

IN THE DISTRICT COURT OF APPEAL OF FLORIDA  
FOURTH DISTRICT

**CASE NO. 4DC#22-2664**

**Related Appellate Case #4DC23-1058**

Lower Tribunal Case No. 50-2020-CC-005756-XXXX-MB

---

**EVAN S. GUTMAN**

Defendant - Petitioner,

vs.

**CITIBANK, N.A.**

Plaintiff - Respondent

---

**REQUEST FOR RULING ON PENDING PETITION  
FOR WRIT OF PROHIBITION and  
RULING ON PENDING ATTORNEY FEE APPEAL**

**(Emergency Filing)**

---

EVAN S. GUTMAN, CPA, JD  
Petitioner Pro Se  
Member State Bar of Pennsylvania  
Member District of Columbia Bar  
Admitted to U.S. Tax Court Bar  
Florida Certified Public Accountant  
1675 NW 4th Avenue, Apt. 511  
Boca Raton, FL 33432  
561-990-7440

**REQUEST FOR RULING ON PENDING PETITION FOR WRIT OF PROHIBITION and RULING ON PENDING ATTORNEY FEE APPEAL**

**(EMERGENCY FILING)**

On April 3, 2024 at a Contempt Hearing the following exchange took place between Judge Edward A. Garrison and Petitioner, Evan S. Gutman (See Exhibit 1 and Exhibit 2 attached):

**JUDGE GARRISON:** "All I'm suggesting to you, Mr. Gutman -- this is your choice. These are direct questions, and you're avoiding them, but I'm trying to get a direct response.

**MR. GUTMAN:** Unlikely is the answer.

**JUDGE GARRISON:** If you want to have **one foot on the banana peel and your neck in a noose**, that's entirely up to you, but there will be no more games, so when this order is entered, that's it. "

Based on the foregoing exchange, Petitioner sent the letter attached hereto as Exhibit 1 to many people and organizations, including but not limited to U.S. Attorney General Merrick Garland; Palm Beach County District Attorney Dave Aronberg; Palm Beach County Sheriff Ric Bradshaw; the U.S. Department of Justice Civil Rights Division; the U.S. Department of Treasury Financial Crimes Enforcement Division and a multiple of others. Petitioner also attaches Page 85 of the transcript as Exhibit 2 herein, which is the Excerpt of the exchange.

Additionally, Petitioner attaches hereto, a complete copy of the Official Transcript of the entire Hearing held on April 3, 2024 (condensed version). On October 3, 2022 Petitioner, Evan S. Gutman filed a document with this Court titled "PETITION FOR EXPEDITED WRITS OF MANDAMUS AND PROHIBITION." On October 25, 2022, this Court denied the portion of the filing pertaining to the Petition for a Writ of Mandamus. However, to date, this Court has not yet ruled upon the Petition for a Writ of Prohibition, although approximately 1 1/2 years have lapsed. Florida Rule of Judicial Administration indicates a Court has a duty to rule upon and announce an order or judgment on every matter submitted within a reasonable time.

Accordingly, Petitioner requests this Court issue an Emergency Ruling on the Writ of Prohibition and also render a decision on the related Attorney Fee Appeal case. Concurrently, Petitioner incorporates by reference herein all matters related to judicial disqualification in the pending related attorney fee appeal; as well as the underlying trial court case, and the transcript attached hereto.

On April 3, 2024, Judge Garrison held Petitioner in Contempt for failure to provide financial discovery, even though Citibank never even so much as filed a Motion to Compel Discovery. Additionally, Judge Garrison

confirmed he will not comply with Florida Supreme Court Rule 2.215(f) or Chief Judge Kelley's Administrative Order requiring a Certificate of Good Faith be attached to a Motion to Compel before the matter can be heard. Furthermore, Judge Garrison has indicated if Petitioner is incarcerated for failure to provide financial discovery, Petitioner may find "**one foot on the banana peel and your neck in a noose.**" That is nothing short of an express threat to cause physical harm to a litigant who has been totally respectful throughout these proceedings (albeit passionately exercising his Legitimate Due Process Rights). The applicable Contempt Order illegally indicates Petitioner may be arrested and incarcerated as soon as the end of this day Friday, April 19, 2024.

Accordingly, Petitioner submits this Request for the applicable Rulings and other Relief the Court may deem appropriate, on an **EMERGENCY BASIS.**

Submitted humbly and graciously this 19th day of April, 2024.



---

Evan S. Gutman CPA, JD  
Petitioner Pro Se  
Member State Bar of Pennsylvania  
Member District of Columbia Bar  
1675 NW 4th Avenue, Apt. 511  
Boca Raton, FL 33432  
561-990-7440

## CERTIFICATE OF SERVICE

I HEREBY CERTIFY a true and correct copy of the foregoing is being furnished to opposing counsel by filing thru the E-Portal and a follow up copy will be sent to Donald Allen Mihokovich, Esquire, of the law firm of ADAMS AND REESE, LLP.

Dated this 19th day of April, 2024.

  
Evan S. Gutman CPA, JD

## CERTIFICATE OF COMPLIANCE

I HEREBY CERTIFY to the best of my ability and with the understanding this is an EMERGENCY MOTION, the foregoing comports with required Font and Spacing requirements as best as possible within the short time frame of an Emergency Motion to avoid an illegal incarceration and possible physical injury to the Petitioner based on statements of Judge Edward A. Garrison.

  
Evan S. Gutman CPA, JD

# **EXHIBIT 1**

**Evan Gutman CPA, JD**  
1675 NW 4th Avenue, #511  
Boca Raton, Florida 33432  
Member State Bar of Pennsylvania  
Member District of Columbia Bar  
Admitted to Federal Sixth Circuit Court of Appeals  
Admitted to Federal Ninth Circuit Court of Appeals  
E-Mail: [egutman@gutmanvaluations.com](mailto:egutman@gutmanvaluations.com)  
561-990-7440

**JUDGE EDWARD GARRISON :** " **Fire Away.**

**CITIBANK ATTORNEY CARTER POPE:** . . . .  
Just to confirm, **Your Honor, it's fine to fire away ?**

**JUDGE EDWARD GARRISON :** **Yes, that's fine. "**

Official Transcript of Hearing Held March 24, 2023 - Matter Pending on Appeal Currently

"The litigation privilege applies across the board to actions in Florida, both to common-law causes of action, those initiated pursuant to a statute, or of some other origin. **"Absolute immunity must be afforded to any act occurring during the course of a judicial proceeding. . . .** so long as the act has some relation to the proceeding."

Echevarria, McCalla, Raymer v Cole, 950 So.2d 380 (Fla. 2007)

"An ordinance unconstitutional on its face or patently unconstitutional as applied - is not made sacred by an unconstitutional injunction that enforces it. It can and should be flouted in the manner of the ordinance itself. **Courts as well as citizens are not free "to ignore all the procedures of the law," to use the Court's language. The "constitutional freedom" of which the Court speaks can be won only if judges honor the constitution.**"

Walker v City of Birmingham, 388 U.S. 307, 338-339 (1967) - Justices Warren, Brennan, Fortas and Douglas Dissenting

U.S. Department of Justice  
Attn: Attorney General Merrick Garland  
950 Pennsylvania Avenue, NW  
Washington, DC 20530

Palm Beach County District Attorney's Office  
Attn: Dave Aronberg, Esq.  
401 N. Dixie Highway  
West Palm Beach, 33401

U.S. Department of Treasury  
Attn: Financial Crimes Enforcement Unit  
1500 Pennsylvania Avenue, NW  
Washington, DC 20220

Re: Citibank N.A. v Evan Gutman  
Palm Beach County Case #50-2020-CC-005756-XXXX-MB  
Florida 4th DCA Case #4DCA23-1058

**Dear U.S. Attorney General Merrick Garland; Palm Beach County District Attorney Dave Aronberg; Palm Beach County Sheriff Rick Bradshaw; and U.S. Dept. of Treasury Financial Crimes Enforcement Division:**

You are of many government officials, agencies, media organizations, public interest organizations, personal friends, prominent Florida attorneys, and numerous others who I am sending this letter to.

I am writing regarding Judge Edward Garrison and the above case currently pending on appeal at Florida's Fourth District Court of Appeal. One issue pending on appeal is Judge Garrison's statement to "Fire Away" made in open court, which intimidated me. His statement was made at a Hearing on **March 24, 2023** and is in the official court transcript cited in my Reply Appellate Brief. It was made subsequent to my filing two Motions to Disqualify him (both Denied); and notably after significant friction had already developed between us since he became the Fourth Judge on the case. The context of the phrase suggests it might not have been be a direct physical threat, but could reasonably be construed as a thinly disguised threat to intimidate me. That said, the possibility of it not being a threat, changed markedly at a later Contempt hearing held on April 3, 2024. At the **April 3, 2024 Contempt Hearing**, Page 85 of the Transcript (attached) shows matters have now escalated. Specifically, on that page, Garrison expressly stated it was my choice **if I wanted to have one foot on a banana peel and my neck in a noose**. It is clear this new statement constitutes a direct physical threat by Judge Garrison to myself. (See Attached Excerpt of Transcript of April 3, 2024 Hearing). Accordingly, I now request he be investigated for possible Prosecution of physically threatening a litigant in open court with bodily harm.

As you know, in this nation there are many angry people. I do not believe any Judge would respond favorably to a litigant directing such language at the Court. Further, to allow a Judge to use such language jeopardizes public respect for other Judges. Accordingly, I request the U.S. Justice Department and Palm Beach County District Attorney's Office to investigate Judge Garrison, Citibank Attorney Carter Pope, Esq., and Citibank Attorney Kenneth Michael Curtin, Esq. about this. I would like to know what they were thinking when then spoke in open court about "Firing Away." And more importantly that Judge Garrison be questioned regarding his April 3, 2024 statement about my being on a "banana peel" with "my neck in a noose." A determination should be made as to whether Judge Garrison should be Prosecuted for his express physical threat made in open court and on the transcript.

I am also writing about the Florida Supreme Court's opinion in Echevarria, McCalla, Raymer v Cole, 950 So.2d 380 (Fla. 2007). So far as I know, no other State has provided Absolute Immunity for the commission of any illegal tortious act. In my view, such constitutes a massive breakdown in the law. Ultimately, if debt collector attorneys are given immunity to violate all laws, it can fairly well be anticipated citizens will lose faith and confidence in the Judiciary and violate laws on their own. Florida stands alone on this issue to the best of my knowledge. The problems related to this issue have the following impact:

- a. Nullifies a Massive Body of U.S. Congressional Legislative Power
- b. Nullifies a Massive Body of Florida State Legislative Power
- c. Nullifies the 14th Amendment Due Process Clause
- d. Nullifies the 14th Amendment Equal Protection Clause
- e. Substantively consolidates within the Judiciary alone, the control of all three branches of government in the State of Florida
- f. Deprives litigants of Fair Access to Courts because the Judiciary is no longer trustworthy.
- g. Effectively Diverts, Seizes and Steals Financial Assets and monies from Impoverished citizens to benefit financial interests of Banks and Debt Collector attorneys

- h. Effectively Diverts and Steals financial assets from litigants lacking legal knowledge to benefit Financial interests of Banks and Debt Collector attorneys
- i. Unlawfully Results in Citibank being able to Seize and Steal my own Legitimate Inheritance from my Parents (deceased a few years ago)
- j. Destroy Family Relationships of Law-Abiding Citizens and ruins the lives of their Children

The Third reason I am writing is predicated upon Citibank filing massive numbers of meritless lawsuits against impoverished citizens and those lacking knowledge of the law based upon a legally defective claim of Unjust Enrichment. Specifically, an Unjust Enrichment claim is predicated upon the nonexistence of a written contract. However, Citibank knows written contracts exist for all credit card accounts. Thus, they are knowingly filing meritless lawsuits on a massive scale in Florida. This is the issue I am referring to the U.S. Treasury Department's Financial Crimes Unit and which gives rise to Paragraphs (f) thru (j) in the list presented above. Also, by utilizing the U.S. Mail to send legal filings to impoverished citizens; Citibank and their attorneys are likely guilty of committing Mail Fraud.

I raised their filing of meritless lawsuits in my counterclaim. However, my counterclaim was dismissed based upon the doctrine of litigation privilege delineated in Echevarria. Thus, what occurred in this case, is Citibank is being allowed to violate laws and when I point out their violations, Judge Garrison simply adopts the position that it really does not matter if they violated the law or not; because they have absolute immunity to violate statutes in the context of a legal proceeding.

The Fourth reason I am writing is there is a pervasive ongoing practice in Palm Beach County Courts for Judges to refuse to render any type of ruling at all on certain motions. Specifically, I served discovery upon Citibank almost three years ago. Citibank timely filed a motion for an extension, which I opposed. To date, almost three years later Judge Garrison (similar to Judge April Bristow) is refusing to rule upon Citibank's extension motion in any manner. The reason he is doing so is because if their extension motion is denied, the requests for admissions I served upon Citibank are deemed admitted. Liability issues would then be resolved in my favor. In contrast, if their motion for an extension is granted, it serves as precedent that 3 years is a "reasonable period of time" for a Court to rule upon a motion. Florida Rule of Judicial Procedure 2.215(f) states as follows:

" **(f) Duty to Rule within a Reasonable Time.** Every judge has a duty to rule upon and announce an order or judgment in every matter submitted to the judge within a reasonable time. "

It is my position Judge Garrison is in Contempt of the Florida Supreme Court by intentionally refusing to rule in any manner upon Citibank's Motion for an Extension. He is also overtly refusing to comply with Chief Judge Glenn Kelley's Order requiring a Good Faith Certificate be attached to a Motion to Compel.

The Fifth reason for this letter is due to the breakdown in the rule of law, I have indicated in writing and open court that I refuse to provide financial discovery to Citibank. The impact is I have been held in Contempt by Garrison. Judge Garrison has indicated I may be held until I provide the financial discovery. Due to matters set forth herein, I do not currently intend to comply with further Court Orders issued by Judge Garrison even though such may cost me my freedom. In this regard, **Citibank has never even filed a Motion to Compel Discovery.** Garrison also never even issued a Court Order scheduling the Contempt hearing for the time it was held. Citibank Attorney Kenneth M. Curtin, Esq. also represented in writing that he was willing to commit Perjury in order to advance illegal debt practices of the Bank. I attached that e-mail to my own Motion for a Protective Order from discovery. Garrison denied that motion thereby placing the Judiciary itself in a position of Suborning Perjury.

Suffice it to say, this has been a very lengthy and difficult case. Bottom line is Citibank is literally being given judicial permission to violate statutes. Judge Garrison is then intentionally ignoring virtually all required due process constitutional protections. Hence, a full breakdown of the legal system in Florida.

The original alleged debt in this case only involved the sum of **\$ 11,292.15** on a credit card account. To date, Garrison has awarded Citibank approximately **\$ 60,000** in attorney fees and costs on top of the credit card amount. He is working in conjunction with Citibank Counsel for the purpose of stealing my own legitimate inheritance from my parents. I have consistently exercised my rights in a legitimate, legal manner (albeit passionately exercising my First Amendment Speech Rights). In turn, Garrison and Citibank are trampling the Due Process and Equal Protection Clauses without hesitation.

I request law enforcement authorities look into this matter. A copy of this letter is being sent to multiple individuals and organizations and will be available on my own websites as soon as possible at [www.gutmanvaluations.com](http://www.gutmanvaluations.com) and [www.heavensadmissions.com](http://www.heavensadmissions.com). I am also the author two books that I have contributed to the public domain. They are both also available on my websites. My first book is titled "STATE BAR ADMISSIONS AND THE BOOTLEGGERS SON." It is about the hypocrisy of the Judiciary focusing on the Good Moral Character requirement to obtain a law license. The other is an upbeat, provocative and somewhat comical fictional novel titled "HEAVEN'S ADMISSIONS PROCESS."

A copy of the transcripts of the attorney fee hearing and "so-called" contempt hearing will also be put on my websites. I understand I may be arrested as early as 5:01 this Friday, unless I comply with Judge Garrison's Court Orders. I have also been notified already that at my request, the Public Company Accounting Oversight Board is now looking into this matter. A copy of my letter to them and their response received a few days ago (April 12, 2024) is also going to be on my websites. My websites also already include a multiplicity of the most relevant legal filings, including the Motions to Disqualify.

Judge Garrison historically has had a troubled and controversial judicial career. His reputation is that of a so-called "No Nonsense" Judge. His reputation, which has been in the media previously does not give him the right to ignore all procedures of law and just "do whatever he wants." Years ago Garrison announced his retirement from the bench to collect both a judicial pension and a judicial salary at the same time. Thus, he got paid twice for doing one job and it became a public embarrassment. He even openly stated he did so for financial reasons. Put simply, he "played" the system to be paid twice for the same job. Another issue in the media, involved a divorce case in which he refused to grant a couple a divorce, even though both the husband and wife agreed to stipulated terms.

In closing, I have never been convicted of any crime in my entire life. I also have never been subjected to professional discipline in my capacity as either a CPA or Attorney, as no ethical complaint of any nature has ever been filed against me. It is irrational to give dishonest debt collector attorneys "absolute immunity"; when we give man law enforcement officials only "qualified immunity."

Thank you very much for your consideration of the matters delineated herein and please also see below.

Very truly yours,

Evan Gutman CPA, JD

#### **TRANSCRIPT PAGE 85 OF APRIL 3, 2024 CONTEMPT HEARING (Attached hereto)**

JUDGE GARRISON All I'm suggesting to you, Mr. Gutman - this is your choice. These are direct questions, and you're avoiding them, but I'm trying to get a direct response.

MR. GUTMAN: Unlikely is the answer.

JUDGE GARRISON: **If you want to have one foot on a banana peel and your neck in a noose, that's entirely up to you**, but there will be no more games, so when this order is entered, that's it.

1 THE COURT: All I'm suggesting to you,  
2 Mr. Gutman -- this is your choice. These are direct  
3 questions, and you're avoiding them, but I'm trying to  
4 get a direct response.

5 MR. GUTMAN: Unlikely is the answer.

6 THE COURT: If you want to have one foot on a  
7 banana peel and your neck in a noose, that's entirely  
8 up to you, but there will be no more games, so when  
9 this order is entered, that's it.

10 MR. GUTMAN: Mmhmm. Well, like I say,  
11 unlikely. I --

12 THE COURT: Okay.

13 MR. GUTMAN: My answer went from -- from no to  
14 unlikely.

15 THE COURT: Okay. Well, it's your choice.

16 MR. GUTMAN: Understood.

17 THE COURT: All I'm trying to make is that  
18 clear.

19 All right. The other motion that you wanted  
20 to deal with?

21 MR. CURTIN: Yes, Your Honor, one other  
22 motion. This is for the final motion on various writs  
23 of acknowledgement, Your Honor. I have a copy of the  
24 motion, Your Honor.

25 So this is an interesting one, Your Honor.

# **EXHIBIT 2**

1 THE COURT: All I'm suggesting to you,  
2 Mr. Gutman -- this is your choice. These are direct  
3 questions, and you're avoiding them, but I'm trying to  
4 get a direct response.

5 MR. GUTMAN: Unlikely is the answer.

6 THE COURT: If you want to have one foot on a  
7 banana peel and your neck in a noose, that's entirely  
8 up to you, but there will be no more games, so when  
9 this order is entered, that's it.

10 MR. GUTMAN: Mmhmm. Well, like I say,  
11 unlikely. I --

12 THE COURT: Okay.

13 MR. GUTMAN: My answer went from -- from no to  
14 unlikely.

15 THE COURT: Okay. Well, it's your choice.

16 MR. GUTMAN: Understood.

17 THE COURT: All I'm trying to make is that  
18 clear.

19 All right. The other motion that you wanted  
20 to deal with?

21 MR. CURTIN: Yes, Your Honor, one other  
22 motion. This is for the final motion on various writs  
23 of acknowledgement, Your Honor. I have a copy of the  
24 motion, Your Honor.

25 So this is an interesting one, Your Honor.

# **EXHIBIT 3**

<p style="text-align: right;">Page 1</p> <p>1 IN THE COUNTY COURT OF THE FIFTEENTH JUDICIAL CIRCUIT</p> <p>2 IN AND FOR PALM BEACH COUNTY, FLORIDA</p> <p>3 CASE NO.: 50-2020-CC-005756-XXXX-MB</p> <p>4</p> <p>5 CITIBANK N.A.,</p> <p>6 Plaintiff/Petitioner</p> <p>7 vs.</p> <p>8 EVAN S. GUTMAN,</p> <p>9 Defendant/Respondent.</p> <p>10 _____/</p> <p>11</p> <p>12</p> <p>13 PROCEEDINGS HELD BEFORE</p> <p>14 THE HONORABLE EDWARD A. GARRISON</p> <p>15</p> <p>16 April 3, 2024</p> <p>17 1:02 p.m. - 3:02 p.m.</p> <p>18</p> <p>19 PALM BEACH COUNTY COURTHOUSE</p> <p>20 205 NORTH DIXIE HWY</p> <p>21 WEST PALM BEACH, FL 33401</p> <p>22</p> <p>23 REPORTED BY:</p> <p>24 Lisa MacDonald, Court Reporter</p> <p>25 Notary Public No. HH-472774</p>	<p style="text-align: right;">Page 3</p> <p>1 INDEX OF PROCEEDINGS</p> <p>2 PAGE</p> <p>3</p> <p>4 OPENING COMMENTS 5</p> <p>5</p> <p>6 EVIDENTIARY HEARING ON THE AMOUNT OF</p> <p>7 PLAINTIFF/PETITIONER ATTORNEYS' FEES</p> <p>8</p> <p>9 WITNESSES ON BEHALF OF PLAINTIFF/RESPONDENT</p> <p>10 Donald Mihokovich, K.C.</p> <p>11 Direct examination by Mr. Curtin 10</p> <p>12 Cross-examination by Mr. Gutman 15</p> <p>13 Redirect examination by Mr. Curtin 38</p> <p>14</p> <p>15 Stephanie Serafin, K.C.</p> <p>16 Direct examination by Mr. Curtin</p> <p>17</p> <p>18 WITNESSES ON BEHALF OF DEFENDANT/RESPONDENT</p> <p>19 Kenneth Curtin, Esq.</p> <p>20 Direct examination by Mr. Gutman 47</p> <p>21</p> <p>22 Final argument by Mr. Gutman 60</p> <p>23 Final argument by MR. Curtin 61</p> <p>24</p> <p>25</p>
<p style="text-align: right;">Page 2</p> <p>1 APPEARANCES</p> <p>2</p> <p>3 ON BEHALF OF THE PLAINTIFF/PETITIONER:</p> <p>4 Kenneth Curtin, Esq.</p> <p>5 Adams and Reese LLP</p> <p>6 North Tampa Street, Suite 4000</p> <p>7 Tampa, Florida 33602</p> <p>8 813-227-5521</p> <p>9 Kenneth.curtin@arlaw.com</p> <p>10</p> <p>11 APPEARING ON HIS OWN BEHALF:</p> <p>12 Evan Gutman</p> <p>13 EVAN GUTMAN CPA, JD</p> <p>14 Boca Raton, Florida 33432</p> <p>15 201-400-6459 (Cell)</p> <p>16 Egutman@gutmanvaluations.com</p> <p>17</p> <p>18</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p> <p>25</p>	<p style="text-align: right;">Page 4</p> <p>1 MOTION TO HOLD DEFENDANT IN CONTEMPT OF</p> <p>2 COURT</p> <p>3 Submissions by Mr. Curtin 63</p> <p>4 Submissions by Mr. Gutman 72</p> <p>5</p> <p>6 MOTION FOR FINAL JUDGMENT ON VARIOUS WRITS</p> <p>7 OF GARNISHMENT</p> <p>8 Submissions by Mr. Curtin 86</p> <p>9 Submissions by Mr. Gutman 91</p> <p>10</p> <p>11</p> <p>12 INDEX OF EXHIBITS</p> <p>13 -----</p> <p>14 EXHIBIT DESCRIPTION PAGE</p> <p>15 -----</p> <p>16 PLAINTIFF EXHIBIT 1: 15</p> <p>17 ATTORNEY HOURS AND RATES SUMMARY WITH</p> <p>18 STATEMENTS</p> <p>19 PLAINTIFF EXHIBIT 2: 45</p> <p>20 KREUSLER-WALSH, VARGAS &amp; SERAFIN'S FEE</p> <p>21 EXPERT BILL</p> <p>22 DEFENDANT EXHIBIT 3: 48</p> <p>23 EMAILS</p> <p>24 DEFENDANT EXHIBIT 4: 48</p> <p>25 JUDGMENT LIEN CERTIFICATE</p>

Page 5

1 (Proceedings commenced at 1:02 p.m.)  
2 THE BAILIFF: All rise. Court is now in  
3 session, the Honorable Edward Garrison presiding.  
4 THE COURT: Good afternoon. If everyone could  
5 have a seat, please.  
6 Okay. So we have a variety of motions that  
7 got added on. The main thing that was set for today  
8 was the evidentiary hearing in determining the  
9 reasonable fees on the prior award to the plaintiff,  
10 and what else do we have still pending?  
11 MR. CURTIN: Yes, Your Honor. This morning we  
12 had two scheduled Zoom hearings, but your secretary  
13 said just to set it all today live. So we have the  
14 evidentiary hearing on the amount of appellate  
15 attorneys' fees, and we have the motion to hold  
16 Mr. Gutman in contempt of court, and we have the  
17 motion for a final judgment on various writs of  
18 garnishment.  
19 If it pleases the Court, I would like to do  
20 the evidentiary hearing first just because I have my  
21 witnesses here for that.  
22 THE COURT: Sure.  
23 MR. GUTMAN: Your Honor, before we even start  
24 with any of the motions, it's my position that these  
25 hearings should not take place even, and if I could,

Page 6

1 I'd like to delineate why.  
2 There's a Citibank motion for extension of  
3 discovery that they filed, I believe, in July 2021.  
4 They then -- excuse me, a motion to extend discovery  
5 that they -- to respond to my discovery that they  
6 filed in July of 2021. They then provided essentially  
7 nothing in -- I believe it was February or March of  
8 2022 they did respond, but they essentially objected  
9 for the most part to all the requests for admissions.  
10 I filed an opposition to the extension. We're now in  
11 2024, which is almost three years -- it will be three  
12 years this July.  
13 The Florida Supreme Court has delineated  
14 that -- in its rules of judicial administration that  
15 all motions should be ruled upon within a reasonable  
16 period of time. So this extension motion is now over  
17 two and a half years old, almost three years old, it  
18 still has not been ruled upon, and if their motion for  
19 extension is denied, the impact is that substantially  
20 all liability issues are resolved in my favor and  
21 against them. If their motion to extend is granted  
22 almost three years after its filing, that would  
23 basically mean that a reasonable period of time,  
24 according to this court, anyway, to comply with the  
25 Florida Supreme Court dictate would be almost three

Page 7

1 years, which I don't think is reasonable, but, in any  
2 event, even if the motion is granted, there's still  
3 the issue of the fact that their discovery was  
4 substantially deficient, and if the motion to extend  
5 is granted, I should be able to file, then, a motion  
6 to compel better answers to their discovery because  
7 the extension motion was pending the entire time.  
8 Now, Mr. Curtin -- I had brought this issue up  
9 once before, and Mr. Curtin's rebuttal on it was that  
10 the underlying case has been resolved, so the  
11 extension motion is moot, but that's not really  
12 correct because if all the liability issues are  
13 admitted, then not only should the attorney fees  
14 motion be denied, but it also provides me, then, with  
15 the ability to file a motion to vacate the underlying  
16 judgment based upon new evidence, that new evidence  
17 being that Citibank has admitted all liability issues.  
18 So before we even continue on the entitlement issue, I  
19 do think we need a ruling on the outstanding motion  
20 for extension.  
21 Now, turning very briefly to the contempt  
22 motion, the reason that should not be heard --  
23 THE COURT: We're focusing on the evidentiary  
24 hearing first, so --  
25 MR. GUTMAN: Okay. Fair enough, fair enough.

Page 8

1 THE COURT: -- if you would clarify --  
2 MR. GUTMAN: Okay. Fair enough.  
3 THE COURT: You started out by saying an  
4 objection, and you kind of moved into a motion. What  
5 specifically do you want right now regarding --  
6 MR. GUTMAN: A ruling on the motion for  
7 extension, their motion for extension.  
8 THE COURT: Okay. Well, we've dealt with that  
9 before. Mr. Curtin's prior position is correct. This  
10 has been resolved. The case is going to final  
11 judgment and then affirmed in appeal. Any other  
12 reasons not to proceed here?  
13 MR. GUTMAN: Not on the entitlement issue, but  
14 I do have -- but I guess what you're saying is --  
15 THE COURT: The entitlement has already been  
16 decided. This is the amount of determination of the  
17 fees.  
18 MR. GUTMAN: No, no, I understand that.  
19 THE COURT: Okay.  
20 MR. GUTMAN: In other words, with respect to  
21 proceeding on the contempt and the garnishment, you're  
22 saying I should wait until we --  
23 THE COURT: Yeah, we're going to get this  
24 evidentiary hearing --  
25 MR. GUTMAN: Okay. Fair enough.

Page 9

1 THE COURT: -- out of the way so we don't keep  
2 our witnesses waiting.  
3 MR. GUTMAN: Okay. Understood.  
4 THE COURT: Mr. Curtin, if you need to make a  
5 brief opening, fine. If not, we can just jump into  
6 the testimony. We know how an attorneys' fee hearing  
7 works, so --  
8 MR. CURTIN: Yeah, I think we can just jump  
9 into the testimony, Your Honor.  
10 THE COURT: All right.  
11 MR. CURTIN: We won on entitlement; it's just  
12 the amount.  
13 My first witness will be my law partner,  
14 Donald Mihokovich, Esquire.  
15  
16 DONALD MIHOKOVICH, ESQ.  
17 Having been duly sworn, testifies as follows:  
18  
19 THE COURT: Please have a seat at the witness  
20 stand. Watch your step going up.  
21 All right. Once again, your full name is --  
22 THE WITNESS: My full name is Donald Allen,  
23 A-L-L-E-N, Mihokovich, and I've already --  
24 THE COURT: Can you spell the last name,  
25 please?

Page 10

1 THE WITNESS: It's M-I-H-O-K-O-V, as in  
2 Victor, I-C-H.  
3 THE COURT: All right, Mr. Curtin, you may  
4 proceed.  
5 MR. CURTIN: Thank you.  
6 DIRECT EXAMINATION BY MR. CURTIN:  
7 Q. Mr. Mihokovich, can you briefly go over your  
8 educational background?  
9 A. Sure. Undergraduate degree was from Bowling  
10 Green State University, 1987. I then attended law  
11 school at --  
12 THE COURT: Let me interrupt for one brief  
13 second.  
14 Do you have an objection to his qualifications  
15 and testimony?  
16 MR. GUTMAN: No, no, no, no.  
17 THE COURT: Okay. We can skip most of it,  
18 then.  
19 MR. CURTIN: Fair enough.  
20 BY MR. CURTIN:  
21 Q. We're here on an evidence hearing on the  
22 amount of appellate attorneys' fees on the appeal of  
23 the underlying final judging. What have you reviewed  
24 in order to make an opinion on the reasonableness of  
25 those fees?

Page 11

1 A. I reviewed the bills, your submissions,  
2 Mr. Gutman's objections, and the underlying briefs,  
3 motions, responses to motions, and rulings to those  
4 motions.  
5 Q. Okay. Let me show you what I'll mark for  
6 identification purposes as exhibit number 1. What is  
7 exhibit number 1?  
8 A. It starts with a summary of the -- of the  
9 number of hours and the hourly rate and the amount for  
10 each of those, and after that, I assume this is all  
11 part of the same thing, are the actual statements.  
12 Q. And are those attorneys' fees statements that  
13 you've reviewed in this matter that determine the  
14 reasonableness of the amount of the appellate  
15 attorneys' fees?  
16 A. Yes, they are.  
17 Q. Okay. And you are familiar with the Rowe  
18 factors for reasonableness of attorneys' fees?  
19 A. I am.  
20 Q. Okay. And as far as the nature of the case  
21 and involvement in this case and the time and labor  
22 and novelty and complexity issues involved, do you  
23 have any opinion on that Rowe factor?  
24 A. It was a little more complex than most appeals  
25 and certainly more than most Citibank or Citi Mortgage

Page 12

1 related appeals because Mr. Gutman, while he is an  
2 attorney in other jurisdictions, he's not a Florida  
3 attorney, so some of his arguments were a little  
4 unique.  
5 Q. And do you have an opinion on the fee and rate  
6 customarily charged compared to the rates -- in this  
7 jurisdiction compared to the rates charged Citibank  
8 for this litigation?  
9 A. Our rates that we charge for Citibank are more  
10 than reasonable compared to what's usually charged in  
11 this jurisdiction.  
12 Q. And as far as the nature and length of the  
13 professional relationship between Adams and Reese, the  
14 law firm, your law firm, and Citibank, do you have any  
15 knowledge of that?  
16 A. Yes. That relationship goes back at least 15  
17 years. I've been with Adams and Reese since 2010, and  
18 Citibank has been a client of the firm since at least  
19 then, and we've handled probably hundreds of files for  
20 Citibank.  
21 Q. And there was only two attorneys who billed  
22 that we're asking for -- there are only two attorneys  
23 who billed time on this appeal, correct, yourself and  
24 myself?  
25 A. Well, I think that there's one time entry on

Page 13

1 the summary for Lou Ursini. He's the primary  
2 relationship partner and oversees just about  
3 everything that we do for Citibank, but primarily it  
4 is my time and your time.  
5 Q. And as far as the appeal, were you the main  
6 attorney on the appeal?  
7 A. Yes.  
8 Q. And what was my relationship with the appeal?  
9 A. Well, you were the trial court attorney, so  
10 you helped guide me as to what the issues were, what I  
11 should look for in the record.  
12 Q. And is that normal in an appeal that you go to  
13 the trial attorney to see what happened at that date?  
14 A. Absolutely.  
15 Q. As far as Section 768.79 Florida Statutes,  
16 that's the offer of judgment statute -- as far as the  
17 elements of that, do you have any opinion on the  
18 apparent merit or lack of merit of the claim?  
19 A. Well, that's already been determined by the  
20 District Court of Appeal, which ruled in our favor on  
21 all issues.  
22 Q. So the appeal was 100 percent victory for  
23 Citibank?  
24 A. Correct.  
25 Q. At the end of the day, how much in fees do you

Page 14

1 believe -- in hours, do you believe are reasonable  
2 occurred in that appeal?  
3 A. As shown on the summary, 56.4 is what we're  
4 requesting, and that is a very reasonable amount.  
5 Q. And as far as the hourly rates on the summary  
6 and in the timesheets, do you have any opinion on the  
7 reasonableness of the hourly rates for yourself,  
8 myself and Mr. Ursini?  
9 A. Again, the hourly rates are very reasonable,  
10 and they're less than what I charge most other  
11 clients.  
12 Q. And as far as the total amount of attorneys'  
13 fees you're asking for -- Citibank is asking for on  
14 this appeal, what's the total amount?  
15 A. \$20,250.90.  
16 Q. And based upon your experience and education,  
17 is that a reasonable total amount?  
18 A. Absolutely.  
19 Q. Based on your experience and education, are  
20 the 56.4 hours reasonable?  
21 A. Yes, they are.  
22 MR. CURTIN: No further questions at this  
23 point.  
24 THE COURT: All right. The composite exhibit  
25 1 that you've handed in has been marked as composite

Page 15

1 exhibit 1 for the plaintiff.  
2 MR. CURTIN: Yes, I would like to enter that  
3 into evidence, Your Honor.  
4 THE COURT: Any objection to the exhibit?  
5 MR. GUTMAN: No objection to it being entered  
6 into evidence, Your Honor.  
7 THE COURT: All right, composite exhibit  
8 number 1 for the plaintiff has been admitted without  
9 objection.  
10 PLAINTIFF EXHIBIT 1:  
11 ATTORNEY HOURS AND RATES SUMMARY WITH  
12 STATEMENTS  
13 Cross-examination, Mr. Gutman?  
14 MR. GUTMAN: Yes.  
15 CROSS-EXAMINATION BY MR. GUTMAN:  
16 Q. Mr. Mihokovich, you basically, is it fair to  
17 say, handled the bulk of the appeal?  
18 A. Correct.  
19 Q. Do you recall filing on May 19th, 2023 a  
20 response in opposition to my motion for a 40-day  
21 extension of time to file a reply brief?  
22 A. I do recall filing a response to it. As I sit  
23 here today, I don't recall the basis for it. You'd  
24 have to show it to me.  
25 Q. Okay. If I were to say to you -- and I'm

Page 16

1 actually reading from the document. If I were to say  
2 to you that what you wrote is, once again, Gutman has  
3 filed his motion in the wrong case --  
4 A. Oh, now I recall the basis for it. You asked  
5 for an extension of time to file a reply brief in this  
6 case because of something that was going on in the  
7 other appeal that was dealing with your appeal of the  
8 attorneys' fee judgment.  
9 Q. Okay. So when you say "the other appeal",  
10 there was also a petition for mandamus and prohibition  
11 that was filed, correct?  
12 A. That's correct.  
13 Q. And when you filed this response in opposition  
14 to my motion, you were basically indicating that the  
15 two appeals, although related -- actually, I'll read  
16 exactly what you said to help you. "While the two  
17 appeals are related, they have not been consolidated".  
18 Would I be correct in saying that the appeal  
19 which is the subject to entitlement to appellate fees  
20 today includes time for the petitions for mandamus and  
21 prohibition, which were a different case, and noting,  
22 would I be correct -- that would be a compound  
23 question, so, actually, I'll leave it at that for  
24 right now.  
25 Would I be correct that the petitions for

Page 17

1 mandamus and prohibition were different case numbers,  
2 and you basically utilized that premise to defeat one  
3 of my motions, or try to defeat it?  
4 MR. CURTIN: My only objection is if he's  
5 going to ask about a document and a filing, if he  
6 could give us at least a copy of that filing to look  
7 at before he answers the question.  
8 MR. GUTMAN: That's fair enough. This is the  
9 only one I have, but I've got my questions on it.  
10 A. I'm not sure I follow your question, but I  
11 can -- okay, this was the objection to appellate  
12 attorneys' fees?  
13 BY MR. GUTMAN:  
14 Q. To clarify the question, you complained the  
15 case numbers were different, therefore they were  
16 different cases, even though they were related. Since  
17 the petition for mandamus is a different case number,  
18 isn't it fair to say that would not be subject to  
19 entitlement to appellate attorney fees, even though  
20 related to the other appeal, because you made that  
21 argument yourself, the Court of Appeals agreed with  
22 you, so isn't that a fair statement?  
23 A. I -- no, I don't think it's a fair statement,  
24 but I'm not here to make legal argument, but I can  
25 tell you that the issues that you raise in your

Page 18

1 petition for writ of mandamus and prohibition, as I  
2 recall, were the same issues that you raise in this  
3 appeal. So to the extent I looked at the underlying  
4 record when you first filed the petition for writ of  
5 mandamus and prohibition, I did not have to repeat  
6 that when handling this appeal, so it all carried over  
7 because they were the exact same issues. You just --  
8 Q. On your time --  
9 A. You just filed it the wrong way.  
10 Q. On your time records do you indicate it was  
11 for this -- for the case that we're dealing with  
12 today, or did you clearly indicate on your time  
13 records that it was for a petition of mandamus?  
14 A. Well, you filed the petition for writ of  
15 mandamus and prohibition first.  
16 Q. Right.  
17 A. So when I looked at some of the stuff  
18 initially, like when I looked at the record of this  
19 case, it was when you would have only filed that one.  
20 It was not until that was dismissed, then you  
21 basically refiled the same thing as a -- as a final  
22 appeal.  
23 Q. On your timesheets, since the petition of  
24 mandamus is a different case number, isn't it a  
25 different case?

Page 19

1 MR. CURTIN: Objection, Your Honor. I think  
2 it's asked and answered. The witness was asked and  
3 answered that.  
4 THE COURT: Overruled. He can answer.  
5 A. They're the same issues that you raised in two  
6 different cases, so I didn't have to repeat the work  
7 twice. I didn't go back and look at the record.  
8 BY MR. GUTMAN:  
9 Q. On your billing records didn't you identify a  
10 petition for mandamus and prohibition instead of  
11 saying these are the same issues that were raised?  
12 And you basically just said, am I correct, petition  
13 from time for petition mandamus and prohibition,  
14 extraordinary writs? I think that's exactly what you  
15 said, there was extraordinary writs in there.  
16 A. I still don't understand what your question  
17 is. I understand you're making an argument, but is  
18 there a question?  
19 Q. The question is aren't they two different  
20 cases? And the time you -- and aren't they two  
21 different cases?  
22 A. No. They're all -- it depends on what you  
23 mean by that.  
24 Q. Different case numbers.  
25 A. You attempted -- there were -- so far in this

Page 20

1 case, if I recall correctly, you have generated --  
2 you've made filings that have generated three  
3 different case numbers with the District Court of  
4 Appeal, if that's what you're asking. You filed first  
5 for a petition of --  
6 Q. I'm asking if your billing records include  
7 time spent for two different case numbers. That's my  
8 question.  
9 A. In one sense, yes, in another sense, no. I  
10 did the work --  
11 Q. Well --  
12 A. I did the work --  
13 Q. -- can't argue with that, I guess.  
14 A. I did the work -- again, I did the work  
15 initially -- some of the work initially when you filed  
16 a petition for writ of prohibition and writ of  
17 mandamus. When that was denied, you essentially  
18 refiled the same thing, but as a final appeal, so when  
19 I initially went back and looked at what happened in  
20 the lower court, that applied to both.  
21 Q. I'm just going to ask the question again. The  
22 time that's on your billing records indicates  
23 extraordinary writ. Weren't the extraordinary writs a  
24 different case number? That's the question. Yes or  
25 no?

Page 21

1 A. I think I answered that. Yes, you've  
2 generated three different District Court of Appeal  
3 case numbers. At first it was the writ of  
4 prohibition, writ of mandamus, then there was this  
5 final appeal, and then you have a third appeal as to  
6 the attorneys' fee judgment.  
7 Q. Can I please, Your Honor, get a direct answer  
8 to the question?  
9 The items you identified as extraordinary  
10 writs, aren't they a different case number?  
11 A. I think I already answered that. There is a  
12 different case number for what you initially filed.  
13 Q. So, yes, you're saying yes?  
14 A. Then when that was dismissed, you refiled the  
15 same thing, which was the appeal that we're under now.  
16 I don't know how else to answer that.  
17 Q. You could just say yes.  
18 MR. CURTIN: Your Honor, I think he's  
19 badgering the witness. I think the witness has  
20 answered it.  
21 THE COURT: Next question, Mr. Gutman.  
22 MR. GUTMAN: Okay. I'm not sure if I have any  
23 other questions. If you could just bear with me for a  
24 moment, Your Honor, please.  
25 I do have a few more questions.

Page 22

1 BY MR. GUTMAN:  
2 Q. Under the statute for attorney fees after an  
3 offer judgment, Florida Statute 768.79, am I correct  
4 that in considering the amount of attorney fees, the  
5 Court should consider the apparent merit or lack of  
6 merit in the claim?  
7 A. That's one of the elements under the statute.  
8 Q. Am I correct that another element would be the  
9 closeness of questions of fact and law at issue?  
10 A. I believe so.  
11 Q. And would I also be correct in saying that the  
12 Court should consider whether the suit was in the  
13 nature of a test case?  
14 A. As I recall.  
15 Q. Okay. That being the case, are you familiar  
16 with Florida's construction of litigation privilege in  
17 the case of Echevarria v. Cole?  
18 A. That is the issue that you attempted to raise  
19 with the United States Supreme Court.  
20 Q. Correct, which they denied the petition for  
21 cert. That being said, are you aware that the denial  
22 of a petition for cert is not precedential in nature?  
23 A. I didn't come prepared here today to make  
24 legal argument with you. That's Mr. Curtin's role, so  
25 I'm not sure --

Page 23

1 Q. Well, no, these go to the amount, though, and  
2 you are the appellate attorney, so, you know, there is  
3 a certain mix of law and fact, basically, that  
4 overlaps to a certain extent.  
5 All I'm asking, basically, is you brought up  
6 that I brought it to the U.S. Supreme Court, so here's  
7 my question: Are you familiar with Florida's  
8 construction of litigation privilege in the case of --  
9 2007 case of Echevarria v. Cole? Are you familiar  
10 with it?  
11 MR. CURTIN: If he wants to talk -- I think  
12 we're getting far afield from a specific time entry.  
13 If he wants to talk about a specific time entry and  
14 the relevancy of that specific time entry, I think  
15 that would be relevant. To talk about esoteric issues  
16 of law --  
17 MR. GUTMAN: Your Honor --  
18 MR. CURTIN: -- is not relevant for the amount  
19 of attorneys' fees billed, Your Honor.  
20 THE COURT: Where are we going with this line  
21 of questioning?  
22 MR. GUTMAN: Okay. Basically where we're  
23 going is that in my opposition to the entitlement, I  
24 basically only rose issue with respect to the  
25 individual time entries to the extent of the

Page 24

1 extraordinary writs basically being a different case  
2 number. However, I also objected to everything that  
3 they're claiming with respect to entitlement to  
4 appellate fees on the grounds that Florida's  
5 construction of litigation privilege is different than  
6 virtually every other state and perhaps even every  
7 single other state, the result being that if Florida's  
8 construction of litigation privilege is so different  
9 from the rest of the country, then it falls squarely  
10 into the 768.79 elements of merit in the claim, nature  
11 of -- closeness of questions of fact and law, suit was  
12 in the nature of an issue of a test case, because  
13 Florida -- so far as I know, Florida is the only state  
14 in the nation that holds that illegal tortious conduct  
15 of any nature is subject to absolute immunity, whether  
16 it's of a statutory source or of a common law source.  
17 So that being the case, if Florida is the only state  
18 that's doing that, and I challenge that premise,  
19 clearly I'm in good shape as far as the issue of  
20 merit, the issue of closeness of questions of fact and  
21 that the suit was in the nature of a test case.  
22 And additionally, since I indicated the U.S.  
23 Supreme Court denied cert, and that's not  
24 precedential, as also the Florida's fourth PCA  
25 affirmance without opinion, that's also not

Page 25

1 precedential under Florida law. So I'm squarely  
2 falling into with respect to the time spent that there  
3 is substantial merit to my assertions, that there is  
4 at least a closeness of questions of fact, if not the  
5 point that 49 states agree with me, and also that the  
6 suit was in the nature of a test case, because since  
7 all the other states are not doing it, it's now  
8 putting to the test in Florida whether Florida really  
9 should be doing it. That's the crux.  
10 THE COURT: It seems to me like your argument  
11 tends to go towards the issue of entitlement rather  
12 than time spent here today, so to the extent that was  
13 the objection, Mr. --  
14 MR. GUTMAN: Actually, if I could, Your Honor,  
15 comment on that. As indicated in my response, we've  
16 had a lot of back and forth, basically, with respect  
17 to the entitlement to appellate attorney fees as well  
18 as the original attorney fee judgment. We've had a  
19 lot of back and forth as to whether the 768.79 factors  
20 go to the issue of entitlement or whether they go to  
21 the issue of amount. I believe when I was utilizing  
22 those factors to challenge entitlement with respect to  
23 the attorney fee judgment, you yourself indicated,  
24 well, wouldn't that go more to the issue of amount?  
25 So what's basically happening here is Citibank

Page 26

1 is saying the 768.79 factors go to amount, not  
2 entitlement, then they get their entitlement, and then  
3 we're at the hearing on amount, and now you're saying  
4 it goes to entitlement. So either way, I should be  
5 able to address it someplace.  
6 THE COURT: Perhaps, but I'm not sure the line  
7 of questioning you're pursuing gets you to that point.  
8 If you're suggesting that a certain number of hours  
9 involved in this was on that issue that you're  
10 raising, then just have him identify how much that is,  
11 if he can, and if not --  
12 MR. GUTMAN: Actually, I believe I identified  
13 it in my opposition.  
14 THE COURT: I'm not looking at that right now,  
15 but this --  
16 MR. GUTMAN: Okay.  
17 THE COURT: This is the witness testifying  
18 about the hours that were submitted that were  
19 reasonable. If you want to have him identify those  
20 that relate to the issue you're raising, we can carve  
21 that out potentially, but I don't want to have a  
22 debate here about the whole substantive argument  
23 that you're --  
24 MR. GUTMAN: Oh, okay. I do -- I mean, I do  
25 have that here, and I can identify them and ask him to

Page 27

1 confirm the identification of any --  
2 THE COURT: Well, like I said, he may or may  
3 not be able to segregate those items, but I'm assuming  
4 at some point you're going to go on to the things that  
5 perhaps may contradict that, but let's focus on the  
6 time and --  
7 MR. GUTMAN: Okay. No, fair enough. Fair  
8 enough. I understand what you're saying.  
9 BY MR. GUTMAN:  
10 Q. Okay. Your time entry on October 3rd, 2022,  
11 Mr. Mihokovich, I assume you have your -- could you  
12 please read that into the record, the description?  
13 A. Is this the second page of the exhibit?  
14 Q. This is the November 3rd, 2022 statement.  
15 It's the first page right after your summary.  
16 A. Okay. (As read)  
17 0.5 hours review/analyze Gutman's  
18 petition for extraordinary writs.  
19 Q. Okay. Jump down to the last item on that --  
20 actually, jump down -- the second one down -- third  
21 one down, excuse me, October 3rd, 2022, "Time spent by  
22 Louis Ursini III". Could you read the description  
23 there?  
24 A. (As read)  
25 Analyze petition for mandamus and

Page 28

1 briefing from op council.  
2 Q. Okay. Jump down to October 4th, 2022, the  
3 last item on that statement, same page.  
4 A. (As read)  
5 Detailed review of trial court docket,  
6 pleadings, motions and orders for  
7 appellate purposes in light of  
8 defendant's petition for writ of  
9 mandamus and prohibition.  
10 Q. Okay. Starting with the phrase that you just  
11 read where it says "in light of", read that into the  
12 record again.  
13 A. You mean you want me to reread the second half  
14 of the sentence I just read?  
15 Q. Exactly.  
16 MR. CURTIN: The only objection I have, Your  
17 Honor, is the record speaks for itself. It's already  
18 been read in.  
19 THE COURT: Sustained.  
20 MR. CURTIN: I don't like to make objections  
21 for no reason, but when you have a question that's  
22 just repeating a question already answered --  
23 BY MR. CURTIN:  
24 Q. Okay. Let's go to the next page, page 2 of 4.  
25 Please read the October 4th, 2022 entry.

Page 29

1 A. For Mr. Curtin's time?  
2 Q. For Mr. Curtin's time.  
3 A. (As read)  
4 Review filing and pleading from the  
5 Fourth District Court of Appeal on  
6 Gutman's writ of mandamus.  
7 Q. Okay.  
8 A. And then I think that was the last one during  
9 that time period because then --  
10 Q. Hang on.  
11 A. -- then you filed your appeal on the exact  
12 same issues.  
13 Q. Okay. Let's jump to the -- let's jump to the  
14 November 3rd, 2022 statement.  
15 A. Okay.  
16 Q. Read the entry that is the fourth one down,  
17 October 25th, 2022.  
18 A. (As read)  
19 Review fourth district's order denying  
20 Gutman's petition for writ of  
21 mandamus, 0.1; Communications with P.  
22 Wiggins regarding same, 0.1.  
23 Q. Okay. Read the October 27th entry on that  
24 same page, time spent by you.  
25 A. I'm sorry, which date?

Page 30

1 Q. October 27th, 2022, same page.  
2 A. So the last time entry on the same page?  
3 Q. Same page, yeah.  
4 A. (As read)  
5 Consult with K. Curtin regarding  
6 appellate ramifications of plan to get  
7 trial court order voluntarily  
8 dismissing count 2 without prejudice.  
9 Q. What was count 2?  
10 A. Count two was the alternate count that wasn't  
11 tried, which I believe 1 was --  
12 Q. Was it the --  
13 A. -- on contract, and count 2 was then for  
14 unjust enrichment.  
15 Q. And so you're charging time for that claim  
16 even though you dismissed it?  
17 A. Even though it was later dismissed. That's  
18 what allowed the appeal to go forward.  
19 Q. Okay. Let's jump to the January 10th, 2023  
20 invoice statement.  
21 A. Okay. I'm there.  
22 Q. The last entry on that page for an hour and a  
23 half, December 27th, 2022.  
24 A. You want me to read it?  
25 Q. Read the description.

Page 31

1 A. Okay. (As read)  
2 Legal research regarding motion to  
3 strike and at-issue rule for setting  
4 matter for trial for use in an  
5 anticipated answer brief.  
6 Q. Are you aware that at the trial Mr. Curtin  
7 testified that the motion to strike was not timely  
8 filed by his predecessor, Mr. Debski?  
9 MR. CURTIN: Your Honor, my objection is we're  
10 not going into what happened at the trial, what  
11 happened at the appeal. We're going into whether this  
12 time entry was relevant to the appeal, not what  
13 happened at trial, and whether it is reasonable, the  
14 amount.  
15 MR. GUTMAN: Your Honor, we're going to have a  
16 major issue on this, so we might as well address it  
17 right now. It is my position that any misconduct on  
18 the part of Mr. Curtin impacts upon the entitlement to  
19 attorney fees. In reliance, I rely on the case of  
20 Levin v. Middlebrooks (verbatim), and I would cite the  
21 last page where the court, Florida Supreme Court,  
22 wrote as follows: (As read)  
23 This does not mean, however, that a  
24 remedy for a participant's misconduct  
25 is unavailable in Florida. On the

Page 32

1 contrary, just as remedies for  
2 perjury, slander and the like  
3 committed during judicial proceedings  
4 are left to the discipline of the  
5 courts, the Bar Association and the  
6 state (Wright 446 South 2nd at 1164)  
7 other tortious conduct occurring  
8 during the litigation is equally  
9 susceptible to that same discipline.  
10 Clearly, a trial judge has the inherent  
11 power to do those things necessary to  
12 enforce its orders, to conduct its  
13 business in a proper manner and to  
14 protect the court from acts obstructing  
15 the administration of justice.  
16 So in a nutshell, I've got a list of questions  
17 that when I call Mr. Curtin to the stand, which I will  
18 be doing if he doesn't want to testify himself, that  
19 address a lot of stuff he's done during this  
20 litigation, and that all impacts upon attorney fees in  
21 accordance with Levin where basically even though they  
22 get the benefit of litigation privilege providing them  
23 with absolute immunity, under Levin the Court still  
24 has to consider these items to conduct its business  
25 properly. I don't think you can simply say, you know,

Page 33

1 Mr. Curtin, I like you, so I'm just going to ignore  
2 all the misconduct that you've committed, and I'm not  
3 even going to allow Mr. Gutman to ask questions,  
4 because I got a long list of questions to ask  
5 Mr. Curtin.  
6 THE COURT: Well, thank you for the preview,  
7 but Mr. Curtin is not on the witness stand. Do you  
8 have a question for this witness about a particular  
9 time entry?  
10 BY MR. GUTMAN:  
11 Q. Basically I think this conversation started  
12 because I wanted him to read December 27, 2022, and  
13 are you aware, Mr. Mihokovich, that Mr. Curtin on the  
14 day of trial indicated that Mr. Debski's motion to  
15 strike was not timely filed?  
16 MR. CURTIN: Once again, Your Honor, I don't  
17 know if what happened at trial has to do with the  
18 appeal. The issue on the appeal he did -- Mr. Gutman,  
19 did bring up an at-issue argument on the appeal  
20 because the Fourth DCA ruled against him on it when  
21 the PCA'd it, and he brought all this up in the  
22 appeal. If he wants to talk about what happened in  
23 the appeal and this time entry and why Mr. Mihokovich  
24 was doing research for 1.5 hours on this, that is  
25 fine, but to talk about what happened at the trial is

Page 34

1 irrelevant to the appellate attorneys' fees.  
2 THE COURT: Sustained.  
3 MR. GUTMAN: In other words, you -- just to  
4 clarify, Your Honor -- just to clarify, is it your  
5 position that any conduct Mr. Curtin -- misconduct  
6 that Mr. Curtin committed is not relevant to  
7 determining the amount of appellate attorney fees?  
8 THE COURT: I'm sure I didn't say that.  
9 MR. GUTMAN: Okay. All right. Then I'll just  
10 move on. Thank you.  
11 BY MR. GUTMAN:  
12 Q. Let's go to February 7th, 2023.  
13 A. The bill dated February 7th?  
14 Q. Bill dated February 7th, 2023, the statement.  
15 A. I'm there.  
16 Q. Okay. Let's look at the fifth entry down,  
17 January 6th, 2023. Could you read the description for  
18 that of 3.9 hours?  
19 A. (As read)  
20 January 6th, 2023, it's my time, 3.9  
21 hours. Legal research regarding  
22 at-issue waiver arguments for answer  
23 brief.  
24 Q. Okay. Thank you.  
25 Let's go to the invoice of March 2nd, 2023.

Page 35

1 A. Okay.  
2 Q. Actually, I'm sorry, excuse me, skip that one.  
3 Let's go back, March 2nd, 2023, the second  
4 time entry on February 3rd, 2023 for 2.5 hours, if you  
5 could read that description.  
6 A. (As read)  
7 Legal research or primary issues  
8 raised in Gutman's initial brief.  
9 Q. Okay. Let's go to April 24th, 2023, one hour.  
10 A. The time entry from April 4th (verbatim),  
11 2023?  
12 Q. Correct.  
13 A. Okay. (As read)  
14 Review and analyze motion filed by  
15 Gutman with Fourth DCA for stay of  
16 enforcement and execution of  
17 attorneys' fee judgment. Begin  
18 working on response to the same.  
19 Q. Okay. Now let's look at the one right below  
20 that for 1.5 hours, if you could read that into the  
21 record?  
22 A. (As read)  
23 Review/analyze Gutman's notice of  
24 appeal as to final judgment.  
25 Q. No, I think you're on the wrong one. This is

Page 36

1 the same statement we were on.  
2 A. Right.  
3 Q. May 9th, 2023.  
4 A. A time entry for me. Okay, that's the next --  
5 all right. (As read)  
6 Draft and file opposition to motion to  
7 stay enforcement of attorneys' fee  
8 judgment.  
9 Q. Okay. So the last three items that I had you  
10 read into the record, February 3rd, 2023 for 2.5 hours  
11 where it says, legal research of primary issues raised  
12 in Gutman's initial brief; the one for one hour on  
13 April 24th, 2023 for stay of enforcement and execution  
14 of attorney fees judgment; the next one, May 8th,  
15 where you had 2.5 hours, opposition to appellate's  
16 motion; May 9th, draft and file opposition to motion  
17 to stay enforcement -- here's my question related to  
18 those items that I just had you read into the record:  
19 You're aware that the attorney fee judgment is  
20 currently on appeals at Fourth DCA?  
21 A. Yes.  
22 Q. Okay. So if the Fourth DCA rules in my favor,  
23 isn't it fair to say that those times essentially  
24 should not be subject to an entitlement to appellate  
25 attorney fees?

Page 37

1 A. No, because we were the prevailing party on  
2 this appeal that we're here seeking attorneys' fees  
3 on, and you filed that motion in this appeal.  
4 Q. Okay. So if the Fourth DCA rules in my favor  
5 on the attorney fee judgment, depending upon what  
6 ground they ruled in my favor on, isn't there a  
7 possibility that the underlying judgment which they  
8 affirmed without opinion could then be subject to  
9 challenge on grounds of new evidence based upon the  
10 attorney fee appeal?  
11 MR. CURTIN: My objection, Your Honor, is this  
12 has nothing to do with the appellate attorneys' fees  
13 in this case.  
14 THE COURT: Well, besides that, it's being  
15 speculative as to what the Court --  
16 MR. GUTMAN: It is -- it's somewhat  
17 speculative, but I need --  
18 THE COURT: And I'm not sure anybody in this  
19 room is good at predicting what they're --  
20 MR. GUTMAN: What's that?  
21 THE COURT: I said I'm not sure anybody in  
22 this room is good at predicting what they're going to  
23 do.  
24 MR. GUTMAN: Okay, I'll move on.  
25 I have no further questions for you,

Page 38

1 Mr. Mihokovich.  
2 THE COURT: Any redirect for this witness?  
3 MR. CURTIN: Briefly. Briefly, Your Honor.  
4 REDIRECT EXAMINATION BY MR. CURTIN:  
5 Q. So, Mr. Mihokovich, if you can go to exhibit  
6 number 1, the time entry from October 4th, 2022, the  
7 2.4 hours.  
8 A. Yes.  
9 Q. And it says: (As read)  
10 Detailed review of trial court docket,  
11 pleadings, motions and orders for  
12 appellate purposes in light of  
13 defendant's petition for writ of  
14 mandamus and prohibition.  
15 While you originally did that for the writ of mandamus  
16 and prohibition, those 2.4 hours you didn't repeat  
17 later on when the actual -- Mr. Gutman actually filed  
18 his correct appeal, the appeal we're talking about  
19 here, correct?  
20 A. That's correct. It was the same record.  
21 Q. So you would have had to incur those 2.4 hours  
22 regardless of whether Mr. Gutman filed his writ of  
23 mandamuses or not?  
24 A. That's correct.  
25 Q. So that's when you were talking about -- as

Page 39

1 far as on your cross-examination when you were talking  
2 about the work you did for the mandamus and  
3 prohibition, that work would have happened -- would  
4 have had been done by you, regardless if he had filed  
5 correctly his appeal in the beginning?  
6 A. That's correct. There was the same issues in  
7 the same underlying record.  
8 Q. And you didn't repeat that work?  
9 A. That's right.  
10 Q. All right. And as far as your entries as to  
11 legal research, December 27th, 2022, for 1.4 hours of  
12 at-issue rule and January 6, 2023, for 3.9 hours of  
13 at-issue arguments, was that one of the main arguments  
14 in the appeal?  
15 A. Yes. He raised four arguments on appeal, and  
16 that was one of the four.  
17 Q. Okay. And the Fourth DCA ruled in your favor  
18 on that issue?  
19 A. That's correct.  
20 MR. CURTIN: No further questions of this  
21 witness, Your Honor.  
22 THE COURT: All right. Thank you,  
23 Mr. Mihokovich. You can step down. Be careful on the  
24 witness stand there.  
25 THE WITNESS: Will do.

Page 40

1 (Witness stands down)  
2 THE COURT: Next witness, Mr. Curtin?  
3 MR. CURTIN: Yes, Your Honor. I call  
4 Stephanie Serafin, Esquire.  
5 STEPHANIE SERAFIN, ESQ.  
6 Having been duly sworn, testifies as follows:  
7 THE COURT: And please take a seat at the  
8 witness stand and watch your step.  
9 Can you please state your full name and spell  
10 the last name, please?  
11 THE WITNESS: Stephanie Serafin. My last name  
12 is spelled S-E-R-A-F-I-N.  
13 THE COURT: All right, Mr. Curtin, your  
14 witness.  
15 DIRECT EXAMINATION BY MR. CURTIN:  
16 Q. Good afternoon, Ms. Serafin. Can you just  
17 briefly go through your educational background?  
18 A. Sure. I.  
19 THE COURT: And, again, is there any question  
20 about her qualifications and the testimony,  
21 Mr. Gutman?  
22 MR. GUTMAN: What is the purpose of her  
23 testimony, I guess that would be the first question.  
24 MR. CURTIN: She's our expert witness on the  
25 amount of attorneys' fees --

Page 41

1 MR. GUTMAN: She's the expert witness? Okay.  
2 I'll ask a few questions. What school did you  
3 graduate from? I know you just --  
4 MR. CURTIN: I don't know if it's --  
5 THE COURT: We can have him to do the whole  
6 dog and pony show or you can zero in on what you think  
7 she's not qualified to do. Either way, I was just  
8 trying to see if you had an objection to --  
9 MR. GUTMAN: I would just like to -- I would  
10 just like to get a general idea. I'm not going to ask  
11 a lot of questions. I don't anticipate --  
12 MR. CURTIN: Well, I think I could go through  
13 the questions, then.  
14 THE COURT: Go ahead and do that.  
15 BY MR. CURTIN:  
16 Q. Can you please briefly go through your  
17 educational background?  
18 A. Sure. I graduated from the University of  
19 Florida in 2004 with my undergraduate degree and the  
20 University of Miami School of Law in 2008 with my JD.  
21 Q. I may not have hired you if I knew you went to  
22 the University of Miami for law school, but --  
23 MR. GUTMAN: Don't badger witnesses.  
24 BY MR. CURTIN:  
25 Q. Can you go through your employment background?

Page 42

1 A. Of course. My first job out of law school, I  
2 was a staff attorney at the Fourth District Court of  
3 Appeal for Judge Dorian Damoorgian. I worked there  
4 for two years, and then I was hired at what was then  
5 Kreuzler-Walsh, Compiani & Vargas as an associate. I  
6 still work there today. I became a named partner in  
7 2017. The firm is now called Kreuzler-Walsh, Vargas &  
8 Serafin.  
9 Q. Okay. And has most of your legal education  
10 and, well, legal background been in appellate work?  
11 A. All of it, yes.  
12 Q. Okay. And what have you been retained to do  
13 in this case?  
14 A. I've been retained to provide an expert  
15 opinion on the reasonableness of the attorneys' fees  
16 that the Adams Reese firm extended for its client,  
17 Citibank, in the appeal.  
18 Q. And what did you review in order to make that  
19 opinion?  
20 A. I reviewed a number of things. I reviewed the  
21 appellate briefs in the appeal, the appellate court  
22 docket, the PCA and the motion for appellate fees and  
23 response that were filed in the Fourth DCA. I also  
24 reviewed the fee-related filings in this court, the  
25 billing records, the court docket in this court and

Page 43

1 the biographies on your firm's website for both you  
2 and Mr. Mihokovich.  
3 Q. And do you have exhibit number 1 in front of  
4 you?  
5 A. I do.  
6 Q. All right. Are those the attorneys' fee  
7 records that you reviewed?  
8 A. Yes.  
9 Q. Okay. And looking at that summary, do you  
10 have any opinion on the 56.4 hours being sought by  
11 Adams and Rees in this appeal?  
12 A. My opinion is that that amount of hours is  
13 reasonable for this appeal.  
14 Q. And based upon your education and experience,  
15 do you have any opinion as to the rates charged by  
16 both myself, Mr. Ursini and Mr. Mihokovich outlined in  
17 exhibit number 1?  
18 A. Sure. My opinion is that those rates are  
19 reasonable based on the fees charged for  
20 similarly-qualified lawyers in the community.  
21 Q. And do you have any opinion based upon your  
22 education and experience on the total amount of  
23 \$20,250.90 being sought by Citibank in this appeal?  
24 A. Yes. My opinion is that the total amount is  
25 very reasonable for this appeal.

Page 44

1 Q. And has your -- is your firm charging for its  
2 time to review the records that you just went over and  
3 make your opinions in this case?  
4 A. Yes.  
5 Q. And let me show you what I'll mark as for  
6 identification purposes exhibit number 2.  
7 A. Thank you.  
8 Q. What is exhibit number 2?  
9 A. Exhibit number two is a history bill of all of  
10 the time that my firm has expended as the fee expert  
11 in this case.  
12 Q. That does not include your time here today,  
13 correct?  
14 A. That's correct, it doesn't include my time  
15 today, and it doesn't include a small amount of time I  
16 spent yesterday preparing for today's hearing.  
17 Q. Okay. So on the invoice, exhibit number 2,  
18 how much time -- prior to that small amount of time  
19 reviewing yesterday and your time today, how much time  
20 was incurred?  
21 A. 5.6 hours.  
22 Q. For how much money?  
23 A. For \$2,677.50.  
24 MR. CURTIN: I'd like to enter exhibit number  
25 3 into evidence, your honor.

Page 45

1 THE COURT: Any objection, Mr. Gutman?  
2 MR. GUTMAN: The only objection I am going to  
3 make is that I was not provided with this previously  
4 or notified that the expert witness would be  
5 testifying at all.  
6 THE COURT: Objection is overruled.  
7 Plaintiff's exhibit 2 is received is received over  
8 objection.  
9 PLAINTIFF EXHIBIT 2:  
10 KREUSLER-WALSH, VARGAS & SERAFIN'S FEE  
11 EXPERT BILL  
12 BY MR. CURTIN:  
13 Q. And as far as your small amount of time  
14 yesterday to preparing time today, how many hours  
15 would that be?  
16 A. I spent an hour preparing for the hearing, and  
17 today it would be an hour and 20 minutes for my  
18 appearance time if you stop right now.  
19 Q. If we stop right now, gotcha.  
20 A. Which I -- that's fine.  
21 Q. And how much is your hourly rate?  
22 A. My rate is \$475 an hour.  
23 Q. Is that \$475 -- is that a reasonable rate for  
24 a person of your education and appellate experience in  
25 this jurisdiction?

Page 46

1 A. Yes, it is.  
2 Q. The rates charged by Citibank attorneys are  
3 considerably less, correct?  
4 A. Much less, that's correct.  
5 MR. CURTIN: No further questions for this  
6 witness, Your Honor.  
7 MR. GUTMAN: No questions, Your Honor.  
8 THE COURT: Okay. Thank you, Ms. Serafin.  
9 You can step down.  
10 (Witness stands down)  
11 THE COURT: Any other witnesses for the  
12 plaintiff?  
13 MR. CURTIN: No, Your Honor.  
14 THE COURT: Okay, plaintiff rests. Witnesses  
15 for the defence?  
16 MR. GUTMAN: I'm sorry, I know I need hearing  
17 aids. I'm sorry, I didn't hear you.  
18 THE COURT: He has now rested. Any witnesses  
19 for you?  
20 MR. GUTMAN: I'd like to call Kenneth Curtin  
21 to the witness stand.  
22 THE COURT: All right.  
23 MR. MIHOKOVICH: Your Honor, if I could change  
24 roles here, I'm going to step in and --  
25 THE COURT: Not a problem.

Page 47

1 KENNETH CURTIN, ESQ.  
2 Having been duly sworn, testifies as follows:  
3 THE COURT: Please have a seat.  
4 Mr. Gutman, you may proceed.  
5 MR. GUTMAN: Okay. Thank you.  
6 DIRECT EXAMINATION BY MR. GUTMAN:  
7 Q. Mr. Curtin, are you licensed to practice law  
8 in the State of Tennessee?  
9 A. I am -- I have an application for the State of  
10 Tennessee for the license -- for a license to practice  
11 law, and I have been sent an email that I have been  
12 accepted to it, yes, but I have not been sworn in yet.  
13 Q. You have received an email that you've been  
14 accepted?  
15 A. I have received an email that I've been  
16 accepted, yes.  
17 Q. Okay.  
18 A. I haven't been sworn in, so, no, technically  
19 I'm not.  
20 Q. Got it. Okay.  
21 You're aware -- actually, I'm going to give  
22 him an exhibit.  
23 THE COURT: I'm sorry, I didn't catch that.  
24 MR. GUTMAN: I said I'm going to give him an  
25 exhibit.

Page 48

1 THE COURT: Oh, okay.  
2 MR. GUTMAN: And I've just got to get the  
3 exhibit.  
4 Okay. I'd like to enter in exhibits -- mark  
5 Exhibit 3 and 4 for the witness.  
6 DEFENDANT EXHIBIT 3:  
7 EMAILS  
8 DEFENDANT EXHIBIT 4:  
9 JUDGMENT LIEN CERTIFICATE  
10 THE BAILIFF: Do you have copies for the  
11 judge?  
12 MR. GUTMAN: Yes, actually, I do have an extra  
13 copy. I've got one for me and an extra one too, so,  
14 yes.  
15 MR. MIHOKOVICH: Is there one I can see?  
16 MR. GUTMAN: I brought -- I brought three  
17 copies, one for me, one for Mr. Curtin and then one  
18 for whoever else, so I didn't bring four copies.  
19 THE WITNESS: If I could have Mr. Mihokovich  
20 at least look at these before I -- and then I'll look  
21 at them.  
22 THE COURT: Thank you.  
23 BY MR. CURTIN:  
24 Q. Mr. Curtin, on the first page --  
25 A. I don't have the exhibits in front of me. My

Page 49

1 attorney is looking at them right now.  
2 Q. Okay. You know what, you can have my copy.  
3 On the first page there --  
4 THE COURT: You're referring to what's marked  
5 Exhibit 3?  
6 MR. GUTMAN: Yes, Exhibit 3.  
7 THE COURT: Okay.  
8 BY MR. GUTMAN:  
9 Q. What's marked as Exhibit 3, on the first page  
10 there are two emails. Could you please read the  
11 bottom email, which is from me to you, first because  
12 that occurred first in time.  
13 A. You want me to read the whole email?  
14 Q. No, actually, just the first two paragraphs.  
15 I believe the first paragraph is a paragraph, and then  
16 I think the second paragraph is just one line.  
17 THE COURT: I believe he's talking about the  
18 bracketed portion.  
19 BY MR. GUTMAN:  
20 Q. The bracketed, yeah, the bracketed.  
21 A. (As read)  
22 Hi Ken,  
23 Per our discussion, I researched the  
24 issue of a judgment lien certificate  
25 to determine if I would be willing to

Page 50

1 agree to that provision you proposed  
2 yesterday. I do not anticipate being  
3 willing to agree to that provision for  
4 several reasons as follows: First, it  
5 appears to me a judgment lien  
6 certificate directly contradicts  
7 established Florida law that the  
8 judgment may not be executed upon,  
9 more specifically, attached is a  
10 blank copy of a judgment lien  
11 certificate application. Please note  
12 the bottom, which you -- which you  
13 would need to sign under penalty of  
14 perjury expressly states the  
15 following: Under penalty of perjury,  
16 I certify there is no stay of the  
17 judgment or its enforcement in effect.  
18 Q. Okay. Now could you please read the first two  
19 sentences of the top email, and if you could speak a  
20 little louder because my hearing is not that good, and  
21 that's partly my fault.  
22 A. And my hearing is not that good either. It  
23 goes back to a Marine Corps injury when I was in the  
24 Marine Corps.  
25 Q. I understand, believe me.

Page 51

1 A. (As read)  
2 Mr. Gutman,  
3 To put this issue to rest, I took out  
4 the judgment lien certificate  
5 language. However, I did add in  
6 another sentence directly following  
7 your sentence about if the appeals are  
8 successful that the judgment is  
9 vacated that read that if the appeals  
10 are unsuccessful, plaintiffs may start  
11 collection and execution on the  
12 judgment.  
13 Q. Okay. Now turn to Exhibit 4 --  
14 A. Is that the judgment lien certificate?  
15 Q. -- which is the judgment lien certificate, and  
16 at the very bottom of that form, read -- I believe  
17 it's the first four words, I believe.  
18 A. The very bottom?  
19 Q. It's the signature section.  
20 A. Okay. Under penalty of perjury, is that what  
21 you're talking about?  
22 Q. That's it.  
23 A. Okay.  
24 Q. That's what I wanted you to read, yes.  
25 So am I correct that we had a discussion, and

Page 52

1 you indicated that -- when we were negotiating the  
2 cost aspect of the appeal, earlier appeal, and you  
3 indicated that you would like to file a judgment lien  
4 certificate when I indicated that the cost should not  
5 be executable?  
6 A. No, that's not correct. If you --  
7 Q. That's not correct?  
8 A. The background to this is -- has nothing --  
9 well, it has nothing to do with the appeal and the --  
10 the appeal we're on here today, and the time --  
11 Q. Actually --  
12 A. -- and the time we're on here today, unless  
13 you point me to a time entry, but I don't think  
14 there's any time entries for this.  
15 This goes back to after I won the trial, I  
16 moved for attorneys' fees and costs. The judge sent  
17 out an order where we had to mediate that issue, which  
18 we did. At that mediation we came to agreement on  
19 costs, on specific costs. We couldn't come to  
20 agreement on all the costs, but on some specific costs  
21 you said that you -- you would agree to those costs  
22 only if we wouldn't seek to collect upon it until the  
23 appeal of the final judgment, which is this appeal,  
24 and that appeal was finalized, the appeal of that  
25 final judgment. I agreed to that.

Page 53

1 This is -- this email, we're going back and  
2 forth on that proposed order, which eventually we came  
3 to an agreement on that proposed final judgment. Then  
4 I waited before filing any judgment lien certificate  
5 until your appeal with the Fourth DCA was over with,  
6 until your appeal with the U.S. Supreme Court was over  
7 with, until all appeals on that final judgment were  
8 over with. Then I sent you an email saying all  
9 appeals on that final judgment are over with, I'm  
10 going to file this judgment lien certificate unless I  
11 hear from you again, and I did file a judgment lien  
12 certificate on those costs, which were, like, \$1,300  
13 or so odd dollars. I don't remember exact amount.  
14 Q. Am I to understand what you're saying now --  
15 and please correct me if I'm wrong. Am I to  
16 understand what you're saying now is that you never  
17 suggested filing a judgment lien certificate until  
18 after the appeals were done?  
19 THE COURT: Gentlemen, as much as I'd like to  
20 spend the entire day with you, this all sounds like  
21 settlement negotiations, which I have no interest in  
22 whatsoever, so, Mr. Gutman, where are you going with  
23 this?  
24 MR. GUTMAN: Basically, like I said, Your  
25 Honor, I've got a list of things that I believe

Page 54

1 constitute misconduct on the part of Mr. Curtin, and I  
2 believe the misconduct should not be ignored by the  
3 Court based upon the Florida Supreme Court's decision  
4 in Levin, Middlebrooks v. United States Fire Insurance  
5 because in the Echevarria case they basically refer to  
6 the Levin case, and that's the reason they're giving  
7 the absolute immunity.  
8 So in my opposition to the entitlement to  
9 appellate fees, the crux of my opposition to all of  
10 the appellate attorney fees -- to all of them, the  
11 crux of it is, one, the extension issue that still  
12 remains outstanding, which I realize you indicated  
13 you're not going to rule on that. The other, which  
14 basically allows me to go against all of the appellate  
15 attorney fees on entitlement, is Mr. Curtin's  
16 misconduct to the extent the Court may believe under  
17 the Florida Supreme Court of Levin, that they should  
18 be penalized on attorney fees because they committed  
19 so much misconduct from the beginning of the case to  
20 the end of it.  
21 THE COURT: All right. Well, let me clarify  
22 what I said earlier when I said I had not said what  
23 you thought I said, but I'm going to say it now.  
24 Regardless of how much misconduct you think you can  
25 prove on Mr. Curtin's part, I am not changing the

Page 55

1 ruling of the Fourth DCA on the entitlement issue. So  
2 if that's where you're headed, until they direct me to  
3 conduct such a hearing, I choose not to.  
4 MR. GUTMAN: Well --  
5 THE COURT: We're talking about time, rates  
6 and reasonableness here.  
7 MR. GUTMAN: I understand that, Your Honor,  
8 and I'm not asking you to change the Fourth DCA's  
9 opinion.  
10 THE COURT: Well, you used the word  
11 "entitlement" several times there.  
12 MR. GUTMAN: No, that's -- that's correct, but  
13 the reason I used it is because under 768.79 the  
14 statute requires you to look at closeness of issues of  
15 fact and whether this is a test case. So to the  
16 extent, basically, that litigation privilege --  
17 whether Florida should change its rule or not in  
18 conjunction with other states, to the extent that  
19 litigation privilege in Florida is different than  
20 other states, it should be considered within the  
21 context of the amount of attorney appellate fees  
22 because that falls within the scope of 768.79. That's  
23 the crux of what I'm saying.  
24 THE COURT: Perhaps. Next question.  
25 MR. GUTMAN: Well, I just -- like I say, I've

Page 56

1 got a list of misconduct issues. Can I ask them or  
2 not?  
3 THE COURT: I'm going to ask that you proffer  
4 them in writing if you choose to make a record for  
5 that, but, as I said, it's not going to change the  
6 Fourth District's decision on determining entitlement,  
7 which is limited, in my view, to time, rate and  
8 reasonableness. Some of the issues you raised there  
9 appear to be going to whether there should be a  
10 numerical factor increase as in Rowe for a test case  
11 and things that you mentioned. It has nothing to do  
12 with the fact that -- at this point I'm not sure  
13 Mr. Curtin is questioning the multiplier, but I'm  
14 trying to focus in right here on the evidentiary part  
15 to the number of hours and the reasonableness of  
16 hours.  
17 The other factors may or may not happen, but  
18 maybe you can clarify that right now, Mr. Curtin. Are  
19 you going to be seeking a multiplier in this case?  
20 THE WITNESS: I'm not seeking any multiplier.  
21 THE COURT: All right. Okay. So I'm not sure  
22 the factors you've mentioned, Mr. Gutman, really are  
23 going to help me out this afternoon, unless your  
24 argument is correct at some point, and they decide --  
25 the Fourth DCA decides to vacate their decision of

Page 57

1 entitlement based on the prevailing party in the  
2 appeal.  
3 MR. GUTMAN: So, Your Honor, you referred to  
4 the Fourth DCA decision numerous times and how you  
5 don't want to change it. The question I have is, my  
6 understanding is that the Fourth DCA's affirming  
7 without opinion has no precedential value because they  
8 didn't write an opinion, they didn't address the  
9 issues. Therefore, I think you do have the ability to  
10 rule however you want on issues pertaining to amount  
11 because the Fourth DCA's affirmance without opinion is  
12 not binding on the at-issue point that I brought up,  
13 it's not binding on the disqualification issue I  
14 brought up, it's not binding on anything because they  
15 didn't issue an opinion, and, therefore, it's not  
16 precedential, and, therefore, you would not be  
17 changing their decision. You would be exercising your  
18 legitimate authority to basically rule however you  
19 want on all these misconduct issues that basically  
20 are -- they're absolutely immune from under litigation  
21 privilege, but, nevertheless, they can be penalized  
22 for under Levin.  
23 THE COURT: Well, as tempting as you make it  
24 sound that I can always rule however I want, which is  
25 my personal opinion, it is not my legal opinion, and

Page 58

1 it's not what I'm going to do here today. I'm going  
2 to rule based on the evidence presented, as I said,  
3 focusing on the issue of the number of hours, the  
4 reasonableness of the time and the reasonableness of  
5 the rate to be applied thereto. Mr. Curtin has said  
6 we're not talking about a multiplier, so regardless of  
7 what your arguments are, convoluted as some of them  
8 may be, the issue is pretty simple, so time and --  
9 MR. GUTMAN: Okay. So I understand what  
10 you're saying. The only things you're going to rule  
11 upon are the time entries on the invoices, the amount  
12 spent, the reasonableness of it, the matters that  
13 their expert testified on, but you're not going to  
14 reduce the amount -- regardless of whether it's a test  
15 case or regardless of whether there's closeness of  
16 issues of that -- because if that's the case, then I  
17 have no further questions.  
18 THE COURT: Okay. I don't believe that your  
19 arguments regarding test case and closeness of issues  
20 relate to my assignment here today, so if that's clear  
21 to you, then --  
22 MR. GUTMAN: Yeah, unfortunately I did not  
23 hear you.  
24 THE COURT: I said I don't believe that  
25 raising the issues of it being a test case or the

Page 59

1 closeness of issues are what I'm to listen to here  
2 today, so if that helps you there --  
3 MR. GUTMAN: Okay. Then I'm --  
4 THE COURT: You've made an argument, and, like  
5 I said, if you want to supplement a proffer, you can  
6 always --  
7 MR. GUTMAN: Okay.  
8 THE COURT: -- you can always do that.  
9 MR. GUTMAN: Okay. Let me see if I -- I don't  
10 think I'm going to have anymore questions, but -- just  
11 a couple more questions.  
12 THE COURT: Okay.  
13 BY MR. GUTMAN:  
14 Q. Mr. Curtin, you withdrew the -- and sought  
15 voluntary dismissal of the unjust enrichment claim,  
16 correct?  
17 A. Yes, after the Fourth DCA brought the issue  
18 up.  
19 Q. The question I have is, do you know if  
20 Citibank has similarly moved for dismissal of unjust  
21 enrichment claims with respect to all other litigants  
22 throughout the State of Florida?  
23 MR. MIHOKOVICH: Objection to relevance.  
24 THE COURT: Sustained.  
25 MR. GUTMAN: No more questions.

Page 60

1 THE COURT: Any redirect on his testimony --  
2 I'm sorry, cross?  
3 Your his witness.  
4 MR. MIHOKOVICH: No, sir.  
5 THE COURT: Okay, no cross.  
6 Thank you, Mr. Curtin. You can step down.  
7 (Witness stands down)  
8 THE COURT: Any other witnesses, Mr. Gutman,  
9 for your side?  
10 MR. GUTMAN: No.  
11 THE COURT: All right. You're resting as  
12 well.  
13 All right. As I've tried to explain, fairly  
14 straightforward, your arguments regarding why the  
15 rates and time are unreasonable in this case,  
16 Mr. Gutman?  
17 MR. GUTMAN: I thought you were making a  
18 statement. I didn't know it was a question.  
19 THE COURT: Okay. It is a question. I have  
20 on their face the number of hours, the number of -- I  
21 mean, the rate and reasonableness. Is there some  
22 reason I should not accept the uncontroverted  
23 testimony --  
24 MR. GUTMAN: Well, actually, it was  
25 controverted to the extent of all of the entries

Page 61

1 regarding the extraordinary writs in different case  
2 numbers.  
3 THE COURT: Okay.  
4 MR. GUTMAN: And then also I would incorporate  
5 in -- I would ask basically anything else that's in my  
6 written submission to be considered by the Court also.  
7 THE COURT: I will do that. I'm not moving on  
8 it right now, but I know that you've filed it.  
9 All right. Mr. Curtin, any final word from  
10 you?  
11 MR. CURTIN: No, Your Honor. Well, as you  
12 said, I believe the original -- on the summary of  
13 \$20,250.90, there been no -- at least no expert  
14 witnesses contesting that.  
15 Ms. Serafin's bill of \$2,677.50, that's  
16 exhibit number 2, is for a good cause, and, as she  
17 testified, she had 2.2 other hours at \$475 to be added  
18 to that bill, so we would ask for all those amounts,  
19 Your Honor.  
20 THE COURT: All right. Based on the evidence  
21 presented this afternoon, I find that the time set  
22 forth in composite Exhibit 1 from the plaintiff, the  
23 total time of 56.4 hours, is reasonable and that the  
24 rates applied to the attorneys, I believe there's  
25 three of them, are reasonable rates for those types of

Page 62

1 services in this area, and so the total of \$20,250.90  
2 seems reasonable based on Exhibit 1 for the plaintiff.  
3 As far as Ms. Serafin's testimony, obviously  
4 she corroborated those numbers, and her time spent of  
5 5.6 hours and her rate of \$475 were both reasonable  
6 with the additional time that she mentioned here  
7 today.  
8 Subject to a review of Mr. Gutman's  
9 opposition, which he said was filed, and, frankly, I  
10 meant to review it this morning and it just got caught  
11 up, I will hold off on signing that. You can submit a  
12 proposal based on that. I can always correct it if I  
13 find something different in those numbers.  
14 Mr. Curtin, you can submit a proposed order  
15 based upon those tentative findings while I review the  
16 matters that were filed previously.  
17 MR. CURTIN: I will do that, Your Honor.  
18 THE COURT: Okay. Now, there were some other  
19 housekeeping matters. Do we want to take a short  
20 break to get organized and see if this --  
21 MR. GUTMAN: All right.  
22 THE COURT: Let's take ten minutes and see if  
23 we can get rid of some of the other pending motions  
24 that are still out there.  
25 (Recess taken)

Page 63

1 THE BAILIFF: All rise. Court is back in  
2 session.  
3 THE COURT: Okay. The remaining motions, what  
4 is the logical order where you'd like to start, Mr.  
5 Curtin?  
6 MR. CURTIN: I think the motion to show cause  
7 why Mr. Gutman should not be held in contempt should  
8 go next, and then we can end with the motion for final  
9 judgment on the writs.  
10 THE COURT: Okay. Sounds good. Go ahead.  
11 Your motion.  
12 MR. CURTIN: Thank you, Your Honor.  
13 This is our amended motion for order to show  
14 cause why defendants should not be held in contempt in  
15 reply to Mr. Gutman's motion to quash in a request for  
16 entitlement to attorneys' fees pursuant to Section  
17 57.115, Florida Statute, and the inherent power in  
18 this court.  
19 I believe it's in the collection -- I have a  
20 copy of the motion, Your Honor.  
21 THE COURT: Okay. I was just going to look  
22 for the docket, but if you've got it, that's fine.  
23 MR. CURTIN: That's fine. The docket's pretty  
24 full, so it will be easier this way.  
25 THE COURT: I'm not able to find things

Page 64

1 quickly, that's for sure. Thank you for the extra  
2 copy.  
3 MR. CURTIN: Sure. So, Your Honor, this is to  
4 hold -- in essence, this is to hold Mr. Gutman in  
5 contempt for not responding to interrogatories and  
6 requests to produce in aid of execution now for over a  
7 year. I would like to take Your Honor -- and the  
8 motion goes through exactly all the attempts  
9 Mr. Gutman has done to try to avoid collection in this  
10 matter.  
11 THE COURT: Before you get into this --  
12 MR. CURTIN: Yes.  
13 THE COURT: -- is there a specific order of  
14 this court on penalty responses, whatever the --  
15 MR. CURTIN: There is, Your Honor.  
16 THE COURT: Okay.  
17 MR. CURTIN: There has been, and part of it --  
18 attached to that motion is part of this, Your Honor.  
19 THE COURT: Okay. Go ahead.  
20 MR. CURTIN: If you remember, we had a trial  
21 on September 15th, 2022; we had a motion for fees  
22 after that on September 21st, 2022; we had a hearing  
23 on entitlement January 11th, 2023; and on March 24th,  
24 2023 we had an evidentiary hearing, and eventually a  
25 final judgment for attorneys' fees was entered with

Page 65

1 costs for 30-some-odd thousand dollars.  
2 Before that was entered, we tried -- after the  
3 evidentiary hearing, you asked me to do a proposed  
4 final judgment. Mr. Gutman would not agree, and on  
5 March 30th, 2023 he filed an objection to the form of  
6 that final judgment. I filed a response one day  
7 later, and eventually you entered the final judgment  
8 for \$31,315.50 on April 3rd. His objection to the  
9 form was he wanted it not to be executable, but you  
10 entered it regardless of his objection.  
11 That didn't stop. He filed a motion to stay  
12 and for rehearing on April 10th, 2023, arguing the  
13 same items he argued in his objection to the form. I  
14 filed a response two days later, and then you had an  
15 order denying that again. That's on April 20th, 2023.  
16 That's when I served my request to produce  
17 interrogatories in aid of execution on April 20th,  
18 2023, almost a year ago. He filed a -- almost a day  
19 before they were due, on May 17th, 2023, Mr. Gutman  
20 filed a motion for protective order on that discovery,  
21 arguing the same issues he's argued in his motion to  
22 stay and in his objection to the form. I filed a  
23 response. You denied that order for the protective  
24 order. So that's the first order you entered denying  
25 the protective order.

Page 66

1 He then went up to the Fourth DCA on May 23rd,  
2 2023 and filed a motion to stay enforcement. That's  
3 part of the appeal that we were just talking about.  
4 May 31st, 2023, we responded. The Fourth DCA denied  
5 his motion to stay enforcement on June 12th, 2023. I  
6 held off on trying to collect or filing any sort of  
7 motions on my request to produce interrogatories until  
8 the Fourth DCA ruled. He filed these motions. I  
9 wanted to get through them all, even though he's  
10 arguing the same issues constantly.  
11 I filed my first motion for contempt on June  
12 27th, 2023. Mr. Gutman filed a response on September  
13 18th, 2023. After the hearing on September 21st,  
14 2023, you entered an order compelling. You didn't  
15 hold him in contempt. You entered an order  
16 compelling, telling him to respond within 20 days.  
17 That's Exhibit A to that motion, Your Honor, you have  
18 in your hand. That would be October 11th, 2023.  
19 Mr. Gutman filed his motion to quash an  
20 unenforceable order. That's, I believe, attached to  
21 the motion I just handed you, but I have an extra copy  
22 of it, Your Honor. Here's his motion to quash.  
23 So he filed a motion to quash what he believed  
24 was your unenforceable order to compel. In that, if  
25 you look on page 7 -- I think I highlighted it --

Page 67

1 Mr. Gutman states accordingly it's the defendant's  
2 determination that Mr. Garrison's order -- he wouldn't  
3 be -- he's in past motions said he's not going to call  
4 you judge because you don't rule in his favor, he's  
5 going to call you Mr. Garrison -- order may be freely  
6 ignored, and it would be ignored and flouted by the  
7 defendant.  
8 If you look at his last page of his motion to  
9 quash, page 9, he literally says whether this motion  
10 is granted or not, the subject court order is going to  
11 be ignored by defendant, so he specifically admits  
12 that he's just going to ignore the court order, Your  
13 Honor.  
14 On November 28th I tried, again, to get  
15 Mr. Gutman -- before I filed this motion -- and this  
16 is Exhibit B to the motion; I have an extra copy for  
17 you, Your Honor -- to just abide by --  
18 THE COURT: I'm sorry, Exhibit B to your  
19 motion?  
20 MR. CURTIN: Yeah, Exhibit B. There's an  
21 extra copy there, Your Honor, but it should be Exhibit  
22 B to the motion.  
23 THE COURT: All right.  
24 MR. CURTIN: I tried to get him to comply with  
25 it without filing another motion, just comply with it,

Page 68

1 and Mr. Gutman wrote to me and stated, and I quote:  
2 (As read)  
3 That said, I am hereby waiving, at  
4 least as of the date of this email,  
5 any issue as to inability to pay  
6 the judgment. Put simply, due to my  
7 inheritance, I am able to pay it  
8 currently.  
9 And then he goes on, stating that he is still  
10 going to refuse to -- (as read)  
11 That said, you are correct, and I'm  
12 forthrightly refusing to comply with  
13 your discovery request due to the  
14 abject violations of constitutional  
15 law committed by the Palm Beach  
16 Judiciary, including, notably, Judge  
17 Edward Garrison.  
18 And then he goes on and says I'll go to jail,  
19 basically, for this.  
20 He then, Your Honor, after I filed my motion,  
21 sent me another email, which I actually have filed  
22 with the Court on February 13th, 2024 -- I have an  
23 extra copy of it here -- talking about collection,  
24 things of that nature, and he's still refusing to give  
25 me any answers to the interrogatories or request to

Page 69

1 produce in aid of execution.  
2 If you look at the first page of that email,  
3 this was talking about -- I did -- you probably  
4 remember, I did a writ of garnishment on a bank, got a  
5 safe deposit box, we're still going to drill into that  
6 with the magistrate, but he actually says here --  
7 because basically I think that was the date I removed  
8 all monetary stuff, and he states in here that just a  
9 few days earlier, prior to the writ of garnishment, he  
10 had monetary items in the safe deposit box, but took  
11 it out and secured it elsewhere, won't tell me where,  
12 because he won't answer any discovery.  
13 "Too funny" is his response, so he's flaunting  
14 his intentional conduct to prevent discovery of any  
15 assets for collection, and not only prevent discovery,  
16 he is hiding assets and telling me he's hiding it and  
17 still refusing to comply with your order compelling,  
18 with your order denying his motion for protective  
19 order, and we're sitting here a year later, Your  
20 Honor.  
21 So I would hold that an order should be  
22 entered making factual findings in those motions, in  
23 the e-mails that his -- fining him and holding him in  
24 contempt of court, stating that he can purge that  
25 contempt if by April 10th -- say give him a week -- he

Page 70

1 complies with the request to produce interrogatories,  
2 fully complies, meaning answers all the  
3 interrogatories, answers all the requests produced,  
4 and provides the documents.  
5 If not, upon an affidavit of default without  
6 further hearing, I think the only thing you have left  
7 in your arsenal is an arrest order and have him jailed  
8 for up to 30 days. And I have no problem putting in  
9 the order that even if he's jailed, if he complies  
10 during that time, he will be released from the jail,  
11 but at this point in time, Your Honor, I think that's  
12 the only thing left, unless Mr. Gutman complies, and  
13 that's why in the next seven days he can purge that  
14 contempt.  
15 I would also request, Your Honor, that at this  
16 point in time, according to Section 57.115 -- and I  
17 have a copy of that, Your Honor. 57.115 provides the  
18 Court may award against a judgment debtor reasonable  
19 costs and attorneys' fees incurred thereafter by a  
20 judgment creditor in connection with execution on a  
21 judgment, and it has various factors, whether the  
22 judgment debtor had attempted to avoid or evade the  
23 payment of the judgment and other factors that can be  
24 determined by the Court.  
25 So according to Section 57.115 -- and also,

Page 71

1 Your Honor, not only that, but the inherent power of  
2 this court -- because of Mr. Gutman's litigious  
3 conduct and intentional failure and refusal to respond  
4 to discovery, that you enter an order of entitlement  
5 to attorneys' fees in regards to collection efforts  
6 under both 57.115 and the inherent power of this  
7 court. We can determine those amounts at another  
8 hearing if it becomes necessary, but at this point in  
9 time I believe an order of contempt should be entered  
10 and an order including attorneys' fees for collection  
11 efforts.  
12 And I've cited several -- there's several  
13 cases on 57.115, Webber v. B. D'Agostino, which was a  
14 Fourth DCA 2018 case, fees awarded in connection with  
15 an execution under 57.115; the Fifth DCA, Vick v.  
16 Vick, the same thing awarded under that same statute;  
17 and Solichin v. Solichin, a Middle District Florida  
18 case under Florida law ordered fees in connection with  
19 execution, all under 57.115, but also under the  
20 inherent power of this court.  
21 So at this point in time we ask that -- and I  
22 have a proposed order I've already drafted for the  
23 contempt, Your Honor. We ask that contempt be  
24 entered.  
25 THE COURT: Any response, Mr. Gutman?

Page 72

1 MR. GUTMAN: Yup. It's interesting that  
2 Mr. Curtin selected Exhibit B attached to his motion  
3 for order to show cause because I actually have the  
4 same exhibit. I'm not sure if he gave you a full copy  
5 of the e-mail train, but I would like to -- this is  
6 Exhibit 8. That would be the judge's copy.  
7 Mr. Curtin -- I don't know if he basically included  
8 the whole thing in there or not.  
9 The interesting thing about Exhibit 8 is the  
10 first sentence in the second paragraph -- I can't tell  
11 what that sentence reads because it's been redacted.  
12 If we turn the page to page 2, it looks like there's a  
13 whole -- some other e-mails that were redacted. If we  
14 turn to page 3, we see more e-mails redacted. If we  
15 turn to page 4, we see more e-mails redacted.  
16 So these redactions of substantial portions of  
17 the entire e-mail train misconstrue what really  
18 occurred here. Mr. Curtin has basically selected the  
19 one e-mail that conceivably has some interesting  
20 language in it, which I did write, and that language  
21 was not submitted to this court. That language was  
22 only submitted to Mr. Curtin to the extent that it  
23 criticizes the legal profession, the judiciary and the  
24 manner in which litigants are victimized by  
25 high-powered debt collector attorneys. The message is

Page 73

1 being misconstrued because of all the other  
2 redactions. As a point of fact, the other redactions  
3 would indicate that what I was really trying to do in  
4 the earlier e-mails, as well as the first sentence in  
5 paragraph 2 -- what I was really trying to do is  
6 settle this matter amicably, and that message is  
7 clearly missing from the version with the redactions  
8 that Mr. Curtin filed.  
9 More specifically, I believe what I had  
10 offered is \$15,000.  
11 MR. CURTIN: Your Honor, those were settlement  
12 discussions. Mr. Gutman is correct, all those are  
13 settlement discussions between ourselves, and nothing  
14 came of it, but that's why I redacted them, because  
15 they're settlement discussions.  
16 MR. GUTMAN: And, Your Honor, if I may, in  
17 anticipation of that, I would now like to admit  
18 Exhibit 9, which pertains to settlement discussions.  
19 Exhibit 9 is Florida Statute 90.408, Compromise and  
20 Offers to Compromise: (As read)  
21 Evidence of an offer to compromise a  
22 claim, which was disputed as to  
23 validity or amount, as well as any  
24 relevant conduct or statements made in  
25 negotiations concerning a compromise,

Page 74

1 is inadmissible to prove liability or  
2 absence of liability for the claim or  
3 its value.  
4 Those redactions were not related to the  
5 liability or absence of liability for the claim. They  
6 were based upon my good faith in trying to settle the  
7 matter so that we wouldn't have contempt. Therefore,  
8 the \$15,000 that I offered you for attorney fees is  
9 admissible, even though it was a settlement  
10 discussion, as is the 70,000 that you told me you  
11 wanted in your e-mails.  
12 MR. CURTIN: Once again, I don't think  
13 settlement discussions are relevant. The relevant  
14 part of that e-mail is his outright refusal to ever  
15 comply with discovery requests in aid of execution,  
16 Your Honor. I would just move that the amounts  
17 offered --  
18 MR. GUTMAN: I'm not through yet, actually.  
19 MR. CURTIN: -- be stricken from the record.  
20 MR. GUTMAN: Just so we're clear, I'm not  
21 through.  
22 THE COURT: I'm certain that you're not  
23 through.  
24 I will take the matter on that objection under  
25 advisement, Mr. Curtin.

Page 75

1 Go ahead, Mr. Gutman.  
2 MR. GUTMAN: In my motion to quash the  
3 order -- excuse me -- in my motion to quash the  
4 self-contradictory void and unenforceable order, I  
5 referred to Exhibit 6, which is attached to my motion.  
6 I don't know that I actually made an exhibit for that,  
7 but in Exhibit 6, attached to the motion to quash,  
8 which was filed on October 9, 2023, what I attached is  
9 an administrative order of this court.  
10 This is actually an administrative order from  
11 Chief Judge Glenn Kelley, and Paragraph 1 states as  
12 follows: (As read)  
13 No motions to compel discovery or for  
14 protection from discovery will be  
15 heard unless the notice of hearing  
16 bears the certificate of moving  
17 counsel that opposing counsel has been  
18 contacted and a good-faith attempt has  
19 been made to resolve the discovery  
20 dispute without a hearing, but that  
21 could not be accomplished.  
22 So far as I know, Mr. Curtin has never filed  
23 that certificate.  
24 MR. CURTIN: I don't know if Mr. Gutman has  
25 finished. I have a brief reply.

Page 76

1 THE COURT: Is there more, Mr. Gutman?  
2 MR. GUTMAN: Yes, I believe there is, not  
3 related to that issue, so if you would like to respond  
4 to that issue, that would be fine, or I can go on with  
5 my other stuff, whichever you prefer, Your Honor.  
6 THE COURT: Which other stuff? You mean the  
7 other motions?  
8 MR. GUTMAN: No, no, no, the other arguments I  
9 had related to contempt.  
10 THE COURT: If you have other arguments, go  
11 ahead.  
12 MR. GUTMAN: Okay. I thought he wanted to  
13 respond to that specific one.  
14 Okay. Let me -- I don't -- see what I have  
15 here. Oh, I think it's important to note with respect  
16 to the email in question at Exhibit 8 that I provided  
17 that it should not be used --  
18 THE COURT: Just so we're clear for the record  
19 here, the Exhibit 8 that you're referring to is the  
20 Exhibit B that's attached to this material?  
21 MR. GUTMAN: Correct.  
22 THE COURT: So we're talking about the same  
23 exhibit?  
24 MR. GUTMAN: That is correct, yes.  
25 THE COURT: All right.

Page 77

1 MR. GUTMAN: Yes, that is exactly right.  
2 As indicated, I sent that to him, not the  
3 Court, and it's a legitimate expression of First  
4 Amendment rights. Therefore, it should not be  
5 considered for purposes of contempt at all unless he  
6 were to provide a full unredacted version, and the  
7 burden would be upon him to provide the full  
8 unredacted version so the Court would have the full  
9 communicative nature of the email.  
10 The other thing I would point out --  
11 THE COURT: If you would permit an  
12 interruption, Mr. Gutman, your discussions back and  
13 forth with Mr. Curtin, although it may be interesting,  
14 and, in Mr. Curtin's view, damning -- as you point  
15 out, some of the things were redacted, so I don't have  
16 the full body of what was going on. What seems  
17 important to me is the purported statement by you that  
18 you have no intention of abiding by the order of the  
19 Court, so let me just ask you point blank, are you  
20 intending to abide by the order of the Court?  
21 MR. GUTMAN: That's a fair question, Your  
22 Honor, and I was actually going to make that kind of  
23 my closing part, but since you've asked it directly  
24 now, I will answer the question.  
25 I guess I have a slight preference, not a huge

Page 78

1 preference, I would say a 55 percent degree  
2 preference, to not go to a jail cell, 55 percent,  
3 maybe 54. On the other hand, I will tell you, there's  
4 about 46 percent of me that believes it could serve a  
5 good purpose.  
6 As you know, I've challenged Rule 4 --  
7 THE COURT: Mr. Gutman --  
8 MR. GUTMAN: No, I'm just trying -- I'm really  
9 trying to answer your question fully.  
10 THE COURT: No, you're not.  
11 MR. GUTMAN: Okay.  
12 THE COURT: It's a simple question, and this  
13 is not a negotiation.  
14 MR. GUTMAN: Okay.  
15 THE COURT: I'm asking you point blank, do you  
16 intend to abide by the order of this court regarding  
17 those discovery items?  
18 MR. GUTMAN: Not at this time.  
19 THE COURT: And if an order is entered today  
20 granting Mr. Curtin's request to hold you in contempt  
21 for your previous failure to comply with that, is  
22 there any point to a purge provision?  
23 MR. GUTMAN: I'm sorry, is there any point to  
24 a purge?  
25 THE COURT: Yeah.

Page 79

1 MR. GUTMAN: No.  
2 THE COURT: So --  
3 MR. GUTMAN: Well, actually -- actually, let  
4 me correct that. Actually, yes --  
5 THE COURT: We can skip that part. I have  
6 enough deputies here to take you into custody --  
7 MR. GUTMAN: I understand that. I understand  
8 that.  
9 THE COURT: -- if that's what you --  
10 MR. GUTMAN: In all fairness, I might break in  
11 jail. I might say, you know, I don't want to be  
12 there, you know, but --  
13 THE COURT: Yeah, but you don't want a purge  
14 provision, so --  
15 MR. GUTMAN: No, actually -- actually, I'm  
16 going to retract the purge provision.  
17 THE COURT: Good. Let's think this -- let's  
18 think this through.  
19 MR. GUTMAN: Okay. The reason I'm going to --  
20 I have a bad left arm, stenosis. Believe me, I'll be  
21 the easiest guy in the world.  
22 The one thing I would like to actually address  
23 where -- I don't know if this is relevant. I have two  
24 cats. I'd like to arrange to have them boarded, if I  
25 could, before I show up for a jail sentence.

Page 80

1 THE COURT: All right. So you're specifically  
2 stating on the record that you have no intention to  
3 honor the previous order of this court directing you  
4 to file those discovery responses?  
5 MR. GUTMAN: With the -- with the  
6 understanding that no motion to compel discovery was  
7 ever filed and also with the understanding that you  
8 acted beyond your authority, in my opinion, by  
9 treating his contempt motion as a motion to compel, I  
10 do not believe a judge has that authority, so, yes,  
11 you are correct.  
12 THE COURT: And if I enter an order similar to  
13 what Mr. Curtin is requesting today, a finding of  
14 contempt, and, again, reiterating that you must comply  
15 with those discovery requests, you have no intention  
16 of complying with that?  
17 MR. GUTMAN: I think that's what I said, but  
18 by the same token, I would like the opportunity to  
19 purge -- to at least consider it. I might change my  
20 mind. As I sit here, I think it's unlikely I would  
21 change my mind, but I might change it. I think it's  
22 unlikely. And, in any event, I would like the seven  
23 days to purge if for no other reason just so I can get  
24 my two cats boarded.  
25 THE COURT: Your reasons are your own,

Page 81

1 Mr. Gutman, but --  
2 MR. GUTMAN: I understand.  
3 THE COURT: -- but this is not a game.  
4 MR. GUTMAN: Understood.  
5 THE COURT: And I don't know if you've ever  
6 been inside a jail. I've only visited them.  
7 MR. GUTMAN: I'm kind of interested to see  
8 what it's like, actually.  
9 THE COURT: You will --  
10 MR. GUTMAN: I'd like to see what the  
11 conditions are like, and I'd like to talk to the other  
12 prisoners.  
13 THE COURT: You will find it interesting. I  
14 don't know how much time you'll get to talk to other  
15 prisoners.  
16 MR. GUTMAN: Fair enough.  
17 THE COURT: But have you -- that order that  
18 you were preparing to offer, Mr. Curtin --  
19 MR. CURTIN: I do have it, Your Honor. I  
20 can --  
21 THE COURT: We can cut to the chase here based  
22 on Mr. Gutman's statements and eliminate a lot of the  
23 findings you probably included there.  
24 MR. CURTIN: Probably, or we could put it --  
25 write in a finding that in open court he stated that

Page 82

1 he would not comply. I mean, that --  
2 THE COURT: You may want to revise that and  
3 submit it, but he's asking apparently for the  
4 seven-day provision.  
5 MR. CURTIN: I already put that in there, Your  
6 Honor.  
7 MR. GUTMAN: And I --  
8 MR. CURTIN: I'll revise that, I'll add in  
9 that finding that he stated in open court that he  
10 would not comply, and I'll submit it tomorrow for you.  
11 MR. GUTMAN: And then I also indicated I would  
12 reconsider.  
13 MR. CURTIN: I'll put the purge provision in  
14 there. That's the reconsideration part, I think, Your  
15 Honor.  
16 THE COURT: Yeah, well, reconsideration on  
17 your part, Mr. Gutman, I'm not sure what you're  
18 contemplating, and I hope you decide to comply with  
19 the order --  
20 MR. GUTMAN: I understand.  
21 THE COURT: -- and not file any motions  
22 directed to the order because we keep going in circles  
23 here.  
24 MR. GUTMAN: I understand.  
25 THE COURT: I have no interest in putting you

Page 83

1 in jail or anyone else, for that matter.  
2 MR. GUTMAN: I understand.  
3 THE COURT: That's why I'm sitting in civil.  
4 I've done enough criminal stuff when I was a younger  
5 judge, but --  
6 MR. GUTMAN: If I may, I would like to --  
7 THE COURT: -- but I don't understand your  
8 position, but it's entirely your own, but I'm just  
9 telling you we're reaching the end of the line here.  
10 MR. GUTMAN: I understand that.  
11 Can I make a closing statement, basically, to  
12 delineate my position for no other reason than to just  
13 make the record?  
14 THE COURT: You're talking about your reasons  
15 for refusing?  
16 MR. GUTMAN: No, no. I'm talking about  
17 basically a summary of essentially what's really  
18 transpired in this case from the inception four or  
19 five years ago.  
20 THE COURT: Well, you have tried on numerous  
21 occasions to obfuscate the issues on this case, and  
22 we've gone in circles around and around and around.  
23 The issue that Mr. Curtin is presenting this afternoon  
24 is very straightforward and simple. There was an  
25 order of the court. You've made a couple of attempts

Page 84

1 to quash it and avoid it, but it was there, and now we  
2 have evidence, not only in these exhibits, but also  
3 your own statement, that you do not intend to comply  
4 with it.  
5 MR. GUTMAN: Well, what --  
6 THE COURT: I really don't care what your  
7 reasons are.  
8 MR. GUTMAN: Well, what about the issue that  
9 he did not attach the certificate of good faith as  
10 required by Chief Judge Glenn Kelley?  
11 THE COURT: Let's assume that's true. Are you  
12 willing to comply now?  
13 MR. GUTMAN: What's that?  
14 THE COURT: Are you willing to comply now?  
15 MR. GUTMAN: I'm basically --  
16 THE COURT: This isn't rocket science. All  
17 we're looking for is discovery responses. If you  
18 think there was a flaw before, okay, well, we're here,  
19 we know that --  
20 MR. GUTMAN: I guess the -- I guess the answer  
21 would be as opposed to the straightforward no, with  
22 asking for a purge, I would say it's quite unlikely I  
23 would comply now. That being said, after the fourth  
24 DCA issues an opinion, I might change my mind, and I  
25 might say, hey, I can't handle this jail stuff.

Page 85

1 THE COURT: All I'm suggesting to you,  
2 Mr. Gutman -- this is your choice. These are direct  
3 questions, and you're avoiding them, but I'm trying to  
4 get a direct response.  
5 MR. GUTMAN: Unlikely is the answer.  
6 THE COURT: If you want to have one foot on a  
7 banana peel and your neck in a noose, that's entirely  
8 up to you, but there will be no more games, so when  
9 this order is entered, that's it.  
10 MR. GUTMAN: Mmhhh. Well, like I say,  
11 unlikely. I --  
12 THE COURT: Okay.  
13 MR. GUTMAN: My answer went from -- from no to  
14 unlikely.  
15 THE COURT: Okay. Well, it's your choice.  
16 MR. GUTMAN: Understood.  
17 THE COURT: All I'm trying to make is that  
18 clear.  
19 All right. The other motion that you wanted  
20 to deal with?  
21 MR. CURTIN: Yes, Your Honor, one other  
22 motion. This is for the final motion on various writs  
23 of acknowledgement, Your Honor. I have a copy of the  
24 motion, Your Honor.  
25 So this is an interesting one, Your Honor.

Page 86

1 Once again, on March 14th, 2023 you entered a cost  
2 judgment for 1,300-and-some-odd dollars. On April  
3 3rd, 2023 you entered an additional attorneys' fee  
4 judgment and additional cost judgment for \$31,000, so  
5 about 32,000-and-some-odd change.  
6 I did a writ of garnishment on an entity  
7 called American Title Corporation because what  
8 happened, Your Honor, was one day I received a call  
9 that there was going to be a sale of property, and  
10 they wanted a release from me, which is typical of a  
11 title company because I have a judgment against  
12 Mr. Gutman, and it's sitting recorded in the public  
13 record. I gave them a payoff, but they never called  
14 me back on it, so I did a writ of garnishment to them,  
15 and lo and behold, they have \$55,161.16 sitting in  
16 their trust account due to a sale of property from  
17 Mr. Gutman's mother's estate where Mr. Gutman is a  
18 beneficiary, and he's also the executor of the Estate.  
19 Mr. Gutman -- that was on December 21st, 2023  
20 when American Title Company responded to the writ of  
21 garnishment. Mr. Gutman filed, timely, a January 9th,  
22 2024 motion for dissolution of the writ. He had three  
23 bases in that motion. Your Honor, here it is. I  
24 have a copy of that motion.  
25 He had three bases in that motion, Your

Page 87

1 Honor, one, that the writ says \$32,639.53, which is  
2 the total amount of the two judgments that I went  
3 over, owed for the two judgments, and the writ says  
4 this does not include post-judgment interest, court  
5 costs and attorneys' fees. Mr. Gutman said that's  
6 just untrue, that that judgment does include that, and  
7 he's pointing to the fact that the judgment itself is  
8 for attorneys' fees, but the writ is correct, the  
9 judgment does not include any post-judgment attorneys'  
10 fees on those judgments or court costs or fees on  
11 those judgments.  
12 His other objection is that fees -- I'm asking  
13 fees upon fees. That's not true, Your Honor. It is a  
14 judgment for fees. I'm not asking for fees on the  
15 amount of the fees, which is typical of the fees upon  
16 fees.  
17 The only objection he has in that January 9,  
18 2024 motion for dissolution, which may have some sort  
19 of validity, is that this money shouldn't go to him,  
20 but it will go to the Estate, and once the Estate  
21 makes a distribution, maybe I could get it, but it's  
22 not going to him; it's going to the Estate.  
23 Now, he is the executor of the Estate, so what  
24 did I do? On December 20th, 2023, I served writs of  
25 garnishment upon Mr. Gutman as the executor of his

Page 88

1 mother's estate and upon Lynne Spraker, PA, and Lynne  
2 Spraker, Esquire, who's the lawyer for the Estate, and  
3 in the Estate she has stated that they filed a  
4 document in the Estate action that she is the  
5 registered agent. So this motion is on all those.  
6 What happened on those motions -- those writs  
7 of garnishment on the Estate, Your Honor -- the Estate  
8 has never responded to those three writs of  
9 garnishment, neither Mr. -- no one on behalf of the  
10 Estate has responded to those writs of garnishment and  
11 said what's in the Estate because the Estate needs to  
12 respond and say what they have in the Estate.  
13 Mr. Gutman did file a motion -- similar  
14 motions, as he filed on behalf of American Title  
15 Corporation, having those three same bases that the  
16 writ says is post-judgment interest and cost, that  
17 it's fees upon fees, and anything that the Estate  
18 hasn't made a distribution yet.  
19 So what we have here -- and Mr. Gutman  
20 rightfully says, and he makes a good point, that he  
21 asked for a jury trial in all his responses, and I  
22 agree with him that Section 77.08 has a right to a  
23 jury trial if there is an issue of fact.  
24 And you can look at Security Bank v.

Page 89

1 BellSouth, which was a Third DCA 1996 case where the  
2 third DCA says when there is no disputed issue of  
3 fact, a motion for summary judgment can be -- is  
4 always permissible.  
5 Zeller Capital v. Zeller, an 11th Circuit case  
6 interpreting -- 2014 interpreting Florida law, says  
7 77.08 does not provide jury trial and garnishments --  
8 does provide jury trial and garnishments, but jury  
9 trial is not absolute. A jury trial is not required  
10 if it would serve no purpose such as a summary ruling.  
11 And Tortilla Marina v. Hartford, a third DCA  
12 1965 case, which every other case thereafter cites to,  
13 says if facts of a particular case warrant, a summary  
14 judgment ruling is appropriate on a writ of  
15 garnishment, even though it provides for a jury trial.  
16 And here, Your Honor, the first two bases  
17 that he comes up with, that the writ says 32,000, and  
18 it does not include post-judgment interest, court  
19 costs or fees, and that's some sort of material  
20 violation, it's just -- on the face of it it's not,  
21 Your Honor. It makes no sense. The fees upon fees  
22 makes no legal sense.  
23 The only issue goes to whether it's a state  
24 asset, the money, or whether it's a Mr. Gutman asset,  
25 and at this point in time, that does not matter. And

Page 90

1 why does that not matter? Because, according to  
2 Section 77.072 -- excuse me -- yes, the Estate itself  
3 must file a response to the writs; otherwise they are  
4 defaulted, and a final judgment will be entered  
5 against the Estate for the amounts requested plus  
6 interest in the writs, Your Honor.  
7 The Estate has never, despite three writs  
8 being issued against them, one being served upon  
9 Mr. Gutman as the executor of the Estate, two being  
10 served upon the lawyer and the law firm as executor of  
11 the Estate, has ever responded to the writs and said  
12 what they are holding. So a judgment needs to be  
13 entered for the full amount of the writ plus the  
14 statutory interest against the Estate, Your Honor.  
15 So now I would have a judgment against the  
16 Estate, so whether this money being held by American  
17 Title belongs to Mr. Gutman personally or to the  
18 Estate, it doesn't matter because if it belongs to  
19 Mr. Gutman, I get it because I have a judgment against  
20 him, and he hasn't issued any sort of viable legal  
21 objection. And if it's money of the Estate, the  
22 Estate has failed to respond to the writs. Mr. Gutman  
23 just filed on his personal behalf a motion to  
24 dissolve, but not on behalf of the Estate, and the  
25 Estate must respond to it and show how much money they

Page 91

1 have, and they have not. If they do not, the statute  
2 says a judgment should be entered against it, default  
3 judgment. And it literally says, failure to timely  
4 file by the garnishee, the one being garnished, that's  
5 the Estate, shall result in a striking of a motion as  
6 unauthorized nullity by the Court and a default  
7 entered.  
8 So there's no issue of fact here demanding a  
9 jury trial, but if there is any issue of fact  
10 demanding a jury trial, Your Honor, that issue of fact  
11 is only based upon his original January 9th motion,  
12 which is only whether this money belongs to him or  
13 belongs to the Estate.  
14 THE COURT: Mr. Gutman?  
15 MR. GUTMAN: On March 25th I filed a  
16 supplement to the motion for dissolution of writ of  
17 garnishment. The first issue here is that there's a  
18 substantial question as to whether this court should  
19 even be deciding this issue. It probably should be  
20 referred over to the probate court. The Estate is  
21 basically a separate entity, according to the IRS,  
22 according to federal statutes. Florida law has  
23 extensive information and statutes regarding how an  
24 estate is handled.  
25 Additionally, I don't see how you can possibly

Page 92

1 even make a decision on this today without the estate  
2 attorney even being present. The estate attorney is  
3 not even here. I don't know whether Mr. Curtin even  
4 notified the estate attorney of this hearing or not.  
5 I did check the online file for the Estate. I don't  
6 see anything at all filed in the Estate file. They  
7 didn't file the writ with the -- with the probate  
8 court, the Estate, which has a separate case number.  
9 They basically sent it to me, and then they basically  
10 also, I guess, sent a writ to the estate attorney that  
11 was filed in this case, but there's nothing at all  
12 filed with the probate court.  
13 I am the personal representative of the  
14 Estate, but under Florida unauthorized practice of law  
15 provisions, I can't even argue on behalf of the  
16 Estate. The Estate has an engaged attorney who is  
17 Lynne Spraker. She's not here today. I don't even  
18 know if she got notice of the hearing or not, I really  
19 have no idea, so this is a probate issue.  
20 What Mr. Curtin is basically saying -- he's  
21 essentially asserting, look, Your Honor, Evan's the  
22 beneficiary of the Estate. This money is really his.  
23 He's ultimately going to get it. The first problem  
24 with that is that Evan is not the only beneficiary of  
25 the Estate. Evan is one of the beneficiaries of the

Page 93

1 Estate and the personal representative of the Estate.  
2 There is at least one more beneficiary. Actually,  
3 I'll state right off the bat there is one more  
4 beneficiary. There's also a substantial question as  
5 to whether the other --  
6 THE COURT: Well, let me interrupt you for  
7 just one moment.  
8 It's a due process issue, do you have a copy  
9 of the notice of hearing for these motions,  
10 Mr. Curtin.  
11 MR. CURTIN: Yes, and the estate attorney is  
12 not on that, Your Honor, and the reason why is they  
13 never answered the writ. And If you look at 77.081,  
14 they had 20 days to answer it. They never answered  
15 it, and that's where the default process comes in.  
16 THE COURT: You're not moving for default;  
17 you're moving for a judgment.  
18 MR. GUTMAN: I'm moving for a judgment, but  
19 what I'm saying is the Estate should be defaulted  
20 also, so the judgment -- it doesn't matter whether the  
21 beneficiaries are Mr. Gutman and his brother, which  
22 that's the other beneficiary, his brother, because I  
23 have a copy of the will. If that's -- if that's the  
24 beneficiary -- because the Estate never responded to  
25 the writ, a final -- a default was entered against the

Page 94

1 Estate, so that money being held by the title company,  
2 whether it belongs to the Estate or should go directly  
3 to Mr. Gutman -- because I also have the escrow  
4 agreement, which says it goes directly to Mr. Gutman,  
5 but that would be an issue of fact. We don't have to  
6 get into that on that, Your Honor, because the Estate  
7 should be defaulted, and if the -- so if the money  
8 belongs to Mr. Gutman, it comes to me. If it belongs  
9 to the Estate, the Estate has already defaulted on  
10 that.  
11 THE COURT: All right. Well, I'm going to  
12 treat the motions here as a motion for default as  
13 opposed to a full final judgment, so, as you pointed  
14 out, they have been served, and no answer has been  
15 filed. You would be entitled to a default, but that's  
16 as far as I'm willing to go without having a specific  
17 notice to the attorney representing the Estate who may  
18 or may not have an issue with this, but obviously they  
19 were not noticed for today.  
20 So it's convoluted, I understand that, but  
21 default, I think, is as far as I'm willing to go  
22 today.  
23 MR. CURTIN: I will set an order of default on  
24 the Estate, Your Honor.  
25 MR. GUTMAN: Your Honor, can I just make one

Page 95

1 other point for the record?  
2 THE COURT: Sure.  
3 MR. GUTMAN: The funds that Mr. Curtin is  
4 seeking to have turned over, which are held by the  
5 Marecki Law Firm -- actually, American Title Company  
6 that Tim Marecki owns, at least I understand he owns  
7 it -- those funds, basically, are subject to an escrow  
8 holdback agreement, which is attached to my  
9 supplement.  
10 Now, it does get a little convoluted because  
11 as we sit here today, the other issue the Court will  
12 need to consider is that the funds held by  
13 Mr. Marecki, by American Title Company, currently are  
14 illegally held by American Title Company.  
15 THE COURT: I'm sure that's not an issue for  
16 me here today, so --  
17 MR. GUTMAN: Well, the question -- the only  
18 issue is whether -- even if the funds were to be  
19 turned over, should the Court be turning over funds to  
20 a beneficiary's creditor that are being illegally held  
21 by a third party? That's the crux of the issue.  
22 THE COURT: We're not there yet.  
23 MR. GUTMAN: Understood. Understood.  
24 THE COURT: Okay. So the defaults will be  
25 granted, you can submit those, as well as the other

Page 96

1 proposals that you were going to submit. Okay.  
2 MR. CURTIN: That's it, Your Honor.  
3 THE COURT: That wraps it up for this  
4 afternoon?  
5 MR. GUTMAN: Actually, one other thing, just  
6 going back to the contempt issue, Your Honor, if I  
7 could just very, very briefly, I understand there's  
8 going to be a purge entered. With respect to -- and,  
9 like I said, I am going to consider it. I think it's  
10 unlikely I'll change my mind, but that being said, I  
11 would request that in the order -- in the order, if  
12 there is going to be a period of time spent in jail,  
13 to see if I can take it or not, I would request  
14 that --  
15 THE COURT: There will be no time specified  
16 for you being in jail.  
17 MR. GUTMAN: No, no. I understand.  
18 THE COURT: It will be a civil commitment  
19 until --  
20 MR. GUTMAN: Understood.  
21 THE COURT: -- until we have compliance.  
22 MR. GUTMAN: That's not even -- that's not  
23 even what I'm getting to.  
24 The only request I have is I would ask that I  
25 be given the opportunity to turn myself in as opposed

Page 97

1 to having the police just show up at my door.  
2 THE COURT: That's a reasonable request. I  
3 hope you don't go there.  
4 MR. GUTMAN: Okay.  
5 THE COURT: Anyway, I just want to make sure  
6 you understand this is not intended to be punitive.  
7 We just want some responses to the previous order,  
8 which will be reinforced by this new order, that it's  
9 not debatable. Regardless of your personal opinions  
10 about me or the judiciary in general or the state of  
11 the world, it's not going to be negotiable at this  
12 point.  
13 MR. GUTMAN: Understood.  
14 THE COURT: Okay.  
15 MR. GUTMAN: The only -- the last point I  
16 would make, and I think I said the last one was, but I  
17 do have one more. Will Your Honor be considering at  
18 all the fact that there is not an order in place  
19 scheduling a contempt hearing for today?  
20 THE COURT: I don't believe we had it set by  
21 order. Mr. Curtin's office was directing the schedule  
22 a notice of hearing to add on what was already set by  
23 order. That's --  
24 MR. GUTMAN: That's my point.  
25 THE COURT: That's how we got here, yes.

Page 98

1 MR. GUTMAN: My point is that there's no  
2 order. Don't you need an order to at least have a  
3 hearing on contempt?  
4 THE COURT: I don't believe so. I mean, it's  
5 basic due process. You knew about it; we're here;  
6 we're talking about it.  
7 MR. GUTMAN: I understand.  
8 THE COURT: Okay.  
9 MR. GUTMAN: I understand.  
10 THE COURT: Okay. We were just adding onto a  
11 previous order, was the direction of the Court,  
12 because we were getting too many Zoom requests, and  
13 the direction was let's lump it all together while  
14 we're here, and we'll do it.  
15 MR. GUTMAN: Okay.  
16 THE COURT: So I appreciate your point. I'm  
17 not sure it matters, to tell you the truth.  
18 Anyway, I'll wait for those submissions,  
19 Mr. Curtin.  
20 MR. CURTIN: Thank you.  
21 THE COURT: All right. Thank you.  
22 MR. GUTMAN: Thank you, Your Honor.  
23 (Proceedings concluded at 3:02 p.m.)  
24  
25

Page 99

1 Certificate of Transcript  
2  
3 I, Lisa MacDonald, a Registered Shorthand Reporter  
4 in and for the State of Florida, do hereby certify:  
5  
6 That the foregoing proceedings were taken before me  
7 at the time and place herein set forth; that the  
8 testimony and proceedings were reported  
9 stenographically by me and later transcribed into  
10 typewriting under my direction; and that the foregoing  
11 is a true record of the testimony and proceedings  
12 taken at that time.  
13  
14 IN WITNESS THEREOF, I have subscribed my name this  
15 15th day of April, 2024.  
16  
17   
18  
19 Lisa MacDonald, Court Reporter  
20 Notary Public No. HH-472774  
21  
22  
23  
24  
25