

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.

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JAMES R. CHRISTENSEN, ESQ.
Nevada Bar No. 003861
601 S. 6th Street
Las Vegas, NV 89101
(702) 272-0406
(702) 272-0415 fax
jim@jchristensenlaw.com
Attorney for Respondents

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1 THE WITNESS: Let's just put it this way. It was my
2 understanding that the mediation 2.4 million was for fees. Is that --

3 THE COURT: Okay.

4 THE WITNESS: -- fair?

5 MR. VANNAH: No, I don't understand that. I actually don't
6 understand that, what does that mean?

7 THE COURT: Okay. Mr. Kemp, what does that mean?

8 THE WITNESS: That means that the mediator threw in an
9 extra 2.4 for fees out of the 6 million, because he wanted to get
10 Edgeworth 3 million, plus some money for costs, and they knew that Mr.
11 Simon, like most people, typically have around 40 percent, so that's why
12 it's 6 million, not 3.6 million, or something like that.

13 MR. VANNAH: Thank you.

14 THE WITNESS: Yeah.

15 MR. VANNAH: That makes no sense.

16 THE COURT: Okay. Mr. Christensen.

17 BY MR. CHRISTENSEN:

18 Q Mr. Kemp, did we cover your opinions?

19 A Give me one second.

20 Q I think I referenced it, but there were a lot of emails, you
21 know. A lot of communication with the client, so I got to commend Mr.
22 Simon for, you know, responding. You know, sometimes he responds
23 in a minute, it's unbelievable. And I don't want to make it sound like Mr.
24 Edgeworth was being frivolous. I mean, there was a lot of important
25 emails from him. You know, he had a list of questions that I thought

1 were great, for a sprinkler expert or something. So anyway, it was a
2 productive relationship, but there was obviously a lot of work done in the
3 case.

4 Q Okay. One follow-up. Is it hard to find a lawyer here in
5 Southern California -- or Southern Nevada, excuse me, or in the Western
6 United States, generally, for complex product cases?

7 A I would say so, because -- you know, there's more to product
8 cases than people understand, you know. First of all, the average juror
9 doesn't understand what product liability is. You know, you tell them
10 that it, you know, it doesn't matter, there's no negligence, they still think
11 they need some negligence.

12 A lot of the judges haven't really tried product's cases, so they
13 don't need all the defendants always coming in, and they talk about this,
14 that and the other thing, and sometimes the judge goes down that rabbit
15 hole. So, there's really not that many people who do product's cases
16 here. So, I would say, yeah, it is hard.

17 Q Well, any other reasons why a product case is different from
18 say a typical injury case?

19 A Well, I mean, first of all you have to have a defective product,
20 okay. Just because the sprinkler broke and there was a flood, it doesn't
21 mean that the product was defective. But first of all, you have to have a
22 defective product. And I think what really makes the product case
23 different is it's pretty expert heavy. You know, you've got to spend a lot
24 of money on the experts.

25 Q Can --

1 A And I think this case is a good example. You know, they had
2 like all kinds of different experts. They had a weather expert, because
3 the sprinkler company said that there was -- you know, because it was
4 hot that's why the sprinkler failed, which I think is really ridiculous, you
5 know.

6 Q Uh-huh.

7 A I mean, what are you supposed to finish the house and turn
8 the air conditioner before you put the sprinklers in? You know, what a
9 ridiculous defense. But in any event, so in this case you had a
10 weatherman defendant, you had engineering defendants. It's tough to
11 win a product's case.

12 Q Well, in this case there are couple hundred thousand dollars
13 in costs, ballpark?

14 A Yeah. That's pretty low, I'm surprised they got it done for
15 that much.

16 Q Okay. Do you have hourly clients?

17 A We do.

18 Q Do they email you as much as Mr. Edgeworth emailed Mr.
19 Simon?

20 A I'm not a big email guys so the answer's no. Even if I was a
21 big email guy, I think the answer would still be no. But I'm not saying
22 Mr. Edgeworth -- you know, he was a stern taskmaster, and you know, I
23 can't say -- I mean a lot of productivity I think came out of this. You
24 know, I mentioned the one about the three and a half pages of
25 questioning. In fact, I've left that up here just in case.

1 I mean, this is the email he wrote. I mean, I've had associates who
2 can't come up with something this good. You know, you should talk to
3 Underwriters Laboratory about this, and about -- yeah. So, I think it was
4 a productive relationship, you know.

5 Q Okay. Well --

6 A The Beatles -- the Beatles broke up too, so --

7 Q Were the opinions that you provided here to a reasonable
8 degree of certainty?

9 A Yes.

10 Q And that covers everything in your declaration as well?

11 A Yes.

12 Q Okay.

13 MR. CHRISTENSEN: No further questions, Your Honor.

14 THE COURT: Cross?

15 MR. VANNAH: Certainly, Your Honor.

16 CROSS-EXAMINATION

17 BY MR. VANNAH:

18 Q Will, we've probably known each other longer than anybody
19 else in the courtroom have known each other right?

20 A I would say that is absolutely true. I used to work out with
21 Mr. Vannah at the health club, and he was diligent coming Sunday
22 nights, I'll say that.

23 Q And we worked -- not against -- well, we worked on the MGM
24 fire --

25 A Correct.

1 Q -- we were on that case together? And we worked on the
2 Puerto Rico fire together, and Dupont Plaza and those were all product
3 liability cases, as I recall?

4 A Yeah. Part negligence, part product.

5 Q You took the smart side, the plaintiff side, ended up doing
6 defense. But I'm still --

7 A You know, who knows. At the end of the case it seemed like
8 the smart side, but during the case it seemed like you were on the smart
9 side.

10 Q Because I was getting paid?

11 A Yeah, right.

12 Q I'd send a bill to get paid. So, you know, let me talk about
13 that. How many cases have you been involved in, when you've been
14 lead counsel, where you took at case, and at the end of the case you
15 asked 40 percent and didn't have a written contingency fee agreement at
16 the beginning of the case?

17 A That precise fact pattern, I don't think any. There are cases
18 where we had -- we're producing a better than average result, where
19 went to the client or the group of attorneys and said, hey, you know, this
20 turned out better than everybody thought, you should pay us more.

21 Q A bonus?

22 A Yeah.

23 Q They don't have to pay the bonus, but they can agree --

24 A Well --

25 Q -- or not agree?

1 A -- if they want to work with us again they do. But, yeah --

2 Q No, I understand that. But there's no --

3 A There's no --

4 Q There's no legal obligation?

5 A No, there's no legal obligation.

6 Q So just I'm clear, so you've been practicing with -- did you
7 get admitted in '76 or '78?

8 A '78.

9 Q Okay. I was in '76, so --

10 A Okay.

11 Q And almost --

12 A But you take more vacations than me, so I practiced longer
13 that you.

14 Q Plus you work harder than I do?

15 A Right.

16 Q I've never met anybody that works any harder than you, and I
17 mean that.

18 A Thank you.

19 Q I have nothing but the highest respect. We've had a lot of
20 fun together. And I think that's -- you answered my question, not once in
21 40 years --

22 A No.

23 Q -- have you ever taken a case, and at the end of the case you
24 just took it and said, gee whiz, let's see happens at the end of the case.
25 And at the end of the case you said, you know what, I want 40 percent,

1 right; that just never happened?

2 A Well, that's a little different question. You asked me if had a
3 fee agreement, and then I wanted more than 40 percent.

4 Q But let me ask that question, all right?

5 A Okay.

6 Q I guess my question is, have you ever taken a case and had
7 no fee agreement, whatsoever, a large case, you know, something that's
8 in the \$6 million range, or above and you've had lots of those. Have you
9 ever taken a case that's in the \$6 million range or above, no fee
10 agreement whatsoever, and at the end you told the client, you need to
11 pay me a contingency of 40 percent?

12 A I would say, no. But I would also say that in the '70s --

13 Q But that --

14 A Okay. Go ahead.

15 Q -- that was a good answer, though. That's the answer to my
16 question, right?

17 A Uh-huh.

18 Q All right. And they'll get a chance to ask you, I'm sure.

19 A I'm sure they will.

20 Q Well, go ahead, they're going to ask you anyway. Just tell
21 me what think?

22 A I was just going to say, things were a little looser in '70s or
23 '80s, so you would take cases and people would say, oh, it's a third or 40
24 percent. And, you know, we didn't have the bar breathing down our
25 neck as much.

1 Q But we have the bar now.

2 A We do. Well, we had it then, but it just wasn't breathe down
3 our neck, as much of it.

4 Q Well, those days were kind of wild and -- those were wild
5 days, right? A little wilder than now?

6 A I think I saw you at my cottage ranch a couple of times, I
7 would agree.

8 Q Which, by the way, was a big ranch at the corner of what
9 Rainbow and --

10 A Oakey, I think.

11 Q Oakey, which was out in the -- I thought that was --

12 A That was a --

13 Q -- so far out.

14 A -- great party.

15 Q That was a great party.

16 A Uh-huh. I never woke up in the stalls in those days. Some
17 people did.

18 Q The parties for those who weren't there were for the new
19 admittees.

20 A Stipulated that it was wilder back in the day.

21 Q All right. I would agree with that. All right. But we do have
22 the bar and the bar's got a rule called Rule 1.5, you're familiar with that
23 rule?

24 A That's right, I have it right here.

25 Q Right. And it says very clear, does it not, that you can't have

1 an oral contingency fee, and have it be valid, agreed?

2 A Not truly agreed, no. It says that it shall be in writing, and it
3 should be done as soon as practicable, or practical or something -- hang
4 on, let me find it. I thought I had it.

5 Q I have it.

6 A I think I have it.

7 Q It's okay. I can give you a copy if you want.

8 THE COURT: Can you just put it on the overhead, Mr.
9 Vannah?

10 BY MR. VANNAH:

11 Q Yeah. I'll put it on the overhead, how about that, Will?

12 THE COURT: Yeah. And then he can see it.

13 BY MR. VANNAH:

14 Q Here we go, we can look at it together, with mine.

15 THE COURT: It's on the screen in front of you, if that would
16 help you, Mr. Kemp.

17 THE WITNESS: Oh, great.

18 BY MR. VANNAH:

19 Q It's right there, do you see it?

20 A Thank you.

21 Q So I think you misspoke a minute ago. Let me back you up a
22 little bit.

23 MR. CHRISTENSEN: Your Honor, could I approach the
24 witness, so I have an easier to read copy of 125.

25 THE COURT: Okay.

1 MR. CHRISTENSEN: Mr. Vannah, is this okay?

2 MR. VANNAH: Oh, yeah, sure.

3 MR. CHRISTENSEN: If I hand it to him. It's a little bit easier
4 to read that.

5 MR. VANNAH: I'd be delighted. Thanks for helping me, I
6 appreciate it.

7 BY MR. VANNAH:

8 Q All right.

9 A Okay. I got it here.

10 Q So I think you misspoke a little, let me just back up, and I
11 don't think you meant to, misspeak. But what you said was -- well, let
12 me back up. So, whether the fee is fixed or contention --

13 A Uh-huh.

14 Q No, no, that's not how it starts, it says this: The scope of the
15 representation and the basis or rate of the fee and expenses for which
16 the client will be responsible shall be communicated to the client,
17 preferably in writing, before or within a reasonable time after
18 commencing their representation. Do you see that?

19 A Right.

20 Q And then there's an exception that doesn't apply?

21 A Right.

22 Q All right. So --

23 A So what I said is that it can be oral, but the bar advises you to
24 put it, preferably in writing, and you should do it within a reasonable
25 time after you start working on the matter.

1 Q Now, actually, I want -- with all due respect, take a look at (c).

2 A Okay.

3 Q That -- (c) is a little more detailed. A fee may be contention,
4 okay?

5 A Uh-huh.

6 Q Only the outcome of the matter --

7 A -- shall be in writing, right.

8 Q For which the service is rendered, except in a matter in which
9 a contingent fee is prohibited?

10 A Right.

11 Q A contingent fee agreement shall be in writing?

12 A Right.

13 Q Signed by the client?

14 A Right.

15 Q And shall state in boldface type, that is at least as large as the
16 largest type used in a contingency agreement:

17 1. The method by which the fee is to be determined, include the
18 percentage, or percentages that shall accrue to the lawyer, in the
19 event of settlement, trial or appeal.

20 2. Whether litigation and other expenses are to be deducted from
21 the recovery, and whether such expenses are to be deducted
22 before or after the contingency fee is calculated.

23 3. Whether the client is liable for expenses, regardless of outcome.

24 4. That in the event of a loss to client, may be liable for the
25 opposing parties' attorney fees, and will be liable for the opposing

1 parties' costs as required by law.

2 5. That a suit brought solely to harass or to coerce a settlement,
3 may result in liability for malicious prosecution or abuse of
4 process.

5 Do you see that?

6 A Yes.

7 Q So if you're going to have a contingency fee agreement, the
8 bar requires, pursuant to this rule, that contingency fee agreement, that's
9 not a choice, where there's oral or written, it is to be in writing, and has
10 to contain these five items, correct; you agree with that?

11 A I don't want to quibble, and I don't know that it's applicable
12 to this case, but I can see a circumstance where you have an oral
13 agreement, and for some reason or another, such as the trial starting the
14 next day, you don't reduce it to writing, and then the trial is over with,
15 and the client would still be responsible for it then.

16 Q On a contingency basis?

17 A Yeah. Because that's really what C says. It says: It shall be
18 communicated to the client; it doesn't say it shall be communicated in
19 writing. In other words, if you and I agree that, okay, I'm going to try
20 your case the next day for a third, and for some reason or another we
21 just don't get the fee agreement done, and I win the case and you get a
22 hundred -- well, 6 million, let's say 6 million, I should get my third.

23 Q Well, let me -- that didn't apply in this case anyway, did it?

24 A You know, it doesn't --

25 Q I mean, I don't --

1 A -- but it --

2 Q -- want to -- I don't want to quibble with you, I actually
3 disagree with you. I think the rule say something different, because
4 that's the way I read it, and the way the bar reads it, is a fee may be
5 contingent on the outcome of the matter for which its service is
6 rendered?

7 A I don't think it applies to the issues we have in front of us.

8 Q Okay. So, what --

9 A But I would say that here we got Mr. Edgeworth proposing a
10 contingent fee right in the thick of things. You know, he writes this letter
11 August 22nd, 2017, and I say this is in the thick of things, because all of a
12 sudden I see all these memos about punitives and something happened,
13 okay. Some -- they must have had a great deposition or something.

14 Q They did.

15 A And, you know, so the real issue is, should this have been
16 formalized --

17 Q Formalized.

18 A -- between the two of them, you know, before they went to
19 the mediation. I would say, yeah, it should have been formalized, okay.
20 But, you know, there's a little bit of fault on both sides here.

21 Q Really? I mean, formalize, being put it in writing --

22 A Right, that's what I mean.

23 Q -- like the law requires?

24 A Right.

25 Q I mean, it's not like a -- the word shall is in there. Now shall

1 means what it means. But, I mean, here it is, it's saying: A fee may be
2 contingent on the outcome of the matter for which the service is
3 rendered.

4 A Let me answer it this way.

5 Q Well, let me just finish, though. It says, a contingent fee shall
6 be in writing, signed by the client, and shall state in boldface print,
7 boldface print, that it's as large as anything else, these five things,
8 including do you apply the 40 percent on the gross settlement, do you
9 apply the 40 percent after you take out expenses. I mean these are
10 things the bar requires, and they're kind of serious about it, when it
11 comes down to fee disputes, right?

12 A Yeah. Well, first of all you're confusing what the bar requires
13 with contract law. So, let's say Mr. Edgeworth in this August 22nd email
14 had proposed to Mr. Simon, let's do 40 percent above my \$500,000 cost,
15 and Mr. Simon has sent back an email saying I agree. We're done, we're
16 done under contract law, okay, it doesn't matter what Rule 1.5 says. That
17 would be an enforceable agreement.

18 Q It could happen that way?

19 A Obviously that didn't happen here.

20 Q It didn't happen?

21 A No.

22 Q All right. So rather than talk about what could have
23 happened, and I -- because we could go, it would be a lot of fun, we
24 could give --

25 A Right.

1 Q -- we could give a CLE seminar on this. But the point is, that
2 didn't happen, and in this case you have never been provided a written
3 contingency fee agreement signed by the client at all, much less
4 containing these five items that the bar said should be in that, right?

5 A I have not.

6 Q Okay. In fact, I don't know if you realize this, I think you
7 probably do, my client testified that there was a conversation in June of
8 2016, a very explicit conversation, where after the friends and family
9 efforts failed, that Mr. Simon said, this is going to be a labor intensive
10 case, I'm getting involved here, I've got to come up with a cost, so I'm
11 going to charge you \$550 an hour, that'll be my fee --

12 A Uh-huh.

13 Q -- and so -- and of course you're going to have to pay the
14 costs. You understand that's what -- that's the testimony?

15 A I haven't -- been not -- had not been provided Mr.
16 Edgeworth's testimony.

17 Q Okay. Well, let's assume that that's what the testimony is.
18 Okay. That's the testimony that they had this meeting, shortly before
19 they filed the complaint the following week, and that there was an oral
20 conversation. And Danny said, I'm going to charge you \$550 an hour.
21 I'll advance the cost, but when I send you a bill you need to reimburse
22 me. That would be under contract law an oral agreement that's binding,
23 correct?

24 A Well, except we have this email that says, we never had a
25 structured discussion about how this should be done. So, you're telling

1 me there was a structured discussion about how it would --

2 Q You're about eight questions ahead of me.

3 A Okay. Fine.

4 Q I don't think I asked that question. I thought you were --

5 A Okay. Assuming for the sake of argument that they had an
6 oral agreement, and that they had talked about everything, you know,
7 that we're going to go for punitives. We're going to -- this is going to
8 cost X amount of money. You know, I would agree with you that that
9 would probably be binding under contract law.

10 Q All right. Yes.

11 A I mean, if that's the question.

12 Q All right. August, the email you're looking at.

13 A Yes.

14 Q Do you know what was the genesis of that email, about the
15 meeting in San Diego. Just yes, or no, have you been told that?

16 A I've been told they had some meeting in San Diego, and they
17 had some --

18 Q So let me tell you what happened?

19 A Okay.

20 Q Okay. I want you to assume that this is what happened.

21 They went to San Diego to meet with some experts. They go back to the
22 airport, same day. They drop off, they have a little adult beverage in a
23 bar, waiting for the plane, chat, and somehow the conversation --

24 A Is there any other kind of beverage in a bar?

25 Q I don't know which kind they had, but -- I don't know if they

1 were having beer, or margaritas or what, but they're having some sort of
2 -- whatever people drink in a bar, they're having some drinks.

3 A Okay.

4 Q In the midst of that, the conversation comes up, hey, is there
5 any possibility, and they start discussing whether or not they can move
6 this from an hourly agreement, to maybe a hybrid, like you talked
7 about --

8 A Uh-huh.

9 Q -- where we've already paid some fees, maybe the
10 contingency above a certain amount, and I get the first 2 million, you get
11 30 percent above that, or, you know --

12 A Which is very common when a case goes forward.

13 Q No, I agree.

14 A Yeah.

15 Q I've done that myself.

16 A Uh-huh. Uh-huh.

17 Q So that could have -- that could have happened, and they
18 could have reached an agreement, and they could have memorialized
19 that. That didn't -- you don't see where that ever happened, right?

20 A No. It just says, we should explore it but then later on I think
21 there's a memo where they're going for punitive and he wants a 100
22 million punitives or something.

23 Q Well, you know what, let me stick with one thing at a time.

24 A Okay.

25 Q If you jump ahead of me three months that doesn't --

1 A Okay.

2 Q -- help me any. Are you ready?

3 A Yeah. I'm ready.

4 Q We'll skip back where we were.

5 A Okay.

6 Q So the testimony's been that they had this conversation, and
7 if you read that memo when he says, look, or that email, he says, look, if
8 I need to I can borrow more money.

9 A Uh-huh.

10 Q I can borrow money from my mother-in-law, I can borrow
11 money from an old high school friend. I can sell some of my bitcoin, I've
12 got a couple of million dollars in bitcoin. I mean, I can get the money, so
13 if we're not going to be able to reach an agreement on a sort of a hybrid
14 contingency fee, fixed fee, whatever, I -- he says there very clearly, I'm
15 able to pay you hourly to finish the case. Do you remember reading
16 that? I hope you have it in front of you, if you do, you'll see it.

17 A I could also swing hourly for the whole case --

18 Q Right.

19 A -- is what he says.

20 Q And I don't know if you realize, but after that meeting the
21 response by Danny was to send another hourly bill, which my client
22 paid; were you aware of that?

23 A I think I was aware of that, because I think it came up with
24 Mr. Simon's testimony, while I was watching.

25 Q Okay. So, if in fact --

1 A What this says to me is that the arrangement between them
2 was in a state of flux, because they both fell in love with the case, down
3 in San Diego, for some reason.

4 Q Well, what it tells me is something totally different. But let
5 me ask you, can it also tell you that they never reached an agreement.
6 What he's saying now, we never reached an agreement on whether or
7 not we can do a hybrid agreement, but if we can't I'll just continue
8 paying you hourly. That certainly is consistent with that, right?

9 A I think I would go even farther, in saying this is consistent
10 from what I said originally, if they never had any agreement of any sort.

11 Q What he says, we've never had instructions, agreement on
12 the contingency portion --

13 A No --

14 Q But --

15 A -- he says --

16 Q But --

17 A -- about how this might be done.

18 Q Why, when they're talking about -- you have to look at the
19 background, what can be done?

20 A I would assume that means --

21 Q But you're assuming, I don't want you to assume.

22 A No, he says -- right now they are thinking that they have to
23 try the case and go appeal it, and then give punitives in addition to the
24 hourly. And so, he's trying to come up with some kind of formula to do
25 it.

1 Q He is, and he says clearly, we've never had a structured
2 agreement on how this might work, but if you want I can pay you
3 hourly, and we can just do the whole case on an hourly basis. And then
4 in response to that, is not a suggestion, like here's a kind of agreement I
5 would -- I would consider, the response to that by Danny is send an
6 hourly bill, and then the client pays the bill, and that's the end of the
7 discussion, right?

8 MR. CHRISTENSEN: Your Honor that's --

9 BY MR. VANNAH:

10 Q Do you have any other facts --

11 A I don't think that's an agreement, but --

12 THE COURT: Okay. Hold on just one second, because
13 there's like everybody talking at the same time. Okay. Are you done
14 asking your question?

15 MR. VANNAH: I thought I was.

16 THE COURT: Okay. Now --

17 THE WITNESS: And the answer is, no. I have no other facts
18 in that other than --

19 THE COURT: Just one second, Mr. Christensen has an
20 objection to that question.

21 THE WITNESS: Okay.

22 THE COURT: Mr. Christensen?

23 MR. CHRISTENSEN: I -- it's a two part objection, because the
24 question was a little vague. If it's a hypothetical it's incomplete. If it's
25 not, there's lacking foundation, because he didn't establish the date the

1 bill that was sent, or when it was paid, because it was actually many
2 days later; not the next day as his question implied.

3 MR. VANNAH: I never said the next day.

4 BY MR. VANNAH:

5 Q My question is very specific can you answer it?

6 THE COURT: Can you clarify, just a very simple version of
7 your questions, Mr. Vannah?

8 MR. VANNAH: Absolutely.

9 BY MR. VANNAH:

10 Q You know we have a meeting in San Diego, right?

11 A Right.

12 Q We know then we have the email afterwards where Mr.
13 Edgeworth's saying, we've never had a structure settlement on our
14 conversation, a structure conversation on this. I'm still willing to
15 consider the hybrid situation, but, you know, I can also just swing hourly
16 and pay an hourly bill. And then within a period after that happened,
17 with no response from Danny, Danny didn't respond to the email, Danny
18 sent another bill that was over \$200,000, and Mr. Edgeworth paid it.

19 A Uh-huh.

20 Q Given that, that would be inconsistent with that he
21 discontinued the hourly billing, right?

22 A No. Because he says here, they didn't have a discussion
23 about how this might be done, and by might be done, I'm assuming he
24 means reaching nirvana, getting the 6 million, you know, after a trial or
25 appeal, that's what I'm assuming it means, okay. And he has two

1 approaches; 1) we do this hybrid; 2) I keep paying you hourly. There's
2 no agreement that I see in either one.

3 Q I know. They already had an agreement to pay him hourly,
4 and he says I can continue --

5 A Well, that's what you said --

6 Q I do.

7 A I know, but I've seen --

8 THE COURT: Okay. Mr. Vannah, he is not going to agree
9 with you on this point. He's basically that's not how he understood it,
10 and you understood it to be completely different.

11 BY MR. VANNAH:

12 Q Well, you know what, what you're understanding -- you
13 understand the judge is going to make these decisions, right?

14 A I am -- I'm sure that that is true, here.

15 Q Okay.

16 A And that's probably the hardest decision, you know -- harder
17 than my decision I think.

18 Q Right.

19 A What I'm saying that the reasonable value 2-4, I think that's
20 pretty --

21 Q That would be great --

22 A Yeah.

23 Q -- if they had agreed at the end of the case you make the
24 decision on the fee, but nobody agreed to that.

25 A If they want to do that, we could --

1 Q Well, the bottom line is, if there is an enforceable agreement
2 between the parties as of June 17, that Mr. Simon will bill \$550 an hour,
3 and bill his costs, and continue the case, and get paid every hour for
4 \$550 an hour, plus his cost, until the case is concluded, then the
5 proposed new agreement is one that Mr. Edgeworth could have agreed
6 to, or say no; would you agree with that?

7 A If they had an agreement, I would agree that's the
8 agreement.

9 Q All right. You know, what, it's really what --

10 A That's your question, right?

11 Q -- I appreciate -- you did. Yeah. That's a great answer, thank
12 you.

13 MR. VANNAH: Thank you, Your Honor.

14 THE COURT: Thank you, Mr. Vannah. Mr. Christensen, any
15 follow-up?

16 MR. CHRISTENSEN: Just a few things, Your Honor.

17 REDIRECT EXAMINATION

18 BY MR. CHRISTENSEN:

19 Q Mr. Kemp, I'd like to show what's been marked and admitted
20 as Office Exhibit 80, this is Bate Stamp 3426. This is a document created
21 by Mr. Edgeworth and --

22 A Right. I have a copy --

23 Q -- provided to Mr. Simon?

24 A -- of that up here. Uh-huh.

25 Q Okay. Where it says, not paid, or not invoiced, yet? Lawyer,

1 it says, do not know.

2 A Right.

3 Q Do you see that?

4 A Right.

5 Q Okay. Is that consistent with your understanding of whether
6 or not there was an agreement in this case?

7 A You know, it -- really what happened here is what happens to
8 all of us sometimes. You get into it with the client, and we both roll up
9 our sleeves. We decide to beat up the enemy, and maybe you don't
10 cross your T's, and dot your I's. So, yeah, I think it is consistent.

11 Q Okay.

12 A I mean, they did it -- it's unbelievable, like I keep saying.
13 They got 6.1 million for a broken sprinkler that flooded a kitchen, and --
14 I'm not trying to diminish the importance of kitchens, but I mean, it's an
15 amazing result.

16 MR. CHRISTENSEN: And I hate to disagree with Mr. Vannah,
17 I'm playing along.

18 THE COURT: Do you know about this one?

19 MR. CHRISTENSEN: I gave him the wink.

20 MR. VANNAH: I haven't seen that reluctance.

21 BY MR. CHRISTENSEN:

22 Q I think 1.5 fee is kind of heading off in the wrong direction.
23 Because we have a statute, we have an attorney fee statute in this State,
24 correct?

25 A We do.

1 Q And NRS 18.0152 says, in the absence of an agreement the
2 lien is for a reasonable fee for the services which the attorney has
3 rendered for the client, correct?

4 A Right, right.

5 Q Is your opinion there was no agreement?

6 A I don't think there was an agreement. I mean --

7 Q That's the reasonable fee for the services which Mr. Simon
8 rendered for the client?

9 A It would be the 224, in my opinion, if not higher. You know,
10 like I keep saying, that's based on 40 percent. We would charge -- if
11 you'd gotten in the door, which, you know, he seems like a nice guy, but
12 friends or family would have had to bring this case in.

13 Q Okay. And, you know, 1.5(a) that we went over, for example
14 (3) that contemplates using the measure of what other lawyers charge in
15 the community?

16 A That is true.

17 Q Is that true?

18 A Uh-huh.

19 Q And that doesn't say contingent, hourly whatever, it just says
20 what other folks charge for this kind of work, that's what you get if it's
21 reasonable, correct?

22 A Yes.

23 Q Okay. Is that --

24 A And I point out again, this is a bar rule. You know,
25 Polisenberg and these guys draft this up. So, they say we should do this

1 for our contingency agreements, they really --

2 Q Well, he usually works for the other side, doesn't he?

3 A Usually he does.

4 Q Okay. And under Brunzell you can go and look at what other
5 folks in the community charge as well, correct?

6 A Yes.

7 Q And under the *Loma Linda* -- or I'm sorry --

8 A *Lindy Lodestar*. The name of the case --

9 Q *Lindy Lodestar*.

10 A -- was Lindy Lodestar is the informant.

11 Q Right. That's just saying, look at what other folks in the
12 community charge for that type of service.

13 A You know, if that guy is reading the MDL manual early in the
14 week, because I hadn't read the new MDL manual, and it has now
15 become vogue that when they get into fee disputes that the judge makes
16 the defendant to produce his case. So, they look at what the defendant's
17 fees are, to determine what a reasonable fee is for the plaintiffs.

18 And usually that works out pretty good for the plaintiff's
19 attorney, because the defendant usually has five or six silk stocking
20 firms, and so they're overcharging the whole way. And so usually that's
21 a bigger fee than you get with it being an 80 percent fee contract. But,
22 yeah. In answer to your question, yes.

23 Q Okay. Thank you.

24 MR. CHRISTENSEN: No further questions.

25 THE COURT: Anything else, Mr. Vannah?

1 MR. VANNAH: I do.

2 RECROSS EXAMINATION

3 BY MR. VANNAH:

4 Q Well, we did that in this case, actually. We looked at what
5 the Defense was charging, they were charging 185 to 225 an hour; were
6 you aware of that?

7 A No. But I'm not surprised because I'm familiar with Mr.
8 Nunez' firm and his rates.

9 Q And on that 1.5 --

10 [Counsel confer]

11 THE WITNESS: But I'll bet you the total charge by the
12 defense was over 24. I bet you when you add up all the expert and the
13 attorney's fees?

14 BY MR. VANNAH:

15 Q Nobody's ever -- I don't know.

16 A Yeah.

17 Q I don't really care, I'm actually here to talk about --

18 A Okay.

19 Q -- this case, but no, I appreciate that.

20 A Yeah.

21 Q Look we parse, and we just saw an example of taking
22 something totally out of context and let me show you why.

23 A Okay.

24 Q So when you look at the fee, at 1.5 the first says, a lawyer
25 shall not make an agreement for a charge or collect an unreasonable fee.

1 Do you see that?

2 A No. Is that the --

3 Q At that top --

4 A -- very beginning.

5 Q That's where --

6 A Yeah. I see that, yes. Uh-huh.

7 Q And that was the area he's talking about --

8 A Uh-huh.

9 Q -- so when I see he, Jim Christensen was saying to you, he
10 had you go down in that section. So, it says, a lawyer shall not make an
11 agreement for a charge, or collect an unreasonable fee, or an
12 unreasonable amount for expenses; do you see that?

13 A Uh-huh.

14 Q And then down below, the way he -- then he directs your
15 attention to several things. One being the fee customary charge in the
16 locality for similar legal services; do you see that?

17 A Uh-huh.

18 Q So what he's saying is that if Mr. Simon had brought him to
19 say, okay, I'm charging you an 80 percent contingency fee, then that
20 would be something later that the client can say, well, wait a minute is
21 that -- one of the factors would be, is that the fee that's customarily
22 charged in the locality, right?

23 A I would think that would be on the high side.

24 Q I would agree with you. So, when Mr. Christensen gets up
25 here and takes it out of context, what he's talking about, when he says

1 the fee customarily charged in the locality he's talking under Section A,
2 as to whether or not the fee that is agreed to is unreasonable or not,
3 correct?

4 A Right.

5 Q All right. So, thank you.

6 A But it's that --

7 Q But that's --

8 A Okay.

9 Q Let me just -- you know, I want to give him a chance to earn
10 his money --

11 A Okay.

12 Q -- so if you got more to add?

13 A Not a problem Mr. Vannah. I will not say a word.

14 THE COURT: Mr. Christensen?

15 MR. CHRISTENSEN: I hate to disagree with Mr. Vannah
16 again.

17 FURTHER REDIRECT EXAMINATION

18 BY MR. CHRISTENSEN:

19 Q Actually, it says, the factors to be considered in determining
20 the reasonableness of fee include the following. It doesn't say
21 unreasonable, right?

22 A Right.

23 Q It says reasonable?

24 A I don't think there's any dispute on a product's case, it would
25 be 40 or 50 -- 40 to 45 or even 50 percent. So, I don't know what the

1 dispute is here.

2 Q And to go to the MDL we're not talking about just looking at
3 the hourly rate of one single defense lawyer on a multi-defendant
4 situation, we're talking about aggregating all of their charges and then
5 comparing that to the plaintiff, correct?

6 A Right.

7 Q So we wouldn't need to know that the gentleman is making
8 185 an hour or 200, or whatever, we'd have to know what the aggregate
9 is of all those defense attorneys and what they all made --

10 A Uh-huh.

11 Q -- and they compare that number, correct?

12 A Yeah. And it probably gets a little more complicated in this
13 case, because apparently Viking has a team that goes from place to
14 place, to place, to place and fights these cases. So, you probably have to
15 throw in maybe a little more from past experience, and effort that they
16 were bringing from other cases to this case.

17 Q But Mr. Greene is making 925 in this case, and he's adverse
18 to Mr. Simon.

19 A You know, I have already tickled this for our annual meeting
20 in January for a discussion, because I would charge a little bit less, but --

21 Q Okay.

22 MR. VANNAH: Well, I have more experience.

23 THE WITNESS: Well, Mr. Greene doesn't.

24 BY MR. CHRISTENSEN:

25 Q Your opinion is 2.44?

1 A Right.

2 MR. CHRISTENSEN: Okay. Thank you, Your Honor.

3 THE COURT: Thank you. Mr. Vannah, anything else?

4 MR. VANNAH: No, nothing, Your Honor.

5 THE COURT: Okay. You guys don't have anything else to
6 say about Rule 1.5?

7 MR. VANNAH: Nothing.

8 THE COURT: Okay. Mr. Kemp, you may be excused. Thank
9 you very much --

10 THE WITNESS: Thank you, Your Honor.

11 THE COURT: -- for your testimony here.

12 Mr. Christensen, do you have any more witnesses?

13 MR. CHRISTENSEN: No, Your Honor.

14 THE COURT: Does Defense have any? Okay.

15 MR. GREENE: We do, Your Honor. Angela Edgeworth.

16 THE COURT: Okay. Do we think we can question her in an
17 hour?

18 MR. GREENE: I think I'm going to make the best effort of that
19 I possibly can.

20 THE COURT: Okay. And, ma'am, if you could remain
21 standing, raise your right hand. Thank you.

22 ANGELA EDGEWORTH, PLAINTIFF'S WITNESS, SWORN

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

25 THE WITNESS: Angela Edgeworth, A-N-G-EL-A E-D-G-E-W-

1 O-R-T-H.

2 THE COURT: Okay.

3 MR. GREENE: Your Honor, can Mr. Kemp be excused?

4 THE COURT: Yes.

5 MR. GREENE: Thank you, Your Honor.

6 THE COURT: Yes. Mr. Kemp you may be excused. Thank
7 you very much.

8 MR. CHRISTIANSEN: And, Judge, this is my witness, and
9 Your Honor asked if we can complete it in an hour. I'd like to complete it
10 cumulatively, not end on the direct examination, and come back later.
11 So, if we can all complete the witness, then I'm good to go.

12 THE COURT: Well --

13 MR. CHRISTIANSEN: If Mr. Greene is going to go right up to
14 5:00, and I go, oh, shoot, I didn't know it would take this long.

15 THE COURT: Well, and that was my question. And like as
16 you understand my concern is -- I mean, I have to assume, Mr.
17 Edgeworth was the very first witness to testify in this at all. We've heard
18 from several other witnesses -- well, yes, only a couple, it seems like
19 several because it's day 4, in that amount of time.

20 So, I don't know how much questioning you guys have for
21 her. But I would agree, I meant cumulative. Because I don't -- what I
22 don't want, is because in all honesty, whatever we don't finish today, I
23 don't know when we're going to finish this again. So, I don't want her to
24 begin now if we're not going to finish her, because I don't want to forget
25 what she said.

1 And then I'm sitting here like three days later -- well, I mean,
2 three months later watching the JAVS, because the problem is this, I'm
3 not here tomorrow, because I thought this hearing was going to go three
4 days, so tomorrow is not available. I start a trial next week on Tuesday
5 that is going to run the entire week.

6 The following week begins my criminal stack that goes for
7 five weeks. We can anticipate some things may not go, but I can't ever
8 make that promise to you. My next civil stack begins October 15th. I'm
9 at judicial college, I'm not here that week. October 22nd I have had a
10 med-mal, that's supposed to start, but you guys all know how that
11 works, and it may start, it may not.

12 So in regards to us looking at a different date to continue, I just
13 don't know how much longer from today that's going to be. So, I don't
14 want her to get halfway through her testimony and then I don't
15 remember what she said.

16 MR. VANNAH: Your point's well-taken. And I think that
17 would risky, because -- what do you think?

18 MR. GREENE: I think it is risky, Your Honor.

19 MR. VANNAH: So, I don't want to do something that
20 would --

21 THE COURT: Yeah. And I apologize if I gave you the
22 impression I only wanted one of you to finish today, or Mr. Christiansen,
23 so I'm glad you cleared that up, because I don't want that at all, because I
24 won't remember what she said.

25 MR. VANNAH: You know, that's a good point.

1 THE COURT: Yeah.

2 MR. VANNAH: So why don't we --

3 MR. CHRISTIANSEN: And, Judge, if the Court's -- Mr.
4 Greene, I'm sorry, I almost called you John. If Mr. Greene says, hey I got
5 45 minutes and the Court's willing to go like 5:15, 5:30, and we can just
6 jamb it all in. My preference is to finish completely, what I just don't
7 want to do is have my side hamstrung, you only hear direct, and then I
8 come back to cross, the witness in two and a half months, and nobody's
9 memory is fresh.

10 THE COURT: No. And I don't want that either. But I'm
11 willing to stay until like 5:15, but my thing is I'm not keeping my staff
12 here until 7:00, while we go back and forth on her. So, you guys tell me
13 how long this going go?

14 MR. GREENE: It's going to take at least an hour, maybe an
15 hour and a half.

16 THE COURT: Okay.

17 MR. GREENE: I mean, she wants to be heard, Your Honor.
18 So, I don't want to --

19 THE COURT: Well, and I mean that's what I was anticipating,
20 and in light of, you know, the testimony that has come since her
21 husband has testified, I would just as soon that there's things you guys
22 have to ask her, that may have been brought up in regard to -- I know
23 there's an email now out there that she sent to Mr. Simon, while Mr.
24 Edgeworth, was in China, so I know you guys want to talk about that.

25 So, I mean, I just don't want to start it either, if we're not going to

1 finish.

2 MR. VANNAH: Well, said and I think you're right. So, we'll --

3 MR. GREENE: That's fair.

4 MR. VANNAH: Well, why don't we adjourn.

5 THE COURT: Okay.

6 MR. VANNAH: We've got one last witness, and then --

7 THE COURT: Is she your only witness?

8 MR. GREENE: Yes. The last one.

9 THE COURT: Okay. Well, I mean, also we have the cell phone
10 records issue that's still out there.

11 MR. VANNAH: We do.

12 THE COURT: As well as -- I mean, I don't know, are you guys
13 inclined to do your closings in writing, or did you guys want to do an
14 oral presentation of those?

15 MR. VANNAH: So, let's ask you, Judge. I mean, what would
16 you prefer, in all honesty?

17 THE COURT: Well, I would -- because I'm going to tell you
18 this right now, and I thought I said it earlier, but I don't know that I did,
19 because I want you guys to do findings of fact, from your -- I want each
20 one of you to do them now that you've heard the evidence. But I will
21 assume you guys wouldn't be prepared to close until you saw those cell
22 phone records?

23 MR. VANNAH: Yeah. I wanted to see those.

24 THE COURT: Because in regards to the calculations and
25 everything that you asked about, I assumed you guys wouldn't want to

1 close until you got those.

2 MR. VANNAH: It's just one thing, and there may be nothing I
3 care about, but I'd just like to see them.

4 THE COURT: Right. But I just assumed you wanted to read
5 those, first.

6 MR. VANNAH: So, we talked about that, but -- so I don't
7 know if you want to give us any guidance as to -- we're almost done. I
8 mean, there's nothing staggeringly new you're going to learn here. Just,
9 obviously she's not as involved as Brian was.

10 THE COURT: Right.

11 MR. VANNAH: So, we talked about it the other day, all of us,
12 about the closing and how that's going to work. So, there's two ways of
13 doing it, either an oral closing, but I mean, if you want -- if you have
14 some area of the law that you wanted to -- I just don't know where you
15 are on it.

16 So, we -- you're very good at hiding the cards, we have no
17 idea. At least I have no idea where you're leaning, or what you're
18 looking at, or what you're concerned about.

19 So, when we had our initial conversation the other day, I was like,
20 I'm lazy, so it would be a lot easier to argue for an hour, but when you
21 write these briefs, it takes like four days, I mean, they're really time
22 consuming.

23 THE COURT: I understand, I understand. Well, I mean -- and
24 I mean, what do you want to say about that Mr. Christensen? I mean, is
25 that what you guys discussed, or --

1 MR. CHRISTENSEN: I'm a little taken aback at the time
2 estimate on direct of Ms. Edgeworth, given the extent of the testimony
3 already adduced to the Court today. Putting that aside the fact that
4 memories may fade is of course something that we're all subject to.

5 So, I'm a little concerned that with the Court's schedule as
6 you just indicated that, we're talking about maybe taking this testimony
7 even maybe two months down the road, three months? We really don't
8 know.

9 THE COURT: right.

10 MR. CHRISTENSEN: And that's going to be awkward. So, I
11 have been kind of mulling that over, and I'm not really sure what the
12 conclusion is, other than I guess we're going to have to hope for a clean
13 date from the Court at some point, maybe we could be on 72-hour
14 notice?

15 THE COURT: Well, I mean, that's the thing, I mean, I do my
16 criminal calendar calls on Monday. If I have a week that nobody
17 announces ready, I'm more than happy to get you guys in here and wrap
18 this up sometime in the month of September. But as I sit here right now
19 I just cannot promise you that that's going to happen.

20 MR. VANNAH: And listen, here's the deal too, I mean, let's
21 be honest. I mean, Jim's got his schedule, I've not mine --

22 THE COURT: Right.

23 MR. VANNAH: -- Pete's got his, Danny's got a schedule, I
24 mean, and all of us, and you have a schedule. So, it's not -- it was hard
25 to get the dates we got one, and listen we got four days, which is

1 wonderful, thank you, from all of us, you gave us Thursday. We're just
2 so close to being done, but -- so we need -- you know, we have
3 vacations, we have trials we've got to do, and you got things to do.

4 So, I don't know what the solution is here, other than obviously
5 we're going to have to come back another time. So, whether we like it or
6 not, like work until -- and I don't blame your for not wanting your staff to
7 stay, and frankly, I don't want to stay either. I'm old and I need to go
8 home and eat.

9 THE COURT: Well, I mean, because that's the thing, I could
10 give you guys a Monday and then just start a criminal trial on Tuesday.
11 Because if they're my cases they can go into the next week.

12 MR. VANNAH: That would be great, Your Honor.

13 MR. CHRISTIANSEN: And, Judge, I don't --

14 MR. VANNAH: Next week [indiscernible].

15 MR. CHRISTIANSEN: -- from my perspective, if Mrs.
16 Edgeworth is the last witness and her direct is an hour, her cross won't
17 be an hour, and if the Court wants briefs, we can argue, or the Court
18 wants briefs, but, it seems to me that the window of time needed to set
19 aside is not more than a half day, I guess, is what I'm saying.

20 THE COURT: Well, that's what I was thinking. I mean, and I
21 can give you guys like an afternoon on a Monday. I'll do my criminal--

22 MR. CHRISTIANSEN: So, Mr. Vannah --

23 THE COURT: -- calendar and give you guys the Monday.

24 MR. CHRISTIANSEN: -- and I could show up, or Mr. Greene,
25 or whoever. And she's my witness, she's Mr. Greene's witness it looks

1 like, adduce that testimony --

2 THE COURT: Okay.

3 MR. CHRISTIANSEN: -- in a couple of hours on a Monday
4 morning, and then if you want to hear closings, or if you say you want
5 them in briefs, we could do either, then the window that you've got to
6 set aside even is a little smaller. Maybe you could start your criminal
7 trial at 11:30 and we can start at 9:00 and be done.

8 MR. VANNAH: You know, Pete makes a good argument, and
9 I have to agree with him. I don't have to be here, and Jim you don't have
10 to be here. If I'm here, I'm here, but I don't want hold up finishing up a
11 trial on my schedule, so --

12 MR. CHRISTENSEN: I agree.

13 MR. VANNAH: John's more available, and it sounds like you
14 are.

15 MR. CHRISTIANSEN: Well, I'll make myself available --

16 MR. VANNAH: It's a lot easier --

17 MR. CHRISTIANSEN: -- for a couple of hours Monday
18 morning. I get whoever else I'm in front of.

19 THE COURT: Well, then I could do it, I mean, on the 10th.
20 Because I'm looking at my trial stack. There's a trial that has to go, and
21 I'm pretty sure that trial is going to go longer than five days anyways, so
22 they're going into the next week anyways.

23 MR. VANNAH: I mean, let's look here before we --

24 THE COURT: What does the 10th look like for you guys?

25 MR. CHRISTIANSEN: Of September?

1 THE COURT: Yeah.

2 MR. CHRISTIANSEN: Unless we juggle -- I'm in Scotland
3 dropping my daughter off until the 12th, Judge, so --

4 THE COURT: Through the 12th?

5 MR. CHRISTIANSEN: Through the 5th through the 12th. And
6 I'm here for the duration, besides that.

7 MR. VANNAH: Yeah.

8 MR. GREENE: And I'm out of town that one Monday.

9 THE COURT: You are out of town the Monday, okay. So,
10 let's look at --

11 MR. VANNAH: If you had the 17th I could do it?

12 THE COURT: So, what about the 17th?

13 MR. CHRISTIANSEN: Yeah.

14 MR. VANNAH: Let me look here.

15 THE COURT: That's a much shorter criminal stack.

16 MR. GREENE: I'm here too.

17 MR. CHRISTIANSEN: Judge, I can do it, as long as the Court
18 wouldn't mind maybe confirming with Department 3, where I'll be in a
19 murder trial, that I need to start a little bit late.

20 THE COURT: I will contact --

21 MR. CHRISTIANSEN: If you tell Judge Herndon --

22 THE COURT: I will contact --

23 MR. CHRISTIANSEN: -- then I'll be here, and I'll be prepared
24 to finish Ms. Edgeworth at that time.

25 THE COURT: Okay.

1 MR. CHRISTIANSEN: Can you do the 17th, John?

2 MR. GREENE: I can.

3 THE COURT: Okay.

4 MR. VANNAH: I can't, but that's okay. I don't need to be
5 here.

6 THE COURT: Okay. So, if you're not going to be here, would
7 you rather do closings in writing then, since you're not going to be here?

8 MR. VANNAH: Well, that's -- so let's talk about that just for a
9 minute, Judge --

10 THE COURT: Okay. Well, first of all, let's see if Ms.
11 Edgeworth, are you available --

12 MS. EDGEWORTH: Can I check my phone?

13 THE COURT: Yes.

14 MS. EDGEWORTH: Okay. Thank you.

15 MR. VANNAH: Yeah. Let's make sure she's there.

16 MS. EDGEWORTH: It's the 17th of September?

17 THE COURT: Yes.

18 MR. VANNAH: While she's doing that, it just takes a million
19 hours to do it by --

20 MR. CHRISTENSEN: At 925 an hour you're complaining.

21 MR. VANNAH: I'm not complaining.

22 [Counsel confer]

23 MS. EDGEWORTH: Your Honor, I'm out of town that day. I get
24 back that evening.

25 MR. VANNAH: Is that Friday a possibility.

1 THE COURT: Well, the problem is every Friday in the month
2 of September I have an evidentiary hearing.

3 MR. VANNAH: I see.

4 THE COURT: Like it's just been crazy, I don't know why.

5 MR. CHRISTIANSEN: John, could you do Tuesday the 11th?
6 John? If your client -- if that's okay Ms. Edgeworth?

7 MR. GREENE: Yes.

8 MS. EDGEWORTH: Yes.

9 THE COURT: Over --

10 MR. CHRISTIANSEN: Could we do --

11 THE COURT: The only problem is on Tuesday I have to make
12 a presentation at the civil bench bar at 11:30.

13 MR. CHRISTIANSEN: Or Wednesday the 12th.

14 MR. CHRISTENSEN: 11:30 she said.

15 MR. CHRISTIANSEN: Oh, 11:30, we could finish by then,
16 Judge.

17 MR. VANNAH: Well, if we start at 9:00.

18 MR. CHRISTIANSEN: Yeah. If we start here at 9:00 --

19 THE COURT: I have a criminal calendar -- I mean a civil
20 calendar, we can't start until 11:00.

21 MR. VANNAH: That makes sense.

22 THE COURT: We have a calendar.

23 MR. VANNAH: Afternoon, that afternoon, or something?

24 THE COURT: I mean, I could give you the -- what about the
25 18th -- well, Mr. Christiansen you're not even here on the 11th, right?

1 MR. CHRISTIANSEN: Correct. .

2 MR. CHRISTENSEN: That's right, he's not back until the 20th

3 THE COURT: So, what the 18th?

4 MR. CHRISTIANSEN: I could do it. I'm just going to ask

5 Judge Herndon to verify that I'm down here for a couple of hours and --

6 THE COURT: Oh, Judge Herndon, yeah he --

7 MR. CHRISTENSEN: He's good like that.

8 THE COURT: -- starts criminal calendar at 9:30-ish.

9 MR. CHRISTIANSEN: And I'm in a murder -- I'm in a retrial of

10 a capital case in front of him. So, he'll -- he's fine, he'll push it off.

11 THE COURT: Yeah. And so, he won't finish his criminal

12 calendar probably until somewhere around like 11:00.

13 MR. GREENE: The 18th would be perfect.

14 MR. CHRISTENSEN: John, can you do the 18th?

15 MS. EDGEWORTH: I' available as well, Your Honor.

16 THE COURT: Okay. Are available on the 18th.

17 MR. GREENE: Are you?

18 MR. VANNAH: Yeah, I am.

19 MR. GREENE: I'm in an arbitration that day, but since I'm the

20 arbitrator, I guess you knew that.

21 THE COURT: Okay. So, we're going to do it on the 18th.

22 That is civil day, so we'll start at 11:00.

23 MR. CHRISTENSEN: Great.

24 MR. GREENE: 11:00, okay.

25 MR. CHRISTIANSEN: And Judge, can we, without imposing

1 too much on your staff, could we work through lunch, so I can get back
2 to my murder trial. So, it might go an hour and then --

3 THE COURT: They're going to kill me, Mr. Christensen.
4 We've got to get this --

5 MR. CHRISTIANSEN: I'm happy to bring sandwiches or
6 something.

7 [Counsel confer]

8 THE COURT: Okay. They're okay with that, Mr. Christensen.

9 MR. CHRISTENSEN: Thank you very much

10 THE COURT: Okay. So, we'll do it on the 18th.

11 Okay. Mr. Vannah, in regards to closing.

12 MR. VANNAH: So, the last time I did those things in writing,
13 I mean, I'm telling you, it is a lot of time.

14 THE COURT: Well, if you're going to be here we can do them
15 orally.

16 MR. VANNAH: Yeah. Well, you know what, we could, why
17 don't we.

18 THE COURT: Okay.

19 MR. VANNAH: Then if you have some issues you can ask --

20 THE COURT: Right, yeah. If you're going to be -- I just didn't
21 want -- I just figured you would be the one doing the closing, so I didn't
22 think you'd be comfortable doing it orally, if you're not here.

23 MR. VANNAH: No, I am going to do the closing.

24 THE COURT: Okay.

25 MR. VANNAH: So, the 18th.

1 THE COURT: The 18th, we'll just do it.

2 MR. VANNAH: Yeah. So that's great.

3 THE COURT: Okay. We'll do it orally. But I do need you
4 guys to prepare findings of fact --

5 MR. VANNAH: Yes.

6 THE COURT: -- and submit them to my law clerk.

7 MR. VANNAH: Yes. That's --

8 THE COURT: Based on the evidence that you heard.

9 MR. VANNAH: Yeah.

10 MR. CHRISTIANSEN: Between now and the 18th, Your
11 Honor?

12 THE COURT: Between now and the 18th.

13 MR. CHRISTIANSEN: Very good, that's perfect.

14 MR. CHRISTENSEN: Yes, Your Honor.

15 THE COURT: Prepare findings of fact, submit it to law clerk
16 in a Word document.

17 MR. VANNAH: Okay.

18 THE COURT: All right.

19 MR. CHRISTENSEN: No. That's very good, Your Honor.

20 THE COURT: Yeah. If she has them by that day, because I
21 am not going to rule from the bench that day. You'll get a ruling after.
22 So, she just has them by the time we start on the 18th.

23 MR. VANNAH: No, I understood, I figured that. But we'll
24 start at 11:00 on the 18th, and just go through that day and do it.

25 THE COURT: Yeah, just go through until we're done.

1 [Counsel confer]

2 MR. VANNAH: Okay. So sounds great.

3 So, let me be kind to your staff. So now we're looking to at 11:00,
4 so from 11:00 a.m. to 5:00, which I don't have a problem with. But --

5 THE COURT: At some point we're going to have to break in
6 there, I mean, I understand Mr. Christensen is going to schedule, we'll
7 work it out with Judge. Herndon. But yeah, at some we're going to have
8 to a break and eat, we all need to eat.

9 MR. CHRISTIANSEN: As soon as I am done with the witness
10 I will go back to my murder trial and let --

11 THE COURT: Oh, okay, okay. Yeah. Well we're still going to
12 take a little recess.

13 [Counsel confer]

14 THE COURT: Yeah. We'll get Mr. Christiansen out of here
15 then we will break for lunch, and then you guys --

16 MR. CHRISTIANSEN: And then come back.

17 THE COURT: Yeah. So, I'll keep that whole afternoon open
18 for you guys. So, yeah, that's what we'll do. We'll get Mr. Christiansen,
19 so will get Mrs. Edgeworth on, Mr. Christiansen out of here, and then
20 we'll break for lunch, and then you guys will come back and close.

21 MR. CHRISTIANSEN: Thank you very much.

22 MR. VANNAH: Thank you, Judge.

23 THE COURT: Thank you.

24 MR. CHRISTIANSEN: Judge, thanks for you
25 accommodations.

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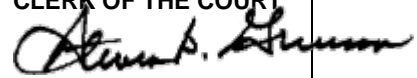
MR. VANNAH: Thank you.
THE COURT: No problem.
MR. VANNAH: That's been great.

[Proceedings adjourned at 4:16 p.m.]

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



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Jessica B. Cahill, Transcriber, CER/CET-708



1 RTRAN

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5 DISTRICT COURT

6 CLARK COUNTY, NEVADA

7 EDGEWORTH FAMILY TRUST;
8 AMERICAN GRATING, LLC,

9 Plaintiffs,

10 vs.

11 LANGE PLUMBING, LLC, ET AL.,

12 Defendants.

CASE#: A-16-738444-C

DEPT. X

13 EDGEWORTH FAMILY TRUST;
14 AMERICAN GRATING, LLC,

15 Plaintiffs,

16 vs.

17 DANIEL S. SIMON, ET AL.,

18 Defendants.

CASE#: A-18-767242-C
DEPT. X

19 BEFORE THE HONORABLE TIERRA JONES, DISTRICT COURT JUDGE
20 TUESDAY, SEPTEMBER 18, 2018

21 **RECORDER'S TRANSCRIPT OF EVIDENTIARY HEARING - DAY 5**

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>
None		

1 Las Vegas, Nevada, Tuesday, September 18, 2018

2

3 [Case called at 11:10 a.m.]

4 THE COURT: -- Edgeworth Family Trust versus Lange
5 Plumbing as well as Edgeworth Family Trust versus Daniel Simon.

6 Good morning, counsel. It seems like it's been so long since
7 we were all together.

8 GROUP RESPONSE: Good morning, Your Honor.

9 THE COURT: Are you guys ready?

10 MR. CHRISTENSEN: Yes.

11 MR. VANNAH: We are.

12 THE COURT: Okay.

13 MR. CHRISTENSEN: Judge, I have one quick matter before
14 we call -- or I think it's John's witness first, right. And that was, I don't
15 know if the Court recalls during the course of the last hearing a couple of
16 times with Mr. Edgeworth, I suggested to him that he was not -- he was
17 looking to counsel for answers. And Mr. Vannah took issue with me and
18 I told him I apologize, and I went forward.

19 I went back and actually looked at an issue that's sort of
20 central to this case and that is the timing of what the word outset means.
21 You remember that whole cross of what outset means?

22 THE COURT: Uh-huh.

23 MR. CHRISTENSEN: And so, I got about a 15 second clip I'd
24 like to show the Court before we get going.

25 THE COURT: Okay.

1 MR. CHRISTENSEN: This is my cross of Mr. Edgeworth on
2 that issue and take a look at Mr. Greene.

3 [A Videotape played at 11:11 a.m., ending at 11:11 a.m.]

4 MR. CHRISTENSEN: See him shake his head, Your Honor?

5 THE COURT: I did.

6 MR. CHRISTENSEN: And so, I just want to point that out, so
7 we don't have a repeat today with Mrs. Edgeworth.

8 MR. VANNAH: Are we not allowed to move our heads? I'm
9 sorry; I didn't see it. I can't see that well.

10 MR. GREENE: Let me address that. Nobody has ever called
11 into question my integrity. I don't coach witnesses. I don't do things the
12 wrong way. I take extreme offense to that type of depiction of me. I
13 practice above board and that is wrong for them to have asserted that. If
14 my head moved, whatever; I did not coach my witnesses. I will not do it
15 in the past, the present or the future. Your Honor, please understand
16 that.

17 THE COURT: And I do, Mr. Greene. And I mean, this is
18 where we are. I mean, Mr. Edgeworth testified for an extremely long
19 period of time. So today we're going to let Mrs. Edgeworth testify. Mrs.
20 Edgeworth, you're going to answer the questions honestly, to the best of
21 your memory, to the best of what you remember and we're going to
22 proceed on that today, okay.

23 MR. CHRISTENSEN: Understood, Your Honor.

24 MR. GREENE: Thanks, Judge.

25 THE COURT: Okay. Are you guys ready to call her?

1 MR. GREENE: Yes.

2 MR. CHRISTENSEN: Yes, ma'am.

3 THE COURT: All right. Mrs. Edgeworth. Okay. And as she's
4 coming up, I want to talk to you guys about timing in the sense of timing.

5 MR. CHRISTENSEN: John and I both agreed we were going
6 to ask you about that too when you came in, Your Honor, because when
7 you scheduled today you sort of were being helpful to me thinking I had
8 to go back upstairs and be in the murder trial with Judge Herndon, which
9 I'm in, but he agreed to take today dark I think at your request.

10 THE COURT: He did do that on Friday. Because I spoke with
11 Judge Herndon about a day or two right after we finished this hearing
12 last time and I had asked him if he would go dark with it and he said
13 12:30. So I -- we were under the impression this would be over by 12:30,
14 you would leave, and then there would be closing after you were gone.

15 MR. CHRISTENSEN: Yes, ma'am.

16 THE COURT: I spoke with Judge Herndon again on Friday
17 because he was under the impression that you were doing the closing,
18 so he was basically saying, I'll do whatever you guys want me to do. I
19 just need to know so I can tell my jury and so I can plan accordingly. So
20 yes. He is willing to be dark today so that you can be here.

21 But in regards to scheduling, I wanted to let you guys know,
22 because as we were waiting for Judge Herndon, because he's in trial
23 right now. So, I had to wait for him to take his lunch break to return my
24 calls on Friday. I had my law clerk reach out to Mr. Vannah's office, and I
25 said, talk to Mr. Greene or Mr. Vannah, not an assistant, because I

1 wanted some sort of timing as to whether 12:30 would work for
2 everybody or how it was going to go. And my law clerk was under the
3 impression that this testimony from Mrs. Edgeworth is going to take
4 three to four hours.

5 MR. VANNAH: With cross-examination there's no doubt.

6 THE COURT: And so, I mean, this is where we are. I mean,
7 this hearing has been going on for several days. This hearing is ending
8 today. So, if we get up and until 4:00 -- you guys have the remainder of
9 today. And my staff has to take a break for lunch at some point, but
10 other than that we have the whole day. But if it's 4:30 when you guys
11 get done questioning her, then we're going to have to close in writing,
12 because I don't want this to keep going on. I'm not going to remember
13 what everybody said. I'm not going to remember what happened and
14 that's not fair to anybody.

15 So, if we don't have time to do oral closing arguments today
16 this -- we will close in writing by the end of the week in this case.

17 MR. VANNAH: I have a suggestion anyway in that regard.

18 THE COURT: Okay.

19 MR. VANNAH: Jim and I talked about it, and I don't think we
20 care one way or another. This is the kind of the case, there's no way
21 we'd be able to do closings today no matter what happens. So why
22 don't we just close in writing? Because this is a document intensive
23 case. It's --

24 THE COURT: And either way is fine with me. I didn't know if
25 you guys would prefer that, but I just wanted to let you know that this is

1 the only opportunity I have this week for you guys to get this done. I
2 have hearings for every day of the remainder of the week and I don't
3 want to pass this out until the middle of October when I have forgotten
4 what everybody's said.

5 MR. VANNAH: It's a little more work on us, but there's no
6 way -- there's no possible way to do it.

7 THE COURT: Okay.

8 MR. VANNAH: And so, I -- and Jim said he has no vested
9 interest one way or another. I've prepared a closing, but I don't see how
10 I can even close within two hours.

11 THE COURT: Well, yeah. And I'm not going to let one side
12 go and not the other side.

13 MR. VANNAH: Right.

14 THE COURT: So, if there wasn't time for them. So, what
15 we'll do right now is we'll plan on taking Ms. Edgeworth today -- Mr.
16 Christensen, I'm so sorry; I didn't even hear from you. Do you have
17 anything to add?

18 MR. CHRISTENSEN: I do, Your Honor.

19 THE COURT: Okay.

20 MR. CHRISTENSEN: I told Mr. Vannah I don't have a vested
21 interested, but I also said let's see what happens. If we run through this
22 thing in an hour, which agreed, may be a little, you know --

23 THE COURT: It may be a little optimistic on your part but --

24 MR. CHRISTENSEN: That may be a fantasy on my part. I
25 don't know.

1 THE COURT: -- we can always hold that hope.

2 MR. CHRISTENSEN: But we'll just see what happens, and we
3 can address it afterwards. I've got a closing. I can shorten it down; I can
4 go on. You know, whatever the Court wants.

5 THE COURT: And I'm totally fine with that. I know I plan to
6 go until like 12:30, start with her, and then we'll break for lunch, and then
7 we'll come back. And I'm totally fine with addressing where we are
8 when we finish with her as far as timing.

9 MR. CHRISTENSEN: Okay. Thank you, Your Honor.

10 MR. VANNAH: It just seems like we also have, you know,
11 with the legal arguments and everything else, tying it all together, it just
12 makes a lot of sense to -- I thought that I could -- you know, the facts are
13 the facts --

14 THE COURT: Right.

15 MR. VANNAH: -- pretty much. I mean, there's some devil in
16 the details as everybody's said. And there are a lot of details that need
17 to be ferreted out. It'd take forever to do a closing on this case.

18 THE COURT: No. And I totally agree with that. And so, I'm
19 okay with just addressing. I'm not as optimistic as Mr. Christensen that
20 we'll get anywhere near closing today, but if for some reason we can
21 address that this afternoon when we get there.

22 MR. VANNAH: Let's put it this way. If I did closing, I know
23 you don't want to do that, there's no way I could -- I know how many
24 questions he's got, I know how long it's going to take. I assume there's
25 going to be some cross-examination. And with my closing I would leave

1 them no time at all. And I know you don't want to do that so.

2 THE COURT: No. And I appreciate -- and Mr. Greene was
3 very candid with my law clerk. When he thought there was going to be
4 more as he was prepping, he let her know that it would take more time.
5 So, I'm very well aware of how long you guys estimate this is going to
6 take, but we'll just see where we are when we finish with her.

7 MR. CHRISTENSEN: Thank you, Your Honor.

8 THE COURT: Okay. If you can raise your right hand, ma'am.

9 ANGELA EDGEWORTH, PLAINTIFF'S WITNESS, SWORN

10 THE CLERK: Thank you. Please be seated. State and spell
11 your name for the record.

12 THE WITNESS: Angela Edgeworth, A-N-G-E-L-A Edgeworth,
13 E-D-G-E-W-O-R-T-H.

14 DIRECT EXAMINATION

15 BY MR. GREENE:

16 Q May I call you Angela?

17 A Yes.

18 Q Please introduce yourself to the Court and tell Judge Jones a
19 little bit about yourself.

20 A I'm Angela Edgeworth. I live in Henderson. I've been a
21 resident of Henderson since 2006. My husband and I are very active in
22 the community. I'm the mother of two teenage girls. I am currently the
23 president and cofounder of pediped Footwear.

24 Q Okay. Tell us a little about your family background if you will
25 please.

1 A I was born in Canada and with my parents two immigrants,
2 and basically grew up in Canada and moved to the U.S. Lived in Taiwan
3 for a few years and moved to the U.S. a little bit more than 20 years ago.

4 Q Perfect. Are you are married?

5 A Yes, I am. Happily.

6 Q That man back there, Brian?

7 A Yes.

8 Q Okay. When did you guys meet?

9 A We met in University. So, I met Brian in 1992. So, I've
10 known him for more than 25 years.

11 Q What did you study in college, Angela?

12 A Business administration and actuarial science.

13 Q What are your majors?

14 A Business administration and actuarial science.

15 Q Gotcha.

16 A Yeah.

17 Q Would you please share what your career background has
18 been since you graduated?

19 A Sure. I worked in California, Costa Mesa in an art gallery for
20 a few years, and then I went to Taiwan. I started my own cosmetics
21 company there which I sold. I came back, and I worked in the family
22 business for about eight years. And before when we got married my
23 husband and I took over the family business. And we also started
24 pediped Footwear at the same time, which was around 2004. So, I've
25 been an entrepreneur for more than 20 years.

1 Q And what do you do for a living now?

2 A I'm president and cofounder of Pediped Footwear. And we
3 make children's shoes for basically newborns up to age 12. And we've
4 been recognized by the American Podiatric Medical Association and
5 we've won numerous awards in the industry for quality and design
6 excellence.

7 Q Do you have any time for hobbies and interests?

8 A Yes. I love to spend time with my family and my friends, and
9 I take -- I partake in all of my daughter's volleyball activities and we
10 travel.

11 Q An issue has arisen about what -- how you and Brian honor
12 your obligations. So, let's describe for a moment on that topic some of
13 your charitable work that you do.

14 A Sure. I currently sit on three boards. So, the first board I sit
15 on is the Moonridge Foundation. It was founded by Julie Murray and
16 Diana Bennett. They started Three Square, and the other board
17 members include Staci Alonso who's the highest ranking SPP for Station
18 Casinos, Punam Mathur, Marlo Vandemore who's the CFO for Bonotel.
19 That foundation, basically what it does is we administer funds. So, for
20 example, the October 1 fund, Zappos Cares, Downtown Cares, and we're
21 responsible for holding two philanthropy summits a year, one in Las
22 Vegas and one in Reno.

23 Also, I sit on the board for the International Women's Forum,
24 which is an amazing and a collected group of women in town. It
25 includes -- the members include Mayor Debra March, Mayor Goodman,

1 Nancy Houssels, Diana Bennett, Chief Justice Miriam Shearing, Jeanne
2 Jackson who was the former president of Nike and the global initiative of
3 IWF is to promote women in basically in leadership positions in the
4 country and around the world.

5 I'm also on the committee which awards scholarships for the
6 Carolyn Sparks award. So, we recently awarded two scholarships. One
7 to Kelly McMahon who's the highest ranking female police officer in LVPD
8 and who her husband is the undersheriff. And also, Marissia Bacha
9 (phonetic) who is the director of Las Vegas Cares.

10 I also sit on the committee for the -- basically the nominating board
11 committee for that organization as well. We also have scholarships for
12 WRIN, the Women's Research in Nevada. And we recently hosted a
13 meeting to promote women on corporate boards at the Boyd School of
14 Law.

15 Thirdly I'm on the advisory council for Vegas Aces, which is a
16 nonprofit my husband and I started. We created that volleyball gym
17 when our girls were young and then we were practicing basically in
18 squash courts. So, my husband converted a gym space in our
19 warehouse to a volleyball facility. It's always been his dream to create
20 a --

21 MR. CHRISTENSEN: Objection as to what somebody else's
22 dream is. your Honor, that's hearsay. And they asserted the marital
23 privilege in the last hearing so they can't talk -- she can't now talk about
24 what her husband and her have ever talked about. They asserted and
25 instructed Mr. Edgeworth to not talk about anything between the two of

1 them.

2 MR. GREENE: We didn't instruct to talk nothing between the
3 two of them. If he wants to give a specific example as to a question that
4 he asked --

5 MR. CHRISTENSEN: Sure.

6 MR. GREENE: -- that something was allegedly not provided,
7 most assuredly then perhaps that could be limited to that. Or the option
8 is if he wants to ask Brian about some question that he had about a
9 marital privilege we can bring him right back up for five minutes and
10 answer that question too.

11 MR. CHRISTENSEN: No, Your Honor. They made the
12 decision to assert the privilege. It was done on the 28th of August at
13 12:25 p.m. Mr. Vannah asserted the privilege, marital privilege and
14 instructed Mr. Edgeworth to not answer my questions about
15 conversations between his wife and himself about her seeing attorneys.
16 They asserted the privilege. Presumption attaches when you do that and
17 instruct your client not to answer. And you can't use the privilege as a
18 shield and a sword as the Court knows.

19 MR. GREENE: It was a privilege about what communications
20 had been happening between attorneys and clients. That's the whole
21 gist of that conversation. Mr. Edgeworth testified numerous times as to
22 what he and his wife were talking about. This was -- they're plaintiffs in
23 this case. They both have a vested interest in this case.

24 So, this case was about them. So, they've already shared
25 information that they have talked about between each other. So, if we

1 want to limit the spousal privilege to discussions between attorneys then
2 that's exactly what the privilege perhaps might have attached to at the
3 time that it was raised. That's not the law.

4 MR. CHRISTENSEN: Judge, just let me read Mr. Vannah's
5 objection. "You are not allowed to know what his wife told him." That's
6 from Robert Vannah. That is an assertion of the privilege, instructed his
7 client to not answer what -- Mr. Edgeworth what Mrs. Edgeworth told
8 him. The assertion of the privilege is done once they've done it.

9 I wasn't allowed to inquire as to anything Mr. Edgeworth and
10 his wife talked about because Mr. Vannah asserted a privilege which he
11 has every right to do. It was a valid assertion. Marital privilege exists in
12 Nevada. There's two kinds as the Court knows. Once they assert it they
13 are judicially estopped from thereafter having the spouses talk about
14 what they spoke with each other about. That's the law. I didn't assert
15 the privilege, they did.

16 MR. GREENE: It was a limited assertion of the privilege as to
17 discussions between attorneys. We had that conversation. That was a
18 contested issue, Your Honor.

19 THE COURT: And. Mr. Christensen, do you have the
20 transcript? Because I remember Mr. Edgeworth asserting the privilege,
21 but I don't remember the question that he was asked or exactly all of the
22 term -- the argument that was made on that.

23 MR. CHRISTENSEN: I think I have the video, Judge, that I
24 can play for you actually.

25 THE COURT: Please do, because I --

1 MR. CHRISTENSEN: I actually have that.

2 THE COURT: -- I remember the privilege but I don't
3 remember --

4 MR. CHRISTENSEN: And I can read it to you.

5 UNIDENTIFIED SPEAKER: Here is.

6 MR. CHRISTENSEN: You got it, Ash?

7 UNIDENTIFIED SPEAKER: Yeah.

8 MR. CHRISTENSEN: Go ahead and play it for Her Honor.

9 UNIDENTIFIED SPEAKER: Oops, I'm sorry. Hold on.

10 [A Videotape played at 11:25 a.m., ending at 11:25 a.m.]

11 MR. CHRISTENSEN: So, you see, Your Honor, I asked for
12 communications. Mr. Vannah under the spousal privilege instructed him
13 to not answer those communications between him and his wife. Your
14 Honor then inquired did he have, Mr. Edgeworth, any independent
15 knowledge separate and aside from his wife. He said no and I was
16 forced to end my examination.

17 So that's the shield that they rightfully assert. They have a
18 right to assert marital privilege. They now can't use it as a sword and
19 have Mrs. Edgeworth come in to try to clean up what they wouldn't let
20 Mr. Edgeworth talk about. Just can't do it. They're judicially estopped.

21 THE COURT: Mr. Greene.

22 MR. GREENE: Everything about that line of questioning had
23 to do with conversations that the parties had with attorneys.

24 THE COURT: Right. But you guys weren't asserting the
25 attorney/client privilege. You asserted the spousal privilege in regards to

1 conversations between herself and her husband about these attorneys
2 that they talked to and what was said to these attorneys.

3 MR. GREENE: That's because he was trying to get at the
4 discussions that Angela had with attorneys. I'm trying to shield them
5 from being able to get into protected communications that the clients
6 and attorneys have.

7 THE COURT: Right. And I mean and had you guys said
8 attorney/client privilege then I totally understand that, but you guys
9 asserted a spousal privilege, which is a conversation he had with her.
10 That -- I mean, I understand that Mr. Christensen's line of questioning
11 when you asserted the privilege was about attorneys, but you didn't
12 assert an attorney/client privilege. You asserted a spousal privilege.

13 MR. GREENE: And Judge, each individual in a marriage
14 holds the privilege. So, she doesn't need to assert the privilege and
15 we're not asserting it on her behalf. She can prevent her husband from
16 discussing things that they talk about if she chooses. He can prevent her
17 if he exercises the privilege. She hasn't exercised the privilege. She
18 does not exercise the privilege.

19 We're not invoking the privilege on her behalf. He has plenty
20 of opportunity to cross-examine Ms. Edgeworth, and he's going to, on
21 any topic that he wants. So, holder of the privilege is a viable issue here.
22 She holds it too. She has not invoked it.

23 MR. CHRISTENSEN: Judge, actually in Nevada the rules
24 regarding privilege are different than what Mr. Greene is citing to, which
25 is the federal rule on privilege. There is the holder, and there's the

1 asserter privilege. They just across the board asserted marital privilege
2 and ended my examination. My examination wasn't, tell me what the
3 lawyer said. My question was, do you know one way or another if your
4 wife talked to lawyers before she met with the Vannah firm and after you
5 quit listening to Mr. Simon.

6 That's not an attorney privilege question. Did she talk to
7 lawyers and who were they? Marital privilege, don't let him answer, you
8 saw, shut me down. Ended my cross. They cannot -- the law is
9 abundantly clear. They are estopped from now coming in and trying to
10 unwind what Mr. Edgeworth, at the advice of counsel, did with Mrs.
11 Edgeworth. She can't talk about what her and her husband discussed.

12 THE COURT: So, I mean, she -- you asserted the privilege
13 with him, so how can she talk about their conversation?

14 MR. VANNAH: She has her own privilege.

15 MR. GREENE: Yes. She holds her own privilege.

16 THE COURT: So why would he then not be able to talk?
17 Why would you guys object to him talking about the exact same thing
18 that you're now asking her to talk about?

19 MR. GREENE: I'm asking --

20 THE COURT: It was objectionable when Mr. Christiansen
21 asked him about it, but now you want her to talk about?

22 MR. VANNAH: Yes.

23 MR. GREENE: Yes. And I'm also not asking her about what
24 discussions Brian had with attorneys before we got involved in the case.
25 It's a totally different -- that was a narrow focus, narrow pointed series of

1 questions. It has nothing to do with this line of questioning that I'm
2 asking Angela about. Yes. She does hold the privilege. She's not
3 invoking it.

4 MR. VANNAH: John, if there's any ambiguity -- I mean, if
5 you want to him back on the stand and ask anything they want about
6 what they talked about, I don't care.

7 MR. GREENE: Yeah. We presented that option as well.

8 MR. VANNAH: Well, tell her.

9 THE COURT: Well, I understand that. But you guys have
10 already asserted the privilege with him so you can't now go back and
11 say we're going to remove it, and we're going to call him back to testify.
12 I mean, you asserted the privilege and now you're basically saying, we
13 wanted you to prevent Mr. Christensen from letting him talking about
14 this, but we want her to talk about that exact same thing.

15 MR. GREENE: No, Your Honor. I'm not asking her about
16 conversations that Brian had with her about lawyers that he spoke to
17 prior to the time that we got involved.

18 THE COURT: So, it's your position the privilege only applies
19 to her talking to him about lawyers that she talked to.

20 MR. GREENE: That's the objection that we were -- we tried to
21 get the objection sustained on attorney/client privilege. And we also
22 invoked the privilege on attorney discussions that they had -- or
23 discussions they had with attorneys before we got involved. That was
24 the narrow focus of this question. That's the only aspect of the privilege
25 that was asserted pertaining to Brian's testimony, that's it.

1 MR. CHRISTENSEN: No, Judge. They ended my
2 examination of Mr. Edgeworth. I asked a question, and I intended to go
3 into a slew of things he and his wife had talked about. Mr. Vannah
4 asserted the privilege that I couldn't talk to him about it. I sat down. Mr.
5 Vannah has that right. That was the end of it. They're judicially
6 estopped from now unwinding that assertion.

7 THE COURT: Well, I mean, she can testify to something she
8 has independent knowledge of, but she can't testify to something he told
9 her because you guys have invoked that privilege. And this is about the
10 volleyball. Wasn't this about -- I'm sorry; I forgot what the question was
11 you asked. Wasn't this about him doing some volley -- the volleyball
12 place?

13 MR. GREENE: It's about charitable backgrounds, talking
14 about her background at this particular point.

15 THE COURT: Okay.

16 MR. GREENE: So --

17 THE COURT: Okay. Well, can we move on from that, Mr.
18 Greene? Because I'm not really sure how that applies to what's owed to
19 Mr. Simon and the legal work that he did.

20 MR. GREENE: Well, I understand that, Your Honor. But they
21 spent time and volumes and words in their briefs for lack of a better
22 word, sliming the Edgeworths. Calling them dishonest, that they don't
23 pay their bills, that they're -- that they can't be trusted. Most assuredly
24 their charitable background, their giving, their conduct towards others is
25 certainly relevant to help unwind some of that stain that the defense put

1 on.

2 THE COURT: Well, let me -- I understand your desire to do
3 that, Mr. Greene, but this isn't a jury, this is me. I'm not up here judging
4 them based on whether or not they gave money to Three Square. I'm
5 here to make a call about the legal work that was done by Mr. Simon and
6 what is owed to him. That is the only thing I am here to pass judgment
7 on.

8 I'm not here to pass judgment on who's passing out canned
9 goods at Three Square. I'm doing it every other week in all reality, but
10 that's not what I'm here for. I mean, I'm -- this is a -- I'm the finder of
11 fact. I'm not a jury. I'm not here to discuss things that are outside the
12 legal realm. I'm just here to decide what is going to be done with what's
13 owed to them, what's owed to Mr. Simon, who needs to get paid.

14 DIRECT EXAMINATION CONTINUED

15 BY MR. GREENE:

16 Q Angela.

17 A Yes.

18 Q When did you come to know the Simons?

19 A I met Alaina (phonetic) when my daughter was in preschool
20 and we've known them for quite a long time. Alaina helped me a lot
21 when my father passed away. She was a good friend, and I considered
22 her to be one of my closest friends. We took family vacations together
23 and you know, our kids knew each other since preschool.

24 Q Did you ever at that time gain an understanding as to what
25 her husband Danny did for a living?

1 A Yes. I understood he was a personal injury attorney.

2 Q Let's go into your understanding of, just a cliff notes version,
3 of what happened with the flood and how you became involved in that?

4 A Well, what happened with the flood was we came home in
5 April of 2016 and we came home, and the house had flooded. And
6 apparently the water ran down the house and caused damage, about
7 \$500,000 worth.

8 Q Did you feel that you would be able to resolve this issue
9 without involving lawyers?

10 A Initially we were hoping that it would, but it didn't turn out
11 that way. So, we -- not at first. We were hoping but it didn't happen that
12 way.

13 Q What was the first thing that was discussed or decided upon
14 with you with getting legal help involved to help address this flood and
15 the ramifications?

16 A Sure. The insurance company actually recommended that
17 we speak to an attorney Craig Marquis.

18 Q Did you speak with him?

19 A Yes.

20 Q Okay. Did you decide to go with him?

21 A No.

22 Q Why not?

23 A Because I didn't like his technique first, and I didn't get a
24 good vibe from him. And then also at the end of the day I didn't want to
25 work with somebody that I didn't know and didn't have any experience

1 with.

2 Q What hourly rate did he quote you?

3 A \$500 an hour.

4 Q Okay. What other options were available to you as a
5 business person for legal help following this flood?

6 A Mark Katz who's our general business attorney and Lisa
7 Carteen who's a friend and attorney of mine for almost 20 years.

8 Q Did you consider hiring either of those attorneys to help out
9 following this flood?

10 A Yes, we did.

11 Q What was behind the discussions or the decision making on
12 whether or not they were going to be involved?

13 A Well, Alaina was a friend of mine, and so I suggested to Brian
14 that he call Danny, and that's where that began.

15 Q But how about with Mark Katz and Lisa Carteen, what was --
16 what do you recall was maybe the rule out, or the hey, maybe they're
17 not going to be the ones that we're going to be choosing?

18 A Lisa's based out of California. And Mark was busy.
19 Sometimes he's unavailable, and he wasn't available at that time.

20 Q What was Mark's hourly rate at that time?

21 A \$250 an hour.

22 Q How about Lisa?

23 A \$415 an hour.

24 Q Thank you.

25 MR. CHRISTENSEN: I'm sorry; I just didn't hear the last

1 number, John.

2 THE WITNESS: 415.

3 MR. CHRISTENSEN: Thank you, ma'am.

4 MR. GREENE: Yeah. But that was --

5 THE COURT: And what was Mr. Katz?

6 THE WITNESS: \$250 an hour.

7 THE COURT: 250.

8 BY MR. GREENE:

9 Q In your business lives, or life, under what circumstances have
10 you needed to reach out and retain legal counsel in the past?

11 A Yes. On many occasions. We have occasional things come
12 up such as business contracts, patents, trademarks, attorneys with
13 different patents that we hold in litigation.

14 Q What law firms -- you mentioned Mark, you mentioned Lisa.
15 What law firms have you retained in the past to assist in your business
16 dealings?

17 A Baker Hostetler, Luis Rocha and probably 20 or more so
18 attorneys throughout our years doing business.

19 Q Do you have an understanding as to what the highest hourly
20 rate that you would pay an attorney or a law firm prior to getting
21 involved in this flood litigation?

22 A Yes. The highest rate we ever paid was \$475 an hour.

23 Q And who was that for?

24 A That was for an IT litigator who was a specialist. She was
25 based out of their St. Louis office and she was a trademark specialist in

1 litigation. And then also Gary Rinkerman who was a trademark specialist
2 out of the D.C. office, and he worked for the U.S. Trade Commission. So,
3 he had a lot of expertise when we were in a patent and trademark
4 litigation case.

5 Q You've heard a lot about fee agreements as you've been
6 sitting in the gallery in this case. What type of fee agreements have you
7 entered into in the past with these law firms you just mentioned to the
8 judge?

9 A All hourly.

10 Q Did you ever have a contingency fee agreement presented to
11 you prior to this flood litigation?

12 A Never.

13 Q So when you understood from your friendship with Alaina
14 that Danny was an attorney, walk us through the steps that led to the
15 suggestion of Danny becoming legally involved in this case.

16 MR. CHRISTENSEN: Objection; to the extent it calls for
17 hearsay or spousal communications.

18 BY MR. GREENE:

19 Q Do you have an independent understanding as to how
20 Danny --

21 A I do, yes. I had suggested to Brian that he call Danny.

22 MR. CHRISTENSEN: Judge, objection. I just asserted the
23 spousal -- we can't talk about what they instructed their other client to
24 not talk about to me last week.

25 MR. GREENE: No, no, no, no. The spousal privilege is what

1 Brian would have said to her. That's the whole point that he just spent
2 all the time on. She just said she has an independent understanding and
3 she suggested to her husband.

4 THE COURT: She can testify to what she did. She suggested
5 he call Danny.

6 BY MR. GREENE:

7 Q Is that what happened?

8 A Correct.

9 Q Do you have an understanding as to what fee was eventually
10 reached?

11 A I do.

12 Q What is that understanding?

13 A It was \$550 an hour.

14 Q When did you gain the understanding that Danny was going
15 to be charging 550 an hour for the work that he performed on this case.
16 Brian and I had a conversation before the lawsuit was actually filed
17 about the fee. And I remember it because I wasn't happy about the fee.
18 It was high in my estimation. \$550 was really expensive in my mind, but
19 we agreed because Alaina was a friend of mine and also because he had
20 already started working on the case. And at the time I thought it would
21 be maybe \$5,000, \$10,000 and then we'd be done.

22 THE COURT: This is before the original lawsuit, or the
23 lawsuit against Danny Simon?

24 THE WITNESS: No. The very first lawsuit when we filed
25 against Viking.

1 BY MR. GREENE:

2 Q Do you have an independent recollection Angela, as to what
3 month and what year these concerns became up on your frontal lobe?

4 A Yeah. It was in June of 2016.

5 Q Despite those concerns what happened?

6 A Despite those concerns we decided to proceed based on
7 friendship. And you know, I would agree with Mr. Christensen that no
8 good deed goes unpunished. I mean, that's what we were thinking. I
9 just thought like we would, you know, write a few letters and then we'd
10 be done with it. And you know, we'd get our money for the damages.

11 Q Why did you believe Angela, that this was going to be
12 resolved with spending five to tenish thousand dollars on Mr. Simon to
13 get this thing wrapped up?

14 A I thought it would just be when you just send a few letters to
15 the insurance company to kind of let you know that they're -- we're
16 serious, and we wanted them to just wrap it up and that we -- you know,
17 that we had legal representation that could help us. And so, I just
18 thought it would be a few letters. I had no idea what was about to
19 happen.

20 Q At any time that you had be in the presence of Danny, or
21 received emails from Danny, did he ever suggest to you prior to
22 November of 2017 that any work was being performed on a contingency
23 fee basis?

24 A No, never.

25 Q If, knowing your business background and the way you work,

1 if a contingency fee would have been suggested back in June of 2016
2 what would you have decided to do?

3 A No. There's no way.

4 Q Why not?

5 A Because it was a property damage case. There was no
6 upside to this case. I mean, we were just hoping to get our damages
7 claim back, which was around half a million dollars. So, it didn't make
8 sense to do any type of contingency fee at that time.

9 Q Do you know whether -- we're so loose, sorry. Did Danny
10 ever present an hourly fee agreement for either you or Brian to sign?

11 A He didn't, but he should have.

12 Q Why do you say that?

13 A Because usually in -- you know, when we start working with
14 attorneys, but maybe smaller firms don't do this, but at least the large
15 firms that I've worked at we will generally sign an engagement letter of
16 some type and they'll go over, you know, a range of fees. So, I'm used
17 to that. Sometimes with the smaller attorneys, if they're just one or two
18 person offices they might just verbally tell me what the rate is, and then
19 we agree to it, and then they send me a bill.

20 Q And then what happens?

21 A And then I get a bill, and then I pay the bill. I review it to
22 make sure that it's okay and I pay it.

23 Q Knowing you as you know you, with your business
24 background if -- would you have ever entered into -- or let me just strike
25 that. Knowing you as you know and the business that you've done in the

1 past, would you have ever entered into a fee agreement where the terms
2 were unknown?

3 A There is no way I would ever do anything like that. I like
4 things 100 percent crystal clear. There's absolutely no way that I would
5 ever do that.

6 Q Did Danny ever tell you in person, by email, snail mail, that
7 we're just going to wait until the end to decide what a fair fee is?

8 A Never.

9 Q If Danny would have ever told you that, what would you have
10 done in response?

11 A I wouldn't have accepted that.

12 Q Why is that?

13 A It's unheard of. I -- how can you decide what's fair at the
14 end? I mean, you have to know what the deal is up front. You know, we
15 need to have an agreement right up front so everybody's 100 percent
16 clear, so we're not stuck in the situation like we are right now.

17 Q Do you have an understanding as to how Brian conducts
18 business?

19 A I do.

20 Q Knowing Brian as you know him, do you have an opinion
21 whether or not he would ever enter into an agreement for the payment
22 of a fee where it was to determine at the end what a fair fee would be?

23 MR. CHRISTENSEN: Objection. Speculation.

24 MR. GREENE: I just asked if she had an opinion of Brian as
25 she knew him.

1 THE COURT: Well, you haven't laid the foundation as to how
2 she knows him as a business man and what type of agreements he
3 entered to.

4 MR. GREENE: Sure. Can I ask those questions, Judge?

5 THE COURT: Yeah.

6 BY MR. GREENE:

7 Q Have you had the opportunity in your past Angela, to gain an
8 understanding as to how Brian conducts his business?

9 A Yes. I've known Brian for 25 years, and we started Pediped
10 together. He was actually the one who came over and took over my
11 father's business after my father became ill. So, we've been working
12 together -- we work together not only, you know, at home but in our
13 business as well. We see each other every day, so we work together in a
14 business capacity as well.

15 Q Have you had an opportunity as you watch Brian in his
16 business transactions have seen him or watch his negotiations with
17 vendors?

18 A Yes. He's very tough.

19 Q Have you gained an understanding as to how he negotiates
20 terms and payments for agreements that he enters into?

21 A Yes. They're very clear.

22 MR. GREENE: Is that a sufficient enough foundation, Your
23 Honor?

24 THE COURT: Yes. She can have an opinion.

25 BY MR. GREENE:

1 Q And back to that original question. Knowing Brian as you
2 know him in his business dealings, would he have ever entered into an
3 agreement for the payment of fees when the amount of the fees to be
4 paid was to be determined at some later date based upon some fair
5 amount?

6 A Absolutely not. It's unheard of.

7 Q Did you choose to be actively involved, or whatever word
8 would you describe in this -- in the flood litigation, or how would you
9 describe your involvement in the flood litigation?

10 A I knew what was going on, but I wasn't actively involved in
11 the day to day. I mean we -- there's no way two of us could be as
12 involved as my husband was in this case. I have a family to run, a
13 business to run, so I had to take care of a lot of things, but he would tell
14 me a lot about the case, so I knew a lot about the case, although I wasn't
15 actively involved in doing all the things that he did.

16 THE COURT: And Mr. Greene, I'm sorry. I don't mean to cut
17 you off, but I have a question in regards to the last line of questioning, I
18 was just waiting for you to finish.

19 MR. GREENE: I'm sorry.

20 THE COURT: You said that you would have never entered
21 into any sort of agreement where you are going to pay later and
22 distribute the fee, and you said there was never a fee agreement, not
23 even for the hourly fee, is that what you testified to?

24 THE WITNESS: No.

25 THE COURT: You testified you understood that Mr. Simon

1 was going to be paid 550 an hour, but there was never a written
2 agreement for the 550?

3 THE WITNESS: Right.

4 THE COURT: So, at any point, did you say to Danny Simon,
5 hey, I've never done business like this before, I need you to write
6 something down?

7 THE WITNESS: I've done business like that before with
8 smaller attorneys.

9 THE COURT: Okay. I thought you testified that you hadn't.
10 I'm sorry.

11 THE WITNESS: Yeah. No, I -- I have --

12 THE COURT: Okay.

13 THE WITNESS: -- with attorneys that are maybe one or two
14 in their office. They don't send a written agreement over.

15 THE COURT: Uh-huh.

16 THE WITNESS: I mean usually the larger firms, because they
17 want to run a check to make sure there are no conflicts of interest. So,
18 I'm used to signing an engagement letter with a larger firm, but the
19 smaller attorneys, if there are one or two, no, I'm -- I'm used that.

20 THE COURT: Okay.

21 THE WITNESS: So usually it's a verbal, and then I get a -- I
22 get a fee or an invoice later, and then we pay the invoice.

23 THE COURT: Okay.

24 Sorry, Mr. Greene. I'm sorry, I had to clear that up.

25 MR. GREENE: No, please, anytime.

1 BY MR. GREENE:

2 Q So, to follow up on what the Judge just asked, at any of
3 those instances with those one or two lawyer firms, where there's been
4 an oral agreement for fees and an hourly rate was quoted, and an
5 invoice is sent based upon that hourly agreement, and then it's paid, had
6 you ever had one of those other lawyers, pursuant to the oral
7 agreement, come back and ask to change the terms of the agreement?

8 A Never.

9 Q How many times, do you think in the past in your business
10 life, Angela, that you had dealt with that kind of a situation where it was
11 that one or two lawyer boutique firm, and there was simply an oral
12 agreement for fees?

13 A I would say at least ten, ten, 15.

14 Q Those are all prior to this incident?

15 A Yes.

16 Q Any since?

17 A At least ten or 15.

18 Q Okay. Now we saw a presentation where there were a lot of
19 boxes brought into the court -- a lot of documents in this case. Is that
20 your understanding?

21 A Yes.

22 Q Do you have an understanding as to what -- if any,
23 documents that you looked at throughout this litigation to keep yourself
24 apprized?

25 A From time to time, we had a -- we had access to go shared

1 Google-dot file, and so from time to time, Brian would ask me to like look
2 at some things and help him reference it. I didn't want to do it, but I did
3 it just to help him out. So, from time to time, yes.

4 Q Do you have an estimation on the number of times that you
5 actually went in and delved in to gain access to the documents that were
6 being generated in this case?

7 A I probably went in a handful of times, but, you know, Brian
8 would usually print things out for me, and then he would basically have
9 it laid out, and he would say hey, can you go through these? Can you
10 match these numbers up? Can you just look at this, because he's been
11 looking at it too much, that just to get a fresh pair of eyeballs.

12 Q Okay. And that was a share point that -- that Danny's office
13 kindly provided for the two of you?

14 A Yes.

15 Q Okay. Just to -- other than what you just mentioned, if
16 there's anything in addition that you, personally, did to stay actively
17 involved in the case, other than looking at the share point and some of
18 the documents that -- that Brian would print out. Anything else that you
19 can share with the Judge that you did to stay advised?

20 A I looked at the bills, because in our office, the -- the bills will
21 come across my desk with procedure on how -- on how invoices are
22 paid. So, Brian would sign off on the invoice. They would go get printed
23 by the accountant, and then they would come across my desk for a final
24 check. So, in that regard, I was involved.

25 He would, you know, he would tell me about the case all the

1 time, especially when he made discoveries or found new things, or he
2 spoke to new people. So, along the way, I had heard a lot of new
3 discoveries that were being made about the case.

4 Q We saw some spreadsheets earlier in this case, as well. Do
5 you have any recollection of looking at any of the spreadsheets that were
6 generated, activations, fees, what -- whatnot. Have you looked at those
7 documents?

8 A Yes.

9 Q Let's talk about some of these activations for a moment
10 about some prior testimony that was offered, okay? Did you hear Ms.
11 Ferrel testify that she found over 90 activations in Great Britain?

12 A Yes.

13 Q Do you have an understanding of whether or not that
14 testimony is true?

15 A I do have an understanding.

16 Q And what is your testimony on that?

17 A It's not accurate. Even I know that the activations, she's
18 misunderstanding an email that was basically sent about 90 activations
19 in the U.S. So, they did not occur in the U.K., and, in fact, there's only 11
20 identified activations in the U.K., and that, like at the end of the case,
21 there were 20. So that's not accurate.

22 Q Do you have an opinion as to who found those activations?

23 A My husband did.

24 Q And how do you know that?

25 A Because he would tell me whenever he found them.

1 MR. CHRISTIANSEN: Objection. Hearsay, then, Your Honor,
2 it's privileged. If he's telling her stuff, they can't assert it. She can say
3 what she knows independently, that's the rule.

4 THE COURT: Does she have any independent knowledge of
5 this without something Mr. Edgeworth told her?

6 MR. GREENE: That was going to be my next question,
7 Judge.

8 THE COURT: Okay. Because she was about to -- she said he
9 said, so she was about to get into something he told her.

10 BY MR. GREENE:

11 Q So other than what your husband --

12 A Yes.

13 Q -- told you, do you have any independent knowledge as
14 to -- as to who found these activations?

15 A He did.

16 Q And how do you know that?

17 A I saw him do all the work, and we discussed the activations
18 every single time that there was a --

19 MR. CHRISTIANSEN: Objection.

20 THE WITNESS: -- a new activation.

21 MR. CHRISTIANSEN: Hearsay, spousal privilege. They
22 cannot get into it.

23 BY MR. GREENE:

24 Q Other than this in-court testimony you heard from Ms. Ferrel
25 and from Danny, did you ever hear them say that they found these

1 activations in the U.K.?

2 A Never.

3 Q Do you hear them give credit to Brian for finding these
4 activations?

5 A I'm sorry, I didn't hear you.

6 Q Did you ever hear them outside of this courtroom, give Brian
7 credit for the work that he was doing in finding these activations in Great
8 Britain, Los Angeles, and, you know, other parts of this world?

9 A No.

10 Q Okay. Who is Harold Rogers?

11 A Harold Rogers is one of the largest installers of the BK457.
12 He installed, I think, more than 50 percent of all of those heads around
13 the world.

14 Q Did you ever have a chance to speak with him?

15 A No, I did not.

16 Q Were you aware how active Brian was --

17 A Yes.

18 Q -- in this flood litigation?

19 A Yes.

20 Q What did you observe?

21 A I observed him working all the time. He was basically
22 consumed from January to November with this case. Weekends,
23 weeknights, time away from family. When we went to dinner, it would
24 be talk all about the sprinkler heads and torque and hinges. I think that's
25 basically the entire life that we lived for those months. So -- and I saw

1 him working all the time, and we did a lot of things in the family without
2 him during that time. I basically didn't have a husband during that time.

3 Q Let's shift gears for a moment and talk about the -- some of
4 the invoices in this case that Mr. Simon's office generated and sent to
5 the -- to you and Brian. Are you aware of -- you mentioned it came
6 across your desk. Are you aware of the content of the invoices that
7 Danny Simon's office submitted to you for payment?

8 A Yes.

9 Q Do you have any concerns with the content of the original
10 four invoices that were submitted from December of 2000 -- or paid from
11 2016 until September of 2017?

12 A I was concerned because there was a lot of block billing in
13 them and not a lot of detail. The invoices that I usually received from
14 attorneys are very, very detailed. So, for one line, they might put five
15 different descriptions of what it was for, even if it was a 15 minutes. So,
16 this was a little bit different than what I was used to, so I was concerned.

17 Q Any other concerns that you had about the content of the
18 invoices that were submitted and paid by you and Brian?

19 A I just seemed like because he didn't have a billing system,
20 maybe he might have overexaggerated not on my -- not to my benefit.

21 Q What affect, Angela, do you remember that this flood
22 litigation had on you and your family?

23 MR. CHRISTIANSEN: Objection, relevance.

24 THE COURT: Mr. Greene?

25 MR. GREENE: It has relevance, as she's going to be

1 answering shortly, on every aspect, including their finances, including
2 their ability to conduct other business affairs, and that Danny Simon was
3 well aware of it.

4 MR. CHRISTIANSEN: It still has absolutely no relevance as to
5 what money of the 1.9 million dollars is in the joint trust account is owed
6 to Mr. Simon and owed to the Edgeworth's, that's the issue.

7 MR. GREENE: Oh, wow. The thing is, is that three days of
8 Brian Edgeworth being on for two days on the stand recently and limited
9 to how much Danny is owed or not owed, pursuant to the work that he
10 did or didn't put perform went far abreast of that.

11 So, this is her chance, she was injured in this -- in this case,
12 Your Honor. This is not a huge diversion from a relevant issue of
13 damages that they suffered in this case.

14 MR. CHRISTIANSEN: Judge, this isn't a personal injury case,
15 this is an adjudication of an attorney's lien, and her mental anguish
16 because she chose to not pay Mr. Simon and sue him instead, isn't
17 relevant.

18 MR. GREENE: Wow. He's right, it's not a personal injury
19 case at a 40 percent fee. He's dead right about that. It is, you
20 know --

21 THE COURT: Hold on. One minute, I think that's where
22 we're all -- but I think we have -- we need to limit this hearing, because I
23 think the reason that we're in Day 5 is because there have been no limits
24 on this hearing, this three-day hearing that now we're in Day 5.

25 The question was what effect did this have on her.

1 MR. GREENE: On the family, and it's a broad question.

2 THE COURT: It's a broad -- well, she can talk about the
3 financial aspects of that, because as I previously explained, I'm not here
4 to judge anyone. I'm here to get to the bottom of what is owed, what's
5 been paid, what hasn't been paid, and what people are owed. She can
6 talk about the financial effects of how this affected her family.

7 MR. GREENE: Okay.

8 BY MR. GREENE:

9 Q What financial effects did this litigation have on you and your
10 family?

11 A It was very stressful. It was a very stressful time for us.

12 THE COURT: And you said -- I'm sorry, Mr. Greene, I don't
13 mean to cut you off either, but we kind of moved on. And I'm sorry, I
14 never know when you are done with one section.

15 You said you had concerns that the billing was exaggerated.
16 Are these concerns that you have now or are these concerns that you
17 had when you guys received, because I thought Mr. Greene was talking
18 about the four original bills. Did you have concerns when you received
19 those four original bills, or are these concerns you have after the
20 January 2018 bill?

21 THE WITNESS: I had concerns back then, Your Honor.

22 THE COURT: Did you express those to Mr. Simon?

23 THE WITNESS: No.

24 THE COURT: Okay.

25 And I'm sorry, Mr. Greene.

1 MR. GREENE: Oh, no, Judge, this is your show.

2 THE COURT: Well, I am the trier of facts, so I think I can ask
3 questions more than I can when we're in trial.

4 MR. GREENE: We just live in your world. No worries.

5 BY MR. GREENE:

6 Q Let's talk about the legal bills some more. Were you
7 concerned about them?

8 A Yes, I was.

9 Q How so?

10 A I was concerned about the amount of money that we were
11 paying. So, over the course of -- from December until November, we
12 had paid out more than \$500,000 in legal fees, which is a lot of money to
13 pay in legal fees. And I had no idea where the end was going to be. So,
14 you know, at that time, when you're right in the thick of it and you have
15 no idea where, you know, if there's an end in sight for those legal bills.
16 So, I was really concerned about that.

17 Q To his credit, only 370'ish-thousand was legal fees, part was
18 costs. So, if we can just focus on that. Knowing that that was the
19 amount of the fees, what other concern did you have about them?

20 A Well, 370 -- \$330,000 over ten months, you know, it's \$33,000
21 a month in legal fees, and it's a lot of money. I mean my greatest
22 concern was just the financial stress that it was putting on the family at
23 the time.

24 Q When you were seated in the gallery, Angela, did you hear
25 Danny testify words to the effect that the payment, these invoices for

1 fees was optional?

2 A I heard this -- that, yes.

3 Q Do you have an opinion as to whether or not that's true?

4 A It's completely not true.

5 Q Did Mr. Simon ever, in person, by email, text, snail mail, ever
6 tell you that the payment of his invoices was optional?

7 A Never.

8 Q If he had told you that, what would it be now?

9 A Of course. I mean we would have taken him up on that, that
10 we -- Danny knew how much of a financial stress this was putting on our
11 family, and, of course , we would have taken him up on that.

12 Q You're copied on some emails, Angela. Have you had a
13 chance to review the emails in this case? There are a lot of them.

14 A Yes.

15 MR. CHRISTIANSEN: John, are those the ones you sent over
16 last week?

17 MR. GREENE: Well, you know, there are some. The first
18 ones I'm -- I'm going to show her are Bates Simon 3100 --

19 MR. CHRISTIANSEN: Exhibit?

20 MR. GREENE: Yeah, that's your --

21 MR. CHRISTIANSEN: Which exhibits are those?

22 THE COURT: So, they're in the Simon exhibits?

23 MR. CHRISTIANSEN: Which exhibit goes on that Bates
24 number?

25 MR. GREENE: Oh, it's -- it's Simon -- Simon EH 3100.

1 MR. CHRISTIANSEN: That's -- that's the Bates stamp
2 number. I'm asking what the exhibit number is.

3 THE COURT: Yeah, what's the exhibit number, Mr. Greene?

4 MR. GREENE: Oh, it's -- that's a super good question. I
5 thought I was making it easy by pulling from theirs and -- and I failed.

6 MR. CHRISTIANSEN: Let me -- let me see, John, maybe I can
7 help you.

8 MR. GREENE: Totally failed.

9 THE COURT: What's the Bates Stamp, 3000?

10 MR. GREENE: It's 3100, Judge. It starts with 3100. And I'll
11 put it up on the ELMO here, so we can all see in a second.

12 MR. CHRISTIANSEN: I don't know -- just tell me the exhibit
13 before I can say if I object or not, because I don't --

14 THE COURT: Yeah, I just had to get the exhibit number so I
15 can follow you.

16 Ms. Ferrel, do you know the exhibit number?

17 MS. FERREL: Let me see what it is.

18 THE COURT: You've been pretty good at getting that.

19 MS. FERREL: This is an Exhibit 80.

20 THE COURT: 80?

21 MS. FERREL: This would be an Exhibit 80, yeah. So, this
22 wasn't -- this would be on the CD.

23 THE COURT: Oh, okay.

24 MS. FERREL: So, yeah.

25 THE COURT: Okay. Then I'll wait for Mr. Greene to put it on

1 the ELMO.

2 MR. GREENE: Is this show and tell?

3 THE COURT: Yeah.

4 Laura, can you make sure -- did we make sure the ELMO's
5 working?

6 MR. GREENE: I did. I did, Your Honor.

7 THE COURT: Oh, okay.

8 MR. GREENE: It's working. Well, it was an hour ago. Hold
9 on a minute.

10 THE COURT: We just rely on Brian to do things like that.

11 MR. GREENE: Thank you.

12 MR. CHRISTIANSEN: Mr. Greene, will you tell me the Bates
13 Stamp one more time so I can try to find my own?

14 MR. GREENE: It's Simon EH, and then 3100.

15 MR. CHRISTIANSEN: You don't happen to have an extra
16 copy, do you?

17 MR. GREENE: I -- you know what, I'm so sorry. I do not, at
18 least I -- oh, hold it. I do. Sorry, I'm sorry.

19 MR. CHRISTIANSEN: That's okay.

20 MR. GREENE: I got it for you.

21 MR. CHRISTIANSEN: No worries. Thank you very much.

22 MR. GREENE: It's always out. I'm going to try to zoom it in.
23 Come on, zoomie, zoomie. Is that -- can you see that font?

24 BY MR. GREENE:

25 Q Angela, you can read that?

1 A I can read this, yes.

2 Q I can try and make it bigger and maybe break the thing at the
3 same time. Do you recognize this email as one that you had reviewed?

4 A Yes.

5 Q This is from Brian to Daniel Simon, dated December 15th,
6 2016. Would you agree?

7 A Yes.

8 Q Just after noon?

9 A Correct.

10 Q Focusing right here on the first question. Do you have an
11 understanding as to whether or not this is around the time that the first
12 invoice was paid?

13 A Yes, it is.

14 Q There's a question from your husband to Danny. Here are
15 some things you may need to know before I leave.

16 Do you where you guys were going?

17 A Vacation.

18 Q It's pretty personal stuff?

19 A Uh-huh.

20 Q Okay. See Item Number 1?

21 A Yes.

22 Q Your bill, Send check to your house or office?

23 A Yes.

24 Q How about Number 3, do you see that?

25 A Yes.

1 Q What does that say?

2 A I'm taking another high interest loan unsecured, only covered
3 by the lawsuit proceeds for \$300,000 from Colin Kendrick to put five
4 percent interest.

5 Q Down further?

6 A This amount will be used by Edgeworth Family Trust to pay
7 the invoices for the bills from the venders and the legal that are due,
8 including American Grating and lawyer.

9 Q Did you have involvement, Angela, in the taking out of the
10 loans from your mom and from Colin to pay the invoices in this case?

11 A Yes.

12 Q Do you have personal knowledge of that?

13 A Yes.

14 Q Down below.

15 MR. GREENE: Let me just do a little zoomie thing, Judge, to
16 see if I can get it a little bit bigger without breaking it.

17 BY MR. GREENE:

18 Q Right here, read that.

19 A I do not know if you need to notify the lawyers again that I
20 have done this and will need to do it again, as their client's negligence
21 has cost me a substantial amount of money, and this put my other
22 companies in financial jeopardy to the point where I'm forced to take out
23 ridiculous loans to pay expenses that they are responsible for.

24 Q Let me just go to a couple more pages on that. One more
25 page.

1 MR. CHRISTIANSEN: Your Honor, before Mr. Greene moves
2 on, can we get an understanding for when Mrs. Edgeworth became
3 aware of these emails? She's not copied on them, so I'm just not
4 understanding that she knew about them back then or in preparation for
5 now.

6 THE COURT: Okay.

7 Mr. Greene, can you clarify that with her?

8 MR. GREENE: Sure.

9 BY MR. GREENE:

10 Q You managed to gain an understanding as to the content of
11 these?

12 A I knew that something like this existed, and you just have to
13 find the emails, so. But I just saw it not too long ago, recently.

14 THE COURT: The email?

15 THE WITNESS: Yes.

16 THE COURT: But when you said you knew something like
17 this existed, so does that -- are you saying that you knew that this was
18 happening or --

19 THE WITNESS: I knew that we had an agreement to pay the
20 bills and pay the invoices on an hourly basis. That's what I mean.

21 THE COURT: Okay.

22 THE WITNESS: Yeah.

23 THE COURT: But I mean in regards to did you know that
24 your husband sometime -- in 2016, did you know that he had a
25 discussion with Danny Simon about where to send the check?

1 THE WITNESS: No, I didn't know that.

2 THE COURT: Okay. So, you just found that out. Did you
3 know about him telling Danny Simon, I got to take out another loan,
4 these are the terms, superhigh interest. Did you know about that?

5 THE WITNESS: Yes, I did.

6 THE COURT: Okay, but you found out about -- you saw this
7 email in its entirety recently?

8 THE WITNESS: Yes.

9 THE COURT: In preparation for this hearing?

10 THE WITNESS: Yes.

11 THE COURT: Okay.

12 BY MR. GREENE:

13 Q Did you sign the checks?

14 A Yes, I did.

15 Q You sent the checks?

16 A Yes.

17 MR. GREENE: This is Bate stamped, and just two pages
18 down, Judge. This is 3102.

19 MR. CHRISTIANSEN: You said 2, Mr. Greene?

20 MR. GREENE: Yes.

21 MR. CHRISTIANSEN: Thank you.

22 BY MR. GREENE:

23 Q This is Mr. Simon's response re: address. Do you see that
24 down below on the bottom, Angela?

25 A Yes. So, anything regarding fees should be sent to 810

1 South Casino Center Boulevard, Las Vegas 89101.

2 Q But if you needed that information to send the check to
3 Danny Simon for the payment of that first invoice?

4 A Yes.

5 Q Without Mr. Simon providing clarification to you, as the
6 bookkeeper, how would you have known where to send the check?

7 A Correct.

8 Q Anywhere on here that you can see where it says that the
9 payment of fees was optional?

10 A No.

11 Q You were again sitting in the gallery when Mr. Simon was
12 testifying, were you not?

13 A Yes.

14 Q Did you hear all of it?

15 A Yes.

16 Q Did you hear Danny testify that your husband wanted a
17 fourth invoice in the amount of, in essence, \$255,000 for fees and costs
18 so he could then be able to testify at his deposition that he had paid all of
19 the invoices in full?

20 A Yes.

21 Q You had an opinion as to whether or not that's true?

22 MR. CHRISTIANSEN: Objection, to the extent it calls for
23 marital communications.

24 THE COURT: Mr. Greene, give me your status how she
25 would know that?

1 BY MR. GREENE:

2 Q Did Plaintiffs have a little plan, as Mr. Simon testified, to
3 inflate your damages against the Lange and the Viking Defendants?

4 A No. We wanted to pay the bills, and we have to know what
5 the bills are, and, you know, we don't want to bounce any payrolls or -- I
6 mean we need to know what we owe, and my -- we pay our bills very
7 promptly. So as a general rule, we like to pay our bills promptly and we
8 don't like to owe people money.

9 Q Do you have an understanding of Brian's business practices
10 as to whether or not he seeks out the opportunity to spend money and
11 pay bills on his own?

12 A I'm not sure I understand your question.

13 Q It's another bad question, a long line of many that I've asked.
14 Do you have an understanding as to Brian's business practices, as to
15 how he pays bills?

16 A Yes.

17 Q And the circumstances in which he pays bills?

18 A Yes.

19 Q Do you have an understanding as to whether or not, with
20 your knowledge of Brian's business practices, whether he has a custom
21 or practice of asking vendors to simply send him an invoice so he can
22 pay it?

23 A Yes, all the time.

24 Q Okay. Would Brian, with your understanding of him, if he
25 had been presented with an invoice, what is he going to do with it?

1 A Pay it.

2 Q You've heard, have you not, in the gallery from attorneys and
3 Mr. Simon, that Brian doesn't pay bills. Have you heard that?

4 A Yes.

5 Q Do you have an opinion on whether or not that's true or not?

6 A It's not true.

7 Q And how do you know that?

8 A Because we pay our bills.

9 Q What impact, Angela, was the payment of invoices for fees,
10 mediation of the house, those kind of laces, what effect was that having
11 financially on your family?

12 A It had a very strong effect at the time because we had just
13 several things going on at the time and --

14 Q Like what?

15 A -- we plan everything. So, we had planned out the entire
16 year's expenditures, and so we had the volleyball bill going on at the
17 same time, and then the house damage occurred. You know, we were at
18 basically the tail end of finishing our house and we had, you know,
19 money set aside to finish it up and decorate, and then all of a sudden,
20 you know, we had the repairs to do, and then we had all these legal bills
21 that kept mounting.

22 Q In September of 2017, did you have
23 255-plus-thousands -- thousand dollars just setting aside in a piggybank,
24 a slush fund, to be able to simply pay an invoice that wasn't due?

25 A No.

1 Q What were the finances like back then, in September of 2017?

2 A It was very tight.

3 Q Knowing Brian as you know him, knowing your finances as
4 you know them, would Brian, in his business practices, simply offer to
5 spend \$255,000 if it wasn't expected to be paid?

6 A No.

7 Q Would you explain to the Judge, and again in that Cliff notes
8 fashion, your understanding as to what financial resources were used to
9 pay Danny's fees, invoices for fees and costs?

10 A Yeah, we took out loans.

11 Q Why didn't you go to U.S. Bank, Bank of Nevada, Bank
12 of -- on every corner to do that?

13 A We tried with Wells Fargo, our bank, and they wouldn't loan
14 us money.

15 Q Why not?

16 A Because when we told them what it was for, they said no, for
17 litigation, they said no.

18 Q Selling some property, did you think about that?

19 A It didn't make sense to sell property. So, from just a
20 business perspective, we decided to take out loans.

21 Q There's the general rule of don't loan money to family
22 members, but one of the lenders was your mom. Why was she on the
23 list of potential sources of revenue?

24 A My mom has money that she doesn't use, and so I asked her.
25 I had never borrowed money from her before, and so when, in a time of

1 need, I asked her, and she said yes.

2 Q Who's Colin?

3 A Colin is a friend of ours.

4 Q Is he a hard money lender?

5 A No.

6 Q How did he make his way to the list of individuals who would
7 be available to loan money?

8 A Again, he was close enough a friend that we could ask that to
9 and felt comfortable, and so we asked that, and he said yes.

10 Q Is Danny aware of these resources --

11 A Yes.

12 Q -- that were being used?

13 A Yes.

14 Q As a business person, like you are, what financial benefit, if
15 any, were you and your family getting from having to pay high interest
16 on the loans that were used to pay fees and costs?

17 A None, absolutely none, we had to pay the interest.

18 Q Did you hear Danny testify where you are the other day, that
19 you benefited from the interest?

20 A I did.

21 Q Do you have an opinion on that?

22 A We did not benefit at all from the interest payments. We had
23 to pay them.

24 Q Do you know how much?

25 A We had to pay more that, 1.1 million dollars back, which after

1 we received the settlement, we paid right away.

2 Q So, Mr. Simon says you don't pay your bills. Did you hear
3 that testimony?

4 A Yes.

5 Q You read that in the pleadings?

6 A Yes.

7 Q So you had principal and interest on these loans that were
8 used to pay his fees?

9 A Yes.

10 Q And costs, correct? When did you get the undisputed funds
11 following the Viking settlement?

12 A January 21st.

13 Q Of?

14 A 2018.

15 Q What day did you pay your mother and Colin for the principal
16 and interest that you had borrowed and accrued?

17 A The next day. I mean to stop the interest rate from accruing
18 more, we paid them the very next day.

19 Q Anything outstanding there? Any money still owed to the
20 lenders?

21 A No.

22 Q Did you also hear Danny testify under oath, in that chair, that
23 Brian wanted to pay all of Danny's invoices as part of his little strategic
24 plan, quote, little strategic plan, to give credibility to his damages and
25 justify his loans that he was taking out and earning all this interest on?

1 Did you hear that?

2 A Yes.

3 Q Did the Plaintiffs have a strategic little plan to ramp up your
4 damages to justify loans that you were taking out?

5 A Absolutely not.

6 Q Did you want damages?

7 A We wanted no part of this.

8 Q Again, do you earn any interest on these loans?

9 A No.

10 Q At any time prior to -- let's just shift gears a little bit if we can.

11 At any time prior to November 17 of 2017, did Danny ever suggest to
12 you, Plaintiffs, that hey, we should enter into a different kind of fee
13 agreement, hybrid contingency, anything of the like?

14 A No, never.

15 THE COURT: And did you say did Danny ever suggest that
16 Mr. Greene; is that what you said?

17 MR. GREENE: Yes. Yes.

18 THE COURT: Okay.

19 BY MR. GREENE:

20 Q As a Plaintiff in the litigation, the flood litigation, if, in July,
21 August of 2017, if Danny had come forward with a written proposal for a
22 hybrid-type fee agreement, what would have been your response?

23 A We would have considered it, and it would have taken some
24 of the financial burden off of ourselves, but it would have to be
25 something that made sense. So, again, after we got all of our costs back,

1 all of our losses, and there was some sort of upside for, you know, both
2 parties to kind of pursue the case to the list, then we would have
3 considered it, yes.

4 Q Did that ever happen?

5 A No.

6 Q Even though you were a Plaintiff -- well, maybe just back up
7 a little bit. What ownership interest do you have in the underlying
8 Plaintiffs that were in the flood litigation? Edgeworth Family Trust, and
9 so on, etcetera, American Grating?

10 A Fifty percent.

11 Q Okay. Is it a partnership, a LLC, do you know?

12 A LLC.

13 Q Okay. Edgeworth Family Trust is a trust?

14 A Yes.

15 Q Are you a trustee?

16 A Yes, I am.

17 Q Do you share those responsibilities with anyone else?

18 A Just Brian.

19 Q Okay. When the case against Viking settled on November
20 15th of 2017, how did you feel?

21 A I was relieved. I was happy that it was over.

22 Q It's over. What did you think was going to happen next?

23 A I thought it was --

24 Q What did you expect was going to happen next?

25 A I thought we would sign documents, and it would be over,

1 and we could put it behind us.

2 Q What effect did it have on Brian to finally get this thing
3 settled?

4 A He was relieved as well.

5 Q Yeah. Let's go forward a couple of days of the settlement
6 with Viking. I'm going to focus for a few minutes.

7 MR. GREENE: I'm going to spend some time on this, Judge,
8 on the --

9 THE COURT: Would you guys like to break for lunch now,
10 because I was going to wait -- so we'll break for lunch now and then we'll
11 come back and you can -- so you don't have to break that up, Mr.
12 Greene.

13 Okay. So, we're going to break for lunch now. It's 12:20,
14 we'll be back from lunch at 1:45. So we'll come back and then Mr.
15 Greene, you can resume.

16 MR. GREENE: Thanks, Judge.

17 THE COURT: Thank you.

18 MR. CHRISTIANSEN: Thank you, Your Honor.

19 THE COURT: Okay, Ms. Edgeworth, you are still going to
20 remain under oath. You're not allowed to talk to anybody about your
21 testimony over the lunchbreak. Okay? Thank you.

22 [Recess at 12:22 p.m., recommencing at 1:51 p.m.]

23 THE COURT: A-767242 and A-738444, Edgeworth Family
24 Trust v. Lange Plumbing, Edgeworth Family Trust v. Daniel Simon.

25 Mrs. Edgeworth, if you could just approach back up to the

1 witness stand. And I'd just like to remind you that you are still under
2 oath; you don't have to be sworn in again. So, you can have a seat,
3 ma'am. Thank you.

4 And, Mr. Greene, whenever you are ready.

5 MR. GREENE: Thank you.

6 DIRECT EXAMINATION CONTINUED

7 BY MR. GREENE:

8 Q Angela, let me just go back and cover something with you
9 quickly if we can. Earlier you testified about your hope or expectation
10 that five to \$10,000 would hopefully get this matter put in the rearview
11 mirror or words to that effect. Do you remember testifying to that?

12 A Yes.

13 Q You had hoped that sending a few letters might get the job
14 done basically is kind of what you were saying, correct?

15 A Yes.

16 Q Now by the time that those few letters were to be written,
17 what's your understanding as to what the status of this whole matter
18 was?

19 A It wasn't resolved.

20 Q And when Danny was going to get involved and the letter
21 writing campaign ended, did you have any expectation as to what would
22 happen next?

23 A Yes. I knew we were going to file a lawsuit.

24 Q Let's get back to kind of where we left off before we took --
25 let me make sure this is -- this little thingy is --

1 THE COURT: Okay. I was going to say if not we'll get Brian
2 to help you, Mr. Greene, because I couldn't begin to help you.

3 MR. GREENE: It's actually working. It's a miracle, Christmas
4 miracle.

5 BY MR. GREENE:

6 Q Angela, when we left off at lunch we had moved up to
7 November 17 of 2017. So, let's focus on that date for the next few
8 minutes, okay.

9 A Yes.

10 Q Were you in a meeting with Brian and Danny in Danny's
11 office on November 17th of 2017?

12 A Yes.

13 Q What was your understanding Angela, as to why you were
14 going to meet with Danny at his office?

15 MR. CHRISTENSEN: Objection; to the extent it calls for
16 communication with her spouse.

17 BY MR. GREENE:

18 Q Do you have an understanding as to -- an independent
19 understanding as to what that meeting was about?

20 A Yes.

21 Q And what was your understanding?

22 A My understanding that we were going to talk about
23 settlement agreement and next steps and strategy.

24 Q Strategy of?

25 A The settlement, to finish up and wrap up the settlement

1 agreement.

2 Q Okay. What time of the day was this meeting scheduled for?

3 A I believe it was 9:00 a.m.

4 Q Let's walk ourselves back then. You're arriving there. What
5 were the circumstances that actually brought you there? Did you and
6 Brian go together?

7 A No. I arrived separately. My girlfriend dropped me off at a
8 donut shop downtown, and my husband picked me up and then we went
9 over to Danny's office together.

10 Q So it has a festive mood?

11 A Yes.

12 Q What happened next?

13 A I got to his office, and I went in and brought some donuts for
14 them, and I needed to use the restroom. So, I proceeded to use the
15 restroom and then I walked into the room. And when I walked into the
16 room my husband gave me a little bit of a glance, which I was
17 wondering what that was about and then I proceeded to sit down. I sat
18 right here, if this is Danny's desk. I sat right here. My husband sat right
19 here and then this is Danny's desk. He leaned up against the desk and
20 then --

21 THE COURT: Who is he?

22 THE WITNESS: Danny.

23 THE COURT: Okay.

24 THE WITNESS: Uh-huh. And then he started off by saying
25 that well, you know, usually in these cases I receive a contingency fee.

1 And that was how he started the conversation and then I just looked --
2 we were just looking at him. And he said, I wouldn't be being fair to
3 myself, and I would be cheating myself if I didn't get more money out of
4 this case is essentially what he was saying.

5 So, then he went onto tell us that he normally receives a 40
6 percent contingency fee. And in this case it would -- that would amount
7 to \$2.4 million. But as a, you know, basically as a favor or discount he
8 was asking for the number that he threw out was \$1.2 million.

9 So, then I argued back, and I said well, we paid you hourly
10 this entire time. I couldn't understand what this conversation was about.
11 And he said that, no, normally, in this case you know, because the result
12 was so great, he felt he deserved more. And I said well, we paid you
13 hourly. And he said, no, normally, sometimes I might receive an hourly
14 and a contingency fee. And my head was just spinning.

15 BY MR. GREENE:

16 Q What was your response to that comment by Mr. Simon that
17 in some of his cases he gets a contingency and an hourly fee?

18 A I believed him. I thought that was the case. I didn't know
19 any better. He's telling me -- this is my attorney. He's telling me that so I
20 believed him and, but I was still arguing that we paid you hourly this
21 entire time and that how could you expect more at this point when the
22 settlement is done? You know, the settlement came out. It was 6 million
23 dollars, a large sum of money.

24 And he said well, I expect you to do what's fair to me. And I said
25 well, if -- what if we had lost? What if we had gotten zero? Would you

1 have given me all my money back that we paid you in fees? And he
2 said, no. That's not the way this works; you don't understand. And he
3 also said that you can ask any attorney this and any attorney would
4 agree with him that this is -- this was customary; this was normal.

5 And then he wanted us to sign documents right then and there
6 regarding a contingency fee, which he alluded to were behind him on the
7 desk if we were ready to sign, if we could come to an agreement. And at
8 some point I looked at him, and I said well, we have to discuss this.
9 We'll think about this and we'll get back to you.

10 And he also went on to say that you know, there was still things
11 left on the case, the settlement that were not done yet, and he would feel
12 uncomfortable signing if we didn't come to this agreement.

13 THE COURT: Signing what?

14 THE WITNESS: Signing his contingency fee document. He
15 wouldn't feel comfortable signing the settlement agreement if we didn't
16 come to an agreement before the settlement case.

17 So, he made it sound that him completing the settlement
18 agreement was contingent upon us agreeing to his contingency
19 agreement. He also said that -- he threatened basically not to go to court
20 for us anymore and that he wouldn't feel comfortable doing that if we
21 didn't sign the contingency agreement.

22 THE COURT: What did he say when he threatened to not go
23 to court for you?

24 THE WITNESS: He said basically, you know, there are still a
25 lot of things that needed to be done, and I might not feel comfortable

1 representing you in that case if you know, you don't treat me fairly
2 basically was what he was saying.

3 BY MR. GREENE:

4 Q Did he say anything else that brings to mind as you sit here?

5 A That was essentially what he told me that day, yeah. And --

6 Q Let's back up for just a minute. You mentioned the
7 orientation, attorney desk, client chairs and Danny sitting in front. How
8 far away from you was he?

9 A Probably two feet. I think the chairs were about two or three
10 feet from his desk, and he was standing in front of his desk looking kind
11 of down at us while we were seated.

12 THE COURT: So, he's standing in front of his desk; he's not
13 behind the desk?

14 THE WITNESS: He's not behind the desk; he's in front of his
15 desk.

16 THE COURT: Okay.

17 THE WITNESS: And he had his feet crossed leaning against
18 his desk.

19 BY MR. GREENE:

20 Q You had been friends with the Simon family for how many
21 years before this November 17, 2017 meeting?

22 A Eleven years.

23 Q How many opportunities in that 11 years had you had the
24 opportunity to interact with Danny prior to this November 17, 2017
25 meeting?

1 A Many.

2 Q What was his demeanor during that meeting in the moment
3 that he began?

4 A It was a little condescending and kind of saying, you know,
5 he did such a great job on the case that he felt that he deserved more.
6 And I felt threatened. He held all the cards. You know, at that point we
7 didn't -- I didn't know if there was a settlement agreement in hand, or
8 whether it was still in the negotiating phase. So, I really felt like the
9 entire settlement agreement was hinged upon whether he could
10 basically make or break the deal at that point.

11 THE COURT: What did you think the status was of the
12 settlement negotiations at that time?

13 THE WITNESS: At that time, I thought that the settlement
14 agreement was they had -- they put an offer out there. But the way that
15 Danny presented it to me was that his signature was required in order
16 for the settlement to be consummated. It -- part of the agreement was
17 contingent upon him signing documents as well.

18 So, I knew that there was an offer, but I did not know if there
19 was an actual agreement that they presented to us. I know there was a
20 verbal offer, but I didn't know if it was a done deal. So, I really felt like
21 he could have sabotaged the deal, or said something that wasn't, you
22 know, in our favor to you know, make the deal not happen. So, I was
23 really concerned about that.

24 BY MR. GREENE:

25 Q In the 11ish years that you had interacted with Danny prior to

1 this meeting had you ever seen him like that?

2 A Never.

3 Q How was it different?

4 A I didn't recognize the Danny in front of me at that time.

5 Q How long did this meeting last?

6 A I want to say it lasted about 30 minutes. Because we just
7 went back and forth. We were sitting there talking about the fee, his
8 contingency agreement and how he wanted us to sign. And it just was a
9 lot of back and forth. And I just couldn't believe I was hearing what I was
10 hearing. I was sitting there completely in disbelief of what was going on.

11 Q While you were there in that meeting with Danny, what was
12 Brian saying?

13 A He had his own questions. He was interjecting.

14 Q Like what?

15 A I can't think of them right now.

16 MR. CHRISTENSEN: Objection. Hearsay.

17 THE WITNESS: I can't think of them right now anyhow. I
18 mean, I remember what I said.

19 BY MR. GREENE:

20 Q Okay. Did Danny present anything at that meeting for you to
21 sign?

22 A No. He alluded to the fact that it was behind him on the desk
23 because he wanted us to agree first and then he was -- wanted us to sign
24 the documents right then and there. Like he was anxious for us to sign
25 the documents that day so that he could -- he felt that you know, how

1 could we not sign the documents. What he was asking was really fair so
2 we should sign them right then and there and then he could proceed
3 with the settlement of the case.

4 And that's when I said, I need some time, we need to discuss this;
5 we need to think about it, and we'll get back to you. And then I asked
6 him for the documents, and he wouldn't give them to me. He said well,
7 we need to come to an agreement first.

8 Q You testified that he said, talk to anybody. What did you
9 interpret that to mean?

10 A I needed to find an attorney.

11 Q Talk to anybody about the proposal that I have, they'll say it's
12 fair. What were the words that he used?

13 A He said, talk to any attorney because they will tell you exactly
14 what I told you, that this is how things work.

15 Q Okay. While you were there for that half an hour with Danny
16 and Brian in Danny's office, did Danny ever bring up on his own the
17 status of the Viking or the Lange settlements or prospective settlement?

18 A No. He didn't. I kept bringing it up and Brian kept bringing it
19 up. What was the status, where were we? You know, is there a
20 settlement in hand? And I basically pleaded with him at that meeting, I
21 said please don't stop working on this case. I said, please proceed as if
22 we don't have a settlement in hand, because I knew we had an
23 evidentiary hearing coming up.

24 And so, I didn't want him to stop doing all those things because he
25 had said well, I'm going to cancel this. We don't need to do this because

1 we have the settlement, but then I didn't know if we actually had the
2 settlement.

3 So, I said -- I reiterated many times during that meeting I said,
4 please don't stop working on this case. You should continue as if we
5 don't have a settlement. Because I wasn't sure if it was still, like the
6 details had to be negotiated or you know, what was going to happen.

7 Q So you --

8 THE COURT: I'm sorry, Mr. Greene. You said that he said I
9 will -- he was going to cancel something. What was he going to cancel?

10 THE WITNESS: There was something coming up with an
11 evidentiary hearing and there were -- I don't know exactly what it was,
12 but there was either -- I don't know. But there was something coming up
13 with an evidentiary hearing that was really critical, really important.

14 THE COURT: Uh-huh.

15 THE WITNESS: And he said that well, we don't need to do
16 this, and we don't need to do that. And I said well, we should do that
17 because we don't -- we still don't have the settlement in hand.

18 BY MR. GREENE:

19 Q You, as the client, with Brian as the client and Danny as the
20 attorney, when you asked him to keep working on the Viking settlement
21 and consummate it, what assurances did Danny, your attorney give you
22 that he would do that?

23 A None. And in fact, he made it sound like he couldn't do
24 those things if we didn't sign the agreement that he had prepared for us
25 that day.

1 Q As the client how did that make you feel?

2 A I was terrified. I mean, this was a year of our life and I
3 thought it could go down the drain right then and there. And I was
4 really, really scared. I was shaken after the meeting. I was taken aback.
5 I had no idea what was going on.

6 Q Have you ever had one of your lawyers, the other ones that
7 we discussed earlier in this hearing ever come on to you as a client like
8 that before?

9 A No.

10 Q And use that kind of demeanor with you before?

11 A Never.

12 Q And make those kind of threats before?

13 A Never.

14 Q How did that make you feel?

15 A It didn't feel like there was a friend sitting across from me at
16 the table at that point. And I felt threatened, I felt scared, I felt worried.
17 And I had the feeling that we were getting blackmailed at that point.

18 Q When you and Brian wouldn't sign some sort of agreement,
19 in the midst of that November 17, 2017 meeting, what was Danny's
20 reaction?

21 A He seemed perturbed, and he wasn't happy that we were --
22 that we didn't sign; that we were going to leave. I think he was in
23 disbelief that we didn't sign it right then and there.

24 Q Did he give you the names of any attorneys that perhaps you
25 and Brian could seek out to vouch for what he had told you?

1 A No.

2 Q Do you recall? What did you decide to do after you walked
3 out of Danny's office following that November 17, 2017 meeting?

4 A I knew we had to seek counsel to figure out what my rights
5 were as a client.

6 Q Did you do that?

7 A Yes.

8 Q Go into that a little bit more and we're almost done, okay.
9 So, what happened after this November 17, 2017 meeting? And kind of
10 work our way up to November 27th. Did you have any additional
11 meetings with Danny?

12 A No. We exchanged emails, Danny and I.

13 Q Do you know whether -- there's been testimony you heard
14 that the Simon family went to Peru around the Thanksgiving holiday. Do
15 you have an understanding as to when that happened?

16 A I do. It was over the Thanksgiving weekend or week.

17 Q I think a date might have mentioned that it was just shortly
18 after this November 17th meeting?

19 A I believe it was the 17th to the 25th.

20 Q Okay. Do you know, have any personal knowledge whether
21 or not while the time that Danny was in Peru with his family whether or
22 not he was working on consummating the Viking settlement?

23 A I do not.

24 Q Was a Viking settlement agreement ever sent to you or Brian
25 that you know of from the date of that November 17th meeting through

1 November 27th for example of 2017?

2 A No. I had asked for it many times.

3 Q Okay. We'll get into that, some email correspondence again
4 in just a moment. Do you know if Danny and Brian communicated at all
5 while the Simons were in Peru?

6 A Yes. I was in the room when Danny called from Machu
7 Picchu.

8 Q And what was said that you overheard?

9 MR. CHRISTENSEN: Objection; hearsay.

10 MR. GREENE: What Danny said is hearsay?

11 MR. CHRISTENSEN: Well, unless she's sitting on the phone
12 with him she can't hear, and she can't talk about what her husband said
13 because that is hearsay.

14 THE COURT: Did -- were you able to hear what Mr. Simon
15 was saying?

16 THE WITNESS: No.

17 THE COURT: Okay.

18 MR. CHRISTENSEN: Objection; hearsay.

19 THE WITNESS: I could only hear my husband.

20 THE COURT: Then that objection is sustained.

21 MR. GREENE: Thank you, Your Honor.

22 BY MR. GREENE:

23 Q There was also testimony that Brian needed to go do
24 business in China sometime just after or around the Thanksgiving break
25 as well; did you hear that?

1 A Yes.

2 Q And he was gone as well?

3 A Yes.

4 Q Do you know if Brian and Danny communicated regarding
5 the Viking settlement while Brian was in China?

6 A There was no communication.

7 Q How about you? While your husband was in China doing
8 business did you and Danny Simon have any communications about
9 anything?

10 A Yes, we did.

11 Q And how did you communicate?

12 A By email.

13 Q Let's take a look at some of those. And this is -- once again
14 I'm going to fumble and Ashley's going to have to come to our rescue.
15 This is a -- I know the bates numbers. Simon EH1669, that's an email
16 from Danny to Brian and Angela dated the 27th of November beginning
17 at 2:26 p.m.

18 UNIDENTIFIED SPEAKER: 1669 is going to be in Exhibit 80.

19 MR. GREENE: 80, all of these are 80?

20 UNIDENTIFIED SPEAKER: Well, not all of them. There are
21 certain ones that are not.

22 MR. GREENE: Okay.

23 UNIDENTIFIED SPEAKER: But that specific one is.

24 MR. GREENE: There are one or two that were out of order.
25 And Ashley, there's one that also starts with number 421.

1 UNIDENTIFIED SPEAKER: That one --
2 MR. CHRISTENSEN: What's the date on the first one, John?
3 MR. GREENE: Everything starts on the 27th --
4 MR. CHRISTENSEN: Okay.
5 MR. GREENE: -- of November.
6 MR. CHRISTENSEN: Thank you.
7 MR. GREENE: And it just kind of --
8 THE COURT: Okay.
9 MR. GREENE: -- works its way to more recent.
10 UNIDENTIFIED SPEAKER: So, the 421 one is Exhibit 44.
11 MR. GREENE: 44.
12 THE COURT: That's 421?
13 UNIDENTIFIED SPEAKER: Yes.
14 MR. GREENE: 44 is the 421 and then 80 --
15 THE COURT: Okay.
16 MR. GREENE: -- begins those.
17 THE COURT: So, you're going to start with 80, Mr. Greene?
18 MR. GREENE: Yes, Your Honor.
19 THE COURT: Okay. So, I can put the 44 -- and you said 44 is
20 the other one?
21 MR. GREENE: Yes. Correct, Your Honor. Do you have
22 those? Those are the ones that I had sent over last week.
23 MR. CHRISTENSEN: The Gmail ones?
24 MR. GREENE: Yeah.
25 MR. CHRISTENSEN: Okay.

1 MR. GREENE: But these -- but we pulled these from your
2 exhibits, and they'd be more friendly on the --

3 MR. CHRISTENSEN: Just tell me which ones you want to
4 use. I don't mind either way.

5 MR. GREENE: Sure. We're just going to use the ones that --
6 this is at the bottom, it says 1669.

7 BY MR. GREENE:

8 Q Take a look at this email on your screen.

9 A Yes.

10 Q Angela, do you recognize this?

11 A I do.

12 Q What is this?

13 A It's Danny's email in response to Brian requesting something
14 in writing.

15 Q I'll represent to you that this is where the retainer agreement
16 is contained where a letter is contained. We've spent a lot of time on
17 that with your husband's testimony. And when a settlement breakdown
18 is attached.

19 MR. GREENE: Another version of it, Your Honor, I can pull
20 up, but that's undisputed that that's what was attached to this particular
21 email from --

22 THE COURT: And I can see the attachment listed --

23 MR. GREENE: Okay, gotcha.

24 THE COURT: -- on there, Mr. Greene.

25 BY MR. GREENE:

1 Q When you saw this email from Danny regarding these
2 documents attached, what was your response?

3 A I read the documents.

4 Q What did you think about those documents that you read?

5 A I was really upset. I was very outraged. There were a lot of
6 things in there that I believe weren't true in the documents.

7 Q Meaning the letter, which?

8 A The letter. The letter --

9 Q What was --

10 A -- portion of it.

11 Q -- concerning to you?

12 A Pardon me?

13 Q What was concerning to you?

14 A In the letter he had written things such as, you knew that this
15 was not an hourly case from the beginning, which was false. He claimed
16 that he lost money on the case, which I found incredible because we paid
17 him an enormous amount of money. He had also in the letter mentioned
18 about not being comfortable about continuing to work on our case if we
19 didn't come to an agreement.

20 There were a few things that were pretty upsetting. And then in
21 the actual retainer agreement itself he had asked for 1.5 million which
22 was different than the 1.2 million that I understood from the November
23 17th meeting.

24 Q As the client?

25 A Yes.

1 Q Getting this -- these three documents from your lawyer, how
2 did that make you feel in light of that relationship?

3 A It was pretty upsetting. I mean, I just -- I didn't understand
4 what was going on. I was completely flabbergasted and lost.

5 Q Did you expect that from your attorney?

6 A Absolutely not.

7 Q Did you respond to this email, Angela?

8 A I did.

9 Q This is same Exhibit 80, bate stamp 1667 is the next email,
10 next in line --

11 THE COURT: Okay.

12 BY MR. GREENE:

13 Q -- same date. Looking at the one that says -- it's weird how
14 these emails are setup. I'm such a technologically challenged human,
15 but they don't just go from top to bottom, is that your understanding as
16 well, Angela?

17 A Yes.

18 Q So looking at this little dot here this says from you?

19 A Yes.

20 Q To Danny?

21 A Yes.

22 Q 3:20 p.m.?

23 A Yes.

24 MR. GREENE: Your Honor, I don't think it's in dispute that
25 the prior email that Danny sent was at 2:26 p.m. So, this is --

1 BY MR. GREENE:

2 Q Is this your first response to that letter?

3 THE COURT: And this is 3:20, correct?

4 THE WITNESS: Yes.

5 THE COURT: Okay. Because I thought you said 2:20 though.

6 MR. GREENE: Yeah. The one that --

7 THE COURT: Danny sent was at 2:26, but this --

8 MR. GREENE: Yes.

9 THE COURT: -- is at 3:20.

10 MR. GREENE: I'm sorry. Yes, I'm sorry.

11 THE COURT: So right after, okay.

12 BY MR. GREENE:

13 Q Do you know whether or not you had sent an email to Danny
14 in response to that earlier email that is -- that was earlier than this one
15 that we're looking at here?

16 A No. This should be the first one.

17 Q What did you convey to Danny at that time?

18 A I conveyed to Danny that Brian was out-of-town, and we
19 were trying to process what was going on. And I was -- said you know,
20 kind of just said we'll try to meet when he's back. And we didn't know --
21 in my mind I didn't know what was going on. And I reiterated to him
22 that I would need to have an attorney to look at this agreement. And
23 then I finally said you know, in the meantime, please send us the Viking
24 agreement immediately so we can review it because I was very, very
25 concerned about the status of the settlement agreement.

1 Q So it looks like a half an hour later if you go up one more
2 subject line, that appears to be Danny's response to you. Is that your
3 understanding as well?

4 A Yes.

5 Q And what was your understanding about his advice to you
6 then? I haven't received the Viking agreement, he said that, correct?

7 A Correct.

8 Q And did he advise you in anything else of significance in his
9 reply in relation to your concerns --

10 A No.

11 Q -- as a client?

12 A No. I was hoping for some reassurance, but no.

13 Q Okay.

14 THE COURT: When you sent -- just before you move that,
15 Mr. Greene. When you sent the email that you sent at 3:20 you said, we
16 would like to have our attorney look at this agreement before we sign.
17 Who are you referring to?

18 THE WITNESS: I wasn't. I was referring to my -- I mean, I
19 was referring to my girlfriend Lisa Carteen who's been my attorney for
20 more than 20 years. So, when I said that I just wanted him to know that I
21 wasn't going to sign anything unless I had an attorney read it. So, she's
22 been my long-time friend and attorney.

23 THE COURT: Okay.

24 BY MR. GREENE:

25 Q Let me show you the next exhibit. This is bates number

1 1664, same of Exhibit 80. Do you recognize this email, Angela?

2 A I do.

3 Q Do you remember receiving this?

4 A Yes.

5 Q Do you remember sending this?

6 A I do.

7 Q What's your understanding as to the order? Would it be your
8 understanding that down here at the bottom of the exhibit would be an
9 email from Danny?

10 A Yes. But there's an email below it that was before that.

11 Q Right here?

12 A At the very bottom it says 4:14.

13 Q 4:14. This is an email that you sent to Danny?

14 A Yes.

15 Q What were you asking for?

16 A I said, did you agree to the settlement because we wanted
17 him to. We conveyed in the November 17th meeting that we were fine
18 with the settlement agreement as it was and just wanted to know did he
19 agree to it, did he have it, what was the status of it. And then I was
20 concerned, I said why have they not sent it yet and when is it coming?
21 Please clarify.

22 Q So then what was his reply?

23 A His reply was; it appears you have a lot of questions about
24 the process which is one reason I wanted to meet with you. If you'd like
25 to come to the office or call me tomorrow, I'd be happy to explain

1 everything in detail. My letter also explains the status of the settlement
2 and what needs to be done. Due to the holiday they probably weren't
3 able to start on it. I'll reach out to the lawyers tomorrow and get a
4 status. I'm also happy to speak to your attorney as well. Let me know,
5 thanks.

6 And after I read that I was not about to walk in by myself into
7 Danny's office and sit down with him and have him bully me into signing
8 some documents that I didn't want to sign.

9 Q Let's back up for a second. This 4:14 p.m. email that you sent
10 to Danny, did you agree to the settlement, what settlement were you
11 referring to?

12 A The Viking settlement agreement.

13 Q And Danny's reply to you, 45ish minutes later, did he provide
14 you any attorney advice as to the status of the Viking settlement?

15 A No.

16 Q What was the tag line -- what was he only talking about to
17 you as a client, what did you understand it to be?

18 A The fee.

19 Q Next up, the top, a larger email. Was this your reply?

20 A Yes, it was.

21 Q What concern did you have as a client?

22 A Well, I think I was in full panic mode at that point. And so, I
23 said, I do have a lot of questions about the process because I was
24 confused. I said, I had no idea we were on anything but an hourly
25 contract with you until our last meeting. And then I told him that Brian

1 was still away, and I said I wanted to get a complete understanding of
2 what has transpired so I can consult my attorney because I'm scared. I
3 don't -- I do not believe I have to get her involved at this time. I was
4 hoping that he would just give me some information about the
5 settlement agreement.

6 And then I said, please let me know what the terms of the
7 settlement are to your knowledge at this point. And if they're -- because
8 they're not detailed in your letter. I mean, it was just this thing
9 overhanging us that we had just no idea whether, you know, he had
10 mixed the deal, or you know, what was the status of it.

11 And I said, please send over whatever documentation you have or
12 tell us what they verbally committed to, otherwise you know, I'll review
13 the letter, meaning the settlement agreement and get back to you in a
14 couple of days. And then in the meantime I trust we're still progressing
15 with Lange, et al., any other immediate concerns that should be
16 addressed, because I was concerned that he wasn't going to represent us
17 anymore on all the other issues that were in play.

18 And then I reiterated, as I mentioned in our last meeting, the
19 November 17th meeting, that we should still be progressing as originally
20 planned. I would hate to see it delayed for any reason. And that was in
21 response to Danny saying that we didn't have to do this and that. And I
22 said, until we see an agreement there is no agreement so please let me
23 know if there are any upcoming delays.

24 And I think everyone has been busy over the holidays and
25 not had time to process everything. And then I -- then again, I was just

1 trying to confirm. You know, you have not yet agreed to the settlement,
2 is that correct? Have you seen it? Is it there? You know, what's the
3 status of the settlement?

4 Q Do you recall getting a reply email from Mr. Simon --

5 A No.

6 Q -- in reply to this, at least on the evening of November 27,
7 2017 --

8 A No.

9 Q -- 5:32 p.m.?

10 A I didn't get a reply.

11 Q Not that evening?

12 A No.

13 Q Let's look at another email.

14 MR. GREENE: This is Exhibit 44, Your Honor.

15 THE COURT: Okay.

16 MR. GREENE: Bate stamp 421.

17 BY MR. GREENE:

18 Q Do you recognize this email, Angela?

19 A Yes, I do.

20 Q It looks like there's one to -- from Danny and there's one to
21 Danny. Is that your understanding?

22 A Yes.

23 Q At least the ones we're focusing on from November 29th?

24 A Yes.

25 Q And looking at this Wednesday 29th email, is it your

1 understanding that this is one that you sent to Danny --

2 A Yes.

3 Q -- in the morning? Why was this email sent, Angela?

4 A I hadn't heard from Danny in more than a day. And I was
5 panicked, scared. I had no idea what was going on, and so I sent another
6 email and I said, Danny, Brian is on route and gets back late tonight. You
7 know, he'll back to you shortly at a time and sit down and talk. I'd prefer
8 if you and Brian worked this out as I did not want to be involved. When I
9 came to your office I thought it was to talk about next steps in the case. I
10 had no idea we were going to talk about fees. So, I would prefer to be
11 excluded from the narrative until you two reach a resolution.

12 I said, this has been stressful and awkward. Please feel free to call
13 me today if you'd like to discuss anything, but I have little knowledge
14 about the case and process and prefer the two of you figure this out and
15 move on and move forward. But that was my polite way of saying just
16 please try to work this out.

17 Q And then he replied, of course it looks like at 10:36 a.m. that
18 morning?

19 A Yes. He said, in light of the recent emails from you this week
20 and that your signature is required for all documentation as well as the
21 fact that you are principal of the parties in the lawsuit, it will be
22 necessary for both of you to be present at any meeting we have.
23 Therefore, please advise what time is good for both of you to come to
24 my office and meet when he returns. Thanks.

25 Q Any other communications that you and Danny had via email

1 while Brian was still in China?

2 A Well, I felt like he wasn't answering my emails. I would ask
3 him a direct question and he wouldn't answer me.

4 MR. CHRISTENSEN: Judge, objection; move to strike as
5 nonresponsive. The question was, were there any other emails.

6 THE COURT: And then the question was, were there any
7 other emails exchanged between you and Mr. Simon while your
8 husband was away in China?

9 THE WITNESS: No. That was it, Your Honor.

10 THE COURT: Just the ones that Mr. Greene --

11 THE WITNESS: That's it.

12 THE COURT: -- has shown you?

13 THE WITNESS: Yes.

14 THE COURT: Okay.

15 BY MR. GREENE:

16 Q And as a client again and Danny Simon, the attorney in this
17 relationship, what did you feel that your representation from him was
18 like? What was the impact upon you upon receiving or not receiving
19 email communications from your attorney?

20 A I was really concerned. And I wasn't sure if he was an
21 advocate for me anymore.

22 Q Viking case settlement. What terms were acceptable to you
23 for settling with Viking and when? And as to what terms were first and
24 then we'll go to the when second.

25 A We were agreeable to the agreement as it was, as is.

1 Q Six million dollars?

2 A Yes.

3 Q Confidentiality?

4 A Yes.

5 Q Just didn't matter?

6 A At that point we just wanted to put it behind us.

7 Q Wanted it done. Was Danny made aware of this?

8 A Yes.

9 Q Angela, why did you and Brian hire Vannah and Vannah?

10 A I never thought in a million years that I'd have to hire an
11 attorney to protect me from my attorney. And that's why we had to hire
12 Vannah and Vannah to basically help us through this process because
13 now we found ourselves in this predicament.

14 Q Angela, did you ever tell Danny to stop working on your
15 cases against Viking and Lange?

16 A Never. In fact, at the meeting I reiterated, don't stop working
17 on the case. And by email I also told him, please don't stop working on
18 the case.

19 Q Did you ever stop listening to the advice of Danny Simon?

20 A No.

21 Q Following and listening, are those distinct different words to
22 you?

23 A Yes.

24 Q When you've received advice from attorneys in your past
25 business life and present business life, do you always follow the advice

1 that the attorneys give?

2 A No.

3 Q You have a business background?

4 A Yes.

5 Q Smart, feel you can make decisions on your own too?

6 A Absolutely.

7 Q Did you ever send anything to Danny, any form of
8 communication that said you are no longer my lawyer?

9 A No.

10 Q There was a thing that we called a super bill that was
11 presented to everyone on January 24th of 2018. It was included in
12 Danny's motion to adjudicate his attorney's lien. Prior to the time that
13 that bill saw the light of day, had you ever seen any of those billing
14 entries before?

15 A No.

16 Q Had Danny, your lawyer, ever communicated to you prior to
17 November 17 of 2017 that he had additional time that he was going to be
18 billing you that he expected to be paid?

19 A Never.

20 Q Let me back that up. Did he ever tell you at any time that up
21 -- or up until the -- even the 27th of November when the letter came and
22 the retainer agreement came, that he had additional time that he was
23 going to bill?

24 A Never.

25 MR. GREENE: Court's indulgence for a moment, Your Honor.

1 THE COURT: Yes.

2 BY MR. GREENE:

3 Q Nonetheless, you knew that Danny still was working on your
4 case to wrap things up, correct?

5 A Correct.

6 Q Okay. And you probably had an understanding, did you not,
7 that there was going to be additional time that was going to be billed
8 that you'd be obligated to pay as a plaintiff. Is that fair to say?

9 A Yes.

10 Q Did you have the opportunity to review the super bill that
11 was given to all of us on January 24th of 2018?

12 A Yes.

13 Q With your background and expertise in reviewing legal bills,
14 or at least business practices, did you form opinions on the nature and
15 content of the super bill?

16 A Yes.

17 Q And what are those opinions?

18 A I was upset. I was upset that he went back, and he found
19 more billing. I found that it was unethical what he did. I was upset
20 because he had written one line item for 135 hours for emails that was
21 \$70,000. I knew that the bill came two and a half months after our
22 meeting and that it most certainly wouldn't be in my favor. And that it
23 was probably used to justify the higher amount -- to get him to justify the
24 high amount that he was due. So, I felt that it was egregious.

25 Q You were here in court when Danny testified that he

1 presented a bill at the mediation on November 10 for \$72,000; were you
2 not?

3 A Yes.

4 Q Did you hear his explanation, that it was for costs?

5 A Yes.

6 MR. CHRISTENSEN: Objection; Your Honor, misstatement of
7 the testimony. That was never said.

8 MR. GREENE: Pretty sure it was, but it's in the transcript,
9 Your Honor.

10 THE COURT: I'll rely --

11 MR. GREENE: We'll point that out.

12 THE COURT: -- on the transcript of what was said.

13 MR. GREENE: Okay.

14 BY MR. GREENE:

15 Q Were you here when Brian testified that it was his
16 understanding that that invoice for \$72,000 was actually for fees?

17 A Yes.

18 Q Do you have an opinion whether or not -- well, let me back
19 up. Do you know what the costs are that have been incurred in this case
20 and paid to Danny Simon's office from September 28 forward?

21 A Yes.

22 Q And what's that amount?

23 A \$68,000 and change.

24 MR. GREENE: Your Honor, we've already agreed to submit
25 all of our exhibits into evidence. We have a check that was written and

1 signed by Mr. Simon and Mr. Vannah. It does have a bates number.
2 Once again, I'm just high maintenance and I don't know exactly which
3 defense exhibit this comes from.

4 THE COURT: Okay.

5 MR. GREENE: But it's the actual check for \$68,000.

6 UNIDENTIFIED SPEAKER: What's the bates number, John?

7 MR. GREENE: It's 454.

8 MR. CHRISTENSEN: What's the date on it, John?

9 MR. GREENE: It's the March 1st --

10 MR. CHRISTENSEN: Thank you.

11 MR. GREENE: -- of 2018.

12 THE COURT: Okay.

13 UNIDENTIFIED SPEAKER: It's Exhibit 55.

14 THE COURT: 55.

15 MR. GREENE: Thank you.

16 BY MR. GREENE:

17 Q As a plaintiff in the flood litigation was this your
18 understanding as the costs that were paid to Mr. Simon's office
19 following his -- the payment of his fourth invoice?

20 A Yes.

21 Q And this represented payment and cost in full?

22 A Correct.

23 Q I'm not a math major. Is that \$72,000?

24 A No.

25 Q So the \$72,000 bill as a plaintiff in the flood litigation that

1 was handed to your husband at the mediation, could that have been for
2 cost?

3 A No.

4 MR. CHRISTENSEN: Objection. Speculation.

5 MR. GREENE: It's a plaintiff in the litigation. She knows
6 what the costs are. It's simple deductive reasoning.

7 THE COURT: Well, did she see the bill that was given to
8 them at mediation?

9 MR. CHRISTENSEN: Nope.

10 THE COURT: So how does she know what the bill is for?

11 MR. GREENE: Because she has read every single piece of
12 paper in this litigation and she -- as it relates to this motion to adjudicate
13 the lien. This was attached the motion to adjudicate the lien.

14 THE COURT: Right.

15 MR. GREENE: It was part of the whole process. Do I need to
16 ask a foundational question as to whether --

17 THE COURT: No. I know she can testify to what the check
18 was for, but you keep referring to this bill that was given during the
19 mediation. Was she there to get that bill?

20 MR. GREENE: She was not there at the mediation.

21 THE COURT: Okay. So how does she know what the bill
22 says? Has she -- can you lay some foundation that she has seen that,
23 and she can somehow testify to what the bill said the charges were for?

24 MR. VANNAH: Danny testified to it.

25 MR. GREENE: It's a -- Danny testified --

1 THE COURT: Right.

2 MR. GREENE: -- as we indicated -- Danny testified it was
3 costs.

4 THE COURT: That Danny's seen the bill.

5 MR. GREENE: -- cost. Brian testified that it was for fees.

6 THE COURT: Because they've both seen the bill. But I don't
7 know how she could clear that up if she has never seen the bill. I mean,
8 you've got to lay some foundation that she has some sort of knowledge
9 of this. Danny I'm assuming is the person that produced the bill so of
10 course he's seen it. It's my understanding he gave it to Mr. Edgeworth at
11 the mediation, so he's seen it, but how does she know?

12 MR. GREENE: Because of what she's read.

13 THE COURT: Right. But I mean, she read about it, but I could
14 read about what it says. I mean, she has to have some sort of
15 knowledge as to what was contained in this bill if she's going to testify to
16 what it says.

17 BY MR. GREENE:

18 Q On the super bill Angela, do you have an opinion whether it's
19 accurate?

20 A I don't believe it's accurate.

21 Q And how do you form that opinion?

22 A Well, there were things on it such as the 24-hour billing for
23 Ashley Ferrel. There were phone bills. After looking at the phone bills,
24 there were phone bills that were billed for three times the same phone
25 call. Things like that that made me question the accuracy.

1 Q Did you see in the super bill Angela, that there was billing
2 entries going back to the Starbucks meeting for May of 2016 going all the
3 way forward through the last date of the invoice that I'll call it the fourth
4 invoice?

5 A Yes.

6 Q As the client in this attorney/client relationship, how do you
7 feel about having your attorney go back and rebill time that's already
8 been billed and paid?

9 A I was outraged and very upset.

10 Q Why so?

11 A Because that's never happened to me ever.

12 Q Angela, do you have an opinion to share with Judge Jones
13 as to how much you believe that plaintiffs owe Danny Simon --

14 A Yes.

15 Q -- for the work that he has -- that he performed in this matter
16 in addition to what's already been paid?

17 A Yes.

18 Q Would you please share that with the Judge?

19 MR. CHRISTENSEN: Objection. Foundation. She's not an
20 expert.

21 MR. VANNAH: She's a client.

22 MR. GREENE: She's a client. She's reviewed all the invoices
23 for heaven sakes.

24 THE COURT: She's reviewed all the invoices in this case.
25 She can testify what she thinks she owes him.

1 THE WITNESS: I believe we owe him the \$72,000 invoice
2 that was presented, and I believe that we owe him the amount of time of
3 work that was done from the end of that invoice to the conclusion of the
4 settlement agreement.

5 BY MR. GREENE:

6 Q Do you have an estimation as to what that additional amount
7 would be? Talking about the 72,000. Do you have an opinion as to what
8 that additional time from the 10th of November of 2017 through the time
9 that -- for the most part everything had wrapped up by early December
10 2017?

11 A I think being generous it would be double that. We are just
12 going by a month but --

13 THE COURT: Double what?

14 THE WITNESS: Double that bill.

15 THE COURT: The 72,000?

16 THE WITNESS: Yes.

17 BY MR. GREENE:

18 Q So 144?

19 A Correct.

20 THE COURT: And are you basing this on the \$550 an hour, or
21 how are you coming to this figure?

22 THE WITNESS: I'm just using averages, and I know that
23 there was work done during that period, and I know it ramped up
24 towards the end. So, I'm just extrapolating from that bill.

25 THE COURT: Okay. So about how many hours do you think

1 that there are?

2 THE WITNESS: I don't know how many hours exactly there
3 were.

4 THE COURT: Okay. So how are you arriving at a figure of
5 \$144,000? Are you -- and does that figure include -- are you calculating it
6 at \$550 an hour or what is the base -- what is the rate --

7 THE WITNESS: \$550 an hour. So just based on the \$72,000
8 of that period and there was about the same amount of time after that
9 from November 10th until the conclusion of the settlement.

10 THE COURT: But that's just what you believe?

11 THE WITNESS: That's just what I believe, Your Honor.

12 THE COURT: Okay.

13 BY MR. GREENE:

14 Q When we were last here for what seemed like forever, we
15 talked about some phone bills and phone records that Danny Simon's
16 law office produced. Do you remember us talking about that at length?

17 A Yes, I do.

18 Q Did you have a chance to review the phone records that
19 Danny Simon's office produced?

20 A Yes.

21 Q Did you have the opportunity to review your own phone bills
22 and phone records pertaining to the same timeline that pertained to the
23 records from Danny Simon?

24 A Yes.

25 Q Were you able to perform any analysis comparing the

1 number of calls, time spent on those calls versus time billed?

2 A Yes.

3 MR. CHRISTENSEN: Objection; Your Honor, they haven't
4 produced her phone bills, and so this analysis is trial by ambush. If they
5 wanted to do an analysis they owed me her phone bills when I gave
6 them Mr. Simon's phone bills.

7 MR. GREENE: They never asked for them ever.

8 THE COURT: Right. But I mean, the issue came up when Ms.
9 Ferrel testified that she started talking about what was in her phone
10 records, and Mr. Vannah jumped up out of his seat and demanded that
11 we get the phone records. And I mean, we all didn't have them and so
12 we got them.

13 So, she can't now do some sort of comparison from her own
14 phone records if you guys haven't handed those over. Because Ms.
15 Ferrel was required to hand over her phone records after she testified to
16 them.

17 BY MR. GREENE:

18 Q In reviewing Danny's phone records and Ashley's phone
19 records and comparing them to the times on the invoices that you were
20 billed for, did you determine that there were any discrepancies?

21 A Yes. They were overstated.

22 Q To what extent were Danny Simon's charges where his bill
23 said, X number of minutes per a phone call versus what you as the client
24 were billed, what discrepancy percentage did you find?

25 A For Danny it was 166 percent and for Ashley it was 218

1 percent.

2 THE COURT: And just so you can translate that for me, I
3 mean, what does that mean? Does that mean that you took Danny
4 Simon's phone records, the ones that were provided, put them together
5 -- is this the January bill or is this the previous bills?

6 THE WITNESS: This is the super bill.

7 THE COURT: They're in the super bill. So, you put them
8 together. And when you -- how do you arrive at 166 percent?

9 THE WITNESS: So, when you look at all the phone bills and
10 the minutes that were billed, and this includes the one minute calls that
11 are usually just you don't reach somebody, or you get a voicemail.
12 When you add all of those up on his phone records and then you add up
13 all the time that was billed for the phone records.

14 So, for example, if there was ten minutes on the one bill it
15 would have been 28 minutes on the, you know, the billed phone bill. So,
16 it was 200 -- or for Ashley, I'm sorry; for 218 percent more over and
17 above what the actual phone records were.

18 THE COURT: Okay.

19 MR. VANNAH: You want to show some examples, John?

20 MR. GREENE: No, no.

21 MR. VANNAH: Okay.

22 MR. CHRISTENSEN: I wouldn't do that.

23 MR. VANNAH: Well, you know what --

24 THE WITNESS: Actually --

25 MR. VANNAH: -- he's challenging them.

1 THE WITNESS: -- it would be 21.8 minutes, Your Honor. I
2 think I did that math wrong.

3 MR. GREENE: You know, I don't chirp during your exam, but
4 that's fine. If you want to chirp, that's fine. Whatever. Goodness.

5 BY MR. GREENE:

6 Q Let's move onto another topic, okay. Do you remember Mr.
7 Christensen examining your husband on Coach Ruben email issue?

8 A I do.

9 Q Who is he?

10 A I'm sorry?

11 Q Who is Coach Ruben?

12 A Coach Ruben is the director of Vegas Aces Volleyball, our
13 nonprofit.

14 Q Did you become aware that an email was sent by Danny to
15 Coach Ruben?

16 A Yes.

17 Q Did you hear Mr. Christensen say that you and Brian and
18 Coach Ruben, being the Board are just self-examining, self-investigating?

19 A Yes.

20 Q Is that true?

21 A No.

22 Q How so?

23 A This is a non-profit, and we take allegations of any
24 impropriety very seriously. And so, it's important that we protect the
25 club, we protect the girls, the athletes that play at the club. And we

1 protect the reputation of the club.

2 So, we decided to do the USAB checks after that because Danny
3 had basically disparaged us to Coach Ruben who is a friend of ours. So,
4 I can imagine what he was saying to other people that we didn't know.
5 And so, we wanted to protect our reputation and protect the integrity of
6 the volleyball facility, the nonprofit.

7 Q Do you plan on being involved in that nonprofit forever?

8 A Not necessarily.

9 Q Do you plan on that nonprofit organization outlasting you?

10 A Yes.

11 Q Did you have any idea or any indication that a corporate
12 culture needed to be established?

13 A Yes.

14 Q Did that have anything to do or not with you and Brian and
15 Ruben decided that this type of allegation warranted an investigation?

16 A Absolutely. If it was me or anybody we would require the
17 same thing.

18 Q I'm just going to a couple of topics that shouldn't take too
19 long that deal with bill pay.

20 MR. GREENE: Just about five minutes on this, Judge. I'm
21 getting close.

22 THE COURT: Okay.

23 MR. GREENE: Scouts' honor.

24 BY MR. GREENE:

25 Q Danny has stated in a court filing in his motion to adjudicate

1 and in his reply that you and Brian don't pay your bills; have you read
2 that?

3 A Yes.

4 Q He indicated there was a 20 -- there was an outstanding
5 obligation to Lange in the amount of \$22,000ish. Do you remember that
6 discussion?

7 A Yes. But in the motion it was for 24,000.

8 Q Twenty-four thousand. What's your understanding as to the
9 truth or falsity of that allegation made by Danny that you didn't pay --
10 you plaintiffs didn't pay your obligations to either Lange or United
11 Restorations in this flood litigation?

12 A It's completely false. And I think it was Danny's attempt to
13 disparage us and make it seem like we don't pay our bills.

14 MR. CHRISTENSEN: Judge, objection. Speculation. She
15 can't say what somebody's attempt is, or intent is. Rank speculation,
16 move to strike.

17 THE COURT: We'll strike that comment. She can -- I'll keep
18 the comment that she says it was false.

19 MR. GREENE: Okay.

20 BY MR. GREENE:

21 Q Why do you know it was false?

22 A Because the amount owed was actually to Lange which was
23 \$22,000. And all those dealings were frozen, and that money was paid
24 out, and Danny signed the check for that check to go to Lange after the
25 settlement was done. So, there was \$100,000 owed to us, 22,000 owed

1 to Lange. The United Restorations matter was a completely separate
2 matter. And the reason that that bill wasn't paid was because they didn't
3 present the mold certificate at the time. And what happened was that
4 they -- United Restorations didn't pay the mold certificate company.

5 So, we had to negotiate that on our own and pay United
6 Restorations a certain amount, 19,000 and then pay the mold company
7 \$5,000 to finally get the mold certificate release, which wasn't presented
8 to us until May of 2018.

9 Q So the deal with United Restorations, they're cleaning up
10 water damage, right?

11 A Correct.

12 Q Water causes mold, right?

13 A Correct.

14 Q So they were to remediate, correct?

15 A Yes.

16 Q Until you can get occupancy in your home what did you need
17 first?

18 A The mold certificate.

19 Q And they hadn't given you that, had they?

20 A Correct.

21 Q And that was part of the deal?

22 A Yes.

23 Q Once it was given to you?

24 A We paid. Well, we paid before that, and then we got the
25 certificate actually.

1 Q After Danny invited you on November 17th of 2017 and the
2 letter of November 27th of 2017 to speak with attorneys --

3 A Yes.

4 Q -- what did you do?

5 A I reached out.

6 Q To?

7 A Lisa Carteen and Chief Justice Miriam Shearing.

8 Q Sometimes when we tell stories we give the varnished
9 opinion, kind of the one that smells the best, tastes the best.

10 MR. CHRISTENSEN: Objection. Is this a question, Judge, or
11 an argument?

12 BY MR. GREENE:

13 Q What facts did you tell Lisa about this conflict with Danny?

14 MR. CHRISTENSEN: I just want to make sure he understands
15 he's now waiving the privilege by getting into this privilege they've
16 asserted.

17 BY MR. GREENE:

18 Q So you spoke with her as a friend, and she happens to be an
19 attorney. Did you retain Lisa?

20 A No.

21 Q Speak with her in what capacity?

22 A As a friend.

23 THE COURT: Okay.

24 BY MR. GREENE:

25 Q So what did you tell her about what had happened between

1 you and Brian and Danny with this dispute?

2 A I said we had an hourly fee agreement with our attorney to
3 represent us in the Viking and Lange case. And then when the
4 settlement came down he decided to change the deal and ask for a
5 contingency fee.

6 Q Did the counsel that you received from your friend Lisa have
7 any bearing on your decisions on how to proceed going forward?

8 A Yes.

9 Q How so?

10 A We're here.

11 Q Did you speak with anyone else about -- who has a legal
12 background about the dispute with Danny?

13 A Yes. I spoke to Chief Justice Miriam Shearing.

14 Q Did you retain her as an attorney?

15 A No. I spoke to her as a friend.

16 Q And what facts did you tell Justice Shearing about this
17 dispute with Danny?

18 A The same as I told Lisa.

19 Q Did the -- did she provide any response?

20 MR. CHRISTENSEN: Objection. Hearsay.

21 MR. GREENE: Hang on.

22 THE WITNESS: Yes.

23 BY MR. GREENE:

24 Q Did the advice that you received from Miriam Shearing have
25 any bearing on how you proceeded from that time forward?

1 A Yes.

2 THE COURT: And what time -- when did you talk to Justice
3 Shearing?

4 THE WITNESS: February of 2018.

5 THE COURT: And the advice you got from her determined
6 how you proceeded after that?

7 THE WITNESS: It was a long time between November 19th
8 until now. So, there was -- I mean, the case was still ongoing. We're
9 here, it's nine months later or ten months later so yes.

10 THE COURT: Okay. I'm so confused. When did you talk to
11 Justice Shearing?

12 THE WITNESS: February 20 -- 2018.

13 THE COURT: So, you talked to her in February of 2018?

14 THE WITNESS: Yes.

15 THE COURT: And did you just testify that the advice she
16 gave you --

17 THE WITNESS: Uh-huh.

18 THE COURT: -- determined how you proceeded after that?

19 THE WITNESS: Yes. I feel her advice, you know --

20 THE COURT: Determined how --

21 THE WITNESS: -- gave me confidence in what we were
22 doing and that we were in the right.

23 THE COURT: After February?

24 THE WITNESS: Correct.

25 THE COURT: Okay.

1 BY MR. GREENE:

2 Q What did she say?

3 MR. CHRISTENSEN: Objection. Hearsay.

4 MR. GREENE: It's effect on the hearer, Your Honor. It's a
5 non hearsay purpose. I'm not offering to the truth of the matter
6 asserted.

7 THE COURT: I'll let in for the effect on the listener.

8 THE WITNESS: I've known Chief Justice for five or six years.
9 I approached her as a friend, and I told her what happened, and she was
10 outraged for me. She said that she couldn't believe that that happened,
11 and she suggested I report it to the bar as the first step and then said that
12 this was a case that was destined for the Supreme Court because it
13 should set precedence for any other case that happens like this in the
14 future. And she said she felt sorry that I was in this situation. And in her
15 entire career she's never heard of anything like this happening ever.

16 MR. GREENE: Your Honor, that's all I have.

17 THE COURT: Okay, thank you. Mr. Christensen, do you need
18 a short break before you start or --

19 MR. CHRISTENSEN: If you don't mind, Judge.

20 THE COURT: Yeah. We'll do --

21 MR. CHRISTENSEN: Maybe we could use --

22 THE COURT: We're only going to do like ten --

23 MR. CHRISTENSEN: -- a restroom break real quick.

24 THE COURT: Yeah. We'll take a restroom break. We're only
25 going to take like ten minutes because I want you to be able to wrap it up

1 today.

2 MR. CHRISTENSEN: I'm going to be not so long as I was
3 with her husband, Your Honor.

4 THE COURT: Yeah. We don't have two days.

5 [Recess at 2:54 p.m., recommencing at 3:04 p.m.]

6 THE COURT: -- Plumbing, Edgeworth Family Trust v. Daniel
7 Simon. Mrs. Edgeworth, if you could approach the witness stand. And
8 ma'am, I'll just remind you, you're still under oath. You may be seated.

9 THE WITNESS: Sure.

10 THE COURT: Mr. Christiansen, whenever you're ready.

11 MR. CHRISTIANSEN: Sure.

12 CROSS-EXAMINATION

13 BY MR. CHRISTIANSEN:

14 Q Good afternoon, Ms. Edgeworth.

15 A Good afternoon.

16 Q Ms. Edgeworth, I'm going to ask you some follow up
17 questions to those that were posed to you this morning and then after
18 lunch break by Mr. Greene and the topics sort of that he covered with
19 you, okay?

20 A Yes.

21 Q This is cross-examination, so my questions are going to call
22 for yes or no answers, and I'd just appreciate it if you'd answer that way,
23 all right?

24 A All right.

25 Q Ms. Edgeworth, I'm going to jump around a bit, because we

1 started from -- or sorry -- we ended today -- one of the last topics was
2 this proposition that you all -- you -- I'm going to stick with you. You pay
3 your bills?

4 A Yes, sir.

5 Q You pay them when you get them?

6 A Yes.

7 Q You don't wait for a court order to pay them?

8 A No.

9 Q All right. So, let's look at what's been entered --

10 MR. CHRISTIANSEN: It's Bates stamp 80, John.

11 BY MR. CHRISTIANSEN:

12 Q You've seen this before. April 18th, 2017 correspondence,
13 where your husband says, We don't have a contract and I'll pay him
14 what the Court tells me to, right? Those are my highlights and
15 underlines, correct?

16 A Correct.

17 Q Because your husband owed money at this time to this
18 contractor, correct?

19 A I don't know. I don't know this case and I don't know the --

20 Q Wait a second. Wait a second.

21 A -- outstanding --

22 Q Wait a second. You just told Mr. Greene that when you get a
23 bill, you pay it, right?

24 A Yes.

25 Q And you just told me you don't wait for a court order. You

1 get a bill and you pay it, right?

2 A Correct.

3 Q That email from your husband says I'm not paying it,
4 because they don't have a contract, and I'll give them what the Court
5 awards them, right?

6 A Yes, Mr. Christiansen, but --

7 Q Okay. That's all I asked you.

8 A -- I don't understand what this is about.

9 Q You don't understand?

10 THE COURT: It's okay, ma'am.

11 BY MR. CHRISTIANSEN:

12 Q You don't understand what that's about?

13 A No, Mr. Christiansen, I don't.

14 Q Right. And that's a bit indicative, ma'am, of sort of the
15 historical -- your, Mrs. Edgeworth's historical approach to this case.
16 Sometimes you know everything about the case and other times you
17 don't know anything about the case, fair?

18 MR. GREENE: Objection. Is he just going to belittle her or is
19 he going to ask a question? Show some respect.

20 THE COURT: Mr. Christiansen, can you rephrase the
21 question?

22 MR. CHRISTIANSEN: Sure.

23 BY MR. CHRISTIANSEN:

24 Q Ma'am, on -- at different moments throughout -- and we'll
25 just use the last one. I show you an exhibit about a matter you just

1 testified to with Mr. Greene and when Mr. Greene asked you questions,
2 you know everything. You knew all the answers to his questions, right?

3 A Yes.

4 Q Yet, I show you an exhibit and now you don't know the
5 answer, correct?

6 A I --

7 Q That's what we just did back and forth.

8 A I don't know what this email is about, Mr. Christiansen.

9 Q Okay. You told the Court today to start with that you knew in
10 June of 2016 that Danny Simon was going to bill you 550 an hour?

11 A Yes.

12 Q You never talked to Danny in June of 2016, did you?

13 A No.

14 Q Danny Simon never told you that, did he?

15 A No.

16 Q In fact, ma'am, up until November the 17th in Danny Simon's
17 office, you never had a conversation with Danny Simon about how he
18 was going to bill this case, correct?

19 A No.

20 Q That's not correct or that is correct?

21 A It is correct.

22 Q Okay. That's okay. Cross is a little bit dicey sometimes. So,
23 from the moment Danny agree -- you got to listen to your husband, Mr.
24 Edgeworth testify. I think it's been a few weeks now, over the course of
25 a series of days. Do you remember that testimony?

1 A Yes.

2 Q And Mr. Edgeworth and you are 50/50 owners -- I may be
3 using the incorrect word -- in both the Plaintiffs that Danny represented
4 in the underlying litigation against Lange and Viking, correct?

5 A Yes.

6 Q You agree with everything your husband testified to?

7 A Yes. I've heard it. I don't know what you're referring to
8 specifically, Mr. Christiansen.

9 Q Well, I'll give you an easy example. You just told the Court
10 you think or you -- I think your best guess is that you may owe Danny
11 another \$144,000. Do you remember that?

12 A Yes.

13 Q And you remember me talking -- questioning your husband,
14 correct?

15 A Yes.

16 Q You remember your husband conceding to me that he had
17 nothing -- no information whatsoever to indicate any of the bills
18 presented, superbill or otherwise were false. Do you remember that?

19 A Yes.

20 Q You further remember your husband presenting to the Court
21 that spreadsheet he had created, correct?

22 A The activation spreadsheet?

23 Q No.

24 A Is that what you're referring to?

25 Q No, ma'am. The spreadsheet he created to criticize the bills,

1 to come in and say he'd been overbilled. Do you remember that?

2 A I do not.

3 Q You probably -- I'll refresh your recollection, if I remind you.

4 This is the spreadsheet that Her Honor caught your husband in a
5 mistake. Do you remember that?

6 A No. Could you explain it to me?

7 Q Sure. Were you here when the Judge questioned Mr.
8 Edgeworth about these entries that he put in the spreadsheet that he
9 proffered as proof that he'd been overbilled?

10 A I was here, yes.

11 Q Do you remember your husband admitting that he -- to the
12 Judge -- she caught him -- that he'd made a mistake?

13 A I do not remember that.

14 Q Do you remember if we look down here to August 20th of the
15 year 2017 and August 21st, your husband testified that he thought he'd
16 been billed twice for the same batch of emails. Do you remember that?

17 A I don't remember that specific comment.

18 Q Well, you were here?

19 A Yes.

20 Q Okay. I was asking him questions about what these boxes
21 meant. Do you remember?

22 A No.

23 Q Okay. Do you remember Mr. Edgeworth testifying that he
24 thought he'd been double-billed for those two sets of emails on the
25 consecutive dates in August?

1 A I don't remember that specific testimony.

2 Q And the emails aren't a secret, Mrs. Edgeworth, right?

3 Everybody's got them. Fair?

4 A I'm sorry. Could you say --

5 Q The --

6 A -- that again?

7 Q The emails aren't a secret. In other words, Mr. Greene gave
8 me your emails. They kind of come out a little bit different than if I print
9 them off Mr. Simon's. Yours say Gmail. Mr. Simon's say Simon Law,
10 but you all physically possess all the emails that went back and forth
11 between you and Danny, right?

12 A Yes.

13 Q All right. And so, it would have been super easy, would it
14 not, for Mr. Edgeworth to look at these dates, August 20th and August
15 21st and say hey, I did or didn't send X emails on those dates, right?
16 That would have been simple.

17 A Sure.

18 Q And rather than do that -- because remember, I had to show
19 him that on one day, he'd sent 10 and on another day he'd sent 12 and
20 they were totally separate emails. Not double-billed. Do you remember
21 that?

22 A No. I'm sorry I don't, Mr. Christiansen.

23 Q Okay. And he could have gone and done that, right?

24 A Yes.

25 Q And it's a little bit like your -- and I want to make sure I get it

1 right. Like the percentage of overbilling you accused Mr. Simon and Mr.
2 Ferrel of. Right? Because what you did -- and you didn't bring any work
3 product. You don't have a spreadsheet to show me about that, do you?

4 A I do.

5 Q You do?

6 A Mr. John Greene has it.

7 Q Okay. And what you did is went and compared total amount
8 of time on a phone call to total amount of time billed, correct?

9 A Correct.

10 Q And ma'am, you know, don't you -- somebody that's a Har --
11 are you Harvard educated as well or is that Just Brian?

12 A That's just Brian.

13 Q Okay. But you have a background in business. It sounds like
14 you've been super successful in your own right in your career?

15 A Yes.

16 Q Dozens of lawyers?

17 A Fair.

18 Q Bills all the time?

19 A Yes.

20 Q You know lawyers bill in incremental amounts, correct?

21 A I do.

22 Q So if I do something for two minutes as a lawyer and I bill
23 0.1, that's actually six minutes, right? It's a tenth of an hour.

24 A Yes, but sometimes you don't -- for example, if you've made
25 back to back phone calls, I wouldn't expect to be billed six minutes, six

1 minutes and six minutes for each one minute call.

2 Q Okay, ma'am. I simply --

3 A My attorneys wouldn't do that.

4 Q -- asked you a question, very simple question. Lawyers bill in
5 increments, right?

6 A Yes.

7 Q All right. And so, when you try to tell Her Honor that these
8 telephone calls are inflated by the percentages you assign to Mr. Simon
9 and Ms. Ferrel, that does not take into account at all the incremental
10 billing of lawyers. True?

11 A True.

12 Q All right. So that figure, by its very nature, is inflated. True?

13 A I would think it would go --

14 Q That's --

15 A -- up and down, Your Honor. Up and down. It should be
16 pretty fair. It shouldn't always be against my favor.

17 Q I got you. And Ms. Edgeworth, do you remember -- if I get
18 back -- I'm sorry. I skipped a little bit. In June of 2016, you knew Danny
19 was billing you at 550 an hour, not from Danny, but from your husband.
20 Fair?

21 A Yes.

22 Q Okay. Remember your husband said that was June the 10th.
23 Do you remember that?

24 A Around --

25 Q Did he --

1 A -- that date.

2 Q Did you know Danny was working for free from May the 27th
3 to June the 10th?

4 A I did not know that.

5 Q Brian didn't tell you that? Fair?

6 A I did not know that.

7 Q In fairness to you, ma'am, I think you said you've not been
8 involved -- I think you told Mr. Greene this morning -- in every aspect of
9 the case. Is that a fair statement?

10 A Fair.

11 Q And in fairness to you, you only know to a certain degree
12 what you've been told by your husband. True?

13 A Well, I've seen documents, yes, but the --

14 Q I --

15 A -- other stuff, you're right. I know what Brian has told me.

16 Q Right. And you weren't privy to the phone call that occurred
17 on June the 10th. Is that fair?

18 A Fair.

19 Q You weren't billed for any phone call on June the 10th by Mr.
20 Simon of 2016. Is that fair?

21 A I don't know. I'd have to look at the bill to see if there was a
22 charge for that on the invoice.

23 Q Okay. So, if you weren't billed for it, either Mr. Simon
24 underbilled you or it didn't happen. One of the two.

25 A I don't know.

1 Q Okay. I got you. You don't know. I'm with you. Do you
2 know what the register of actions looks like?

3 A I do not.

4 Q I showed it to your husband a little bit. It's just sort of all the
5 filings that happened in you all's case.

6 MR. CHRISTIANSEN: And this is Exhibit 63, John. I'm sorry.

7 THE COURT: Okay.

8 BY MR. CHRISTIANSEN:

9 Q It's just the register of everything that was done in the
10 underlying case. Have you ever looked at that, Ms. Edgeworth?

11 A I didn't see it. Could you put it --

12 Q Sure.

13 A -- back up again, please?

14 Q There you go. Have you ever looked at --

15 A Can I see the whole thing, please? I may have seen this a
16 long time ago, but I don't recall.

17 Q Anything in this register of actions, any of the filings, any of
18 the motion work, any of the courtroom work, was any of it done by you
19 or Brian?

20 A I don't know what's in that document, Mr. Christiansen. I
21 don't understand your question.

22 Q Okay. I'll move on, Ms. Edgeworth. Ms. Edgeworth, when
23 you get billed by lawyers, they bill you every month, right?

24 A No.

25 Q So you go six months at a time without billing?

1 A Yes, they do.

2 Q Wow. And that was your agreement with Mr. Simon that he
3 would go six months at a time without billing. Is that what you're telling
4 the Judge?

5 A No.

6 Q You don't know what the agreement was, correct?

7 A I know the agreement was hourly.

8 Q You don't know what the interim payment schedule was for,
9 correct?

10 A I know there wasn't much work done for the first six months.

11 Q Ma'am, it's an easy question.

12 MR. GREENE: I'm --

13 BY MR. CHRISTIANSEN:

14 Q Do you know what -- do you know when he was supposed --
15 how often you were supposed to get billed and pay Mr. Simon? Yes or
16 no?

17 A No.

18 Q All right. That's a term you're just unfamiliar with, correct?

19 A Which term? I'm sorry.

20 Q The incremental timing of the bills and paying them.

21 A I'm not familiar with that term, no.

22 Q Do you remember having your deposition taken --

23 A I do.

24 Q -- in the underlying matter? The Lange lawsuit?

25 A I do.

1 Q Mr. Simon went with you to your deposition?

2 A Yes.

3 Q And in your deposition, do you remember your husband
4 answering questions relative to the portion of his deposition he cites in
5 all his affidavits in the complaint, where he claims that his testimony was
6 that all the bills as of his depo in September for the case had been
7 submitted, and there were no other bills?

8 A I do.

9 Q And do you remember me having to show Brian -- Mr.
10 Edgeworth. I apologize. Your husband. That he'd sort of forgotten to
11 cite the second part, the latter part of the deposition, where he testified
12 that the bills were still accruing?

13 A I'll take your word that he did, but I don't remember
14 specifically.

15 Q But you do recall that that's nowhere in any of his affidavits
16 or the complaint Edgeworth v. Simon, correct?

17 A I don't know.

18 Q All right. Well, the Judge has all that and we'll let her see it.
19 And I asked it that way, because your deposition -- I'll show you.

20 MR. CHRISTIANSEN: John, it's Exhibit 86, Mr. Greene.

21 BY MR. CHRISTIANSEN:

22 Q Is Monday, September the 18th, 2017. Do you remember
23 going for your deposition, Mrs. Edgeworth?

24 A Yes.

25 Q Do you remember the oath you took?

1 A Yes.

2 Q The same oath you took here in court?

3 A Yes.

4 Q And do you remember being asked questions in your
5 deposition relative to attorney's fees?

6 A Yes.

7 Q And your deposition is -- let me think -- 14 or 15 months after
8 you came to this understanding that Mr. Simon was billing at 550 an
9 hour, right?

10 A Okay.

11 Q True?

12 A Yes.

13 Q Okay. And yet when you're asked, Mrs. Edgeworth, how
14 much you've paid your attorney's fees and costs to date, you don't know.

15 A I don't know the full amount. That's -- I didn't know the full
16 amount.

17 Q Okay.

18 A I know the hours and rates.

19 Q Okay. Let's just read.

20 "Q Can you tell me how much you've paid in attorney's fees and
21 costs to date?

22 "A I don't know. That would be a question for my husband.

23 "Q Okay. All right.

24 "A I don't think I want to know.

25 Did I get that right?

1 A That's a joke.

2 Q Oh, I just mean did I read it correctly?

3 A Yes, you did.

4 Q Okay. And this is some 14 or 15 months after you had this
5 firm understanding between you and your husband about what your
6 husband told you Mr. Simon agreed to be paid, correct?

7 A I knew the rate, Mr. Christiansen. I didn't know the exact
8 amount that we'd paid Danny to that date.

9 Q Well ma'am, you told Mr. Greene this morning that you were
10 the person that reviewed the bills. You had an internal procedure where
11 Mr. Edgeworth would check off on a bill and you would check off on a
12 bill and an accountant or a maybe a bookkeeper or somebody would
13 actually sign the bill?

14 A Yes.

15 Q All right. So, by September, you'd submitted three or four
16 invoices, right? Over 18 months?

17 A I couldn't tell you right now, at that particular time how much
18 we had paid. I don't remember the exact dates of all the payments, so I
19 couldn't tell you the exact amount that we had paid at that time.

20 Q Right. But today in preparation for the hearing, you knew
21 back in June of 2016, based on not conversations with my client, Danny
22 Simon, that you were going to pay Danny Simon 550 an hour?

23 A Yes.

24 Q All right. So, if Mr. Greene and you agree how much I'm
25 going to get paid, does that bind me?

1 A I'm sorry. Could you repeat that?

2 Q If you and Mr. Greene agree to what my rate is, but you don't
3 tell me about it, am I bound by that?

4 A I don't understand your question.

5 Q I think probably the Judge does. This is further in your
6 deposition.

7 MR. CHRISTIANSEN: Page 48, Mr. Greene. I'm sorry.

8 BY MR. CHRISTIANSEN:

9 Q Why did you need to borrow the money? Question.

10 "A The ongoing lawsuit and repairs.

11 "Q So was this money used to pay the attorney's fees?

12 "A Correct.

13 "Q Okay. Because you guys have paying the attorney's fees as
14 you've gone?

15 "A Correct.

16 "Q Okay. So, on a monthly basis, you'll pay those fees?

17 "A I don't know. I don't know. You have to ask my husband
18 that.

19 Did I get that all right?

20 A Yes.

21 Q So, in September of '18 -- '17. I'm sorry. Your deposition
22 testimony accurately reflects how familiar you were with the agreement
23 with Danny Simon, correct?

24 A Yes.

25 Q And can we agree that that's drastically different than your

1 testimony this morning as to how familiar you were with the financial
2 arrangement with Danny Simon?

3 A No.

4 Q No. Okay. Remember when I objected at one point this
5 morning and said can we get some context when Mrs. Edgeworth
6 learned about the things she's testifying to? And your -- I think you told
7 the Judge in preparation of this hearing; you learned a lot of things?

8 A Yes.

9 Q And that's because, in all fairness to you, you were taking
10 care of your family. I think you have a couple of daughters that are
11 active young ladies, and you're a busy woman yourself?

12 A Yes.

13 Q And most of what you knew about the Edgeworth v. Viking
14 and Lange lawsuit came from Brian?

15 A Yes.

16 Q Like a simple example. Remember Mr. Greene showed you
17 that check for 68 grand? Remember the check that you got paid in March
18 for 68,000 and change?

19 THE COURT: Exhibit 55, Mr. Christiansen?

20 MR. CHRISTIANSEN: I think that's right, Your Honor.

21 THE WITNESS: Is that for the costs?

22 MR. CHRISTIANSEN: Yes, ma'am.

23 THE WITNESS: Yes, ma'am.

24 BY MR. CHRISTIANSEN:

25 Q And those costs were paid in March. Fair?

1 A Yes.

2 Q I'm sorry. I didn't -- my fault. Bad question. I didn't finish.

3 March of 2018?

4 A Yes.

5 Q Right. That's about two months after you sued Mr. Simon,
6 correct?

7 A Yes.

8 Q And I'll show you. Let me see if I can blow it up for you Ms.
9 Edgeworth. \$68,844. And that's signed by -- I think that's Mr. Vannah's
10 signature.

11 MR. VANNAH: It is.

12 BY MR. CHRISTIANSEN:

13 Q I'm not sure.

14 MR. VANNAH: I will stipulate that's my signature.

15 THE COURT: Okay. That's a [indiscernible] symbol saying
16 Robert Vannah.

17 BY MR. CHRISTIANSEN:

18 Q That's Mr. Vannah's signature and Mr. Simon's on that joint
19 trust account that was created to deposit the \$6 million Viking
20 settlement?

21 A Yes.

22 Q Is that right?

23 A Yes.

24 Q Okay. And you suggested to the Court that you are guessing
25 that this is the amount that Danny had in attorney's fees that he gave --

1 72,000 is the amount Danny had in attorney's fees he gave to Brian at the
2 mediation -- Mr. Edgeworth at the mediation?

3 MR. GREENE: I'll object. That mischaracterizes her
4 testimony. She never said guessing. That's Mr. Christiansen's hope.

5 MR. CHRISTIANSEN: Well, actually I think it was the Judge
6 that pinned that down. I'll rephrase.

7 BY MR. CHRISTIANSEN:

8 Q You never saw whatever bill or invoice or whatever it was
9 that your husband received at the November mediation. Fair?

10 A No, but I believe it was there, because I believe my husband,
11 yes. But --

12 Q I --

13 A -- no, I didn't see it.

14 Q Okay. I'm not -- I recognize that you believe your husband,
15 all right? And the amount that Danny was owed in costs is just a few
16 grand less than this -- that bill your husband got in November, right?

17 A You're referring to this check?

18 Q Yes. Yes, ma'am.

19 A Yes.

20 Q And did you know immediately before this check was cut that
21 Mr. Simon had found an accounting error, a cost that had been put into
22 your client -- your case file and they talked to your lawyers and that
23 backed out of it and -- from the 72 grand in costs, this was actually the
24 total? Did you know that?

25 A I did.

1 Q Okay. So, the 72 grand that Brian saw was more likely than
2 attorney fees billed as a cost bill, right?

3 A No.

4 Q Just magically 72 grand was both, right?

5 A It's possible.

6 Q Okay. The truth is, you just don't know?

7 A I'm sorry.

8 Q The truth is, you just don't know?

9 A I don't know.

10 Q Right. And that was true also of you in your deposition. You
11 didn't know lots of things about the lawsuit. Fair?

12 A I feel like I know lots of things about the lawsuit.

13 Q Did you know what an interrogatory was in your deposition?

14 A No.

15 Q Did you know what your cost itemization of losses were in
16 your deposition?

17 A I'd seen the sheet before, but I couldn't rattle them off to you.

18 Q Okay. Those are questions better asked to your husband, I
19 think is the short version of what is sort of testified to?

20 A That's correct.

21 Q Fair?

22 A Fair.

23 Q Brian is the -- Mr. Edgeworth. I apologize. I keep --
24 everybody's started using first names in this case, and it's making me
25 nuts. Mr. Edgeworth is the genesis of much, if not -- well, much of the

1 information you have -- you had going through this case until that
2 meeting at Danny's office November 17th?

3 A Fair.

4 Q Is that a fair statement? All right. And the meeting. You
5 didn't testify today that Mr. Simon was dropping F bombs, correct?
6 Using the F word, curse word at that meeting? You didn't testify to that,
7 did you?

8 A My husband told me and I --

9 Q Well, that's -- my question is you did not testify to that,
10 correct?

11 A Today, no.

12 Q Right.

13 A But I know about that.

14 Q You didn't hear it, correct?

15 A I heard it from my husband, because I was not in the room at
16 the time.

17 Q Right. And you believe your husband, right?

18 A I do.

19 Q All right. Have you seen the emails where your husband is
20 using F bombs all over the place?

21 A He uses them frequently.

22 Q Okay. Nobody's getting offended by the F word, right?
23 Between Mr. Simon and your husband, right?

24 A No. It just --

25 Q And you've --

1 A -- seemed out of place at the moment.

2 Q How would you know, if you didn't hear it?

3 A I'm sorry?

4 Q How would you know it was out of place, if you didn't hear it,
5 ma'am?

6 A Because we went there to talk about the case. It didn't seem
7 the appropriate place to drop F bombs.

8 Q Ma'am, you didn't hear it. How would you know whether it
9 was appropriate or not?

10 A My husband told me about it after.

11 Q Okay. Do you remember your husband testifying about this
12 meeting in Danny's office?

13 A Yes.

14 Q Do you remember him not -- and I want to be clear -- not
15 testifying consistent with the physical aspect of how this meeting took
16 place that you gave -- the version you gave this morning?

17 A I do not remember that.

18 Q Brian Edgeworth never testified -- told this Judge that Danny
19 leaned against a desk between you and some chair -- between his desk
20 and some chairs and sort of leered over you, as you described this
21 morning?

22 A I remember it like it was yesterday.

23 Q Ma'am, that's not my question. You sat here for a week and
24 your husband testifying. And isn't it true Mr. Edgeworth did not recite
25 that same version?

1 A I don't recall.

2 Q Okay. And do you remember Mr. Edgeworth telling me that
3 you felt threatened?

4 A Yes.

5 Q And you know, if we were to compare sizes, Mr. Simon's
6 probably closer to you than to Brian's size, right?

7 A Fair.

8 Q So Danny Simon wasn't physically threatening anybody, was
9 he?

10 A Physically, no.

11 Q All right. And the words. I wrote down -- you had lots of
12 words for that meeting and let me get to them. Terrified. I'm just going
13 to go through them with you, okay? Terrified. Fair?

14 A Fair.

15 Q Shocked?

16 A Yes.

17 Q Shaken?

18 A Yes.

19 Q Taken aback?

20 A Yes.

21 Q Threatened?

22 A Yes.

23 Q Worried?

24 A Yes.

25 Q Blackmailed?

1 A Yes.

2 Q You thought he was trying to convert your money? Take
3 your money? Right?

4 A Yes.

5 Q You actually sued him and that was one of the claims is he
6 was converting your money, right?

7 A I wasn't worried about conversion at the time, because I was
8 more -- I was worried about the settlement deal not happening.

9 Q Flabbergasted?

10 A Yes.

11 Q This another word? And can we agree that nowhere in the
12 email communications between November the 17th and when Mr.
13 Simon is notified on November the 30th that the Vannah firm is involved,
14 do you use any of those words --

15 A That's how I felt --

16 Q -- in any of your email?

17 A -- inside.

18 Q No -- ma'am, just listen to my question. It's a very particular
19 question. Can we agree all of those words, none of them make their way
20 to any email you typed?

21 A I was being polite.

22 Q Is that a yes? They're not in your emails, correct?

23 A Correct.

24 Q In fact, in your emails -- and we'll go through them. But in
25 your emails are these promises that you're going to sit down and meet

1 with Danny, right?

2 A Yes.

3 Q At the time you put that in the email, you knew you weren't
4 going to, correct?

5 A I didn't know that for sure, but I was stalling.

6 Q Ma'am, that's not what you told the Judge this morning.
7 You told the Judge you made the determination after you talked to your
8 friend on the 17th or 18th of November -- I forgot that lady's name. The
9 out of state lawyer.

10 A Lisa Carteen [phonetic].

11 Q Carteen. T with a T? Carteen?

12 A Uh-huh.

13 Q Ms. Carteen -- that you were in no way going to sit in
14 Danny's office without a lawyer, right?

15 A No. I said I wasn't going to go there by myself and sit in
16 front of Danny Simon and get bullied into signing something.

17 Q Okay. Bullied. That's another term you used, right? Do you
18 remember Brian -- Mr. Edgeworth's testimony that he was never shown
19 a document on that day of the 17th that he was to sign? Do you
20 remember that?

21 A Yes.

22 Q Okay. Do you remember your testimony? Yes?

23 A Yes.

24 Q Tell me what the document Mr. Simon presented to you to
25 sign looked like?

1 A I didn't see the document. He alluded to the document
2 behind him on a desk like this that he was -- he had it, if we were ready
3 to sign it, so I didn't see the actual document.

4 Q So in the opening -- you were here for the opening?

5 A Yes.

6 Q When your lawyer stood up and said that there was a
7 document that Mr. Simon put in front of you, tried to force you to sign it,
8 that factually was a little bit off?

9 A I didn't hear that, but yes, that would be factually off. There
10 wasn't a document presented to us there, no.

11 Q It's a little bit like -- do you know what the word outset
12 means, ma'am?

13 A Yes.

14 Q Outset means the beginning, correct?

15 A Correct.

16 Q Correct. You saw all of Brian's affidavits, correct?

17 A Yes. Which ones? I don't know which ones you're referring
18 to.

19 Q 2/2, 2/12 and 3/15. He signed three affidavits in support of
20 the -- this litigation for attorney's fees. You've seen them all?

21 A I've seen them at some point.

22 Q And you know that in each one of them, he said at the outset
23 of the arrangement with Mr. Simon, Danny agreed to 550 an hour,
24 correct?

25 A Correct.

1 Q Were you here last week when your husband couldn't
2 understand what the word outset meant?

3 A He thought outset meant --

4 Q Ma'am, just answer --

5 A -- the very first day.

6 Q -- my question. Did you -- were you hear when he didn't
7 understand my questions what the word outset meant?

8 A Yes.

9 Q Okay. Outset, you know, means the first day, right?

10 A I would interpret it to mean the beginning, which meant at
11 the beginning of the case, so the outset to me, would be at the beginning
12 of the case, so sometime at the beginning of the case. The outset
13 doesn't necessarily mean the very first day.

14 Q Okay. Is that kind of like revisiting history, when your
15 husband says I retained Danny on the 27th of May and from the outset,
16 he agreed to 550 an hour? That's what all those affidavits said?

17 A The outset means the beginning and that was the beginning.

18 Q Ma'am, isn't it true that it's not until I confront your husband
19 with the email from Danny Simon that says let's cross that bridge when
20 we come to it, relative to what he's going to get paid, that Mr. Edgeworth
21 and you then have to change your story to -- for the outset to become
22 June 10th, as opposed to May 27th?

23 A No.

24 Q Prior to me confronting Mr. Edgeworth with the email that
25 said we'll cross that bridge when we come to it, had he ever in writing

1 said June 10th is the day Danny Simon told him 550 an hour?

2 A I don't know.

3 Q Okay. The words you used, ma'am -- and I won't go through
4 them all -- when you talked to Ms. Carteen -- did I get that right?

5 A Yes.

6 Q Were those the words you used to her when describing Mr.
7 Simon?

8 A I'm sorry. Which -- what do you mean?

9 Q Terrified, blackmailed, extorted.

10 A I used blackmailed, yes.

11 Q You used those words to her.

12 A And I used extortion, yes.

13 Q Similarly, when you talked to Justice Shearing in February of
14 2018, were those the words you used?

15 A I don't think they were that strong. I just told her what
16 happened. Lisa is more of a closer friend of mine, so I was a little bit
17 more open with her.

18 Q And you were talking to Lisa as your friend, not your lawyer,
19 right?

20 A Correct.

21 Q Okay. If I get the gist of what you were saying is that you
22 were of the belief that if you didn't sign the document you'd never
23 seen -- because you told me you never saw the document on the 17th,
24 Mr. Simon would blow up the \$6 million settlement?

25 A I didn't know. That was a possibility at that time, when I was

1 sitting there, yes.

2 Q All right. And so, the -- if it's a possibility and from that
3 possibility, you feel extorted, blackmailed, terrified, spooked, all the
4 words -- isn't that -- I mean, can we agree that's a little bit like when you
5 and your husband as the board of the volleyball team make you as
6 individuals to do those applications? It's a bit histrionic, right?

7 A No.

8 Q All right. It's a bit of self-imposed drama, isn't it?

9 A No, it's not.

10 Q I mean, it's not contained in any correspondence between
11 you and a long-time friend that hey man, you're spooking me, Mr.
12 Simon?

13 A I wrote that I was stressed --

14 Q And it was awkward.

15 A -- and it was awkward and that is pretty -- for me, that's
16 pretty powerful.

17 Q Okay. Did you use any --

18 A I was being polite.

19 Q -- of the words you used today, ma'am?

20 A Excuse me?

21 Q Did you use any of the words you used today for Her Honor?
22 Terrified, extorted, blackmailed, in any of your emails?

23 A No.

24 Q All right. And this is your friend, right?

25 A Yes.

1 Q A guy that was working for free for at least part of the -- even
2 to believe Brian, for at least two weeks he was working for free as a
3 favor, right?

4 A For two weeks, yes.

5 Q Right. He was working for free.

6 A Certainly wasn't working for free later.

7 Q And you told the Judge this morning that you agreed -- kind
8 of a gratuitous mention of my name. You said you agreed with me that
9 no good deed goes unpunished. Remember that?

10 A I agree with you 100 percent on that, Mr. Christiansen.

11 Q Right. And you guys had a \$500,000 property claim, correct?

12 A Correct.

13 Q You got \$4 million already, correct?

14 A Correct.

15 Q And you don't want to pay your lawyer as much as you paid
16 interest to your mom and your husband's best friend, right?

17 A I want to pay Danny what we owe him.

18 Q Okay. And let's just sort of back up. When you go talk to
19 that Ruben, is that the coach? That -- the charities coach, Ruben, he's an
20 employee of the Aces, Volleyball Aces? I've forgotten the name of it.

21 A Yes.

22 Q And so he works for the board?

23 A I'm sorry. He works for the --

24 Q The board.

25 A Board. Yes.

1 Q Works for you and your husband, correct?

2 A Yes.

3 Q And when you went to him and told him, you used those
4 same words. You'd been blackmailed or you felt like you were being
5 blackmailed by Danny Simon, correct?

6 A I didn't speak to Coach Ruben about those things, no.

7 Q Do you know if Coach Ruben ever called Mr. Simon and said
8 hey, let's get to the bottom of this? What's the big deal?

9 A I'm sorry. Could you repeat that?

10 Q Do you know one way or another, did Coach Ruben call Mr.
11 Simon?

12 A I don't know.

13 Q All right. Back to your November 17th meeting. I've been in
14 the same office with Mr. Simon off and on for 25 years. Are you really
15 telling the Judge -- and I want to make sure I'm understanding just the
16 physics of it, all right? I'm not trying to get closer to you. I'm just going
17 to use. This is the front of Mr. Simon's desk. He's between you and his
18 two client chairs that are right here leaning against the desk?

19 A Yes.

20 Q That's about four inches.

21 A The chairs --

22 Q Right? There's nothing underneath Danny's desk, right?
23 There's like a big gap, correct?

24 A That's how I remember it.

25 Q And those chairs are about four inches from the front of that

1 desk, right?

2 A Not at that time, they weren't.

3 Q Okay. When you told your husband -- let me start back at the
4 beginning a little bit with you -- that Mr. Simon was a lawyer, husband of
5 your friend, Elaina, you told -- and I wrote it down. You told Mr. Greene
6 that you knew that Danny was a personal injury attorney?

7 A Yes.

8 Q You knew that he took cases on a percentage fee
9 arrangement?

10 A I didn't know his arrangement, but I would assume that he
11 did.

12 Q You knew he didn't bill clients, correct?

13 A I didn't know that for sure, no.

14 Q Okay. Has Mr. Simon ever told you -- I don't want to know
15 what your husband told you -- Mr. Simon ever told you he has any other
16 billable clients?

17 A No.

18 Q Mr. Simon ever indicated that you'd get an hourly bill every
19 month with you?

20 A I'm sorry. Say that again.

21 Q Did Mr. Simon ever tell you what period time he would bill
22 you?

23 A No.

24 Q Did Mr. Simon ever tell you how much Ashley would bill for?

25 A I saw it in the invoices.

1 Q So the answer is no?

2 A No.

3 Q All right. Did Mr. Simon ever tell you what costs he would
4 front as opposed to you all paying?

5 A No.

6 Q Did Mr. Simon -- I mean, these are all like pretty important
7 terms in an arrangement, right? Yes.

8 A Sure, yes.

9 Q I mean, those are terms that in your experience, lawyers
10 work out with clients, right?

11 A Sure.

12 Q And you didn't work any of those out with Danny Simon,
13 correct?

14 A My husband was handling those.

15 Q So the answer is yes, you didn't work any of those out with
16 Mr. Simon, correct?

17 A Correct.

18 Q All right. And you talked about -- you told the Judge that you
19 felt as if the initial four invoices were exaggerated. That was your word,
20 correct?

21 A I felt that they were unclear and that they were, yes, I did.

22 Q Ma'am, your was --

23 A Yes.

24 Q -- exaggerated, right?

25 A Yes.

1 MR. CHRISTIANSEN: Let me see those pictures, Ash.
2 Rather than bring all the boxes back in, I took a picture so Mr. Vannah
3 wouldn't get irritated with me.

4 MR. VANNAH: Oh, I'm still irritated with you.

5 MR. CHRISTIANSEN: Story of my life, Judge.

6 THE COURT: Okay.

7 MR. VANNAH: I'm being irrational here.

8 BY MR. CHRISTIANSEN:

9 Q This is -- we'll use this as Exhibit 92, I think is next in line.

10 MR. CHRISTIANSEN: Is that right?

11 THE CLERK: Yes.

12 MR. CHRISTIANSEN: Ms. Clerk?

13 THE CLERK: Yes.

14 MR. CHRISTIANSEN: How do you say 92 in New York?

15 THE CLERK: 92.

16 (Plaintiff's Exhibit 92 marked for identification)

17 BY MR. CHRISTIANSEN:

18 Q Ma'am, in those four invoices, can we agree that you were
19 not billed for reviewing all the documents that went in these boxes?

20 A No.

21 Q You think the amount of hours contained in those four
22 invoices includes bills for all these boxes and the paper included there,
23 160 some thousand pages worth of documents?

24 A I don't believe all those documents were reviewed.

25 Q Okay. So, you were, or you weren't billed for them? I'm

1 asking you.

2 A I was billed for all the work that they did, yes.

3 Q Okay, well, no you weren't, ma'am and you know you
4 weren't. Exhibit 93 are the emails. You know in those first four invoices,
5 you're not billed for all those emails, right? You know that.

6 A No.

7 Q What do you mean, no? How is it you don't know that you're
8 not billed for all the emails? You got the emails, right?

9 A Yes.

10 Q You got the invoices, right?

11 A Yes.

12 Q You're telling the Judge with a straight face that there are
13 time entries equivalent to the number of emails in Exhibit 93 contained
14 in your bills?

15 A Mr. Christensen --

16 Q Yes or no --

17 A -- the bills were so --

18 Q -- ma'am? Is that what you're telling? You have --

19 A There were --

20 Q -- to answer. You don't get to just --

21 A -- big blocks --

22 Q -- look at the Judge and start talking. You have to answer my
23 questions.

24 A I'm sorry. Say the -- please say it again.

25 Q Sure. You're telling the Court, yes or no, that in the first

1 invoices, there are time entries for which you paid Mr. Simon for his time
2 for all the emails your husband caused to be sent back and forth, which
3 are depicted in Exhibit 93?

4 A Yes.

5 Q Well, you disagree with your husband then, right?

6 A I'm sorry?

7 Q You disagree with Mr. Edgeworth then, correct?

8 A I don't know what you're referring to, Mr. Christiansen.

9 Q Well, you heard him testify, didn't you?

10 A About? I don't know --

11 Q Emails. Yes?

12 A Yes.

13 Q You heard him say he knew all the bills for emails were
14 included in those first four invoices, correct?

15 A I don't know that, Mr. Christiansen.

16 Q That's not what I asked you, ma'am. I asked you did your
17 husband say yes, I Brian, know that I didn't get billed for all the emails?
18 Did you hear him say that?

19 A I don't recall that.

20 Q Well, we'll let the Judge look at the transcript. Were you
21 familiar, ma'am, with the calculation of damages in your case? The
22 underlying case?

23 A Yes.

24 Q You knew that was something that your husband and Mr.
25 Simon worked on together, correct?

1 A Yes, Brian put it together.

2 Q He did those spreadsheets you saw me show him three
3 weeks ago?

4 A Yes.

5 Q All right. And the calculation included line items like John
6 Olivas' [phonetic] \$1.5 million for stigma damage to the house?

7 A Yes.

8 Q You heard your husband say that was a line item that Mr.
9 Simon was solely responsible for, correct?

10 A Correct.

11 Q Do you agree with that?

12 A Yes.

13 Q Now, do you agree with \$4 million for a \$500,000 property
14 claim as being made whole?

15 A Yes.

16 Q Okay. So, you've been made whole, correct?

17 A Yes.

18 Q All right. And once you were made whole or about the same
19 time you were made whole, you sued Mr. Simon rather than pay him,
20 correct?

21 A No.

22 Q When were you made whole? When did you get the check?
23 Tell me the date. You knew it earlier.

24 A January 21st.

25 Q You sued Mr. Simon what date? January 4th?

1 A Yes.

2 Q So before you even had your money, you sued Mr. Simon?

3 Yes?

4 A Yes.

5 Q You accused him of converting your money, correct?

6 A Yes.

7 Q Before you even had the money, correct?

8 A Yes.

9 Q Before the money was in a bank account, right?

10 A Yes.

11 Q Okay. And in that lawsuit, you sought to get from him
12 personally and individually, from his and his wife Elaina, your friend, you
13 want punitive damages, right?

14 A Yes. I didn't --

15 Q Just yes.

16 A -- ask to be in this position.

17 Q Just yes.

18 A Yes.

19 MR. GREENE: Your Honor, object. We didn't --

20 MR. CHRISTIANSEN: Sure -- most certainly did.

21 MR. GREENE: Elaina wasn't sued.

22 MR. CHRISTIANSEN: Well, it was his family.

23 MR. GREENE: Well --

24 THE COURT: Well, I mean, if Danny Simon as an individual
25 and the Law Office of Danny Simon, isn't it?

1 MR. GREENE: Yes, but we didn't name his wife --

2 MR. VANNAH: That's not his wife.

3 MR. GREENE: -- as a defendant.

4 THE COURT: Okay.

5 BY MR. CHRISTIANSEN:

6 Q Is Elaina married to Danny?

7 A Yes.

8 Q Okay. So, if you're trying to get punitive damages from a
9 husband individually, you're trying to get their family's money, right?

10 MR. GREENE: Same objection.

11 THE COURT: Mr. Christiansen, the lawsuit is against Danny
12 Simon as an individual and the Law Office of Danny Simon, so that's
13 who they sued.

14 BY MR. CHRISTIANSEN:

15 Q You made an intentional choice to sue him as an individual,
16 as opposed to just his law office. Fair?

17 A Fair.

18 Q That is an effort to get his individual money, correct? His
19 personal money as opposed to like some insurance for his law practice?

20 A Fair.

21 Q And you wanted money to punish him for stealing your
22 money, converting it, correct?

23 A Yes.

24 Q And he hadn't even cashed a check yet, correct?

25 A No.

1 Q Right. He couldn't cash the check, because Mr. Vannah and
2 him had to make an agreement. Mr. Vannah figured out to do it, I think
3 at a bank, right? How to do like a joint --

4 MR. VANNAH: Yeah, we -- it's just we opened a trust
5 account --

6 THE COURT: Right.

7 MR. VANNAH: -- that both he and I are on, so neither one of
8 our trust accounts got it, but it went into a trust account to comply with
9 the Bar rules.

10 THE COURT: Okay.

11 MR. CHRISTIANSEN: So --

12 MR. VANNAH: If that helps.

13 MR. CHRISTIANSEN: It does. Thank you, Mr. Vannah.

14 MR. VANNAH: Sure.

15 BY MR. CHRISTIANSEN:

16 Q That's what happened, right? That's where the money got
17 deposited?

18 A Yes.

19 THE COURT: And just so I'm clear about that, is the whole \$6
20 million in that trust account?

21 MR. VANNAH: Yeah, I can help with that.

22 MR. GREENE: Me, too, but go ahead, Bob.

23 THE COURT: Okay.

24 MR. VANNAH: The 6 million dollars went into the trust
25 account.

1 THE COURT: Okay.

2 MR. VANNAH: Mr. Simon said this is how much I think I'm
3 owed. We took the largest number that he could possibly get --

4 THE COURT: Okay.

5 MR. VANNAH: -- and then we gave the clients the remainder.

6 THE COURT: So, the 6 --

7 MR. VANNAH: In other words, he chose a number that -- in
8 other words, we both agreed that look, here's the deal. Obviously can't
9 take and keep the client's money, which is about 4 million dollars, so we
10 -- I asked Mr. Simon to come up with a number that would be the largest
11 number that he would be asking for. That money is still in the trust
12 account.

13 THE COURT: Okay.

14 MR. VANNAH: And the remainder of the money went to the
15 Edgeworth's.

16 THE COURT: Okay. So, there's about \$2.4 million or
17 something along those lines --

18 MR. VANNAH: Yeah.

19 THE COURT: -- in the trust account.

20 MR. VANNAH: There's like 2.4 million minus the 400,000 that
21 was already paid, so there's a couple million dollars in the account.

22 THE COURT: Okay.

23 MR. GREENE: It's 1.9 and change, Your Honor.

24 THE COURT: Okay. Just so --

25 MR. CHRISTIANSEN: Oh, that's true --

1 THE COURT: Yeah. Just so --

2 MR. CHRISTIANSEN: -- Mr. Kimball said --

3 THE COURT: -- I was sure about what happened. I mean, the
4 rest of the money was disbursed, because I heard her testifying about
5 paying back the in-laws and all this stuff. So, they paid that back out of
6 their portion, and the disputed portion is in the trust account?

7 MR. VANNAH: Right. So, they took that money and paid
8 back the in-laws, so they wouldn't keep that interest running --

9 THE COURT: Right.

10 MR. VANNAH: -- and then the money that we're disputing --

11 THE COURT: Is in the trust account.

12 MR. VANNAH: -- is held in trust, as the Bar requires.

13 THE COURT: Okay.

14 MR. CHRISTENSEN: And Your Honor, just to follow up on
15 that. The amount that's being held in trust is the amount that was
16 claimed on the attorney lien.

17 THE COURT: Okay.

18 MR. VANNAH: That's correct.

19 MR. CHRISTENSEN: Any -- and, also, any interest that
20 accrues on the money held in the trust inures to the benefit of the clients.

21 THE COURT: Right. I was aware of that, yes. It would go to
22 the Edgeworth's, right?

23 MR. VANNAH: Exactly.

24 MR. CHRISTENSEN: That's correct.

25 MR. VANNAH: That's what we all agreed to, yes.

1 THE COURT: Okay. Yes, I was aware of that.

2 MR. VANNAH: Yes, that's accurate.

3 BY MR. CHRISTIANSEN:

4 Q Ms. Edgeworth, in time, timing wise, when was the first time
5 you ever looked at one of your husband's spreadsheets for the
6 calculation of damages?

7 A I don't know exactly the time. It was a long duration of the
8 case, but you know, sometime during the case.

9 Q Okay. Is it fair to say you never looked at any of the damages
10 calculations until after the November 17th meeting at Danny Simon's
11 office?

12 A No.

13 Q You looked at them before then?

14 A Yes.

15 Q Did you see on them -- and I can show you -- I'm trying to
16 kind of move it along -- where you husband leaves blank spaces that he
17 still owes money for attorney's fees in October and November?

18 A Yes.

19 Q All right. And so that's leading up to when you guys hired
20 Mr. Vannah. And I'll show you just --

21 MR. CHRISTIANSEN: By way of ease, this is 90, John.

22 BY MR. CHRISTIANSEN:

23 Q -- Mr. Vannah's fee agreement, which is signed by yourself,
24 ma'am? Or is that Brian's signature? I'm sorry.

25 A That's Brian.

1 Q And it's dated the 29th of November 2017?

2 A Yes.

3 Q And this is before the Viking -- just in time -- this is before the
4 Viking settlement agreement is executed by you and your husband,
5 correct?

6 A Yes, the day before.

7 Q Okay. And the Viking settlement agreement says that you're
8 being advised on that agreement by Vannah & Vannah, correct?

9 A Correct.

10 Q And you signed it after you hired Vannah & Vannah, correct?

11 A Correct.

12 Q And you hired Vannah & Vannah on the 29th, the same day
13 that you're sending Mr. Simon, by my count, two or three emails saying
14 we're going to sit down as soon as Brian gets back, correct?

15 A Yes.

16 Q All right. So, you knew you weren't going to sit down with
17 Danny when Brian got back when you sent those emails, right?

18 A No.

19 Q You were just leading Danny along until you got a new
20 lawyer you could listen to and disregard his advice, correct?

21 A We hired Vannah & Vannah to protect us from Danny, and
22 we wanted Danny to finish the settlement agreement.

23 Q Right. And you stopped listening to Danny in terms of
24 following his advice, correct?

25 A No.

1 Q Okay. You choose to settle the Lange case for 100 grand
2 minus the 22 you still owed Lange, right?

3 A Yes.

4 Q That wasn't Danny's advice, was it?

5 A No.

6 Q You -- so you stopped listening to Danny's advice and started
7 listening to Mr. Vannah's advice right?

8 A No. Brian and I made that decision together.

9 Q Okay. I'm not disputing that. That -- but the decision was to
10 disregard Mr. Simon's advice and to follow or heed the advice of Vannah
11 & Vannah?

12 A They had different pieces of advice. We weren't following
13 anybody. We were deciding for ourselves.

14 Q And the decision you made was inconsistent with the advice
15 Mr. Simon was giving you, correct?

16 A Yes, correct.

17 Q And that decision was made on the 7th, that consent to settle
18 was dated the 7th and that's two days after Mr. -- oh, I'm sorry. It's Mr.
19 Edgeworth that sends the email to Danny saying just called John, just
20 call Mr. Greene, right?

21 A Yes.

22 Q And you heard your husband testify that he never spoke to
23 Danny Simon once -- I think you said he lost it and told Danny to put
24 something in writing, correct?

25 A Yes.

1 Q And the -- you understood, did you not, ma'am, that the
2 attorney's fees were a line item of damages against Lange, the plumber?

3 A Yes, if you say so.

4 Q Well, I just want to know, did you understand that during the
5 case?

6 A I understood -- can you please rephrase that question?

7 Q Sure. You understood, did you not, during the litigation of
8 Edgeworth v. Viking that attorney's fees were a line of damages against
9 the Lange defendant?

10 A Yes.

11 Q Similarly, you understood that the loan and the interest
12 rates -- they went from about 2 to 3 percent interest a month, were line
13 items of damages in Lange or the Viking case, correct?

14 A Yes.

15 Q And you talked -- you told the Judge about the hardship that
16 you went through, and it was trying times and financially difficult. And
17 one of the emails where you're have this tough time is you're taking off
18 on vacation the day the inquiry is where should we send the bill, right?

19 A Yes.

20 Q Okay. You all are very sophisticated business folks. True?

21 A Yes.

22 Q You knew that by borrowing money from your mom and
23 your husband's buddy at these usury rates or 25, 30 percent interest a
24 year, that you could increase your property damage in a property
25 damage claim against Lange and Viking, correct?

1 A No.

2 Q You didn't know that?

3 A That's not why we did it, if that's what you're --

4 Q I asked you did you know it?

5 A Yes.

6 Q Right. It --

7 A Though not necessarily that we would get it back, Mr.

8 Christiansen.

9 Q Okay. Ma'am, could you just listen to my question? You
10 knew you were trying to increase your damage calculation against Lange
11 and Viking, correct?

12 A Yes.

13 Q Okay. Because it's not as if you couldn't have got the money
14 other places, true?

15 A No, that's not true.

16 Q Your husband could have sold his bitcoin.

17 A There were a lot of business ramifications for that and that
18 was not --

19 Q Ma'am, that's not what --

20 A -- something we wanted to do.

21 Q I recognize, ma'am, that you made a business choice, a smart
22 people choice to borrow money. My question to you is, that wasn't your
23 only option. Fair? You had other options. That just -- was the smartest
24 one in Brian's prudent decision making as he described it for me.

25 A Sure.

1 Q Okay. You borrowed money from your mom?

2 A Sure.

3 Q You're mom's not going to sue you, if you didn't pay you
4 back, was she?

5 A No.

6 Q Right. Colin wasn't going to sue Brian if he didn't pay him
7 back, was he?

8 A I can't answer for Colin.

9 Q So all this risk that we've been hearing about for weeks on
10 end that you guys wore all this risk, and it was so stressful. You're not
11 stressed that your mom's going to do something bad to you, are you?

12 A No. I'm not --

13 Q Okay.

14 A -- stressed about my mom.

15 Q All right. Do you remember ever writing -- do you remember
16 in Mr. Vannah's consent to settle document, the one dated December
17 7th, where you all agreed that you'd been made more than whole?

18 A Yes.

19 Q Okay. And you agreed to that then and I think you told me
20 you agree to that now?

21 A Yes.

22 Q And that's whole with the 4 million you've already taken and
23 put it your own bank account and paid back your relatives and friends
24 and done the rest with whatever folks do with their money?

25 A Yes.

1 Q Okay. And earlier you said, in response to Mr. Greene's
2 questions, that you got the check, I think January 21st, and the very next
3 day, you paid everybody back, to the tune of I think, 1.1 million bucks.

4 A Yes.

5 Q Okay. So, you had 1.1 million bucks already sitting in your
6 bank accounts?

7 A No. We took the proceeds from the money that we received
8 from the trust and paid them back.

9 Q So you're telling the Judge you got a cashier's check or some
10 type of check that your bank negotiated for you in 24 hours and you
11 wrote checks out to other people?

12 A I don't know the exact circumstances --

13 Q Yeah, you do.

14 A -- but yes.

15 Q You knew them this morning. You knew and you said under
16 oath you had a check on day one. On day two, you paid everybody back.
17 True?

18 A We received the money on the 21st and we paid them back
19 on the 22nd, yes.

20 Q So where are the checks?

21 A Mr. Greene has them.

22 MR. GREENE: Do you want to see them, Pete?

23 BY MR. CHRISTIANSEN:

24 Q Haven't been produced. Are you telling the Court that the
25 checks can clear in one day or are you telling the Court that you had 1.1

1 million bucks sitting in your --

2 A I don't think the checks cleared that day, because they
3 needed to be mailed, and so they weren't cleared the same day, so there
4 was probably sometime in between the depositing of the funds from the
5 trust and the checks.

6 THE COURT: Can I see them, Mr. Greene?

7 MR. GREENE: Absolutely, Your Honor.

8 THE COURT: Mr. Christiansen, if you could approach.

9 MR. VANNAH: Should we mark them as exhibits?

10 MR. GREENE: I haven't seen them. Sure.

11 MR. CHRISTIANSEN: I would see them, sure. Looks great.

12 THE WITNESS: I think there's a date on there, where it
13 shows that it actually cleared.

14 [Counsel confer]

15 BY MR. CHRISTIANSEN:

16 Q I'll ask her. I would just ask her. Did they clear the same
17 day? Do you know? Mr. Vannah is whispering that they did clear the
18 same day.

19 A I don't know.

20	Q	All right.
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21 MR. VANNAH: I could help with that. Do you want to know?

22 MR. CHRISTIANSEN: I hear --

23 MR. VANNAH: Our banks called each other, and they cleared
24 the funds the same day.

25 THE COURT: Okay.

1 MR. CHRISTIANSEN: Okay.

2 BY MR. CHRISTIANSEN:

3 Q Ms. Edgeworth, let's back up. Remember the cross that
4 bridge when we come to it email?

5 A Was that about the fee in the beginning, Mr. Christiansen?

6 Q It was.

7 A Yes.

8 MR. VANNAH: Should we mark those and put them in
9 exhibits?

10 THE COURT: Do you guys want these admitted?

11 MR. GREENE: Please.

12 MR. VANNAH: Please, yes. I'd like to make those exhibits.

13 THE COURT: Okay. Just next in line?

14 MR. GREENE: Please.

15 MR. CHRISTIANSEN: Which numbers would they be, Your
16 Honor, just so I can write them down? 92 and 3 maybe or something
17 like.

18 MR. GREENE: Probably more than that.

19 [Court and Clerk confer]

20 MR. GREENE: 94 and 5 maybe.

21 [Court and Clerk confer]

22 THE COURT: Okay. So, 92 will be the \$437 check.

23 MR. GREENE: Judge --

24 THE CLERK: We just assigned 92 and 93.

25 MR. GREENE: -- I think 92 might have been the photos of the

1 boxes of the exhibits.

2 MR. CHRISTIANSEN: They were, Judge.

3 MR. GREENE: And then the photos of the emails might have
4 been 93.

5 THE CLERK: Correct.

6 THE COURT: So -- but there was two -- well, there were two
7 photos of the boxes, so did you want both of those? So that would be
8 92 --

9 MR. CHRISTIANSEN: Judge, one was a photo of what would
10 have been the production and one was a photo of just the emails.

11 THE COURT: The emails. So, 92 -- can we have those, Mr.
12 Christen --

13 UNIDENTIFIED SPEAKER: And I have tabs for the Clerk when
14 we take a break.

15 THE COURT: Okay. 92 --

16 MR. CHRISTIANSEN: May I approach your Clerk, Your
17 Honor?

18 THE COURT: -- yes. Will be the photos of the boxes.

19 (Defendant's Exhibit 92 marked for identification)

20 THE COURT: 93 will be the emails.

21 (Defendant's Exhibit 93 marked for identification)

22 THE COURT: 94 is the \$437,000 check.

23 (Plaintiff's Exhibit 94 marked for identification)

24 THE COURT: And 95 is the \$728,000 check.

25 (Plaintiff's Exhibit 95 marked for identification)

1 MR. VANNAH: So, since I interjected, somebody is still
2 taking this down, I -- as an officer of the Court, that is what happened is
3 the two banks did talk to each other and -- because with the -- they did
4 clear the checks the same day.

5 THE COURT: Okay. Thank you, Mr. Vannah. Mr.
6 Christiansen.

7 BY MR. CHRISTIANSEN:

8 Q Ma'am, before the beginning of the hearing, where I put your
9 husband as the first witness, did you ever -- you had never seen Exhibit
10 80, Bates stamp 3557, the we'll cross that bridge when we come to it or
11 let's cross that bridge later email. True?

12 A True.

13 Q Yes?

14 A Yes.

15 THE COURT: So, you had never seen that before this
16 hearing?

17 THE WITNESS: No.

18 THE COURT: Okay.

19 BY MR. CHRISTIANSEN:

20 Q And three different times after you and your husband sued
21 Danny Simon, your -- he signed affidavits saying that Mr. Simon agreed
22 from the outset to 550 an hour?

23 A Yes.

24 Q And on all three of those affidavits, he also stated that he
25 hired Danny Simon on May 25th -- 27th, 2016, correct?

1 A Correct.

2 Q At a Starbucks out in Henderson?

3 A Yes.

4 Q And I can show you, just so you. This is Exhibit 80.

5 MR. CHRISTIANSEN: Bates stamp 3552 and 3, John. Mr.
6 Greene. I'm sorry.

7 MR. GREENE: Thank you. That's okay. I am what I am.

8 THE COURT: Can you make that a little bit bigger, Mr.
9 Christiansen?

10 MR. CHRISTIANSEN: I sure will try, Your Honor.

11 MR. VANNAH: I'm glad you asked. I can't see it.

12 THE COURT: Yeah, I can't see it. Okay. Thank you.

13 MR. CHRISTIANSEN: Better, Bob?

14 MR. VANNAH: Yeah, that helps. Thanks.

15 MR. CHRISTIANSEN: Sure.

16 BY MR. CHRISTIANSEN:

17 Q That was -- this email just reflects that that meeting was out
18 there at the Starbucks in Green Valley someplace?

19 A Yes.

20 Q In all the emails -- and I count 2,000-ish emails. Believe me, I
21 wish I didn't, but I did count them. Can you find me an email, just one,
22 that shows your husband or you saying to Danny Simon here's 550
23 bucks and hour? That's what we're going to pay you?

24 A That I said it to Danny?

25 Q Sure.

1 A I'd have to look through all the emails.

2 Q Did you see your husband show anybody an email when he
3 testified that he said this is what we agreed to?

4 A Could you say that again, please?

5 Q Sure. Brian didn't -- Mr. Edgeworth didn't show the Judge
6 an email he wrote reflecting the June 10th meeting, where this phone
7 call or this 550 bucks and hour occurred, correct?

8 A No.

9 Q And in fact, as of June, your husband doesn't even know
10 who's writing the promissory notes.

11 MR. CHRISTIANSEN: This is Exhibit 80 Bates stamp 3505.

12 BY MR. CHRISTIANSEN:

13 Q Whether it's Mark Katz or Danny, correct?

14 A Correct.

15 Q I mean, they far from cemented any type of attorney-client
16 relationship. Can we agree on that?

17 A No.

18 Q Well, what was Danny going to get paid for writing the
19 promissory note?

20 A 550 an hour.

21 Q Hadn't agreed to it yet, ma'am. This is June 5th.

22 A Oh. June 5th. I didn't know that.

23 Q So 550 is the number you and your husband agreed upon,
24 right?

25 A Yes.

1 Q That's what I thought. And can we agree that on June 10th,
2 Mr. Simon's sending emails. And -- with Brian, and there's no mention
3 of 550 bucks an hour? Right. This is June 10th. I'll move it up.

4 A Okay. Yeah. I --

5 MR. CHRISTIANSEN: Sorry, Mr. Greene. That's --

6 THE WITNESS: -- just reading the whole thing.

7 MR. CHRISTIANSEN: -- Exhibit 80.

8 MR. GREENE: Thank you.

9 MR. CHRISTIANSEN: 3499.

10 THE WITNESS: Could you scroll it up, please?

11 BY MR. CHRISTIANSEN:

12 Q Scroll it up? Yes, ma'am.

13 A Yeah. So, I can read it.

14 Q Yep. I'm sorry. I was trying to keep it large so the Judge
15 can -- all of us could see.

16 A Correct. I don't see 550 an hour there.

17 Q And this is your Harvard, Masters in Business husband,
18 right? He graduated from Harvard?

19 A Yes.

20 Q Multinational businessman, right?

21 A Sure.

22 Q And you're a multinational business woman. Sounds like
23 you had -- you went to Taiwan at some point and had a cosmetics line?

24 A Yes.

25 Q Hired dozens of lawyers?

1 A Yes.

2 Q Just asked you -- did you ever put in an email that you
3 thought Mr. Simon had exaggerated his four first invoices?

4 A No, that would be rude, no.

5 Q Did you ever put in an email that you thought Mr. Simon's
6 rate was too high?

7 A No.

8 Q Did you ever acknowledge in your testimony that Mr. Simon
9 told you all that his rate of 550 an hour was a reduced rate?

10 A I don't recall him telling me that, but --

11 Q Well, you looked at all the bills, right?

12 A Yes.

13 Q And I'll just show you the bottom of bill number --

14 MR. CHRISTIANSEN: Exhibit 8, John. Mr. Greene. I'm sorry.

15 BY MR. CHRISTIANSEN:

16 Q See where it says 550 an hour, reduced?

17 A Yes, I've seen that before.

18 Q Okay. So, you knew right from the first bill that Mr. Simon
19 was giving you guys a break on the bill, correct?

20 A It didn't feel like the friends and family rate, Mr. Christiansen.

21 Q Ma'am, I'm not asking what it felt like. I'm asking you what it
22 said on the bill. It said reduced, right?

23 A Yes.

24 Q And in fairness, the initial work done on this case, you heard
25 your husband testify, is for a property damage claim, right?

1 A Yes.

2 Q I mean, at first, Mr. Edgeworth thought it was just going to
3 be a favor. Danny was going to work for free, right?

4 A I don't think he thought Danny was going to work for free.

5 Q Well, that's what he testified to ma'am. So --

6 A Well --

7 Q -- do you accept what he says is true or not? That's what he
8 said.

9 A Okay. Well, I'm just saying what I believe.

10 Q You don't believe him now?

11 A I'm sorry?

12 Q Well, you've been telling me all along you believe your
13 husband. You believe your --

14 A I do believe, yes.

15 Q -- well, he's testified from that witness stand with you in the
16 courtroom that he Danny was going to do him a favor.

17 A Okay. Fair. Yes.

18 Q That's work for free.

19 A Okay.

20 Q Okay.

21 A Sure.

22 Q That changed as the nature of the case changed, correct?

23 A Yes.

24 Q Right. And when the case got into sort of hard and heavy
25 litigation, it was no longer a claim case, correct? It wasn't a friends and

1 family rate property damage claim anymore.

2 A It was still a claims case up until later on, when the
3 discoveries started being made.

4 Q When was that?

5 A I want to say July or August. Somewhere around that time.
6 July of 2016.

7 Q And you --

8 A '17. I'm sorry.

9 Q -- you became aware of that in preparation for this hearing,
10 as opposed to knowing it back then, right?

11 A No. I knew about it then, because my husband told me about
12 the -- all the cases that he had discovered, so.

13 Q Right. And it's your testimony that your husband found
14 everything, right?

15 A Yes.

16 Q And Ms. Ferrel, she was fabricating what she found and the
17 work she did. I think that -- I think the word you used was exaggerating
18 this morning, right?

19 A With regards to the 90 activations.

20 Q And this chart that Ms. Ferrel testified from, have you ever
21 seen it before?

22 A Can you please --

23 Q There you go.

24 A -- minimize it, just so I can see the whole thing? I think I saw
25 this a long time ago, yes.

1 Q Okay. Ashley did this before your husband found anything,
2 right? In time --

3 A I don't know.

4 Q Right. Well, ma'am, you know, that's the concerning thing.
5 Remember when your husband said, I think I've been overbilled, and
6 then I presented him his little chart and he said well, I really don't know.
7 I don't have any evidence of it. Do you remember that testimony?

8 A We can't prove it.

9 Q Okay. That's a little bit like you saying your husband found
10 everything. You don't know, and you can't prove it, right?

11 A That I can prove.

12 Q Okay. I just showed you a chart Ms. Ferrel prepared, showed
13 a cover letter to the judge last week that --

14 A Can I --

15 Q -- that predates --

16 A -- I can --

17 Q -- listen to my question -- that predates in time any of your
18 husband's discoveries. Do you remember that?

19 A No, I don't.

20 Q All right. I didn't think so.

21 MR. VANNAH: You know, I'd move -- I don't think so is kind
22 of -- it's cute in front of a jury, but it's getting old. He's good at that,
23 though.

24 BY MR. CHRISTIANSEN:

25 Q Have you seen this July confidential production from July

1 6th?

2 A What is the contents of that?

3 Q It's production by Viking. Have you -- had you seen it?

4 A Yes.

5 Q Did you see the email where Ms. Ferrel, before you husband
6 and you -- before your husband is given the information, puts in big
7 letters can you say punitive damages?

8 A Yes.

9 Q And that was before Brian even had the information to go
10 through, right?

11 A What do you mean the information to go through? I don't
12 understand what you're asking.

13 Q The Viking productions that he went through and worked
14 with his lawyers on.

15 A The Viking productions. I don't understand that.

16 Q Okay. Well, I'll move on to a different area with you. Do you
17 remember in -- well -- do you agree with all of the assertions made by
18 Mr. Edgeworth and all of the affidavits on behalf of the two entities that
19 sued Mr. Simon?

20 A Could you please --

21 Q Sure.

22 A -- repeat that question?

23 Q Mr. Edgeworth signed affidavits in support of this hearing on
24 February the 2nd, February the 12th and March the 15th of this year. Did
25 you know that?

1 A Yes.

2 Q Did you read those?

3 A Yes.

4 Q He signed those as a co-owner of the two entities that sued
5 Mr. Simon, correct?

6 A Correct.

7 Q Now, you were the other co-owner, correct?

8 A Yes.

9 Q Do you agree with all those statements?

10 A Yes.

11 Q You've ratified those statements, correct?

12 A Yes.

13 Q All right. Do you agree with the statement he put in the third
14 one that as of September, Mr. Simon had been paid in full for all of his
15 work?

16 A I bel -- yes.

17 Q Do you agree with him in -- that he put in his third affidavit
18 that Mr. Simon -- I want to tell you exactly right. Let me stop and back
19 up to -- the 17th is the uncomfortable meeting of November and that's
20 my word, not yours. I'm sorry. I'm just trying to make it easy. Is that
21 fair?

22 A Yes.

23 Q And after the 17th, you're texting Elaina Simon, right? You
24 texted her on November the 23rd and said Happy Thanksgiving.

25 A I did.

1 Q And you're so upset, you're so threatened, you're so
2 extorted, you're such a victim of blackmail that you're talking nicely to
3 Mrs. Simon, correct?

4 A I'm trying to keep the peace, yes.

5 Q And ma'am, were you here in -- when I say here, I mean
6 physically in court, when your husband testified that Danny Simon's
7 November 27th letter was sent at his request? At Brian's request?

8 A Yes.

9 Q So do you remember telling the Judge you -- the letter made
10 you feel terrified and you thought all kinds of untoward things were
11 going on?

12 A Yes.

13 Q And I think the word you used over and over and over is you
14 were stunned to receive the letter?

15 A Yes.

16 Q How can you be stunned to receive a letter your husband
17 requested?

18 A I was stunned at the contents of the letter, Mr. Christiansen.

19 Q All right. Because we're not going to dispute that Brian
20 directed Danny to put in writing what Danny put in writing and you
21 received November the 27th, correct?

22 A Correct.

23 Q That was something he did at Brian's request after Brian sent
24 him an estimation of damages, correct?

25 A Could you please repeat that?

1 Q Sure. Brian on November the 21st gave Mr. Simon an
2 estimation of what he thought his hard damages were?

3 A Yes.

4 Q They were less than \$4 million, correct?

5 A Yes.

6 Q And that was with the 1.5 stigma that Danny had found an
7 expert to attest to, correct?

8 A Yes.

9 Q That was with 220,000 in prejudgment interest, correct?

10 A Yes.

11 Q I mean, it was with a whole bunch of money to fluff it up as
12 high as it could get and it was still not \$4 million, correct?

13 A Those were the costs, yes.

14 Q And that's why the 4 million you received made you more
15 than whole, right?

16 A Sure.

17 Q And Mr. Simon's the lawyer that did the work that got you
18 the 4 million, right?

19 A Yes.

20 Q And I couldn't put my finger on it, but Mr. Simon handed to
21 me. On page 6 paragraph 21, last sentence says, since we've already
22 paid him for his work to resolve the litigation, can't he at least finish
23 what he has been retained and paid for?

24 Did I read that correctly?

25 A Can you tell me what -- in what context this is? What

1 document are we looking at?

2 Q This is your husband's affidavit signed under penalty of
3 perjury dated --

4 A Which affidavit? Can I see --

5 Q Number 1. February 2, 2018, about a month after you sued
6 Mr. Simon, rather than pay him.

7 A Okay. Yes.

8 Q Do you agree with that statement?

9 A Since we've already paid him for this work to resolve the
10 litigation, can't he at least finish what he has been retained and paid for?
11 I think it's taken in the wrong context. We still owe him money for work
12 that he's done.

13 Q Where does it say that?

14 A I don't see --

15 Q Let me make it easy for you. Isn't it true that until your
16 testimony today, you've never conceded you owe Danny Simon money?

17 A No. That's completely wrong.

18 Q Well, before your husband agreed he owed him somewhere
19 between 350 and 450 grand on my cross, did you ever agree you owed
20 him money?

21 A Yes, we owe Danny money.

22 Q Ma'am, your husband signed an affidavit saying, quote,
23 "Since we've already paid him for this work and this work is to resolve
24 the litigation, can't he at least finish what he has been retained and paid
25 for?"

1 Did I read that correctly? Did I read that right, ma'am?

2 A I was trying to read the whole paragraph.

3 Q All right.

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

5 BY MR. CHRISTIANSEN:

6 Q And I'll just show you the complaint, so we'll be consistent.

7 This was the complaint filed January the 4th by you all and the
8 highlighted portions, it says that, Plaintiffs are entitled to declaratory
9 judgment setting forth the terms of the contract as alleged herein that
10 the contract has been fully satisfied by the Plaintiff and that Simon is in
11 material breach of the contract and that Plaintiffs are entitled to the full
12 amount of the settlement proceeds.

13 Did I read that correctly?

14 A Yes.

15 Q Okay. So as of January, when you sued Mr. Simon, you
16 thought you were entitled to all of the 1.9 million and change, correct?

17 A Yes.

18 Q And he was entitled to nothing else, correct?

19 A He was entitled to whatever we owed him to finish up the
20 case as a separate issue.

21 Q As a separate issue. Do you remember in the affidavits when
22 your husband -- all three of them -- was savvy, and he uses the word
23 savvy enough to know that if Mr. Simon hadn't presented damages, he
24 couldn't make a claim for damages?

25 A I don't recall that.

1 Q Okay. You were unfamiliar -- I'll just show it to you, and I
2 think you're going to say you were -- with the agreement with Lange, Mr.
3 Teddy Parker, between him and Mr. Simon to continue out all the dates?
4 Right?

5 A Unfamiliar with it, yes.

6 Q You were unfamiliar with it at the time. Is that true?
7 November 29th.

8 A What do you mean unfamiliar with at the time?

9 Q Did you know it --

10 A I knew that there was a settlement.

11 Q No. This is an agreement with the Lange -- Lange hired a
12 new lawyer, an African-American man named Teddy Parker.

13 A Yes. I was here.

14 Q Member, your husband's scared of Teddy?

15 A I was in the courtroom with Teddy Parker.

16 Q Okay. Do you know Teddy on the 29th agreed with Danny,
17 your lawyer, to extend all the deadlines to produce damage calculations,
18 get experts, et cetera? Did you know that?

19 A Can you say that again? I don't understand.

20 Q Had you ever seen this letter, ma'am, on the 29th of
21 November?

22 A I believe I've seen it before.

23 Q No, ma'am. On the 29th of November, did you know it
24 existed?

25 A No.

1 Q When you hired Mr. Vannah did you know it existed? Same
2 day, 29th.

3 A No.

4 Q Okay. When your husband signed the affidavit saying he
5 was savvy enough to know certain things, isn't it true he didn't know this
6 existed?

7 A I don't understand your question, Mr. Christiansen.

8 Q Very simple. When you're sign -- when your husband's
9 signed the affidavit saying he was savvy enough to know that damages
10 hadn't been put in the calculation spreadsheet, so they couldn't be
11 pursued, isn't it true he didn't know? He -- Brian didn't know that Lange
12 had agreed to extend all the deadlines?

13 A I don't know.

14 Q Just touch on a couple of emails and I'll probably sit down
15 with you. Exhibit 42 is an email sent to you on Monday the 27th. And
16 just so we're clear, the 27th is the day after the Thanksgiving weekend.
17 Is that right?

18 A Two days, I believe.

19 MR. VANNAH: It says Monday.

20 THE WITNESS: 25th is Monday.

21 BY MR. CHRISTIANSEN:

22 Q Monday would be -- Sunday would be the end of the
23 weekend?

24 A Okay. Yes.

25 Q That's okay.

1 A Sure.

2 Q No problem. Mr. Simon's saying, Please review and advise
3 me of your position at your earliest possible convenience. If you'd like to
4 discuss please call me anytime. Thanks.

5 A Yes.

6 Q And it's this email that I wrote it down, you felt outrage from.
7 Right? Outrage was your word. You got this email. You got his
8 proposal and you were outraged?

9 A After I read the proposal, yes.

10 Q And then it's in response to this email as the day goes on
11 and Mr. Greene did it with you sort of chronologically that you're telling
12 him hey, we're going to come sit with you. We're going to come sit with
13 you when Brian gets back and then ultimately, rather than that, you go
14 hire Vannah & Vannah?

15 A I was stalling for some time to figure out what to do.

16 Q Just -- I'm just meaning chronologically that's what
17 happened. In August of 2017, was there any money on the table to settle
18 your case against Viking?

19 A August 2017, no.

20 Q So why did your husband sign an affidavit saying that after a
21 substantial sum of money was offered, Mr. Simon wanted to change the
22 contract?

23 A He was referring to the 6 million dollar of the settlement
24 agreement.

25 Q Okay. That didn't happen until November, right?

1 A Yes.

2 Q And you and I can agree -- probably not on much -- but that
3 your husband authored an email unsolicited. There's no email saying --
4 from Danny saying tell me what you want to do. Brian wrote an email
5 entitled contingency, right?

6 A Yes.

7 Q And that email says what it says. I'm not going to get into it
8 with you. You didn't write it?

9 A Correct.

10 Q You didn't read it?

11 A I read it.

12 Q You didn't read it at the time.

13 A Not the day it was written.

14 Q You likely didn't read it until this fee dispute occurred. Fair?

15 A No. I've heard about that email, because Brian and I spoke
16 about the contingency fee, that conversation that he had with Danny at
17 the San Diego meeting.

18 Q Right. And that's when everybody agreed the case had
19 changed, right? It was a different beast.

20 A Sure.

21 Q Your husband -- I'm paraphrasing -- said nobody could have
22 predicted this when we started. Fair?

23 A Sure. Fair.

24 Q Nobody had an agreement about this new beast? Right?
25 That the case had become, it had become a beast. To use your words, it

1 was consuming your husband?

2 A Yes.

3 Q Okay. Nobody had ever contemplated a friends and family
4 favor to be something consuming everybody's life. Fair?

5 A Fair.

6 Q And if it was consuming your husband, it likely was
7 consuming Elaina's husband. True?

8 A I don't know.

9 Q I mean, you got to see your husband, right? He's calling
10 Danny on the weekends, at night, on vacation, from different countries.
11 True?

12 A My husband read thousands and thousands of pages of
13 documents and discoveries and talked to all the key people involved, so I
14 saw him working a lot on the case.

15 Q And you heard Mr. Kemp testify, right? Our expert?

16 A Yes.

17 Q And you don't have an expert. Fair?

18 A Correct.

19 Q And you heard Mr. Kemp say there was, in his view, no
20 contract for -- at any time, but much -- for sure not about the new beast
21 that your husband memorialized in the August 22nd email, correct?

22 A He's wrong.

23 Q You heard Mr. Kemp say it. That's all I asked you. True?

24 A Correct.

25 Q All right. And since you don't have an expert, if there's no --

1 you're not a lawyer, right?

2 A No.

3 Q All right. You don't know when an agreement exists, do
4 you?

5 A I'm sorry. Say that again, please.

6 Q You don't know the legal requirements for an agreement, a
7 meeting of the minds? True?

8 A True.

9 Q Okay. And so, you don't have any evidence to dispute Mr.
10 Kemp's opinions, right? Evidence. Not what you think and how you feel
11 and all that other stuff. You don't have any evidence, right?

12 A No.

13 Q Essentially what you're asking the Court to do, if you agree
14 you were made whole with a \$4 million settlement that you've already
15 received is to give you monies that were earmarked as lawyer fees in the
16 settlement, right?

17 A No.

18 Q And you heard Mr. Kemp say he talked to the mediator, who
19 knew and told Will Kemp --

20 MR. GREENE: Object to hearsay on that as well.

21 MR. CHRISTIANSEN: She sat through the trial, Your Honor.
22 She heard the testimony.

23 THE COURT: Are you asking her to testify to a hearsay
24 statement or are you asking her what Mr. Kemp said?

25 MR. CHRISTIANSEN: The latter, Your Honor.

1 THE COURT: Okay. You can ask her what Mr. Kemp said,
2 because he already --

3 BY MR. CHRISTIANSEN:

4 Q You heard Mr. Kemp say --

5 THE COURT: -- testified to it.

6 MR. CHRISTIANSEN: I'm sorry.

7 BY MR. CHRISTIANSEN:

8 Q -- that Mr. Floyd, the gentleman who mediated the \$6 million
9 settlement told him 2.4 of that money was earmarked as attorney's fees,
10 right?

11 A No.

12 Q I mean, Mr. Vannah is the one he did it to and Bob and him
13 got up and they talked back and forth with each other. Do you
14 remember that?

15 MR. GREENE: Mischaracterizes testimony. It's also hearsay.

16 BY MR. CHRISTIANSEN:

17 Q You don't remember that?

18 THE COURT: Well, she said she doesn't remember, and I
19 remember Mr. Kemp's testimony. I remember what he said.

20 BY MR. CHRISTIANSEN:

21 Q And Exhibit 61, these are photos of your home, ma'am. Is
22 that right?

23 A Yes.

24 Q This is the home that you guys now own outright, as I
25 understand Mr. Edgeworth's testimony, correct?

1 A Yes.

2 Q From the money that Mr. Simon got from Viking for you all
3 from a \$500,000 property damage claim, correct?

4 A No.

5 Q Who got the money for you?

6 A I'm sorry. Could you rephrase your question?

7 Q Sure.

8 A I didn't understand the question. Whether --

9 Q The money you used to pay your house off and own it free
10 and clear came from the Viking settlement?

11 A No, that's wrong. We built it with our own cash. It never had
12 a mortgage on it, if that's what your -- I understand your question, Mr.
13 Christiansen.

14 Q Well, I thought you needed to borrow money from people to
15 build the house.

16 A Yes.

17 Q But you didn't need to borrow money from people to build
18 up your damage?

19 A We plan everything, Your Honor. Okay. So, we had certain
20 monies set aside for the volleyball gym, certain money set aside to finish
21 up our house, to furnish it. And then the damage came, which was half a
22 million dollars plus our mountain legal fees. We did not anticipate that.

23 THE COURT: Okay. So, you guys did not use the Viking
24 settlement to pay off this house?

25 THE WITNESS: No.

1 THE COURT: Okay. How was the house paid off?

2 THE WITNESS: We paid for it in cash. We built it slowly over
3 time with cash.

4 THE COURT: And then after the sprinkler busted, you guys
5 did what?

6 THE WITNESS: I'm sorry?

7 THE COURT: After the sprinkler busted, then this litigation
8 occurred.

9 THE WITNESS: Yeah.

10 THE COURT: So, while you guys are in this litigation, are
11 you -- you're borrowing money from your mom --

12 THE WITNESS: Yes.

13 THE COURT: -- and this friend and then you use the Viking
14 settlement to pay them back?

15 THE WITNESS: Yes.

16 THE COURT: But you used all of your own money to redo
17 the stuff in the house?

18 THE WITNESS: Yes.

19 THE COURT: Okay.

20 BY MR. CHRISTIANSEN:

21 Q Just by ease of example, wasn't there an line item for a
22 couple hundred grand to replace all your cabinets in your kitchen?

23 A Yes.

24 Q At least in this photograph, those cabinets have yet to be
25 replaced, correct?

1 A No. They were -- I think they were -- I don't know when this
2 picture is, Mr. Christiansen, so they were replaced at some point.

3 Q Okay. The house that you told the Judge was going to -- you
4 were going to live in really is a spec house you guys were building --

5 A Correct.

6 Q -- as an investment, correct?

7 A Yes.

8 Q And during the litigation, you finished the house and actually
9 listed it for 5 and a half million bucks?

10 A Yes.

11 Q And then just chose to move, I think -- if I get the geography
12 down, you all live down -- used to live down the street and moved up
13 into this 5 and a half million dollar house that you own outright?

14 A Yes.

15 MR. CHRISTIANSEN: Court's indulgence.

16 [Pause]

17 MR. CHRISTIANSEN: Judge, your preference. Do you need
18 me to go through the volleyball emails or has the Court seen enough of
19 them?

20 THE COURT: I've seen plenty of volleyball emails.

21 MR. CHRISTIANSEN: Okay. That concludes cross-
22 examination, Your Honor.

23 THE COURT: Okay.

24 MR. CHRISTIANSEN: Even I know when I'm irritating
25 somebody.

1 THE COURT: Mr. Greene, do you have redirect?

2 MR. GREENE: Just briefly. I promise this time.

3 MR. CHRISTIANSEN: We're all going to finish today, right
4 John?

5 MR. GREENE: Yes.

6 THE COURT: Oh, we're finishing today.

7 REDIRECT EXAMINATION

8 BY MR. GREENE:

9 Q Let's talk about evidence of a contract, okay?

10 A Yes.

11 MR. GREENE: This is Exhibit 2.

12 THE COURT: 2. Okay.

13 BY MR. GREENE:

14 Q Page 1. This is the first invoice that Danny Simon and his
15 law firm sent to you?

16 A Yes.

17 Q Do you see any dates on here?

18 A No.

19 Q He didn't get dates going on until the 8th of August -- sorry,
20 the 19th of August 2016, correct?

21 A Correct.

22 Q You see the first entry?

23 A Yes, initial meeting with client.

24 Q What did he charge you guys for that?

25 A \$550 an hour.

1 Q For how much time?

2 A 1.75 hours.

3 Q Very first meeting, correct?

4 A Correct.

5 Q This is the Starbucks meeting, isn't it?

6 A It is.

7 Q Fourth entry down. We don't have any dates on these, so we
8 don't know when these happened. You as the client don't know when
9 these happened, do you?

10 A No.

11 Q You don't know when Danny is keeping track of his time or
12 when he's actually marking that a discussion with the client took place,
13 correct?

14 A Correct.

15 Q But you are seeing on the fourth entry down, he's billing you
16 4.25 hours for discussion with client, correct?

17 A Yes.

18 Q You're also seeing that second line down. Review file. We
19 don't have a date on that one, either, do we?

20 A No.

21 Q Review file. Several discussions with clients at how many
22 hours?

23 A 4.75.

24 Q And what did he bill you at -- per hour at 4.75 hours?

25 A \$550 an hour.

1 Q How about 4.25 hours?

2 A \$550 an hour.

3 Q From the very beginning -- let's look at the very end, okay?

4 This is part of the superbill, Exhibit 5, page 79. See the very last dated
5 entry for Mr. Simon?

6 A I do.

7 Q Dated what?

8 A January 8th, 2018.

9 Q Travel to Bank of Nevada to X re trust deposit. Do you see
10 that?

11 A Yes.

12 Q Number of hours?

13 A Two and a half.

14 Q What did Mr. Simon bill you, the client per hour for that 2.5
15 hours?

16 A \$550 an hour.

17 Q From the initial meeting with client that we know took place
18 in May of 2016 -- nobody disputes that -- to January 8th of 2018, what
19 has every entry for Mr. Simon been billed at?

20 A \$550 an hour.

21 Q Did he ever send any of the fee checks back to you?

22 A No.

23 Q Did he ever offer to send any of the fee checks that you had
24 sent to him back to you?

25 A No.

1 Q Did they all clear?

2 A Yes.

3 MR. GREENE: I have nothing else, Your Honor.

4 THE COURT: Thank you, Mr. Greene. Mr. Christiansen, do
5 you have any follow up?

6 MR. CHRISTIANSEN: Just one question.

7 THE COURT: Okay.

8 RECROSS-EXAMINATION

9 BY MR. CHRISTIANSEN:

10 Q Ms. Edgeworth, on -- I showed you the first bill. If I were to
11 show you the last line of bills 2, 3 and 4, could we agree that the word
12 reduced is all four -- all three of those bills?

13 A If you say that they are, Mr. Christiansen, yes.

14 Q Okay.

15 MR. GREENE: I just have one more then.

16 FURTHER REDIRECT EXAMINATION

17 BY MR. GREENE:

18 Q Let's take a look at the very last line of Mr. Simon's very last
19 bill, okay?

20 THE COURT: This is the superbill, Mr. Greene?

21 MR. GREENE: This is the superbill.

22 THE COURT: Okay.

23 MR. GREENE: This is page 79.

24 BY MR. GREENE:

25 Q Total fees at 550 per hour. Do you see that, Angela?

1 A I do.

2 Q Where does it say reduced?

3 A It does not.

4 Q Anywhere, does it?

5 A No.

6 Q That's all I have.

7 FURTHER RECROSS-EXAMINATION

8 BY MR. CHRISTIANSEN:

9 Q Just -- Ms. Edgeworth, do you know the date of your first
10 bill? Just the date?

11 A December 6th or 16. Somewhere in December, '16.

12 Q Thank you, ma'am.

13 THE COURT: Anything else, Mr. Greene?

14 MR. GREENE: No, Your Honor.

15 THE COURT: Mr. Christiansen?

16 MR. CHRISTIANSEN: No, ma'am.

17 THE COURT: Okay. This witness may be excused. Ms.
18 Edgeworth, thank you very much for your testimony again today.

19 THE WITNESS: Thank you, Your Honor.

20 MR. GREENE: I think your estimation of time of Mr. Vannah's
21 was more accurate than Mr. Christensen.

22 THE COURT: Me and Mr. Vannah just aren't as optimistic as
23 Mr. Christensen.

24 MR. CHRISTENSEN: I did use the word fantasy, and I know
25 what it means.

1 MR. VANNAH: I'm outraged. I'm outraged and shocked.

2 THE COURT: Okay. So --

3 MR. GREENE: Please don't tell us how you know that.

4 THE COURT: -- it's 4:25. I think everybody has an
5 understanding and nobody is going to close today.

6 MR. VANNAH: I'm too tired.

7 MR. CHRISTIANSEN: No, ma'am.

8 THE COURT: I understand, Mr. Vannah. So, what we're
9 going to do is I'm going to get your closing arguments in writing.
10 They're going to be blindly done. We're not going to do a closing and
11 then a response and a reply. They're going to be blindly done by both
12 parties. If you could submit those to chambers by Friday at 5:00.

13 MR. CHRISTIANSEN: Perfect.

14 MR. VANNAH: Could you give us like until Monday, so we
15 can have the weekend?

16 THE COURT: Mr. Vannah. Yeah, Monday at 5:00 is fine.

17 MR. VANNAH: Monday at 5:00.

18 THE COURT: Yes.

19 MR. VANNAH: Yeah. That way we have a little more time.

20 THE COURT: Okay.

21 MR. CHRISTIANSEN: Thank you, Your Honor.

22 MR. GREENE: Thank you, Your Honor.

23 MR. CHRISTENSEN: Thanks for all you're accommodating
24 me, Judge. I really appreciate it.

25 THE COURT: No, I appreciate it. It's fine. I just have to not

1 get Judge Herndon mad at me.

2 MR. CHRISTIANSEN: Oh, he'll take it out on me. Don't worry
3 about it.

4 THE COURT: Yeah. My goal is to not get Judge Herndon
5 mad at me. I was very nice to him when I called him.

6 [Proceedings concluded at 4:29 p.m.]
7
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18

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

22 
23

24 Maukele Transcribers, LLC

25 Jessica B. Cahill, Transcriber, CER/CET-708

Peter S. Christiansen, Esq.
Nevada Bar No. 5254
CHRISTIANSSEN LAW OFFICES
810S. Casino Center Blvd., Ste. 104
Las Vegas, NV 89101
(702)240-7979
-and-
James R. Christensen Esq.
Nevada Bar No. 3861
JAMES R. CHRISTENSEN PC
601 S. 6th Street
Las Vegas NV 89101
(702) 272-0406
Attorneys for SIMON

**Eighth Judicial District Court
District of Nevada**

EDGEWORTH FAMILY TRUST; and
AMERICAN GRATING, LLC

Plaintiffs,

vs.

LANGE PLUMBING, LLC; THE VIKING
CORPORTATION, a Michigan corporation;
SUPPLY NETWORK, INC., dba VIKING
SUPPLYNET, a Michigan Corporation; and
DOES 1 through 5; and, ROE entities 6 through
10;

Defendants.

EDGEWORTH FAMILY TRUST;
AMERICAN GRATING, LLC

Plaintiffs,

vs.

DANIEL S. SIMON; THE LAW OFFICE OF
DANIEL S. SIMON, a Professional Corporation
d/b/a SIMON LAW; DOES 1 through 10; and,
ROE entities 1 through 10;

Defendants.

CASE NO.: A-18-767242-C
DEPT NO.: XXVI

Consolidated with

CASE NO.: A-16-738444-C
DEPT NO.: X

CLOSING ARGUMENTS OF LAW
OFFICE OF DANIEL SIMON

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1 **CLOSING ARGUMENTS OF LAW OFFICE OF DANIEL S. SIMON**

2 Daniel Simon and Law Office of Daniel S. Simon d/b/a Simon Law (jointly the
3 “Defendants” or “Law Office” or “Mr. Simon”) submits their closing arguments in support of
4 their motion to adjudicate the attorney’s lien and motions to dismiss.
5

6 **I.**

7 **INTRODUCTION**

8 Danny and Eleya Simon were close family friends with Brian and Angela Edgeworth
9 for many years. The families travelled abroad together, and they routinely helped each other out
10 when needed. Angela Edgeworth agrees Eleya Simon was a close friend who helped plan her
11 father’s funeral. However, after one discussion about attorney’s fees owed, the Edgeworths,
12 ended the friendship and personally sued Mr. Simon for punitive damages. They sued Mr. Simon
13 before he even had the ability to deposit the settlement money solely as a tactic to avoid paying
14 him a reasonable fee.
15

16 On April 10, 2016, a house Brian Edgeworth started building as an investment suffered a
17 flood. Lange, the plumber, installed a defective Viking fire sprinkler that caused the flood. The
18 flood caused about \$500,000 in damage.

19 Mr. Edgeworth decided not to buy course of construction insurance, so he had to look to
20 Lange to pay or repair. Lange refused to pay or repair the flood damage, blaming the defective
21 Viking fire sprinkler.

22 Mr. Edgeworth first tried to resolve the claim on his own. Mr. Edgeworth got nowhere.
23 Mr. Edgeworth soon realized that he needed an attorney.

24 At the outset, the Edgeworths had difficulty finding an attorney. The Edgeworths felt it
25 would be too costly to pay an hourly lawyer full time at full rates and looked for a favor.

1 Given the Edgeworths self-imposed limits on what they would pay, on May 27, 2018,
2 the Edgeworths decided to ask their friend, Mr. Simon, for a favor:

3 Hey Danny:

4 I do not want to waste your time with this hassle (other than to force you to listen me
5 bitch about it constantly) and the insurance broker says I should hire Craig Marquiz and
6 start moving the process forward. Should I just do that and not bother you with this? My
7 only concern is that some goes nuclear (with billing and time) when just a bullet to the
8 head was all that was needed to end this nightmare (and I do not know this person from
9 Adam).

10 ...

11 Okay, I will type up the summary with all the documents today and then get them to you
12 somehow. I would rather pay you and get it resolved than have someone like Craig drag
13 this in forever.

14 *See, Exhibit 80, SIMONEH0003557-0003558.*

15 Mr. Simon agreed to help his friends with the flood claim and to send a few letters.
16 Because they were friends, Mr. Simon took the case on a friends and family basis and deferred a
17 discussion on attorney fees. Danny specifically said “we will cross that bridge later.” *See,*
18 **Exhibit 80, SIMONEH0003557-0003558.**

19 *There was no express written or oral agreement on fees at the “outset”¹ of the case.* Mr.
20 Simon took the case as a favor in the belief that the Law Office could push Lange and Lange’s
21 insurance carrier to pay the property loss claim, especially given the clear language of the
22 contract between Lange and the Edgeworths.

23 In June of 2016, the Law Office filed a complaint. The case did not begin to heat up
24 until December of 2016. While the case began as a favor, it grew into a complex products
25 liability case with many other aspects, including breach of contract claims, contract
interpretation, property damage, construction building codes, insurance coverage, engineering,

¹ See all three of Mr. Edgeworth’s affidavits clearly state it was agreed to at the “outset.” *See, Exhibits 16, 17 and 18.*

1 manufacturing, weather sciences and punitive damages.

2 The Edgeworths openly admit that the case dramatically changed from where it started as
3 a favor and turned into a beast. There was never a meeting of the minds as to compensation. Mr.
4 Kemp credibly testified that in his expert opinion, the email confirms there was no express or
5 implied agreement for compensation as Mr. Edgeworth was looking for terms based on several
6 options, including an hourly, contingency or hybrid. The email states as follows:

7 “We never really had a structured discussion about how this might be done”

8 ...

9 I could also swing hourly for the whole case (unless I am off what this is going to cost). I
10 would likely borrow another \$450k from Margaret in 250 and 200 increments and then
either I could use one of the house sales for cash or if things get really bad, I still have a
couple million in bitcoin I could sell.”

11 *See, Exhibit 27.*

12 Mr. Edgeworth openly admitted that there was not agreement as to the punitive aspect of
13 the case as nobody could have contemplated it at the beginning of the case that started as a favor.
14 Mrs. Edgeworth also testified that the case changed when it became a “beast” and there was
15 never an agreement for compensation for the new aspect of the case. Since the case became a
16 new case, Mr. Kemp made it abundantly clear that the evidence of the August, 22, 2017 email
17 confirms that there was no contract at all, and the lack of any other evidence supporting a
18 different conclusion confirms that compensation for the new case was never reached.

19 The Court saw firsthand the excellent work of the Law Office. The original cost of
20 construction of the house, including land acquisition was about \$3 million. The cost to repair
21 flood damage was about \$500,000. The entire case settled for \$6.1 million.

22 Mr. Will Kemp testified that the result was beyond amazing. Mr. Kemp said the
23 settlement amount was the highest for a single home product defect in Nevada history. Mr.
24 Kemp also testified that the case would not have gotten off the ground if Mr. Simon did not take
25

1 the case as a favor.

2 On December 7, 2017, the Edgeworths signed a "Consent To Settle" on the advice of the
3 Vannah firm and against Simon's advice. *See*, **Exhibit 47**. This form was signed by both, Mr.
4 and Mrs. Edgeworth who acknowledge "**We have been made more than whole.**" *Id.* This was
5 also re-affirmed by the Edgeworths at the hearing. The Edgeworths received \$4 million cash in
6 January of 2018. Even though they were made "more than whole" they now seek the remaining
7 \$1,977,843.80, held in the trust account. The disputed amount left in the trust account was
8 earmarked by the mediator, Floyd Hale, as attorney's fees when Mr. Hale made the \$6 million
9 mediator's recommendation. The choice now is to grant the money earmarked for attorney's fees
10 to the attorney that did the work with a great result; or, to give the money to the clients who have
11 already received \$4 million for a \$500,000 property damage claim and "have been made more
12 than whole."

13
14 The Edgeworth's view of the value of legal services is contrary to the law and not
15 supported by any evidence. Mr. Edgeworth testified about what he thinks of the value of legal
16 services. At the end of day two, Mr. Edgeworth testified he would have been interested in a deal
17 with the Law Office in which the Law Office paid off the loans the couple took from Angela's
18 mother and Brian's friend. At 4:42 p.m. of the video on day 2, Mr. Edgeworth testified that he
19 thought his negotiating position improves and the value of legal services goes down as the Law
20 Office devoted more time to the case and made the case more valuable.

21 This is the core of the dispute. The Edgeworths believe the money due the Law Office
22 goes down as the hours spent by the Law Office goes up and the case is made more valuable;
23 while the Law thinks the opposite. The Law holds that the payment due increases as time spent
24 on the case increases and when the value of the case increase.
25

1 Mr. Simon worked on the case with the understanding that the Law Office would
2 receive a reasonable fee at the end, in part, dependent on the result obtained. Mr. Simon's
3 understanding was that he was due quantum meruit, per the Law. Of course, Mr. Simon also
4 thought, incorrectly, that he could reach an agreement with his friends on what the reasonable
5 amount would be. The facts and the law of this case support a finding by the Court of quantum
6 meruit. If the court determines that a contract did not exist for compensation and/or Mr. Simon
7 was constructively discharged, the court is free to determine the reasonable amount of the
8 services rendered based on quantum meruit.

9 II.

10 **CONSTRUCTIVE DISCHARGE / TERMINATION**

11 Constructive discharge of an attorney may occur under several circumstances.

- 12 • Refusal to communicate with an attorney creates constructive discharge. *Rosenberg v.*
13 *Calderon Automation*, 1986 Ohio App. LEXIS 5460 (Jan. 31, 1986).
- 14 • Refusal to pay an attorney creates constructive discharge. *Christian v. All Persons*
15 *Claiming Any Right*, 962 F. Supp. 676 (U.S. Dist. V.I. 1997).
- 16 • Suing an attorney creates constructive discharge. *Tao v. Probate Court for the Northeast*
17 *Dist. #26*, 2015 Conn. Super. LEXIS 3146, *13-14, (Dec. 14, 2015). See also *Maples v.*
18 *Thomas*, 565 U.S. 266 (2012); *Harris v. State*, 2017 Nev. LEXIS 111; and *Guerrero v.*
19 *State*, 2017 Nev. Unpubl. LEXIS 472.
- Taking actions that preventing effective representation creates constructive discharge.
20 *McNair v. Commonwealth*, 37 Va. App. 687, 697-98 (Va. 2002).

21 The Edgeworths did all the above and more. Constructive discharge occurred when the
22 Edgeworths hired a different lawyer, stopped talking to the Law Office, stopped following the
23 advice of the Law Office, accused the Law Office of an intent to steal \$6 million dollars, refused
24 to deposit settlement proceeds in the trust account and sued the Law Office for conversion and
25 requested punitive damages.

1 Mr. Simon credibly testified that when he received the letter of direction on November
2 30, 2017, he believed he had been fired. *See*, **Exhibit 43**. Mr. Vannah's firm was retained on
3 November 29, 2017 to represent the Plaintiffs for the Viking claims. The retainer specifically
4 states, as follow:

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

10 ...
11 (b) \$925 an hour for attorney time for Robert D. Vannah and John B. Greene

12 (c) Client agrees that his attorneys will work to consummate a settlement of \$6,000,000
13 from the Viking entities and any settlement amount agreed to be paid by the Lange entity.
14 Client also agrees that attorneys will work to reach an agreement amongst the parties to
15 resolve all claims in the Lange and Viking litigation.

16 *See*, **Exhibit 90**, Vannah Retainer Agreement. Thereafter, Mr. Vannah's firm solely advised the
17 Edgeworths on all aspects of the case and settlement.

18 The Edgeworths had no direct contact with Mr. Simon and refused to speak with Mr.
19 Simon even prior to Mr. Vannah's involvement. The last verbal conversation Mr. Simon had
20 with the Edgeworths was on or about November 25, 2017 when Mr. Edgeworth requested the
21 proposed retainer in writing. The last email correspondence with the Edgeworths was on
22 November 29, 2017 when Mrs. Edgeworth promised to meet with Mr. Simon when Mr.
23 Edgeworth returned from China. *See*, **Exhibit 44**. She later admitted that these were false
24 promises to mislead Mr. Simon.

25 Mr. Simon had already been negotiating the terms of the settlement with Viking during
the week of November 27, 2017 prior to Mr. Vannah's involvement. These negotiated terms
were put into a final release signed by the clients and Mr. Vannah's office on December 1, 2017.
See, **Exhibit 5**. Mr. Simon's name is not contained in the release; Mr. Vannah's firm is expressly

1 identified as the firm that solely advised the clients about the settlement. The provision of the
2 release, V.(E) states, as follows:

3 E. PLAINTIFFS represent that their independent counsel, Robert Vannah, Esq. and
4 John Greene, Esq., of the law firm Vannah & Vannah has explained the effect of this
5 AGREEMENT and their release of any and all claims, known or unknown and, based
6 upon that explanation and their independent judgment by the reading of this Agreement,
7 PLAINTIFFS understand and acknowledge the legal significance and the consequences
8 of the claims being released by this Agreement. PLAINTIFFS further represent that they
9 understand and acknowledge the legal significance and consequences of a release of
10 unknown claims against the SETTLING PARTIES set forth in, or arising from, the
11 INCIDENT and hereby assume full responsibility for any injuries, damages, losses or
12 liabilities that hereafter may occur with respect to the matters released by this Agreement.

13 *See, Exhibit 5.*

14 The Law Office filed their Notice of Attorneys lien on December 1, 2017 recognizing the
15 need to do so since Mr. Simon was effectively discharged. *See, Exhibit 3.* However, Mr. Simon
16 continued to work on the case to protect the client's interest and at the specific direction of the
17 Vannah firm.

18 On December 7, 2017, Lange offered the sum of \$100,000 to resolve the entire claim
19 against Lange Plumbing. Mr. Simon sent a letter advising Mr. Vannah that the Lange claim was
20 a sizeable claim as it allowed for reimbursement of attorney's fees and costs incurred for
21 enforcing the warranty against the Viking Defendants. *See, Exhibit 46.* Mr. Simon previously
22 advised the clients at the November 17, 2017 meeting and throughout the litigation that the claim
23 against Lange was a valid claim that was valuable to recover the attorney's fees and costs paid
24 from the Viking settlement.

25 Later that same day, the Edgeworths signed a "Consent to Settle" the Lange claims for
\$100,000. *See, Exhibit 47.* Vannah advised the clients that they were made "more than whole
from the Viking settlement." Mr. Edgeworth also testified that they were "made more than
whole" during the evidentiary hearing:

1 PETE CHRISTIANSEN: So you agree with Mr. Vannah's assessment that as a result
2 of Mr. Simon's work on the punitive aspect of your case,
3 you were over paid? Right? Made more than whole,
4 correct?

5 BRIAN EDGEWORTH: Correct, they paid me more than.

6 *See, Brian Edgeworth Testimony on August 27, 2018 at 3:52:00.*

7 The clients followed Mr. Vannah's advice and chose not to follow the advice of Mr.
8 Simon. Regardless of the advice given, it is clear that the there was a breakdown in the attorney-
9 client relationship preventing Mr. Simon from effectively representing the clients. This further
10 confirmed the intentions of the Edgeworths to discharge Mr. Simon as of November 29, 2017
11 upon retaining the Vannah firm.

12 Prior to receiving the settlement proceeds from Viking, the clients, through their lawyer,
13 Mr. Vannah, made accusations that they believed the Law Office would steal the money and
14 would not allow Mr. Simon to deposit the settlement proceeds in his trust account. *See, Exhibit*
15 **48**. This is substantial evidence of a breakdown in the attorney-client relationship preventing Mr.
16 Simon from effectively representing the clients. Mr. Vannah was already suggesting they were
17 going sue Mr. Simon at that time. *See, Exhibit 48*.

18 The clients demanded that a new trust account be opened with Mr. Vannah as a signer to
19 deposit the Viking settlement proceeds. *See, Exhibit 50*. Mr. Simon complied with their unusual
20 request. Prior to depositing any settlement proceeds in the bank account, the Edgeworths,
21 through their counsel, Mr. Vannah, sued Mr. Simon for conversion of the settlement proceeds on
22 January 4, 2018. *See, Exhibit 19*. The settlement money was not deposited until January 8, 2018
23 and did not clear the bank for another week thereafter. The filing of the lawsuit is substantial and
24 compelling evidence that there was a breakdown in the attorney-client relationship preventing
25 Mr. Simon from effectively representing the clients.

1 The breakdown in the attorney-client relationship began as early as November 25, 2017
2 when the client's last spoke to Mr. Simon and all acts thereafter confirm that once Mr. Vannah's
3 firm was retained, the Law Office was constructively discharged.

4 The Edgeworth's assert that because Mr. Simon has not been expressly terminated and
5 since he has not withdrawn and is still technically their attorney of record, there cannot be a
6 termination. Mr. Edgeworth was not credible when he testified in his affidavit that Mr. Simon
7 was paid in full for his services and he was already paid for the work to finalize the settlement. In
8 his affidavit Mr. Edgeworth states "Since we've already paid him for his work to resolve the
9 LITIGATION, can't he at least finish what he's been retained and paid for? (*See, Exhibit 17*, 2-
10 12-18 affidavit, 7:11-12) Mr. Edgeworth also alleged that Mr. Simon was paid in full in his
11 complaint filed on January 4, 2018. *See, Exhibit 19*. Mr. Edgeworth contradicted himself under
12 oath when he testified at the evidentiary hearing that Mr. Simon is still owed a substantial sum
13 and was not paid in full. Mr. Edgeworth also testified that he always believed that Mr. Simon
14 was owed money even prior to the filing of the complaint. An email from Mr. Vannah dated
15 January 9, 2018, intimates that if Mr. Simon withdrew there would be harsh consequences. *See,*
16 **Exhibit 53**. The Court should find that Mr. Simon was merely fulfilling his ethical duties after
17 his termination by putting his clients' interests above his own and doing whatever acts were
18 necessary to protect the interests of the clients. Mr. Simon's compliance with his ethical duties
19 was also confirmed by the expert opinion of David Clark, Esq. who is a former long-standing
20 Nevada State Bar counsel. *See, Exhibit 2*.

22 The **Court should find** that Mr. Simon was constructively discharged and there was no
23 just cause for his termination. If this finding is made, quantum meruit is used to determine the
24 amount of the lien.
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III.

AN EXPRESS HOURLY FEE AGREEMENT WAS NOT FORMED

Mr. Edgeworth's proffered testimony is the only piece of evidence to suggest that an express agreement was made for \$550 an hour. At the evidentiary hearing, Mr. Edgeworth testified for the first time that an express oral contract was formed on a phone call on June 10, 2016. The claim of contract formation during a June 10, 2016 phone call, contradicted the earlier testimony by Mr. Edgeworth made in his three declarations submitted to the court, contradicted the facts alleged in the Edgeworths' complaints, and contradicted his attorney's opening statement at the evidentiary hearing. In the Edgeworth declarations, complaint and opening statement, Edgeworth said the express oral contract was formed at the outset of the retention, which occurred on May 27, 2016. *See, Exhibits 16, 17, 18, 19 and 20.*

Mr. Edgeworth, through counsel, asserted that the conversation of May 27, 2016, that an express oral contract was formed to pay \$275 an hour for the work of Law Office associate Ashley Ferrel, Esq. Mr. Simon denied any hourly fee was discussed let alone a fee for Ashley Ferrel. Mr. Edgeworth later conceded that the fee of Ms. Ferrel was never discussed. Mr. Edgeworth also testified that he was billed a week after the retention. He testified, as follows:

PETE CHRISTIANSEN: Sir you just told the Court Danny took the case as a favor, do you remember that?

BRIAN EDGEWORTH: Yeah and a week later he started billing me.

See, Brian Edgeworth Testimony on August 27, 2018 at 1:43:00.

This contradicted the undeniable evidence that the first bill was not created and sent to Edgeworth until December, 2016.

Ms. Ferrel did not work on the case until briefly in late December of 2016 and significant time until January of 2017. On cross examination, Mr. Edgeworth admitted that her

1 fee was never discussed at the outset. He also confirmed a bill from Ms. Ferrel was not provided
2 until 14 months later. Mr. Simon did not send a bill for six months after the retention. This
3 further supports Mr. Simon's version that a specific hourly fee amount of \$550 was never
4 discussed.

5 Mr. Edgeworth sent Mr. Simon almost 2,000 emails within 18 months and never
6 stated that there was an hourly contract only for \$550 an hour. The June 10, 2016 phone
7 conversation was first testified to by Mr. Edgeworth at the evidentiary hearing and is not
8 contained in any of the three (3) very detailed affidavits that Mr. Edgeworth prepared setting
9 forth his version of the dispute. The June 10, 2016 conversation is inconsistent with his lawyer's
10 opening statement asserting the oral agreement was made point blank at the outset of the
11 representation on May 27, 2018. Mr. Edgeworth tried to suggest outset, which means the
12 beginning, actually meant something else like several weeks after the beginning. This new
13 explanation was created to get around the "cross that bridge later" email from Mr. Simon on May
14 27, 2016, concerning the fees. There is no evidence to support Mr. Edgeworth's contention that a
15 phone call occurred wherein the parties expressly agreed orally to an hourly representation of
16 \$550 an hour. He could have, but did not provide his own phone bill. The email from Mr. Simon
17 on June 10, 2016, when he was out of town, does not reference this crucial phone call. *See*, June
18 10, 2016 email, attached as **Exhibit 80, SIMONEH0003500**.

19
20 Mr. Simon never sent a bill for six months after he started working on the case
21 and credibly explained the reasons for the bills created and the reasons that Mr. Edgeworth chose
22 to pay them, which is discussed in further detail below. Ms. Ferrel credibly testified that the
23 hourly rate of Mr. Simon was first discussed between herself and Mr. Simon only in December,
24 2016, to determine an amount to establish damages in the Lange claim only. The amount of \$550
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1 was determined by using an amount less than what was already approved by the Court in another
2 case and used so that the Defendants would not dispute the amount as damages for the Lange
3 claim. Mr. and Mrs. Edgeworth both admitted that they clearly understood the bills were used for
4 damages in the Lange claim. It was never stated that the \$550 an hour was an amount already
5 agreed to with Edgeworth, which was expressly denied.

6 When the Early Case Conference happened in November, 2016, Mr. Simon had to
7 go back and recreate a bill to produce under NRCP 16.1. The initial bill also had a lot of lost time
8 as the bill was recreated and did not include a lot of emails and phone discussions. Yet, the
9 Edgeworths now want to complain the bill was too high. The Edgeworths both concede they
10 never suggested the bills were too high to Mr. Simon. To the contrary, the Edgeworths both
11 admitted on the stand they knew the bills were used as damages in support of the Lange claims.
12 As sophisticated and detailed as the Edgeworths are, they both denied knowing that the 2,000
13 emails and numerous phone calls were not contained in the bills they received. Yet, they want to
14 complain about the time entries, even in the initial bill, was against their favor. Again, they have
15 no basis for this testimony. Their credibility is completely gone when suggesting \$550 an hour is
16 too high, when they already acknowledge the reasonable fee in the Viking matter is \$925 an
17 hour. This is not a patent or trademark case.

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19 The Edgeworths may argue that they did not know payment was optional. Mr.
20 Simon made it clear in his testimony that costs were expected to be reimbursed, but it was Mr.
21 Edgeworth that chose to pay the bills. He wanted to justify the high interest loans. Mr. Simon
22 never sent an email suggesting he wanted the bills paid and in fact did not bill frequently. Also,
23 Mr. Edgeworth sent a check and then tracked when it was not cashed urging Mr. Simon to cash
24 it. *See, Exhibit 30.*
25

1 **A. While an implied contract between lawyer and client existed, there was no**
2 **agreement on the payment term.**

3 A contract implied-in-fact must be "manifested by conduct"; it "is a true contract that
4 arises from the tacit agreement of the parties." To find a contract implied-in-fact, the fact-finder
5 must conclude that the parties intended to contract and promises were exchanged, the general
6 obligations for which must be sufficiently clear. It is at that point that a party may invoke
7 quantum meruit as a gap-filler to supply the absent term. Where such a contract exists, then,
8 quantum meruit ensures the laborer receives the reasonable value, usually market price, for his
9 services. *Certified Fire Prot. Inc. v. Precision Constr. Inc.*, 128 Nev. 371, 379-380, 283 P.3d
10 250, 256, (2012) (internal citations omitted)

11 There was no implied contract on the payment term. Mr. Simon credibly testified that the
12 billing statements created and produced in litigation were to show damages in support of the
13 Lange contract claim only and were not the amount of compensation to be paid for all the work
14 on the case. Both Edgeworths conceded they knew the bills were used as damages in the Lange
15 claim. Sadly, because the bills were created for this purpose, the Edgeworths now want to use
16 this as a basis to support their scheme to avoid paying Mr. Simon.

17 On cross examination, Mr. Edgeworth admitted that Mr. Simon started the representation
18 at the outset as a "favor." The Law Office did not provide a bill until six months later, which was
19 the time a billing statement was necessary to produce at the Early Case Conference to produce
20 evidence of damage under NRCP 16.1 for the Lange claim only. The Law Office is not set up to
21 bill, does not have other hourly clients, did not take a retainer from the Edgeworths, and did not
22 bill regularly every 30 days. The Law Office advanced almost \$200,000 in costs. Mr. Edgeworth
23 abused the time of the Law Office sending almost 2,000 emails and he admitted to calling and
24
25

1 emailing at all hours of the day, night and weekends. Mr. Edgeworth never requested an hourly
2 billing contract. These are all acts inconsistent with an hourly only billing contract.

3 Mr. Edgeworth never confirmed an hourly billing agreement in any of his almost 2,000
4 emails to the Law Office. A bill was not presented or paid by Mr. Edgeworth after September
5 2017 when the focus of litigation was directed toward Viking and the billing statements were not
6 necessary to support any of the Viking claims.

7 Mr. Edgeworth is a very sophisticated, well-educated business man with an MBA from
8 Harvard University. He has successful international companies and has hired many law firms for
9 many years, including large firms on an hourly basis. These firms always have him sign a written
10 agreement, pay a retainer and regularly bill for all time expended on a matter. Mr. Edgeworth is
11 aware of the process of hourly billing. Mr. Edgeworth knew that Mr. Simon's representation was
12 not like the hourly representation with which he has extensive experience. Mr. Edgeworth never
13 asked Mr. Simon for an hourly contract further supporting this was not an hourly contract case.

14 Mr. Edgeworth sent Mr. Simon an email dated August 22, 2017 entitled "Contingency"
15 in the subject line. *See, Exhibit 27*. There is no purpose for Mr. Edgeworth to send the email,
16 except to attempt to reach an agreement about amount of compensation for the attorney's fees.
17 This email supports the conclusion that there was no express or implied agreement for
18 compensation.
19

20 The parties testified to a conversation occurring at the San Diego Airport on or about
21 August 9, 2017. Mr. Simon credibly testified that the case was becoming more demanding for his
22 small boutique law firm, and he wanted to reach some type of an express agreement. At the end
23 of the conversation, Mr. Simon told Mr. Edgeworth the Law Office would continue with the case
24 and work out a fair fee depending on the outcome of the case, which is what he usually does. At
25