



1 THE COURT: Folks, come on in and be seated.  
2 I think this is the first time we've been in this courtroom  
3 together.

4 MRS. DeCOURSEY: Yes. How do you do, sir?  
5 I'm pleased to meet you. I wish the circumstances were  
6 otherwise.

7 THE COURT: All right.

8 MRS. DeCOURSEY: But it's nice to meet you.

9 THE COURT: Thank you.

10 MRS. DeCOURSEY: This is my husband, Mark.

11 THE COURT: Okay. First off, the issue of  
12 recording. I'm going to address the issue of recording  
13 this. And I will tell you right at the beginning you may  
14 not have a court reporter transcribe this hearing but you  
15 may audio record it. You have an audio recorder with you?

16 MRS. DeCOURSEY: (Nodded head up and down.)

17 THE COURT: Okay. If you want to set the  
18 audio recorder up here you're welcome to do that.

19 I looked back on the May 29th letter from  
20 Assistant Presiding Judge Palmer Robinson which says you  
21 may audio record it. So you are all set up already and  
22 running?

23 MRS. DeCOURSEY: (Nodded head up and down.)

24 THE COURT: All right, then. We're okay  
25 and we're ready to then proceed with this matter.

1 MR. SULKIN: May I begin, Your Honor?

2 THE COURT: Yes. And I think we ought to  
3 begin -- I know you had in your mind but with the  
4 continuance request.

5 MR. SULKIN: Thank you, Your Honor.

6 THE COURT REPORTER: Counsel, could you put  
7 your name on the record for me, please?

8 MR. SULKIN: Absolutely.

9 THE COURT REPORTER: Thank you.

10 MR. SULKIN: My name is --

11 MR. DeCOURSEY: The continuance request was  
12 our motion.

13 THE COURT: Oh, you're right. It's your  
14 motion so that's what we ought to begin with.

15 MR. SULKIN: Okay.

16 THE COURT: Thank you. Do you want to come  
17 up here and argue? Do you want to argue from there or?  
18 There's no reason why you can't stay up here. We should  
19 take this fairly directly.

20 Actually the -- Mr. DeCoursey, who's your  
21 friend?

22 MR. DeCOURSEY: This is my ADA advocate.  
23 This is Eric.

24 THE COURT: Fair enough.

25 MR. DeCOURSEY: We move for a continuance on

1 the basis of Lane Powell's discovery violations and a 56(f)  
2 motion --

3 THE COURT: All right.

4 MR. DeCOURSEY: -- that we were unable to  
5 prepare all the evidence we needed to face a discovery --  
6 or to face a summary judgment.

7 The motion for continuance was unopposed.  
8 The last day that Lane Powell could file a opposition to  
9 our motion was Thursday, the -- November the 8th; that is  
10 because the motion was dated for Tuesday, the 13th. And  
11 Monday was a court holiday, so they are required under  
12 LCR 7 to -- any opposition is due two court days prior to  
13 the date of hearing the motion.

14 Since it's unopposed, I believe the Court  
15 should take it that Lane Powell has consented to the motion  
16 -- has stipulated to the motion.

17 THE COURT: Okay.

18 MR. DeCOURSEY: And all these facts and  
19 arguments and more are in the written motion itself.

20 THE COURT: Okay.

21 MR. DeCOURSEY: And in the reply that we  
22 filed.

23 THE COURT: Okay.

24 MR. DeCOURSEY: Yes, sir?

25 THE COURT: You did file a reply to that,

1 didn't you?

2 MR. DeCOURSEY: We did file a reply. We --  
3 but, of course, the reply was not within the deadlines  
4 provided in LCR 7 because noon of the day before the court  
5 hearing was Friday, and that was when Lane Powell filed its  
6 untimely opposition, which would in all equity not provide  
7 us an opportunity to file our reply by noon on Friday.

8 THE COURT: Of course. So it was filed  
9 later. And I was out of the state until the 14th in any  
10 event, so.

11 MRS. DeCOURSEY: Okay.

12 THE COURT: Okay.

13 THE COURT REPORTER: Excuse me, Your Honor.  
14 Could he just put his name on the record just formally if  
15 he doesn't mind?

16 MR. DeCOURSEY: Oh, yes. My name is Mark  
17 DeCoursey.

18 THE COURT REPORTER: Thank you.

19 MR. DeCOURSEY: And I'm a defendant in this  
20 matter.

21 THE COURT REPORTER: Thank you, Your Honor.

22 THE COURT: Counsel?

23 MR. SULKIN: Your Honor, the motion wasn't  
24 unopposed. The motion was -- we responded on Friday the  
25 9th.

1 THE COURT: Okay. Now, I've got to ask you  
2 to keep your voice up a little bit.

3 MR. SULKIN: Fair enough.

4 THE COURT: And so that the DeCourseys can  
5 hear.

6 MR. SULKIN: Fair enough, Your Honor.

7 For the record, Bob Sulkin representing Lane  
8 Powell.

9 Your Honor, we did file a motion in response  
10 on Friday, a brief in response. And, look, this is just --  
11 this has to be seen for what it is. It's just yet another  
12 attempt by the DeCourseys to delay us getting paid.

13 THE COURT: Okay.

14 MR. SULKIN: And let me just --

15 THE COURT: Let me ask you a question,  
16 please.

17 MR. SULKIN: Sure.

18 THE COURT: I'm going to ask you to --

19 MR. SULKIN: Fair enough.

20 THE COURT: -- let me do that.

21 So you're -- do you agree that it was due on  
22 Thursday, November 8th?

23 MR. SULKIN: No.

24 THE COURT: When was it due?

25 MR. SULKIN: It was due on Friday.

1 THE COURT: It was due on Friday?

2 MR. SULKIN: Right.

3 THE COURT: And you filed it on Friday?

4 MR. SULKIN: Yes.

5 THE COURT: Okay. Under LCR 7?

6 MR. SULKIN: Yes.

7 THE COURT: Okay, fair enough. Go ahead.

8 MR. SULKIN: This is just another effort by  
9 them to delay. And let me give you the context of this.

10 THE COURT: Okay.

11 MR. SULKIN: If you have a question I'm  
12 happy to answer it.

13 THE COURT: I do.

14 MR. SULKIN: Oh, sure.

15 THE COURT: Under the requirements, did  
16 they meet the requirements for a continuance of this  
17 hearing under 56(f)?

18 MR. SULKIN: No.

19 THE COURT: Okay. Tell me why not.

20 MR. SULKIN: Two reasons, Your Honor.

21 THE COURT: Okay.

22 MR. SULKIN: First - they basically give you  
23 two reasons. First, they just hired a new lawyer. That's  
24 reason number one. That was the declaration of Lish  
25 Whitson saying I may join.

1 THE COURT: Okay, but they did not hire  
2 Mr. Whitson.

3 MR. SULKIN: And they didn't hire mister --

4 THE COURT: As far as I know.

5 MR. SULKIN: So he's not even hired.  
6 They've had three previous lawyers in this case.

7 THE COURT: Okay.

8 MR. SULKIN: So the idea that they  
9 couldn't -- they didn't have enough time to hire a lawyer  
10 when this case was filed way back when is absurd quite  
11 frankly. They've had plenty of time. This isn't a  
12 situation where, you know, we move quickly for summary  
13 judgement, they need time, their lawyer got sick, we  
14 need -- look, I accommodate all that, okay. But here  
15 they've had three different lawyers and they've been using  
16 them strategically not to represent them in this case.  
17 That's number one.

18 Number two, the documents they claim they  
19 want are completely irrelevant to every -- any issue in  
20 this case for a couple of reasons. One, they were fully  
21 available to them months and months ago. They don't --  
22 they never wanted them because of this claim of privilege  
23 they assert and then don't assert and then they assert  
24 again.

25 Second -- if I may make continue?

1 THE COURT: Yes.

2 MR. SULKIN: You struck all of their  
3 defense -- all the counterclaims and affirmative defenses  
4 and they have no other. You've already done that. There  
5 is no other defense they have.

6 Second, they don't take the -- the documents  
7 have no relevance to the issue of reasonableness of the  
8 fees. Court's already found the fees to be reasonable. So  
9 all of these issues is just another in a series of delay  
10 tactics by the DeCourseys.

11 And I should say, Your Honor, I understand  
12 the Court's concern about making sure there's a fair  
13 hearing here. I believe you've gone well beyond what's  
14 fair and reasonable in this case to a point where justice  
15 is being denied my client. We've been waiting four years  
16 to be paid, okay. I mean, let's put this in perspective,  
17 four years, and enough is enough already. They've had  
18 their chance to respond. They don't have a defense.  
19 You've struck them all. We need to proceed, get the case  
20 over with. They've got an appeal, let's go forward.

21 I'm happy to answer any questions you have,  
22 Your Honor.

23 THE COURT: Any response, Mr. DeCoursey?

24 MR. DeCOURSEY: Yes.

25 MRS. DeCOURSEY: Yes, I have a response.

1                   Mr. Sulkin is quite misleading. He says  
2 we've had a number of lawyers. That's not quite true.  
3 We -- after Lane Powell filed it's lien, judge, we went to  
4 Mr. Paul Fogarty to see if we can negotiate with Lane  
5 Powell.

6                   And Mr. Fogarty wrote Lane Powell a 19-page  
7 letter asking that negotiation take place and that type of  
8 thing. Lane Powell wrote back on September -- that letter  
9 from Mr. Fogarty was dated September 22. On September 28th  
10 Lane Powell wrote back indicating well, okay, maybe there's  
11 some things we can talk about. Next thing we knew there  
12 was a summons delivered to our house on October the 5th.

13                   On October the 6th, this gentleman here,  
14 Mr. Sulkin, called Mr. Fogarty and said that Lane Powell  
15 would spend \$800,000 in legal fees or was willing to spend  
16 \$800,000 in legal fees in order to recoup \$300,000. Quite  
17 clearly, Mr. Sulkin was threatening to wipe out our entire  
18 Windermere award in violation of CR 1 and CR 11.

19                   It was basically -- well, sir, forgive me.  
20 I come from Brooklyn, New York, and if someone made that  
21 threat on the street we just call thuggery. So we could  
22 not afford to hire Mr. Fogarty for that amount. Okay,  
23 let's see what else we have.

24                   We have -- one gentleman helped us in  
25 limited representation going to Mr. Sulkin's office to have

1 a look at boxes of materials. And Mr. Lish Whitson could  
2 not represent us because we didn't have enough time.

3 We can't get a contingency lawyer because  
4 they cannot bear up to Mr. Sulkin's threat to wipe them out  
5 for \$800,000. Basically this gentleman has denied us legal  
6 representation. That's the effective message.

7 THE COURT: Okay.

8 MRS. DeCOURSEY: And we have presented  
9 this -- this e-mail that Mr. Fogarty sent to us confirming  
10 the content of that conversation and that threat. We have  
11 sent that to you several times, sir. So we'll just handle  
12 that one. I hope that handles that for you.

13 THE COURT: Okay. What I was trying to get  
14 at and I didn't hear really was the requirements of  
15 CR 56(f) in terms of a continuance, and I didn't hear that  
16 from you.

17 Fifty-six (f) requires that there be --  
18 identify particular discovery, specific discovery that  
19 needs to be done. A good reason why it hasn't been done to  
20 date and, of course, its relevance to the motion which is  
21 being heard. I think that based upon your oral arguments  
22 and your written materials, those standards haven't been  
23 met.

24 There is an issue of resolving cases in a  
25 reasonable amount of time. Cases are expensive for

1 everyone, and we try to make that as efficient as  
2 possible. A request for striking this motion or continuing  
3 it for ten months would be unreasonable. Those are the  
4 options you asked for. Under any circumstances those would  
5 be unreasonable.

6 In terms of the opposition to the motion to  
7 continue in 56(f), obviously the moving parties, the  
8 plaintiffs, do object to it. I mean, it's obvious, I  
9 guess, if I can say that again. Whether the response was  
10 due on Thursday, November 8th, or on Friday, I'm not sure.  
11 I haven't looked back on that and I haven't counted those  
12 days. But what I look for is the overall effect of  
13 continuing it on the basis of that kind of circumstance  
14 would be, I think, inappropriate. You did have your  
15 opportunity to reply and I think I take that into account.

16 MR. DeCOURSEY: Objection, Your Honor. We  
17 didn't have the opportunity to reply since the hearing was  
18 on Tuesday.

19 THE COURT: I thought you said you filed a  
20 reply.

21 MR. DeCOURSEY: We filed a reply Tuesday  
22 morning, but there's no guarantee that you ever saw it or  
23 that it got to your desk.

24 THE COURT: Right, I have those matters. I  
25 mean, it hasn't been addressed until now. This is the

1 16th, so it's here.

2                   So I think based upon that, and I think I  
3 want to make clear on the record my analysis under 56(f),  
4 that the motion to continue or to cancel should be and is  
5 denied.

6                   So we'll move to the motion on summary  
7 judgment.

8                   MR. SULKIN: Thank you, Your Honor. Again,  
9 Bob Sulkin representing Lane Powell.

10                  THE COURT: I do want to say, though, to all  
11 you folks. I know there's a lot of feeling in this case,  
12 personal feeling, frustration, and I just want you to  
13 recognize you're in a courtroom, you are to proceed  
14 professionally on the issues. Leave your feelings about  
15 other individuals, please, unexpressed here. We'll just  
16 move on the record, on the law, and on the facts in this  
17 case.

18                  MR. SULKIN: Thank you, Your Honor.

19                         Just to give a quick background. I know  
20 you're fully familiar with the case.

21                  THE COURT: Been with it a long time as  
22 you've pointed out.

23                  MR. SULKIN: It has been, Your Honor.

24                         The DeCourseys paid \$280,000 approximately  
25 for a house that they claimed had some problems with due to

1 construction work.

2 THE COURT: Mr. Sulkin, I don't want to  
3 interrupt too much, but I think that the issues of the  
4 Windermere lawsuit are sensitive in this case, and I don't  
5 want any suggestion in this record that anything that I am  
6 doing here is affected at all by the facts of the  
7 Windermere lawsuit. So I'm going to ask you to skip over  
8 those facts.

9 MR. SULKIN: I didn't mean to do it that  
10 way, Your Honor. I was just wanting to explain they got a  
11 lot of money, but let's move to.

12 THE COURT: Okay.

13 MR. SULKIN: Let's just get to here. There  
14 are six independent reasons in and of themselves, each  
15 standing alone to justify summary judgment here.

16 THE COURT: But before you -- one question.

17 MR. SULKIN: Sure.

18 THE COURT: This was characterized at one  
19 point as partial summary judgment, another point not.

20 MR. SULKIN: Yeah, it shouldn't have been.

21 THE COURT: Is it --

22 MR. SULKIN: It's partial in the sense that  
23 we have other claims but they would disappear. It's for  
24 everything. So it's full summary judgment. We have  
25 different ways to get to the same result, so --

1 THE COURT: Okay.

2 MR. SULKIN: -- that's why and that was  
3 confusing on our part.

4 There are at least six independent bases to  
5 grant summary judgment, and let me just, if I may, take you  
6 through them one by one.

7 First, Mr. Degginger put in a declaration,  
8 he's a Lane Powell lawyer-in-charge, setting forth the  
9 reasonableness, the fees, the hours and everything else and  
10 it is uncontested, okay. So unrebutted evidence is reason  
11 number one.

12 Reason number two, on page four of their  
13 response brief they concede the reasonableness of the fees.  
14 And to put a finer point on that, Your Honor, what they say  
15 is this is a contract question, whether or not the fees are  
16 reasonable is irrelevant and they move on. So they don't  
17 even in a brief address the question is reason number two.

18 Reason number three, you have a signed fee  
19 agreement that is Exhibit Double N. You also have a  
20 statement which is Exhibit K, their letter saying we owe  
21 you the money.

22 THE COURT: Are we on four now or are we  
23 still on three?

24 MR. SULKIN: This is number three.

25 THE COURT: Okay.

1                   MR. SULKIN: You say you have an agree --  
2 we can call it four, either way, you have an agreement to  
3 pay. Then you have an acknowledgement of payment which is  
4 Exhibit K; we owe you the money. All your fees were earned  
5 and we owe you the money. And I'm going to come back to  
6 that in a minute.

7                   Next reason, courts have already ruled on  
8 the reasonableness of the hourly rate and most of the fees  
9 already. That is, on the question of -- as you recall,  
10 Your Honor, in the underlying case some fees were covered  
11 by -- for fee shifting and other portions were not. But  
12 for the most part, the courts have ruled as to the  
13 reasonableness of the rates and the hours except for about  
14 \$4700. Now, I'll address that in a minute.

15                   You have the issue of judicial estoppel.  
16 That is, they can't take a position that the fees were  
17 reasonable in one case and unreasonable now.

18                   THE COURT: Yes.

19                   MR. SULKIN: Okay, and they don't argue  
20 that.

21                   The next independent reason is you have  
22 struck all their affirmative defenses and all of their  
23 counterclaims. And in briefing to the Court of Appeals  
24 which we point out in our brief, they state that's all we  
25 have. We have no other defenses but that. So on a

1 procedural basis they have no defense, and they have  
2 offered in their brief no evidence.

3                   Let me raise two issues if I may. One is  
4 the -- I think the number is \$4700 is -- you may recall in  
5 the Court of Appeals, the Court of Appeals awarded fees to  
6 us. The Supreme Court reduced the fees by \$4739.57 based  
7 on Mr. McBride's billing rate of \$40, okay. We're asking  
8 for that, but if you decide we're not entitled to it, fine.  
9 We've done the math to figure out what that comes out with  
10 what interest. So really the only issue is \$40 on his  
11 Court of Appeals issue, to be fair to the Court.

12                   Second, the only thing they say in their  
13 response is that the lawyers billed for copying time. I  
14 think you may have seen that. Well, first, all those other  
15 defenses would apply to that argument, but more importantly  
16 it's just not true, okay. And we know that because what  
17 they did was they saw, for instance, that lawyer X -- they  
18 looked at the cost and said lawyer X typed in his code  
19 copy, okay, but if you look at the billing record he didn't  
20 charge for it. So, for instance, Mr. Gable had copies made  
21 on --

22                   THE COURT: Are these copies and charges  
23 that were before the court --

24                   MR. SULKIN: Yes.

25                   THE COURT: -- after the Windermere

1 litigation ended that the courts reviewed and made --

2 MR. SULKIN: This is from November of '07.

3 THE COURT: Okay.

4 MR. SULKIN: It's already been reviewed. He  
5 doesn't say I charged for billing -- for copying. It's  
6 just a stalking horse argument.

7 So in the end, Your Honor, you know, there's  
8 nothing more to say here. It's gone on long enough. I  
9 understand the frustration all the way around. I don't  
10 want to tie into it, but I think summary judgment is  
11 warranted and based on both procedural reasons and  
12 substantive reasons.

13 THE COURT: Now, the question.

14 MR. SULKIN: Sure.

15 THE COURT: So you're seeking from this  
16 court now an award of attorney's fees which are the damages  
17 really in your case, isn't that correct?

18 MR. SULKIN: Correct.

19 THE COURT: So to the extent that those --  
20 that the actual judgment you're seeking here today is  
21 damages for the attorney's fees that were -- argued were  
22 earned and haven't been paid?

23 MR. SULKIN: Yes.

24 THE COURT: All of those have been addressed  
25 by other courts, correct, except maybe \$4700?

1                   MR. SULKIN: Well, not quite true. To be  
2 fair, Your Honor --

3                   THE COURT: Yes.

4                   MR. SULKIN: -- if I may.

5                   THE COURT: Well, let me --

6                   MR. SULKIN: Sure.

7                   THE COURT: May I rephrase the question?

8                   MR. SULKIN: Absolutely.

9                   THE COURT: All of the fees that you're  
10 seeking by way of damages in this case, by way of damages,  
11 I can make a distinction between damages and attorney's  
12 fees that you may be seeking and may be not be seeking in  
13 this case, but all of the fees that you are seeking by way  
14 of damages that were fees that were earned in the  
15 Windermere litigation have been addressed by the trial  
16 court and the Court of Appeals and the Supreme Court, maybe  
17 two of those?

18                   MR. SULKIN: Yes, with an asterisk if I may.

19                   THE COURT: Go ahead.

20                   MR. SULKIN: Okay. There were certain  
21 claims in the underlying Windermere case, I don't want to  
22 get into it, for which there was fee shifting, okay.

23                   THE COURT: Yes.

24                   MR. SULKIN: And certain claims for which  
25 there was not fee shifting. And what the courts did was

1 look at the fees relating to the fee shifting but not to  
2 the others. So, for instance, in the Court of Appeals,  
3 Judge Fox in the trial court gave us \$47,000 approximately  
4 in fees for certain fees. The Court of Appeals says no,  
5 fee shifting didn't apply to those. And there may be some  
6 other fees related to non-fee shifting issues which may not  
7 have been addressed by the court.

8 Our point though is -- on that issue is  
9 twofold. One, as to all the fees in the underlying case  
10 they agreed through Exhibit K that they're due and owing  
11 and fair. And second, the rates have all been blessed.  
12 The only fees to have been found to be unwarranted -- they  
13 were found to be warranted by the Court of Appeal's  
14 commissioner but not warranted by the commissioner of the  
15 Supreme Court was the approximately \$4700 by Mr. McBride,  
16 okay.

17 All the money -- to give you sort of -- to  
18 put this in a neat bow if I may, what they want -- they've  
19 been paid all their damages, okay. They've been paid all  
20 their damages. What they want is the fees we earned. I  
21 mean, those aren't damages to them, that's money that's  
22 owed to us. So all we're asking is to be paid our fees  
23 which is our second lien and we're ready to go.

24 THE COURT: But what I'm trying to get at  
25 is there any fee that you're seeking here today that was

1 related to performance on the Windermere litigation that  
2 wasn't either, a, approved by the court in the Windermere  
3 litigation or, b, was a part of an application to the court  
4 in the Windermere litigation? Is there any Windermere  
5 litigation fees you're asking me to review that haven't  
6 been reviewed by another court?

7 MR. SULKIN: There are certain fees that  
8 have not been reviewed by a court but which they agree  
9 through Exhibit K were reasonable.

10 THE COURT: Okay.

11 MR. SULKIN: And which would -- all the  
12 other defenses would apply. And those same fees that were  
13 not -- they put no defense into the Degginger declaration.  
14 So all those defenses I've given you, Degginger's  
15 declaration applies to all fees.

16 THE COURT: Okay.

17 MR. SULKIN: Exhibit K applies to all fees  
18 but for the ones in the Court of Appeals. Before the court  
19 does look at those and we got blessing, all the hourly  
20 rates were reviewed and found reasonable.

21 THE COURT: Yes.

22 MR. SULKIN: Okay. So I hope that fairly  
23 answers your question.

24 THE COURT: I think it does, and it should  
25 be obvious to you why I'm asking.

1 MR. SULKIN: Yes, I understand.

2 THE COURT: Yes.

3 MR. SULKIN: Thank you.

4 THE COURT: Okay. Now, for Defense who's  
5 going to argue?

6 MR. DeCOURSEY: Well, we're both going to  
7 argue because we're both defendants in this suit.

8 THE COURT: Okay, fair enough. Then you  
9 may go ahead and proceed.

10 MR. DeCOURSEY: Lane Powell has asserted  
11 over and over again that they taxed all fees to Windermere  
12 that were involved in the Windermere suit. That statement  
13 alone is false. During November, December of 2008,  
14 January, February and March of 2009, there was almost  
15 \$40,000 in fees that Lane Powell invoiced to us and did not  
16 tax to Windermere, though they had full opportunity to do  
17 so. That was -- so their statement -- that statement is  
18 false.

19 At the Court of Appeals Lane Powell  
20 completely consented to dropping a -- one of the supports  
21 for the suit, the real estate purchase and sale agreement.  
22 Under the *Pluer v. Fritz* (phonetic), the court had found  
23 and the Supreme Court had found that there is a full  
24 support for expenses of the suit provide in -- provided in  
25 the Windermere real estate purchase and sale agreement

1 supported a much broader basis for fees than were supported  
2 in the Consumer Protection Act. And so they got 100% of  
3 their fees. And under that argument we were able to get  
4 100% of our fees at the trial level.

5 At the Court of Appeals Lane Powell  
6 permitted that leg of support for the fees to be dropped,  
7 and thereby they lost us \$45,000 in costs and about \$52,000  
8 in fees at the Court of Appeals. They refused to take that  
9 issue to the Supreme Court even though they had a  
10 contractual obligation to appeal all awards that were award  
11 setbacks in the -- for the processing. Those things  
12 directly counter what Mr. Sulkin was saying.

13 There are a few other issues and we did  
14 provide these in the written defense to the summary  
15 judgment.

16 THE COURT: Yes.

17 MR. DeCOURSEY: It's quite an annoyance to  
18 have my opponent present my arguments for me in the most  
19 unfavorable light.

20 THE COURT: I'm sure, Mr. DeCoursey, it's a  
21 common occurrence in court whether there are lawyers on  
22 both sides or not, so it's people anticipating your  
23 arguments and wanting to make them.

24 MR. DeCOURSEY: Nevertheless, I choose to be  
25 more polite. I will not characterize his arguments except

1 where he says things that are directly false.

2                   The exfoliation of evidence comes into it  
3 because we found evidence of fraud over the photocopies.  
4 The photocopying involves \$4,000 in timekeeper billings  
5 where they go to the photocopier, photocopy 1400 pages,  
6 then go back to the desk and bill for four hours that day,  
7 or three or four hours depending on the wage earner.

8                   I presented a spreadsheet of those costs to  
9 this court. That information was not available to the  
10 courts when Lane Powell provided the affidavits of fees and  
11 costs and so those courts did not see them. We did not see  
12 them either.

13                   In the December 2008 agreement which Lane  
14 Powell has structured as being part of the agreement, the  
15 two of them together, referred to them as "the agreement"  
16 in its motion for summary judgment. If so, we should look  
17 at those two documents, the one signed in 2007 and the one  
18 in 2008. We should look at them as a unit, and as a unit  
19 they are in violation of the Rules of Professional  
20 Conduct. Specifically Rule 1.8 provides that "a lawyer  
21 shall not make an agreement prospectively limiting the  
22 lawyer's liability to a client for malpractice unless  
23 permitted by law and the client is independently  
24 represented."

25                   When we signed those agreements we were not

1 independently represented. Lane Powell inserted a clause  
2 in the 2008 agreement that says that the DeCourseys agreed  
3 that Lane Powell's fees delivered were necessarily incurred  
4 in their litigation given our opponent's strategy. They've  
5 taken that clause, they've inserted -- they've imported it  
6 into the summary judgment and they've used it exactly as  
7 the Rules of Professional Conduct forbids them to do which  
8 is as a perspective -- excuse me -- as a prospective  
9 limitation on our ability to claim malpractice against Lane  
10 Powell.

11                   There is one more thing I'd like to present.

12                   THE COURT: Sure.

13                   MR. DeCOURSEY: The discovery issue comes up  
14 again because we specifically asked Lane Powell to support  
15 its cost that it billed to us, support those costs with  
16 documentation. Instead, Lane Powell in some places refused  
17 to answer the interrogatories, refused to answer the  
18 productions. This is in our motion for -- to continue this  
19 hearing.

20                   In other places they waved vaguely at 35  
21 banker boxes full of documentation and said it's in there.  
22 It's in the discovery materials, the support for their  
23 costs. Well, it isn't in there. They have said a needle  
24 is someplace in that haystack, therefore, we don't have to  
25 answer your questions. But that isn't an answer to the

1 question. I could also say that answer is someplace in the  
2 public library and that isn't an answer to the question.

3 Hang on just a moment, please.

4 THE COURT: Yes, sir.

5 MR. DeCOURSEY: The discovery materials that  
6 they dumped on us after they moved for summary judgment  
7 included 11,000 -- what they say is 11,000 documents, but  
8 in fact, turned out to be 63,000 files. They even admit  
9 effectively to exfoliating those files. They saw that the  
10 log -- that they're Microsoft Word files but when they get  
11 to us they're only pictures of those documents. Pictures  
12 that cannot be indexed, cannot be searched, cannot be --  
13 all that can be done is printed and looked over.

14 In effect, by producing that late in October  
15 after filing for summary judgment, after dragging their  
16 feet for ten months on the production of this discovery  
17 material, they have fallen firmly into the qualification of  
18 CR 56(f) which says you can't do it. You can't.

19 They should be subject to the spoliation.  
20 The Spoliation Rule says you must infer that what they are  
21 hiding by exfoliating the evidence, by destroying the files  
22 and tearing them up, by withholding them from us and then  
23 dumping them one week before our response is due, that what  
24 they have -- the Court must infer that the evidence is  
25 contrary to their claims and contrary to their defenses.

1 That's a standard rule in Washington courts. Since we have  
2 proven some fraud among their billing, then it's reasonable  
3 to infer that what they are hiding by withholding evidence  
4 is more fraud. And fraud vitiates everything it touches.

5 MRS. DeCOURSEY: We will agree that this  
6 court has stricken our counterclaims because it says on the  
7 piece of paper that you gave us. We can see that. And the  
8 defense we claim --

9 THE COURT REPORTER: Your Honor, I cannot  
10 hear her.

11 THE COURT: Excuse me, it may be more  
12 comfortable coming up here.

13 MRS. DeCOURSEY: Oh, yes, of course.

14 THE COURT: I think the problem the court  
15 reporter is having hearing you is when you look down and  
16 talk.

17 MRS. DeCOURSEY: Okay, sure.

18 THE COURT: Keep your head up and maybe it's  
19 easier up here.

20 MRS. DeCOURSEY: So what the claim for was  
21 breach of fiduciary duty, fraud, breach of contract,  
22 conflicts of interest, malpractice, consumer protection  
23 violation, malicious prosecution, unjust enrichment and  
24 extortion. Now, all of those causes of action claims, what  
25 have you, defenses have been stricken.

1                   What happens when we go to trial? Mark and  
2 I will, thus having all our defenses and other claims taken  
3 from us, will be like people who have all of our limbs  
4 amputated. I mean, what will a jury think? What is the  
5 scenario that you envision after that?

6                   THE COURT: I will answer that question  
7 because my understanding is that it is the plaintiff's  
8 position in this case that if the motion for summary  
9 judgment is granted here there is nothing left to try.

10                  MRS. DeCOURSEY: I get you.

11                  THE COURT: The case is over --

12                  MR. DeCOURSEY: Thank you very much. Thank  
13 you for clarifying that.

14                  THE COURT: -- is my understanding.

15                  Mr. Sulkin, you may have an opportunity to  
16 respond.

17                  MRS. DeCOURSEY: Okay. Thank you, sir.

18                  All right. Now, that I would say was very  
19 good legal work on Lane Powell's part, but let's have a  
20 look at how they got to their present state.

21                  First thing Lane Powell told the court, by  
22 firing our -- firing them on August 3rd, 2011, we broke our  
23 contract with Lane Powell. And they said that in there  
24 complaint on page 3, line 25 -- approximately line 25.  
25 Okay. But right here, sir, I have our agreement on

1 September 19th, 2007. That agreement stipulates that  
2 either of us, Lane Powell or DeCourseys, can terminate the  
3 agreement at any time. So the fact that we terminated them  
4 on August 3rd, 2011 was not a breach of contract. I have  
5 the paper right here, so that's an untruth they told the  
6 Court. And they knew it was untrue when they told it.

7                   Number two, Lane Powell told the Court after  
8 we fired them that we secretly made an arrangement with  
9 Windermere to pay us the final satisfaction of judgment,  
10 and that we went behind Windermere's back -- I'm sorry,  
11 Lane Powell's back to make that arrangement. And they said  
12 that in the plaintiff's motion to require deposit of funds  
13 with the court registry December 13th, 2011. Page one,  
14 line one to five.

15                   Sir, I offer you this. This is a  
16 declaration signed by Lane Powell, Grant Degginger on  
17 December 30th, 2011, and in there he swears under penalty  
18 of perjury that he knew that back in August 2011 that we  
19 were doing exactly that. He spoke to our replacement  
20 counsel on this very subject. So Lane Powell fully knew  
21 that we were attempting to get a payment of the judgment.  
22 So that's line number two.

23                   Forgive me, misrepresentation number two. I  
24 will try to clean my language up to make it lawyerly.  
25 Okay. All righty.

1                   Now, moreover, on September 28th, 2011, I  
2 have that letter here, Lane Powell wrote to Mr. Paul  
3 Fogarty who had attempted to negotiate a settlement in  
4 which he said that Lane Powell has not -- refused to  
5 cooperate with the DeCourseys in an effort to obtain  
6 payment to the contrary. We would like to see that the  
7 DeCourseys are paid. Lane Powell simply asserted a lien  
8 for payment on its fees in accordance with RCW 60.40.010  
9 applicable law. So that is another verification of a Lane  
10 Powell untruth. They were an untruth machine. Just keep  
11 on churning and churning and churning it out.

12                   Okay, next point. Lane told the court that  
13 we lied about the amount of money on the Lane Powell claim  
14 and cheated it out of the full lien amount. That's what he  
15 said. They said that on the motion to require the deposit  
16 of funds in court originally December 19 -- page 1,  
17 lines 19 through 26.

18                   But Lane Powell's own witness, Pamela Okano  
19 herself testified in court about the amount of Lane  
20 Powell's lien. This document is right here. Okano's sworn  
21 declaration she said that was exactly the same amount as we  
22 stated in our court records, so Lane Powell's witness  
23 actually testifies against the veracity of Lane Powell's  
24 statements.

25                   Next point, Lane Powell has told the Court

1 that Windermere sued us after the judgment had been secured  
2 against Windermere and because we then failed to pay Lane  
3 Powell. And they said that in the response to our motion  
4 to vacate and recuse Your Honor on -- they said that on  
5 August the 15th, 2011, page 4, lines 13 to 14.

6                   But let's think this through carefully.  
7 Lane Powell has demanded payment. Lane Powell had demanded  
8 payment after the judgment was paid. The first partial  
9 payment of judgment was filed on November the 4th; November  
10 the 4th. Now, they filed their suit on October the 5th.  
11 October the 5th comes before November the 4th. So then  
12 knowing we had not yet been paid, Lane Powell filed suit  
13 against us for not paying them, pretending that we had run  
14 away with their pot of gold. But that's not true either.  
15 Okay. They told a myriad of untruths throughout this  
16 proceeding.

17                   Why is telling the truth in court  
18 important? Because the courts must find the truth so they  
19 can dispense justice. Therefore, it's wrong to lie to the  
20 court. Most especially it's wrong for officers of the  
21 court, attorneys to knowingly make provenly false  
22 statements.

23                   And, sir, forgive me for my frankness, it's  
24 even more wrong for judges to knowingly accept those  
25 provenly untrue statements, allow the untruthful statements

1 to stand and to adopt the untruth statements as judicial  
2 verities.

3                   Now let me move on to the discovery  
4 controversy. The very day Lane Powell filed the suit it  
5 issued a series of discovery requests which demanded all of  
6 our attorney/client privileges on all subjects. Judges and  
7 experienced litigators know the rules of discovery and  
8 evidence. They know that CR 26(b), ER 502, and the Pappas  
9 versus Holloway precedent apply. There was no legitimate  
10 reason to charge us with discovery violations. We told  
11 them they could -- we absolutely concede all kinds of  
12 documents having to do with the subject of the lawsuit  
13 which is breach of contract and blah, blah, blah. The suit  
14 is an argument about fees and services. They have that  
15 kind of material.

16                   But their message was simple, pay up  
17 whatever we demand or we'll force your confidences into  
18 evidence. And ordinary parlance there is called extortion  
19 and we have justifiably charged Lane Powell with exactly  
20 that.

21                   But nonetheless, this discovery brouhaha  
22 that was used as an excuse to strike our claims and  
23 defenses, I ask several things. First of all, I say that  
24 law firms are a part of our system of public trust. Judges  
25 should not allow them to do what Lane Powell has done, lied

1 to the Court repeatedly basic issues of the case and get  
2 away with it. Law firms cannot be permitted to treat their  
3 clients like Enron and Worldcom and Bernie Madoff. The  
4 clients must -- law firms cannot be permitted to blackmail  
5 their --

6 THE COURT REPORTER: Can you slow down,  
7 please?

8 MRS. DeCOURSEY: Law firms must not be  
9 permitted to blackmail their clients over privileged  
10 material.

11 I ask the Court to restore the trust of the  
12 people this day and put the judicial system to repudiate  
13 the lies Lane Powell has put before the Court and the Court  
14 has accepted. That the Court restore our counterclaim of  
15 defendants and that the Court deny Lane Powell's motion for  
16 partial summary judgment.

17 And, Judge, I really do understand your  
18 sympathy with the issue of Windermere. It's -- we have  
19 done our very best to expose their unlawful actions and the  
20 corruption of the government agencies that allows them to  
21 have, you know, an unfair place in the marketplace. And I  
22 understand that your wife works for them and you love her  
23 and she loves you and all of that, and we're very  
24 sympathetic to that. But really, sir, it doesn't look good  
25 and it doesn't feel good and it doesn't -- it doesn't -- it

1 doesn't -- it's not good.

2 THE COURT: Sure, I understand. I just want  
3 you to understand too even though my wife was not involved  
4 in this agent -- or with this office of the agent or  
5 anything --

6 MRS. DeCOURSEY: I understand that, sir.

7 THE COURT: -- she's an independent agent  
8 like most are.

9 MRS. DeCOURSEY: But Windermere operates --  
10 I believe we have been through it. Windermere operates as  
11 a single company. They do, sir. They do indeed. You  
12 should have a look at our page, Windermere Victims dot com.  
13 You might learn quite a lot about your wife's employer.

14 THE COURT: Okay.

15 MRS. DeCOURSEY: So --

16 THE COURT: Okay.

17 MRS. DeCOURSEY: -- we can understand that  
18 you're feeling protective but still anyway, enough said.

19 THE COURT: Okay.

20 MRS. DeCOURSEY: Thank you very much.

21 THE COURT: Fair enough.

22 MR. SULKIN: The \$45,000 in costs that they  
23 now claim fraud on, those costs were reviewed by Judge Fox  
24 and approved. In fact, if we look at Exhibit H which is  
25 the Court of Appeal's decision, and if you turn,

1 Your Honor, to page 36 of that opinion, it explains exactly  
2 what happened.

3                   What happened was that Judge Fox -- and I'm  
4 at that second full paragraph here "the record reveals" and  
5 the footnote. What happened was Judge Fox ordered the  
6 defendants to pay costs \$45,442. In other words, he looked  
7 at everything and said you owe it. And he said you owe it  
8 under the real estate purchase and sale agreement. And the  
9 Court of Appeals said wait a minute, you're not suing the  
10 seller. So the very costs that they're claiming were the  
11 subject of fraud, it's just -- all the reasons I gave you  
12 apply there.

13                   Lastly, at Exhibit A, page four, it is their  
14 brief to the Court of Appeals where they say all of the  
15 defenses are the ones you struck. So I'm happy to answer  
16 Exhibit A, page four if that's what you're looking for,  
17 Your Honor.

18                   THE COURT: No, I've got no problem. I may  
19 have a couple of questions for you.

20                   MR. DeCOURSEY: Sure. And obviously I  
21 dispute the claims that Ms. DeCoursey made about Lane  
22 Powell lying and the rest of it. I'm not going to take  
23 them on one by one, but I'm happy to answer any questions  
24 you have.

25                   THE COURT: Okay. Hold on just a moment.

1 I have a basic question to ask but I want to  
2 check something.

3 Well, let me ask this. Again, this is a  
4 repeat of the question I asked you before. In this case  
5 your client is seeking by way of damages -- it's not a fee  
6 petition to bar -- request fees be approved which is an  
7 action for damages now in their current standing. For  
8 action for damages for fees that have either been approved  
9 by courts related to the Windermere litigation or were fees  
10 which the DeCourseys participated in submitting to the  
11 court as reasonable and necessary in the Windermere  
12 litigation. Is that correct?

13 MR. SULKIN: There were certain fee that  
14 were not submitted to the court that everyone agreed were  
15 not covered by fee shifting, Your Honor.

16 THE COURT: Okay. So if they weren't  
17 submitted to the court on those fees, are you asking me at  
18 this time to determine the reasonableness of those fees, or  
19 are they already been determined by some prior proceedings  
20 here?

21 MR. SULKIN: The hourly rates we believe  
22 have been determined to be reasonable because the same  
23 lawyer is working on them. The number of hours we believe  
24 we put in evidence before you, that is Degginger's  
25 declaration laying out all the fees, and there's no

1 response.

2 Now, I believe you can look at those fees  
3 through that declaration and decide whether you believe  
4 there's something improper there. We don't believe there  
5 are -- there is, period.

6 THE COURT: Excuse me. Just so I'm  
7 understanding as we go along. Are those fees that you're  
8 asking me to look at to determine if I see anything wrong  
9 with them related to the Windermere litigation --

10 MR. SULKIN: Yes.

11 THE COURT: -- directly?

12 MR. SULKIN: Yes.

13 THE COURT: Okay. And where do I find those  
14 fees set out?

15 MR. SULKIN: The Degginger declaration is  
16 attached to our --

17 THE COURT REPORTER: To your what, counsel?

18 MR. SULKIN: Opening brief.

19 THE COURT REPORTER: Thank you.

20 THE COURT: Okay. Now, with respect to  
21 those fees, do any of the estoppel arguments that you've  
22 made apply?

23 MR. SULKIN: The ones -- to the fees covered  
24 by Judge Fox's ruling that were upheld by the Court of  
25 Appeals, yes.

1 THE COURT: No, those are all covered --

2 MR. SULKIN: Yeah.

3 THE COURT: -- right? But to the additional  
4 fees, the ones that aren't -- that haven't been submitted  
5 to the court that were held back, in what way in this  
6 proceeding have the DeCourseys agreed that those were  
7 reasonable fees?

8 MR. SULKIN: Okay. They've done it three  
9 ways if I may, Your Honor.

10 THE COURT: Yes.

11 MR. SULKIN: In the format of summary  
12 judgment. First, they've not responded to put in a --  
13 they've not responded to the Degginger declaration. He put  
14 in a declaration and they could have put in something  
15 saying they were -- fees were unreasonable. They have not  
16 done that.

17 Second, if we look at their response brief,  
18 Your Honor, at page four of their response brief, what they  
19 write at lines 10 through 13 it says, "Lane Powell spends  
20 much of its text arguing that fees were quote, unquote,  
21 reasonable." I'll wait until you get there, Your Honor.  
22 I'm at lines 10 through 13.

23 THE COURT: Page 4, 10 through 15.

24 MR. SULKIN: "Such argument is  
25 inappropriate and irrelevant." In other words, they don't

1 even take it out off the issue. I mean, they don't argue  
2 that they're not reasonable.

3 So we put it a Degginger declaration. So  
4 not only do they not put in something in response, they  
5 don't even -- they've nothing to even say about it from a  
6 legal point of view.

7 Third argument is you struck all their  
8 defenses. I mean, at the end of the day you struck the  
9 defenses and for good reason, and for a reason the Court of  
10 Appeals refused to flip.

11 Next reason. Exhibit K to our -- it's a  
12 letter they sent to us, okay. It's framed as we writing it  
13 to them in which --

14 MR. DeCOURSEY: Excuse me?

15 MR. SULKIN: In which they say --

16 THE COURT: Exhibit K. Do you have  
17 Exhibit K?

18 MR. DeCOURSEY: Yes, we have Exhibit K.

19 THE COURT: Okay, that's where --

20 MR. DeCOURSEY: But it's not a letter from  
21 us to them.

22 THE COURT: Okay.

23 MR. SULKIN: If I may?

24 THE COURT: Yes.

25 MR. SULKIN: You'll see there's a fax from

1 them to Mr. Norris at Lane Powell where they sign, asking  
2 Norris to sign for -- to sign too, okay. In other words,  
3 the first page of the exhibit is the fax, one page back.

4 THE COURT: Yeah.

5 MR. SULKIN: And you'll see it's from Mark  
6 DeCoursey to Fred Norris. Norris is the Lane Powell  
7 lawyer, okay. And he says, "please fax back signed copy.  
8 Have ready for pick up," okay.

9 And so if we go to page two they say they'll  
10 agree to pay all the fees, and not only that, they're fair,  
11 honest and everything else. So, again, each of these are  
12 independent reasons. If K didn't exist you'd still have  
13 all the others. If the others didn't exist you would still  
14 have K. And if none existed you'd still have your order  
15 denying all their -- striking all their defenses. And so  
16 at the end of the day no matter how you take it, you come  
17 to the same place.

18 THE COURT: I wish I could go back and  
19 redraft that because what I meant is strike all the  
20 defenses but still put upon the plaintiff a requirement to  
21 prove their claim.

22 MR. SULKIN: And, Your Honor, I took it that  
23 way which is why I put the Degginger declaration into  
24 evidence so that we would be proving our claim, okay.

25 And ultimately that is our -- you know, we

1 came forth with our burden, we put the evidence before you.  
2 In fact, Judge Fox gave us a 30% kicker on our fee because  
3 we did such a great job. We meaning Lane Powell, and they  
4 haven't responded to the evidence we put forward.

5 THE COURT: How much is in the Degginger  
6 declaration that was not passed on or agreed to in the --

7 MR. SULKIN: I did not separate it out. I  
8 can -- if you need that --

9 THE COURT: I think I need to have that,  
10 right.

11 MR. SULKIN: I can -- I can't do that right  
12 now, Your Honor, but if not I can separate that out for  
13 you.

14 THE COURT: All right. And I am --

15 MR. SULKIN: I believe the number's around,  
16 if I may, a hundred and something -- a hundred to two  
17 hundred thousand. Something in there.

18 THE COURT: So it's a substantial amount.  
19 And all based though on hourly rates that were approved by  
20 courts during the course of this proceeding.

21 MR. SULKIN: Correct, Your Honor.

22 THE COURT: Okay.

23 MR. SULKIN: And which, just to be fair,  
24 and the number of hours have not been attacked by them in  
25 this case.

1 THE COURT: How readily comes to your mind  
2 the case of Moeller versus Scucs?

3 THE COURT REPORTER: I'm sorry, Your Honor?

4 THE COURT: Moeller versus Scucs, that's  
5 S-C-U-C-S.

6 MR. SULKIN: I'm not -- to be fair, it  
7 doesn't.

8 THE COURT: All right.

9 MR. SULKIN: But I'm pretty good at the  
10 law. If you want to --

11 THE COURT: The question -- the question  
12 that's embedded in this is the court's responsibility --

13 MR. SULKIN: Which is why, Your Honor --  
14 yeah, I think the court -- you said this, if I may. You  
15 said to me this is a damages claim by Lane Powell and it's  
16 true. I don't think at the end of the day a jury gets to  
17 decide the fairness of fees. That's a court decision which  
18 is why we put this before you.

19 THE COURT: Okay. The distinction that  
20 you're making is when fees are damages rather than approval  
21 of fees as reasonable fees under --

22 MR. SULKIN: But we think both -- I think  
23 the Court -- we think the Court should look at the fees to  
24 make sure its comfortable with them. In other words, that  
25 I don't have a problem with which is why we put them before

1 you if you feel that way. I'm just saying we laid it out,  
2 they don't have anyone coming in saying they're  
3 unreasonable. You do have an independent obligation.

4 THE COURT: That would just be as to then as  
5 it appears to me here to the number of hours.

6 MR. SULKIN: Correct, which is why,  
7 Your Honor, if I may.

8 THE COURT: Yes.

9 MR. SULKIN: I started and I'll try and keep  
10 this short, on the Windermere case. And the reason I said  
11 it is that Judge Fox himself said in his -- and we put his  
12 transcript -- it's long.

13 THE COURT: I saw that.

14 MR. SULKIN: He himself said the reason so  
15 much was spent on fees was because of Windermere's conduct.  
16 I mean, Judge Fox looked at the number of hours in this  
17 case clearly, at least as to covered issues but as a whole.  
18 And he blamed Windermere for that, for that very issue.

19 So we have some statement as to the number  
20 of hours and why they may have been high, but if you  
21 subtract out -- I think the number is, if you just took  
22 what's out of their pocket in the case where they get a  
23 hundred to \$822,000, that was the damages award; that is,  
24 522 in damages plus 270 in settlement, the total fees out  
25 of their pocket is \$115,000. I mean, it's -- by any

1 measure it's good, that's reasonable. But, again -- well,  
2 I'll stop here.

3 THE COURT: I just want to get that  
4 affidavit in front of me again before I get you off the  
5 hook here.

6 It's the Grant --

7 MR. SULKIN: Degginger, yes.

8 THE COURT: -- Degginger. And it's the --  
9 under tab SMA?

10 MR. SULKIN: Correct.

11 THE COURT: And it's the one that's dated  
12 October 17th?

13 MR. SULKIN: Correct.

14 THE COURT: And we have attachments to that.  
15 Is there any way that you can tell me on those attachments  
16 where the hours that you think that I need to look at or a  
17 judge needs to look at as being reasonable?

18 MR. SULKIN: The short answer is no. The  
19 longer answer is I don't know that it's -- it's that simple  
20 because you had a situation, Your Honor, where certain  
21 claims were covered and certain weren't, but the work was  
22 done as to both.

23 And so I believe what happened though I  
24 wasn't there, Judge Fox looked at everything and he made --  
25 he kind of does this and says this is what's a fair -- this

1 is what's a fair number of hours. So it became difficult.  
2 If it was easy I certainly would have done that for you.

3 THE COURT: Okay. There are some hours here  
4 that were not approved by any court during the -- that was  
5 involved in the Windermere litigation and that were not  
6 supported by declaration, affidavit or some representation  
7 by the DeCourseys that those fees were reasonably incurred  
8 in asking someone else to pay for them.

9 MR. SULKIN: That I don't think is accurate,  
10 Your Honor.

11 THE COURT: No?

12 MR. SULKIN: Exhibit K, which you just  
13 looked at --

14 THE COURT: Right.

15 MR. SULKIN: -- applies to all of the fees  
16 in the underlying case. All five -- I think 522 because  
17 that case is finished. Then after that there was an appeal  
18 to the Court of Appeals.

19 THE COURT: Yes.

20 MR. SULKIN: The Court of Appeals did review  
21 the hours and approved --

22 THE COURT: Some.

23 MR. SULKIN: I think some or all --

24 THE COURT: All the hours on appeal.

25 MR. SULKIN: Yeah, all on appeal. So in

1 that sense everything is covered between the letter and the  
2 Court of Appeals. And if all is covered by Degginger's  
3 declaration, but the separation gets a little bit dicey  
4 only because some work is done for some things and not.  
5 It's hard to break it out --

6 THE COURT: Sure.

7 MR. SULKIN: -- cleanly.

8 THE COURT: But what I'm really trying to  
9 parse out of this is those specific hours that haven't been  
10 reviewed by some prior judicial officer or haven't been  
11 represented as reasonable by the DeCourseys.

12 MR. SULKIN: I understand that and there are  
13 no hours -- if I understand your question, there are no  
14 hours that the DeCourseys have taken issue with because  
15 they haven't responded.

16 THE COURT: That's slightly different.

17 MR. SULKIN: I'm not trying to be craft. In  
18 fact, let me try again to understand.

19 THE COURT: No, my question is, that were  
20 specifically represented by the DeCourseys as being  
21 reasonable.

22 MR. SULKIN: I'm sure it's me. I'm not --

23 THE COURT: Such as in a application for  
24 award of fees to the court, that wasn't granted.

25 MR. SULKIN: There are no hours -- if I may

1 and I think I understand your question. It's Friday at  
2 3:00. It's me and not you. There are no hours that a court  
3 has found to be unreasonable, that is correct.

4 THE COURT: Yes.

5 MR. SULKIN: No court has ever found --  
6 other than the rate that Mr. McBride in the Court of  
7 Appeals which is \$4712. That's the only thing any court  
8 has ever found to be reasonable. But even as to those  
9 hours the commissioner in the appellate court found those  
10 to be appropriate.

11 THE COURT: Right, and here's what I'm  
12 trying to get at. Is there anything in the Degginger  
13 declaration that wasn't submitted to some court?

14 MR. SULKIN: I have not compared --

15 THE COURT: Okay.

16 MR. SULKIN: -- Degginger's declaration --

17 THE COURT: What I'm trying to get at is are  
18 you -- what hours you're asking me to look at to make a  
19 reasonableness determination.

20 MR. SULKIN: I believe it would be the hours  
21 Judge Fox didn't approve, but I don't think Judge Fox was  
22 able to -- if you know what I mean. And I know it puts you  
23 in a tough spot and I'm trying to be fair to you.

24 THE COURT: No, that's fine. Because  
25 here's -- and you described that as perhaps being a

1 substantial amount of money, between a hundred thousand and  
2 \$200,000.

3 MR. SULKIN: It may be. I'd have to go  
4 back.

5 THE COURT: So tell me how I can approach  
6 this without going over all of the work that another trial  
7 court and the Court of Appeals and the Supreme Court has  
8 done. I suppose the Supreme Court that work might be easy  
9 to parse out.

10 MR. SULKIN: Yeah.

11 THE COURT: But how am I to approach that  
12 without going over what's already been gone over?

13 MR. SULKIN: You may -- if you think you  
14 have to do that you may have to, Your Honor.

15 THE COURT: Okay.

16 MR. SULKIN: And that may not be the answer  
17 you want to hear from me.

18 THE COURT: No.

19 MR. SULKIN: But what you do have from me is  
20 there's no one claiming -- the reason you don't have to, I  
21 mean, is this. One, if you feel you have to, you have to  
22 in a sense go over it. And I can't easily segregate out to  
23 you and say every hour after November second of X years you  
24 have you to look at it. I can't make it that easy for you.  
25 What I can say is no one -- they don't complain about the

1 reasonableness of the fees because they're arguing fraud  
2 and all these other things. And they don't complain --  
3 they don't complain about the number of hours because they  
4 put in nothing else. Their defenses are all around these  
5 sort of ideas of fraud which we know the Court of Appeals  
6 has addressed because -- and Judge Fox addressed.

7 THE COURT: Right. Now, with respect to the  
8 fees that you're asking or the award that you're seeking  
9 here, are you asking as part of this motion an award of  
10 attorney's fees for your services representing Lane Powell?

11 MR. SULKIN: No.

12 THE COURT: Okay.

13 MR. SULKIN: No.

14 THE COURT: Okay.

15 MR. SULKIN: I mean, we've made a motion to  
16 you which you granted on sanctions, but the fees we're  
17 asking here are solely the fees that are in the lien  
18 plus -- what's in the lien plus interest. I mean, it's  
19 just the underlying case. It's got nothing to do with me,  
20 we're not asking for my fees as part of this motion.

21 THE COURT: Right, okay.

22 MR. SULKIN: Any other questions?

23 THE COURT: I think I covered it.

24 MR. SULKIN: Thank you, Your Honor.

25 THE COURT: Final word?

1 MR. DeCOURSEY: Yes, please. I wish I could  
2 see Exhibit K.

3 Mr. Sulkin, do you have a copy of Exhibit K  
4 that I can see?

5 THE COURT: Well, I'll tell you what. I'm  
6 not going to go there. I can give you mine.

7 MR. DeCOURSEY: Okay.

8 THE COURT: I'll pull it out here.

9 MR. SULKIN: Your Honor, if I may correct  
10 one statement?

11 THE COURT: Yes.

12 MR. SULKIN: Ms. Heely (phonetic) believes  
13 that -- and I'd want to double check this but to just give  
14 you a since of scope; that the number we're talking about,  
15 that 71,225 which is our fees beyond that which Judge Fox  
16 found to be addressed.

17 THE COURT: Right, but those would be fees  
18 that were related to Windermere.

19 MR. SULKIN: Absolutely. They're all  
20 underlying cases.

21 MR. DeCOURSEY: This letter in Exhibit K --

22 THE COURT: Give that one back. That has  
23 holes punched in it.

24 MR. DeCOURSEY: The letter in Exhibit K was  
25 written by Lane Powell and addressed to us. It was not

1 from us to Lane Powell. They sent us the letter, we signed  
2 ours. It was unsigned when he sent it to us. We signed it  
3 and we sent it to them and asked them to send a ratified  
4 ratified copy to us. They never did.

5 THE COURT: Then --

6 MR. DeCOURSEY: But you see that it's --  
7 the addressee line is Carol and Mark DeCoursey, and the  
8 signature line is Brent Nourse of Lane Powell PC. They  
9 wrote this agreement.

10 THE COURT: And you agreed in this  
11 apparently that Lane Powell's fees were appropriate.

12 MR. DeCOURSEY: That is an illegal term  
13 according to the RPC. Mr. Sulkin has not addressed that,  
14 but that is illegal under RPC I think it's 1.8. It says  
15 that "a lawyer shall not make an agreement prospectively  
16 limiting the lawyer's liability to a client," and that's  
17 the way they've used it over and over again in the written  
18 pleading for this and in his oral argument.

19 THE COURT: Okay, got it.

20 MR. DeCOURSEY: So under the RPC that  
21 agreement is void under that case -- I'm sorry, Simburg  
22 Ketter Sheppard & Purdy. It's not a valid agreement.

23 THE COURT: Okay, go ahead.

24 MR. DeCOURSEY: I'm sorry. I thought you  
25 were about to ask me a question.

1 THE COURT: No, no, no.

2 MR. DeCOURSEY: Okay. Also the court  
3 papers provide a very clear picture of what fees they  
4 submitted to the court and which they did not. If you go  
5 into the motion for fees, you see that the invoices are  
6 blacked out in line after line after line, things they  
7 would -- they did not submit to the court for fees. Things  
8 that Judge Fox did not see, things that no court saw. And  
9 by those items you can tell what was submitted to the  
10 courts and what was not.

11 Also, all the fees -- as I said earlier, all  
12 the fees notice of November and December, January and  
13 February of 2008 and 2009, they didn't submit any of those  
14 fees either, and you can see where the invoices -- the fee  
15 motion to the judge cut off. And you can see from  
16 Degginger's declaration where they just kept on going and  
17 kept on billing us --

18 THE COURT: Okay.

19 MR. DeCOURSEY: -- in spite of the fact of  
20 having written that fee motion late in February.

21 They also after the Court decided that they  
22 were going to pay 12 percent interest, that Windermere was  
23 going to pay 12 percent interest, Lane Powell made a  
24 private agreement without consulting us that Windermere  
25 would pay 3.49 interest, post-judgment interest.

1 THE COURT: Now you're getting back into  
2 arguments you've already made.

3 MR. DeCOURSEY: I didn't mention that  
4 earlier.

5 THE COURT: I think you did, but.

6 MR. DeCOURSEY: Okay.

7 THE COURT: But in any event, you got it  
8 now.

9 MR. DeCOURSEY: Okay.

10 THE COURT: One way or the other.

11 But what I want to say is that I've given  
12 you a little extra latitude in terms of a further reply  
13 here, but it's not opening the door to going through all of  
14 your arguments.

15 MR. DeCOURSEY: Okay.

16 THE COURT: Yeah.

17 MR. DeCOURSEY: Right.

18 THE COURT: Yeah.

19 MR. DeCOURSEY: Also -- oh, the Court of  
20 Appeals also trimmed off hours. Mr. Sulkin says again and  
21 again that the only court that did it was the Supreme Court  
22 or the Court of Appeals. They both trimmed hours from the  
23 claims that Lane Powell submitted. They trimmed -- they --  
24 neither one of them found the claims to be reasonable.

25 There was also the fact that Lane Powell

1 originally estimated the case at a hundred thousand dollars  
2 and then billed us for \$480,000 for the trial. That's just  
3 for the trial phase. That was part of the verbal contract,  
4 but we haven't argued that.

5                   The reason we haven't argued about  
6 reasonableness of fees is because Lane Powell did not move  
7 this court for summary judgment on quantum meruit. They  
8 moved the court for summary judgment only on breach of  
9 contract. So it's the contract terms that we are arguing,  
10 and that's why we said it was irrelevant. But to argue  
11 reasonableness is to ask the court to determine whether or  
12 not they're reasonable. And that I would think would be  
13 more of a fact finding thing, but that's just my opinion.

14                   THE COURT: Got it, thank you.

15                   MR. DeCOURSEY: Thank you.

16                   THE COURT: You can keep that now.

17                   MR. DeCOURSEY: Thank you for your help,  
18 sir.

19                   MRS. DeCOURSEY: May I offer you these  
20 documents? These are the documents that prove Lane Powell  
21 tells lies about basic --

22                   THE COURT: No.

23                   MRS. DeCOURSEY: They have impeached their  
24 credibility of themselves as witnesses.

25                   THE COURT: No.

1 MRS. DeCOURSEY: Lane Powell lies.

2 THE COURT: Ms. DeCoursey, the documents  
3 upon which this motion has to be decided have already been  
4 presented.

5 MRS. DeCOURSEY: But we've presented this to  
6 you before, sir, many many times. Does it matter when  
7 lawyers lie to judges or should that be swept under the  
8 table? I don't understand. Please explain.

9 THE COURT: We have a process by which a  
10 person who wants summary judgment says what they want in  
11 summary judgment and provides the documents that they think  
12 necessary, the affidavits that are necessary to support  
13 that. The responding parties get to put in their -- make  
14 their arguments and put in their documents that they think  
15 support their view. Then we have a reply which isn't  
16 supposed to put in new matters but it's argument about the  
17 case.

18 And that closes the record for the purposes  
19 of the summary judgment. That's what a judge has to decide  
20 this case on, this summary judgment. Each side has had to  
21 respond -- the opportunity and the responsibility to put in  
22 those documents that they think are appropriate for that.  
23 So -- and we have a strict rule, pretty strict rule on  
24 adding something new after everyone's gone through that  
25 process.

1 MRS. DeCOURSEY: So what about the  
2 credibility of the witness, sir? They have just said lies.  
3 I always --

4 THE COURT: This is --

5 MRS. DeCOURSEY: Maybe I was brought up  
6 funny. I was always told to tell the truth and certainly  
7 tell the truth in court.

8 THE COURT: This is --

9 MRS. DeCOURSEY: I can't understand why  
10 people tell lies like that.

11 THE COURT: Well, this is based upon  
12 material facts that are really not disputed, and that's  
13 what their burden is to show material facts that are not  
14 disputed. Now, you may disagree about a lot of things, but  
15 it's a question of whether there's a disagreement about --  
16 and evidence, there's further disagreement about material  
17 facts, facts that are important to the decision that was  
18 made.

19 And I'm going to find that in terms of the  
20 obligation for attorney's fees to Lane Powell that they've  
21 met that burden. So they have judgment for the attorney's  
22 fees that are owed to Lane Powell. And those would include  
23 all attorney's fees that have been approved by courts that  
24 haven't been paid.

25 And I just want you to understand that when

1 you go to a court and ask a court to approve attorney's  
2 fees; you say here are my attorney's fees and these are  
3 reasonable and hourly. I want you, court, to have somebody  
4 else pay those, and then the court says okay, you know,  
5 whatever fees are reasonable, the court says yes. Okay, I  
6 agree these are reasonable. Somebody else should pay those  
7 because of the nature of the case. And then that someone  
8 else comes back and does pay them and so you benefit from  
9 that. And you can't then go back and say those fees were  
10 not reasonable. It just wouldn't be fair for you now to  
11 come back and say no, those weren't reasonable fees even  
12 though I said they were before and I got paid for them in  
13 fact.

14 MRS. DeCOURSEY: Although it's Lane Powell  
15 saying that, not us.

16 THE COURT: So those fees that have been  
17 approved by the courts, those will be part of the summary  
18 judgment here. Those fees that may not have ended up in a  
19 court order but they were part of a petition to a court and  
20 are clearly included here because those were court -- those  
21 were submitted on your behalf and for you.

22 And the only question I have now are there  
23 any additional fees and there are additional fees, but  
24 those fees were put forward here, and a request was made  
25 for those fees so there was no objection to those fees. I

1 think I can find without getting into any Windermere  
2 evaluation that the courts have approved those hourly  
3 rates. That representation has been made, there's been no  
4 indication that that isn't so. It's in the record. So the  
5 hourly rates are all determined to be reasonable.

6                   The only question is on the number of hours  
7 and whether the number of hours are reasonable. Now, there  
8 hasn't been a dispute from you on that. I may just go back  
9 and check a little law on that to ensure that if the fact  
10 that you did not dispute those in this hearing closes the  
11 book on that, then we'll close the book on that.

12                   If it says that I have to go back and make  
13 an independent review of those, if that's what the law is,  
14 then that's another question and that's something that I am  
15 concerned would bring me into an evaluation of the  
16 Windermere litigation and put me in a position of an  
17 appearance that I shouldn't be doing that because of my  
18 wife's occupation as an independent agent working out of an  
19 Windermere office, going back and evaluating in a sense,  
20 Windermere. And I may -- if it comes to that I will look  
21 at the law and I did find out whether I can rely on the  
22 absence of an objection, but if it comes to that I may  
23 defer that to another judge.

24                   MR. SULKIN: Just for the review of the --

25                   THE COURT: Yes. And I'd do that before.

1 I don't think -- I don't have any prejudice or bias in  
2 favor of Windermere. It's a big organization. It's like a  
3 lot of others. It didn't have any connection to my family  
4 or otherwise with the transactions that caused your  
5 lawsuit.

6 I'm not defensive for Windermere. I have no  
7 financial stake in Windermere, my wife doesn't. She earns  
8 commission from her sales of houses she's involved with and  
9 pays a portion of that to Windermere; the Windermere  
10 franchise that she works from which was not the Windermere  
11 franchise involved here.

12 But in any event, I don't think I have a  
13 conflict on that but I respect your concern. And so I  
14 think that if it comes down to my evaluating the litigation  
15 that involved Windermere directly and might involve then  
16 some evaluation of Windermere's conduct, then I think I  
17 would at that point recuse and leave that issue to another  
18 judge, but I don't know if we have to be there or not. I  
19 don't know that we don't have it already covered.

20 MR. SULKIN: Can I make a quick --

21 THE COURT: Yes.

22 MR. SULKIN: Your Honor, we'll obviously  
23 respect your decision and whether you feel comfortable with  
24 Windermere, but the hours you'll be looking at would be  
25 hours that we're not asking Windermere to pay. I think

1 your point would be well taken even stronger if we'd then  
2 ask Windermere to pay the money but we're not. And I'll  
3 leave that to you.

4 THE COURT: Yes. Well, that's a nice  
5 distinction. So what I'm going to ask you do -- so I will  
6 grant the motion for all aspects on this case with that  
7 reservation in terms of that amount, and I am going to ask  
8 you to give me a submission on that. You need to go back  
9 and look at this again, and maybe you can make it clear  
10 that it wasn't involved in the Windermere -- or that  
11 Windermere wasn't asked to pay that. But first, the legal  
12 analysis as to whether -- because there having been no  
13 objections for those in this, whether that is sufficient.

14 MR. SULKIN: Just so I understand,  
15 Your Honor.

16 THE COURT: Just a minute.

17 MR. SULKIN: I'm happy to have  
18 Mr. DeCoursey go first.

19 THE COURT: No, no. I want to --

20 MR. SULKIN: I just want to be clear what  
21 you expect from us.

22 THE COURT: Okay.

23 MR. SULKIN: Do you want us -- do you  
24 want -- do you want anything entered formally today?

25 THE COURT: Well, you may if you can

1 scratch it out that way.

2 MR. SULKIN: Okay.

3 THE COURT: But if there is an issue that a  
4 judge is required to review the reasonableness of some  
5 hours, then obviously you'd have to do that.

6 MR. SULKIN: Right.

7 THE COURT: I'm not sure that we have to do  
8 that.

9 MR. SULKIN: And would you like us to make a  
10 submission on that?

11 THE COURT: Yes.

12 MR. SULKIN: Okay. And when would you like  
13 that submission by, Your Honor?

14 THE COURT: Well, I'm going to be gone all  
15 next week, so you have all next week. Work on Thanksgiving  
16 to do it.

17 MR. SULKIN: And --

18 THE COURT: Just a moment, counsel.

19 MR. SULKIN: And maybe what I'll do as far  
20 as this submission is concerned is go back to the office  
21 and --

22 THE COURT: And the second part of it, you  
23 know, the law on that. It should be not more than three  
24 pages. Maybe two pages.

25 MR. SULKIN: Right, right, that's all it

1 will be.

2 THE COURT: But if you can then on that  
3 identify with more clarity the hours that need to be  
4 reviewed, I think that's going to be helpful.

5 MR. SULKIN: Understood, Your Honor.

6 THE COURT: Yes, and in the Degginger  
7 declaration, if there's some way of setting off those hours  
8 that are the ones that if a judge needs to review that  
9 these are the hours, that would be really helpful.

10 MR. SULKIN: Okay. And my last question I  
11 have --

12 THE COURT: Yes.

13 MR. SULKIN: -- I think is do you want to  
14 rule today or later on the question of McBride, that \$4700  
15 issue?

16 THE COURT: In the McBride \$4700 issue I  
17 think it was a matter of \$40 an hour?

18 MR. SULKIN: Correct. He was charging 440  
19 and the court said 400.

20 THE COURT: 400. And the court ruled on  
21 that, said 400.

22 MR. SULKIN: Well, actually the court  
23 commissioner did, not the full court.

24 THE COURT: Right.

25 MR. SULKIN: The court commissioner did so

1 there's not a chance to --

2 THE COURT: Whoever is the final arbiter on  
3 that though.

4 MR. SULKIN: Yes, that was the final -- the  
5 last decision --

6 THE COURT: Okay.

7 MR. SULKIN: -- was the commissioner.

8 THE COURT: And so you want the \$40.  
9 You're asking for \$40 per hour, the \$4700. Now, if that  
10 commissioner, that judicial officer reviewed that and said  
11 this is reasonable and this isn't, then what's your basis  
12 for it? It could be reasonable for the client but not  
13 reasonable to cost shift?

14 MR. SULKIN: Correct, Your Honor, and that  
15 commissioner is -- with due respect of the commissioner,  
16 it's not a full judicial proceeding with full judicial --

17 THE COURT: Okay.

18 MR. SULKIN: Correct.

19 THE COURT: Okay, so to the extent that you  
20 can mark out that what you're really asking me to do then  
21 is to go back and look at that hourly rate. Did they  
22 approve the full time?

23 MR. SULKIN: Yes.

24 THE COURT: So it's just the hourly rate.

25 MR. SULKIN: Just the hourly rate, whether

1 you think 400 or it should be 440.

2 THE COURT: Okay. So if you're asking me to  
3 make a determination then I'd have to have a basis for it.

4 MR. SULKIN: Correct.

5 THE COURT: So you need to give me whatever  
6 that affidavit is that sets the reasonableness of that.

7 MR. SULKIN: Thank you, Your Honor.

8 THE COURT: Now, you folks understand that  
9 then there will be an order presented but there's going to  
10 be this -- a brief on whether there are some hours that  
11 were -- that they're seeking -- you know, Lane Powell is  
12 seeking to recover on here that I need to review for  
13 reasonableness, the reasonableness of the number of hours,  
14 and that I may not have to and may not require that. And  
15 if it doesn't require that then those will be granted. If  
16 it does require that, then I think that -- if it does  
17 require that I think then that I would -- I'll pass that  
18 off to a different judge because then that gets us into  
19 looking at Windermere.

20 MRS. DeCOURSEY: Just a quick question,  
21 Your Honor.

22 THE COURT: Sure.

23 MRS. DeCOURSEY: On the subject of  
24 reasonableness --

25 THE COURT: Yes.

1 MRS. DeCOURSEY: -- the problem was alluded  
2 to. Someone said here that the problem was Windermere,  
3 they kept on using aggressive litigation.

4 THE COURT: Right.

5 MRS. DeCOURSEY: Now here's the issue. We  
6 asked Lane Powell to ask for CR 11 sanctions. They  
7 absolutely would not do it. Lane Powell mined this case  
8 for legal fees. It was a CPA case and they used it  
9 shamelessly to mine legal fees. One hundred thousand  
10 dollar estimate, \$480,000 at end of trial. It's not  
11 reasonable. It a racket, it's a racket.

12 THE COURT: Okay. Now, I would entertain  
13 signing an order that goes as far as we've gone today, so  
14 you can note for presentation probably is the best way. If  
15 you don't have one there, they're scratching one out.

16 MR. SULKIN: Here's what I've done,  
17 Your Honor, and I'm happy to do it any obviously way you  
18 want.

19 THE COURT: Okay.

20 MR. SULKIN: I have an order that grants us  
21 the full amount, and then I put an asterisk saying  
22 "however, parties shall submit briefs," and going on trying  
23 to get what you said and understanding this order is not  
24 final. Or we can just wait and I think we have a record, a  
25 pretty good record here. Whatever you're comfortable

1 doing, Your Honor.

2 THE COURT: Well, the only part that is --  
3 concerns me is if we end up saying the order isn't final  
4 then --

5 MR. SULKIN: The order on the liability is  
6 final except for the hours not covered.

7 THE COURT: Right. Yeah, okay. I think we  
8 can enter an order of liability and I think that probably  
9 would be good for us to enter as much as we can here now.

10 Sir?

11 MR. DeCOURSEY: I don't understand why the  
12 Court keeps saying there's no objection to the fees. We  
13 have presented evidence of fraud. We have in our written  
14 presentation we presented that they mined the case and  
15 refused to get CR 11 sanctions and to limit Windermere's  
16 flagrant galaxies of arguments. Why does the Court say  
17 there has been no objection to the fees? We objected at  
18 the time in letter after letter, and we've presented those  
19 letters as quite a packet in our submission to the Court on  
20 summary judgment.

21 THE COURT: Perhaps --

22 MR. DeCOURSEY: Why are these things being  
23 ignored?

24 THE COURT: Perhaps I spoke a little broadly  
25 on that, and I in the most general --

1                   MR. DeCOURSEY: Mr. Sulkin has also said the  
2 same thing over and over again.

3                   THE COURT: Now, you have to give me an  
4 opportunity to answer you now, okay?

5                   Perhaps I was a little broad on that, but  
6 what I meant was in terms of the hourly rate -- hours, the  
7 reasonableness of the hours that we've been talking about  
8 with Mr. Sulkin that was unclear as to whether I have to  
9 review those for reasonableness or not. Those are the  
10 hours I'm talking about and just those.

11                   And in the brief -- and in the briefing in  
12 this motion, in this motion, the motion was made, your  
13 response, there was no --

14                   MR. DeCOURSEY: Yes, there was. There was.

15                   THE COURT: -- objection on your part to the  
16 reasonableness of those hours.

17                   MR. DeCOURSEY: Yes, we did.

18                   THE COURT: Okay.

19                   MR. DeCOURSEY: We showed you that there was  
20 fraudulent billing.

21                   THE COURT: Okay. Now, what's going to  
22 happen --

23                   MR. DeCOURSEY: That's not -- I don't  
24 understand why that's not an objection. We just --

25                   THE COURT: Okay.

1 MR. DeCOURSEY: -- addressed that one point.

2 THE COURT: Okay. Now -- okay, just let me  
3 try to respond to that. There's going to be -- we're going  
4 to enter a partial order here, and then Mr. Sulkin or his  
5 partners will give me a brief with respect to whether I  
6 need to look at those for reasonableness or not, and you'll  
7 have an opportunity to respond to that. You'll get a copy.  
8 You know how this goes; you'll get a copy produced and then  
9 you'll get an opportunity to send your own brief back and  
10 then you can lay out whatever you think is wrong with their  
11 motion, and then they'll reply.

12 I would anticipate that this would be a  
13 motion without oral argument, but if either party requests  
14 oral argument on it, then you'll get it. It just makes it  
15 maybe a little more difficult to schedule.

16 MR. SULKIN: May I read what I wrote just --

17 THE COURT: Sure.

18 MR. SULKIN: -- to make sure it fairly  
19 captures what you said. You said you have an order here  
20 which uses the number of 422,675 which is plus the  
21 interest. I put an asterisk by every place where that is  
22 in the order. And I wrote, "However, the parties shall  
23 submit briefs no longer than three or four pages on whether  
24 this court must review the number of hours worked by Lane  
25 Powell that were previously not reviewed by other courts to

1 determine reasonableness. As to such hours, no summary  
2 judgment shall be entered. Additionally, briefing on  
3 whether Mr. McBride's rate in the appellate process may be  
4 challenged is due by November 30, 2012."

5 THE COURT: Okay. Is that enough time?

6 MR. SULKIN: That would be okay for us.

7 THE COURT: Okay. I'm mindful what next  
8 week is.

9 MR. SULKIN: Okay.

10 THE COURT: And, you know, three or four --  
11 because we doubled up on the issues there, you know, I  
12 think five pages -- five legitimate pages. Sometimes when  
13 we get down to this point we say five pages, no footnotes.

14 MR. SULKIN: I'll change it to five pages,  
15 no footnotes.

16 THE COURT: No, you don't have to put the no  
17 footnotes, counsel.

18 MR. SULKIN: All right, we're just going to  
19 change.

20 MRS. DeCOURSEY: I'm not going to sign  
21 anything.

22 MR. SULKIN: Okay. They're not -- they  
23 won't sign this but I'm going to change this to --

24 THE COURT: Okay. Mr. and Mrs. DeCoursey, I  
25 understand that you've declined to sign on this.

1 MRS. DeCOURSEY: We both have, sir.

2 THE COURT: Okay.

3 MRS. DeCOURSEY: I'm sorry, I didn't speak  
4 to my husband but I heard him say he's not going to sign  
5 it.

6 THE COURT: Okay. Mr. DeCoursey?

7 MR. DeCOURSEY: Well, I don't even  
8 understand what it is you want me to sign. That it's  
9 reasonable?

10 THE COURT: No.

11 MR. DeCOURSEY: Sign that we don't object?  
12 What?

13 THE COURT: No, this order that -- the  
14 summary judgment motion is granted and that we are going to  
15 go to the extent requested except that we're going to go  
16 look back at certain hours to see if I have to determine  
17 whether they're reasonable or not. If I don't have to go  
18 through a reasonableness determination on those hours, then  
19 this would be the final order. If I do have to go through  
20 a reasonableness determination on those hours, then it will  
21 be my -- I'm thinking very seriously about assigning that  
22 to a different judge.

23 MR. DeCOURSEY: We understand that part of  
24 it. What is that Mr. Sulkin thinks we ought to sign?

25 THE COURT: Well, it's an order that says

1 that.

2 MRS. DeCOURSEY: We would have to study it  
3 scrupulously in light of the phenomenal lies these people  
4 tell you.

5 THE COURT: Okay. You're going to get a  
6 copy of it today. We'll make copies for both sides in this  
7 case. Then we'll have that.

8 Okay, thank you. Anything further?

9 MR. SULKIN: No, Your Honor.

10 THE COURT: Okay, thank you very much.

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13 (Proceedings concluded.)

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