

1           IN THE CIRCUIT COURT OF THE 15TH JUDICIAL CIRCUIT  
2                           IN AND FOR PALM BEACH COUNTY, FLORIDA  
3   CASE NO. 2020-005756 CC

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5           CITIBANK, N.A.,  
6                           Plaintiff,

7  
8           vs.

9  
10          EVAN S. GUTMAN,  
11                           Defendant.

12          \_\_\_\_\_ /

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14                           PROCEEDINGS BEFORE  
15                           THE HONORABLE EDWARD GARRISON  
16   FRIDAY, MARCH 24th, 2023  
17   PALM BEACH COUNTY COURTHOUSE  
18   COURTROOM 6K  
19   WEST PALM BEACH, FLORIDA  
20   12:58 p.m. - 2:17 p.m.

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22  
23          Reported By:  
24          Rebecca Viera, RPR, Court Reporter  
25          Notary Public, State of Florida

1 APPEARANCES:

2 On behalf of the Plaintiff:

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6 On behalf of the Defendant:

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I N D E X

DIRECT CROSS

Plaintiff's Witnesses:

KENNETH CURTIN	8	24
DANIEL MATLOW	42	48

E X H I B I T S

Number	Marked	Admitted
Plaintiff's 2		16

1 P R O C E E D I N G S

2 - - - -

3 THE COURT: Citibank versus Gutman. This  
4 was scheduled for a motion on attorney's fees.  
5 The cost portion of it we resolved by way of an  
6 agreed order I entered, I guess, a couple of  
7 weeks ago. And the Court has already determined  
8 entitlement to fees to the plaintiff. So today's  
9 hearing is simply establishing the amount of the  
10 fees.

11 So, Mr. Curtin, are you ready to proceed?

12 MR. CURTIN: I am, Your Honor.

13 One revision to -- what Your Honor said was  
14 perfectly true, except the only costs that are  
15 still outstanding, which me and Mr. Gutman agreed  
16 to, was the court reporter's fee for today and my  
17 expert's fee.

18 MR. GUTMAN: Your Honor, if I may, I would  
19 just like to note the name of the company the  
20 court reporter is with because there will be a  
21 transcript. So could I get the -- could I please  
22 ask for the court reporter's company name and the  
23 name of the court reporter?

24 THE COURT: She'll be happy to give you a  
25 card when we're through, sir. They like to make

1 money.

2 MR. CURTIN: We are ready to proceed, Your  
3 Honor. I don't need an opening, unless  
4 Mr. Gutman wants one or Your Honor wants one. I  
5 was going to call -- my associate, Carter Pope,  
6 was going to call myself to testify, and then I  
7 will put Mr. Matlow, our expert, on.

8 THE COURT: Might as well just jump right  
9 in.

10 MR. GUTMAN: Your Honor --

11 THE COURT: Yes.

12 MR. GUTMAN: -- from my perspective there  
13 are two preliminary issues that do need to be  
14 addressed, I think.

15 THE COURT: Okay.

16 MR. GUTMAN: One is that there's a motion to  
17 postpone this hearing that's pending and has not  
18 yet been ruled upon.

19 Mr. Curtin's firm had filed a motion to  
20 extend with the Fourth District Court of Appeal  
21 on the ground that the appellate attorney was too  
22 busy, I guess, was the ground. In my case, with  
23 respect to the pending motion to postpone here,  
24 I'm actually prejudiced by the fact that I don't  
25 have their answer to the brief, even though they

1 have my appellate brief. So I do think that  
2 motion does need to be ruled upon.

3 And then, in addition, the other preliminary  
4 matter that I'd like to address, while you did  
5 correctly indicate that the ruling was on  
6 entitlement that -- in favor of Citibank, I'd  
7 like to orally, just for -- it will only take  
8 about two minutes -- I'd like to orally ask for  
9 reconsideration on the entitlement issue on the  
10 following ground: At the hearing on entitlement  
11 I had asserted that they were not entitled to it  
12 because I was seeking equitable relief in my  
13 counterclaim.

14 Mr. Curtin had countered that by indicating  
15 that the counterclaim was dismissed, which is  
16 correct. And I then countered it by saying, that  
17 the counterclaim was still pending at the Fourth  
18 District Court of Appeal. And Your Honor  
19 rejected that argument, which I understand.

20 That being said, however -- that being said,  
21 however, it's come to my attention that  
22 Citibank's complaint contains a count of unjust  
23 enrichment, and unjust enrichment itself is a  
24 claim for equitable relief. And under the  
25 Florida Supreme Court's opinion in Diamond

1 Aircraft v. Horowitz, equitable relief claims  
2 preclude an award of attorney's fees. And the  
3 assertion that an unjust enrichment claim is a  
4 claim for equitable relief have been held in the  
5 case of Bowleg v. Bowe, where the Court basically  
6 stated Bowleg's second count fails because the  
7 theory of unjust enrichment is equitable in  
8 nature.

9 Similarly, the Eleventh Circuit Court of  
10 Appeals in Tooltrend, Inc. v. CMT Utensili, they  
11 also held that an unjust enrichment claim -- they  
12 basically said: We first turn to the elements of  
13 an unjust enrichment claim in the state of  
14 Florida. A claim for unjust enrichment is an  
15 equitable claim.

16 So since their complaint itself seeks  
17 equitable relief, I would just respectfully ask  
18 for reconsideration on the entitlement.

19 THE COURT: The motion to postpone the  
20 hearing today is denied, and the motion for  
21 reconsideration on the order on entitlement is  
22 denied.

23 Fire away.

24 MR. CURTIN: Do you want me to sit up there?

25 THE COURT: Probably be better. If you

1 would raise your right hand. Mr. Curtin, do you  
2 swear to tell the truth, the whole truth and  
3 nothing but the truth?

4 MR. CURTIN: I do, Your Honor.

5 THE COURT: Have a seat, please.

6 MR. POPE: Just to confirm, Your Honor, it's  
7 fine to fire away?

8 THE COURT: Yes, that's fine.

9 DIRECT EXAMINATION

10 BY MR. POPE:

11 Q. Will you please state your name for the  
12 record?

13 A. Kenneth Michael Curtin.

14 Q. Okay. And will you please describe for me  
15 your education, experience and employment background?

16 A. I will. Graduated high school in 1987 just  
17 north of Tampa in Hernando County. I immediately went  
18 into the Marine Corps. I spent several years in the  
19 Marine Corps. I was injured in the Marine Corps in a  
20 helicopter accident, and my Marine Corps career ended  
21 at that point in time, and I went to college.

22 I graduated from the University of South  
23 Florida in Tampa with an undergraduate degree in  
24 criminal justice, an undergraduate degree in history  
25 and a minor in French. And I then moved out to North



1 Carolina where I worked a little bit selling cars,  
2 doing some things like that.

3 Moved out to Colorado where I worked in --  
4 for the Small Business Administration, worked in a  
5 casino wearing a cowboy hat greeting people to come  
6 in, and I waited tables. And then I decided, what to  
7 do? Let's go to law school.

8 So I came back to Florida, went to the  
9 University of Florida, graduated in the top ten  
10 percent of my class. During the University of Florida  
11 I interned in Paris, France with the International  
12 Chamber of Commerce, which is an international  
13 arbitration forum.

14 Graduated in 1996, became a member of the  
15 Florida Bar. I had a hard time finding a job, so I  
16 looked into going into the Peace Corps. And about a  
17 month before I was going to go in the Peace Corps, I  
18 got a job here in West Palm Beach with a firm called  
19 Paxton Crow.

20 Spent from 1996 to 2000 there. Probably the  
21 best firm I worked for at the time. Had several  
22 judges, Judge David Crow, who was a retired judge from  
23 this circuit, was my first boss. Judge Keyser, who is  
24 a judge right now in this circuit, was my boss. Sandy  
25 Bosso-Pardo, I think retired, she was my boss there

1 too. Judge Holly who became a judge in Indian River  
2 County also worked at that firm, and I worked with  
3 him, and I had the pleasure of working with attorneys  
4 much smarter than me; such as David Crow, Clark Smith,  
5 who just retired a couple of years ago; but did that  
6 1996 to 2000.

7 And made the decision as a young attorney I  
8 wanted to go to a bigger firm. So I went to a firm  
9 called Ruden McClosky. Started in their Fort  
10 Lauderdale office, worked there in the financial  
11 litigation -- most of my practice has always been  
12 litigation; financial litigation, construction  
13 litigation, contract litigation. Worked in the Fort  
14 Lauderdale office for four or five years, then became  
15 a partner, moved up to West Palm Beach because I have  
16 always lived in West Palm Beach, and was a partner  
17 here. Became an equity partner in that firm in 2008  
18 or 2009, and lived right over here at City Place a  
19 couple of blocks away.

20 In 2010, my son was born in March of 2010, so  
21 I decided to look around for a new firm because Ruden  
22 McClosky was in a little financial trouble because of  
23 the 2008 financial crisis, and they were deep into  
24 real estate, and 2008 real estate tanked.

25 So I had the opportunity at that point in

1 time, Adams and Reese, my current law firm, was a New  
2 Orleans based firm with no offices in Florida. They  
3 opened their first office, I think, in June or July  
4 of 2010 in Tampa. My office manager here in West Palm  
5 Beach joined them because that Tampa office was Ruden  
6 McClosky's office in Tampa. They basically took the  
7 Ruden McClosky employees, they became Adams and Reese  
8 employees.

9 My office manager was offered a job, she went  
10 to Tampa. Six months later she said: Hey, I know  
11 your son was born in March, I know you're from the  
12 Tampa area, would you be willing -- you know, the  
13 partners here are wondering if you'd be willing to  
14 come here. So I interviewed with the New Orleans  
15 people. I already knew all the partners at the Tampa  
16 office, I worked with them for 10 years, 15 years.  
17 And so, I had to move back to Tampa.

18 You know -- West Palm is a great place. Good  
19 when you're single to be four hours away from the  
20 parents. But when the parents turn into grandparents  
21 and you get married, you want to be 30 minutes away  
22 from them.

23 So I joined Adams and Reese November 1st,  
24 2010, been there ever since. My practice is, like I  
25 said, 90 percent litigation. A lot of financial

1 litigation with banks, various banks and other  
2 financial resources. Construction litigation and  
3 contract litigation. I'm Florida Bar certified in  
4 construction law. I'm AV rated by the rating agency,  
5 which is the highest rating you can get. Licensed in  
6 Florida, New York, Illinois, shortly to be licensed in  
7 Tennessee. That's about it.

8 Q. Great.

9 A. My life in five minutes.

10 Q. I'm going to ask, are you familiar with the  
11 case of Citibank, N.A. versus Evan S. Gutman, Case No.  
12 2020-005756 CC in Palm Beach County court, which you  
13 are appearing for today?

14 A. I am. I was the main attorney on that  
15 litigation for approximately the last year. One of my  
16 partners handled the litigation prior to that, Chantal  
17 Pillay, but when she got pregnant and went on  
18 maternity leave, I took it over. So I have been the  
19 main partner working that file for at least the last  
20 year or so.

21 Q. If the bailiff would help me out, I would  
22 like to show you something I had premarked as  
23 Plaintiff's Exhibit 2 for this hearing, and I have  
24 copies for the court reporter, Mr. Gutman and Your  
25 Honor.

1           And just to repeat that, I premarked this as  
2 Plaintiff's Exhibit 2, but do you recognize the items  
3 compiled in this document?

4           A.    Yes.  What this composite is, is all our  
5 attorney's fees from July 29th -- attorney fee  
6 statements from July 29th, 2022, which is the date of  
7 the offer of settlement, which entitlement is based  
8 upon, up until the order on entitlement, which I think  
9 was in early January, I want to say like January 13th,  
10 2023.

11           And the first page is a summary by myself, I  
12 drafted the summary; which basically summarizes for  
13 each invoice the hours billed from each attorney, the  
14 rate from each attorney, the amount, and then has  
15 totals on it.

16           Q.    So the invoices compiling this document, do  
17 you review these invoices before they are sent to the  
18 client?

19           A.    I do.  I review all the invoices on my files  
20 before they're sent to the client.  Some of these  
21 invoices are redacted, and those redactions are --  
22 either they're times before the offer of settlement or  
23 they're times that we're just not claiming in this  
24 lawsuit for a variety of reasons; such as, it may be  
25 related to the appeal.

1 I think I saw one or two charges which were  
2 actually not on this file on another Citibank file  
3 mistakenly put on this file. That's just because we  
4 handle hundreds of Citibank files. But everything  
5 redacted was taken out basically from this summary.

6 Q. Did you make those redactions?

7 A. I personally made those redactions.

8 Q. And so, it's fair to say that you recognize  
9 these invoices?

10 A. Absolutely.

11 Q. Do these invoices reflect your work, as well  
12 as the work of all other attorneys and paralegals  
13 which worked on this case following the second offer  
14 of judgment?

15 A. They do. This is our business records of  
16 Adams and Reese, and the attorneys and paralegals are  
17 instructed to put their time in daily. I can  
18 guarantee you -- I can't think of a time in the last  
19 ten years I haven't put my time in daily, except maybe  
20 when I'm in trial, you know, and I'm working 12 hours  
21 a day, and I don't put my time in until after the  
22 trial.

23 But all this time is entered  
24 contemporaneously with the actual charge and bill by  
25 our paralegals and attorneys on this file.

1 Q. Great. And we spoke -- you spoke about the  
2 summary just a moment ago, but I take it this summary  
3 was created by you, correct?

4 A. It was.

5 Q. On the summary, what is the total number of  
6 hours billed in this case?

7 A. Well, the total number of hours is two total  
8 number of hours. You can see the total number of  
9 hours was 28,000 -- the total numbers are 89.7 hours  
10 for \$28,938.50. But then I have a summary under that,  
11 which I label fees Citibank agreed to remove from  
12 reimbursement.

13 After Mr. Gutman -- the Judge entered an  
14 order after entitlement where I provide our attorney  
15 fee statements, Mr. Gutman would make specific  
16 objections to any of the rates or time, and I would  
17 respond to that. After Mr. Gutman made some  
18 objections to it, instead of arguing over that I  
19 deleted 5.8 hours of that time, and that's what this  
20 time is on the bottom, fees Citibank agreed to remove  
21 for reimbursement.

22 So the amount of hours, I think, that we're  
23 claiming for reimbursement are 83.9 hours for the  
24 total of \$26,957.50.

25 Q. Thank you.

1 MR. POPE: I'd like to offer into evidence  
2 the attorney time records from July of 2022  
3 through January of 2023, which I have pre-marked  
4 as Exhibit 2.

5 THE COURT: Any objection?

6 MR. GUTMAN: No objection.

7 THE COURT: Plaintiff's Composite No. 2 is  
8 in evidence.

9 (Plaintiff's Composite Exhibit No. 2 was  
10 received in evidence.)

11 BY MR. POPE:

12 Q. Mr. Curtin, are you familiar with the Rowe  
13 factors and how they apply to attorney's fees?

14 A. Yes.

15 Q. The first Rowe factor is the time, labor,  
16 novelty and difficulty of the case.

17 Can you tell me how this factor pertains to  
18 this case?

19 A. Well, this was a fairly simple case. But the  
20 problem -- what occurred was the fact that there was  
21 multiple motions filed at the last minute, which I had  
22 to then drop everything I'm doing on other cases,  
23 respond to those motions because we had hearings  
24 coming up, et cetera.

25 For example, there were multiple motions to



1 recuse the judge. There was multiple motions for  
2 rehearing. I have actually never in my entire 23-year  
3 career seen more than one motion for rehearing; but  
4 here, I think there was like two -- at least two  
5 motions for rehearing on the motion to dismiss.

6 There was motions to stay usually filed  
7 within days or at the last minute prior to a hearing  
8 or something of that nature. And there was just a lot  
9 of argument over discovery and things like that came  
10 up at the last minute, which increased the fees and  
11 increased the novelty and time expended in this  
12 matter.

13 Q. The second Rowe factor is the likelihood that  
14 the matter will preclude you from other employment.

15 Can you tell me how this factor pertains to  
16 this case?

17 A. That's fairly irrelevant to this case. The  
18 way I see that Rowe factor is if I take a case with a  
19 major company, and then I'm suing another major  
20 company. I can't represent that other major company.

21 Me taking a case representing Citibank  
22 against Mr. Gutman, I'm probably not going --  
23 Mr. Gutman is probably not going to be calling me up,  
24 you know, probably doesn't have much litigation.

25 The only other part of that is the fact that,

1 once again, as far as other litigation, I had to drop  
2 a lot of my other cases and things that I'm working  
3 on, and delay that because of last minute motions and  
4 things to be filed in this, which I had to respond to.

5 Q. So the third Rowe factor is fees customarily  
6 charged in the locality. And you spoke earlier that  
7 you have experience in Palm Beach County, so can you  
8 tell me how this factor pertains to this case?

9 A. Quite frankly, I started my legal career in  
10 Palm Beach County. Even after I moved to Tampa in  
11 2010 -- I can't say I have been to Palm Beach County  
12 much since Covid hit, but prior to that, prior to  
13 Covid, between 2010 and 2020, I would think that the  
14 majority of my cases were still in the south Florida  
15 area, and I still file. I just filed two cases  
16 yesterday in Broward County.

17 So majority of my cases -- or a good portion  
18 of them are still in the south Florida area. I was  
19 driving down here so much for the last -- from 2010 to  
20 2020, that I actually had to seek orthopedic advice  
21 because my knee was hurting so much because the  
22 driving, and I was told I'm driving too much.

23 So, yes, I'm quite familiar with Palm Beach  
24 County and their fees and charges sought. Especially  
25 in the financial area, banking litigation; which I

1 have done since 1996, and I still do. I can actually  
2 say the majority of my Citibank, CitiGroup/Citibank  
3 litigation is still in South Florida, and our fees are  
4 low.

5 I think my rate -- I made a note. My rate --  
6 my normal rate is 525, and my rate here is 345.  
7 Donald Mihokovich, which is another attorney that has  
8 time on this, his normal rate is 595, and his rate  
9 here is 360. So we do reduce rates to Citibank.

10 Q. And the fourth Rowe factor is the amount  
11 involved and the results obtained.

12 Can you tell me how this factor pertains to  
13 this case?

14 A. The amounts involved were relatively small as  
15 compared to a multinational company such as Citibank.  
16 The results obtained is a hundred percent victory, so  
17 that's it. And there was -- Mr. -- the defendant had  
18 unique affirmative defenses and unique counterclaims,  
19 and that is one of the reasons my firm was brought in.

20 I can say my firm, in my experience, has -- I  
21 can't think of maybe once or twice I have filed the  
22 actual filer of a collection action. Normally  
23 Citibank has collection counsel file the collection  
24 actions. I become involved in the collection actions  
25 when the collection action gets complicated because of

1 the defendant. They start filing multiple defenses,  
2 they start filing multiple counterclaims. My firm  
3 will then get involved because it goes beyond a simple  
4 mere collection matter, and that's when we get  
5 involved.

6 When I say I can't even think of a time when  
7 I actually filed a collection action, I can only think  
8 of it once or twice, and that's when Citibank was sued  
9 by a credit card holder, and then we came -- my firm  
10 was brought in. And they're like: Well, if he's  
11 suing, we might as well counterclaim on the 15,000 or  
12 whatever he owes on the credit card.

13 But normally we don't file the credit card  
14 actions. They're normally done by collection counsel,  
15 we only get involved in the more complicated cases.

16 Q. The fifth Rowe factor is the time limitations  
17 imposed by the client or the circumstances. Can you  
18 tell me how this factor pertains to this case?

19 A. Once again, that goes back to the last minute  
20 motions, the multiple motions to disqualify the judges  
21 in this case, the multiple motions for rehearing; that  
22 goes into that factor.

23 Q. The sixth Rowe factor is the nature and  
24 length of the professional relationship. Can you tell  
25 me how this factor pertains to this case with

1 CitiGroup?

2 A. Well, Citi -- this case is Citibank, N.A.  
3 Citibank, N.A. in the 15, 20 years I represented them  
4 have gone through multiple changes in their corporate  
5 status. It used to be -- credit cards used to be a  
6 company called Citibank South Dakota, N.A., that then  
7 merged with Citibank, N.A.

8 There used to be a company called  
9 CitiFinancial, which did other types of loans other  
10 than credit cards, that merged with Citibank, N.A.

11 So when I talk about Citi, I talk about  
12 CitiGroup, which is kind of why I call it the parent.  
13 I represent CityFinancial, Citibank, N.A., Citibank  
14 South Dakota, N.A., CitiMortgage, and I'm sure there's  
15 two or three more in there.

16 The last time I looked, which was on the  
17 order of entitlement, right around that time, so we're  
18 talking four, five, six months ago, we had 655 cases  
19 for Citibank South Dakota, 614 cases were Citibank,  
20 N.A., a little over 600 cases for CitiMortgage, 922  
21 pre-suit cases, and we do -- that's in ten years, in  
22 ten year's time. And we do every writs of garnishment  
23 for Citibank in the state of Florida.

24 So it is a good client with a long-term  
25 relationship, which actually helps keep the attorney's

1 fees down normally because I know their processes, I  
2 know their documents, I can read them, I know where to  
3 look. I know where to ask -- what documents to ask  
4 for based upon the defenses, rather than an attorney  
5 coming in who has never worked for Citibank before.

6 Q. The seventh Rowe factor is the experience,  
7 reputation and the ability of the lawyers involved.

8 Can you tell me about this factor as it  
9 pertains to this case?

10 A. I don't like talking about myself. But let  
11 me talk about some of the other attorneys right now.  
12 Donald Mihokovich, who has some time on this case,  
13 he's our appellate attorney, he has a few hours on  
14 this case. Mostly when I'm asking him for advice,  
15 especially on an appellate issue or I think it may  
16 become an appellate issue, Don will be handling that  
17 appellate case.

18 Don has been practicing since 1990. I have  
19 known Don since 2000 when he was working with Ruden  
20 McClosky, and Don is a MENSA, a member of MENSA. Don  
21 is probably one of the smartest attorneys I know.

22 Lou Ursini, who also worked on this case, has  
23 a few hours on it, he's the head of our financial  
24 services practice group. Lou is practicing -- he's a  
25 couple years younger than me. So I have been

1 practicing since '96. I think Lou is like 1998 or so.  
2 Extremely bright attorney.

3 And myself, you have heard my background. I  
4 think of myself as usually the dumbest attorney in the  
5 room, and I have had the pleasure of that because when  
6 I worked at Paxton Crow and Ruden McClosky every  
7 attorney I worked with were mentors of mine, have been  
8 smarter than me, and I have learned greatly from them.

9 Q. Thank you. The eighth Rowe factor is whether  
10 the fee is fixed or contingent.

11 Can you tell me the nature of the fee  
12 arrangement in this case?

13 A. It's hourly. We don't do contingency.

14 Q. I think that takes us through the Rowe  
15 factors. The final question I have while you're on  
16 the stand is, are there any other taxable costs which  
17 you are seeking in this case?

18 A. Yes. The only taxable cost is the court  
19 reporter here, which I think will probably be about  
20 \$135, if it's the normal cost that they have been, and  
21 then Mr. Matlow's cost, which I think he had ten hours  
22 at \$425 an hour, but he'll testify to that.

23 MR. POPE: Thank you. I have no further  
24 questions.

25 THE COURT: Cross-examination, Mr. Gutman?

1 MR. GUTMAN: Yes. Thank you, Your Honor.

2 CROSS-EXAMINATION

3 BY MR. GUTMAN:

4 Q. Mr. Curtin, in your motion for attorney fees,  
5 is it fair to say that you stated the total amount of  
6 attorney's and paralegal fees expended from July 29th,  
7 2022 up until September 20, 2019 --

8 MR. POPE: Objection. Your Honor, this was  
9 heard at the previous hearing when we discussed.

10 THE COURT: I won't know until I hear his  
11 question. So please finish.

12 MR. GUTMAN: Your Honor, if I may --

13 THE WITNESS: I heard 2019. I believe -- I  
14 don't have the motion in front of me, Mr. Gutman,  
15 but I believe that's what I said, and that was a  
16 scrivener's error. I think the attorney fee  
17 statements were attached to that, and there was a  
18 summary similar to this summary attached to that,  
19 which had the actual fees on it.

20 MR. GUTMAN: Your Honor, the position that  
21 I'll be taking, since there is an objection made,  
22 before I even continue with the questions, the  
23 position I'll be taking is that while Your Honor  
24 granted entitlement, you may recall at the  
25 hearing when I tried to address the Florida



1 Statute 768.79 factors, Your Honor indicated  
2 that's an issue better left to amount.

3 Now, the scrivener issue was not expressly  
4 ruled upon by yourself at the entitlement  
5 hearing. So before you even rule on the  
6 scrivener issue, I would like to at least have  
7 the opportunity to get my series of questions on  
8 it because it was not ruled on at the entitlement  
9 hearing, and you did indicate that the 768.79  
10 factors go to amount, not entitlement.

11 My position is that the scrivener issue goes  
12 to amount more than entitlement, just like the  
13 768.79 factors. And even if it doesn't go to  
14 amount more than entitlement, it's certainly  
15 equal to the issue of entitlement being like a  
16 hybrid going to both entitlement and amount. But  
17 I believe it goes more to the amount.

18 So before you rule on the scrivener issue  
19 and the objection that's here, I'd like to have  
20 the opportunity to at least ask my questions,  
21 which are directed towards it.

22 THE COURT: Thank you for the preview, but I  
23 can only rule on the objections one at a time.  
24 So ask your questions and we'll see where we go.

25

1 BY MR. GUTMAN:

2 Q. Mr. Curtin, so your position is that this is  
3 a mere scrivener issue?

4 A. I'd have to look at the motion. But if I  
5 remember correctly, if you have a copy of motion or  
6 Carter --

7 Q. I do have a copy, but it's all marked up.

8 A. From my memory, it was a simple scrivener's  
9 error.

10 Q. Mr. Curtin, is it fair to say that prior to  
11 the entitlement hearing I raised the scrivener issue?

12 A. I can't remember that.

13 Q. And then at the hearing, is it fair to say  
14 that you addressed your position that it was a  
15 scrivener error for the very first time -- that's the  
16 question.

17 Is it true you raised the scrivener issue for  
18 the very first time at the time of the hearing?

19 A. If I remember correctly, you had a motion in  
20 opposition to my entitlement where you said something  
21 to the affect that I did not understand how time  
22 works, and I'm working backwards in time. And, quite  
23 frankly, I could have wrote a memorandum, a reply to  
24 that, but that would just increase the attorney's  
25 fees, and I'm trying to keep the attorney's fees down

1 for a simple scrivener's error to write a reply when I  
2 could just -- when that issue would ever come up at a  
3 hearing, I could just tell the judge it was a  
4 scrivener's error, which is, to me, obvious on the  
5 face of the document, especially when I think I  
6 attached the summary there, which has the -- and I may  
7 have even attached the attorney's fee statement to my  
8 original motion. I can't remember.

9 Q. So essentially the reason you didn't take any  
10 corrective action with respect to the scrivener issue,  
11 such as filing an amended motion, or a motion to  
12 correct it as a scrivener error, the reason you did  
13 that is because you didn't want to have more attorney  
14 fees incurred; is that a fair statement?

15 A. No. The reason I said that is it's a simple  
16 scrivener's error, which is obvious on its face. And  
17 why charge both my client extra or something similar,  
18 and something that I'd be charging back to your client  
19 because then we'd be at this hearing where you would  
20 be arguing why did I charge an hour for a reply when  
21 it was a simple scrivener's error and that would be  
22 unreasonable, and I would think that would be a  
23 reasonable argument for you to make that it would be  
24 unreasonable to correct that scrivener's error.

25 Q. So essentially, even if the law requires you

1 to take corrective action, your position is that you  
2 didn't want to take corrective action because it would  
3 have ran up the amount that I would be responsible for  
4 and the amount your client would be responsible for?

5 A. No. Once again, it's a simple scrivener's  
6 error, and -- a simple scrivener's error on its face.  
7 I didn't even think about doing a reply.

8 Q. I'll move on.

9 Are you familiar with the Florida Rule of  
10 Civil Procedure 1.540, entitled relief from judgment,  
11 decrees, or orders?

12 A. I have heard of that, but I don't have it in  
13 front of me. I am generally familiar.

14 Q. I'm going to read to you the text of  
15 Fla.R.Civ.P 1.540, and I may ask you a question.

16 What the rule states: Subsection A, clerical  
17 mistakes. Clerical mistakes in judgment, decrees, or  
18 other parts of the record, and errors therein, arising  
19 from oversight or omission may be corrected by the  
20 Court at any time on its own initiative, or on the  
21 motion of any party, and after such notice, if any, as  
22 the Court orders.

23 You did not file a motion to correct it; am I  
24 correct?

25 A. To me, Mr. Gutman, and I don't think this

1 hearing is on my expertise on Florida Rules of Civil  
2 Procedure, but that rule is if the judge makes an  
3 order -- enters an order which is somehow incorrect  
4 because it was said there was a scrivener's error or  
5 something, then you could file a motion to correct it.

6 I have done that before. For example, I just  
7 had a motion for final summary judgement, I entered a  
8 final judgment, and there was a word missing from that  
9 final judgment. And so, I did a motion to correct  
10 that, the judge entered a revised final judgment.  
11 That's it.

12 In simple motions filed by the attorneys, I  
13 don't think that rule applies to that.

14 Q. I'm only going to ask two more questions on  
15 the scrivener's issue -- actually, maybe one.

16 Is it fair to say that if I were right on the  
17 scrivener issue, if I were right on the scrivener  
18 issue, is it fair to say that the scrivener issue  
19 itself goes to the very heart, soul and essence of  
20 your motion?

21 In other words, if it were determined that  
22 the law required you to correct it and you took no  
23 steps to file a motion or amended motion or a motion  
24 to have it deemed as a scrivener error -- which, you  
25 actually probably could have done all the way up until

1 today even -- but you never did it, you chose not to  
2 do it because you didn't want to spend the attorney's  
3 time; is it fair to say that scrivener issue, alleged  
4 scrivener issue would go to the heart, soul and crux  
5 of your motion and eliminate all your costs and  
6 attorney's fees?

7 MR. POPE: Objection. Not only is his  
8 question compound, but it's irrelevant. And  
9 ultimately, what's at issue today is the limited  
10 nature of the -- whether the time entries we have  
11 provided are relevant and correct as a matter of  
12 time, not necessarily whether time runs linearly  
13 or not as argued in Mr. Gutman's motion before  
14 the entitlement.

15 THE COURT: Objection is sustained.

16 MR. GUTMAN: I'll move on.

17 BY MR. GUTMAN:

18 Q. Mr. Curtin, in your Exhibit 2, which is the  
19 time that is charged, when you testified just now you  
20 indicated that certain information was redacted and  
21 all of the redacted information was not included. It  
22 was not included as an invoice; is that correct?

23 A. Yes. If it's redacted, I can tell you, for  
24 example, some -- remember, I took out some fees I  
25 agreed to remove after you made specific objections to

1 that, that's on my summary. And those fees, you can  
2 look at it, and they're in the invoice dated  
3 September 6th, 2022, and the invoice dated  
4 October 11th, 2022, but they are in the outline there.  
5 So those are partially redacted. I think -- I can  
6 look here, there's an invoice on 08/25/22, which is  
7 partially redacted, which we're still claiming.  
8 That's partially redacted.

9 Q. So is it fair to say that there are  
10 substantial entries that have redactions that are  
11 included in the time records that you're billing?

12 A. No. Can you repeat that?

13 Q. I misspoke. Is it fair to say that there are  
14 a substantial number of items that are redacted which  
15 you are claiming attorney's fees for?

16 A. Let me look. When I'm looking at the only  
17 one which is -- has any redactions, which we are now  
18 claiming attorney's fees on, are on page three of four  
19 of the invoice dated September 6th, 2022, and it's  
20 partially redacted is: Review account statements from  
21 2010 to 2019, there's a small redaction, various  
22 correspondences between Citibank and Gutman and other  
23 documents to review for possible inclusion on the  
24 trial exhibit list, and outline issues involving the  
25 same for questioning at trial on both direct and

1 cross-examination of witnesses. The only thing I  
2 redacted was something I did not include on that  
3 trial, which is my trial exhibit list.

4 Q. Can you please turn to the September 6th,  
5 2022, invoice, which is the one you were just reading  
6 from?

7 A. September 6th, you said?

8 Q. September 6th, 2022, page two, the  
9 August 5th, 2022, for 1.9 hours, which reads:  
10 Additional research on; isn't that redacted?

11 A. It is.

12 Q. Is the whole description redacted?

13 A. The whole thing. And I agreed to take it out  
14 on my summary.

15 Q. So you're saying you took that out?

16 A. That's exactly what I'm saying.

17 Q. Please turn to page four of the same  
18 invoice --

19 A. Yeah.

20 Q. -- which is your exhibit. Doesn't that say  
21 total hours 19.1, and doesn't -- it does not appear to  
22 take out that 1.9 --

23 A. I didn't take it out of this summary. I took  
24 it out of the summary here. If you add up --

25 Q. But you did not provide this summary before



1 this hearing; is that correct?

2 A. I think the summary is attached to my notice  
3 of use of summary, which I filed on whatever date that  
4 is. It was filed months ago or something. Mr. Carter  
5 probably provided that.

6 Q. I'll move on.

7 A. I literally attached it with these invoices  
8 filed in the court file.

9 Q. I'll move on.

10 Please see the invoice dated October 3rd,  
11 2022 -- excuse me, the invoice dated -- the time  
12 entries -- I apologize for misspeaking.

13 A. The November invoice?

14 Q. Basically, could you please turn to the  
15 invoice dated --

16 A. If it's October time, you're looking at a  
17 November invoice.

18 Q. November 3rd, 2022, that is correct.

19 A. Which entry do you want me to look at?

20 Q. The entries that have both the hours and the  
21 description redacted, which there's several of them.

22 A. Yes.

23 Q. And then turn to page three of that  
24 invoice --

25 A. Yes.

1 Q. -- am I correct that you did not take any  
2 time related to those -- one, two, three, four, five,  
3 six -- you did not take any time related to those  
4 approximately six or seven entries out of the total  
5 hours of 15; is that correct?

6 A. No. If you look at my summary, unless I did  
7 my math wrong, this summary should have taken out all  
8 that time in this summary.

9 Q. But you did not take it out -- you redacted  
10 the invoice, but did not change the total on the  
11 invoice itself; is that correct?

12 A. I did not change the total on the invoice. I  
13 did the total on the summary of what we're claiming,  
14 and if you count up everything on that November  
15 invoice, all the hours un-redacted and all the time  
16 un-redacted, it would equal the amount of hours and  
17 time on the summary.

18 Q. Can you see how an individual, such as  
19 myself looking at this invoice, which shows a total  
20 that isn't changed, would think that's the total  
21 you're claiming?

22 A. Not if you looked at the summary, which I  
23 filed on my notice of intent to use summary. I think  
24 I filed this exact summary --

25 Q. So in order to arrive at that conclusion, I

1 would need to look at both the invoice, then the  
2 summary, and then figure out on my own that you took  
3 it out even though you didn't change it on the invoice  
4 itself?

5 A. All you have to do is count out the  
6 un-redacted hours and times it by the hourly rate and  
7 you get the exact amount on the summary.

8 Q. If we take a look at the entry for, say,  
9 October 27th, October 28th, October 30th,  
10 October 31st, which has two entries, how do I know how  
11 much time to take out for those? You redacted the  
12 hourly amounts, how would I know?

13 A. No. What I'm saying, Mr. Gutman, is you  
14 don't take out the time. If you count the hours  
15 un-redacted, add those up with a calculator, times it  
16 by the hourly rate, which is on the last page, four of  
17 four for those attorneys, you would come up with the  
18 exact amount on the summary.

19 Q. What is that amount? If we were to add up  
20 the amounts that are un-redacted for that particular  
21 invoice -- because this one obviously had a lot  
22 redacted -- if we were to add up the time for -- on  
23 that November 3rd, 2022, invoice, anything that's  
24 un-redacted, what would be the number it comes out to  
25 if we added it up?

1           A.    Unless my math is off, which I did it in  
2   Excel, so I don't think it is. I can pull up the  
3   Excel on my computer. If you go to the summary, you  
4   see where it says invoice date 3rd, November '22 --

5           Q.    I have to find the summary on my desk.

6           A.    -- invoice 118988, it has K. Curtin, 5.9  
7   hours, hourly rate 345; total, \$2,335.50.

8           S. Steven, my paralegal, 1.8 hours, \$150 an  
9   hour, \$270. You add up that 5.9 and that 1.8 for the  
10  hours and you add up the \$2,235.50 and the 270, and  
11  you'll get the hours -- the amount charged.

12          Q.    But I would need to, realistically, look at  
13  both your summary and the invoice, or as you correctly  
14  stated, I would have to actually punch the numbers  
15  into an adding machine myself?

16          A.    That's why I gave you the summary, so it was  
17  clear on the face of the summary what I'm asking for.  
18  Otherwise, I agree with you it may be a little  
19  confusing if I was asking -- personally, I don't think  
20  it's confusing if it's redacted and there's nothing  
21  there, then I can't be asking for it, but that's why I  
22  gave the summary.

23          Q.    On your time entry for October 21st, 2022,  
24  you have point three hours charges for draft on notice  
25  of dismissal without prejudice of Count 2 for unjust

1 enrichment. Is it fair to say that an unjust  
2 enrichment claim when a written contract exists is a  
3 meritless claim?

4 A. No.

5 Q. Why not?

6 A. It could be pled in the alternative. You do  
7 that -- normally if someone denies -- say you sue the  
8 defendant, you as the plaintiff believes there's a  
9 contract, but the defendant denies there's a contract,  
10 you can sue for breach of contract, you can sue for  
11 whatever other counts you may have, you can sue for  
12 unjust enrichment in the alternative.

13 Q. So basically, the crux of your assertion that  
14 unjust enrichment is not a meritless claim, even  
15 though Florida law -- I'm going to back up.

16 The crux of your assertion that an unjust  
17 enrichment claim is not meritless is because your  
18 perspective is that you can plead in the alternative;  
19 is that a fair statement?

20 A. Yes. And based upon experience of  
21 representing Citibank for close to 20 years, I can  
22 guarantee you have seen cardholders come in and deny  
23 that they ever received a contract or a card  
24 statement, deny that they ever received an actual  
25 statement, but then you sue for unjust enrichment,

1 but, you know, you kept the baseball bat that was paid  
2 by this credit card and you kept that, then it's  
3 unjust enrichment. I have seen that happen.

4 Q. So the crux of it is that basically you feel  
5 it's not meritless because you can plead in the  
6 alternative?

7 A. That's the crux of it, yes.

8 Q. Here's my question, then: That being the  
9 case, are you familiar with the Peloponnesian War that  
10 occurred in the year 400 A.D. between the nation  
11 states in Greece and Athens and Sparta; are you  
12 familiar with that?

13 MR. POPE: Objection.

14 MR. GUTMAN: I have a point to make, and I  
15 think it's an important one, Your Honor.

16 THE COURT: I doubt it. Let's move on.  
17 We're not here for Greek history.

18 MR. GUTMAN: Well, no, the reason I ask this  
19 question -- I think that would be a totally  
20 meritless assertion, I really do. But from your  
21 perspective, from your perspective, if I were to  
22 mix that assertion in with all the other stuff  
23 I'm saying regarding Florida Statute 768.79, the  
24 scrivener issue, and other things, from your  
25 perspective something gets cleansed of the

1 meritless nature simply by virtue of the fact  
2 that you can plead in the alternative.

3 I don't think if your unjust enrichment  
4 claim is meritless that it gets cleansed of that  
5 meritless nature by virtue of the fact that it's  
6 included in a complaint that may have a merit  
7 worthy claim. That's my point, Your Honor.

8 THE COURT: How about asking a question  
9 instead? We're not here to make points. We're  
10 here for cross-examination.

11 BY MR. GUTMAN:

12 Q. My question is, do you feel a meritless claim  
13 is cleansed of its meritless nature by virtue of the  
14 fact that you can plead in the alternative?

15 A. Quite frankly, I don't really understand the  
16 question. I don't think I can actually answer it.

17 Q. I'll rephrase. If a claim is meritless, is  
18 it cleansed of that meritless nature by virtue of the  
19 fact that it's mixed in with merit worthy claims?

20 A. Once again, I think that's speculative -- I  
21 can't even answer the question. I really don't  
22 understand it. Pleading in the alternative --

23 Q. I'll move on.

24 At the trial in this case on September 15th,  
25 2022, is it true that you expressly represented to the

1 Court that Mr. Debski, your predecessor, that his  
2 motion to strike was not timely filed, did you  
3 represent that to the Court?

4 A. I can't remember that. Yeah. If I did,  
5 maybe I was wrong on that. I don't know. I can't  
6 remember what I did back in -- eight months ago, to be  
7 honest with you, or whenever that was. It was  
8 probably more than a year ago.

9 Q. Is it possible at the trial that you  
10 represented Mr. Debski's motion was not filed timely  
11 because you felt by doing so the case would not be  
12 considered as being not at issue?

13 MR. POPE: Objection. I mean, to the extent  
14 he wants to ask our witness questions about the  
15 time entries, we're happy to allow it. But we're  
16 not here to rehash the --

17 THE COURT: Sustained.

18 MR. GUTMAN: The point is, though, that if  
19 he won the case at trial by making a false  
20 representation on a key and credible issue, any  
21 of the time that followed afterwards would not be  
22 legitimate time. The point is the unjust  
23 enrichment claim is meritless --

24 THE COURT: Mr. Gutman, let me put your  
25 issues to rest. Pleading in the alternative for



1 unjust enrichment in a breach of contract case is  
2 not meritless. It's well recognized. If you  
3 need me to repeat it, I will, but let's move on.  
4 You're barking up the wrong tree.

5 MR. GUTMAN: Okay. Understood. Understood.

6 BY MR. GUTMAN:

7 Q. Mr. Curtin, are you going to be claiming any  
8 attorney fees with relation to legal fees incurred  
9 pertaining to litigating the amount of attorney fees  
10 versus entitlement?

11 A. I don't believe so. I mean, if you have a  
12 specific entry, but I think I stopped when the  
13 entitlement order, if I remember -- the last entry I  
14 see here is review executed order granting Citibank's  
15 motion for attorney's fees and costs as to  
16 entitlement, 1/13/2023, and that's the last entry I  
17 have, if you see there.

18 Then there's one, two, three pages of  
19 redacted attorney's fees statements. And obviously,  
20 that statement was February 7th, 2023 for January  
21 time, and I have had February, March time, but that's  
22 not in here either.

23 Q. So you're not claiming fees on litigating the  
24 amount of attorney fees, you're only claiming fees  
25 with respect to entitlement?

1 A. It's not my intent. If you have a specific  
2 entry, but that's not my intent.

3 Q. Okay.

4 MR. GUTMAN: That concludes my questions,  
5 Your Honor.

6 THE COURT: Any redirect?

7 MR. POPE: I think we're good, Your Honor.

8 THE COURT: Watch your step, Mr. Curtin.  
9 You can step down.

10 MR. CURTIN: Your Honor, we'll call  
11 Mr. Matlow as our expert witness.

12 THE COURT: Okay. Raise your right hand,  
13 sir. Do you swear to tell us the truth, the  
14 whole truth and nothing but the truth?

15 THE WITNESS: I do.

16 THE COURT: Your full name, please.

17 THE WITNESS: Daniel Matlow.

18 THE COURT: Spell the last name, please.

19 THE WITNESS: M-A-T-L-O-W.

20 THE COURT: Go head, Mr. Curtin.

21 DIRECT EXAMINATION

22 BY MR. CURTIN:

23 Q. Who do you work for, Mr. Matlow?

24 A. Vezina, Lawrence & Piscitelli.

25 Q. And are you a lawyer?

1 A. Yes, sir.

2 Q. How long have you been a lawyer in the state  
3 of Florida?

4 A. I was licensed in 2000. So we're in year 23.

5 Q. Can you take me briefly through your  
6 educational background?

7 A. So I started working at Vezina, Lawrence &  
8 Piscitelli -- I became licensed -- I'm not going to go  
9 back as far as you. I graduated from Michigan for  
10 undergrad. University of Miami Law School, I  
11 graduated cum laude. My first attorney job out of  
12 school was Vezina, Lawrence & Piscitelli. I was there  
13 three years, from 2000 to 2003. It's a litigation  
14 firm.

15 And then I wanted to go to a bigger firm. I  
16 was at Ruden McClosky from 2003 until 2010; again, a  
17 litigation firm. I was -- during the course of that  
18 employment I was promoted to partner, which involved  
19 reviewing -- among other things -- reviewing bills  
20 before they were sent to clients.

21 From 2011 through 2019, I was a solo  
22 attorney. So, you know, I ran my own firm. I was  
23 responsible for, you know, doing the work and getting  
24 the bills out and making billing judgment decisions  
25 just like at Ruden McClosky.

1           Spent two years as an attorney of a  
2 litigation firm here in Palm Beach County, which was  
3 Tobin & Reyes from 2019 to 2021. And then, kind of an  
4 interesting 360-degree or 180-degree, I'm not sure of  
5 the math, 2021 teamed up again with Vezina, Lawrence &  
6 Piscitelli, which is where I started 18 years prior to  
7 that. So that was a great move; and, again, doing  
8 litigation. I am responsible for reviewing pre-bills  
9 and making billing judgment for clients for the files  
10 that I work on.

11           Q. Has your whole career basically been, the  
12 majority of your practice, been litigation in  
13 courtrooms with cases?

14           A. Yeah. The majority of my work is litigation,  
15 and I do a little bit of transactional work, but it's  
16 not heavy-duty transactional work.

17           Q. And did that litigation include banking  
18 litigation and financial litigation?

19           A. I have cases involving banks and so forth,  
20 yes.

21           Q. As seen from your history of your work, all  
22 your litigation and all your work has been here in the  
23 South Florida area?

24           A. Yeah. I would say probably 90-plus percent  
25 would be, you know, Dade, Broward, Palm Beach, maybe

1 through into the Keys for a little bit.

2 Q. And have you testified before as an expert in  
3 the amount of attorney's fees?

4 A. Yes, nine times.

5 Q. And have you signed affidavits on the amount  
6 of attorney's fees?

7 A. Yes, certainly hundreds of affidavits. I  
8 don't know if I would say thousands, but certainly  
9 hundreds. I have never kept track of how many  
10 affidavits I signed.

11 Q. Most of these type of cases settle before  
12 they go to actual testimony?

13 A. Right. So if they don't challenge the  
14 affidavit, then there's no need to testify. That's  
15 right.

16 Q. And were you eventually asked to look at the  
17 attorney fee statements that Citibank is asking to be  
18 reimbursed in this case?

19 A. Yes. And I did look at the attorney fee  
20 statements for the period, which I believe is  
21 July 29th of 2022 through January 13th of 2023.

22 Q. And, in fact, Plaintiff's Exhibit No. 2, are  
23 those attorney fee statements that you reviewed?

24 A. Right. So the first page of Exhibit 2 is the  
25 summary. So I looked at the summary, and then I

1 looked behind the summary at the actual invoices; that  
2 was part of my process.

3 Q. And what else did you review in making a  
4 determination of reasonableness of attorney fees?

5 A. Well, I looked at the pleadings. And when I  
6 say pleadings, I use that term strictly to the  
7 initial, you know, the pleadings, as opposed to other  
8 filings. And then, I skipped -- after looking at the  
9 pleadings, which, you know, is the complaint and the  
10 answer and so forth, then I focus my attention on the  
11 court filings which occurred during that period of  
12 July 29th, 2022 through January 13th of 2023.

13 So I looked at those court filings, I looked  
14 at the billing entries that were being sought. I  
15 looked at -- I paid special attention to the motion  
16 for attorney's fees, and the response to the motion  
17 for attorney's fees where the defendant identified the  
18 items that he felt were improper. And so, although I  
19 review all of the entries to see if I felt they were  
20 proper and reasonable, I also paid attention to the  
21 subset, which is the items that the defendant was  
22 complaining about being unreasonable.

23 Q. And those items that he complained about  
24 being unreasonable, were there also many items on  
25 their attorney fee statements where Mr. Gutman in his

1 pleadings did not make a specific objection to?

2 A. Yes. So what I observed, and I'm relying on  
3 the math from your office, Mr. Curtin, but from what I  
4 observed there were about \$15,000 in change of items  
5 that the defendant did not object to, and there were  
6 roughly \$11,000 and change of items that the defendant  
7 did object to.

8 Q. And looking at the summary that you have in  
9 front of you, the \$26,957.50 that Citibank is claiming  
10 to be reasonable in this case, and the 83.9 hours that  
11 is requested, based upon your experience and education  
12 do you believe that those are reasonable hours and a  
13 reasonable amount?

14 A. Yes, I believe that to be reasonable.  
15 Although, I would say that as I'm listening to this,  
16 and there's so much discussion about entitlement still  
17 being something that's being grumbled about and argued  
18 about, I think Citi could have been more aggressive  
19 and tried to get some fees after that order on  
20 entitlement, which you still have to litigate  
21 entitlement.

22 Q. Meaning that, we may be able to --

23 A. Your number might be low because it seems  
24 like there's still litigation entitlement after the  
25 judge ruled.

1 Q. Based upon your experience and education, are  
2 the hours, the actual hourly rate expended by their  
3 attorneys and paralegals outlined in Exhibit No. 2,  
4 are those reasonable and related?

5 A. Yes. These are clearly discounted rates  
6 relative to what somebody would pay off the street for  
7 commercial litigation.

8 MR. CURTIN: No further questions of this  
9 witness.

10 THE COURT: Cross-examination, Mr. Gutman.

11 MR. GUTMAN: Thank you, Your Honor.

12 CROSS-EXAMINATION

13 BY MR. GUTMAN:

14 Q. Mr. Matlow, would you please turn to the  
15 invoice dated September 6th, 2022?

16 A. Can you tell me which time entry?

17 Q. Yes. The first time entry dated August 1st,  
18 2022, on the September 6th, invoice.

19 A. Draft our motion in limine?

20 Q. Draft our motion in limine.

21 How much of the time on that entry was  
22 attributable to the account stated claim versus the  
23 unjust enrichment claim?

24 A. I don't know. I don't have that memorized.

25 Q. Let's go to the next entry, point two hours.



1 Draft email to our client on our motion in limine and  
2 strategy in regards to the same. How much time was  
3 spent on the counts being claimed versus the unjust  
4 enrichment claim?

5 A. It was all in the email. So I would say it  
6 has nothing to do with unjust enrichment --

7 Q. In either one of the claims?

8 A. It has to do with the motion in limine and  
9 strategy in regards to same, so --

10 Q. So is it related to the claims that Citibank  
11 was pursuing?

12 A. It's related to the motion in limine and  
13 however else that affects the case in its totality.

14 Q. Let's go to the next one. August 2nd --  
15 August 3rd -- let's go to the bottom of that page,  
16 August 3rd, 2022. Point five hours: Telephone call  
17 with client and testifying witness to discuss  
18 upcoming trial and trial testimony.

19 How much of this was for the account stated  
20 claims and how much to the unjust enrichment claim?

21 MR. CURTIN: Your Honor, my only objection  
22 to that, this -- the motion on entitlement was  
23 based upon the entire case based upon an offer of  
24 settlement, not based upon one count, such as a  
25 breach of contract, where there would be any sort

1 of -- where it would be relevant the division of  
2 it. It was based upon the case in its totality,  
3 Your Honor. So this line of questioning is  
4 irrelevant.

5 THE COURT: Sustained.

6 MR. GUTMAN: I'm sorry, did you say --

7 THE COURT: Sustained.

8 MR. GUTMAN: Okay. I do realize you  
9 sustained the objection, Your Honor. I just  
10 would ask that Your Honor take into consideration  
11 that the overwhelming majority of the time  
12 entries do not make any breakout between the  
13 account stated claim and the unjust enrichment  
14 claim.

15 So in making an award, I would -- it seems  
16 to me that since the unjust enrichment claim --  
17 and I know you feel it's merit worthy -- since it  
18 is meritless and since it did lose, and since  
19 they withdrew it, I don't think that they should  
20 be entitled to attorney fees on that claim. So  
21 at most, they'd be entitled to half of what  
22 they're asking for.

23 THE COURT: I understand your position, and  
24 I think Mr. Curtin would concede that he didn't  
25 breakout the time and separate it for you. But I

1 understand your position.

2 MR. GUTMAN: Could I ask the bailiff to help  
3 out here? This is Defendant's Exhibit 1.  
4 Unfortunately, I literally just handwrote it as  
5 Defendant's Exhibit 1, and it's the order  
6 canceling a hearing. If you could give that to  
7 the witness, and if Mr. Curtin would like to see  
8 it. It's just a court order that the judge  
9 signed.

10 BY MR. GUTMAN:

11 Q. Mr. Matlow, could you please read that order?

12 A. Order canceling hearing. The November 9th,  
13 2022, hearing is canceled.

14 Q. And what does that order mean to you?

15 A. It means that there's a hearing that was  
16 supposed to happen on a certain date, and it's not  
17 happening on that date.

18 Q. Okay.

19 MR. GUTMAN: Your Honor, I'd like the record  
20 to reflect that to read that order, and in  
21 interpret it, according to my watch it took  
22 Mr. Matlow approximately 15 seconds.

23 BY MR. GUTMAN:

24 Q. Mr. Matlow, now I'd like you to turn to the  
25 time entry on November 8th, 2022, which is by K.

1 Curtin for point three hours, and I'd like you to read  
2 what the description of the time spent there is.

3 A. So you're on page two of three?

4 Q. When you say two of three -- November 8th,  
5 2022.

6 A. So we're looking at an entry that says point  
7 three -- tell me if I got this right -- review order  
8 from Court canceling hearing on our motion for  
9 attorney's fees and costs.

10 Q. Correct. So it basically took you 15 seconds  
11 to do. How much time does point three hours equal?

12 A. It would be more than -- well, you have to  
13 figure out rounding, right? So I would say anything  
14 more than 14 minutes -- let's say 14 minutes and one  
15 second would be point three.

16 Q. I would say point three would be 18 minutes.

17 A. Well, the question is if you rounded down,  
18 but if I had 14 minutes, you had to round up.

19 Q. Okay. So even going with the rounded down,  
20 you're basically saying that -- am I correct in  
21 asserting that Mr. Curtin charged 14 minutes' time to  
22 18 minutes for something you did in 15 seconds?

23 A. I think you're missing the point.

24 Q. Tell me how.

25 A. Because when you get an order like this

1 there's things that have to happen. You have to, you  
2 know, make sure that you communicate to -- you know,  
3 double check with your assistant that things -- you  
4 know, that it's taken off the calendar, so on and so  
5 forth, and you take it off the calendar. So, you  
6 know, it's not simply 15 seconds and you're done.

7           Maybe you think about: Well, how soon do I  
8 need to get that hearing reset? What's the strategy  
9 for when we need to -- let's get some time on the  
10 Court's calendar to get this reset, and when is that  
11 going to be, and how does it affect our case if it's  
12 decided now versus two months from now?

13           And nobody who is a busy attorney writes down  
14 in vivid detail all the minutia of what that involves.

15           Q. So is it fair to say, then, that the bulk of  
16 the time spent with respect to that time entry was not  
17 spent redoing the order and understanding it, it was  
18 spent doing all this other stuff that you have just  
19 delineated?

20           A. Well, as I'm an expert, I don't have personal  
21 knowledge, I can just tell you in my experience -- I  
22 don't need to have personal knowledge as an expert.  
23 That's my experience of how things happen in a law  
24 office.

25           Q. So is it fair to say that the bulk of the

1 time on that time entry was not spent in a manner that  
2 correlates with the description?

3 MR. CURTIN: Objection.

4 THE WITNESS: I would say that the  
5 description is not as detailed as what you  
6 would -- as what's involved in that task.

7 And I also want to correct, I think the  
8 rounding up would happen in 15 minutes, if that's  
9 half of the difference between point two and  
10 point three. So I apologize for that math error.

11 BY MR. GUTMAN:

12 Q. That's fine.

13 MR. GUTMAN: Could I ask for the bailiff's  
14 assistance one more time? This is Defendant's  
15 Exhibit 2. It's the order granting the motion  
16 for dismissal of the unjust enrichment claim.

17 BY MR. GUTMAN:

18 Q. Mr. Matlow, starting now, could you please  
19 read that motion -- that order?

20 A. I think it would be appropriate to tell you,  
21 I could read this in probably 20 seconds.

22 Q. And understand it?

23 A. Read it -- this is an order granting the  
24 motion to dismiss Count 2. I could get this order  
25 from the Court, read it and understand it in 20 to

1 30 seconds.

2 Q. All right. Good enough.

3 So essentially, if we go with your 15-minute  
4 number, and you're doing this in, say, 30 seconds,  
5 hypothetically if that theory that the descriptions on  
6 these invoices, roughly speaking, equate to I think it  
7 would be -- if you say -- if we up it to 30 seconds,  
8 one-thirtieth of the time it's actually on there, you  
9 would actually take the total amount that Mr. Curtin  
10 is claiming of \$28,000, divide it by 30, and that  
11 would be the amount of attorney's fees they'd be  
12 entitled to; is that a fair statement? If there was  
13 to be precise correlation between the descriptions and  
14 the time spent?

15 A. You're saying that if you're correct that  
16 this entry for point three was overstated, you want to  
17 extrapolate that to assume that every other entry in  
18 the whole --

19 Q. I'm not saying that I want to extrapolate it.  
20 What I'm saying is if you were to extrapolate it,  
21 would that be a relatively accurate calculation?

22 A. I think you would have to hire a statistician  
23 with a Ph.D. to tell you if that was a meaningful  
24 analysis.

25 Q. Once again, I'm not asking if it's a

1 meaningful analysis. What I'm asking is, if it were  
2 to be extrapolated, working from the perspective that  
3 the assumption is set, whether it's a correct  
4 assumption or not, it would be one-thirtieth --

5 MR. CURTIN: Your Honor, I object. This  
6 calls for speculation. It's really -- Mr. Matlow  
7 said it's outside his knowledge and expertise.  
8 It would be more an accountant or a CPA to  
9 extrapolate.

10 MR. GUTMAN: I don't think it does call for  
11 speculation, Your Honor, because all I'm asking  
12 is that Mr. Matlow indicate whether or not an  
13 extrapolation would come up with that result.  
14 I'm not asking him to comment on whether the  
15 extrapolation is justified. I'm simply asking  
16 him to comment upon if that extrapolation were  
17 justified, would that be the result? So I don't  
18 think it's speculative.

19 THE COURT: No, but it's still irrelevant.  
20 Objection is sustained.

21 MR. GUTMAN: I'm just reviewing for a brief  
22 moment, Your Honor. I feel I may be done, but I  
23 just want to be sure.

24 BY MR. GUTMAN:

25 Q. Mr. Matlow, one of the things you testified



1 on just now is that due to the number of documents  
2 filed and motions filed, this came -- this case became  
3 more complex, I believe you indicated?

4 A. Mr. Curtin said that.

5 Q. I think you're right. Do you believe that to  
6 be the case yourself, though?

7 A. I think you complicated the case by your  
8 filings, yes.

9 Q. Okay. The question I have is if you look at  
10 the docket list, did Citibank submit more pleadings  
11 and documents to the Court or did I submit more  
12 pleadings and documents to the Court?

13 MR. CURTIN: Objection, Your Honor,  
14 relevancy. We're talking about a specific  
15 timeframe between July, I think 29th, 2022 up  
16 until the order on entitlement. We're not  
17 talking about the whole entire case, Your Honor.

18 THE COURT: Sustained.

19 MR. GUTMAN: I would like to note for the  
20 record, Your Honor, I didn't get an opportunity  
21 to respond, but...

22 THE COURT: You'd like to what?

23 MR. GUTMAN: I didn't get an opportunity to  
24 respond to Mr. Curtin.

25 THE COURT: I didn't think a response was

1 necessary.

2 MR. GUTMAN: Okay. I understand. I have no  
3 further questions.

4 THE COURT: Any redirect on Mr. Matlow's  
5 testimony?

6 MR. CURTIN: No, Your Honor.

7 THE COURT: Thank you, Mr. Matlow. Watch  
8 your step coming down.

9 MR. CURTIN: We rest our case, Your Honor.

10 THE COURT: Any testimony for the defense or  
11 just argument?

12 MR. GUTMAN: I am done, Your Honor.

13 THE COURT: Let's take about a five-minute  
14 break, and I will entertain your summation and  
15 we'll wrap this up.

16 MR. CURTIN: Thank you, Your Honor.

17 (A short recess was taken.)

18 THE COURT: Have a seat. I'm not sure  
19 there's much of a closing from Mr. Curtin, but  
20 take a few moments, if you'd like.

21 MR. CURTIN: No, Your Honor. I think our  
22 summary attached as Exhibit No. 2 says it all,  
23 Your Honor, that we're asking for a total of  
24 \$26,957.50, which I think equates to 89.3 hours,  
25 Your Honor, of attorney time and paralegal time.

1 MR. POPE: Eight-three.

2 MR. CURTIN: 83.9. The only other thing,  
3 which there, Your Honor, which is not evidentiary  
4 is whenever I get the bill from Ms. Court  
5 Reporter and whenever I get Mr. Matlow's final  
6 bill, I can send it to Mr. Gutman, and I think  
7 that's taxable costs, which is not an evidentiary  
8 issue.

9 THE COURT: Mr. Gutman.

10 MR. GUTMAN: Thank you, Your Honor. In  
11 rendering your decision, I would just ask that  
12 you, in addition to matters that I stated, that  
13 you take into account that the unjust enrichment  
14 claim versus the account stated claims are not  
15 delineated or broken out in any manner.

16 And Florida law clear indicates that it's --  
17 you can't have an unjust enrichment claim when a  
18 contract exists. And in this case, both parties  
19 have been in agreement for a long, long time that  
20 the -- that there was a contract in existence,  
21 certainly we were even going to -- you know,  
22 Mr. Curtin provided the contract, I had the  
23 contract. So there was no doubt that the  
24 contract existed. So at least at that point in  
25 time the unjust enrichment claim should have been

1 withdrawn prior to the trial. They waited years  
2 to withdraw that unjust enrichment claim.

3 So even to the extent that, you know, if  
4 hypothetically it is merit worthy initially  
5 because they didn't know -- because there are  
6 litigants, as Mr. Curtin indicated, that assert  
7 contracts don't exist, once the parties were  
8 clearly in agreement that there was a written  
9 contract and exchanging them, they should have  
10 withdrawn the unjust enrichment claim at that  
11 point in time, and not put me in a position where  
12 I still had to oppose it. So there should be  
13 some accounting for that.

14 And along those same lines, since I raised  
15 the unjust enrichment issue, that it was  
16 meritless in my counterclaim, I think it's  
17 important to point out also that the reason my  
18 counterclaim was dismissed was predicated  
19 primarily, at least based upon my understanding,  
20 on litigation privilege. And litigation  
21 privilege, basically, is a doctrine that provides  
22 absolute immunity to debt collectors for tortious  
23 conduct during the course of a litigation. So  
24 they used litigation privilege to get rid of the  
25 counterclaim. At that point in time, they didn't

1 even argue that the unjust enrichment claim was  
2 merit worthy. The whole concept of their  
3 argument that the unjust enrichment claim was  
4 merit worthy was not even -- was not made. So it  
5 was litigation privilege that resulted in the  
6 dismissal.

7 So I do think that should be taken into  
8 account. I'm hoping you will take it into  
9 account.

10 And then, the only other point I would raise  
11 is that -- since I do think you're going to award  
12 some amount -- I would like to request that the  
13 order itself indicate that it's not executable  
14 pursuant to the Florida Supreme Court's opinion  
15 in Bernstein v. Bernstein, as well as several  
16 other cases.

17 There is, obviously, an appeal pending. The  
18 public has an interest in this. The general  
19 public has an interest in this because Citibank  
20 was filing countless numbers on a massive scale,  
21 of unjust enrichment claims against helpless,  
22 impoverished litigants, and I do ask that the  
23 Court take that into account.

24 And so, whatever amount you do ultimately  
25 award, I do request that the order indicate it's

1 not executable or collectable until the appeal is  
2 resolved.

3 THE COURT: All right. So based upon the  
4 evidence presented today, I find that the hours  
5 set forth in the summary marked and received as  
6 Plaintiff's Composite 2, that the hours -- the  
7 number of hours were reasonably spent, and the  
8 rates for each of the professionals involved are  
9 reasonable rates for this locale. And so, I am  
10 granting the fees in the amount as set forth in  
11 the Exhibit 2.

12 So if you would be good enough to prepare a  
13 judgment reflecting those findings and reserving  
14 as to the costs that you have not completed yet,  
15 then I will take a look at it and execute an  
16 order for you.

17 I believe your concern about executing on  
18 that judgment is just as a matter of law while  
19 the appeal is pending they're not going to go  
20 execute on a judgment. It need not be stated in  
21 the order.

22 Anything further for this afternoon?

23 MR. CURTIN: No, Your Honor.

24 THE COURT: Thank you all for coming in.

25 (Proceedings concluded.)

C E R T I F I C A T E

I, REBECCA M. VIERA, Registered Professional Reporter, certify that I was authorized to and did stenographically report the foregoing proceedings and that the transcript is a true and complete record of my stenographic notes.

Dated this 21st day of May, 2023.

*Rebecca Viera*

REBECCA M. VIERA, RPR, Court Reporter