COURT: He needs to ask the questions.

8 THE WITNESS: I'm sorry.

9 THE COURT: You just answer them.

10 BY MR. CHRISTIANSEN:

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

12 Fair?

13 A Fair.

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

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

16 conversation with Mr. Simon, correct?

17 A Correct.

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

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

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

21 Greene, correct?

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

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

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

25 A I'm not sure.

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

3 A Maybe, I'm not sure.

4 [Counsel confer]

5 BY MR. CHRISTIANSEN:

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

9 A No, I do not.

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

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

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

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

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

21 MS FERREL: It's our 5.

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

23 THE COURT: It's Number 5?

24 MS. FERREL: Yeah.

25 BY MR. CHRISTIANSEN:

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

3 A Could you just put it up, sir?

4 Q Sure.

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

6 Q Okay.

7 [Counsel confer]

8 BY MR. CHRISTIANSEN:

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

11 A Yes.

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

13 A Yes.

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

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

17 Q Okay.

18 A -- if your finger is on it.

19 Q Sure. It says Mr. Vannah --

20 A Oh, Vannah and Vannah.

21 Q -- and Mr. Greene, correct?

22 A Correct.

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

24 A No.

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

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

3 A Correct.

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

5 MR. CHRISTIANSEN: It is.

6 BY MR. CHRISTIANSEN:

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

10 A Yes.

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

12 A Yes.

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

14 A That's what I said, yes.

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

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

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

22 A I agreed with it, correct.

23 Q And you controlled the Board?

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

25 Q Who's the lawyer on the Board?

1 A Mark Katz.

2 Q That's your lawyer, right?

3 A Yes.

4 Q And your wife's on the Board?

5 A Yes.

6 Q And you're on the Board?

7 A Yes.

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

9 A Yes.

10 Q And the fourth is Mr. Herrera?

11 A Correct.

12 Q Who you employed, correct?

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

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

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

16 distress, that was a self-imposed distress?

17 A No.

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

19 A No.

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

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

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

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

24 correct?

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

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

5 A No.

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

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

10 MR. GREENE: Which one?

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

12 BY MR. CHRISTIANSEN:

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

16 A Yes.

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

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

22 Q Is that fair?

23 A Correct, fair.

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

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

2 A About right.

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

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

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

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

10 MR. GREENE: Okay.

11 BY MR. CHRISTIANSEN:

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

14 A Right.

15 Q -- and change?

16 A Correct.

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

18 A Correct.

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

20 A Correct.

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

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

24 Q The last cost payment?

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

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

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

8 A Yes, I agree.

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

11 [Counsel confer]

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

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

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

18 A 22nd, yes.

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

23 A Yes.

24 Q Included --

25 A I received it on the lawsuit, correct.

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

4 A I believe so.

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

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

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

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

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

14 A No, I do not.

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

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

18 Q All right. And --

19 THE COURT: You mean September 22nd?

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

22 BY MR. CHRISTIANSEN:

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

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

1 know what they say about our math.

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

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

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

7 MS. FERREL: \$418,742.50.

8 BY MR. CHRISTIANSEN:

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

12 A No, I do not.

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

15 A Correct.

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

19 A Correct.

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

22 A It's a small -- no.

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

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

2 A Yes.

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

8 A Correct.

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

15 A Can you restate the question?

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

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

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

22 A Late July, correct.

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

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

3 A Correct.

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

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

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

13 A After all four of those events --

14 Q Yeah.

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

16 Q Then you wrote that August 22nd email?

17 A After the affidavit?

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

19 A No.

20 Q Okay. We'll agree to disagree with what the paragraph says.
21 My question to you, ultimately, was did that blossoming or significant
22 sum of money, was that just in your mind because you thought it was
23 going to make some money come July?

24 A Correct.

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

1 A No.

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

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

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

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

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

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

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

9 contemplated at its origination, correct?

10 A Can you repeat it again?

11 Q Sure.

12 A Not with two and the one.

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

15 Both of those --

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

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

19 A No. Can you show me?

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

23 A No.

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

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

3 A No.

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

6 A I agree with that.

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

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

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

14 A No, you're wordsmithing a bit.

15 Q Just tell me yes or no.

16 A No.

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

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

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

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

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

25 MR. CHRISTIANSEN: Sure.

1 BY MR. CHRISTIANSEN:

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

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

8 Q Correct.

9 A No, it's the same case.

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

12 A I agree.

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

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

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

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

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

22 A Correct.

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

25 A Margaret Ho.

1 Q H-O?

2 A Yes.

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

4 A Correct.

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

8 A That's one aspect.

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

11 A Not just that, no.

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

14 A No, it was 300, I believe.

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

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

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

23 A Yes.

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

1 A I agree.

2 Q You set the terms?

3 A I agree.

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

6 A No, from high school.

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

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

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

11 A Yes.

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

13 A Correct.

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

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

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

22 A I beg your pardon. Just --

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

1 A Correct.

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

5 A Correct.

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

8 MR. CHRISTIANSEN: He answered the question.

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

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

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

14 THE COURT: Okay.

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

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

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

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

22 MR. CHRISTIANSEN: Right.

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

25 MR. CHRISTIANSEN: Yes, Judge.

1 BY MR. CHRISTIANSEN:

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

3 A Correct.

4 Q You were the maker of the notes?

5 A Correct.

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

8 A Personally.

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

11 A Correct.

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

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

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

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

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

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

3 A Option or partial.

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

6 A No.

7 Q Well, what was --

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

11 MR. CHRISTIANSEN: Sure.

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

14 BY MR. CHRISTIANSEN:

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

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

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

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

7 A Yeah.

8 Q Those are levers that you were --

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

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

14 A Yes.

15 Q To relieve some stress?

16 A Correct.

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

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

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

23 A No.

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

25 A I disagree.

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

4 A Yes, I do.

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

8 A Has anyone --

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

11 A Yes.

12 Q Recently?

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

15 Q All right.

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

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

21 A Yes.

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

24 A I don't know.

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

1 You didn't understand the distinction, right?

2 A Correct.

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

4 A Correct.

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

6 A Correct.

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

8 A Correct.

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

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

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

20 A Correct.

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

22 A No.

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

25 A They wouldn't need to be.

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

3 MR. GREENE: Is that a question?

4 BY MR. CHRISTIANSEN:

5 Q Did you know that?

6 A I disagree.

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

10 A Correct.

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

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

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

17 A Oh, periodical?

18 Q Correct.

19 A No.

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

21 A No, I was billed.

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

24 A Of course they were.

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

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

2 A The 5,000?

3 Q Yeah, five-ish thousand.

4 A Emails, yeah.

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

7 A Right.

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

10 A Sure, he could have read them.

11 Q He could have?

12 A Just ask the initial bills.

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

15 [Counsel confer]

16 BY MR. CHRISTIANSEN:

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

19 A Yes.

20 Q Do you remember that?

21 A Yes.

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

24 A Yes.

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

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

3 A Yes.

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

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

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

12 A This one, yes, it was likely.

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

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

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

19 A No.

20 Q Did you prepare it?

21 A I prepared it.

22 Q And you're here testifying, right?

23 A Yes.

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

25 A No.

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

4 BY MR. CHRISTIANSEN:

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

7 BY MR. CHRISTIANSEN:

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

12 A Yes, I do.

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

16 A Correct.

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

21 A Very possible.

22 Q Possible, right?

23 A Correct.

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

1 A No.

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

5 A Yes, it's possible.

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

9 A It's impossible to know.

10 Q You don't know?

11 A It's impossible to know.

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

15 A Most of them probably.

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

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

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

23 A Okay.

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

1 correct?

2 A Correct.

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

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

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

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

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

14 A Yes.

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

17 A Correct.

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

21 A About the fee agreement --

22 Q Right.

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

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

1 A Correct, to pass on.

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

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

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

8 A It seems the right date.

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

11 A Yes, it was different.

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

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

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

18 A I took the settlement, correct.

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

20 A Correct.

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

23 A Correct.

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

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

3 A What -- figure what out, sir?

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

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

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

9 A Yes, sir.

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

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

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

15 THE COURT: Okay. Proceed.

16 BY MR. CHRISTIANSEN:

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

20 A Yes.

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

23 A No.

24 Q They did not tell you that?

25 A Pardon me?

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

4 A No.

5 MR. GREENE: Objection, irrelevance.

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

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

10 MR. CHRISTIANSEN: Okay.

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

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

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

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

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

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

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

23 THE COURT: Right.

24 MR. VANNAH: I did that.

25 THE COURT: And read the contract.

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

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

5 MR. VANNAH: Thank you.

6 BY MR. CHRISTIANSEN:

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

9 A I don't think so.

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

12 A No, I'm not.

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

14 A I don't know.

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

17 A Yes.

18 Q But you don't know the ruling?

19 A No.

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

21 A Correct.

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

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

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

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

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

8 A I paid restoration, sir.

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

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

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

17 A Yes, I do.

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

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

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

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

2 MR. CHRISTIANSEN: Okay.

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

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

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

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

12 MR. GREENE: Yep.

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

14 MR. CHRISTIANSEN: Yeah, yeah.

15 THE COURT: Okay.

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

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

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

24 THE COURT: Okay.

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

1 for these fine gentlemen.

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

5 THE COURT: Okay.

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

8 MR. CHRISTIANSEN: Today.

9 MR. VANNAH: Mr. Simon.

10 MR. CHRISTIANSEN: Tomorrow.

11 MR. VANNAH: And Mr. Kemp.

12 MR. CHRISTIANSEN: Tomorrow.

13 MR. VANNAH: That's it.

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

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

16 THE COURT: Right.

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

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

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

23 THE COURT: All right.

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

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

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

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

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

11 THE COURT: Okay.

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

14 THE COURT: Okay.

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

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

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

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

20 Mr. Edgeworth, if you could, just come back on the stand.
21 And I would like to remind you, sir, that you're still under oath.

22 THE WITNESS: Yes, ma'am.

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

25 MR. CHRISTIANSEN: I was, Your Honor.

1 BY MR. CHRISTIANSEN:

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

6 A Correct.

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

8 A Nine, I believe.

9 Q Nine?

10 A Yes.

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

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

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

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

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

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

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

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

2 BY MR. CHRISTIANSEN:

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

6 A Yes.

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

8 A Right.

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

13 A Correct.

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

17 A Not --

18 Q -- right?

19 A -- exactly.

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

22 MR. GREENE: Your Honor, he answered the question.
23 Maybe he wants a different answer, but he answered the question.

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

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

3 MR. CHRISTIANSEN: Yeah.

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

5 THE WITNESS: Yeah.

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

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

10 THE COURT: Okay.

11 BY MR. CHRISTIANSEN:

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

16 A Sort of the way you --

17 Q Okay.

18 A -- say it, yeah.

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

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

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

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

25 Q You don't remember right before lunch?

1 A No.

2 Q That's fine.

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

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

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

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

11 THE WITNESS: Yeah.

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

15 THE WITNESS: Yeah.

16 THE COURT: Okay.

17 THE WITNESS: It was a new opportunity.

18 MR. CHRISTIANSEN: All right.

19 BY MR. CHRISTENSEN:

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

22 A No.

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

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

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

3 A Correct.

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

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

9 Q And that is from --

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

11 MR. GREENE: That's okay.

12 MR. CHRISTIANSEN: Thirty-nine.

13 MR. GREENE: Thank you.

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

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

16 THE COURT: Okay.

17 BY MR. CHRISTIANSEN:

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

21 A Correct.

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

24 A Correct.

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

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

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

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

8 A Correct.

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

12 A From beginning to end, yes.

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

15 A No.

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

18 A I wouldn't call it soft.

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

20 A Fair.

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

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

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

2 MR. CHRISTIANSEN: I could have --

3 BY MR. CHRISTIANSEN:

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

5 A Yes, I did.

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

7 A Correct.

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

10 A Correct.

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

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

16 Q You got six, right?

17 A Correct.

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

19 A Correct.

20 Q The difference is about 2.2 million, correct?

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

22 Q And then if --

23 A -- it overpaid.

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

1 right?

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

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

5 A The math.

6 Q -- would simply be --

7 A Correct.

8 Q -- 3.8 million, right?

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

10 Q Right.

11 A -- it would be about 2.3.

12 Q And you got how much?

13 A Six.

14 Q So, you were overpaid 3.7?

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

16 Q The difference in the math is 3.7 million?

17 A Correct.

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

22 A I have no idea, sir.

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

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

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

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

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

6 MR. GREENE: Exactly.

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

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

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

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

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

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

22 THE WITNESS: No.

23 THE COURT: Okay.

24 BY MR. CHRISTIANSEN:

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

1 A I have no idea.

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

6 A Yes.

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

10 A Correct.

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

13 MR. GREENE: Okay.

14 MR. CHRISTIANSEN: Okay.

15 BY MR. CHRISTIANSEN:

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

19 A Something in writing, correct.

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

22 A Correct.

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

1 A Correct.

2 Q Give it to me in writing?

3 A Correct.

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

7 A Correct.

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

10 A Yes, I think that does.

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

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

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

16 A No. The implication is clear.

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

18 A Yes, they do, sir.

19 Q Does it say withdraw?

20 A No.

21 Q That was something you were worried about?

22 A Yes.

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

24 A No.

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

1 done. John, Exhibit 42.

2 BY MR. CHRISTIANSEN:

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

5 A I was copied it, yes.

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

7 A I was copied on the email.

8 Q Oh, you were?

9 A Yeah.

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

12 A Yes.

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

17 A Yes.

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

21 A Correct.

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

24 A Correct.

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

1 A Fair.

2 Q Nothing in here about being blackmailed or extorted?

3 A Fair enough.

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

7 A Correct.

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

11 A That is correct.

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

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

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

17 THE WITNESS: Yes. Sorry, yes.

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

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

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

23 THE WITNESS: Yes, I was.

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

25 THE WITNESS: The 29th.

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

3 THE WITNESS: That's correct.

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

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

8 THE COURT: Okay.

9 THE WITNESS: I didn't really --

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

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

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

18 THE WITNESS: I believe so.

19 THE COURT: Okay.

20 BY MR. CHRISTIANSEN:

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

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

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

2 MR. CHRISTIANSEN: The Judge -- yeah.

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

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

5 THE COURT: -- was the question.

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

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

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

12 THE COURT: Okay.

13 BY MR. CHRISTIANSEN:

14 Q Justice Shearing?

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

16 Q She was at some point.

17 THE COURT: Yes.

18 BY MR. CHRISTIANSEN:

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

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

22 MR. GREENE: Uh-huh..

23 BY MR. CHRISTIANSEN:

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

1 A Yes.

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

5 A Correct.

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

8 A Correct.

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

13 A Correct.

14 Q No threats in that email, right?

15 A No.

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

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

19 Q Yeah.

20 A Correct.

21 MR. CHRISTIANSEN: That concludes cross-examination.

22 Thank you, Mr. Edgeworth.

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

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

3 THE COURT: No problem. Take your time.

4 [Counsel confer]

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

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

8 MR. GREENE: Okay.

9 RECROSS EXAMINATION

10 BY MR. GREENE:

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

15 A Yes.

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

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

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

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

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

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

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

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

1 six --

2 Q Okay.

3 A -- million.

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

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

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

11 THE COURT: Sure.

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

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

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

19 THE COURT: Okay.

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

21 THE COURT: Okay.

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

23 BY MR. GREENE:

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

25 A Yes.

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

3 A Yes.

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

10 A No.

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

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

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

17 A Absolutely not.

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

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

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

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

23 MR. GREENE: Sure.

24 MR. CHRISTIANSEN: That last one.

25 FURTHER REDIRECT EXAMINATION

1 BY MR. CHRISTIANSEN:

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

6 A It would appear so. They were --

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

9 A I do not know.

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

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

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

17 THE COURT: -- started in May.

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

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

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

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

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

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

4 MR. CHRISTIANSEN: It does.

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

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

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

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

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

19 MR. VANNAH: Oh.

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

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

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

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

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

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

4 MR. VANNAH: Yeah.

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

7 BY MR. CHRISTIANSEN:

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

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

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

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

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

21 A It was on his desk, and he insisted that we come to an
22 agreement, sign the agreement before we leave. We asked for the
23 document, he had never given to us until we got the email 10 days later.

24 Q Do you agree that just now, you told Mr. Greene you never
25 actually saw what he wanted you to sign?

1 A No, I couldn't like grasp it. I couldn't grab it.

2 Q Okay. So, you couldn't tell the Judge what it looked like?

3 A No.

4 Q You couldn't tell the Judge details of it?

5 A No.

6 Q You couldn't tell the Judge what it was entitled?

7 A No.

8 Q All right. And then your testimony over lunch became that
9 you were prevented from leaving with it, correct?

10 A Prevented? Maybe not -- that's not the right term. We
11 weren't allowed to have it. He would not give it to us until we agreed --

12 Q So, in other words, you asked? You said, Danny, can I have
13 those documents on your desk and take them with us?

14 A My wife insisted on we having something driving home to
15 read, yes.

16 Q You asked and he refused. He said, you can't have these
17 documents.

18 A He said not until we come to an agreement.

19 Q Okay, but you don't know what the documents were?

20 A Well, the new fee agreement would be my assumption.

21 Q Okay. So, you're just assuming, again?

22 A Yes.

23 Q Thanks, sir.

24 THE COURT: Any follow-up on that, Mr. Greene?

25 MR. GREENE: No, Your Honor.

1 THE COURT: Okay. This witness can be excused. Mr.
2 Edgeworth, you can be excused. Thank you very much.

3 Is there a next witness?

4 MR. CHRISTIANSEN: Ashley Ferrel, Your Honor.

5 THE COURT: Okay.

6 THE MARSHAL: Please raise your right hand.

7 ASHLEY FERREL, PLAINTIFF'S WITNESS, SWORN

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

10 THE WITNESS: Ashley Ferrel, A-S-H-L-E-Y, F-E-R-R-E-L.

11 THE COURT: I'm sorry. I just had to laugh. It's always
12 amazing that we have to always remind the lawyers to raise their right
13 hand so they can be sworn, but all of our lay witnesses just get up here
14 and raise their hand.

15 MR. CHRISTIANSEN: I took his Post-its and [indiscernible].

16 DIRECT EXAMINATION

17 BY MR. CHRISTIANSEN:

18 Q Ms. Ferrel.

19 A Yes.

20 Q Good afternoon.

21 A Good afternoon.

22 Q What do you do for a living?

23 A I'm an attorney.

24 Q How long have you been an attorney?

25 A I have been licensed for seven-and-a-half years.

1 Q Can you give us a little thumbnail sketch of your work
2 history?

3 A Yeah. For about four-and-a-half years, I worked with Mr.
4 Eglet and Mr. Adams over at the Eglet Firm, and then for the last three-
5 and-a-half -- three years, I've worked with Mr. Simon.

6 Q When you've been working for Mr. Simon, have you had
7 experience on a variety of cases?

8 A I have.

9 Q What kinds of cases?

10 A Personal injury, product liability, med mal.

11 Q Done any trials?

12 A Yes, sir.

13 Q Done any large document cases?

14 A Yes, sir.

15 Q Do you have any experience with hourly billing?

16 A Absolutely none.

17 Q Have you ever done any -- did you do any hourly billing over
18 at Mr. Eglet's firm?

19 A No, sir.

20 Q Have you done any hourly billing other than, I guess, the
21 attempts in this case over at Mr. Simon's office?

22 A No, sir. Not other than this case.

23 Q Does the law office have any billing software?

24 A No. Law office -- Mr. Simon's?

25 Q Yes.

1 A No.

2 Q Does the law office -- Mr. Simon -- I'm just going to say law
3 office.

4 A I understand now.

5 Q Okay.

6 A Sorry, I just wanted to be sure.

7 Q Does the law office have any timesheets?

8 A No.

9 Q Any experienced timekeepers?

10 A No.

11 Q Are any of the staff experienced at hourly billing?

12 A Not that I know of, no.

13 Q Okay. Are you familiar with the Edgeworth case?

14 A Yes, sir.

15 Q What kind of a case was it?

16 A It was -- I mean, a complex case. It was a product defect case
17 and also a breach of contract case.

18 Q And have you worked such cases in the past?

19 A Yes, sir, I have.

20 Q And have you worked such cases with Mr. Simon in the past?

21 A Yes, sir, I have.

22 Q Was Mr. Edgeworth a demanding client?

23 A He was demanding, I mean, yes.

24 Q Let's see if we can flesh that out a little bit.

25 A I mean, so Mr. Edgeworth -- when I first met Mr. Edgeworth,

1 it was my understanding he was a close friend of Mr. Simon's. I kind of
2 get pulled in on cases that Mr. Simon is working on, and so I just wanted
3 to make sure I did everything I could for Mr. Edgeworth because it was
4 my understanding that he was a close friend of Mr. Simon's.

5 Q Were there a lot of phone calls from Mr. Edgeworth?

6 A Yes, sir. Once I started working on the case, there were.

7 Q Can you quantify the number of phone calls that were made
8 by Mr. Edgeworth as compared to some other client in a product defect
9 case?

10 A Well, I mean, I can say this. Mr. Edgeworth had my cell
11 phone number at some point, I mean, in the litigation. I gave him my
12 cell phone number. I just don't give my cell phone number out to any
13 other client. And so, I mean, I would -- he would call, and I would
14 answer his phone call as best I could. I mean, if I was in the middle of a
15 deposition or something like that, I wouldn't answer his phone call, but I
16 would take his phone call whenever -- at the office whenever I could.

17 Q How about emails?

18 A He liked to email. There were a lot of emails. I mean, we
19 would go back and forth, I mean, on things, probably -- I mean, on
20 average, I could say probably five, six emails a day during the -- and but
21 sometimes there were like 12, sometimes there were like 15. I mean, but
22 we would be going back and forth on chains.

23 Q Did you ever have an occasion to see any expressions of
24 temper by Mr. Edgeworth?

25 A Yes. He never got angry with me, specifically, but he did --

1 he was very -- he did get angry sometimes during the depositions.
2 Sometimes, you know, when things weren't necessarily favorable in the
3 case, he did get a little angry, yes.

4 Q Did he ever make any expressions of temper, anger, or
5 disagreement towards any Defense counsel?

6 A Towards the end. He didn't really care for the attorneys out
7 of Los Angeles, and Ms. Pancoast, as well. I don't really know about Ms.
8 Dalacas. It was more so because we were more focused on Viking, and
9 he didn't really care for them. At one point, I think he said he wanted to
10 file a bar complaint or something, or just asked about a bar complaint.

11 Q Did he ask you or Mr. Simon?

12 A It was a conversation. I don't know if it was specifically at
13 me, but I know that -- I don't know if the question was directed at me or if
14 it was directed at Mr. Simon, but I was in the room when we discussed it.

15 Q Did you folks, and by that, I mean yourself and Mr. Simon,
16 pursue that?

17 A Oh, we did not. No, sir.

18 Q Were there times that Mr. Edgeworth, for lack of a better
19 term, tried to act like a lawyer during the case?

20 A Yeah, I think so. Yes.

21 Q Can you give an example?

22 A Yeah. I mean, like so one that came to my mind would be
23 request for admissions, which are written discovery, obviously, and --
24 well, I had already drafted them, and he sent over a whole list that he --
25 of stuff he wanted to admit that we were able to -- that I responded, that

1 was forwarded -- either he forwarded it to me or Mr. Simon forwarded it
2 to me, and I responded back, these are already all in there. Another -- I
3 mean, sometimes in regard to motions, you know, he would want a
4 specific section in the -- like a factual section in there, and we would say,
5 well that's already in there because it was something we had already all
6 discussed and what not, that kind of thing, and the motion had already
7 been filed.

8 Q Okay. And that's not to say -- did he ever come up with
9 something that was useful?

10 A Oh, no. He came up with stuff that was useful sometimes.

11 Q Okay.

12 A I mean, he was pretty smart on the factual stuff.

13 Q Okay. He did have a habit of raising issues that had already
14 been addressed?

15 A Yes, sir.

16 Q Okay. Any other examples of them in ones you've talked
17 about that jump to mind?

18 A Well, with regard to the activations, maybe -- I don't know if
19 I'm jumping ahead, but --

20 Q Well, we can get to activations in a bit.

21 A Okay.

22 Q You said that you understood that Mr. Edgeworth was a
23 Simon family friend?

24 A Yes, sir.

25 Q A friend of Mr. Simon's?

1 A A friend of Mr. Simon's, at least. Yes, sir.

2 Q Okay. Did the office have that understanding?

3 A I think so. I mean, Mr. Edgeworth pretty much dealt with me
4 and Mr. Simon, but I mean he would -- he would kind of -- He would
5 come back behind the reception desk, and -- like the way our office is set
6 up, you've kind of got to go through a door, and the receptionist usually
7 will seat you in a conference room, but he would just come on back, and
8 he would go right to Danny's office or right to my office. I mean, and
9 then at a couple depositions and stuff -- I mean, he basically had free
10 reign in the office. He didn't do anything like bad, but it was just he
11 would -- I think the office staff knew who he was, and they knew that he
12 was a friend of Mr. Simon's.

13 Q Any other clients given free rein to the office?

14 A Not typically; no.

15 Q Given Mr. Edgeworth was a demanding client, did he ever
16 make any acknowledgment of that to you?

17 A Verbally, I don't think he ever said that directly to me, I mean,
18 but I think he had to know that he was -- I mean, the office was pretty
19 consumed. The office, meaning Danny and I were definitely consumed
20 with his taste, and that's basically all we were doing.

21 Q Let's focus in on some bills for a bit. Did you learn, at some
22 point, that Mr. Simon wanted to generate an hourly bill on the
23 Edgeworth case?

24 A Yes, sir.

25 Q Do you recall about when that occurred?

1 A It was around November-ish, sometime. It was in the fall.
2 So, it was like November -- it was right around the ECC. Danny said we
3 needed to -- he was like hey, remember that -- we had a case, we need to
4 come up with -- he needed to come up with an hourly bill, and we were
5 going to put a bill together for the Lange, because the Lange contract
6 had a provision in it for attorney's fees.

7 So, part of the calculation -- part of that, part of our damages in the
8 16.1 initial disclosure in November, needed to be a calculation of
9 damages and we needed to bill out our attorney's fees.

10 Q Was that --

11 THE COURT: And this is November of what year?

12 THE WITNESS: 2016. I apologize.

13 THE COURT: '16.

14 BY MR. CHRISTIANSEN:

15 Q And that was in preparation for an early case conference
16 disclosure?

17 A Yes.

18 Q What did you respond to Mr. Simon when he brought up the
19 issue of an hourly rate?

20 A Well, so what I said to him, I was like, well hey, remember
21 earlier this year, we had that mis -- there was a case that mistrialed, and
22 we had to file a motion in front of Judge Israel asking for attorney's fees
23 and costs, so we had to bill out all of our hours, him and I both. And in
24 that case, he charged \$600 an hour, I charged \$300 an hour.

25 And so, we took those because Judge Israel had approved them,

1 and we figured the Defense couldn't balk at those. They couldn't, you
2 know, think that they were unreasonable, and then we cut it down a little
3 bit. Danny's was 550 and mine was -- well, at that point in time, mine
4 was not 275, but later down the road in April when I started billing, that's
5 where I get my basis, too, is 275.

6 Q Okay. That was the Ash case?

7 A Yes, sir.

8 Q And that was mistrialed in front of Judge Israel in
9 Department 28 --

10 A Correct.

11 Q -- in this building?

12 A Yes, sir.

13 Q Okay. And that's where the 550 number came from?

14 A Yes, sir.

15 Q Was Mr. Edgeworth involved in the decision of setting the
16 550 rate?

17 A No, sir. I mean, not part of that discussion; no.

18 Q Okay. As I understand it, that discussion occurred, and then
19 Mr. Simon said okay and used the 550 number?

20 A Yes, sir.

21 Q And that was in November of 2016?

22 A Correct.

23 Q When did you start working on the Edgeworth case?

24 A Well, I started working on it in January of 2017, on the bill. I
25 did do -- our paralegal was out, so I did do a download on December

1 20th of 2016. That is in -- that's technically, I guess, the first number in
2 what's the timesheet, that's also been referred to as the superbill for my
3 time, but I started working on the case in January of 2017.

4 Q What were you doing at that time?

5 A What was I -- at that time, I was just helping Mr. Simon. We
6 were getting ready to -- he filed -- we were getting ready to file a motion
7 for summary judgment, which was ultimately filed later that month, and
8 we were just kind of ramping it up. Basically, it was -- he had been doing
9 some stuff on it. I hadn't really been working on the case yet, and he
10 asked if I could help him.

11 Q Okay. When did you start billing on the file?

12 A I didn't start billing until April.

13 Q Of 2017?

14 A 2017. I apologize, yes.

15 Q Okay. Is it fair to say that you didn't bill for your January
16 through April 2017 time until the generation of the timesheets that were
17 submitted in this hearing that some folks have been calling the superbill?

18 A Yes, sir.

19 Q Going back to the first bill that Mr. Simon generated on the
20 Edgeworth case, do you have an understanding of the purpose of that
21 bill?

22 A As I just said, my understanding was it was to support the
23 calculation of damages. It was because there was an attorney's fee
24 clause in the Lange contract.

25 Q Sorry, I'm jumping around a little bit, but why the delay from

1 January to April 2017, in including your time and your work on the bills
2 that were sent to Mr. Edgeworth and that were disclosed in the
3 litigation?

4 A Because it was my understanding this was Danny's friend I
5 was just helping out. The bills weren't really bills. They were only
6 supposed to be for calculation of damages. So, but then in April, we
7 realized after -- I think it was Judge Bonaventure, on April 25th, denied
8 our motion for summary judgment to put a moratorium on discovery.
9 We've got to start taking depositions, we've got to start doing all this on
10 written discovery and all that stuff.

11 So, at that time, I'm working on the case, I need to start billing my
12 time so we can add it to the computation of damages.

13 Q When you started billing your time, did you bill all your
14 work --

15 A No, sir.

16 Q -- and all your time?

17 A Oh, I'm sorry.

18 Q All your work and time, did you bill it?

19 A No, I did not.

20 Q Why not?

21 A Well, because again, this was Danny's friend. I billed the
22 substantial things -- like the substantial documents, like the motions that
23 I did, the depositions I attended, the court hearings I attended. Basically,
24 I didn't bill any emails, I didn't bill any telephone calls. This was Danny's
25 friend, and this was just us putting together bills for the calculation of

1 damages. Plus, I'm not a great biller. I don't have any billing software. I
2 don't know, you know -- and so I mean, I didn't think to really bill that
3 way. That was just when I was putting together the substantial stuff.

4 Q Was there an office effort to bill on this file?

5 A No, sir. Not at that time.

6 Q To your knowledge, have any paralegals ever billed any time
7 in this file?

8 A No.

9 Q Any assistants?

10 A No.

11 Q Were you involved in the document management of this
12 case?

13 A Yes, sir, I was.

14 Q Do you have an understanding of the size of the file and the
15 documents produced?

16 A Yes. It was huge.

17 MR. CHRISTIANSEN: Your Honor, I'd like to bring in a
18 demonstrative piece of evidence --

19 THE COURT: Okay, which is?

20 MR. CHRISTIANSEN: -- for the Court's --

21 MR. GREENE: It would be nice if we could have seen it first.

22 MR. CHRISTIANSEN: It's going to be very technical and hard
23 to understand.

24 MR. GREENE: Generally, before you show exhibits to
25 witnesses, you show them to either side, don't you?

1 MR. VANNAH: No surprises.

2 MR. CHRISTIANSEN: Is this your witness, Mr. Greene?

3 MR. GREENE: Yeah. No, we have terrible way about each
4 other, apparently.

5 MR. CHRISTIANSEN: I've noticed.

6 MR. VANNAH: I didn't know.

7 MR. CHRISTIANSEN: [Indiscernible].

8 MR. VANNAH: I can understand that.

9 MR. CHRISTIANSEN: It's not that.

10 MR. VANNAH: Whatever.

11 MR. CHRISTIANSEN: I know.

12 THE COURT: And what is this, Mr. Christiansen that requires
13 four people to hold the door open? So, now I'm nervous.

14 MR. VANNAH: It's a big bulletin.

15 MR. CHRISTIANSEN: It's some boxes, Your Honor.

16 MR. VANNAH: Oh my God.

17 MR. CHRISTIANSEN: It's boxes.

18 MR. VANNAH: If somebody gets a bad back out of all this,
19 I'm not responsible.

20 THE COURT: I'm not liable either, Mr. Vannah.

21 MR. VANNAH: Oh my gosh. Are we filming this?

22 MR. CHRISTIANSEN: We're building a wall. It's like a
23 concert I went to once, a long time ago.

24 THE COURT: Oh, my goodness.

25 MR. CHRISTIANSEN: While the folks are bringing in the

1 boxes --

2 BY MR. CHRISTENSEN:

3 Q Ms. Ferrel, while the folks are bringing in the boxes --

4 A Yes, sir.

5 Q -- how many documents were produced in discovery in the
6 Edgeworth case?

7 A Just discovery alone were 122,458 pages.

8 Q Did you do any research into how many pieces of paper fit
9 into a standard bankers box?

10 A Yeah, 5,000 pieces of paper.

11 Q So, do the math for us and round up, if you would, how
12 many banker's boxes of paper was that equal to?

13 A It's 24.5, so 122,458 divided by 5,000 is 24 -- approximately
14 24.5 boxes. So, 24.5 boxes just in the production.

15 Q So, that would be 25 boxes?

16 A Twenty-five boxes. Yes, sir.

17 Q Okay. We're not quite there yet. Did you have the lovely
18 opportunity to look at all those pieces of paper?

19 A Yes, sir.

20 Q Now, the boxes that we're, I guess, still bringing in, would
21 that include the pleadings that were filed in the case?

22 A No, sir.

23 Q Motions?

24 A No, sir.

25 Q Depositions?

1 A No, sir.

2 Q Exhibits attached to depositions?

3 A No, sir.

4 Q Research?

5 A No, sir.

6 Q And of course, the emails, we know were in a whole bunch of

7 additional boxes behind those?

8 A Yes, sir.

9 Q Okay. So that would be in addition to the 25 boxes?

10 A Yeah, that's just the discovery produced in the case.

11 Q I'd like to talk a little bit about the timesheets that were

12 submitted during the adjudication process.

13 A Okay.

14 Q I think we've been calling them superbills today.

15 A Yes, sir.

16 Q Okay.

17 A I understand what you're talking about.

18 Q All right. Those are exhibits 13, 14, and 15?

19 A Yes. I believe so, yes.

20 Q Did you have a role in the creation of those --

21 A Yes, sir.

22 Q -- timesheets?

23 A Yes.

24 Q What was your role?

25 A Well, I did all of mine, and then I also helped with Mr.

1 Simon's.

2 Q I think there was an allegation that you all sat around a
3 conference table and dreamed up the numbers contained in the
4 timesheets; is that true?

5 A No, sir. We did not do that.

6 MR. VANNAH: I'm going to object to that. I don't remember,
7 and I'm pretty good at reading, but I don't remember anybody saying
8 anybody sat around a conference table and dreamed up anything. Can
9 we just come up with crap like that with no background? Can we not do
10 that?

11 THE COURT: Well, I mean, I don't recall that, Mr.
12 Christiansen, anybody saying that.

13 MR. VANNAH: Yeah. If you want to show me where I ever
14 alleged in a pleading that you guys sat around the table holding hands,
15 praying, and coming up with a time out of the blue, I'd like to see that.

16 MR. CHRISTIANSEN: I will provide it.

17 MR. VANNAH: Okay. Well we'll --

18 MR. CHRISTIANSEN: Tomorrow.

19 MR. VANNAH: Maybe Mr. Simon can --

20 MR. CHRISTIANSEN: I didn't anticipate your standing up and
21 contradicting that, but we'll give it to him.

22 THE COURT: Okay.

23 MR. CHRISTIANSEN: We'll provide it.

24 THE COURT: Okay.

25 MR. VANNAH: All right.

1 BY MR. CHRISTIANSEN:

2 Q So, what went into your timesheets?

3 A What went into my -- the superbill timesheets?

4 Q Correct.

5 A So, basically, we billed -- so, I guess you could kind of split it
6 up into two things. From September 19th, so like September 20th, I think
7 it is, through when we stopped working on the case, which mine is
8 sometime in January 2018. That was all hours that we were working on
9 the case. Everything before that -- and I'm just talking about mine. I
10 don't know if I clarified that. All of mine before that, we went back to
11 May of -- I didn't start working the case until May, until January, except
12 for that one December 20th, 2016 date. In January from that point to
13 September 19th, all of those bills were emails, and telephone calls, and
14 downloads -- WIZnet downloads, that I did that I had not billed for
15 previously. And --

16 Q Was that a time consuming process?

17 A Yes, sir. I had to go through all of the emails.

18 THE COURT: Okay. I'm sorry, Mr. Christiansen. I have a
19 question. So, your bills, in this superbill --

20 THE WITNESS: Yes, ma'am.

21 THE COURT: -- everything from January of 2017 to
22 September 19th of 2017, is for emails, telephone calls, and WIZnet
23 downloads that you hadn't previously billed for?

24 THE WITNESS: Yes, ma'am.

25 THE COURT: Okay. And that's what's included in this

1 superbill?

2 THE WITNESS: Yeah. And I believe if you look at mine,
3 that's all that's in there are telephone calls for my cell phone --

4 THE COURT: Okay.

5 THE WITNESS: -- and WIZnet downloads, and also emails.

6 THE COURT: But from September 20th to January 2018,
7 that's the hours you worked on this case?

8 THE WITNESS: Well, that's the hours I worked on this case,
9 including -- but I also incorporated in my downloads, also my emails,
10 and my telephone calls in there, as well.

11 THE COURT: So, that's in that calculation --

12 THE WITNESS: Yes, ma'am.

13 THE COURT: -- on the superbill? Okay.

14 BY MR. CHRISTIANSEN:

15 Q Do the timesheets capture all the work?

16 A No. So, the timesheets -- when we had to go back and do it
17 for this adjudication process, we had to show -- because it's my
18 understanding we had to show the Court how much work we did on the
19 file, and so we went back, and we only put entries on there that we could
20 support with documentation.

21 So, that's why the emails were added, that's why the cell phone
22 records were added, and that's also why the WIZnet filings were added,
23 as well. And so, basically -- and because we had a hard document. If we
24 didn't have a hard document, we didn't capture it on the bill. We didn't
25 put it on there. Any discussions with Mr. Simon that I had, you know, 10

1 minute discussions -- there are a few discussions on the bills that are on
2 there, those aren't captured.

3 Any calls from the office that we did with regard to this case,
4 whether it be with Mr. Edgeworth, whether it be with experts, whether it
5 be whoever, any calls from the office we weren't able to get, we
6 subpoenaed the records from Cox and were not able to obtain those, so
7 those aren't include on there -- included on there.

8 But what we did to get those dates on that superbill was we had to
9 choose a landmark date. So, with regard to the WIZnet filings, because I
10 needed something -- I needed a landmark date for each of those filings, I
11 went to the date that that thing was filed, the date that the pleading was
12 filed and that's the date that I put it in on.

13 I know there's been some allegations about a 22 hour day, which I
14 know we're going to talk about in detail, but that kind of explains that
15 because I -- and I mean, again, I talked about it in detail. Everything that
16 was filed, for example, on September 13th, I put on September 13th for
17 the WIZnet filings. Every email that was received on September 13th, I
18 put on September 13th, and then I also gave all of the WIZnet documents
19 .3 hours, because what I did was I would review the -- when it came in on
20 WIZnet -- I was the one working on this case. We didn't have a paralegal
21 in this case. I was the one that did it. I would open the WIZnet
22 document, review it, download it, save it, and send it out to wherever it
23 needed to do. Some of these, super quick, maybe not .3. Some of them,
24 way longer than .3.

25 So, we had to have a base mark number for all of the WIZnet

1 filings, so that's why we chose .3 for the WIZnet filings, which are
2 identified as -- I can tell you, if you'd like. On my bills, review, download,
3 and save, and then I put the name of the document, and that's a WIZnet
4 filing. So anytime you see review, download, and save, that's a WIZnet
5 filing.

6 Same thing with emails. Our base calculation, I had to put a base
7 calculation, it was .15, and then if the email was more time consuming,
8 the appropriate number was put on there. This is with regard to my bill.

9 Q So, I heard a couple of things. One, I heard no paralegal.

10 A Yes, sir.

11 Q So that's why there are no paralegal bills?

12 A Yes, sir.

13 Q Okay. Thanks for clearing that up. Let's take the WIZnet
14 filings as an example. What did you do with a WIZnet filing when it was
15 made in this case, in the Edgeworth case?

16 A I would -- like a WIZnet, like any filing?

17 Q Like someone filed a motion. One of the Defendants filed a
18 motion.

19 A When the Defendants filed a motion, I would download it, I
20 mean, review it, save it, and then send it out to Danny, send it out to
21 Brian, send it out to whoever. And I didn't send it to Brian every single
22 time, but some of the more important things, I know Brian was very
23 active in the case, and like he wanted to be in charge -- like not in charge.
24 Informed of the stuff going on. So, I would sometimes send it to him,
25 too.

1 Q Okay. And is that different from any review you would do if
2 you were say taking the lead on drafting an opposition to a motion?

3 A Well, yeah. I would review it to see what it is. I mean, do I --
4 and then I would also have to like calendar it or what not, too. I mean,
5 and if I was supposed to do an opposition, so for example, with your
6 example, a motion. A motion comes in, the review, download, and case
7 only incorporates the review, download, and save. If it was a motion,
8 then I -- and I was going to do an opposition to it, I would review it later.
9 I wasn't reviewing it at that time to draft the opposition.

10 Q Okay. You indicated that you did some -- that you helped Mr.
11 Simon with his timesheets?

12 A Yes, sir; I did.

13 Q What did you do --

14 A Some of it.

15 Q -- for Mr. Simon?

16 A Well, I did -- I took his cell phone records. Again, because we
17 weren't able to get the office records, so I took his cell phone records and
18 I plugged in his cell phone records into the bill, and then I also -- I'm the
19 one that put the infamous, on Exhibit 13, a Plaintiff review of all emails
20 concerning service of all pleadings, (679 emails), without a date. So,
21 would you like me to explain that?

22 THE COURT: I would.

23 THE WITNESS: Okay.

24 MR. CHRISTIANSEN: Yeah, I'd like to hear about it, too.

25 THE WITNESS: So, what that is, is that's the WIZnet filings.

1 If you look at any of Mr. -- if you look at Mr. Simon's superbill, there are
2 no WIZnet filings in his. And so, when I would send the WIZnet filing -- I
3 sent every single WIZnet filing to Mr. Simon.

4 So, what that number is -- or so what is, there were 679
5 emails, and I had multiplied that by .2 because he would have to open it,
6 and then analyze it or whatever, and then that was it. And if he wanted
7 to do more to it, then he could choose to do more to it, but because there
8 was a formatting issue, plugging every one of those 679 emails in -- so
9 those are all WIZnet filings. Those WIZnet filings are for the entire case,
10 679. So, that goes from May -- well, I guess the complaint wasn't filed
11 until June, so June of 2016 through -- I guess the attorney lien is when
12 we kind of stopped counting. That's when we stopped counting any of
13 the WIZnet filings in the case.

14 MR. CHRISTENSEN: Okay.

15 THE COURT: So, that's through the attorney lien?

16 THE WITNESS: Yes, ma'am. The amended attorney lien in
17 January.

18 THE COURT: And do these include some of the same WIZnet
19 filings that are in your bill?

20 THE WITNESS: Yes, ma'am.

21 THE COURT: Okay.

22 THE WITNESS: But we would both -- I mean, he would read
23 them as I -- he didn't download them. He just read them when I would
24 send them to him.

25 THE COURT: And what did you -- what was the time per --

1 THE WITNESS: .2.

2 THE COURT: .2. Okay.

3 BY MR. CHRISTIANSEN:

4 Q Did Mr. Simon enjoy billing?

5 A No.

6 Q How do you know?

7 A He was super grumpy about it, and he had lots of Post-Its
8 everywhere, and he just -- he absolutely did not enjoy billing. I don't
9 know how many times he said he didn't know how to bill.

10 Q Let's talk about the Edgeworth Exhibit 9.

11 A Okay.

12 Q Have you seen Edgeworth Exhibit 9?

13 A Yes, sir.

14 Q What did you do when you first received Edgeworth Exhibit
15 9?

16 A Well, I looked at it. I added up -- not that I'm great at math,
17 but I think I'm decent enough. I added up just to make sure their hours
18 were all, and the math -- the chart was right. And then I looked at all of
19 the boxed ones, because I assumed those were the ones that they had
20 issue with, and then I pulled the bills for -- if -- because some of them are
21 prior to the superbill. I pulled the paid hours and the new hours, the
22 superbill hours, and I compared them to see what their issue was or
23 what I thought their issue was with it.

24 Q Okay.

25 A So I could review it.

1 Q And just for clarification of the record, it's Edgeworth Exhibit
2 9, Bate 8 through 12; is that what you have?

3 A I believe it's 7 through 12.

4 Q Oh, did I miss one?

5 THE COURT: Yes, it starts on 7.

6 MR. CHRISTIANSEN: Okay. I apologize. I missed one.

7 THE COURT: Well, Ms. Ferrel starts on 8, but the --

8 THE WITNESS: Oh, I do --

9 THE COURT: Right. There's beginning with Mr. Simon on
10 page 12.

11 THE WITNESS: Sorry, Judge.

12 MR. CHRISTIANSEN: Okay.

13 THE COURT: I mean on 7.

14 BY MR. CHRISTIANSEN:

15 Q So, there was some discussion about email billing for Mr.
16 Simon on 8/20 and 8/21/2017.

17 A Yes, sir.

18 Q Do you recall that earlier today?

19 A Yes, I do.

20 Q Okay. So, what did you find when you took a deeper look
21 into those boxes on this exhibit?

22 A On Mr. Simon's 8/20 and 8/21, or just --

23 Q Correct.

24 A -- all boxes? On those boxes, it was different things. A lot of
25 -- what I think the common error is, and maybe Mr. Vannah can correct

1 me if I'm wrong, but it's the emails, the WIZnet filings, and the telephone
2 calls that were added that put all of these -- that put -- that I think they're
3 questioning these hours, because -- and again, like I just told you, I had
4 to use a landmark date.

5 So, whether I opened, reviewed, and downloaded on that specific
6 day, or whether it was the next day, or the next day, I mean, it happened
7 within a few days of that, but I used a landmark date because again, I
8 wanted to have support for everything I put into the superbill.

9 Q Talking, specifically, about the Sing [phonetic] work old, new,
10 on 8/20/2017, that's listed on Bated page 10 of Exhibit 9 for Mr. Simon.

11 A Oh, I apologize. Yeah. Well, what I found on there is that he
12 had -- they're different. It's actually different stuff.

13 Q Okay. Those are the emails that Mr. Christiansen showed to
14 Mr. Edgeworth earlier today?

15 A I believe so, yes.

16 Q And copies of those emails are in Exhibit 80 that's been
17 submitted to the Edgeworth counsel and to the Court?

18 A Yes, sir. And I believe one of them, and I can't tell you which
19 date right now, one had 10 emails and one had 12 emails.

20 Q Okay.

21 A And on one of those days, I believe it was 8/21, he hadn't
22 billed for any emails at all.

23 Q So, let's take a look at some of these issues on here. There's
24 a 22 hour day on here.

25 A Yes, sir.

1 Q 9/13/2017. That's on page 10 of Exhibit 9.

2 A Yes, sir.

3 Q What's going on there?

4 A Okay. So again, what I think happened, if you look at the --
5 it's the very last entry on that page. On the paid bills, it was -- I had eight
6 hours, 8.75 hours, and then on the new superbill, there's 14.10 hour, and
7 if you look at the new bill, all of the time is review, download, and save
8 the WIZnet filings. But, also, on that day, and I know for a fact because
9 that was right after -- we had to do out-of-state commission. We're like
10 ramping everything up. This case was incredibly fast at the very end.

11 Q Let me interrupt you for just a second.

12 A Okay.

13 Q Did something happen the day before that date on 9/13?

14 Was there a deposition or something that went on?

15 A Well, on 9/7 --

16 Q Okay.

17 A -- Mr. Carnahan -- yeah, Carnahan, he was deposed.

18 Q Okay.

19 A And he was our expert for like seven hours, and so then one
20 of their other complaints they have is the one right above that -- or not
21 complaints. I apologize. One of the other issues that they had boxed
22 was the 9/8/17 date.

23 Q Okay.

24 A And that was the date after Mr. Carnahan's deposition, and
25 there was a ton going on that day because of what Mr. Carnahan had

1 testified to, we were -- I mean, we were resetting depositions, we were
2 starting the motion to strike, we were noticing all these depositions over
3 that course of between the 8th, the 13th. I mean, and it just all happened
4 in a short period of time, Viking people in Michigan.

5 So, on the 13th one, which you were talking about a minute ago, a
6 lot of those downloads were for Michigan people, okay? The Viking
7 counsel refused to accept service on a lot of them, so we had to file
8 applications to take out-of-state commission, deposition, out-of-state -- I
9 think everyone knows what I --

10 THE COURT: Out-of-state depositions?

11 THE WITNESS: Yeah, the commission to take an out-of-state
12 deposition. There we go. So, we had to file that. But then you had to
13 also file all of the paperwork with the Court in that jurisdiction. Well, in
14 Lansing, you have Ingham and Eaton, and that's where some of these
15 were at, and then some of them were in Grand Rapids, which is a
16 different county, and you had to fill out documents each time you did.

17 So, some of these, yeah, it was, you know, an amended
18 deposition notice, okay, but each time I filed that deposition notice, I had
19 to resubmit the paperwork to the Court, which took time. I mean, and it
20 was, yeah, I had some of it filled out. It was a little quicker the next
21 times, but you know, that's why it took so long each time I did it, even
22 whether it was amended or the first notice.

23 BY MR. CHRISTIANSEN:

24 Q We were talking about some of the WIZnet filings with regard
25 to the 22 hour entry on 9/13.

1 A Yes, sir.

2 Q So, you know, I use WIZnet, sort of, right? I get an email, I
3 can open it up, I can download something. I don't always do it that day.
4 Sometimes I do it the following day when I get to it. What were you
5 doing in this case?

6 A What was I doing in the WIZnet --

7 Q Yeah, with the WIZnet.

8 A -- with regard to WIZnet?

9 Q Did you open them every day as soon as they came in? How
10 did that work?

11 A No. I mean, yeah, I would try to do that, but there was,
12 again, a lot of stuff going on with the case. I mean, if I'm working on a
13 motion to strike, I'm not going to stop my motion to strike when I see,
14 you know -- just when I'm downloading, when I know I just filed 10 or 12,
15 you know, deposition notices, especially in the ones Viking counsel's,
16 you know, taking -- that they're accepting service of.

17 I'm not going to stop working on my motion to strike and/or reply,
18 or opposition, or motion to compel, or whatever I'm working on, to
19 download that day. It may have been the next day or the next day, but it
20 would've had to be within two or three days because we had to keep up
21 to date on this case all the time.

22 Q So, I mean, why does it take you to do this work, just to do a
23 WIZnet for a notice of taking deposition?

24 A Okay. So, what happened in this case is they had a
25 confidentiality order, right? A protective order. I know that's super

1 common in these big document cases and things like that, but this one,
2 they had actually threatened us because a document got served that was
3 confidential, and they sent a letter to us threatening to sue us if --
4 because we violated -- not sue us, but they were going to take action
5 against us, because we violated the protective order.

6 And so, they told us to withdraw it and then we had to do all this
7 other stuff from that. So, because of that, I was the one that was doing
8 all of this.

9 Q Well, is calendaring also an important issue in a large
10 complex litigation?

11 A Yes.

12 Q I mean, you have to keep track of all the different parts, right?

13 A Yes.

14 Q But do you keep track of all the different parts and do this
15 kind of labor on a smaller case?

16 A No.

17 Q Only the larger cases?

18 A I mean, this is the only one that I typically do all of it on. I
19 mean, we have a paralegal who is very competent and has done --
20 worked for Mr. Simon for 20 years, so she does most of it, but with
21 regard to this case, because again, it was kind of a -- it was a very -- it
22 was his friend, it was a very fast moving case. We didn't want to miss
23 anything. That's why I was doing all of it.

24 Q When you performed your review of these box entries, did
25 you find any errors?

1 A On?

2 Q On any of the billing? Did you go and see -- like for the 22
3 hour day, did you go back and see, yeah, there were however many
4 WIZnet filings that day and --

5 A Oh, yeah. No. Sorry. I didn't quite --

6 Q Yeah.

7 A -- understand. Yeah. So, no, I did. I took that day, and I
8 pulled -- you know, I pulled the paid hours, and then I also pulled the
9 new hours, and I compared them, and these are an exhibit, if you needed
10 them, but -- and there were no -- I recalculated everything because I
11 anticipated that they were going to talk to me about the ones in the box
12 -- in the boxes.

13 Q Okay.

14 A So, I just wanted to make sure that I didn't screw up, so if I
15 did screw up, I could at least say that it was my fault.

16 Q Okay. Well, are you padding bills?

17 A No, sir.

18 Q Was that your intent?

19 A No, sir.

20 Q Long days happen when you're an attorney?

21 A Yeah. Especially a trial attorney, yes.

22 Q Okay. And especially in document intensive cases?

23 A Yes, sir.

24 Q I think your testimony is that you probably didn't work 22
25 hours on 9/13 because of the WIZnet filings?

1 A Yeah. I don't think I worked 22 hours on 9/13, however --

2 Q And --

3 A -- I do --

4 Q Have you worked 22 hour days before?

5 A I have one hundred percent worked 22 hour days before.

6 Q Okay. Can you --

7 A When I --

8 Q -- explain that a little bit?

9 A Yeah. When I worked over with -- at Mr. Eglet's firm, we did
10 -- I worked hand-in-hand with him and Mr. Adams, and a couple of other
11 attorneys on the endoscopy cases, and those were huge, complex cases,
12 very similar -- I mean, not similar in fact and stuff to this case. I mean,
13 but when we were preparing for it, I mean, we're talking hundreds and
14 thousands of documents. Yeah, we would. We would work, I mean, on
15 average, 15, 16 hour days. That was an average day for us if we were in
16 trial.

17 Q Okay.

18 A There were -- I can think of at least a dozen days where we
19 worked all through the night, me and Mr. Adams, and I went home, I
20 would shower, and I'd come right back to work, and we'd go right to
21 trial. Did it happen on this day? No. I didn't do 22 hours on this day
22 specifically, but again, that -- I have worked 15 hour -- yeah, I have
23 definitely worked 15, 16 hour days on this case.

24 You know, I mean, and so there was a lot of times I would even
25 work from home. I think it was said, and I don't remember who said it,

1 but I heard the testimony, or it may have been in opening that, you
2 know, I was working from my -- there is no way someone could work
3 from their office for that long. Well, I have remote access, and so I'm -- I
4 work a lot of times at home until 1 or 2:00 in the morning. I live by
5 myself with my dogs, so, you know, I mean, I don't have a lot of
6 interruptions.

7 And so, you know, I mean, I work from home a ton. I'm at the --
8 but in this case, I had to be at the office for a lot, and so it was very
9 common for me to be there 12, 13 hour days, and then I would go home
10 and work from home. And I have email on my phone, I have email --
11 remote access on my laptop. So, I mean, I would work long hours.

12 Q Did you do all the work that you billed for?

13 A Yes, sir; I did.

14 Q Did you get the right date on all the work that you billed for?

15 A Well, I mean, I think I did. Yeah, with what we've just talked
16 about, I mean, with the exception of those -- with the WIZnet filings
17 maybe being the next day or the following day within that time range;
18 yes, I did.

19 Q Okay. And on that same theme, we've got a 135 hour block
20 entry for Mr. Simon. How do you know that he was reviewing these
21 emails that you gave him credit for?

22 A Because he would respond back to the email with the WIZnet
23 filing attached.

24 Q Okay.

25 A Like he would -- like I would send the email, and then he

1 would respond to the email, and the WIZnet filing would be at the
2 bottom. You know how an email is.

3 Q So, he was on top of it?

4 A Yes, sir.

5 Q Okay. Let's talk a little bit about the review of these
6 produced documents and the assertion by Mr. Edgeworth that he was
7 solely responsible for the blossoming value of the case. Is it fair to say
8 that you get the first look at any document production?

9 A Yes.

10 Q Was the first major production on July 6th, 2017?

11 A Yeah, that's the first one that was like thousands and
12 thousands of pages. It was a lot more. They had only produced like a
13 couple hundred pages or maybe a thousand pages before that one.

14 Q Okay.

15 A That's the first big one.

16 Q And that was by Viking, I believe?

17 A Yes, sir.

18 Q Okay. So, this is Exhibit 88. It's the law offices, Exhibit 88.
19 So, this appears to be an email from you, Ms. Ferrel, on July 6th; is that
20 correct?

21 A Yes, sir.

22 Q And that's 2017?

23 A Yep. Yes. Sorry.

24 Q And it seems to be a -- as these emails are set up, as we can
25 see, it's a forward on top of an email from Janet Pancoast --

1 A Yes, sir.

2 Q -- to some of the other lawyers in the case, including
3 yourself?

4 A Yes, sir.

5 Q So, first of all, can you tell me a little bit about what had gone
6 on in the case prior to this time about disclosures and attached
7 documents?

8 A Yeah. So, what Viking was doing when they were producing
9 their documents and, actually, Lange was doing it, too, is they'd serve
10 the pleading without any documents attached, unless it was like six
11 pages or something like that, or maybe even like 20 pages. I don't -- you
12 know, but a small amount. And then they'd send a disc in the mail, and
13 so we would wait three days, four days, or however long the mail took to
14 get it. And I mean, that's -- and when a case is moving this case, you
15 kind of need the documents then.

16 So, I said something to Janet -- Ms. Pancoast, and so then that's
17 why she sent the email before they would serve a pleading, or the day
18 they'd serve the pleading, and it let -- she then would email us and tell
19 us, hey, we're going to serve this today. Let me know if your runner is
20 going to come pick it up.

21 So, I would send a runner to pick it up, so then they would put it --
22 so it wouldn't get put in the mail. The runner would come back, bring it
23 to me, so then I could start going through it as soon as I get it.

24 Q Did that happen with this production on July 6th?

25 A Yes, sir.

1 Q So, the runner went and picked up the production on July
2 6th?

3 A Yes, sir.

4 Q And then you started in on it?

5 A I downloaded it and started in on it right as soon as I got it,
6 and this is at 9:12 in the morning, so she went and picked it up pretty
7 early.

8 Q About how much was the -- that download? The July 6th
9 download?

10 A Twenty-two -- 24,000 pages. I don't know exactly, but it was
11 at least 22, but it may have been 24,000.

12 Q I want to show you what's been marked as the Law Office
13 Exhibit Number 89. It's an email. So, it looks like you sent an email on
14 July 10, 2017, at 10:26 a.m.

15 A Could you bring it down just a little bit? Oh, 10:26. Yeah,
16 never mind. I see what you're saying. Yes, sir.

17 Q You see that? Right --

18 A Yeah.

19 Q -- in the middle?

20 A Yes.

21 Q And you wrote, holy crap, two words, punitive damages.

22 A Yeah.

23 Q And then you mention there's a ton of documents, and then
24 you talk about sending a Dropbox link out to folks for their review?

25 A Yes, sir.

1 Q Is that fair?

2 A Yes.

3 Q Okay. What did you find?

4 A In there? I mean, there was so much stuff. So, kind of go
5 back a minute. The reason why I said that was, holy crap, punitive -- two
6 words, punitive damages, is because on May 3rd, Scott Martorano, who
7 was the 30(b)(6) witness for Viking was deposed for the first time, and he
8 had said that there were 46 activations, okay? Activation is something
9 that Mr. Edgeworth testified to, and it's all throughout this entire case.

10 Q It's when a sprinkler brings rain to everyone --

11 A Yes.

12 Q -- below it and everything below it?

13 A Correct.

14 Q It's when one of those sprinklers goes off.

15 A Yes.

16 Q The 457s. Okay.

17 A Correct. And so, in his deposition, he testified 46 activations.
18 So, when reviewing these, there was a ton of emails, and I don't know
19 how many emails there were. There was a ton of emails. There were
20 also a ton of other documents and things like that. Well, in these emails,
21 they kept referencing another activation, another activation, another
22 activation, another activation. Oh, we had two go off this weekend. Oh,
23 we had two go off this weekend, or -- and even some of these emails
24 were from Viking. Some of these -- I mean, they all came from Viking.
25 Some of them were from people, it turns out, in Southern California,

1 talking about other activations. Well, just looking at it, you could tell that
2 it had it up to weigh more than 46. So, he had basically lied under oath
3 or misrepresented, you know, 46 activations. There were definitely more
4 than 46 activations.

5 Q When you reviewed the July 6th documents, were you
6 looking for something to drive some sort of a punitive damages claim?
7 Was that the part of your thinking?

8 A Well, yeah, that's just something that we do. That's
9 something that I've learned as, you know -- that is -- that's kind of how
10 you kind of change a case, I guess, you know, to say -- I don't know how
11 to exactly say it other than that, but when you find out people are hiding
12 things. When you find out, you know, things like that. We're always
13 looking for ways to, you know, change it and get punitive damages in the
14 case.

15 Q You had done that in other cases to drive value?

16 A Yes. Multiple.

17 Q Without violating any confidentiality provisions, is it fair to
18 say that the law office has recovered a number of seven and eight figure
19 cases using this method?

20 A Yes, sir.

21 Q I'd like to show you what's been marked by the Office as
22 Exhibit 80. This is Bates stamp 6751. It's an email from you to Brian
23 Edgeworth; is that correct?

24 A Yes, sir.

25 Q And this is July 10, 2017, at 11:40 a.m.?

1 A Yes, sir.

2 Q And is it fair to say that via this email, you were providing
3 him with a link to the Dropbox where you had loaded that Viking
4 production into?

5 A The sixth supplement; yes, sir.

6 Q Okay. And then again, looking back to -- let's take a look at
7 the time here that's 11:40 on July the 10th, and going back to Exhibit 89,
8 the time here is 10:26 a.m.; is that true?

9 A Yes, sir.

10 Q Okay. So, you'd already looked through these and had
11 located evidence to support the punitive damage claim, or at least get it
12 up and running --

13 A Yes, sir.

14 Q -- before these documents were ever provided to Mr.
15 Edgeworth --

16 A Yes, sir.

17 Q -- is that accurate? Okay. Now, Mr. Edgeworth talked about
18 an email summary in the last couple of days?

19 A Yes, sir.

20 Q Do you recall the email summary?

21 A Yeah. It was based off of that sixth supplement. There --
22 again, there were thousands and thousands of pages of emails, and so
23 we created an email summary. I created an email summary of what
24 those emails said with Bates stamps, and so it was easier for us to
25 locate. And at that point, activations were, I mean, key for us, so I bolded

1 anywhere it kind of referenced something that was activation related.

2 Q Okay. So, the email was sent around on July 19 via -- or the
3 summary was sent to around on July 19 via email?

4 A I believe so; yeah.

5 Q Okay.

6 MR. CHRISTIANSEN: I'd like to mark Plaintiff's next in order,
7 it's 91. This is 91.

8 MR. GREENE: And what is that?

9 MR. CHRISTIANSEN: It's the e-mail summary --

10 MR. GREENE: Okay.

11 MR. CHRISTIANSEN: -- that Brian talked about earlier today,
12 or maybe it was yesterday. I forget.

13 THE COURT: So, this is the email summary that Ms. Ferrel
14 prepared?

15 MR. CHRISTIANSEN: Correct.

16 THE COURT: Okay. Exhibit 91.

17 [Law Office's Exhibit 91 Received]

18 MR. CHRISTIANSEN: Your Honor, if I could -- yes?

19 THE COURT: Defense has got it. Okay.

20 MR. CHRISTIANSEN: If I could approach the witness?

21 THE COURT: Yes.

22 MR. CHRISTIANSEN: I have a courteous copy for you.

23 THE COURT: I was going to say; do I have a copy. Yeah.

24 MR. CHRISTIANSEN: You sure do.

25 THE COURT: This way I can follow along.

1 MR. CHRISTIANSEN: And you can have a Post-It.

2 THE COURT: Well, thank you.

3 MR. CHRISTIANSEN: There you go.

4 BY MR. CHRISTIANSEN:

5 Q When did you put together Exhibit 91?

6 A Well, I started putting it together after we received the -- it
7 was sometime between July 6th -- I probably -- I didn't start it on the 6th.
8 It would've been the 7th, 8th, sometime after that.

9 Q Okay.

10 A After we received the document production. It took a while.
11 It's a lot of emails.

12 Q When did you finish it?

13 A Well, I sent it out on July 19th.

14 Q Okay. Do you recall if you finished on the 19th or on the
15 18th?

16 A It could have been the 18th. It could have even been the 19th
17 depending on what time the email -- I sent the email. I'm sure I sent it
18 out after.

19 Q Fairly quickly?

20 A Yes, sir.

21 Q Okay. So, tell me a little bit about the work that went into
22 this.

23 A Well, I looked at the email, I would write Bates stamp down,
24 any key phrases kind of that would jog my memory. I mean, I guess it
25 was more geared towards me, but it was also for everybody else to look

1 at. Description of the email, date, from, to. I mean, I just kind of filled in
2 the --

3 Q You also had the Bates number of the particular document
4 that you're discussing?

5 A Correct.

6 Q Okay. And this was sent around to everyone, including
7 Brian?

8 A Yeah. Yes.

9 Q All right. It looks like the very first entry addresses Harold
10 Rogers?

11 A That was who the email was to, yes.

12 Q Okay. Was that the same Harold Rogers that we heard Mr.
13 Edgeworth discuss yesterday?

14 A I believe it was, yes.

15 Q Okay. Without going through -- how many pages is this?

16 A Twenty.

17 Q Okay. You counted it?

18 A I just counted it, yeah. I recounted it.

19 Q Okay. Thank you. How many activations were you able to
20 identify that are reflected just on this email summary, Exhibit 91?

21 A Well, so in --

22 MR. VANNAH: I didn't understand your words. How many
23 what?

24 MR. CHRISTIANSEN: Activations.

25 MR. VANNAH: Activations. Thank you. Thank you.

1 MR. CHRISTIANSEN: Sorry.

2 THE WITNESS: So about 83, but the other thing that's in
3 here is there's an email of 91 in the U.K. So, that was something that
4 was -- I mean, 91 in and of itself, that one email. So, it shows that it's
5 over 46, right? But setting that 91 email aside, there was at least, I
6 believe, 83 to 85. I'd have to go back and count exactly again, which is
7 obviously more than 46, so.

8 BY CHRISTIANSEN:

9 Q The 80 some activations were here in the U.S.?

10 A Yeah, those were in the U.S.

11 Q And then we had 91 in the U.K.?

12 A Right. and that was kind of a distinction. I should've made
13 that distinction because whether the U.K. ones were going to come in or
14 not, I mean, that was kind of a fight we were having with -- you know, in
15 the case, but there were definitely over 46, in the 80s referenced in here,
16 you know, at the time I did the summary.

17 Q The Defense were fighting introduction of activations in a
18 different country?

19 A Yes, they were.

20 Q On evidentiary grounds?

21 A Yes, they were.

22 Q Of course, the U.K. is traditionally a little bit colder than the
23 western United States, especially California, southern California?

24 MR. VANNAH: Is that an expert opinion on the weather?

25 Objection. Some days it's colder, some days it's not.

1 THE WITNESS: I'm not an expert on it. I know Southern
2 California gets warm.

3 MR. CHRISTIANSEN: Whenever I see those guys on the golf
4 channel, they always look cold when they're in the U.K.

5 MR. VANNAH: During the summer, it's not as bad.

6 THE COURT: Mr. Vannah is probably pretty much an expert.

7 MR. CHRISTIANSEN: He could be.

8 MR. VANNAH: Mr. Christensen -- he's not here.

9 MR. CHRISTIANSEN: Christiansen.

10 MR. VANNAH: He just got -- yeah, but he just --

11 THE COURT: Oh, he's here.

12 MR. VANNAH: He's an expert because --

13 MR. CHRISTIANSEN: He's in the back.

14 MR. VANNAH: He's got a daughter that's living in Scotland,
15 right?

16 MR. CHRISTENSEN: Yeah, I do.

17 MR. VANNAH: So, he can be an expert, but I don't think she
18 can.

19 MR. CHRISTIANSEN: I hear he sends her sweaters like every
20 week, because it's so cold.

21 MR. VANNAH: Maybe a bikini, too. Who knows?

22 MR. CHRISTIANSEN: Oh, stop.

23 MR. VANNAH: I'm talking about summer.

24 MR. CHRISTIANSEN: You know --

25 THE COURT: Oh, we are so far -- oh, Mr. Greene, just come

1 save us.

2 MR. CHRISTIANSEN: So, moving on, Your Honor. Moving
3 on.

4 BY MR. CHRISTIANSEN:

5 Q Taking a look at Number 91, was that the extent of the work
6 that you did on activations?

7 A No. This was just kind of the beginning of it. I mean, no -- I
8 mean, this is -- the activations turned into a huge thing, and Mr.
9 Edgeworth created -- I believe he's testified to, a big chart that had -- I
10 think he said -- I don't even remember anymore. There was a lot, over a
11 hundred activations on this chart that were broken down, that he
12 testified to in his --

13 Q Did you --

14 A -- direct.

15 Q -- see the chart from Mr. Edgeworth?

16 A Yes. He sent it. Each time he would add stuff to it, he sent it.

17 Q Okay. Was the starting point of the chart some of the
18 activations on Exhibit 91?

19 A I believe it was. That's one of the first times that we got
20 detailed, you know -- we got detailed, like Bate stamps, because in his
21 chart, he had Bate stamps, and like he had the addresses and things like
22 that. Again, other than the emails, there were a couple other things in
23 there.

24 Q Did you send this around -- 91 around in Excel form?

25 A No. No, it was a PDF.

1 Q Oh, okay. Was Mr. Edgeworth's chart useful?

2 A Yeah.

3 Q Okay. Did you discover evidence of more activations during
4 discovery?

5 A Yes, we did.

6 Q And that was through a use of what I would call traditional
7 discovery?

8 A Yes.

9 Q Interrogatories, request for production of documents --

10 A Motions to compel.

11 Q -- motions to compel. Okay. So, that information combined
12 with -- did Mr. Edgeworth ever independently find an activation?

13 A Maybe -- I'm sure he found activation. Yeah, I'm sure --

14 Q Okay.

15 A -- he did. There was lots of them. I mean --

16 Q All right.

17 A -- so yeah.

18 Q So, those were all used?

19 A Yes.

20 Q Okay.

21 A I mean -- yeah. I think -- yeah, we used the chart. So, yes.

22 Q All right.

23 MR. CHRISTIANSEN: Can I have just a moment, Your Honor?

24 THE COURT: Yes.

25 [Counsel confer]

1 MR. CHRISTIANSEN: No more questions, Your Honor.

2 THE COURT: Okay. And, Mr. Vannah, would you mind if we
3 took like 10 minutes before you start so I didn't have to stop in the
4 middle, because I'm going to need use the restroom before you finish
5 with her. So, if we just go now, then we can do it, and I won't have to
6 cut you off in the middle.

7 MR. VANNAH: I think that's a great idea.

8 THE COURT: Okay. So, we'll take 10 minutes. We'll be back
9 at 3:00.

10 [Recess at 2:55 p.m., recommencing at 3:08 p.m.]

11 THE COURT: Okay. Are you guys ready? We're going to go
12 back on the record in 9738444, Edgeworth Family Trust, American
13 Grating, v. Daniel Simon doing business as Simon Law.

14 Mr. Christiansen, you were finished?

15 MR. CHRISTIANSEN: Yeah.

16 THE COURT: Mr. Vannah --

17 MR. CHRISTIANSEN: Yes, Your Honor.

18 THE COURT: -- your witness.

19 CROSS-EXAMINATION

20 BY MR. VANNAH:

21 Q Do you mind if I call you Ashley?

22 A That's fine.

23 Q We've known each other a long time.

24 A Yes, we have.

25 Q You used to work over at the house of Eglet that I helped

1 build, right?

2 A Yes, we did.

3 Q All right.

4 THE COURT: Mr. Vannah, we just actually had a discussion
5 as to whether you were ever partners with Eglet. I wasn't sure.

6 MR. VANNAH: Well, I own half the building, but he put his
7 name on there. He had more votes than I did. I think Mr. Christiansen
8 voted for him; didn't he?

9 THE COURT: You wanted to call him out.

10 MR. GREENE: I think he did.

11 MR. VANNAH: I don't want to get into that. It's now the
12 house of Eglet, though, but I pay half of it. Okay. I think that was the tie.
13 That was before the endoscopy, I think.

14 THE WITNESS: Yeah.

15 MR. VANNAH: It was me they were looking to, not him. All
16 right.

17 BY MR. VANNAH:

18 Q So, if you don't mind if I just call you Ashley? I don't mean
19 any disrespect. I've just known you that way. It's hard to --

20 A That's fine.

21 Q Okay. So, I just wanted to clarify some things. So, do I
22 understand correctly -- we've seen four invoices and the superbill, right?

23 A Yes, sir.

24 Q All right. And I just wanted to clarify and make sure I
25 understand it. Somebody had to actually prepare those; was that you?

1 A Well, so let me -- the superbill -- I prepared my own superbill,
2 or the timesheet, the big one. And then I prepared all my own invoices.
3 So, I started invoicing, is it April? So, I only did the last two, and I would
4 only prepare my own invoices.

5 Q Yeah. And I may be -- so, let me just back up and make sure I
6 understand it. And I'm not trying to confuse you or make -- either one.

7 A Of course.

8 Q So, I think of four invoices that got paid, I think that way.

9 A Yes.

10 Q Are you with me, up through --

11 A Yeah.

12 Q -- September 22, 2017?

13 A Yes, sir.

14 Q Where there was four separate invoices?

15 A Correct.

16 Q All right. So, let's start with that. Somebody actually had to
17 sit down and prepare that, and kind of what I was listening to is that
18 somewhere in late 2016 or so, that you and Danny had a conversation
19 about the fact that, hey, we need to send an invoice out, right?

20 A Yes, sir.

21 Q Is that right?

22 A Yeah. It would have been like the fall. It was in November-
23 ish.

24 Q Okay.

25 A Yes, sir.

1 Q Of 2016?

2 A Yes, sir.

3 Q And that's the invoice number one --

4 A Yeah, that's invoice number one.

5 Q -- can we call it?

6 A Yes, sir.

7 Q Okay. Fair enough. So, my question to you is that
8 somebody, a human -- some human being, prepared that invoice,
9 actually went through and put it together. Was that you?

10 A No.

11 Q Okay. Who did that?

12 A I believe it was Mr. Simon.

13 Q Okay.

14 A I'm not sure. I did not do it.

15 Q Not a problem. Let's talk about invoice number two --

16 A Okay.

17 Q -- that had been paid.

18 A Yes.

19 Q Did you have any input in preparing that invoice?

20 A No, sir. I did not do that invoice either.

21 Q Do you know -- again, was that Mr. Simon, to your
22 knowledge, that did that, or do you know?

23 A I don't know.

24 Q And as to invoice number one, do you actually know or is
25 that just kind of a guess on your part?

1 A I know I've physically seen Danny typing into that invoice,
2 whether the actual final one was the one that was -- you know, he did it
3 all. I don't know.

4 Q Okay. Let me ask you about invoice number three.

5 A Yes.

6 Q Did you have any input in preparing invoice number three?

7 A Yes.

8 Q What -- did you prepare the entire invoice number three?

9 A No, sir. The one that's -- okay, so invoice number three --

10 Q Yes.

11 A -- it had a cover sheet on it, if I remember correctly, and then
12 it had an invoice for Daniel S. Simon, and then it had the chart, and then
13 after that it had invoice for Ashley M. Ferrel. So, everything that was
14 identified as invoice for Ashley M. Ferrel, I prepared.

15 Q All right. I appreciate that.

16 A Uh-huh.

17 Q Now, how did you go about making the document? What do
18 you physically do?

19 A So, I actually used, as I told Mr. Christiansen, we had put
20 together an hourly bill for a case in Mr. Israel's court -- Judge Israel, with
21 regard to hours for that mistrial earlier in 2016, so I actually just used
22 that template. It was a Word document that I -- that had four columns in
23 it -- and I think it's four. Three. I apologize. It had a date -- well, that's
24 Danny's. Yeah, it had three. Date, description, and time.

25 Q Okay. So, if I understand correctly then, that's a two-part

1 document, invoice three?

2 A Yes, sir.

3 Q And one part is Danny's time and one part is your time,
4 right?

5 A Yes, sir.

6 Q And you use that template and you prepared -- completely
7 prepared the portion of invoice number three of your time, right?

8 A Yes, sir.

9 Q Okay. Invoice number four, same question. Tell me -- the
10 same question I'm going to ask you is do you know who prepared that?
11 Is that when you prepared your portion and Danny prepared his?

12 A Yes, sir. And I believe in that one Mr. Miller also had one.

13 Q Okay.

14 A He has like a single sheet, and I believe his format is very
15 similar to mine, and it's just a single sheet, and he did that himself.

16 Q Okay. But you did your share of that --

17 A Yes, sir, I did.

18 Q -- for your time?

19 A Yes, sir.

20 Q And when you say format, I think I sort of get it. So, the
21 format -- normally on a bill that I see from law offices, I've sent a
22 hundred -- probably millions, millions of those, maybe billions of those.

23 A Uh-huh.

24 Q But on bills, normally, you have something that says the date
25 you do the item.

1 A Yes, sir.

2 Q A description of the item, the number of hours, and
3 sometimes off to the right, some people multiply that out, but a lot of
4 times, just at the bottom, they add up the hours and then put down the
5 rate and come up with the amount; is that how you did that?

6 A Yes, sir. It just had three columns. Date, description, time,
7 and then at the bottom, I think the last page had -- I mean, it will say -- I
8 don't have a full copy of it up here, but it had like total hours, and then it
9 would multiply by \$275, because that was for --

10 Q Okay. Very good. Now, I want to kind of back up to a
11 conversation that you and Mr. Simon had when the first invoice was
12 going out. And I may be wrong about that, so I just want to make sure I
13 understood it. My understanding was that in late 2016, whenever that
14 was, that you and Mr. Simon had a conversation where Mr. Simon says,
15 you know, we need to send a bill -- an invoice out to the client. Do you
16 remember that? Am I right about that? Did you have that conversation
17 before the first invoice went out?

18 A It was with regard to creating an invoice for purposes of the
19 calculations of damages because of the attorney's fee provision in the
20 Lange contract. That was the discussion we had for it. I don't recall
21 anything with regard to him sending this to the client or anything like
22 that. The discussion was just with regard to the hourly rate and how we
23 could do the hourly rate, and that's where the *Sarah Ash* case came in.

24 Q Okay. So that conversation -- how did that conversation
25 come about? I mean, why were you having this conversation, because

1 you're not going to be doing it in billing? Why is he talking to you about
2 it?

3 A Well, we talk about all of our cases.

4 Q Okay.

5 A I mean, and so I'm sure I was just talking to him about a case
6 that was going on or a couple issues that I had in other cases not related
7 to this case. And I mean, we just sat down, and we were talking, and I
8 think he just brought it up. It was one of -- because he was working on
9 the Edgeworth case. At that point in time, you know, he wasn't like fully
10 consumed as he was at the end of the Edgeworth case. You know, and
11 so it was kind of more just us talking about it, and he had to put together
12 a bill for that disclosure.

13 Q Yeah, so I'm just trying to get my brain around the whole
14 thing. So, do you remember the conversation?

15 A Yeah. I mean, the verbatim, no, not the exact.

16 Q But you remember the conversation occurring?

17 A Yes, sir.

18 Q Okay. So, here it is. You're not working on the case, but you
19 guys are talking about it, right?

20 A Yes.

21 Q He's telling you; you know, I need to put together an invoice
22 -- a billing invoice on the case, on the Edgeworth matter, right? He tells
23 you; I need to get an invoice put together?

24 A He may have said sprinkler case, but yeah, we all knew it was
25 Edgeworth -- I knew it was the Edgeworth case.

1 Q What did you guys call it?

2 A The sprinkler case. The Edgeworth case.

3 Q That's --

4 A Same thing.

5 Q You're like me. It's easier to think of the sprinkler case. Yes.

6 A Yes, sir.

7 Q Okay. So, you talk about the sprinkler case. I need to do an
8 invoice to the client, right?

9 A Yes, sir.

10 Q All right.

11 A I've got -- sorry. An invoice for the calculation of damages. I
12 don't know whether or not at that point he was sending it. It was -- the
13 hours he was working, I don't know if he was actually going to send it to
14 the client at that time. In the conversation, I don't know.

15 Q That's fair.

16 A Okay.

17 Q So, out of curiosity, there in the firm, people always ask me
18 questions. Did you ask them at that point in time, by the way, what are
19 your -- what are the terms of our engagement in that case? Did you ask
20 him during that period of time? What exactly is our billing arrangement
21 with him?

22 A No. I kind of leave the money stuff to him.

23 Q Okay, and that's fair. So, was there -- okay. So, we know
24 you didn't know anything about the billing arrangements by the end of
25 2016. You don't have any clue what the billing arrangements are, right?

1 A Correct.

2 Q On the sprinkler case?

3 A Other than what I just told you.

4 Q That he needed to put together a bill?

5 A Correct.

6 Q Right, but you didn't talk about whether it was hourly,
7 whether it was contingency, whether it's an hourly plus a contingency, or
8 how much the hourly was if it was; none of that discussion, right?

9 A Well, with regard to the *Sarah Ash*, it was the five -- we chose
10 the 550. We discussed what he should put.

11 Q Okay.

12 A So, the five -- that's where the 550 came from was -- there
13 was a discussion about his hourly rate at that time.

14 Q And that's -- I want to make sure I get all of the parts of the
15 conversation.

16 A Okay. Sorry.

17 Q And then that's why I've been asking you a little more
18 penetrating questions, so.

19 A Okay.

20 Q So, in this conversation in 2016, late two-thousand -- can I
21 call it late 2016?

22 A That's fine. Yes, sir.

23 Q All right. So, now that you thought about it, you do
24 remember, and I think you might've said that earlier -- you do remember
25 that as part of the conversation, there was a discussion about what was

1 going to be the billing of rate? There was a discussion about that?

2 A Yes, sir.

3 Q And let me involve myself on that. Did Mr. Simon tell you, I
4 don't have an agreement with the client on an hourly rate, so I need to
5 come up with something that I can justify or something like that? How
6 did that come up about the hourly rate?

7 A Well, I mean, he didn't specifically -- I just remember he
8 needed to come up with an hourly rate, and so I said, why don't we use
9 the *Sarah Ash* thing, so --

10 Q So, okay, I want to make sure I get it.

11 A Yeah.

12 Q So, Mr. Simon is looking to you for your thoughts and says
13 to you, I don't have an hourly rate, I don't have an agreement with the
14 client for an hourly rate. Does he say, what do you think would be a
15 good hourly rate or just exactly how -- can you remember the details of
16 that conversation?

17 A All I know is we were talking about the case, and that he
18 needed to -- he was coming up with an hourly rate, and I suggested
19 using the *Sarah Ash* order from Judge Israel. And so, in that one -- do
20 you want me to just talk? I'm sorry. I don't --

21 Q Yeah, go ahead.

22 A Okay.

23 Q I don't mind.

24 A In that one, it was \$600. Judge Israel, \$600 for himself. And
25 so, he decided to just knock it off so the Defense wouldn't complain,

1 balk, whatever word you want to use, wouldn't complain about the rate,
2 because Judge Israel -- if they were to complain about the rate, we had
3 an order from Judge Israel saying that the rate was, you know, approved
4 earlier that year.

5 Q Right. So, if I understand correctly, you have a mistrial?

6 A Yes.

7 Q And Judge Israel says, you guys are going to pay for this
8 mistrial, right?

9 A Well, not ask the Defense, but yes.

10 Q Not you.

11 A Yeah.

12 Q But the people that caused the mistrial, the bad boys.

13 A Yes, sir.

14 Q And he says, you guys are going to pay for the mistrial. So,
15 I'm going to give you an hourly fee for how much you guys lost, you
16 come up with what you did in the case, and we'll come up with a fair
17 hourly fee, right?

18 A Yes.

19 Q And Judge Israel eventually approved \$600 an hour to Mr.
20 Simon as a reasonable compensation for his time, given his stature in
21 the community, correct?

22 A Yes, sir.

23 Q Okay.

24 A I mean, I think.

25 Q So, I'm back to the conversation. I get that.

1 A Okay.

2 Q So, Danny and you were talking, and do you call him Danny?

3 A I do.

4 Q Okay. All right. So, Danny and you were talking and
5 somehow, he discusses with you, I need to do a billing, I need to
6 prepare a billing, and does he say to you, what do you think would be a
7 fair billing, or do you just volunteer that number, or does he say, I
8 wonder what I ought to bill? I mean, I'm trying to get my arms around
9 that because that's -- let me tell you why.

10 You've been in the courtroom. My client has a clear, clear
11 recollection of the conversation at the onset of the case, looking at an
12 onset meeting, you know, within a week, you know, a broader term than
13 Mr. Christiansen likes, but at the onset of the case that the billing was
14 going to be for his time, they don't talk about you. I was wrong the other
15 day when I said that, but it wasn't you who was discussed, it was 550 an
16 hour. Do you remember hearing that testimony?

17 A I heard that testimony.

18 Q Okay. So, that's why I'm so interested in your conversation
19 with Danny, in more -- in as much detail as possible. Did Danny say to
20 you, I don't have an agreement with Mr. Edgeworth as to an hourly fee,
21 so I need to come up with something? Did he say that to you?

22 A He didn't talk about the agreement between him and Mr.
23 Edgeworth at all.

24 Q So, see, here's why I'm asking that question, because I mean,
25 if he's going to prepare an hourly bill to Mr. Edgeworth, was it your

1 impression this hourly bill wasn't a "real bill"? It's going to be just a bill
2 that's going to be presented to the Defense to say, hey guys, your
3 damages are getting bigger, and bigger, and bigger under this indemnity
4 agreement to Lange. The more I bill, the more you guys got to pay. Was
5 that kind of what you saw that as the purpose?

6 A That was my -- yes, sir. That was my understanding of it.

7 Q That that was the purpose of the bill?

8 A That was the purpose of the bill.

9 Q So, you know, I find it kind of odd that the bill that he's
10 preparing to show to Lange that he actually sends to Mr. Edgeworth, and
11 that Mr. Edgeworth actually writes checks and pays not only the legal
12 portion of the bill, but all the costs? Do you see -- you understand that
13 happened?

14 A No, I understand that happened.

15 Q Okay. And in invoice number two, that happened again,
16 right? He prepared another bill at 550 an hour, sent -- gave eventually to
17 the Lange people in discovery, but also sent that to Mr. Edgeworth, and
18 Mr. Edgeworth writes a check for the 550 an hour and all the costs, and
19 pays that bill.

20 A I understand that happened.

21 Q And then, eventually, you get involved in the billing process?

22 A Yes, sir.

23 Q And I think that was on invoice number three?

24 A Yes, sir.

25 Q And so, in invoice number three, again, Mr. Simon prepares

1 a bill for 550 an hour, outlines it. You then prepare your portion of the
2 bill for how much?

3 A Two-seventy-five.

4 Q Very reasonable. No complaints. You're worth more than
5 that, probably. So, for 275 an hour, which is more than that other guy on
6 the stand bills, but that's okay. You prepare your share of the bill for 275
7 an hour, and at the time that you did that, were you also under the same
8 thinking that these are just bills being prepared to give to Lange -- the
9 Lange lawyers to say, well, your damages are getting bigger and bigger?
10 Is that --

11 A That's my understanding of what the bills were for.

12 Q But what you had learned is that Mr. Simon took that bill, not
13 only gave it to the Lange people, but gave that to the Edgeworths and
14 the Edgeworths paid all of that bill, plus all of the costs that had been
15 incurred to date, right?

16 A I understand Mr. Edgeworth paid the bill; yes, sir.

17 Q And on the fourth invoice, they got paid. Again, your time's
18 included in that, right?

19 A Yes, sir.

20 Q Mr. Simon's time is included in that?

21 A Yes, sir.

22 Q And there might've been someone else. Ben, was he in
23 there?

24 A Mr. Miller. Yeah, Ben Miller.

25 Q And I don't know him, but I'm sure his bill was reasonable,

1 but he included time in that. That was all presented to the Edgeworths,
2 and they paid that bill again, in full, with all the costs, correct?

3 A That is my understanding, yes.

4 Q All right. Were you ever present at any meeting, or overhear
5 any discussion on the phone, or anything else where you overheard or
6 were present, where Mr. Simon said to Mr. Edgeworth, hey, old buddy,
7 I'm sending you a bill for 550 an hour, but my time is worth a whole lot
8 more than that, and some day we're going to have to reckon this thing
9 out. Did you ever hear him say something like that?

10 A No. That -- I wasn't around for any of those conversations.

11 Q Okay. Did Mr. Simon ever say to you, hey, I'm billing him for
12 550 an hour, but, in actuality, I have a better idea, someday I'm going to
13 bring him in, sit him down, and tell him, you know what, all my options
14 are on the table, and you guys need to come up and agree to pay me
15 more than the agreement we agreed to in the first place? Did you ever
16 heard that kind of a conversation from Mr. Simon or anyone else?

17 A No, sir. I didn't have anything -- discussions with him like
18 that.

19 Q Did Mr. Simon ever tell you that he had planned on bringing
20 the Edgeworths into the office -- and after they had paid four of those
21 invoices in full, did he ever tell you that he planned on calling them into
22 his office and sit down and say, you know what, you paid all your bills
23 faithfully, you've written every check, you've paid every bill I've given to
24 you, but you know what, I'm losing money. I'm losing money and you
25 guys need to pay me more or my options are on the table. Did he ever

1 tell you he was going to do that? Mr. Simon tell you he was going to do
2 that?

3 A No. I wasn't privy to any of those conversations.

4 Q Did you ever have a conversation with Mr. Simon where you
5 said, you know, Mr. Simon, or boss, or Danny, are you aware that there's
6 rules in the Rules of Professional Conduct that actually talk about having
7 an agreement with a client upfront before you do all of this billing,
8 before you charge them, and you get the fee agreement preferably in
9 writing, but certainty clear as a bell, early on or at the very near outset of
10 the case? Did you ever have that conversation with Mr. Simon where
11 you told him, you ought to do that?

12 A No, sir. I wasn't involved in the case in early -- in mid-
13 summer of 2016. So, I --

14 Q I mean, I'm talking about even later have you ever had that
15 conversation with him? Like why didn't you just have an agreement that
16 everybody was familiar with and have somebody signed it, and you
17 wouldn't be here today. Did you ever say that to him?

18 A I don't think I've ever said that. I just -- you know, I don't
19 have any idea what their agreement was, and I have never had any of
20 those conversations with Mr. Simon, so.

21 Q It felt a little uncomfortable telling him that maybe a little
22 preventative medicine might prevent a lot of what we're doing here
23 today?

24 A Well --

25 Q I get that. And you're an associate, right?

1 A I am an associate.

2 Q Okay. And, again, it's not comfortable to go to a partner and
3 say, you know -- I'm just asking if you ever --

4 MR. CHRISTIANSEN: Excuse me, Your Honor. I'm going to
5 object on foundation grounds. From what I've heard, there is no
6 foundation that she knew whether there was or wasn't a fee agreement.
7 So, this is -- there's no evidence in the record to support any of these
8 questions. He has to lay a foundation first before he can ask these
9 questions.

10 MR. VANNAH: I'm laying a foundation for one thing, but I'm
11 asking a separate question. I think that my foundation is well laid here.

12 THE COURT: Well, I mean, what is the -- I mean, you're
13 asking her if she ever had said to Mr. Simon that he could've prevented
14 this?

15 MR. VANNAH: Yeah.

16 THE COURT: Okay.

17 MR. VANNAH: Just by simply having a fee agreement.

18 THE COURT: Right. And I think she already said no.

19 MR. VANNAH: I think she has.

20 THE COURT: So, can you ask her something else until, Mr.
21 Vannah?

22 MR. CHRISTIANSEN: She has to know whether the, you
23 know, was there an agreement.

24 MR. VANNAH: I thinks he said, no, she didn't have that
25 conversation.

1 MR. CHRISTIANSEN: Was there --

2 THE COURT: Okay. Hold on. Only one of you is going to
3 talk at any given time. We're still in court.

4 MR. VANNAH: Well, he's objecting -- okay.

5 THE COURT: We're still having court here.

6 MR. VANNAH: You are. Go ahead.

7 THE COURT: I mean, this is the deal. He asked her if she
8 ever said that to Mr. Simon, which I think she can testify to, but she
9 already said, no, I never said that to him.

10 MR. CHRISTIANSEN: Absolutely, and then the questions --

11 MR. VANNAH: I'm not -- I don't have any other questions.

12 THE COURT: Okay. He's going to move on.

13 MR. VANNAH: So, to make it simple --

14 MR. CHRISTIANSEN: Okay.

15 MR. VANNAH: I mean, I don't have questions about --

16 THE COURT: About that.

17 MR. VANNAH: -- that because --

18 THE COURT: Okay.

19 MR. VANNAH: -- that answered the question.

20 THE COURT: Okay.

21 BY MR. VANNAH:

22 Q Has Mr. Simon ever told you that he actually had a fee
23 agreement with Mr. Edgeworth that he made early on in the case? Has
24 he ever said I actually had a fee agreement?

25 A I have never had any conversations with regard to the fee

1 agreement with Mr. Simon.

2 Q Okay. And so, you know, this is a yes or no question. Has
3 Mr. Simon ever told you -- I just want to make it clear -- that he actually
4 had a fee agreement with Mr. Edgeworth that he entered into at the
5 outset of the case?

6 A No, sir.

7 Q Thank you. Now, I don't want to go through each and every
8 one of your billings, but the ones -- I just pulled out some. Like the
9 9/13/2017.

10 A Yes, sir.

11 Q You billed -- I think you billed -- at least I just added up 22.85
12 hours.

13 THE COURT: And are you referring to the chart that was
14 created by your client, Mr. Vannah?

15 MR. VANNAH: I am because I think that reflects that day.

16 THE COURT: Okay. I'm just -- I just need to follow along
17 with you. I just wanted to know what document we're talking about.

18 MR. VANNAH: Good question. I don't even know that.

19 THE COURT: So, it's your Exhibit 9.

20 MR. VANNAH: 9.

21 THE COURT: Okay. And what date did you say, Mr. Vannah?

22 MR. VANNAH: I just want to take one date and just go to
23 September 13th --

24 THE COURT: '17?

25 MR. VANNAH: -- 2017. That date. Hold that right there. Let

1 me just ask some preliminary questions.

2 THE WITNESS: Okay.

3 BY MR. VANNAH:

4 Q So, what I understand --

5 MR. VANNAH: -- okay. While he's looking for that let me just
6 make sure --

7 THE COURT: It should be Bates stamp page 10, Mr. Greene.

8 MR. GREENE: It sure should.

9 THE COURT: At the very bottom.

10 MR. VANNAH: All right.

11 MR. GREENE: Thank you, Judge.

12 THE COURT: You're welcome.

13 BY MR. VANNAH:

14 Q I want to call it the original invoice.

15 A Yes, sir.

16 THE COURT: Okay. Just so we're clear, Mr. Vannah, this
17 isn't the invoice. This is a chart that your client prepared, not the invoice
18 that was sent out by Mr. Simon's office, right?

19 MR. VANNAH: Right. I'm saying -- I want to talk -- yes.

20 THE COURT: Oh, so you are talking about the original
21 invoice?

22 MR. VANNAH: Yeah. Just keep this in mind.

23 THE COURT: Okay.

24 BY MR. VANNAH:

25 Q We're going to go to this. I want to now go to -- just in my

1 mind. You don't have to look at it, I don't think. What I call the original
2 invoice, would that be invoice number three or invoice number four that
3 would capture this date?

4 A That would be invoice number four.

5 Q Okay. I don't think we have to look at it, because you've
6 already looked at it, but on invoice number four that was eventually sent
7 to Mr. Edgeworth that he paid --

8 A Yes, sir.

9 Q -- on that date, 9/13/2017, had your time on that date been
10 8.75 hours on invoice number four? And if you need to look at it, you
11 can.

12 A Yes, sir. It was 8.75.

13 Q 8.75. And this one you've looked at, so you're pretty sure of
14 what you're saying, right?

15 A Yeah. I actually --

16 THE COURT: Mr. Vannah, I need to follow along, so I'm
17 going to need some page numbers.

18 MR. VANNAH: Okay. Then help me just --

19 MR. GREENE: That's Exhibit 2, page number --

20 MR. VANNAH: We'll do -- help me out here.

21 MR. GREENE: -- 30.

22 THE COURT: Page 30? Okay.

23 MR. GREENE: Yeah.

24 THE COURT: Okay.

25 MR. VANNAH: I'm going to have --

1 THE COURT: Okay. So, 9/13. Okay.

2 MR. VANNAH: I've got this tech genius here next to me. He
3 can't even turn a cell phone on, but --

4 BY MR. VANNAH:

5 Q All right. Just point -- so if you look at -- what's the
6 document number so I say it right? Exhibit what?

7 THE COURT: 2.

8 MR. GREENE: Exhibit 2.

9 MR. VANNAH: Exhibit 2? That's our Exhibit 2?

10 MR. GREENE: Yes, it is.

11 THE COURT: Yes.

12 MR. VANNAH: Page 30. Point to where it says that. So, if
13 you look at line item -- it would be 9/13.

14 THE COURT: The very top two, Mr. Vannah.

15 MR. VANNAH: Thank you.

16 BY MR. VANNAH:

17 Q Yeah, so, if you look at 9/13, the very top two, in detail, you
18 talked about you prepared, and you attended a hearing on Defendant's
19 motion to compel home inspection, right?

20 A Yes, sir.

21 Q And you reviewed the Pancoast letter and discussed it with
22 DSS, and that'd be Danny Simon, I'd take it?

23 A Yes, sir.

24 Q So, your time for that particular task was 6.25 hours, right?

25 A Yes, sir.

1 Q All right. Then you go down to the next item. Finalize and
2 serve Nevada revised civil procedure 30(b)(6), notice of deposition. That
3 time took two-and-a-half hours, right?

4 A Yes, sir.

5 Q Or two-and-a-half, right? So, if we add those two things
6 together on 9/13, on the bill that got paid, you -- the firm got paid for 8.75
7 hours of your time for 9/13/2017, right?

8 A Yes, sir.

9 Q Then if I understand correctly, then you went back, and we've
10 talked about that a little bit, and created among other things -- so this --
11 you created more time for -- that the firm wanted to be reimbursed, for
12 example, on this date, the very same day, 9/13/2017, correct? That's
13 what you entered in timewise, correct?

14 A Yes.

15 Q Okay. Now, let's talk about that. So, the time in addition to
16 the 8.75 hours that you came up with in this task that you undertook was
17 an additional 14.1 hours to bill for on 9/13/2017, right?

18 A Yes, sir.

19 Q Now, when you add that up, I come up with really close to 23
20 hours. Do you see that?

21 A Yes, sir.

22 Q All right. And in all due candor, I think you've said that
23 earlier, and I know you're an honest person, you didn't work anywhere
24 near 23 hours that day, correct --

25 A Likely not that day.

1 Q -- on this case?

2 A Correct.

3 Q Okay. So, when we look at this -- and I'm just not going to
4 go through every entry, okay, because it would -- we would be here, I
5 mean, literally until months from now, and I don't want to do that, but if I
6 look at one entry here, you're clearly telling me that's just erroneous that
7 you know for a fact you did not bill -- you did not work 23 hours plus that
8 day on the sprinkler case, right?

9 A On that day, probably not, but those --

10 Q That's my question.

11 A Okay.

12 Q Because the billing is for that day.

13 A What?

14 Q The billing is for that day, right?

15 A The billing is on -- identified as 9/13/17, correct.

16 Q All right. And you understand, and to be honest and fair to
17 you, you've never sent a bill to another client in your entire life, correct?

18 A Correct.

19 Q You don't have anything to do with billing?

20 A Nope.

21 Q Never had anything to do with billing?

22 A No, sir.

23 Q This is the one and only client that you've ever billed, right?

24 A Well, yeah, that I've -- yeah, that I've ever billed.

25 Q Hourly.

1 A Correct.

2 Q I mean hourly.

3 A Other than the Ash. Putting together hours for the Ash case.

4 Q Okay.

5 MR. GREENE: This is Exhibit 5, Your Honor. This is from --

6 THE COURT: I think it was page --

7 MR. GREENE: That's correct.

8 THE COURT: I don't know what page it was.

9 MR. GREENE: It begins at pages -- page 131 and goes
10 through page 134.

11 THE COURT: Okay.

12 MR. VANNAH: Right.

13 BY MR. VANNAH:

14 Q And if you look at that document, so what you did -- this is
15 the ongoing -- what we've been calling the superbill for that date.
16 There's all those entries about an email chain, et cetera, et cetera, review
17 email, the attachment, review email from documents, and there's just
18 one after another after another, and they're at -- they start at the email
19 chain with DSS, which is Danny Simon. Documents being sent to
20 Zamisky [phonetic], and then it goes -- you go through the next page,
21 and some of them are .15. There's a lot of .30's, right, for review,
22 download, and save, review, download, and save. And then you go to
23 the third page, and you get a lot more review, download, and save, and
24 all at .3, correct?

25 A Correct.

1 Q And then you go to the next page, and you've got a lot more
2 review, download, and save, going all the way down to the last entry,
3 which is review of email from Robinson re deposition dates for Zamisky,
4 Hastings, and Olives [phonetic], and that's .15, right?

5 A Correct.

6 Q So, when you add all that up, that's when you come up with
7 this 14.1 new hours in addition to the 8.75 that you already billed on that
8 day, correct?

9 A Correct.

10 Q Okay. So, was it ever explained to you why Mr. Simon -- did
11 Mr. Simon ever explain to you why he wanted you to go back and create
12 this new billing that had never been presented to the Edgeworths for that
13 period of time in May of 2016 through September 22, 2017? Did he ever
14 tell you why he wanted you to go and come up with all this new -- these
15 new numbers?

16 A Well, the new numbers were all just emails -- things that I
17 could have a hard tie, because I had never billed for any of that time.
18 And it was actually -- I didn't start working on the file until January, so I
19 didn't bill for anything from May until January, but for that one 12/20/16
20 download. So, from that period to the September, so January '17 to
21 September '17, because I had not -- well, January to April, I had not
22 billed for, and so those are emails, phone calls, that kind of thing.

23 Q My question was, did Mr. Simon ever tell you why he wanted
24 you to go back and create all this additional time to put in invoices that
25 had already been sent, reviewed, and paid? Did he ever tell you why he

1 wanted you to do that?

2 A It was my understanding for Lange adjudication process, we
3 had to put together all of our time that we spent on the case.

4 Q Okay. Now, in all fairness, Mr. Edgeworth never said in this
5 courtroom or anywhere that you guys did nothing of any value on this
6 case. Do you understand that? Have you ever heard him say otherwise?
7 Have you ever heard Mr. Edgeworth say you guys never did anything of
8 value on the case?

9 A Not as I sit here right now.

10 Q Do you remember when Mr. Edgeworth said he thought you
11 were very -- you, personally, were very competent, very good at what
12 you did, and he was pleased to work with you. Do you remember him
13 saying that?

14 A I don't know if those were his exact words, but I do -- I wasn't
15 here yesterday when he was testifying.

16 Q Oh, okay.

17 A Yes, sir.

18 Q Did you always have cordial, good relationships with Mr.
19 Edgeworth?

20 A Mr. Edgeworth and I had a cordial relationship.

21 Q Did you find him to be -- it's posed to most clients that I've
22 had at least, did you find him to be more easy -- did you find him more --
23 I don't want to use the word intelligent, but the type of logical mind that
24 could understand the things that you were telling him, as opposed to a
25 lot of clients that I have that -- I mean, personal injuries tend not to get

1 anything.

2 A I mean, he's a smart guy. He's definitely a smart guy. I
3 mean, I have other clients, though, that are engineers, lawyers, things
4 like that. So, I don't want to say he's the only smart guy. I mean, but I
5 won't take away that he's a smart guy.

6 Q I mean, but he -- was he trying to help when he would give
7 you information that he would go out and find? Did you get to -- was
8 some of it helpful to you?

9 A Yeah. Some of it was helpful, yes, sir.

10 Q Did he seem to understand the factual background in the
11 case, the way the failure happened about the different activations, what
12 they had withheld from you guys, and how these things were being
13 activated? Did he seem to understand that?

14 A The factual background to the case with regard to the
15 sprinkler and stuff like that, he was very knowledgeable about that,
16 correct. With holding stuff, I don't understand, but definitely with regard
17 to the factual stuff, yes.

18 Q Yeah, I wasn't suggesting he was withholding anything.

19 A No, no, not him, but I didn't understand that part. That was
20 all I wanted to clarify.

21 Q I understand.

22 A Okay.

23 Q Okay. So -- now, were you at the deposition of Brian
24 Edgeworth?

25 A I was not at Mr. Edgeworth's deposition, no, sir.

1 Q Did you ever read that deposition?

2 A I've read bits and pieces of it, and I haven't read it from cover
3 to -- I have read it, yes, in its entirety, but it was in the middle of the case.

4 Q Did you read the portion of the deposition where Mr. Simon,
5 while, albeit, not under oath, as the attorney said, look, I had given you
6 our billings over and over and over again to billings in this case. Do you
7 remember reading that?

8 A I know that part of the deposition, yes, sir.

9 Q Okay. And when you reviewed that part of the deposition,
10 did you ever see anywhere where Mr. Simon said, well, there's actually
11 more billings for that time, but I'm just giving you the friends and family
12 discount portion of the billing. Did you ever hear him say that to the
13 other side?

14 A Well, no, I don't -- the way -- not the friends and family
15 portion, but my reading of that is that we had supplemented it over and
16 over and over again. That's what he meant by over and over and over
17 again is my understanding. I mean, I don't know, you can ask him,
18 which I'm sure you're going to.

19 Q You're right.

20 A But that we were supplementing, because we did
21 supplement the calculation and the damages over and over and over
22 again, so that's my understanding of that. I don't --

23 Q Did you personally, as working on the case, ever tell the
24 lawyers on the other side, especially the Lange lawyers, or anybody on
25 the other side, hey, you know, these billings that we're submitting as

1 part of the damages, the billings that have been paid by Mr. Edgeworth,
2 these aren't -- this is only a portion of the billings during that time? Did
3 you ever tell anybody on the other side so that they don't get mislead
4 here, that our billings in this case and the damages to Mr. Edgeworth as
5 a result of our legal billings are going to be quite a bit higher than what
6 we've told you so far? Did you ever tell anybody that?

7 A No, sir, I never had that conversation with any of the other
8 defense lawyers or anybody.

9 Q Were you -- did you, during your time you worked in the
10 case, did Mr. Simon ever say to you, you know, these billings that we're
11 giving to the other attorneys, that we're giving to them as our
12 computation of the damages, they really aren't as big as they really are.
13 They're going to be a lot bigger some day when I get a chance to go back
14 and rebill the file? Did they ever tell you that? Did Mr. Simon tell you
15 that?

16 A Not in those words. I knew that the bills, at least mine,
17 specifically -- you would have to ask him. I mean, and I've looked at his
18 bills. It didn't include the emails, the WIZnet filings, and telephone calls,
19 specifically. I knew that, but that conversation -- what you just asked me,
20 did that conversation happen, no, sir.

21 Q So, let me ask you this because I'm trying to understand why
22 you would do something like that. So, it was your belief, was it not, right
23 or wrong, but it was your belief that the larger the bills were that were
24 being paid by the Edgeworths, the more they paid for legal fees, the
25 more Lange would have to reimburse; is that -- that's kind of the thinking

1 that was going on there? At least that's what they told Mr. Edgeworth; is
2 that what you understood?

3 A Well, my understanding is that there was an attorney fee
4 provision in the Lange contract, so whether it was \$1,000 or \$500, or
5 whatever, whatever his attorney's fees were, were recoverable.

6 Q And my point is this, is if those fees were recoverable to the
7 Edgeworths when the case is over. If they're recoverable, wouldn't you
8 want the fees -- if the fees are actually higher than what you're giving
9 them, would you want the fee that you're going to be seeking recovery
10 on to be as high as possible? And not just inflated artificially, but if the
11 fees are really more than what you are giving them in the computation of
12 damages, don't you want to say, hey, we need to get the full amount of
13 the fees that he's eventually going to be responsible for into the
14 computation of damages? Wouldn't you want that to happen?

15 A Well, I mean, yeah, but it was my -- this case was super
16 quick. I mean --

17 Q So, I just want to ask then, when you want that to happen --

18 A Oh, okay. Sorry.

19 Q -- wouldn't you want to get all the damages to the
20 computation of damages, not just part of them?

21 A Yes.

22 Q In fact, you understand, do you not, that if you -- the way the
23 rules work -- I mean, I know you know this, that if you don't do a proper
24 computation of damages, then you leave damages out, at the time of
25 trial, you can't just come up and say, well, we actually had more

1 damages, and we forgot to put them in here, right? You can't just --
2 that's a problem, right?

3 A I understand what NRCP 16.1 says, yes, sir, with regards to
4 computation of damages.

5 Q I bet you know that more than I do, because you're in the
6 trenches doing that and the partner sometimes just relies on the people
7 that really do the good work and know the rules.

8 So, you knew that those computations of damages that in -- that
9 were including the attorney fees of the Edgeworths' pay, you knew that
10 they had a lot of significance to what his damages that he could
11 eventually recover from Lange would be; you knew that, right?

12 A I knew that they were going towards the provision. It was a
13 portion of damages. Yes, sir.

14 Q So if you knew -- if you and Mr. Simon knew that there were
15 going to be additional billings over that four-invoice period, and you
16 knew that the Defense didn't know that, right? They didn't know there
17 was going to be additional billings during that four-invoice period, right?

18 A I don't know what they knew, but I would assume, no; I don't
19 know.

20 Q So, wasn't it incumbent if you had, in your mind and Mr.
21 Simon's mind, you guys had reached the agreement that there's a lot
22 more billing that Mr. Edgeworth's eventually going to have to pay during
23 that period of time that covers those four invoices, we'd better get those
24 supplemented so that we could collect that from Lange? Did you and
25 Mr. Simon ever have a conversation like that?

1 A Not during -- the case was moving so quickly. Like I was
2 saying, none of the emails or telephone calls were captured in those
3 initial bills.

4 Q That's not the question I'm asking you.

5 A Okay.

6 Q My question was if you knew that there was going to be a
7 substantial additional time during the four invoices that you had
8 basically given as a computation of damages to Lange, if you knew there
9 was considerable extra time that wasn't being presented to the Lange
10 defendants, for example, didn't you know that would be a problem in the
11 future when suddenly you say, oh, by the way, you guys have been
12 defending this case for two years, but, here, we have 300,000 more in
13 damages that you weren't aware of that we never bothered to tell you
14 about; didn't you know that would be a problem?

15 A Yeah, it could be a problem at trial. Yes, sir.

16 Q Okay. You knew that -- did you know that you didn't have
17 this case on a contingency fee?

18 A I didn't know what the fee agreement -- or fee arrangement
19 was on this case.

20 Q And you -- were you aware, as you were preparing the billing
21 in the first place, that eventually the Edgeworths would be charged for
22 these additional billings that you were eventually going to come up with
23 at the end of the case?

24 A No, sir. We didn't start doing this, the -- what everyone's
25 called the superbill, until the Lange adjudication process, so I don't think

1 that --

2 Q So, here's what really happened; isn't it? So, what happened
3 is the Edgeworths and the Simons had a little bit of a falling out in
4 November; that would be fair to say, right?

5 A I don't know their relationship. I know they're not talking any
6 more, and I know they used to be friends, so I think that's fair.

7 Q But you learned that working at the office, I assume, that
8 there was some discussion at the office about this Lange adjudication?

9 A Yeah. Yes.

10 Q And then at that point, Mr. Simon said, you know what, I
11 don't know how the Judge is going to rule here, but let's go back and
12 add all the time we can that we can add to -- into the period of time that
13 the Edgeworths were already billed, and even though they had paid
14 those bills in full and even though they paid all the costs in full, let's go
15 back and find more time and add more time so that we can be in a better
16 position with the Judge; isn't that what happened?

17 A No. It's my understanding that they're timesheets, so it's just
18 the hours that were not captured. The purpose of the -- what's been
19 termed the superbill is just a timesheet to show the Judge how much
20 work has been done. Whether or not that's considered a bill, that's
21 something Mr. Simon -- I was told to put my time into a timesheet to put
22 in the motion for adjudication.

23 Q Well, you are aware, are you not, that Mr. Simon is asking
24 the Court to rule and determine that the Edgeworths should pay this
25 extra, what is it, 2-, 300,000?