

THE STATE OF SOUTH CAROLINA
In the South Carolina Court of Appeals

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APPEAL FROM RICHLAND COUNTY
Court of Common Pleas

SC Court of Appeals

Brooks P. Goldsmith, Circuit Court Judge

Case No. 2019-000953

Thomas Jackson and Christopher Mitchell..... Respondents,

V.

Joe Henry and Joe Henry Law Firm Appellants.

RECORD ON APPEAL

VOLUME II

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JOSEPH HENRY-DIRECT BY MR. ORMOND

1 docket, the statute of limitation shall be tolled as to
2 all considered parties, consenting parties, during the
3 time the case is stricken.

4 Now, that means that the two year statute
5 is tolled. In other words, stayed --

6 A Stopped --

7 Q -- for that additional year?

8 A It stopped running, yes.

9 Q But if you don't restore it within that year and
10 it's now 2009, then you're outside the statute, would you
11 agree with that?

12 A That's absolutely correct.

13 Q And if you're outside the statute of
14 limitations, you can't bring the case?

15 A That's right.

16 Q Okay. And the remedy or the way to restore a
17 case under Rule 40J is to make a motion with the court?

18 A To file a motion, pay a motion filing fee --
19 well, you got to pay the motion filing fee to file the
20 motion. And you got to pay the filing fee, usually, to
21 restore the summons and complaint which is another \$150.
22 You're talking about probably \$175.00.

23 Q Okay. So, in your opinion it would be about
24 \$175.00 to restore the case?

25 A Yes.

000240

JOSEPH HENRY-DIRECT BY MR. ORMOND

1 Q Okay. Did you tell the clients when you --
2 again, we have a dispute as to whether you told them but
3 when you believed you told them about the 40J?

4 A Yes, I did. I told them you have to -- if you
5 want to take it off the roster, if you decide you want to
6 go back and put it back on, there's a filing fee for that
7 and this is how much that filing fee is. And it has to be
8 paid to get the case started over.

9 Q All right. Well, let's look at the date on
10 this. The date on this is March 10th, 2008?

11 A Uh-huh.

12 Q So, my March 9th, 2009, this case would have
13 needed to be restored?

14 A That's absolutely correct.

15 Q Okay. And during that period of time, April of
16 '08, through January of '09, nothing happened in the case?

17 A There was discussions about what we were going
18 to do as far as the -- let me back up a minute. During
19 that time you said nothing was going on, that's not
20 actually true. What was going on the clients -- we were
21 filing collateral matters with, I think, OSHA, we went
22 through OSHA, we went through the Contractor Licensing
23 Board. These were all issues involved with things
24 regulated by either OSHA, the contractor licensing board
25 or other agencies that regulated work and trades in the

000241

JOSEPH HENRY-DIRECT BY MR. ORMOND

1 areas they were being asked to work in. So, they had
2 pending matters before those places and they were using
3 those as collateral, negotiations strategies to try to get
4 the case resolved.

5 Since the didn't look like is working and
6 OSHA came back and didn't find any problems, that
7 undercut -- it undercut the value of what they would have
8 been looking at had the case panned out and OSHA agreed
9 that those were violations, that would have given their
10 case more value. But once they realized that those things
11 were not going to happen, that caused the case not to be
12 that valuable. I explained to them that you don't have
13 any damages so the best your case can look to do is change
14 the policy. You may get some money as a whistleblower for
15 bringing this up but you're not going to rich on this
16 cases. These cases have no real monetary value at this
17 point because OSHA has come back against you and so has
18 the contractor licensing board. Saying that they didn't
19 find real issues with what you're saying, although, you're
20 being asked to do things you're not licensed or certified
21 to do. You're a painter, you don't have certification to
22 work on HVAC system. But they didn't find a problem with
23 that.

24 So, the regulatory body didn't see anything
25 wrong, there's nothing I can do with that. Now, I will

090 242

JOSEPH HENRY-DIRECT BY MR. ORMOND

1 tell you, Mr. Henry, when you presented your file to us,
2 we requested that through discovery.

3 A Uh-huh.

4 Q There was nothing in there about OSHA or LLR,
5 will be the contractors board; is that correct?

6 A That's correct.

7 Q Do you have that information?

8 A Yeah.

9 Q Do you have it here?

10 A I think it is in here. Thomas Jackson filed,
11 when he filed his complaint with the disciplinary counsel,
12 I had to submit a copy of my entire file for them. I had
13 to go and talk to them and sit down and show them what all
14 I had done. They reviewed my entire file. And I have a
15 copy of their subpoena for the file. Which asks for
16 everything.

17 Q I'm just asking you if you have it here?

18 A Yeah.

19 Q Okay. But we didn't receive it, would you agree
20 with that?

21 A I don't know whether you did or not. You didn't
22 ask for --

23 Q Did you provide the -- do you have the citations
24 which OSHA did cite The Budget and Control Board?

25 A No, OSHA didn't give them a citation. That's

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JOSEPH HENRY-DIRECT BY MR. ORMOND

1 what I was telling you, they didn't have -- that's what
2 undercut their case. There was no citation that I'm aware
3 of.

4 Q Okay. So you -- okay, so you dispute that there
5 was a citation?

6 A I don't dispute, I just simply don't have one.
7 They didn't give me one so I don't know. That's why I
8 asked Mr. Jackson.

9 Q Sir, just trying to figure out what we agree on
10 and what we don't.

11 A Okay. Well, Mr. Jackson testified that OSHA
12 found against The Budget and Control Board. I never
13 received anything from OSHA saying that. That's why I
14 asked them that question. Had I gotten that, that would
15 have been more value to him in the long run.

16 Q Was Mr. Jackson and Mr. Henry that--

17 A I'm Mr. Henry.

18 Q I'm sorry, Mr. Mitchell that went to these
19 agencies, correct?

20 A Yeah, they filed -- I helped them draft the
21 complaints that they submitted to OSHA and to the
22 contractor licensing board explaining their circumstances
23 that they were not licensed to do the work that they were
24 being asked to do. And they that had no certifications in
25 those areas. And it was outside the scope of their

000244

JOSEPH HENRY-DIRECT BY MR. ORMOND

1 training.

2 Q Okay. And Mr. Jackson, at least, recorded this
3 even prior to the lawsuit to he thought was DHEC and OSHA
4 and some of the regulatory agencies, correct?

5 A The only report I'm aware that he made to OSHA
6 was the one I prepared for him.

7 Q Okay.

8 A I don't know whether he did anything else other
9 than that. But the only one that I'm aware of is the one
10 I drafted for him. And I also drafted some memorandums
11 for them to submit to their employer, notifying them of
12 the concerns they had over the work they were being asked
13 to do. And I had them to submit those each time they were
14 called out to do something, to submit a memo explaining
15 that they had concerns over their safety. And I drafted
16 those.

17 Q But much of the case is point, the underlining
18 cases with that they reported these issues internally and
19 externally. They, meaning Mitchell and Jackson, and
20 began -- they were retaliating, right?

21 A That's -- yes, yes.

22 Q And you didn't file a whistleblower statute
23 case, at least at first; right?

24 A There's a whistleblower claim in their case. We
25 filed and amended the compliant and put in the

000245

JOSEPH HENRY-DIRECT BY MR. ORMOND

1 whistleblower claim.

2 Q So, you amended the complaint after what
3 complaints we now have in the file.

4 A The first complaint. There were two complaints.
5 There was a complaint and an amended complaint.

6 Q Okay. I would suggest that we didn't get those
7 either.

8 A They --

9 Q Well, let's go forward.

10 A They are all part of the public record. They're
11 right downstairs in the courthouse right now if you want
12 them.

13 Q Yes, sir. I will tell you that that's what I
14 got, I got those from the public record. That's the last
15 they had.

16 A All right. Did you see the compliant in there?
17 Because there should have been a complaint and the amended
18 compliant.

19 Q I got what was in the public. Is that what was
20 in the public record?

21 A I don't know of -- I have a copy, I think I have
22 a copy of the complaint.

23 Q Okay, very good. Then you had a mediation, did
24 you know that the case wasn't as good as you had all hoped
25 at that time?

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JOSEPH HENRY-DIRECT BY MR. ORMOND

1 A Oh, yeah.

2 Q Okay.

3 A And I had already discussed that with the
4 clients and told them I'm going to go to this mediation,
5 if we could resolve the case it would be in your interest
6 to do so. Because you have no damages.

7 Q Okay.

8 A You haven't gotten hurt, you haven't lost money,
9 so you don't have any real damages to claim. So, if you
10 go to mediation and they make some kind of proposal you
11 need to consider what you want to do. But the decision on
12 that is the client, it's not mine.

13 Q Okay. But at this point in the trial you are
14 admitting or stating that you did tell them that the case
15 had some issues?

16 A I told them that from the beginning. They never
17 had any discernable damages because in most cases the
18 person is going to have some kind of injury that they can
19 point to and say, as a result of what happened, I was
20 injured and I'm unable to work or whatever and that's
21 costing me money. They didn't have that in here. So, I
22 had to tell them that upfront.

23 Q Okay. Well, we would, I think, we would
24 stipulate that this wasn't a personal injury case?

25 A And that were no injuries or no other kind or

000247

JOSEPH HENRY-DIRECT BY MR. ORMOND

1 monetary loss that they sustained. So, I told them you
2 can bring this case, this is more a case designed to
3 change the policy so that you don't have to go out there
4 and risk your safety doing work that you're not qualified
5 to do.

6 Q Well, on February 27th there was mediation?

7 A That's correct.

8 Q Correct. And during that mediation Mr. Mitchell
9 was offered \$25,000, Mr. Jackson was offered \$5,000?

10 A I'm not at liberty to discuss things that took
11 place in the mediation unless instructed to do so by the
12 court.

13 MR. ORMOND: Your Honor, I instruct him to do
14 so.

15 THE COURT: You may answer the question.

16 THE WITNESS: Okay. With the reservation of the
17 objections that I've raised that I will answer the
18 question and the answer would be yes. They were
19 offered the money to settle the case, if they wanted
20 to settle it. And if they settled, it was stipulated
21 that you had to resign from your state job and never
22 work for the state again. They didn't want to do
23 that.

24 BY MR. HENRY:

25 Q Well, Mr. Jackson, was working for the state at

000248

JOSEPH HENRY-DIRECT BY MR. ORMOND

1 the time, he had retired.

2 A Mr. Mitchell was offered that. Mr. Jackson was
3 offered about \$5,000 because he was already retired. They
4 just wanted to get rid of him.

5 Q Okay. Well, they, I guess, they were already
6 rid of them.

7 A No, because he was suing them so they needed to
8 deal with that. That's the reason they needed to get rid
9 of them.

10 Q Okay. And that's true in all cases. The
11 defendant kind of wants to get rid of the case sometimes.

12 A I don't know. I'm just saying in this -- I can
13 only speak for this case.

14 Q You tried other cases, you had other cases?

15 A Lots of them.

16 Q Okay. Now, you indicated that the defendant
17 attorney wanted to 40?

18 A Yes.

19 Q And he wanted to do that to try to resolve the
20 case?

21 A Yes.

22 Q So, in March of 2008, you know that maybe they
23 wanted to resolve the case, correct?

24 A There's always a desire to resolve it. It's a
25 question of whether you can reach an agreeable resolution.

000249

JOSEPH HENRY-DIRECT BY MR. ORMOND

1 But yes, there's always a desire to resolve a case. And
2 they will make an effort. But they're only going to go as
3 far as they feel is reasonable. And that's what they were
4 trying to do. Just because they want to resolve it,
5 doesn't mean they will. If you don't come up with a
6 figure that they agree to, they're not going to resolve
7 it. So, even there is a desire, you're not going to get
8 there if you don't reach is agreeable figure.

9 Q Now, I understand that you -- well let me try to
10 ask you this. Are you testifying that you advised the
11 clients they needed to take the numbers that were given?

12 A No, I never advise a client to take or reject
13 the money. I tell them what my opinion is and I let them
14 decide. I tell them at all times, it is your decision. I
15 can't take the money, I can agree that you can take the
16 money because it will benefit me if you do. But that's
17 why I don't do that. Because it's not my case. And the
18 case is designed to help the client get that call, not me.
19 If I wanted to try to make money, it would have been in my
20 interest to tell them whatever they offer, go ahead and
21 take it. Because I was only going to get paid if they got
22 paid. And I didn't get paid in this case for any of this
23 work.

24 Q I understand, sir. What did you advise them
25 then?

000250

JOSEPH HENRY-DIRECT BY MR. ORMOND

1 A I advised them to consider the money and make a
2 decision or whether that was acceptable. That's the only
3 thing I could advise them because it's their decision to
4 make.

5 Q If they said they didn't think it was enough,
6 what did you say?

7 A Then it's your decision, it's your case. I
8 can't tell you whether it's enough or not. Only you know
9 how much it will take to satisfy you.

10 Q When you were cross-examining Mr. Jackson, you
11 indicated to him there really wasn't a lot of damages and
12 so forth and whether that's true or not, did you do that
13 during mediation?

14 A Before, during and after mediation. Because I
15 continued to talk to them after the mediation was over.

16 Q So just didn't take your advice?

17 A They didn't take my advice. He didn't -- he
18 wanted more money. And he decided -- he decided that that
19 wasn't enough. I didn't make that decision.

20 Q Well, let's go on to the more important part.
21 During mediation did you tell the clients, look, we got a
22 week or so to restore this case?

23 A Not -- not during the mediation, no. After--

24 Q Did you tell them after the mediation?

25 A Yes, sir, I did. Because they -- I give them a

000251

JOSEPH HENRY-DIRECT BY MR. ORMOND

1 copy of this document when it was signed. We discussed
2 this before it was signed. I gave them a copy and told
3 them this is what you're going to have to live be. If we
4 don't settle this case at mediation, you're going to need
5 to restore it. But the only way you're going to do that
6 is you have to pay those fees. And if you also recall,
7 Mr. Jackson when he testified, he said that he -- he knew
8 he had a copy of the contract. The contract tells them
9 about the fees. There's nothing in the contract that
10 covers real statement of the case. There was no
11 discussion at all about that. That's not a part of my
12 contract. That's a separate agreement.

13 Q I'm trying to get to -- is your testimony here
14 today, sir, under oath, that you told Mr. Jackson and
15 Mr. Mitchell, that will they needed to get the case
16 restored after mediation?

17 A Yes.

18 Q All right. Do you remember the deposition we
19 took?

20 A I do.

21 Q About three years ago, March 10th, 2016.

22 A I remember taking a deposition at your office--

23 MR. ORMOND: Do you do this or does he need to
24 unseal it?

25 THE COURT REPORTER: He can.

JOSEPH HENRY-DIRECT BY MR. ORMOND

1 MR. ORMOND: He can?

2 THE COURT REPORTER: Yes, sir.

3 BY MR. ORMOND:

4 Q Could you unseal that deposition?

5 A I might need you to unseal it.

6 (WHEREUPON, Court's Exhibit No. 1 was marked for
7 identification only.)

8 BY MR. ORMOND:

9 Q Take a quick look at that and tell me if that's
10 your deposition.

11 A This appears to be my deposition.

12 Q Okay. Can you read it?

13 A Yeah.

14 Q Page over to Page 36.

15 A Page 36 you said?

16 Q All right. Line 6, I'll read my question.

17 Did you ever tell them that after
18 mediation, so we don't cross ourselves, Mr. Jackson or
19 Mr. Mitchell that he should settle for the amounts already
20 offered that were on the table at the time at the
21 mediation.

22 The answer -- do you want me to read the
23 answer or would you like me to read.

24 A I can read it if you want.

25 It has been my practice since I started

b7D253

JOSEPH HENRY-DIRECT BY MR. ORMOND

1 practicing law to never tell the client to settle or not
2 to settle simply because it's is the client's case and
3 only the client knows what they will need to be satisfied
4 with. So, I don't. I don't take that upon myself because
5 it's not -- I don't think it's appropriate for a lawyer to
6 tell a client that because it's the client's case, if
7 client -- if you think an offer is reasonable, you can
8 tell the client that. But it's is the client's choice as
9 to whether to accept or reject.

10 Q Okay. All right. Go to Page 54, please.

11 A All right. I'm there.

12 Q All right. We were talking about we had a
13 mediation on February 27th. That's less than 10 days from
14 the time you needed to restore the case or someone needed
15 to restore the case?

16 A Uh-huh.

17 Q Okay.

18 My question was: Okay, they just had a
19 mediation and they didn't settle it; is that correct?

20 A That's correct.

21 Q You said, That's correct.

22 A Uh-huh.

23 Q And they had about a week or so to refile or it
24 would be dismissed; is that correct.

25 A That's correct.

000254

JOSEPH HENRY-DIRECT BY MR. ORMOND

1 Q And that's the period of time I'm asking. I
2 can't tell you what you're saying. Do you recall talking
3 to them about refiling 40J or not?

4 A I'm telling you that I had discussions with them
5 the mediation but I don't recall the time. The substance
6 of the discussions.

7 Q So, if they were here to testify, they don't
8 recall you telling them anything about refiling the 40J at
9 the mediation, that may well be correct; is that right?

10 A It may also not be correct.

11 Q So, in 2016 you didn't remember when you told
12 them that?

13 A I don't remember when I told them. I know it
14 was after the mediation. The exact date, no I don't
15 remember.

16 Q Okay. So, they had -- Mr. Jackson had \$5000
17 offer that was extended past the mediation; is that
18 correct?

19 A Yes.

20 Q Okay. Are you telling this Court that you told
21 them they had to pay 150 to \$175 to restore the case?

22 A 175 to restore.

23 Q All right, I'm sorry.

24 A The motion fee and the fee for the summons and
25 compliant.

000 255

JOSEPH HENRY-DIRECT BY MR. ORMOND

1 Q Okay. Assume it's 175.

2 A Uh-huh.

3 Q But you told Mr. Jackson, Mr. Henry--

4 A Mr. Mitchell.

5 Q Mr. Mitchell, I'm sorry. That in order to
6 continue the case, otherwise it will be dismissed and
7 never be brought again?

8 A Uh-huh.

9 Q They needed to come up with \$175?

10 A That's correct.

11 Q Did they say, no, we're not going to do it?

12 A No, they just never did.

13 Q And so, you intentionally did not restore this
14 case?

15 A That's right.

16 Q And that was it?

17 A That was it.

18 Q Did you call them up a couple of days before the
19 restoration deadline, March 8th, March 7th of 2009 and
20 say, he look, you know, we need \$175? They were working.

21 A They were in my office just about every day. I
22 didn't have to call them.

23 Q Okay.

24 A And so --

25 Q Sorry.

000 256

JOSEPH HENRY-DIRECT BY MR. ORMOND

1 A -- we talked about it and they took, since Vance
2 Bettis was willing to continue to negotiate, even though
3 the mediation was over and the case was coming to a close,
4 he was still willing to accept a reasonable proposal to
5 settle. That's why we sent the letter in October.
6 Because even after that he said, if they come up with a
7 figure that that I can get my clients to agree to, we'll
8 go ahead and get rid of the case that way. We'll get rid
9 of it once and for all. If there's a reasonable--

10 Q Well, let's stop talking about what somebody
11 else that said --

12 That's hearsay, Your Honor. I--

13 A Oh, okay.

14 THE COURT: I'll sustain that objection.

15 MR. HENRY: All right.

16 BY MR. ORMOND:

17 Q But you would agree with me that on March 10th
18 or certainly March 11th, 2009, the case was over?

19 A Definitely.

20 Q Okay. The Budget and Control Board did not have
21 to worry about going to a trial, right?

22 A No.

23 Q They don't have to worry about dealing with
24 these Plaintiffs anymore?

25 A No, they didn't.

000 257

JOSEPH HENRY-DIRECT BY MR. ORMOND

1 Q Okay. And you would agree that Mr. Jackson was
2 already now retired, right at this time?

3 A I don't actually know when he retired. I know
4 he did retire but I don't actually know the date.

5 Q But you would agree that his offer was not with
6 any strings about quitting or resigning?

7 A No, he was on his way out any way.

8 Q Okay. And you do know that Mr. Mitchell in July
9 of that year in 2009, was terminated. Or do you remember
10 that?

11 A I do know that.

12 Q Okay. So, there not even employees anymore?

13 A No.

14 Q Okay.

15 Would like to have marked for
16 identification, I believe, it's Plaintiff's Exhibit 6.

17 (WHEREUPON, Plaintiff's Exhibit No. 6 was marked
18 for identification only.)

19 BY MR. ORMOND:

20 Q Is this the letter you sent to Mr. Bettis
21 March 20th, 2009?

22 A Yes.

23 Q This is your signature?

24 A It is.

25 Q Okay.

000258

JOSEPH HENRY-DIRECT BY MR. ORMOND

1 Your Honor, move to enter into evidence as
2 exhibit 6.

3 MR. HENRY: Without objection.

4 THE COURT: Motion's granted, it's admitted.

5 (WHEREUPON, Plaintiff's Exhibit No. 6 was
6 admitted into evidence.)

7 BY MR. ORMOND:

8 Q All right. This is dated March 20 of 2009; is
9 that correct?

10 A That's correct.

11 Q And March 20th, 2009, is about 11 days after
12 March 9th, 2009, would you agree with that?

13 A That's right.

14 Q And March 9th, 2009 was the last chance you had
15 to restore the case?

16 A That's correct.

17 Q So, the case was over --

18 A Yeah.

19 Q -- on March 20th, 2009 when you wrote this
20 letter?

21 A That's correct.

22 Q Okay.

23 A Do you want me to read what the letter says?

24 Q I tell you what, why don't we give it to the
25 jury, they can look at it.

000259

JOSEPH HENRY-DIRECT BY MR. ORMOND

1 MR. HENRY: Well, I'd like to publish the
2 letter, Your Honor.

3 MR. ORMOND: Well, Your Honor --

4 MR. HENRY: I'd like to publish the contents of
5 the letter since we're putting it in.

6 THE COURT: Well, what says the Plaintiff? You
7 want it published or not?

8 MR. ORMOND: I don't -- if he wants to read it
9 in for the sake of time, I really don't care. But
10 what I was going to do is give it to the jury and let
11 them look at it. It is in evidence, it is published.

12 THE COURT: It's still the Plaintiffs case, let
13 the Plaintiff hand it to the jury.

14 MR. ORMOND: Pardon?

15 MR. HENRY: Do you want me to read it?

16 MR. ORMOND: No.

17 MR. HENRY: Okay.

18 MR. ORMOND: Jury can read it.

19 BY MR. ORMOND:

20 Q Now, Mr. Bettis wrote you back, you recall that?

21 A I do.

22 MR. ORMOND: Move for identification Plaintiff's
23 7.

24 (WHEREUPON, Plaintiff's Exhibit No. 7 was marked
25 for identification only.)

000 260

JOSEPH HENRY-DIRECT BY MR. ORMOND

1 BY MR. ORMOND:

2 Q Did you receive this letter from Mr. Bettis?

3 A Yes.

4 Q Okay.

5 Your Honor, I'd like to admit as
6 Plaintiff's 7.

7 THE COURT: Any objection?

8 MR. HENRY: Without objection.

9 THE COURT: It's admitted.

10 (WHEREUPON, Plaintiff's Exhibit No. 7 was
11 admitted into evidence.)

12 BY MR. ORMOND:

13 Q Now, I would want you to read the second
14 paragraph it says, Dear Joseph on the top. Would you
15 agree with that? Looking at the same thing?

16 A Yes. Says, Dear Joseph--

17 Q Okay.

18 A This is --

19 Q Mr. Henry, I'll tell where to read, just give me
20 a second. March 24th, 2009, would you agree with that as
21 the date it was sent?

22 A The date of the letter? Yeah, that's the date
23 of the letter, yes. March 24th, 2009.

24 Q And I'm going to read the second paragraph but I
25 want you to read along with me, at least silently, so I

000261

JOSEPH HENRY-DIRECT BY MR. ORMOND

1 can -- you can tell me if this what it says.

2 It is my understanding that these cases
3 have been dismissed pursuant to the terms of the Rule 40J
4 agreements that we filed on March 10th, 2008. Those
5 agreements provide one year period to restore the cases to
6 the active roster but stipulated if they were not restored
7 within that time, the agreement operated as a dismissal.
8 Since the cases were not restored within that year they
9 are currently dismissed.

10 Do you agree that that's what it says?

11 A That's correct.

12 Q Okay.

13 A The juror can look at it and see the entire
14 contents.

15 Q Yes.

16 A Then it will make more sense to them.

17 Q All right. Now, it's true that The Budget and
18 Control Board never made another offer.

19 A Uh-huh.

20 Q They never did, did they?

21 A No.

22 Q Why would they?

23 A I don't know.

24 Q If they didn't have a case to worry about,
25 right?

000262

JOSEPH HENRY-DIRECT BY MR. ORMOND

1 A I have -- that would be speculation on my part
2 to guess why.

3 MR. ORMOND: Fair, I withdraw the question, Your
4 Honor.

5 THE COURT: All right.

6 BY MR. ORMOND:

7 Q Now, during this time you're speaking with the
8 clients, Mr. Mitchell and Mr. Jackson, and telling them
9 the case was still active; isn't that correct?

10 A No, it's not.

11 Q So, they knew then, at this time, that this case
12 was over?

13 A They went with me to the mediation. They also
14 had a copy of the Rule 40J. And it had been explained to
15 them beforehand and during the time it was being entered
16 and after it had been entered. So, they knew it was --
17 the case was on a 40J status. And in furtherance of their
18 understanding, at one point when Mr. Mitchell was having
19 problems getting -- having problems with his employment
20 after he hired me, he hired Mr. Lewis Cromer to represent
21 him on the other -- the termination part of his case. He
22 discussed the 40J with Mr. Cromer during that time.

23 MR. ORMOND: Your Honor, I object to him saying
24 what my client may have said to somebody else.

25 MR. HENRY: I didn't say what he said to him. I

000263

JOSEPH HENRY-DIRECT BY MR. ORMOND

1 said he discussed it with him.

2 BY MR. ORMOND:

3 Q Were you there?

4 A No, Lewis called me.

5 MR. ORMOND: Then, Your Honor--

6 MR. HENRY: Lewis Cromer called me--

7 THE COURT: Hold, hold, hold, we're doing it
8 again. We're talking over each other.

9 MR. HENRY: Your Honor, I apologize.

10 THE COURT: Whoa, whoa, we have an objection.

11 MR. ORMOND: The objection is that he cannot
12 state what he allegedly learned from another person
13 about what my client or what Mr. Mitchell might have
14 said.

15 MR. HENRY: I didn't say what Mr. Mitchell said.
16 I said Mr. Cromer called me and told me--

17 THE COURT: That's the objection.

18 MR. ORMOND: Yes, sir, Your Honor.

19 THE COURT: And I sustain the objection.

20 MR. ORMOND: All right.

21 BY MR. ORMOND:

22 Q But you do recall that Mr. Cromer and
23 Mr. Robinson got involved when he was terminated in July
24 of 2009?

25 A Uh-huh.

000264

JOSEPH HENRY-DIRECT BY MR. ORMOND

1 Q Which is about four or five months after the
2 mediation, would you agree with that?

3 A Yeah.

4 Q Okay. Did you tell them that it was likely now
5 that the case is dismissed, you can't go to trial, that
6 The Budget and Control Board is unlikely to give you any
7 money and to settle the case?

8 A I told them when we went to mediation, your best
9 option in this case is if you can get money out of
10 mediation, that would be your best chance to get paid.

11 Q So, you did advise them to take the amount?

12 A I didn't advise them to take that amount. I
13 never advised him on taking the amount. I just tell them
14 what their options are. You have the option of settling
15 or going forward. If you're going to get money out of the
16 case, if they offer you something, the best offer you're
17 probably going to get is now. And that's what I let them
18 know.

19 Q So, now that is what you're saying you said
20 during or after or before mediation?

21 A I told them before the mediation and during the
22 mediation, your case has not a lot of monetary value. If
23 you're going to get paid out of the case, you're going to
24 have to decide how much it's going to take to resolve it.
25 But it's not going to be a lot of money because you have

000265

JOSEPH HENRY-DIRECT BY MR. ORMOND

1 no damages.

2 Q Okay. And I guess you're saying they disagreed
3 with you?

4 A They did.

5 Q Okay. Did they want to go forward with the case
6 if it didn't settle?

7 A I have no idea because they never paid the money
8 to go forward.

9 Q You don't remember that you testified in your
10 deposition earlier that they did want to go forward with
11 the case if they didn't settle it?

12 A No, I don't remember that, it's been a while
13 ago. But if they did, they had the option to do that. If
14 they paid the money they could have done it.

15 Q So, in February 27th, you advised them in some
16 way that they should take it?

17 A No. I never advised them to take or reject the
18 money. Either way, either way, the decision was their
19 decision regardless of which way they went. I never
20 advise a client to take money or reject it. It's not my
21 case.

22 Q And they knew that in 10 days the case was going
23 to disappear?

24 A Yes, they did.

25 Q Okay. And if the case disappeared, they knew

000266

JOSEPH HENRY-DIRECT BY MR. ORMOND

1 that they would not then have any other offers?

2 A Yes, they knew.

3 Q Okay. And they did it any way. They just
4 simply didn't pay to \$175.00.

5 A People decide things different ways. I don't
6 know why they didn't want to pay the money but they didn't
7 pay the money so we didn't go forward.

8 Q They didn't say hey, you know, geez, you know,
9 we don't have the money or we just don't want to pay that
10 money, let's try to get what we already got in settlement?

11 A They had that option the entire time.

12 Q Did you tell them they had that option?

13 A Yes. They were made aware of that from day one.
14 You got an option to settle or going to court. If you
15 decide to go forward, you're taking a chance on the jury
16 coming back with a verdict for you or against you.

17 Q Well, that's true--

18 A I can't guarantee you an outcome. I can tell
19 you this, your case has no real monetary value because you
20 have not been injured. A case requires a couple of
21 things, a injury, approximate cause and the big part of
22 it, damages. That's what you get paid for. If you don't
23 have no damages, all the other pieces can fall into place
24 but your case is worthless.

25 Q But you alleged in the complaints that they were

000267

JOSEPH HENRY-DIRECT BY MR. ORMOND

1 retaliated against, they didn't get bonuses and things
2 like that; correct?

3 A That's correct.

4 Q That's damages, is it not?

5 A You're not guaranteed a bonus. If it's your
6 salary, it's one thing but you're not guaranteed a bonus.
7 So, it's not necessarily damage because it's not something
8 that you were supposed to be entitled to. You can get it,
9 it's at the discretion of your employer.

10 Q If you're an employer because you have made a
11 report to DHEC or OSHA or something like that, then does
12 not give you a bonus and they don't do it for that reason;
13 is that illegal?

14 A Provided that your -- your complaint is
15 validated. You got a valid complaint and DHEC finds merit
16 in the complaint, you may have a claim. It's not
17 necessarily illegal. But you may have a valid claim
18 against your employer for retaliation. You may be able to
19 show retaliation. Because if you can show enough
20 connection between your not getting the bonus and your
21 having made the report. But if you can't prove a
22 connection between those things, it could be a valid
23 claim. But you still don't get paid. You've been a
24 lawyer for a while, I know you know that as well as I do.

25 Q There are risks at trial; is that correct?

000268

JOSEPH HENRY-DIRECT BY MR. ORMOND

1 A That's correct.

2 Q But there's risks for both sides of trial,
3 correct?

4 A That's correct.

5 Q But if there is no case, it's been dismissed and
6 cannot be brought again, then there's no risk to the
7 Defendant, right?

8 A Right.

9 Q And the Defendant in this case was Budget and
10 Control Board, right?

11 A That's right.

12 Q The underlining case. And once that case got
13 dismissed, they had no risks?

14 A No.

15 Q There was no reason to settle the case?

16 A Not unless they want to. It's up to them.

17 Q They --

18 A They have the option.

19 Q And they didn't want to. They didn't want to
20 give money. The Insurance Reserve Fund didn't want to
21 give money, even the money they had already offered, after
22 the case was dismissed?

23 A And they didn't.

24 Q And they didn't.

25 A Yeah.

000269

JOSEPH HENRY-DIRECT BY MR. ORMOND

1 Q And Mr. Mitchell and Mr. Jackson thought when
2 they learned a few years later that the case has been
3 dismissed in 2000--

4 A He learned a few years later?

5 Q Yeah.

6 A He had a copy of this the entire time.

7 Q All right. I understand you say that. He says
8 he didn't have it.

9 A I understand.

10 Q Why would he know whether or not the case had
11 been restored or not?

12 A What? The case was never restored, he wouldn't
13 know that. There was no restoration.

14 Q Mr. Henry, you say that they got a piece of
15 paper, they got that 40J?

16 A That's right.

17 Q First of all, Mr. Jackson has an 11th grade
18 education, Mr. Mitchell not much more, would you agree
19 with that?

20 A I don't know their education.

21 Q Okay. They're not lawyers, would you, at least,
22 agree with that?

23 A They're definitely not.

24 Q Okay. So, let's say that maybe you did give
25 them that document, that 40J. Why would they know that it

000270

JOSEPH HENRY-DIRECT BY MR. ORMOND

1 was no longer -- that the case hadn't been restored like
2 it was supposed to be under that order?

3 A Because it never was. We never discussed the
4 case being restored. It -- as far as them -- the case
5 being put back on the docket, we never discussed the case
6 being restored on the docket. It's never been restored.
7 That's not been an issue.

8 Q Well, that's the issue in this case--

9 A Because the motion was never made because it was
10 never paid for.

11 Q I understand what you say--

12 A So, what are we talking about then because there
13 was no restoration to discuss?

14 Q Right. You did not restore the case?

15 A No. I wasn't--

16 Q And you intentionally did not restore the case?

17 A That's correct because I wasn't paid -- the fees
18 weren't paid to put the case back on the roster so I
19 didn't do it. I'm not required to do it unless I'm paid
20 the fee or unless I'm advancing the cost. And I wasn't
21 advancing the cost.

22 Q There's no letter in the file to them saying
23 that you need to pay this money?

24 A No.

25 Q There's no record of a call to them saying that

000271

JOSEPH HENRY-DIRECT BY MR. ORMOND

1 you to need to pay money or else they would lose the case?

2 A You know, if somebody--

3 Q Would you agree?

4 A -- if somebody is in your office talking to you
5 directly, you don't have to write a letter. If someone
6 comes to your office and pays you directly, you--

7 MR. ORMOND: Your Honor, I ask that he just
8 answer the question asked.

9 THE WITNESS: I'm answering the question. He
10 asked whether--

11 THE COURT: Well, let's start over again.
12 Restate your question.

13 BY MR. ORMOND:

14 Q Okay. My question was, there's no notations in
15 the record of Mr. -- of you calling or speaking with
16 Mr. Jackson or Mr. Mitchell about we need to have \$175 to
17 restore this case?

18 A Never.

19 Q Okay. All right. There's no letter written to
20 them to that effect?

21 A Didn't have to, they were in my office everyday.

22 Q Okay.

23 A They dropped in some days, some days they made
24 appointment.

25 Q And during those times you never made a

000270

JOSEPH HENRY-DIRECT BY MR. ORMOND

1 notation -- or, at least, we certainly never saw in the
2 file that you gave us.

3 A I never made a notation to that effect.

4 Q Okay.

5 A I was discussing the matters with them in
6 person. I don't usually have clients coming by my office
7 everyday. They knew me and they just stopped in on me
8 when they came -- when they got off of work. I would be
9 working late sometimes, they would stop in and talk to me.
10 All that was happening just about everyday Mr. Mitchell
11 and Mr. Jackson even told you me they talked to me almost
12 everyday. So, he was aware of everything happening with
13 his case and he had plenty of opportunity to pay me for
14 that stuff if he wanted to. And he didn't. So, it didn't
15 go any farther than where it went.

16 Q Now, October of 2009, this is nine or ten months
17 after the case is dismissed, we've agreed?

18 A That's right.

19 Q Can't be brought to trial?

20 A No.

21 Q You wrote a letter to Mr. Bettis and you've
22 entered that into evidence?

23 A That's correct.

24 Q With even larger amounts of money requested.

25 A That's right. And guess where the figures came

000273

JOSEPH HENRY-DIRECT BY MR. ORMOND

1 from? The clients. Because they wanted to -- because
2 Mr. Bettis wanted to know well if they want to try to do
3 something, then tell, you know, even though the case was
4 over, I'll entertain an offer from them if they come up
5 with something I think is reasonable and my clients will
6 go for it, we can settle it still. That's why I sent the
7 letter. Otherwise, I wouldn't have even bothered. I
8 tried to get them something out of the case because I felt
9 that it was worth their while to try to get something
10 because they have were put in jeopardy.

11 I disagree with OSHA, I disagree with the
12 contractor licensing board. These are matters that are
13 regulated by them and they are legitimate safety issues.
14 But because they didn't find that they thought those
15 issues were of any true value, it under mind the value of
16 their case. And unfortunately that happen with cases
17 sometimes.

18 MR. ORMOND: Your Honor, if he would just answer
19 the question.

20 THE COURT: Go ahead with your next question.

21 MR. ORMOND: Thank you.

22 BY MR. ORMOND:

23 Q My understanding is you wrote a letter in
24 October 15th, 2009?

25 A That's right.

000 274

JOSEPH HENRY-DIRECT BY MR. ORMOND

1 Q That's about six or seven months after
2 Mr. Bettis wrote you a letter stating the case is over,
3 it's been dismissed?

4 A Uh-huh.

5 Q Right? And you put in huge numbers?

6 A That's right.

7 Q I understand you believe that was from the
8 clients.

9 A No, I know it was from the clients because I
10 consulted them to get the figures.

11 Q Okay.

12 A And I told them --

13 Q And you told them that there was no case?

14 A Yep.

15 Q That there was no way in the world that they
16 would accept any number much less a large number; is that
17 correct?

18 A I don't know. I'm not sure I understand the
19 question.

20 Q You're testifying that the clients came in to
21 you and said, we need a bunch of money?

22 A No. This is how that went down. I called the
23 clients after consulting with Mr. Bettis because
24 Mr. Bettis was still willing to entertain a reasonable
25 offer.

000275

JOSEPH HENRY-DIRECT BY MR. ORMOND

1 He said well, Joe, even though the case is
2 over, if they want to make a proposal, we may still be
3 able to do so. And so he said, Get from them the figure
4 that they think they can settle it for and send that to
5 me. And if we can find -- if we find mutual ground, we
6 might still be able to do something.

7 So, I did. I called them in, talked to
8 them and found out from each one of them what the figure
9 was that it would take to settle their claim. And I said
10 remember, I told you that you're not going to rich on
11 these cases because you don't have any damages. But I'll
12 do what you want me to do. They said -- I said, So come
13 in and talk to me, tell me what you want. Each one of
14 them came to me individually and talked to me. And I put
15 in the letter under each one of their name, what they
16 wanted. And Mr. Jackson asked me to ask them for a
17 hundred thousand dollars for him.

18 And I told him, That's going to kill any
19 negotiations because they're not going to give you that
20 kind of money. You don't have damages.

21 Mr. Mitchell wanted, I think, it was two
22 hundred thousand dollars. I told him, You're not going to
23 get that. You're going to kill the negotiations. They
24 only -- they don't have to do this. But they're willing
25 to entertain an offer but it needs to be something

000276

JOSEPH HENRY-DIRECT BY MR. ORMOND

1 reasonable.

2 That's what they want to go with. I went
3 with it, put it in writing to Mr. Bettis. He responded
4 back that they weren't going to do that.

5 Q Okay. Well he responded, I guess, on the phone?
6 Because there's no other letter. You sent this to him and
7 there was--

8 A Well, it wasn't worth writing back because he
9 already--

10 MR. ORMOND: Your Honor, object. He can't
11 testify.

12 THE COURT: Answer the question.

13 MR. HENRY: He asked me how did Mr. Bettis
14 respond, I was trying to let him know I talked to
15 Mr. Bettis on the phone.

16 THE COURT: All right. And stop there.

17 Go ahead and ask your next question.

18 BY MR. ORMOND:

19 Q Mr. Bettis had written no letter prior to
20 October, right?

21 A Say what now?

22 Q Mr. Bettis wrote you a letter, responding to
23 your letter of March 20th, 2009?

24 A That's correct.

25 Q He said, You know this case has been dismissed,

000 277

JOSEPH HENRY-DIRECT BY MR. ORMOND

1 it over?

2 A Yes.

3 Q Okay. And then six, seven months later, October
4 of 2009?

5 A Uh-huh.

6 Q You write this letter. You've gone over why you
7 did it and so on and so forth. And that's disputed
8 whether or not the clients agree with that. But there is
9 no letter from Mr. Bettis in the file saying, you know,
10 here's what we will do, right? As a matter of fact, they
11 never made any other offer of any type; is that correct?

12 A That's correct.

13 Q Okay. And again, without belaboring the point
14 and I'll stop after this, why would they? If they didn't
15 have a trial coming?

16 A I have no idea.

17 Q Okay.

18 A They have the decision -- on each side there's a
19 decision to be made. You will decide what you want to do
20 and the other side decide--

21 Q Mr. Mitchell wasn't working there anymore, they
22 had terminated him?

23 A I don't know when he got terminated.

24 Q That was July of 2009, do you have any reason to
25 disbelieve that? This was October. Then Mr. Jackson was

000 278

JOSEPH HENRY-DIRECT BY MR. ORMOND

1 not working right around the mediation time, correct?

2 Because he had retired.

3 A I don't know when he retired.

4 Q Okay. Do you have any reason to believe that's
5 not correct?

6 A I don't have any reason to know whether it was
7 or not. Because like I said, I don't know when he
8 retired. I just know that he retired. I know he was
9 close to retiring. But at the time I don't know whether
10 he had retired then or he was in the process of retiring.

11 Q All right. Mr. Henry, when Mr. Bettis wrote
12 that letter March 20th, nine days after the case needed to
13 be restored in order to go forward, was that the first
14 time that you remembered that you had -- that you needed
15 to restore that case?

16 A No, I knew I needed to restore the case the
17 entire time. If they wanted to go forward, they had to
18 let me know by giving me the money to put the case back on
19 the roster. And they didn't do that.

20 MR. ORMOND: Thank you, that's all I have.

21 THE COURT: Thank you, Mr. Ormond.

22 Anything else, Mr. Henry?

23 MR. HENRY: No.

24 THE COURT: Thank you, you may step down.

25 MR. HENRY: Well, wait. Let me make sure before

000279

1 I step down. Just that the conversations between
2 Mr. Bettis and I about this matter continued after
3 mediation, some of it was by telephone. I sent this
4 letter of October in response to Mr. Bettis'
5 willingness to entertain an offer even after the case
6 was over.

7 THE COURT: All right, sir.

8 MR. HENRY: Thank you, Your Honor, nothing
9 further?

10 THE COURT: All right, thank you, you may step
11 down.

12 You may call your next witness.

13 MR. ORMOND: Can we have a five minute break?

14 THE COURT: Let's take a short recess, ladies
15 and gentlemen. Ask you to step in your jury room and
16 hope to be back in touch with you shortly.

17 (WHEREUPON, the jury left open court at
18 approximately 10:25 a.m.)

19 THE COURT: All right, let's take a five minute
20 recess.

21 MR. ORMOND: Your Honor, one point, it's my
22 understanding Mr. Henry has the right to go ahead and
23 direct now if he wants or wait until the defense's
24 case. But I think he needs to make that election.

25 THE COURT: I'm not sure I understood. Can you

VOD 280

1 say it again?

2 MR. ORMOND: Mr. Henry has a right to direct
3 himself in this case. He can wait until his defense
4 case, which he may want to do. Or he can do it now.

5 THE COURT: That's what I was giving him an
6 opportunity to do just a moment ago.

7 MR. ORMOND: I'm sorry, I must not have heard.
8 I'm sorry, Your Honor.

9 THE COURT: Okay.

10 MR. ORMOND: I'm sorry.

11 (WHEREUPON, a short break was taken.)

12 THE COURT: All right, Plaintiff ready for the
13 jury?

14 MR. ORMOND: Yes, sir, Your Honor.

15 THE COURT: Defense ready?

16 MR. HENRY: Yes, sir.

17 THE COURT: All right, let's bring the jury in.

18 (WHEREUPON, the jury came into open court at
19 approximately 10:33 a.m.)

20 THE COURT: Welcome back, ladies and gentlemen.

21 Mr. Ormond, ready to call your next witness?

22 MR. ORMOND: Can we have a sidebar first?

23 THE COURT: A sidebar, I'm sorry. All right.

24 (WHEREUPON, an on-the-record sidebar was held in
25 the presence of the jury but out of the hearing

000281

1 of the jury.)

2 MR. ORMOND: Mr. Mitchell says he knows one of
3 the jurors. I asked him how well. He said not well..
4 It's the fella --

5 THE COURT: I can't understand what you're
6 saying.

7 MR. ORMOND: I'm sorry.

8 THE COURT: Can you understand what he's saying?

9 THE COURT REPORTER: I can't hear him.

10 THE COURT: She can't, so we'll do this off the
11 record.

12 (WHEREUPON, an off-the-record bench conference
13 was held in the presence of the jury but out of
14 the hearing of the jury.)

15 THE COURT: You may call your witness.

16 MR. ORMOND: Thank you, Your Honor. Plaintiff
17 would call Mr. Chris Mitchell.

18 THE CLERK: Place your left hand on the Bible
19 raise your right hand.

20 CHRIS MITCHELL{,}after being duly
21 sworn{,}testified as follows:{F}

22 THE CLERK: Please have a seat, state your full
23 name for the record.

24 THE WITNESS: Christopher Mitchell..

25 DIRECT EXAMINATION

BY MR. ORMOND:

000 288

CHRIS MITCHELL-DIRECT BY MR. ORMOND

1 Q Mr. Mitchell, do you have a speech stutter?

2 A Yes, sir.

3 Q Have you had that all your life?

4 A Yes, sir.

5 Q I'm going to make this short and sweet. Were
6 you born and raised in South Carolina?

7 A Yes, sir.

8 Q Do you have any kids?

9 A Three.

10 Q Are you working currently?

11 A Yes, sir.

12 Q Where do you work?

13 A Dayton Rogers.

14 Q Did you work for The Budget and Control Board
15 for a significant period of time?

16 A Yes, sir. Ten years almost.

17 Q Okay. Did you have issues with Budget and
18 Control Board toward the end of your tenure?

19 A Yes, sir.

20 Q Did you retain Mr. Henry to bring a case against
21 Budget and Control Board?

22 A Yes, sir.

23 Q Was that because of some retaliation that they
24 were doing after reporting some issues?

25 A A lot of it, yes.

000283

CHRIS MITCHELL-DIRECT BY MR. ORMOND

1 Q Did you enter into a representation agreement
2 with him, this written agreement?

3 A Yes, sir.

4 Q Did you understand that you needed to pay him
5 anything for this?

6 A Didn't tell us that. Didn't ask us for
7 anything.

8 Q If he would have asked for money to file the
9 claim or restore the case or needed for court cost, would
10 you have been able to pay that?

11 A Some of it I could have.

12 Q Well, let's say if it was less than \$500, would
13 you have been able to pay that?

14 A Yes, sir.

15 Q If you needed to pay \$175 for something would
16 you have been able to pay that?

17 A Yes, sir.

18 Q Or half of that?

19 A Yes.

20 Q Did he ever ask you to pay any money to him?

21 A No, sir.

22 Q Do you recall if you saw the complaint that
23 Mr. Henry filed with the court?

24 A Which complaint?

25 Q Initial complaint against The Budget and Control

000284

CHRIS MITCHELL-DIRECT BY MR. ORMOND

1 Board.

2 A Yes.

3 Q Do you recall if anything else happened until
4 the mediation occurred?

5 A As far as what happened like?

6 Q Did he ask you to do anything, ask questions of
7 you, did y'all -- was there anything going on from your
8 perspective in the case?

9 A No, sir.

10 Q Okay. And then in February of 2009, there was a
11 mediation.

12 A Yes.

13 Q And there were several people in that mediation
14 room, do you recall that?

15 A Yes.

16 Q And man named Ron Stanley was the mediator?

17 A Mr. Stanley, yes, sir.

18 Q And people from The Budget and Control Board
19 were there, right?

20 A It was, yeah.

21 Q A few people there? You and Mr. Mitchell were
22 there?

23 A Me and Mr. Jackson.

24 Q I'm sorry, you and Mr. Jackson, sorry.

25 A Yes.

000 285

CHRIS MITCHELL-DIRECT BY MR. ORMOND

1 Q And Mr. Henry. And during that mediation were
2 you offered a sum of money?

3 A Yes, sir.

4 Q Can you tell me how much?

5 A Twenty-five thousand.

6 Q Okay. Now, that offer required you to resign at
7 some point in the future; is that correct?

8 A Immediately, yes.

9 Q Were you worried about being terminated
10 regardless of this?

11 A A little bit, yes.

12 Q And were you, in fact, terminated in July of
13 that year?

14 A 2009.

15 Q Yes.

16 A Yes.

17 Q Okay. Can you recall if the mediation was late
18 February 2009?

19 A From my recollection.

20 Q Okay. Did you discuss that offer with
21 Mr. Henry?

22 A Yes, we did.

23 Q What did he say?

24 A He said, Don't take that.

25 Q Did he tell you why?

000 286

CHRIS MITCHELL-DIRECT BY MR. ORMOND

1 A You can always go back and file it. File the
2 case.

3 Q Now, at that time, Mr. Mitchell, did you
4 understand that in about a week or two the case would be
5 dismissed and could not be brought again?

6 A No, sir.

7 Q Unless the case was restored, did you understand
8 anything about that?

9 A I don't know what that means.

10 Q I'm sorry. Do you recall ever seeing -- well,
11 until very much later, do you recall ever seeing a
12 document called a 40J?

13 A Is this is?

14 Q Do you recall ever seeing that document? It's
15 listed as Plaintiff's 5.

16 A No, sir.

17 Q Did Mr. Henry, to your recollection, ever tell
18 you that the case was dismissed?

19 A No, sir.

20 Q After the mediation in February of 2009, did
21 Mr. Henry ever give you any indication that the case could
22 not go to trial?

23 A No, sir.

24 Q Did you understand that if it didn't settle that
25 it could go to trial?

000287

CHRIS MITCHELL-DIRECT BY MR. ORMOND

1 A Yes.

2 Q Do you recall ever telling Mr. Henry, and this
3 would be later in 2009, well after the mediation, that you
4 wanted \$200,000 or something like that for the case?

5 A I don't recall that.

6 Q Did Mr. Henry tell you that you weren't going to
7 get rich on this case?

8 A Yes, he told me.

9 Q Did you understand that?

10 A Yes.

11 Q Did he tell you that from the beginning?

12 A Yes.

13 Q Did you disagree with that?

14 A No.

15 Q Would have taken the offer if Mr. Henry advised
16 you to take that offer?

17 A Yes, I would have.

18 Q Would you have taken that offer if you knew the
19 case was going to be dismissed in a week or two and you
20 would never be able to bring it again?

21 A I would have taken the money.

22 Q If Mr. Henry would have asked you for your part
23 or \$175, would you have been able to pay that?

24 A Yes, sir.

25 MR. ORMOND: Thank you, Your Honor, that's all I

000288

CHRIS MITCHELL-CROSS BY MR. HENRY

1 have.

2 THE COURT: Cross-examination, Mr. Henry.

3 MR. HENRY: Thank you, Your Honor.

4 CROSS-EXAMINATION

5 BY MR. HENRY:

6 Q Mr. Mitchell, is it your testimony that you
7 didn't pay any money to get your case going?

8 A My recollection I don't remember paying
9 anything.

10 Q Your recollection you don't remember paying or
11 you didn't pay it?

12 A I didn't pay.

13 Q So, you were never required to pay anything to
14 get this case going?

15 A You didn't tell us that. Ask us for anything.

16 Q And you didn't pay anything, right?

17 A No, sir.

18 Q Nothing?

19 A Huh-uh.

20 Q And the case just magically appeared on the
21 roster?

22 A I guess so.

23 Q Have you ever used a lawyer before you hired me?

24 A A couple of lawyers.

25 Q Have you ever had to file a lawsuit before?

000289

CHRIS MITCHELL-CROSS BY MR. HENRY

1 A Yes, sir.

2 Q Did you have to pay anything to file that
3 lawsuit?

4 A On one of them, yes.

5 Q So, you thought, even though you knew that you
6 had to pay for those other case, you wouldn't have had to
7 pay anything to get this one going; is that your
8 testimony?

9 A That's my testimony.

10 Q And you're saying definitively that you didn't
11 pay anything?

12 A Not to my recollection, no.

13 Q Well, you did or didn't.

14 A No, I didn't.

15 Q You didn't.

16 A Huh-uh.

17 Q Okay.

18 May we have about a five minute recess,
19 Your Honor?

20 THE COURT: Are you through with the examination
21 of the witness?

22 MR. HENRY: No, sir, I just need to take a
23 break. I want to confer with opposing counsel for a
24 moment.

25 THE COURT: Well. . .

000290

CHRIS MITCHELL-CROSS BY MR. HENRY

1 MR. ORMOND: I don't have an objection, Your
2 Honor.

3 THE COURT: Why don't y'all discuss it and
4 everybody just stay in place.

5 MR. HENRY: Well, where are we going to discuss
6 it?

7 THE COURT: You got a whole courtroom here..

8 MR. HENRY: Beg the Court's indulgence, just a
9 minute.

10 THE COURT: We'll be at ease ladies, and
11 gentlemen, while the attorneys discuss something.

12 (WHEREUPON, the attorneys had an off-the record
13 discussion.)

14 BY MR. HENRY:

15 Q Mr. Mitchell.

16 A Yes, sir.

17 Q You're aware of the importance of being truthful
18 in a court of law, right?

19 A Yes, sir.

20 Q And you know they're serious consequences for
21 being untruthful in a court of law, right?

22 A Yes, sir.

23 Q And with that in mind, I'm going to give a
24 chance to decide whether you want to go forward with that
25 or not. The information that you gave in here today, is

000 291

CHRIS MITCHELL-CROSS BY MR. HENRY

1 it truthful or untruthful when it comes about the issue
2 about your paying the fees? Did you or did you not pay
3 the filing fees to get this case going?

4 A From my recollection I have no [verbatim].

5 Q You didn't pay any filing fees. I didn't get
6 any money from you I just filed a suit, right? Yes or no?

7 A It's been 10 years so to my recollection--

8 Q Pardon?

9 A It's been 10 years so it's to my recollection, I
10 never paid anything.

11 Q You're testifying in court and it's important
12 for you to be truthful and for you to only testify about
13 what you know; isn't that -- you understand that, don't
14 you?

15 A Yes.

16 Q So, if you tell something in court you know it
17 needs to be true?

18 A Yeah.

19 Q And if it's not true, they're consequences for
20 failing to tell the truth, right?

21 A Yes, sir.

22 Q Okay. Just a minute, please. Do you know how
23 much it costs to file a lawsuit?

24 A No, sir.

25 Q Do you -- Mr. Mitchell, I'm going to show you a

000298

CHRIS MITCHELL-CROSS BY MR. HENRY

1 copy of a document and ask you if you recognize it?

2 A Okay.

3 Q A lawsuit is filed by -- you got to first pay
4 the filing fee. And in order to get the lawsuit on the
5 books that money has to be paid upfront. It can't be paid
6 later and you can pay it in portions, can you?

7 A I guess so.

8 Q And the filing fee for a lawsuit in South
9 Carolina is \$150.

10 A Okay.

11 Q Correct?

12 A I guess. I don't know.

13 Q I'm going to show you a document and ask if you
14 recognize it.

15 A Okay.

16 MR. HENRY: May I approach the witness, Your
17 Honor?

18 THE COURT: You may.

19 MR. ORMOND: Do you have a copy of it?

20 MR. HENRY: Yeah.

21 MR. ORMOND: Can I have it?

22 Your Honor, I am, at least at this time, going
23 to object, we didn't get this in discovery. And it
24 appears to be signed by someone other than anybody in
25 this courtroom.

000293

CHRIS MITCHELL-CROSS BY MR. HENRY

1 THE COURT: All right.

2 What's the objection on, Mr. Henry?

3 MR. HENRY: This is a receipt from my receipt
4 book from my office. And it's to Mr. Mitchell. For
5 his filing fees. As a part of my office records, I
6 have the original receipt book showing that he--

7 THE COURT: Okay, ask him if he's familiar with
8 it.

9 BY MR. HENRY:

10 Q Do you recognize that document, Mr. Mitchell?

11 A No, sir, I certainly don't.

12 Q You don't?

13 A No, sir.

14 Q Is your name on it?

15 A Yes, sir.

16 Q Does -- what does it say?

17 THE COURT: Well, wait it hasn't been introduced
18 into evidence yet. Hold on.

19 MR. HENRY: Okay, I'm sorry.

20 BY MR. HENRY:

21 Q Do you recognize that?

22 Your Honor, I would offer this document
23 into evidence as business record from my office.

24 THE COURT: There's an objection to it, isn't
25 there?

000294

CHRIS MITCHELL-CROSS BY MR. HENRY

1 MR. ORMOND: No, Your Honor, I withdraw the
2 objection. It's fine.

3 THE COURT: Then it's admitted without
4 objection.

5 (WHEREUPON, Defendant's Exhibit No. 4 was marked
6 for identification and received into evidence.)

7 BY MR. HENRY:

8 Q Now, what does that document say, Mr. Mitchell?

9 A Christopher Mitchell 150 -- \$150.

10 Q For what?

11 A For filing fee.

12 Q For filing fee?

13 A Yes.

14 Q What date is that?

15 A April 30th, 2007.

16 Q Would that be about the time this lawsuit was
17 going on?

18 A I think so. I believe so.

19 Q And you testified under oath that you didn't pay
20 any money?

21 A Yes, sir.

22 Q And you got a receipt for the filing?

23 A I didn't see that.

24 Q But you got a receipt for a filing fee?

25 A I never got this.

000295

CHRIS MITCHELL-CROSS BY MR. HENRY

1 Q You didn't?

2 A No, sir.

3 Q I just made out a receipt and keep it in my
4 book; is that your testimony?

5 A I didn't say that. I'm saying --

6 Q Well, what are --

7 A -- I didn't see--

8 Q What are you saying?

9 A I didn't see this here.

10 Q So, then I just made out a receipt in my book
11 and kept it in there?

12 A I didn't say that either. I said I didn't see
13 this.

14 Q In other words, you're not being truthful with
15 this court, are you?

16 A I'm being truthful.

17 Q No, you're not.

18 A Yes, sir.

19 Q Because that document is made out to you, it's a
20 receipt for your money.

21 A That's what it says, yes.

22 Q So, I don't just make it a habit of keeping a
23 receipt book and keeping them in my book with peoples name
24 on it. You got that receipt because you gave me the
25 money?

000 296

CHRIS MITCHELL-CROSS BY MR. HENRY

1 A It's like you didn't tell us about the case
2 being thrown out.

3 Q Chris--

4 A So, what this--

5 Q So, let's talk about that. You said I didn't
6 tell you about the case being thrown out, it wasn't thrown
7 out, it was dismissed.

8 A Same thing to me, Mr. Henry.

9 Q Okay. And you didn't know about it but now
10 remember what you testified to a moment ago?

11 A Uh-huh.

12 Q When your lawyer asked you the question and you
13 said, Well, Mr. Henry, did he tell you at the mediation
14 that your case was being dismissed? That you weren't
15 going to be able to go forward?

16 And you said --

17 Oh, the money, that's what it was, I'm
18 sorry. Change the question.

19 A Okay.

20 Q He asked you whether I told you to take the
21 money. And you -- what was your answer? No. I told you
22 not to take it, right?

23 A Yes--

24 Q And then I told?

25 MR. ORMOND: Your, Honor I have--

000297

CHRIS MITCHELL-CROSS BY MR. HENRY

1 THE COURT: Hold on just a moment, we have an
2 objection.

3 MR. ORMOND: I'm going to object as to any
4 testimony by Mr. Henry, he just needs to ask
5 questions.

6 MR. HENRY: Mr. Henry's not testifying, he's
7 reminding the witness of--

8 THE COURT: He's asking a question. Overruled.
9 Go ahead.

10 BY MR. HENRY:

11 Q Do you recall telling your lawyer that I told
12 you not to take the money because we could always what?
13 Refile is what you said. Right?

14 A Yes.

15 Q Do you recall that?

16 A Yes.

17 Q Why would you need to refile if the case is
18 already filed?

19 A That -- restate --

20 Q I told you you could refile but why would you
21 need to refile if the case was already filed?

22 A Uh.

23 Q Hmm?

24 A I'm not an attorney --

25 Q -- you don't --

000 298

CHRIS MITCHELL-CROSS BY MR. HENRY

1 A -- what? You told me--

2 Q The case was filed or it's not.

3 A I'm repeating what you told me.

4 Q I'm sorry, say that again.

5 A You told us that, so.

6 Q I told you you could refile a case that's
7 already filed?

8 A That's what you said.

9 Q That's what I told you?

10 A Yes.

11 Q Your case is pending, Mr. Mitchell, it's filed
12 already but you can refile it. Why would I refile--

13 A If we didn't settle it. That's what you told
14 us.

15 Q If I don't settle it, I don't need to refile it
16 if it's already on file--

17 THE COURT: Mr. Henry, you got to let the
18 witness finish answering the question. You're asking
19 him another question --

20 MR. HENRY: I'm sorry --

21 THE COURT: -- before he finishes--

22 MR. HENRY: I'm sorry --

23 THE COURT: -- answering the first question.

24 MR. HENRY: I'm apology if I'm going too fast.

25

000299

CHRIS MITCHELL-CROSS BY MR. HENRY

1 BY MR. HENRY:

2 Q Okay, Mr. Mitchell, give me your answer.

3 A Can you repeat that? You just asked me two?

4 Q Why would we need to refile a case if we don't
5 settle it if the case on file?

6 A I'm not an attorney, I'm just repeating what you
7 told us.

8 Q You said you've been through the process before.

9 A You told us that. That's what I'm repeating.

10 Q You're repeating what I told you --

11 A What you said.

12 Q So, I told you I got to refile a case that's
13 already filed?

14 A You told us that.

15 Q Okay. Fair enough. So, what did you take that
16 to mean then?

17 A I'm not an attorney.

18 Q I know.

19 A Okay.

20 Q That's why asking you, what did that mean to
21 you?

22 A That's your job. You tell us.

23 Q That's what I'm asking you. What did I tell
24 you--

25 A That was your job to tell us what to do.

000300

CHRIS MITCHELL-CROSS BY MR. HENRY

1 Q Wait until I ask the question.

2 A Go ahead.

3 Q What did I say refiling, what did that mean to
4 you?

5 A I'm not an attorney, I don't know.

6 Q You don't understand any of that?

7 A You're the attorney.

8 Q Yeah, I'm the attorney, you're the client.

9 A You're supposed to tell us what to do. And you
10 didn't.

11 Q Do you know what it means to file a case?

12 A You just asked me that.

13 Q No. Do you know what it means to file suit?
14 Yes or no?

15 A No, sir.

16 Q You don't?

17 A All I know is we come in and talk to y'all and
18 whatever. Whatever happens happens.

19 Q The rest is magic, right?

20 A Not magic.

21 Q You don't have to do anything else, you just
22 talk to the lawyer and the case magically appears--

23 A And you're supposed to tell us what to do.

24 Q You tell the lawyer the information to put in
25 the lawsuit. What -- you tell them what's happening that

000 301

CHRIS MITCHELL-CROSS BY MR. HENRY

1 causes you to file the lawsuit?

2 A And you went to college for that. I didn't.

3 Q Would you answer the question I'm asking you.

4 The question is, do you give the lawyer the information
5 about what allegedly happened to you that caused you to
6 need to file a lawsuit? Yes or no?

7 A Now, I understand, yes.

8 Q So, you agree with that?

9 A Yes.

10 Q So, you have input in the process?

11 A I have very little input.

12 Q Very little. You just show up at the lawyer's
13 office and he files the suit, right? And you don't know
14 anything else after that?

15 A You're the attorney, I don't know. I tell you--

16 Q You didn't have to tell me I'm an attorney--

17 A -- and you tell us what to do.

18 Q Did you answer any discovery questions? Do you
19 remember being presented with a series of questions that
20 were being asked by The Budget and Control Board that you
21 had to answer?

22 A I have to think. It's been 10 years. I'm not
23 sure. That's my understanding, I'm not sure.

24 Q So, what did you come to court to talk about?
25 If you don't know anything about the case and you don't

000308

CHRIS MITCHELL-CROSS BY MR. HENRY

1 what the process involved, what exactly did you come down
2 here to tell the jury?

3 A Just what I just told them about what happened.

4 Q That you didn't know.

5 A I'm not the attorney you are.

6 Q How many times you going to say that?

7 A A hundred times until you get it.

8 Q I'm not trying to make you the attorney, I'm--

9 A Yes, you are. You're trying to tell me to tell
10 them how to do this here. I don't know how to do this.

11 Q I'm not asking you how to do that. I asked you
12 did you -- why would we need to refile and you said I told
13 you--

14 A Those were your words--

15 Q -- refile --

16 A Not mine. You said that, I was just repeating.

17 Q Mr. Mitchell, you were being very evasive but
18 you're not answering the question.

19 A I'm not evasive. You keep asking me the same
20 thing and I'm giving you the same truth.

21 Q Okay.

22 A The honest truth. You told us that.

23 Q That you don't recognize a receipt when you got
24 your name on it and you paid money--

25 A I never seen that--

000303

CHRIS MITCHELL-CROSS BY MR. HENRY

1 (WHEREUPON, the parties were talking over one
2 another.)

3 THE COURT: Y'all are talking over each other
4 again.

5 MR. HENRY: Okay, I'm sorry, Your Honor.

6 BY MR. HENRY:

7 Q The money that was on that receipt, you don't
8 remember paying that either, do you?

9 A Mr. Henry, that was 12 years ago.

10 Q Well, we're here. We're here to sort --

11 A I buried my dad, I took care of him for six
12 years. Thinking about to this, I don't know. I never
13 seen this. I don't know.

14 Q Interesting.

15 A Yeah, very. It is.

16 Q Now, tell me this, you went to the mediation;
17 didn't you?

18 A Yes, sir.

19 Q And at the mediation was it discussed about the
20 fact that there was a 40J in your case?

21 A I never heard of a 40J. Until I got with
22 Mr. Ormond.

23 Q So, the mediator didn't worry about finding out
24 the status of the case?

25 A I never heard of a 40J until I got with

000304

CHRIS MITCHELL-CROSS BY MR. HENRY

1 Mr. Ormond.

2 Q If the guy from The Budget and Control Board was
3 involved only during mediation, and he heard about the
4 40J, where were you when that was discussed?

5 MR. ORMOND: Your Honor, I have no idea how he
6 could possibly answer that question.

7 MR. HENRY: He was at the mediation.

8 THE WITNESS: For the third time --

9 THE COURT: Hold on just one minute.

10 THE WITNESS: Yes, sir.

11 THE COURT: That calls for speculation, I'll
12 sustain the objection.

13 BY MR. HENRY:

14 Q Okay. Were you at the mediation when the 40J
15 was discussed with the mediator; yes or no?

16 A For the fourth time, Mr. Henry, I never heard of
17 40J until I got with Mr. Ormond.

18 Q All right. Well, let's move on. You filed a
19 grievance in this case, did you not?

20 A Yes.

21 Q You went through a grievance proceeding; did you
22 not?

23 A Yes, sir.

24 Q And you were represented during that proceeding?

25 A By you.

1700305

CHRIS MITCHELL-CROSS BY MR. HENRY

1 Q How much did you pay for that?

2 A I have no idea, Mr. Henry.

3 Q I got a receipt saying -- showing you paid
4 anything for it?

5 A I have no idea, Mr. Henry. That was back in
6 2005, 2006?

7 Q I'm asking you--

8 A You went through -- I don't know I'm asking.

9 Q And you went through it with me. It was your
10 case, though.

11 A Okay. I don't remember.

12 Q You went through an arbitration on this case,
13 didn't you?

14 MR. ORMOND: Your Honor, I don't think this is
15 relevant, what happened in the past prior to this.

16 THE COURT: The relevance of it would be what
17 then?

18 MR. HENRY: The representation, what all was
19 involved in the representation. To show how long the
20 relationship went on and what they actually got.
21 Because he's saying he wasn't properly -- this case
22 was about whether or not they have were properly
23 represented. This was a drawn out process and I'm
24 showing trying to show the relationship.

25 THE COURT: This is a separate--

000306

CHRIS MITCHELL-CROSS BY MR. HENRY

1 MR. HENRY: Same case. All of it is part of
2 this case.

3 THE COURT: If you're saying part of the same
4 case --

5 MR. HENRY: All part of the same case.

6 THE COURT: Go ahead, I'll overrule the
7 objection.

8 MR. HENRY: All part of the same case.

9 BY MR. HENRY:

10 Q You when to an arbitration on that case; didn't
11 it?

12 A Yes.

13 Q How long did that take?

14 A As far as time or?

15 Q Time.

16 A Days, weeks, months --

17 Q Time.

18 A Uh?

19 Q Time.

20 A Time?

21 Q Uh-huh.

22 A About an hour or so.

23 Q You don't remember it being about a day?

24 A Maybe, I'm not sure. It was -- it was -- it
25 might have been an hour or two. I'm not sure. I was with

000307

CHRIS MITCHELL-CROSS BY MR. HENRY

1 you, though.

2 Q How much did you pay for that?

3 A Don't know, Mr. Henry. I have no idea.

4 Q Did you pay for that?

5 A I have no idea. That was back in 2005 or six, I
6 don't know.

7 Q Well, aren't you here to testify about damages
8 that you supposedly sustained as a result of the
9 representation?

10 A I got damaged, I lost my job. I almost lost my
11 house. I almost lost my family. That's damaged.

12 Q Did you--

13 A Because of you.

14 Q Did you -- okay. You lost it because of me.
15 When did you get fired?

16 A July of 2009.

17 Q When did have this lawsuit?

18 A Which lawsuit?

19 Q The one that I did for you.

20 A 2007.

21 Q So, you lost your job in 2009 but it's my fault
22 that you got fired because of what -- they fired you
23 because you got Mr. Henry to come after them?

24 A Their excuse was budget cuts. But I was the
25 only budget to get cut.

000308

CHRIS MITCHELL-CROSS BY MR. HENRY

1 Q Uh-huh.

2 A Out of the whole shop.

3 Q And they told you that was because of Mr. Henry?

4 A It was so obvious.

5 Q Did they tell you it was because of Mr. Henry?

6 A Tim Martin did.

7 Q He did?

8 A Yeah, he sure did.

9 I know that's hearsay, Your Honor. I
10 understand that. But that's what they told me.

11 Q That it was because of Mr. Henry you got fired?

12 A That's what they said.

13 Q Oh, okay. I never got anything on that. But
14 anyway.

15 A I did.

16 Q In 2007 you brought the suit you said and then
17 got fired in 2009?

18 A Uh-huh.

19 Q And the reason was--

20 A Budget cuts.

21 Q -- because Mr. Henry?

22 A Budget cuts and yeah.

23 Q And what happened with the firing? After you
24 got fired, did you do anything about it?

25 A Yes.

000309

CHRIS MITCHELL-CROSS BY MR. HENRY

1 Q What did you do?

2 A Came and talk to you about it. And you said I
3 couldn't take the case.

4 Q Okay. So, what did you do? Did you follow it
5 up?

6 A Yes.

7 Q And did you do anything about your firing?

8 A Yes.

9 Q And what was that?

10 A Mr. Cromer took my case.

11 Q So, did you sue them over the firing.

12 A Yes.

13 Q And did you get paid for that?

14 A Yes, sir.

15 Q So, you got something out of it?

16 A Yeah, fired.

17 Q Now, when you were doing these call backs.

18 A Uh-huh.

19 Q How many times did you get injured on a call
20 back?

21 A Nare a time but I almost did on one occasion.

22 And I told you about that situation.

23 Q What occasion was that?

24 A Excuse me?

25 Q What occasion was that?

000310

CHRIS MITCHELL-CROSS BY MR. HENRY

1 A I got a call to go to the brown building, I
2 think it was. Brown building. And I was going in and
3 there was some torn something hanging down. And it
4 shocked me. Almost shocked me.

5 Q And you filed a report about that, of course,
6 right?

7 A They didn't do anything about it.

8 Q You put something in writing about that?

9 A To them, yes.

10 Q What happened with that?

11 A They didn't do nothing about it.

12 Q Are you aware of any finding by OSHA or by the
13 contractors licensing board about violations against the
14 budget and control board?

15 A They came in.

16 Q Did they write up any violations that you're
17 aware of?

18 A You talking me to?

19 Q Pardon?

20 A They didn't talk to me.

21 Q Are you aware of any violations that they wrote
22 up?

23 A It was some of them. But what they were, I
24 didn't know.

25 Q Did you ever get any notices about your claim

000 311

CHRIS MITCHELL-CROSS BY MR. HENRY

1 leading to any citations against The Budget and Control
2 Board?

3 A I got a paper, I think it was. Something like
4 that.

5 Q What kind of paper?

6 A I don't know. It was just a -- I couldn't tell
7 you now if I tried to. It's been so long.

8 Q Okay. So, you're saying you're down here today
9 to testify about damages you sustained. What is your
10 damage in this case?

11 A What's my damage?

12 Q Yeah, what kind of damages do you have?

13 A I just wanted the truth to come out. Truth from
14 you. You know what I'm saying?

15 Q What's the truth?

16 A All these years.

17 Q What's the truth that you need to come out?

18 A You never told us anything about the case being
19 thrown out or dismissed, as you call it.

20 Q So, I'm going to have to reinstate the case--

21 A No, you ain't got to do that. I'm just trying--

22 Q You --

23 THE COURT: Hold, hold, hold. Got to let him
24 ask you a question.

25 THE WITNESS: Yes, sir.

000312

CHRIS MITCHELL-CROSS BY MR. HENRY

1 THE COURT: Go ahead.

2 BY MR. HENRY:

3 Q Are you saying that you never knew the case was
4 not on the roster but yet I needed to reinstate it?

5 A I didn't find about this case being thrown out.
6 Like came down here and went up to the filing office or
7 the office.

8 Q Clerk of court?

9 A Yes. I went in there.

10 Q Even though you had been to mediation and all
11 that discussion took place, you didn't know anything about
12 any of this?

13 A Not it being dismissed, no.

14 Q You didn't know -- how did you know to even come
15 to the mediation?

16 A You was with me.

17 Q I was with you then?

18 A I drove you there. Remember that?

19 Q And we didn't discuss anything about the case as
20 far as status?

21 A No.

22 Q And the mediator had no idea what the status was
23 because you didn't discuss that, right?

24 A I--

25 MR. ORMOND: He can't speculate and determine

000 313

CHRIS MITCHELL-REDIRECT BY MR. ORMOND

1 what the mediator was thinking.

2 MR. HENRY: No, I said because we didn't discuss
3 it, he had no idea. Not because he didn't know.

4 MR. ORMOND: No objection, that's fine.

5 THE COURT: All right, overruled.

6 Go ahead.

7 BY MR. HENRY:

8 Q So, we didn't discuss any of this with the
9 mediator? He had no idea what the status of the case was,
10 right?

11 A You have -- I don't know.

12 Q And you never got a receipt for your money,
13 although, I have a copy of it.

14 A I said I never seen that --

15 Q Never seen it --

16 A -- receipt before.

17 MR. HENRY: Thank you, Mr. Mitchell, no further
18 questions.

19 THE WITNESS: You're welcome.

20 THE COURT: Any redirect, Mr. Ormond?

21 MR. ORMOND: Yes, Your Honor, brief short
22 followups.

23 REDIRECT EXAMINATION

24 BY MR. ORMOND:

25 Q Mr. Mitchell, was your offer in mediation

000314

CHRIS MITCHELL-REDIRECT BY MR. ORMOND

1 \$25,000?

2 A Yes, sir.

3 Q Mr. Henry has given you a receipt, do you have
4 that in front of you?

5 A Yes, sir.

6 Q Is your signature on that anywhere?

7 A No, sir.

8 Q Do you have any knowledge of who signed that or
9 who wrote it?

10 A No, sir.

11 Q All right. This was 2007; is that correct?

12 A Uh-huh.

13 Q That's 12 years ago?

14 A Yes.

15 Q It is possible that you did pay \$150 to the firm
16 of Mr. Henry at some point in 2007? Do you have any idea
17 whether you did or not?

18 A It's 12 years ago. So much has happened in 12
19 years, I could have, could not. I don't remember.

20 Q Were you asked for any money by Mr. Henry to
21 restore the case?

22 A No, sir.

23 Q Did you find out that the case was dismissed by
24 coming to -- when you said here, this courtroom?

25 A This building.

000315

CHRIS MITCHELL-RECROSS BY MR. HENRY

1 Q I'm sorry, this courthouse?

2 A Yes, sir.

3 Q Is that in late 2012?

4 A Yes.

5 MR. ORMOND: That's all I have, Your Honor.

6 THE COURT: Recross?

7 MR. HENRY: Just briefly.

8 RECROSS-EXAMINATION

9 BY MR. HENRY:

10 Q Mr. Mitchell, you're signature is not on the
11 receipt, you said? You said your signature is not on the
12 receipt, right?

13 A I don't see it.

14 Q And there's no reason for it to be there, is it?
15 Because you didn't issue the receipt, did you?

16 A I don't have a booklet like this.

17 Q Right. You get a receipt, you don't issue a
18 receipt when was pay money, do you?

19 A Not normally, no.

20 Q So, the signature on receipt would be the
21 signature of the person giving the receipt, right?

22 A Okay, yes.

23 Q You agree with that?

24 A Yes, sir.

25 Q Okay. So, you wouldn't expect your signature to

000316

CHRIS MITCHELL-RECROSS BY MR. HENRY

1 appear on that, would you?

2 A No.

3 Q Do you recognize the name on the receipt?

4 A May name on it.

5 Q No, the signature. Do you recognize whose
6 signature that is?

7 A Where at?

8 Q At the bottom of the receipt where it says --
9 where the signature part of it is.

10 A By -- talking about where it says, By.

11 Q Where it says, By?

12 A I don't recognize that writing, no..

13 Q You don't?

14 A No, sir.

15 Q Okay. You can't recognize who that is?

16 A Huh-uh.

17 Q And it says on the receipt that you paid by
18 check, right?

19 A That's what it says.

20 Q And gives a check number, doesn't it?

21 A I think so.

22 Q So, if you paid by check, you have a record of
23 it; don't you?

24 A Twelve years ago, I don't think so.

25 Q You would have a copy of the check that was

600317

CHRIS MITCHELL-RECROSS BY MR. HENRY

1 issued for it, if you paid?

2 A If I paid, yes.

3 Q So, when you tell the Court that you didn't pay
4 anything and you definitively said, because I asked you
5 whether you -- certainly you said, yes; right?

6 A Yes.

7 Q You lied to the Court; didn't you?

8 A No. Because I don't remember.

9 Q Where did the check number come from?

10 A How am I supposed to know?

11 Q From the check. That's one of your checks.

12 A Like I said, I've never seen this receipt.

13 Q Is there--

14 MR. ORMOND: Objection, Your Honor. At this
15 point it's asked and answered.

16 MR. HENRY: No, it's not. I'm asking it now--

17 THE COURT: He asked now about a check number.

18 MR. HENRY: Yeah.

19 THE COURT: Go ahead.

20 BY MR. HENRY:

21 Q Is there a check number on this statement?

22 A Yes, I think it is.

23 Q What check number is it?

24 A Check number?

25 Q Yeah.

000 318

CHRIS MITCHELL-RECROSS BY MR. HENRY

1 A 3391, is that the number you're talking about?

2 Q Yes, sir. So, now would somebody have a check
3 number from a check if you didn't issue one?

4 A If they did but like I said, I don't remember
5 this receipt. I don't remember, I don't remember.

6 Q You being very, very -- your memory's very
7 selective it seems. But this has a definite check number
8 on it, you would admit, right?

9 A I guess that's the check number, Mr. Henry.

10 THE COURT: Thank you, sir, no further
11 questions.

12 THE WITNESS: You're welcome.

13 THE COURT: Thank you, sir, you may step down.

14 THE WITNESS: Thank you.

15 THE COURT: Call your next witness.

16 MR. ORMOND: Your Honor, we have no further
17 witnesses.

18 THE COURT: Plaintiff rest, ladies and
19 gentlemen. I need to speak with the attorneys for a
20 few moments outside your presence, so I would ask you
21 to please retire to the jury room. And do something
22 while you're on this break. See if you can select a
23 foreperson to represent the jury. I don't want y'all
24 to get in a fuss or fight over who's going to be the
25 foreperson, I could do it. But if y'all could, I'd

000319

1 appreciate it. I hope to be back in touch with you
2 soon, ladies and gentlemen.

3 (WHEREUPON, the jury left open court at
4 approximately 11:22 a.m.)

5 THE COURT: Any motions from either side?

6 MR. HENRY: Your Honor, at this time, we move
7 for a directed verdict. And the basis of the
8 directed verdict is the claim -- the Plaintiffs in
9 this case have not presented any evidence to show
10 that they received the services that they claim they
11 paid for. The information about the 40J was a
12 matter -- is a matter of public record. It was on
13 file, they had a copy, the court had a copy. They
14 had a year to restore the case. They had a contract
15 requiring them to pay the fees. And they didn't pay
16 the fees. The contract does not discuss reinstating
17 the case to the roster. That was never a part of our
18 agreement.

19 If you look at the contract in its totality,
20 there's no reference at all to the 40J. The only
21 requirement is you file the case and get the case
22 going. The case was filed. Everything that was
23 required by the contract was done. And so, when they
24 came in and failed to pay the fees to show that the
25 case needs to go back on the roster, they abandoned

000320

1 the case. And the evidence is the fees were being
2 paid by them because I have the receipt showing that
3 they paid the fee. They told the court untruth
4 information about filing fees that they said they
5 didn't pay fees. There's evidence directly
6 contradictory to that. And I have the receipt book
7 to prove it.

8 THE COURT: All right, thank you, Mr. Henry.

9 MR. HENRY: So, they have failed to put forth a
10 primary fascia case for the malpractice claim or any
11 other claim.

12 THE COURT: All right, Mr. Ormond.

13 MR. ORMOND: Your Honor, the evidence in the
14 case denies that the clients, that Mr. Jackson and
15 Mr. Mitchell had any knowledge of a 40J at any time.
16 But even if they did, that was in the purview of
17 Mr. Henry to try to restore the case or determine or
18 refile it, whatever the terminology would be. The
19 rules terminology is restore the case. And I
20 understand that Mr. Henry dispute -- or the factual
21 dispute is whether or not he had to pay the money or
22 advance it, then they pay it.

23 They deny they ever knew about it. They deny
24 they were ever told that it was under 40J or even
25 what that meant. They denied that they were ever

000 321

1 asked for money and would have paid it had they been
2 asked to restore the case. And didn't find out the
3 case was not restored or, essentially, dismissed in
4 March of 2009. Because it hasn't been restored.
5 They don't know for a couple of years even after
6 that. That's the testimony in this case. I
7 understand there's disputed testimony but it's a fact
8 question to go to the jury, Your Honor.

9 THE COURT: All right. Yeah, I find that there
10 is contradictory evidence in this case on that issue.
11 And therefore, it's a matter for the jury to decide
12 and deny the motion.

13 You ready to present your case, Mr. Henry?

14 MR. HENRY: Yes, sir. And I renew my motions
15 that we previously made in the case concerning the
16 admissibility of mediation and discussions held in
17 mediation based on those discussions being negotiate
18 settlement negotiations, which are inadmissible in
19 court.

20 THE COURT: All right, the court notes those
21 objections. And you ready to present your case,
22 Mr. Henry?

23 MR. HENRY: Yes, sir.

24 THE COURT: Call your witnesses?

25 MR. HENRY: Yes, sir.

000322

1 THE COURT: All right.

2 Let's bring the jury back. If they have
3 selected a foreperson. If they haven't done it yet,
4 give them a few minutes.

5 How many witnesses you think you might call,
6 Mr. Henry?

7 MR. HENRY: Probably one.

8 THE COURT: Probably what?

9 MR. HENRY: One. One, maybe two, probably one.

10 THE BAILIFF: May I approach, Your Honor?

11 THE COURT: Yes, ma'am. Are they ready?

12 THE BAILIFF: Yes, sir.

13 All right, let's bring them in.

14 Thomas Tim, is juror 261 is apparently who the
15 jury has selected.

16 (WHEREUPON, the jury came into open court at
17 approximately 11:28 a.m.)

18 (WHEREUPON, Court's Exhibit No. 2 was marked for
19 identification only.)

20 MR. HENRY: Excuse me, did I introduce that
21 document into evidence?

22 THE COURT REPORTER: You did, I just had an
23 opportunity to mark it.

24 THE COURT: Welcome back, ladies and gentlemen,
25 the bailiff handed me a note from the jury

000323

1 indicating, I believe, that the jury had selected
2 juror 261, Thomas Timms to serve as foreperson; is
3 that correct? And Mr. Timms would be? Wise decision
4 the jury made.

5 Thank you for serving, Mr. Timms.

6 MR. FOREPERSON: Thank you.

7 THE COURT: As you heard, the Plaintiff has
8 rested, meaning the Plaintiff has presented to you
9 all of the Plaintiff's case. The Defense now has the
10 opportunity to present evidence.

11 Mr. Henry, you may call your first witness.

12 MR. HENRY: Thank you, Your Honor, may it please
13 the Court. The defense calls Joseph Henry.

14 (WHEREUPON, Joe Henry gave the following direct
15 testimony.)

16 DIRECT EXAMINATION

17 MR. HENRY: Would you state your full name for
18 the record, please?

19 My name is Joseph Henry.

20 And, Mr. Henry, where are you employed?

21 I am self-employed, I work for Joseph Henry, PC
22 Attorney at Law.

23 In what capacity, Mr. Henry, what do you do?

24 I'm an attorney practicing law in the State of
25 South Carolina. I practice both civil and criminal

000324

JOSEPH HENRY DIRECT

1 law.

2 Mr. Henry, during the time that you've been
3 practicing law, have you had occasion to represent
4 one Thomas Jackson and one Christopher Mitchell?

5 Yes, I did.

6 And when did you represent them?

7 That was 2007.

8 In what capacity were you representing them?

9 I was their attorney in a lawsuit against their
10 employer, Budget and Control Board.

11 And what kind of case was that?

12 The case involved issues that they raised
13 concerning safety and being required to do jobs that
14 required certification, licensures that they didn't
15 have.

16 Did you tell them what the case would -- how the
17 case would likely proceed?

18 Yes, we discussed the details of the case and
19 the possible remedies that would be available to
20 them. One of which would be filing complaints with
21 the regulatory body to regulate employment in those
22 areas that they were being asked to do work in. And
23 they had the also ultimate possibly in filing a
24 lawsuit.

25 Did they want to pursue a lawsuit?

000325

JOSEPH HENRY DIRECT

1 Yes, they did.

2 Did you file the lawsuit for them?

3 Yes, I did.

4 And in that lawsuit, did you ever get any kind
5 of resolution?

6 Well, it depends on what you consider as a
7 resolution. In their case, we got The Budget and
8 Control Board to decide to come to table and
9 negotiate at one point and they decided to do
10 mediation and try to resolve the case. But before we
11 got there, when we had gone through the other things
12 that did not pan out, they did not -- OSHA and the
13 other licensing boards didn't find any violations
14 that would give credence to the charges that were
15 being paid by the clients.

16 Did you agree with those findings?

17 No, I did not. But I did discuss with the
18 clients what the findings meant. That the findings
19 undercut the value of any cases that they might have
20 pending. The clients had never had any damages and
21 so the cases were never going to generate a lot of
22 money. So, I let them know that they might be able
23 to get some money because they were doing what I call
24 a whistleblower. Calling to the attention of the
25 employer, problems that could save the state money in

000 326

JOSEPH HENRY DIRECT

1 terms of liabilities that the state might incur from
2 issues arising out of people being injured.

3 And that their case -- the one thing that the
4 case might do would be to change the policy. So,
5 they would not have to go out and do these kinds of
6 dangerous jobs. The state Budget and Control Board
7 came to the mediation and they decided that they
8 would offer some form of settlement to try to get the
9 cases over. And to get Mr. Mitchell and Mr. Jackson
10 out of their employment.

11 And what happened with that?

12 They made an offer to Mr. Jackson for about
13 \$5,000. They made an offer to Mr. Mitchell for
14 \$25,000.

15 And what happened with the offers, did they
16 accept those offers?

17 No, they did not.

18 What did they do when they did not accept the
19 offers, what happened?

20 When they did not accept the offers, I discussed
21 with them the fact that if they didn't take the
22 money, they would have -- there would be no other
23 opportunity, probably, for them to get anything out
24 of the case. And that they're not going to get a lot
25 of money out of the case either way it goes.

000327

JOSEPH HENRY DIRECT

1 What, if anything, did Mr. Mitchell and
2 Mr. Jackson decide at that point?

3 At that point, they wanted me to continue the
4 negotiations because Mr. Bettis, who was the lawyer
5 for the state, agreed to entertain settlement offers
6 even after the mediation.

7 Did you make any offers to them after that?

8 Yes, I did. And ultimately, they asked for some
9 ridiculous amounts of money that he refused, that the
10 Defendants refused to accept and the negotiations
11 ended, the cases were all over.

12 Now, when you do cases for clients, how does a
13 case get started?

14 Typically, what will happen I will collect from
15 the client the filing fees and then I will file the
16 lawsuit on the clients behalf if we go that route.

17 So, the filing fees are collected from the
18 clients?

19 Yes, we collect the filing fees from the client
20 and we file the suit and go ahead and get things
21 started.

22 In this case, was there anything different about
23 it?

24 No, the clients paid the filing fees and I paid
25 the court the filing fees and started the lawsuits.

000 328

JOSEPH HENRY DIRECT

1 Did you give them any documentation evidencing
2 that?

3 Yes, I did. I gave a receipt for the money that
4 I received from Mr. Jackson. And for the money that
5 I received from Mr. Mitchell.

6 And do you have a copy of that receipt from
7 Mr. Jackson?

8 Yes, I do.

9 I'm going to show you a document and ask you if
10 you recognize it.

11 Yes, I do recognize it.

12 We're offering the document review by opposing
13 counsel.

14 Do you want to see it?

15 MR. ORMOND: Same document that's already
16 entered?

17 MR. HENRY: No.

18 THE COURT: You need to see it then?

19 MR. ORMOND: Your Honor, I have a question about
20 that document. That doesn't have a signature on it,
21 I object to it.

22 MR. HENRY: Mr. Jackson's signature wouldn't be
23 on the receipt, Your Honor.

24 THE COURT: Overruled.

25 Go ahead. I'll admit it.

000329

JOSEPH HENRY DIRECT

1 MR. HENRY: Thank you, Your Honor.

2 (WHEREUPON, Defendant's Exhibit No. 5 was marked
3 for identification and received into evidence.)

4 (WHEREUPON, Joe Henry continued to give the
5 following direct testimony.)

6 MR. HENRY: Now, Mr. Henry, going to show you
7 what's been marked as Defendant's Exhibit No. 5, ask
8 if you recognize it?

9 Yes, I do.

10 What is that?

11 This is a receipt.

12 And where is that receipt from?

13 My office receipt book.

14 And who is that receipt made out to?

15 This receipt appears to be made out to Thomas
16 Jackson.

17 How much is the receipt for?

18 The receipt is for the amount of \$150.

19 Does it say what that money is for?

20 Yes.

21 What was it for?

22 Filing fee.

23 And what -- filing fee for what?

24 It was a filing fee for the case that I filed on
25 Mr. Jackson's behalf.

000330

JOSEPH HENRY DIRECT

1 What is the date of that receipt?

2 April 30th, 2007.

3 And how much is the receipt?

4 One hundred fifty dollars.

5 How was the \$150 paid?

6 Cash. And it's receipt number 5615. It looks
7 like 60 but I can't make out to last part of it.

8 Okay. And Mr. Jackson paid that money to file
9 his case; did he not?

10 Yes, he did.

11 Is there any other receipt from Mr. Jackson?

12 Yes. There's another receipt dated 4/30/07 and
13 it's receipt number 561570. The other one is 69, I'm
14 sorry. It's 561570 and it's in the amount of \$30 and
15 it's dated 4/30/07.

16 What was that for?

17 Process server.

18 What is a process server?

19 A process server is a person who goes out and
20 delivers the lawsuit to the person who is being sued.

21 So, Mr. Jackson paid for the filing and the
22 service of his lawsuit, right?

23 Yes.

24 And when Mr. Jackson testified the other day and
25 said he hadn't paid you any money or hadn't paid any

000331

JOSEPH HENRY DIRECT

1 money for this lawsuit, is this what that relates to?

2 Yes.

3 Did Mr. Jackson use your services for that case?

4 He did.

5 And is this the same case that he's in court
6 with you about today?

7 Yes, it is.

8 And you also heard that Mr. Jackson filed a
9 disciplinary complaint against you; is that correct?

10 Yes, it is.

11 And when he filed that disciplinary complaint,
12 were you required to respond to it?

13 Yes.

14 Mr. Henry, I'm going to show you a document, as
15 soon as I can find it. And ask you if you recognize
16 it. Mr. Henry, I'm going to show you the document
17 and ask you if you recognize it. Do you recognize
18 this document?

19 Yes.

20 And we would offer that document to opposing
21 counsel to look at.

22 MR. ORMOND: What is this document, Mr. Henry?

23 MR. HENRY: That is my letter in response to
24 Mr. Jackson's complaint to disciplinary counsel.

25 Your Honor, I offer this document as -- offer

000332

JOSEPH HENRY DIRECT

1 this document in evidence as Defense Exhibit?

2 THE COURT REPORTER: Six.

3 MR. HENRY: Six.

4 MR. ORMOND: No objection.

5 THE COURT: Admitted without objection.

6 (WHEREUPON, Defendant's Exhibit No. 6 was marked
7 for identification and received into evidence.)

8 (WHEREUPON, Joe Henry continued to give the
9 following direct testimony.)

10 MR. HENRY: Now, Mr. Henry, if you'll take a
11 look at that letter and tell us -- I may get you to
12 read a certain portion of it, but take a look at it
13 refresh your memory on what it says. Have you had a
14 chance to look at the document?

15 Yes, I have.

16 If you would, read for jury the Paragraph 2.

17 Yes.

18 Thomas Jackson has filed a complaint against me
19 alleging that I settled his case against the South
20 Carolina Budget and Control Board without informing
21 him and without his knowledge. I am not aware of any
22 settlement that has been entered in Mr. Jackson's
23 case. I have not accepted a settlement on
24 Mr. Jackson's behalf, nor have I been offered a
25 settlement other than the one he refused at the

000333

JOSEPH HENRY DIRECT

1 mediation conference in this matter. Pursuant to
2 Mr. Jackson's specific instruction and full
3 participation, the settlement offer was rejected.
4 Once the offer was rejected and counteroffer was
5 made, which was rejected by the Defendant, the
6 conference ended and Defendant left. After the
7 mediation conference we continued our attempts to
8 resolve the matter to negotiations but to no avail.
9 Therefore, contrary to Mr. Jackson's assertion, there
10 has been no settlement of this matter. Mr. Jackson
11 was made aware of all communications in regards to
12 his case as we communicated almost weekly through
13 telephone calls, schedule and drop-in unscheduled
14 office visits from Mr. Jackson.

15 Now, did you have to go and speak with the folks
16 down at the disciplinary counsel office?

17 Yes, I did.

18 And why did you have to go down there?

19 Well, I received in the mail from disciplinary
20 counsel a subpoena.

21 And what did the subpoena ask and what did they
22 want?

23 Well, in the subpoena they wanted to see my file
24 on Mr. Jackson's case.

25 When you say they wanted to see your file, what

ADD 334

JOSEPH HENRY DIRECT

1 do you mean?

2 They wanted to see all the communications, all
3 the notes and everything else concerning the
4 representation.

5 Did they ask for anything on submission?

6 Yes, they wanted Mr. Jackson's and
7 Mr. Mitchell's files.

8 Did you provide that?

9 Yes, I did. Did disciplinary counsel get a
10 chance to look at your file?

11 They reviewed the entire file in addition to
12 that they interviewed me. And I spoke with them at
13 length about the representation.

14 And they went back and after reviewing
15 everything they made a decision on the case?

16 Yes, they did.

17 And what was that decision?

18 The decision was there was nothing that they
19 found that was improper.

20 And do you have a copy of that decision?

21 I believe that was entered into evidence on
22 yesterday and should be marked already in the courts
23 file. So, I don't remember the exhibit number but it
24 should be in the court's record already as an
25 exhibit.

000 335

JOSEPH HENRY DIRECT

1 So, it's an exhibit that shows that the case was
2 resolved in your favor?

3 Yes, it was.

4 So, they didn't find that Mr. Jackson had been
5 improperly represented?

6 No, they didn't.

7 What about Mr. Mitchell?

8 No, they didn't. Mr. Mitchell didn't file a
9 compliant but they reviewed his any way because he
10 was a part of the case that -- he had a case that was
11 a companion case to Mr. Jackson's. So, the issues
12 would have been the same. They reviewed both cases
13 and found nothing wrong.

14 Okay.

15 Beg the Court's indulgence.

16 And Mr. Mitchell testified that he didn't pay
17 any money in his case but you said you had a receipt
18 from Mr. Mitchell and you introduced that into
19 evidence?

20 Yes, I did.

21 So, did Mr. Mitchell pay any money for his
22 representation?

23 He didn't pay me any fees but he did pay filing
24 fees. And he also paid fees for the mediator.

25 And when he paid those fees how did he do that?

000336

JOSEPH HENRY DIRECT

1 He paid by check. No, he paid by cash for the
2 mediator, I'm sorry.

3 And how much was that?

4 Two hundred and fifty dollars.

5 And did you give him a receipt?

6 I did.

7 And did you bring that receipt with you to court
8 today?

9 I did.

10 I'm going to show you a document and ask you if
11 you recognize it. Is this a copy of the receipt that
12 you gave Mr. Mitchell for the money gave to the
13 mediator?

14 Yes, it is.

15 We show this to opposing counsel.

16 MR. ORMOND: Your Honor, for what it's worth, in
17 discovery none of this was produced. But I don't
18 have any objection to it.

19 THE COURT: All right.

20 MR. HENRY: Would offer this as Defendant's
21 Exhibit 7.

22 THE COURT: Defendant's Exhibit 7 admitted
23 without objection.

24 (WHEREUPON, Defendant's Exhibit No. 7 was marked
25 for identification and received into evidence.)

000337

JOSEPH HENRY DIRECT

1 (WHEREUPON, Joe Henry continued to give the
2 following direct testimony.)

3 MR. HENRY: Mr. Henry, looking at that exhibit
4 seven, can you tell me how much Mr. Mitchell paid for
5 the mediation?

6 Yes, he paid \$250. And he paid by cash. His
7 receipt number 454587, dated November 13, 2009.

8 So, when Mr. Mitchell testified in court under
9 oath that he hadn't paid any money, was that true?

10 No, it was not.

11 When Mr. Jackson testified that he paid nothing
12 on the case, was that the truth?

13 No, it was not.

14 They paid you by check and cash and got
15 receipts; is that correct?

16 That's correct.

17 And these are copies of the receipts that they
18 got?

19 Yes.

20 And have these receipts been altered in any way?

21 No, they have not.

22 Do you have the original receipts in your file
23 anywhere?

24 Yes, I do.

25 Thank you, Mr. Henry, no further questions.

000 338

JOSEPH HENRY-CROSS BY MR. ORMOND

1 THE COURT: Cross-examination?

2 MR. ORMOND: Yes, sir, thank you.

3 CROSS-EXAMINATION

4 BY MR. ORMOND:

5 Q Mr. Henry, regarding the receipts, these were in
6 2007?

7 A Oh, let's see.

8 Q Well, let me ask this way.

9 A One is in 2009 it looks like. The other in
10 2007.

11 Q It's your testimony you have some receipts that
12 you now have gotten in the file?

13 A They've been in the file.

14 Q Okay. Would you agree that you didn't give them
15 to me in the file?

16 A Yeah.

17 Q Okay. Thank you. That shows that maybe
18 Mr. Jackson and Mr. Mitchell did pay you some money?

19 A They didn't pay me any money, they paid the
20 filing fees.

21 Q Well, they paid your firm money and your firm
22 then wrote a check to the court; is that what you're
23 saying?

24 A They give me the money for the filing fee. They
25 didn't pay me any money, the money went to the court.

000339

JOSEPH HENRY-CROSS BY MR. ORMOND

1 Q Okay. And, at least, Mr. Mitchell paid
2 something for the mediation?

3 A And so did Mr. Jackson.

4 Q I didn't hear that so Mr. Jackson paid too?

5 A Uh-huh.

6 Q Was there a receipt for that also?

7 A I'm sure. I don't know if I bought that one or
8 not. But I do have a receipt for his mediation fee.

9 Q So, they did pay some money for this?

10 A Well, they didn't pay any money for this, they
11 paid to file this.

12 Q Did the checks -- the cash bounce? I mean, the
13 money -- was it to your recollection they paid money; is
14 that right?

15 A For the filing fee, yes.

16 Q For the filing fee?

17 A That's correct.

18 Q Okay. So, they had some money into this case?

19 A Well, which is also the case. When you file a
20 case you got to have money to get it going.

21 Q I just asked if they had money--

22 A Yeah, they got the filing fee.

23 Q Have you ever taken an accident case?

24 A Yes.

25 Q Do you advance those costs and pay the filing

600 340

JOSEPH HENRY-CROSS BY MR. ORMOND

1 fee?

2 A No.

3 Q In your contract it says that you can advance
4 cost.

5 A I can.

6 Q And you invoice the client, right?

7 A I can but I don't because I don't find that
8 works very well. Clients don't like to be reimbursed.

9 Q Both clients were working or had retirement
10 income coming in?

11 A That's why I didn't pay any fees upfront or any
12 costs.

13 Q And they paid before and that's what you're
14 saying, right? They paid the filing fee.

15 A That's correct.

16 Q And they just didn't pay to restore the case?

17 A Correct. Because they advancing the cost. So
18 they decided they didn't want to advance any more cost.

19 Q Did they tell you they decided they just don't
20 want to pay to restore the case?

21 A No. But if you don't pay it, you obviously made
22 that decision.

23 Q How would they know what to pay and when?

24 A Because they paid the filing fee to get the case
25 going. And I told them what the filing fee was for the

000341

JOSEPH HENRY-CROSS BY MR. ORMOND

1 motion to reinstate it and how much it would cost to get
2 the summons and compliant reinstated.

3 Q But when did you tell them that?

4 A During the time this 40J was filed. Because we
5 discussed all that before we even did the 40J.

6 Q So, a year prior to the mediation, a year--

7 A And after. And during the process I told them
8 if you want the case to go forward, you're going to have
9 to reinstate by pay the filing fees to go forward.

10 Q Okay.

11 A And they never brought in any filing fees and
12 never said what they wanted to do one way or the other.

13 Q And you didn't call or write them and say,
14 hey --

15 A No. Didn't have to because they were in my
16 office almost everyday.

17 Q You didn't tell them when they were in your
18 office, hey, look--

19 A Yes, I did.

20 Q If you guys don't give me \$175, this case is
21 going to go away.

22 A I told them that when we filed the 40J, I told
23 them that during the time they were waiting on the case to
24 be resolved. And we did -- just never got around to them
25 giving me money to start the case back up.

000348

JOSEPH HENRY-CROSS BY MR. ORMOND

1 Q You understand they dispute ever knowing
2 anything about the 40J? Even so--

3 A They dispute --

4 Q -- try to restore it?

5 A No, during the whole entire time that the case
6 was sitting out there they had the opportunity to do that.

7 Q But they never said, No, we're not going to pay,
8 we don't have the money?

9 A They don't have to say if they don't bring the
10 money.

11 Q Pardon?

12 A They don't have to say if they don't want to do
13 it if they don't bring the money.

14 Q They just didn't bring the money?

15 A Right, they just didn't bring the money.

16 Q So, if they didn't bring the money in time
17 then --

18 A You can't go forward.

19 Q -- then the case is gone?

20 A Right.

21 Q Well, it's not going forward if you -- had you
22 restored the case--

23 A Not unless you got the money.

24 THE COURT: Hold on, y'all are going to have to
25 slow it down.

000343

JOSEPH HENRY-CROSS BY MR. ORMOND

1 MR. ORMOND: I'm sorry, Your Honor.

2 MR. HENRY: Sorry, Your Honor.

3 THE COURT: You got to let him finish asking the
4 question before you can get an answer to the
5 question.

6 MR. HENRY: Okay, I apologize, I'm sorry.

7 BY MR. ORMOND:

8 Q So, it's your testimony, in sum, you told them
9 that if they didn't pay dollars \$175 --

10 A Uh-huh.

11 Q -- within a year, before this case needed to be
12 restored, then it would be gone?

13 A Yes.

14 Q That they would not have a right to trial, it
15 wouldn't go forward?

16 A Correct.

17 Q And they just didn't pay the money?

18 A They just didn't pay the money. Which is their
19 right. I can't make them pay it. I don't believe in
20 trying to force the clients to do something. If they want
21 to do it, they come forward and do it. If they don't do
22 it, I assume they made a decision.

23 Q You didn't just forget about them?

24 A No. How can I forget them when they're in there
25 every day talking to me about it?

000 344

JOSEPH HENRY-CROSS BY MR. ORMOND

1 Q Okay. You would mind, I've drawn up a little
2 timeline, I think it's all concluded evidence. Do you
3 mind if we use that?

4 A I've not seen the timeline.

5 Q Here it is. Just a timeline of what we have
6 already discussed. The dates and so forth.

7 MR. HENRY: I'm going to object on the ground of
8 relevance.

9 MR. ORMOND: Of relevance?

10 MR. HENRY: It--

11 MR. ORMOND: It's the same time and dates of
12 what we've already talked about, what's already been
13 entered into evidence.

14 THE COURT: I'm going to sustain the objection.
15 BY MR. ORMOND:

16 Q In 2007, you filed a case and you believe they
17 paid you to file -- they paid the court fees to file;
18 right?

19 A I believe it because I have a receipt showing
20 the proof.

21 Q Just trying to ask you for a yes or no?

22 A The answer is yes.

23 Q Okay. And the other side answered?

24 A Yes.

25 Q Do you recall that part of their answer is that

000345

JOSEPH HENRY-CROSS BY MR. ORMOND

1 the claim should fail because you didn't cite the
2 whistleblower statute?

3 A No, I don't recall because I don't have any. . .

4 Q All right. But you meant to put the
5 whistleblower statute in there; is that correct?

6 A No. I just made the allegation about
7 whistleblower, I don't have to necessarily cite the
8 statute.

9 Q Fair enough. Fair enough, sir. Then there was
10 some discovery by the other side that you answered?

11 A Correct.

12 Q But there was no discovery that you sent out to
13 the other side?

14 A Nope.

15 Q Then in March of 2008, March 10, you entered
16 into, with the other lawyer, you entered into a 40J, which
17 took the case off the roster?

18 A Yes.

19 MR. HENRY: Your Honor, those questions have
20 been asked and answer several times already. And I
21 want to object to continuing to answer the same
22 question.

23 THE COURT: All right, overrule the objection.
24 You may continue.

25 MR. ORMOND: Thank you, Your Honor.

000346

JOSEPH HENRY-CROSS BY MR. ORMOND

1 BY MR. ORMOND:

2 Q So, in 2008 you entered into a 40J which gave
3 you a year to restore the case?

4 A That's correct.

5 Q I understand your testimony that you told the
6 clients about that?

7 A That's correct.

8 Q And specifically in the order itself, that you
9 have a year to refile the case and the statutes toll
10 during that period, right?

11 A Yeah, I think we already testified to that, yes.

12 Q I understand that, sir. And then you've already
13 testified too that there's a two year statute of
14 limitations against The Budget and Control Board, right?

15 A And any state agency.

16 Q Pardon me?

17 A Any state agency.

18 Q Any state agency, yes, sir, that's correct. So,
19 the statute was up?

20 A Yep.

21 Q And if it hadn't been tolled by the Rule 40J,
22 then that would have been it; right?

23 A Yep.

24 Q Okay. But if you didn't restore that within the
25 one year period of the Rule 40J, then the case is

000347

JOSEPH HENRY-CROSS BY MR. ORMOND

1 dismissed and the statute would be over; is that correct?

2 A Yes.

3 Q You already discussed it.

4 A We already discussed that, that's right.

5 Q And the reason why you did not restore that,
6 even though you knew that it needed to be restored?

7 A Uh-huh.

8 Q Is because you just didn't receive the money
9 from Mr. Jackson and Mr. Henry?

10 A Mr. Jackson and Mr. Mitchell.

11 Q I'm sorry, I have done that three or four times
12 now, I apologize.

13 A Yes, that's correct.

14 Q Mr. Mitchell and Mr. Jackson?

15 A Yeah. Because that's required by their being
16 responsible to paying the fees upfront. As my contract
17 states.

18 Q It is possible they didn't understand?

19 A No, it's not. Because they already dealt with
20 that issue in this case and with other lawyers that they
21 hired. And I represented them several times myself. So,
22 I know they know better.

23 Q So, knowing they knew that on March 9th, 2009,
24 just a week after the mediation in which they've been
25 offered five and \$25,000, that if they didn't pay 175

000 348

JOSEPH HENRY-CROSS BY MR. ORMOND

1 bucks, dollars, then this case was over?

2 A Yeah.

3 Q Okay. And they just didn't pay it any way?

4 A Right.

5 Q All right.

6 A It's their case, they make the decision as to
7 whether they want to go forward or not. And they do that
8 by paying or not pay the filing fee.

9 Q Okay. And then, 10 days after that you wrote a
10 letter to Mr. Bettis, the lawyer on other side, saying,
11 hey let's continue negotiations?

12 A That's correct.

13 Q And he wrote you back on March 24th, 2009,
14 saying, well maybe, but the case is over. It's been
15 dismissed.

16 A He already knew the case was over before I sent
17 the letter. I only sent the letter after I talked to him
18 and he agreed to entertain further discussions.

19 MR. ORMOND: Your Honor, obviously, I would
20 object to him saying what Mr. Bettis knew --

21 MR. HENRY: He called me and told me. That's
22 why--

23 MR. ORMOND: Objection.

24 THE COURT: I sustain the objection.

25

000349

JOSEPH HENRY-CROSS BY MR. ORMOND

1 BY MR. ORMOND:

2 Q But, at least, in his letter that's in evidence,
3 he says -- whether he knew it or not, and Mr. Henry I
4 would suggest he did know it on the date it was over he
5 knew it was over and he told his client, this case is
6 over, how about that?

7 A Well, I don't know what he told his client
8 because I--

9 Q Fair enough, sir.

10 A I don't get to--

11 Q I'll withdraw that question. He wrote back and
12 said, Well, the case is over.

13 It wasn't restored?

14 A Uh-huh.

15 Q Right? And then, at least, as far as the
16 writing, there's nothing in writing until the October
17 letter in which you write him and ask for a tremendous
18 amount of money for each client; is that correct?

19 A Per the clients instruction, yes, sir.

20 Q I understand that. And no settlement Offer was
21 ever offered?

22 A No.

23 Q Now, on the disciplinary case, some point
24 Mr. Jackson filed a disciplinary case, he learned that he
25 could go to the bar and say, hey, look, I don't know

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JOSEPH HENRY-CROSS BY MR. ORMOND

1 what's going on here, right?

2 A Uh-huh.

3 Q Okay. And he, essentially, said, I think that
4 my lawyer, Mr. Henry, must have taken this settlement. I
5 just learned that the case was dismissed, I never got
6 anything, I don't understand it. I think Mr. Henry may
7 have taken my settlement; is that correct?

8 A It was a little more definitive than that.

9 Q Right. And we have the letter --

10 A He said Mr. Henry took his -- Mr. Henry settled
11 his case. He didn't state he must have, he said--

12 Q You, in fact, hadn't settled the case.

13 A No.

14 Q It just never settled?

15 A No.

16 Q In fact, what actually happened was the 40J ran
17 out on March 10th or 9th, 2009 and the case was over?

18 A Yes.

19 Q And he wrote the disciplinary letter, I believe,
20 in 2013; is that correct?

21 A I don't have it in front of me but that sounds
22 right but I don't have it in front of me.

23 Q And the testimony was they learned about the
24 dismissal in late 2012?

25 A I don't know when they supposedly learned from

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JOSEPH HENRY-CROSS BY MR. ORMOND

1 their standpoint but they had the 40J the entire time.
2 They had it. It was right after it was filed because I
3 had discussed it with them when they came to my office.

4 Q But you're saying they already knew it was
5 dismissed.

6 A They did because they came to my office and I
7 discussed the possibility of doing a 40J. That's why we
8 dismissed it. Because they agreed to do that.

9 Q Well, that was in 2008. A 40J can be restored,
10 right?

11 A Yeah.

12 Q Just make a motion.

13 A That's the whole purpose. And that's what they
14 were told. You can restore it but you got to pay the
15 filing fee.

16 Q But you didn't?

17 A No, because they didn't pay the filing fee. So,
18 if you don't pay the filing fee you can't restore it.

19 Q Doesn't the disciplinary letter that Mr. Jackson
20 write indicate that he did not know that his case had been
21 dismissed in 2009?

22 A The disciplinary letter, yes, it indicates that.
23 And it also indicates that I settled his case and took the
24 money. And disciplinary counsel looked into all of that.
25 And they came back with the conclusion that none of it had

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JOSEPH HENRY-CROSS BY MR. ORMOND

1 any merit.

2 Q Mr. Henry, they we went to The Budget and
3 Control Board and learned there had been no settlement.
4 Therefore, you, obviously, did not take the settlement?

5 A Well, then--

6 Q So, then they knew.

7 A They knew it before that.

8 Q Okay.

9 A Because they now they didn't get any money. And
10 I was only going to get money if they got money.

11 Q I understand that, sir.

12 A So, since I didn't get that, obviously, they
13 didn't get any either. And why would I tell them not to
14 settle the case and forgo my fee? I could have collected
15 a pretty nice fee out of that. But I didn't collect
16 anything. But I'm going to tell them the turn down money
17 that I don't have anything at risk. I could have taken a
18 fee out of what they got and got a pretty good fee.

19 Q That makes more sense that you forgot to refile
20 the case--

21 A I forgot to refile because I had all this stuff
22 filed out here all these things I was doing to try to help
23 them get the money and continuing negotiations that even
24 after their case was over, got the lawyer to agree to
25 entertain a settlement offer from them anyway and they

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JOSEPH HENRY-CROSS BY MR. ORMOND

1 blew it with a big demand. And so, I went out asked and
2 for that money, knowing all along that Bettis wasn't going
3 to entertain that. And that advance wasn't even accepted,
4 right? That's why he accepted the letter in October for
5 something that was already over. That he didn't have to
6 entertain anything on.

7 Q He didn't, did he? The case was over.

8 A He what -- we have his letter showing that he
9 did entertain an offer. And he didn't have to do any of
10 that. And I wouldn't have sent him a offer if he wasn't
11 going to entertain one.

12 MR. ORMOND: That's all I have, Your Honor.

13 THE COURT: All right.

14 Anything else, Mr. Henry?

15 MR. HENRY: Nothing further from me, Your Honor.

16 THE COURT: You can have a seat, please.

17 MR. HENRY: Yes, sir.

18 THE COURT: Call your next witness.

19 MR. HENRY: The Defense rests, Your Honor.

20 THE COURT: Defense rests.

21 Anything in reply?

22 MR. ORMOND: No, Your Honor.

23 THE COURT: Ladies and gentlemen, both sides
24 have presented to you all the evidence that you're
25 going to receive in this case. What remains to be

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1 done is I have to have a short meeting with the
2 attorneys. And after that they'll make their closing
3 arguments to you and then I'll give you the law that
4 applies in the case and then you will begin your
5 deliberations. My guess that will be an hour and a
6 half, something in that neighborhood. Let's take a
7 lunch break until 1:30. Remind you it's too early to
8 begin discussing the case, don't let anybody talk to
9 you about the case. See you back at 1:30, ladies and
10 gentlemen.

11 (WHEREUPON, the jury left open court at
12 approximately 12:12 p.m.)

13 THE COURT: Does the Plaintiff have any proposed
14 jury charges?

15 MR. ORMOND: Yes, sir, Your Honor. May I
16 approach?

17 THE COURT: Yeah. Thank you.

18 Does the Defense have any specific charges they
19 wish?

20 MR. HENRY: Not at this time, Your Honor.
21 There's another little matter that I think we need to
22 address.

23 THE COURT: All right, sir.

24 MR. HENRY: And that being the details of
25 Section 16-9-10. Relating to perjury.

000355

1 THE COURT: I'm sorry, I couldn't hear you.

2 MR. HENRY: Section 16-9-10.

3 THE COURT: Yes, sir.

4 MR. HENRY: Perjury and subornation perjury.

5 THE COURT: Yes, sir.

6 MR. HENRY: It is unlawful for a person to
7 willfully give false, misleading or incomplete
8 testimony under oath in any court of record.
9 Judicial, administrative or regular court proceeding
10 in the state. It is unlawful for a person to
11 willfully falsify, misleading information on a
12 document in a court of record. Or to require --
13 sorry, required by the laws of this state. A person
14 who violates provisions of Subjection(a) (1) is guilty
15 of a felon and upon conviction, must be found in the
16 discretion of the court or imprisoned not more than
17 five years or more. A person who violates a
18 provision subjection--

19 THE COURT: Yes, sir, but tell me why you're
20 bringing that to the attention of the court?

21 MR. HENRY: Because you have witnesses who said
22 that -- there's a witness testified they didn't pay
23 any money in the case and that I just filed the case
24 on their behalf--

25 THE COURT: I understand.

000356

1 MR. HENRY: Without colleting any money. They
2 gave me checks and cash--

3 THE COURT: I understand. I understand all of
4 that but why are you telling me this?

5 MR. HENRY: Because they lied under oath.

6 THE COURT: Why are you telling me that?

7 MR. HENRY: Because it's perjury.

8 THE COURT: I understand but why are you telling
9 me?

10 MR. HENRY: Because it needs to be addressed by
11 the court because it's misleading false testimony
12 under oath, in court of law designed to pollute the
13 administration of justice.

14 THE COURT: All right. I don't have anything to
15 do with enforcing that criminal statute, all right.
16 You're going to have to talk to the solicitor about
17 bringing charges if you want charges brought.

18 MR. HENRY: Well, the Court can address the
19 issue if you'd like. And if somebody is lying in
20 court and it's brought out in the court, the Court
21 can refer a case to the solicitor.

22 THE COURT: Well, you can refer a case to the
23 solicitor.

24 MR. HENRY: Well, the Court needs to address the
25 perjury because it effects the administration of

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1 justice in this courtroom.

2 THE COURT: All right, I disagree with you and
3 therefore am going to deny that request or motion.

4 MR. HENRY: Just wanted to make a record of it.

5 THE COURT: Yes, sir.

6 MR. HENRY: Thank you, Your Honor.

7 THE COURT: Any other motions, any other things
8 the Court needs to consider?

9 MR. ORMOND: No, Your Honor.

10 THE COURT: Well, let's take a minute to see.

11 Now, the Plaintiff seeks punitive damages?

12 MR. ORMOND: Yes, sir, Your Honor.

13 THE COURT: And the basis for that would be
14 what?

15 MR. ORMOND: Your Honor, obviously, it's, at
16 least, reckless if he knew -- if the jury determines
17 that the Plaintiffs are telling the truth, Mr. Henry
18 says he intentionally did not restore this case. The
19 Plaintiff said they didn't even know that it was
20 needing to be restored or about the 40J. So, that's
21 not just negligence. If he had just made an error,
22 forgot about the statute, which, you know, but we all
23 can certainly do that. But that would be the basis
24 for the punitive damages. He stated on the record
25 that he intentionally did not restore this case. And

000358

1 would be, at least, reckless or the jury can
2 determine that it was.

3 MR. HENRY: Very simple response, Your Honor.

4 THE COURT: Yes, sir.

5 MR. HENRY: The case -- requirement for
6 litigation in this case was governed by contract.
7 You have a written contract outlining their
8 obligations of the parties. My contract doesn't even
9 address the 40J issue so that's not even a part of
10 the duties and responsibilities that were agreed to.
11 And as a result of that, there's no obligation
12 whether reckless or otherwise that there would be an
13 obligation at all. Because that's not even a part of
14 our agreement. So, it doesn't matter that it wasn't
15 restored because it wasn't undertaken for me to have
16 restored. The contract does not address me bringing
17 a 40J action. So, the only thing the contract was to
18 file a lawsuit and get the lawsuit on the books.
19 Which was done. 40J is something outside the scope
20 of that. And they had to have separate
21 [indiscernible] to work with that. And they had the
22 opportunity to get the case restored, they chose not
23 to make it.

24 THE COURT: I understand.

25 MR. HENRY: So, there is no recklessness or

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1 anything else that you can attribute. And that does
2 not [indiscernible] modification. And the statute of
3 limitations doesn't apply to me in that because I had
4 no duty to do anything on that. If I had a duty,
5 then yes, I would do it wholeheartedly. Because
6 there was no duty, there was nothing for me to do.

7 THE COURT: All right, let me think about it,
8 I'll let you know.

9 Twenty minutes each side to close?

10 MR. HENRY: That's fine.

11 MR. ORMOND: Wouldn't even need that long, Your
12 Honor. But whatever you would like to give us.

13 THE COURT: All right. All right, we'll be in
14 recess until 1:30.

15 MR. ORMOND: Your Honor, would the Plaintiff
16 have closing and then rebuttable?

17 THE COURT: Yeah, you do. But a total of 20 --

18 MR. ORMOND: I don't --

19 THE COURT: -- 15 and 5.

20 MR. ORMOND: I don't think I will be that long.
21 Thank you.

22 THE COURT: All right, be in recess.

23 (WHEREUPON, a lunch break was taken.)

24 THE COURT: Plaintiff ready for the jury?

25 MR. ORMOND: Yes, sir, Your Honor.

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1 THE COURT: Defense ready?

2 MR. HENRY: We're ready.

3 THE COURT: Let's bring the jury.

4 The Court is going to deny the Plaintiff's
5 request for --

6 Come on in, that's fine.

7 -- for punitive damages.

8 THE BAILIFF: The jurors are seated, Your Honor.

9 (WHEREUPON, the jury came into open court at
10 approximately 1:41 p.m.)

11 THE COURT: Welcome back, ladies and gentlemen.
12 You're now ready to receive closing arguments from
13 the attorneys. When the attorneys will try to
14 convince you to see the evidence the way they see it.
15 These statements made by the attorneys in the closing
16 arguments is not evidence, it's just merely what the
17 attorneys recall what that evidence was, they think.
18 And how it should be interpreted by you.

19 Beginning with the Plaintiff.

20 CLOSING STATEMENT

21 MR. ORMOND: Thank you, Your Honor.

22 Thank you so much for your service. I know this
23 has been difficult with work, etcetera. I'll try to
24 make this as quick as possible and I'll try do that
25 with the closing. But it is an important function

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1 and it's the way we resolve disputes in civil
2 society, civil disputes anyway. It's important to
3 have a jury that is listening and that have an opened
4 mind and most of all uses common sense. You're the
5 finders of the facts. And when there's a dispute in
6 the facts, one of the most important items anybody
7 has, whether it's in court or not is what makes
8 sense. What version of the facts make sense and what
9 version doesn't make sense. It's a pretty simple
10 case.

11 In 2007, Mr. Mitchell--

12 MR. HENRY: Beg the Court's indulgence, I
13 believe, I may have an objection.

14 THE COURT: All right, what's your objection?

15 MR. HENRY: I haven't seen that document, I
16 believe if that is the document he raised earlier
17 that we objected to, I would have the same objection
18 to it now.

19 MR. ORMOND: Your Honor, it's for demonstrative
20 purposes. And everything on here was presented as
21 evidence.

22 THE COURT: Well, let's just take a moment, let
23 the defense counsel look at it to see. I understand
24 what the Plaintiff says but let's see if the
25 Defendant has a specific disagreement.

000 362

1 MR. HENRY: That's the document we objected to
2 earlier and I still object to it.

3 THE COURT: And your objection is what?

4 MR. HENRY: That it has no relevance on the
5 case, we could not use it in trial.

6 THE COURT: Okay, I understand.

7 Overruled.

8 Go ahead, you may proceed.

9 MR. ORMOND: Thank you, Your Honor.

10 In 2007, Mr. Jackson, Mr. Mitchell, came to
11 Mr. Henry and they hired Mr. Henry, they retained
12 him. There's a written agreement. A written
13 agreement was a contingency agreement and it talked
14 about costs. Mr. Henry says -- recalls that they
15 paid costs and had some receipts. Mr. Jackson and
16 Mr. Mitchell don't recall that they paid the money.
17 That's not really relevant whether they paid money or
18 not. The case got filed. And maybe they didn't
19 recall paying to have the case filed. The case was
20 filed, there's no dispute there.

21 The Defendant then answered compliant. The
22 Defendant was The Budget and Control Board. They
23 answered it. They sent what's called discovery.
24 Some questions and some requests to produce. And
25 Apparently some of that was sent by Mr. Henry to the

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1 other side. In any case, both sides have that
2 opportunity. They can discovery and ask questions of
3 the other side. In this case, Mr. Henry would have
4 done that to The Budget and Control Board and asked
5 them for documents about suspensions. And all of the
6 stuff that would be associated with the case. He
7 didn't. A year went by and in March 10, 2008, no
8 dispute here. The Plaintiffs lawyer, Mr. Henry, and
9 the Defendant's lawyer, Mr. Salvage -- Mr. Bettis,
10 I'm sorry, entered into a 40J agreement or order.

11 The statute of limitations for this case was
12 already over. But the 40J allows that statute to be
13 tolled or continued on for a year. If you restore
14 the case within that year, then the case is back on
15 as if it was never off. That's what the agreement,
16 that's what the rule says. And Mr. Henry signed it,
17 clearly understanding it. But on the contract, if
18 you do not restore within a year and the statute has
19 run, which it had, that's not disputed, then the case
20 is over. Essentially, he allowed the case to be
21 dismissed. That's what happened.

22 Now, Mr. Henry states, I told them about this in
23 2008 when I did the 40J. Plaintiffs don't remember
24 that. They never heard the term 40J. Most you
25 probably haven't heard that term either. It's a

000 364

1 legal term and it's part of the Rules of Civil
2 Procedure. They had no idea about that. Nothing
3 happens. And in February of 2009, February 27th to
4 be exact of 2009, almost right as the time the year's
5 up, they have a mediation. Mediation results in a
6 offer of 25,000 to Mr. Mitchell and \$5,000 to
7 Mr. Jackson. It's undisputed they don't accept the
8 offer.

9 The difference -- disputed testimony here, as
10 Mr. Henry says, he said a number of different things.
11 But he said I didn't think the case was worth that
12 much, I never tell my clients what to do. But I kind
13 of did tell them what to do and the clients didn't do
14 it. Mr. Henry -- Mr. Jackson and Mr. Mitchell say, I
15 was relying on my lawyer and my lawyer said, quote,
16 unquote, I wouldn't take it if I were you. During
17 this mediation. Mr. Mitchell, Mr. Jackson, had no
18 idea that in a week, assuming that Mr. Henry doesn't
19 file a one page motion with the court to restore the
20 case, that case is over.

21 That's where common sense comes in. Why in the
22 world, if they knew, that in a week, the case was
23 going to be done, there would be nothing more of it.
24 There would be no reason for The Budget and Control
25 Board, the defendant, to settle the case anymore.

000 365

1 Why, if they knew that, would they simply failed to
2 pay some money? Especially, if they had been paying
3 for costs. One was working. One had just retired,
4 had retirement benefits. So, they had money and they
5 said they would have absolutely paid if they had been
6 asked. Mr. Henry forgot. He forgot about it. That
7 happens. And he didn't file the motion.

8 Now, we as lawyers, I happen to be one of them,
9 certainly I do not ask our clients to pay costs but
10 we also have to protect our clients, period. It's
11 like physicians. First do no harm. By not restoring
12 with a one page motion, this case in court, Mr. Henry
13 stopped their ability to go forward. Ever with this
14 case. It was over. That is undisputed, Mr. Henry
15 agrees. He says he did it because they just didn't
16 pay him that money. The \$175.

17 He also then, more than 11 days after the case
18 was over, and I guess I can't say that in more
19 empathetic terms. No way you can bring it again, no
20 way you can refile the case, the statute is over, he
21 sent a letter to Mr. Bettis saying, well, let's
22 continue to discuss and negotiate. So, Mr. Bettis
23 sent a letter. Y'all have it, be able to read it and
24 review it. This was nine days, ten days, after the
25 case was over. Undisputed. And Mr. Bettis then

000 366

1 writes a letter, 24th of March, 14 days after the
2 case is over and says, yeah, we can talk but the case
3 is over. That's when Mr. Henry learned the case was
4 over.

5 Again, there for the grace of God for any of us.
6 But if you make a mistake, if you make an error that
7 causes damage, you're texting, looking at something
8 else and run into the back of somebody or you don't
9 act as a normal, professional attorney or you miss a
10 statute. Or you miss the time to refile, or in this
11 case, restore a case to the active roster. Because
12 if you do not, it is over. And the Plaintiffs never
13 got a settlement.

14 But more than that, the evidence shows, very
15 clearly, that Mr. Henry dragged this out. Didn't
16 tell them this is what happened. They did not know
17 that this case had been dismissed. How do we know
18 that? Mr. Henry said that they did know. First of
19 all, makes no sense that they did know that the case
20 was over, they're never getting a settlement, why
21 would there be settlement offers made later?
22 Especially, this huge settlement made 10 months after
23 the case was over. There's no responsive letter by
24 the attorney on the other side.

25 Why would an attorney respond to a demand,

000367

1 whether it be big or small? Why would an attorney do
2 that on the other side if there was no case? That
3 is, essentially, what you have when you go to court.
4 Is you have a case. You have the ability to do what
5 we're doing now. Talk to a jury, present the
6 evidence. The jury may not agree with you. Either
7 side. Or they may split the difference. You don't
8 know what a jury is going to do but you have that
9 right to do it.

10 And in this case, Mr. Henry abrogated that right
11 without letting them know. And they didn't know it
12 for a couple more years until Mr. Mitchell went to
13 the courthouse. That's not disputed. Why would he
14 go to the courthouse to figure out what was going on
15 if he already knew it was dismissed? And he got a
16 copy of that document and that's when Mr. Jackson,
17 Mr. Henry both -- Mr. Mitchell, I'm so sorry,
18 understood and knew this case has been dismissed.

19 Now, Mr. Jackson thought, Hmm, he must have
20 settled this case and not told me. Nothing else
21 makes sense. And that makes him upset. So, he
22 writes the bar. He has -- every client has the right
23 to do that. The bar takes a look at it. And he
24 writes and says, This is what I think happened. I'm
25 writing the bar. For somehow this case got

070 368

1 dismissed. My attorney dismissed this and he must
2 have taken the settlement and not given me a part of
3 it. That is wrong. That is not what happened. No
4 dispute there.

5 They hired me, they come to me. And I do what's
6 call a freedom of information request. And I asked
7 The Budget and Control Board if they gave them a
8 settlement. We had Mr. Potts testified. He looked
9 at it, no, they didn't. He said they knew that the
10 time to restore this case was coming close to
11 mediation. They did make a \$25,000 offer and a
12 \$5,000 offer to them. They kept one of those offers
13 opened for a week. And then the case wasn't
14 restored. And there was never any settlement. There
15 wasn't a settlement because the case was over.

16 That's what would have happened had Mr. Henry
17 restored the case. The case would have continued.
18 They have would have had the possibility of going to
19 trial. They meaning The Budget and Control Board.
20 The Plaintiffs could have continued to negotiate.
21 They would have had leverage. They would have that
22 opportunity to say, why don't we negotiate this and
23 try to come up with some sort of settlement? Just
24 like they already had. They didn't have that right
25 anymore because Mr. Henry let that case expire. You

000 369

1 have to protect your clients as an attorney. Even if
2 they -- and they -- Mr. Henry didn't testify to this,
3 look we just don't have the money, we can't pay. He
4 just said that they -- that the money didn't come, I
5 don't know.

6 Even if they would have said you still need to
7 file it. You need to pay us now, you need to pay us
8 but you need to protect your client. That is the
9 foremost, the most important thing that an attorney
10 does. Mr. Henry could have restored that case and
11 gotten out of the case. Said look, I don't want to
12 represent you, get another lawyer or just represent
13 yourself. Just like Mr. Henry is doing here. And
14 they could have, at least, still had their case.

15 That's what they lost. They lost this case.
16 What's the value of that? In any legal malpractice,
17 or any malpractice, you have to determine what
18 damages are. What was the underlining case worth?
19 Well, in this case, it's unusual, we know what the
20 minimum was. The minimum was what they were offered.
21 The Budget and Control Board was willing to settle
22 for \$25,000 and \$5,000 at that time. Mr. Mitchell,
23 Mr. Jackson, say they were told by their client
24 [verbatim] or at least advices by their client
25 [verbatim], I wouldn't take that. But they also

000370

1 stated that if their attorney said, you know, look,
2 maybe that's probably a pretty good deal, why don't
3 you take that they would have.

4 Number two, I can't imagine anyone not taking
5 that if the option was nothing. No restoring of the
6 case and you don't get anything. Did that work in
7 Mr. Henry's favor too? No, he missed it. He forgot
8 it. He didn't remember, he thought it was later.
9 Maybe he didn't do it right. Again, but for the
10 grace of God, all of us, we all -- everybody makes
11 mistakes.

12 In a civil court, in civil law, if you make a
13 mistake and it costs somebody something, whether it's
14 a accident case or malpractice surgery, you make it
15 right. How do you make this right? You award them,
16 at least, the minimum value of 2009. The value that
17 was already offered them. That's the value of the
18 case that they lost. Now, would they have gotten
19 more money in settlements? Very possible. If the
20 case would have been restored. Could they have gone
21 to trial and maybe won that trial and gotten a better
22 deal, a better judgment, a better settlement, if you
23 will? Sure. But they don't have the opportunity.
24 And they were told for two years that everything was
25 fine, that they were going forward until they went

000371

1 to -- I'm sorry, Mr. Mitchell went to this courthouse
2 then informed Mr. Jackson. This case has been
3 dismissed.

4 Lawyers are required to protect their clients.
5 A lawyer doesn't have a choice. We all have a civil
6 situation to, essentially, allow a case that's
7 ongoing, especially, if there's already been a
8 settlement made, there's merit to the case, to just
9 let it go. A let it end where the clients then no
10 longer have a cause of action. And it's over. They
11 don't have that right. That is not part of our
12 ethics and it is negligent to do so. Thank you.

13 THE COURT: Your turn.

14 CLOSING STATEMENT

15 MR. HENRY: Thank you, Your Honor, may it please
16 the Court?

17 THE COURT: Certainly.

18 MR. HENRY: Ladies and gentlemen, give you all
19 my most sincere apology. And that apology being
20 simply because you have been brought into this
21 courtroom and, unfortunately, exposed to very
22 contagious and dangerous disease. What is that
23 disease called? Selective amnesia. What do I mean
24 by that? Let's go back through a little of what we
25 went through here. Testimony from the witness stand.

000372

1 You go in and hire someone to represent you. As a
2 result of that hiring, you ask to have certain things
3 done. Like certain documents filed. You're not an
4 unsophisticated person because A, you've been through
5 this before. This isn't your first rodeo. You've
6 hired lawyers in the past. You filed lawsuits in the
7 past. And you know the process. You paid the filing
8 fees to file this claim. The lawyer takes the suit
9 to the courthouse, takes the money to the agent and
10 files your suit. It's now pending in court. That's
11 how you start.

12 Mr. Mitchell testified that he'd been through
13 that before. Mr. Jackson had been through it also.
14 So, they knew the process. But then, here's where
15 the convenient amnesia comes in. Did you pay the
16 money to file -- reinstate after the case was put on
17 40J? No, I didn't pay the money. I didn't pay the
18 money to start the case. Show them the receipt.
19 What's the answer? They still don't know about it.
20 Don't know what the receipt is. Never seen a
21 receipt. It's got their name on it. Their check
22 number. Their cash. But they don't know anything
23 about it.

24 I remember everything else in great detail. But
25 when it comes down to remembering the thing that

000373

1 might show that I didn't follow through on my end of
2 the bargain, I can't remember. How convenient. You
3 don't remember writing a check through your on
4 checkbook and given a receipt for the check that you
5 wrote? Where's the receipt come from? I just made
6 up a receipt? All these years later, it just so
7 happened, actually, I didn't know that was going to
8 be an issue. So, I didn't initially bring my
9 checkbook [verbatim] to court. I had that dig back
10 through my archive files to find my own checkbooks --
11 not checkbooks but find my old receipt books in order
12 to produce those receipts to show you that these
13 people are lying to you. They knew they wrote these
14 checks. They couldn't remember that. But they
15 remember everything else according to them. Couldn't
16 remember getting a copy of the 40J. But yet, they
17 want you to believe they were coming by asking me
18 about their case and not talking about what the
19 status was.

20 Well, Thomas Jackson, ladies and gentlemen, if
21 you recall, took it a bit further. He ran down to
22 the bar association and wrote them a letter. And
23 made up accusations, loose accusations, in that
24 letter saying that I had settled his case and stolen
25 his money. And what did he say when he was on the

000374

1 stand yesterday under oath?

2 Yeah, I did that but I did because I was mad.

3 You go and make a formal complaint against
4 someone's license because you're angry? That's what
5 the court rules for. So come in here and try to take
6 out vendetta. To get restitution for a bad deal that
7 you made. You heard both Chris Mitchell and Thomas
8 Jackson tell you from their own lips what? I turned
9 the money down. Only the client can turn down the
10 money, not the lawyer. If you were offered money and
11 you turn it down, that's on you. That's not your
12 lawyer's fault. I gave them my advice but I don't
13 tell them what to do. If a client is pursuing a case
14 and decided not to pursue it further, I don't press
15 them the do so. Because if they don't have an
16 interest in it, I certainly am not going to push it
17 through the court system. Only the client makes
18 decisions on whether to pursue or not pursue a
19 matter.

20 Did I know that the case was coming to an end?
21 Yes, I did. Did I share that with them? Yes, I did.
22 Did they have the opportunity to reinstate the case
23 if they wanted to? Yes, they did. And they chose
24 not to pay the fee. And why is that such a big
25 issue? Why am I talking about them paying the fee

000375

1 being a big issue? Because in a case, a lawyer does
2 a case one or two ways. Either the client pays the
3 fees and costs upfront or they get [indiscernible] --
4 it's a choice. If lawyer and client agree that the
5 client is going to advance the cost, that's how it's
6 done. In this case, that's what was done. They had
7 to advance the costs. Hence, the production of the
8 receipts. The receipts show you who actually paid.

9 And the contract. The contract tells you what
10 they agreed to do and what I agreed to do. And you
11 don't have to take my word for it and you don't have
12 to take their word for it. The contract is in
13 evidence. It tells you in plain English, black and
14 white, who agreed to do what. And in Paragraph 4 on
15 Page 1 on the contract where it talks about
16 disbursements, costs and expenses. The client pays
17 the costs. The costs being faxes, long distance,
18 filing fees, etcetera. And that's the obligation of
19 the client, not the lawyer.

20 The contract also, something that I didn't point
21 out to you that I'm going to point out now. Gives me
22 the option, about if they don't fulfill their end of
23 the bargain, I could have dumped them. I could have
24 pulled out of their case. But because they didn't
25 have anybody to help them and I was trying to help

000376

1 them, I stayed in the case. And did things to try to
2 continue to help them out to get their case resolved.

3 When they decided to turn down the money that
4 was offered to them, was I pleased with that? No.
5 But was it my place to tell them you can't do that?
6 No, it wasn't. Here's the big thing. They're
7 telling you that I told them not to take the money.
8 So, they had, according to them, \$30,000 on the
9 table. My contract calls for a third of whatever
10 they collect. So, I just told them I don't need to
11 be paid anything. Ten thousand dollars is no big
12 deal to me. I wouldn't take that. And you're not
13 paying me anything else but, you know, \$10,000,
14 that's just peanuts, let's just walk away. And I'll
15 get nothing. And you will get nothing and we'll all
16 be happy. That's what they want you to believe.

17 But yet, they didn't know anything about the
18 40J, ladies and gentlemen. Let's go back in time,
19 turn back the clocks for you. Remember Mr. Potts?
20 Their witness. From the Budget and Control Board. A
21 defendant in the case came and testified on their
22 behalf. Now, Mr. Jackson and Mr. Mitchell told you
23 emphatically that they didn't know a thing about the
24 40J. Remember what Mr. Potts said when he took the
25 stand? He wasn't up here very long. Probably not to

000 397

1 difficult to remember, just think back. He wasn't
2 involved with this case until mediation.

3 I asked him a simple question, Did you know
4 about the Rule 40J?

5 And what was his answer? Yes. I knew about it.
6 I knew that the case was also winding down.

7 Well, now where did you learn that, Mr. Potts?

8 At the mediation.

9 Within 30 minutes of being in mediation, he had
10 learned that about this case. These gentlemen were
11 in the same mediation. In a mediation conference,
12 the first thing you do -- and I was at the mediation,
13 also, by the way. The first thing you do in
14 mediation is the mediator gathers all of the parties
15 in one room. He finds out from the parties what the
16 status of the case is. Where are things in the case
17 as far as how it's going through the court system?
18 Are there offers on the table that might need to be
19 considered that we need to talk about in case there's
20 a possibility we can settle it with close to
21 something that you already considered? Let's talk
22 about everything. Where's the case procedurally?
23 What's the next thing that's going to happen in this
24 case? That the first thing the mediator is going to
25 find out because he wants to know what he's working

000378

1 with.

2 So, you have to tell them, well, we filed
3 discovery or whatever we have about the discovery in
4 the case or we've asked for all the discovery and
5 we're waiting on a court date. Or we have put the
6 case on inactive roster, 40J. And then, if we don't
7 settle it, if we decide to go forward well go and
8 reinstate it.

9 So, Mr. Potts, Mr. Mitchell and Mr. Jackson, the
10 lawyer for The Budget and Control Board and the
11 mediator and all were sitting in the same room and
12 we were discussing that matter. And we told the
13 mediator that the case was on the 40J status. That's
14 how Mr. Potts found out. But these guys already knew
15 that. Because they have to approve signing the 40J
16 before it's signed and filed. And then, they come in
17 to do mediation, then we decide to do the mediation
18 after that. But they already knew what the status of
19 their case was.

20 And to also, you need to recognize Mr. Thomas
21 Jackson, had told you he didn't know anything about
22 where his case was. But interestingly enough, when
23 he went down to file his complaint, that was one of
24 things he talked about. The status of his case. And
25 that was addressed, that reviewed and addressed by

000379

1 the Office of Disciplinary Counsel. And this a
2 letter dated November 25th, 2014.

3 Dear, Mr. Jackson, this office has conducted an
4 investigation concerning the allegations of lawyer
5 misconduct raised in the complaint you filed in
6 connection the above-referenced matter. And this
7 investigation focused on the grounds of misconduct
8 set out under the rules, blah, blah, blah.

9 Let's get to the part where it gets real
10 specific.

11 In your letter of complaint, you allege that
12 Joseph Henry, Esquire, settled your case without your
13 knowledge, dismissing your suit and keeping the
14 settlement money for himself. You also allege he
15 misled you about the status of your case. As a
16 result of your letter, this office conducted an
17 investigation to ascertain if Mr. Henry's conduct
18 violated the rules of professional conduct. And
19 rules of lawyer discipline. From your investigation
20 this office has determined that there is no evidence
21 of any such lawyer misconduct on the part of
22 Mr. Henry rising out of events mentioned in your
23 complaint. And that further investigation would not
24 likely reveal such evidence.

25 They reviewed my entire file. I had to bring my

000380

1 file in, sit down with the folks with disciplinary
2 counsel's office and go through documents with them
3 and answer their questions about what was done. This
4 is from Mr. Jackson who told you yesterday, he filed
5 this because he was angry. He didn't have any
6 information that support any of what he told them.
7 He just made it up. And now, he couldn't stand the
8 fact that they didn't find anything wrong. So, he
9 came on down here to try to get his revenge. He's
10 not happy that he didn't get any money because he
11 turned down the only opportunity to get it.

12 Now, no good deed going unpunished. He didn't
13 appreciate the fact that I tried to get him money
14 even though he turned down his only chance of getting
15 money. And I, in my letter, addressed a little of
16 that, I think I put my in -- bear with me just a
17 minute, ladies and gentlemen. All right, my letter
18 in response is Defense's Exhibit No. 6. Okay, this
19 is in a paragraph on the second page of my letter,
20 it's Paragraph number 3.

21 Mr. Jackson was aware that he did not have any
22 real discernible damages, as revealed by the
23 investigation of this matter, as he was not injured
24 during any of his responses to any [indiscernible].
25 He was also I apprized of the fact that the rejected

000381

1 offer may be his best and only chance to receive
2 compensation for the claims he made. He was also
3 made aware that in order to further pursue the
4 matter, the case will have to be restored to the
5 trial roster by being refiled at the 40J, also served
6 as a dismissal if no motion to restore was filed.
7 Which was not done.

8 I do not recall a conversation with Mr. Jackson
9 a few months ago wherein I led him to believe the
10 case was still pending. And that I was communicating
11 with the state's attorney regarding his case. I did
12 have conversations with him during the pendency of
13 the 40J, to the effect that the case was still
14 pending and settlement negotiations was still active.

15 It should be noted that Mr. Jackson was aware of
16 the 40J and consented to the same, after explanation,
17 and has been given a copy of the document. So, he
18 knew all of that. But yet, he went down there and
19 told a lie. And not just told a lie but filed a
20 formal complaint containing a lie. Which outside of
21 official proceedings would have been a signing
22 [verbatim] statement. Because it's the only thing
23 that protects you in that case was an official
24 proceeding. If he had said that on the streets,
25 rather than saying it in a proceeding like that, I

000382

1 could have sued him for slander. But I didn't. It's
2 not worth it. That's not my style. I'm not
3 interested revenge on him. I was trying to help him.
4 But he didn't appreciate the help.

5 And then, he came down here and didn't stop with
6 that. He came in here and lied about whether he was
7 responsible for costs of getting this case going.
8 The documents are right here. Receipts showing that
9 he actually advanced the cost of the case to get file
10 in the first place. So, he aware that he had to pay
11 the cost for this.

12 My contract, ladies and gentlemen, doesn't
13 mentioned the word 40J. Because that wasn't what I
14 agreed to do. 40J was not a part of our agreement
15 and still isn't. And that's why it never got filed.
16 I did what the contract required me to do for him.
17 As he requested. And for Mr. Mitchell. Problems
18 that you have here, they made a bad deal by not
19 accepting the settlement offers and they need
20 somebody to blame for it. Because they have gambled,
21 they lost and didn't get anything. And now they want
22 somebody to pay. That's not the way the court system
23 is supposed to work.

24 I don't mind taking responsibility for that I
25 have agreed to do and didn't do. And there's nothing

000 383

1 in this case that happened. I did what I agreed to
2 do. They didn't get the money. Lawyer's charge for
3 the services that they rendered. They don't do work
4 and then walk away scot-free. I spent years working
5 on their case. This wasn't a one year or a couple of
6 weeks or months. This was years worth of work and I
7 got absolutely nothing for it.

8 So, am I angry about it? No, that's part of
9 doing business. But I don't like being accused of
10 lying by people who have to lie themselves to make
11 the accusations. It's not appreciated. That's the
12 part I don't appreciate. Rest of it, I don't care
13 about. The money, I wasn't going to get any if they
14 didn't get any. I did get anything, they didn't get
15 anything. So, that's the cost of doing business.

16 That's what's called a contingency fee. My
17 payment is contingent upon their recovery. So, it's
18 in their interest to take a settlement. It's in my
19 interest for them to do so. I could have got \$10,000
20 as opposed to getting nothing. But I didn't. And
21 it's not because I wanted them not to get any money.
22 I want them to get paid. They chose not to get paid.
23 They chose to turn down the money. As is their
24 right. I don't have to agree with that. But I have
25 to protect their right and do what they want to do.

000 384

1 A lawyer has a duty to protect his client and he does
2 as best he can to protect them. He can protect them
3 from every normal source that they might have to deal
4 with. Except one. Themselves. Thank you, ladies
5 and gentlemen.

6 THE COURT: Thank you, Mr. Henry.

7 Mr. Ormond.

8 CLOSING STATEMENT

9 MR. ORMOND: Thank you, Your Honor.

10 Ladies and gentlemen, the Judge told you that
11 closing arguments aren't evidence. The evidence
12 presented by the witnesses and Mr. Henry was one of
13 the witnesses but he did give you some more evidence
14 and that was talking about the mediation. And,
15 essentially, what he said was if Frank Potts, which
16 was on the defendant's side, Budget and Control
17 Board, somehow knew that there was a 40J just about
18 to go, I'm sure that he did, that Mr. Mitchell and
19 Mr. Jackson must have known that too.

20 Mediations do not work that way. You're in
21 separate rooms. There's a conference, then there's
22 separate rooms. And he has no way of knowing how
23 Mr. Potts knew about the 40J, knew about the status
24 of the case. He points to a letter written by the
25 disciplinary counsel, a lawyer, using the term status

000385

1 of the case. And he says because she used that term,
2 Mr. Jackson must have known that term also. It is a
3 legal issue, it's a legal terminology, the status of
4 a case, is what it is. Mr. Jackson doesn't know what
5 the status of the case means. It was never discussed
6 at the mediation, the status of the case. What was
7 discussed at the mediation was the settlements.

8 Finally, the -- I guess, it's so simple for me
9 but yes, Mr. Jackson, Mr. Mitchell, on the advice of
10 their attorney, turned down these offers. But they
11 didn't know that Mr. Henry had 40J the case, they
12 didn't know that in ten days there would be no case.
13 All it took was a motion. According to Mr. Henry
14 \$175. Motion's \$25, it's actually less than that.
15 But even if it was \$175, it's just a motion. That if
16 Mr. Henry didn't like the case, he could have gotten
17 out of it but they still would have had a case. They
18 would have had a case to bring.

19 In February 27th of 2009, Mr. Mitchell and
20 Mr. Jackson didn't make a decision to not take an
21 offer knowing that if they don't take that offer they
22 get nothing. Because they're not that into it. If
23 that was the case, they would have taken the offer.
24 It was only the case because after the mediation, in
25 that ten days, no motion, a simple one-page document,

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1 sent to the court was filed. And then it was over.

2 The disciplinary -- I understand Mr. Henry's
3 upset about the disciplinary thing. Mr. Jackson did
4 not understand it when he found out in 2012, two and
5 a half years later, that the case had been dismissed.
6 Yes, he was mad. He had been told that it was still
7 going on. Mr. Henry just stated that. And he put in
8 a letter that the case was still going on when it
9 wasn't, it was over on March 9th, 2010. Undisputed.
10 Undisputable. And he wrote some letters about trying
11 to get the thing settled but nobody's going to settle
12 a case if there is no case. They would be silly to
13 do so. There could have been a case. There could
14 have been a continuation of the case. All it would
15 have taken was a motion.

16 Mr. Henry did not protect his clients. Even if
17 he had to pay out of pocket, \$175 and then tell the
18 clients, you need to pay that back to me. I need it
19 so we can still have a case. Mr. Henry forgot. He
20 missed the time period. It happens. What's the case
21 worth? They did turn down the 5,000 and \$25,000.
22 They say on their lawyer's advice. I wouldn't take
23 that if were you. That's what they said. They were
24 both in the same room, they both say that. I
25 wouldn't take that if were you. It is the client's

000 387

1 decision. They made that decision, they should have
2 paid it, no question about it. But they made that
3 decision assuming that the case was continued.
4 Because it was at that time. It was only ten days
5 later that the case wasn't going to continue.

6 If you don't settle you go to trial. What we're
7 doing here now. They didn't have that opportunity.
8 Why? Because a motion wasn't filed. A one-page,
9 simple, ten minute motion. Mr. Henry didn't get
10 anything out of this because he missed the statute,
11 he didn't file the motion in the right timeframe.
12 Mr. Henry wrote about and Mr. Bettis wrote ten days
13 later, I'm afraid we're out of time. 40J wasn't
14 restored in time. You have that letter, you can read
15 it.

16 Nothing happened then until this October letter.
17 Clients were told, for two years, case is pending.
18 Mr. Henry just stated he told them that. He told the
19 disciplinary counsel that he told his clients after
20 the date of March 9th, 2010, that the case was
21 pending. Now maybe they don't understand that
22 language, what it means, that the case is still going
23 on. Their case is still going on. There's still a
24 case. Mr. Henry didn't tell the disciplinary counsel
25 the right thing, it was incorrect, the case was not

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1 pending after March 9th, 2010.

2 The disciplinary letter was 2014. The
3 disciplinary counsel did not know what was going and
4 no Mr. Henry did not take the settlement and not give
5 his clients money. There wasn't a settlement because
6 he missed the statute. It's that simple. Thank you.

7 THE COURT: Thank you, Mr. Ormond.

8 JURY CHARGE

9 Ladies and gentlemen, I remind you that during
10 the trial of this case, you and I have had certain
11 duties to perform. As the trial Judge, it's my
12 responsibility to preside over the trial of the case.
13 And I've had the duty to rule on the admissibility of
14 evidence that was offered during the trial. You are
15 to consider only the evidence submitted to you in
16 this case. You are to consider only the testimony
17 presented by witnesses and any exhibits which have
18 been made part of the record in this case.

19 I also have the additional duty to charge you or
20 tell you about the law that applies in the case and
21 it's your duty, ladies and gentlemen, as jurors to
22 accept and apply the law as I now state it to you.
23 If you have any idea that the law is different than I
24 tell you or should be different than I tell you, you
25 must put that out of your mind because under your

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1 oath you must accept the law as I give it to you.

2 In every case tried before a jury, as I told you
3 earlier, the jury becomes the sole and exclusive
4 judges of the facts of the case. The trial judge,
5 such as myself, cannot comment on, make any statement
6 about the facts of the case. Since you are the sole
7 judges of the facts of the case, do not think that
8 anything I've done during this trial or anything that
9 I've said during this trial causes me to have an
10 opinion about the facts of the case. As I told you
11 earlier, the law does not allow me to have an opinion
12 about the facts of the case.

13 The burden of proof in this case is by a
14 preponderance of the evidence. And that simply means
15 the greater weight of the evidence. It is presented
16 to you as a whole, shows that a fact sought to be
17 proved is more likely true than not true. And this
18 can be illustrated by imagining a set of scales. At
19 the beginning of the case, the scales are even. And
20 after all of the evidence has been presented, if the
21 scales remain or if they tip slightly in favor of the
22 Defendant, then the Plaintiff would have failed to
23 meet the Plaintiff's burden of proof and would not be
24 entitled to a recovery. If on the other hand, the
25 scales tip even slightly in favor of the Plaintiff,

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1 then the Plaintiff would have met the Plaintiff's
2 burden of proof and you should return a verdict for
3 the Plaintiff.

4 A preponderance of the evidence is not
5 determined by the number of witnesses, instead is
6 determined by the greater weight of all of the
7 evidence. Necessarily, ladies and gentlemen, you
8 must determine the credibility of the witnesses who
9 have testified in this case. This simply means the
10 believability. It becomes your duty, as jurors, to
11 evaluate this evidence and determine which evidence
12 convinces you that it is true.

13 In determining believability of witnesses who
14 have testified in this case, you may believe one
15 witness over several witness, several witnesses over
16 one witness. You may believe a part of the testimony
17 of a witness and reject the remaining part of that
18 very same witness. You may believe the testimony of
19 a witness in it's entirety or reject the testimony of
20 a witness in it's entirety. And you may consider
21 whether a witness had any interest in the result of
22 this trial and whether the witness might be
23 prejudiced towards either the Plaintiff or the
24 Defendant.

25 As you know, the Plaintiff claims that the

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1 Defendant committed malpractice. Or professional
2 negligence. Malpractice is the failure to provide
3 services with the amount of skill, care, knowledge
4 and judgment usually used by the members of the
5 Defendant's profession. Following good and accepted
6 practices. In good faith without fraud or
7 conclusion, resulting in harm to a Plaintiff. It is
8 a form of carelessnesses or negligence.

9 In order to recover for malpractice, the
10 Plaintiff must first prove by preponderance or
11 greater weight of the evidence, the standard of care
12 was that the Defendant owed to the Plaintiff. The
13 law does not require absolute accuracy in either
14 practice or in decision making. The law does not
15 hold the Defendant to standards of perfection. The
16 Defendant must use reasonable care and diligence and
17 his skill in applying his knowledge.

18 Next, the Plaintiff must also prove that the
19 Defendant negligently departed from that standard of
20 care. And that simply means the failure to do what
21 an ordinary and careful professional would have done
22 under the same or similar circumstances. Or the
23 doing of something that an ordinary, careful
24 professional would not have done under the same or
25 similar circumstances.

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1 The Defendant may also be responsible, having
2 met the required skill, the Defendant is negligently
3 fails to use it or as not as careful as he should
4 have been. The Plaintiff must also prove that the
5 Defendant's negligence approximately caused the
6 Plaintiff's damages. And I tell you proximate cause
7 is something that produces a natural chain of events
8 which in the end brings about a injury or loss.

9 To prove that a Defendant's negligence
10 proximately cause the Plaintiffs injury, the
11 Plaintiff must first prove causation in fact. This
12 is proven by showing that the injury or loss would
13 not have occurred by for the Defendant's negligence.
14 The Plaintiff must also prove legal cause. Legal
15 cause is proven by showing that the injury was
16 foreseeable. This mean that the injury or loss
17 occurred as a natural and probable consequence of the
18 Defendant's negligence.

19 The Plaintiff must prove some injury or loss
20 from the Defendant's negligence and that it was
21 foreseeable. But does not have to prove that a
22 particularly loss or injury occurred was foreseeable.
23 However, the Defendant cannot be held responsible for
24 something which could not be expected to happen.

25 If you decide that the Plaintiffs are entitled

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1 to a verdict, your next step would be to decide how
2 much the Defendant should be required to pay the
3 Plaintiff. I tell you that actual damages are
4 compensated to the Plaintiff for injuries or losses.
5 And to put a Plaintiff as near as possible to the
6 same position that the Plaintiff was in before this
7 incident occurred. In other words, actual damages
8 would be the actual losses and expenses which the
9 Plaintiff suffered because of the Defendant's
10 negligence.

11 If you recall, they're two Plaintiffs that have
12 different claims against the Defendant. You will be
13 required to address each of these claims separately.
14 You will be given a verdict form that will show you
15 in Paragraph 1, to address the claim of the
16 Plaintiff, Thomas Jackson. If you find for Thomas
17 Jackson against the Defendant, then you would award a
18 dollar amount for damages. If you find against the
19 Plaintiff, then you would check the block that says,
20 Find for the Defendant. And the same thing applies
21 to the claim of the Plaintiff, Christopher Mitchell.
22 For there to be a verdict, ladies and gentlemen, it
23 must be unanimous, all 12 of you must agree.

24 I'm going to ask you to retire the jury room but
25 don't yet begin deliberations until I send to the

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1 jury room this verdict form and the exhibits. When
2 they're brought to the jury room, please begin your
3 deliberations. I'm going to ask our foreperson if he
4 would, on behalf of the jury, complete to verdict
5 form. And once you do that and the jury has reached
6 a verdict, knock on the door, let the bailiffs know
7 you've reached a verdict and we'll receive you back
8 in the courtroom. So, you'd please retire to the
9 jury room, ladies and gentlemen, hope to be with you
10 shortly.

11 (WHEREUPON, the jury left open court at
12 approximately 2:30 p.m.)

13 THE COURT: Exceptions from the Plaintiff?

14 MR. ORMOND: No, Your Honor.

15 THE COURT: From the Defendant?

16 MR. HENRY: No, Your Honor.

17 THE COURT: All right, y'all want to look at the
18 exhibits, make sure we have them all?

19 MR. ORMOND: Your Honor, Plaintiff's exhibits
20 are fine.

21 MR. HENRY: Your Honor, Defense exhibits are
22 fine.

23 THE COURT: All right, get our bailiff to take
24 these to the jury room along with the verdict form.
25 And we will be at ease waiting to hear from the jury

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1 in this case.

2 MR. HENRY: When the case is over, can I get
3 copy of these?

4 THE COURT: I'm sorry?

5 MR. HENRY: When the case is done, can I get a
6 copy of these?

7 THE COURT: You have to ask clerk of court.

8 MR. HENRY: That's fine.

9 THE COURT: Court will be recess for ten minutes
10 while we wait on another case, perhaps.

11 (WHEREUPON, court was in recess awaiting a
12 verdict.)

13 (WHEREUPON, deliberations began at approximately
14 2:45 p.m.)

15 VERDICT

16 THE COURT: On behalf of the Plaintiff,
17 Mr. Ormond, you ready to receive the verdict of the
18 jury?

19 MR. ORMOND: Yes, Your Honor.

20 THE COURT: Mr. Henry?

21 MR. HENRY: Yes, Your Honor.

22 THE COURT: Let's bring our jury in.

23 (WHEREUPON, the jury came into open court at
24 approximately 4:09 p.m.)

25 THE COURT: Welcome back, ladies and gentlemen.

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1 Mr. Timms, as foreperson of the jury, has the jury
2 reached a verdict?

3 MR. FOREPERSON: Yes, Your Honor.

4 THE COURT: Is it a unanimous verdict?

5 MR. FOREPERSON: Yes, Your Honor.

6 THE COURT: Did you complete the verdict form?

7 MR. FOREPERSON: Yes, Your Honor.

8 THE COURT: Would you, please, pass it forward.

9 Madam Clerk, if you'd please publish the
10 verdict.

11 THE CLERK: Case number 2015-CP-42-01449, Thomas
12 Jackson, Christopher Mitchell vs. Joe Henry, Esquire
13 Law Firm of Joe Henry, as to the Plaintiff, Thomas
14 Jackson, we find for said Plaintiff against the
15 Defendant in the sum of \$2,500.

16 As to the claim of the Plaintiff, Christopher
17 Mitchell, we find for said Plaintiff against the
18 Defendant in the sum of \$13,000.

19 This is signed by foreperson Thomas Timms, May
20 14, 2019.

21 Mr. foreman, is this your verdict and the
22 verdict of the entire jury?

23 MR. FOREPERSON: Yes, ma'am.

24 THE COURT: Thank you, ma'am.

25 Anything before the jury is discharged from the

000 397

1 Plaintiff?

2 MR. ORMOND: No, Your Honor.

3 THE COURT: From the Defendant?

4 MR. HENRY: No, Your Honor.

5 THE COURT: Ladies and gentlemen, I want to
6 thank you for your service. I previously told you
7 you couldn't talk about this case, you're now free to
8 talk about it or not talk about it, it's totally up
9 to you. I don't have any reason to think that
10 anybody will really bug you about it or bother you
11 but if they do, tell them you don't want to talk
12 about it if that's the way you feel. If they persist,
13 please report them to the clerk of court. But again,
14 I don't have any reason to think that's going to
15 happen, I just want you to know you can talk or not
16 talk about the case. I hate to ask the clerk what
17 you should do next.

18 MS. CLERK: Report downstairs to the juror
19 coordinator, she may let them go.

20 MR. CLERK: Correct, Your Honor. Report down to
21 the jury assembly room. If anybody needs a work
22 excuse, they'll print you a work excuse downstairs
23 and then they will be released for the week, Your
24 Honor.

25 THE COURT: One of the greatest guys in this

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1 building.

2 Any questions any problems? Ladies and
3 gentlemen, thank you for your service, you're
4 excused.

5 (WHEREUPON, the jury left open court at
6 approximately 4:14 p.m.)

7 THE COURT: Any other matters we need to take up
8 now the jury has been discharged, from the Plaintiff?

9 MR. ORMOND: No, Your Honor.

10 THE COURT: From the Defendant?

11 MR. HENRY: Yes, Your Honor.

12 THE COURT: All right, if you would.

13 MR. HENRY: All right, I have several motions.

14 The first of which I move for judgment
15 notwithstanding the verdict. And a new trial nisi
16 absolute, a new trial nisi on damages and in the
17 alternative, a new trial. That's based upon the fact
18 that the evidence adduced at trial does not establish
19 a duty to file the document that they were bringing
20 this lawsuit about. And extraneous to the contract
21 that we signed. And is not an affirmative duty of
22 the lawyer to invest money in a case about something
23 the client has decided not to pursue.

24 The client had ample opportunity to go pay the
25 filing fee, which is what the case was based on,

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1 paying the fees pursuant to the contract. They chose
2 not to pay these fees. The motion was not filed
3 because of that. And there's nothing that says that
4 I had to file the motion on my own. The contract
5 specified what our duties are. That's why the rules
6 require a contract in a contingency case. And that
7 is what this is. So, there's no duty outside of what
8 the contract permits. The contract did not permit a
9 duty for what they came to court for.

10 THE COURT: All right, thank you, Mr. Henry.

11 Mr. Ormond, what do you say?

12 MR. ORMOND: Your Honor, I believe we
13 established all the elements of the case. The
14 elements are attorney/client relationship. There was
15 a failure to restore to 40J. It was disputed
16 evidence of who knew what. Whether fees were paid or
17 willing to be paid. Or even indicated to the
18 clients. This case was appealed. The Court of
19 Appeals found that if a lawyer misses -- fails to
20 restore as 40J, that is not only negligence but
21 assuming those facts to be true, but that would be
22 negligence that would not require an expert witness.
23 That's the law of the case.

24 As far as the JNOV, I don't believe, from a
25 technical standpoint, Mr. Henry renewed his directed

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1 verdict motion. I think that's required but outside
2 of that, I believe, that we presented evidence of
3 every element of the case including the value of the
4 case. As far as a new trial nisi, I assume
5 remittitur, I'm not sure what he's talking about
6 there. New trial absolute. That would be some sort
7 of prejudice or some sort of determination by the
8 jury that would be not associated or not
9 substantiated by the evidence. It was not a high
10 verdict, Your Honor. As a matter of fact, it looks
11 like they cut it to some degree, cut was questioned.
12 Then the nisi remittitur, the same argument would be
13 there.

14 THE COURT: All right. Thank you, Mr. Ormond.

15 MR. HENRY: Briefly, Your Honor, the jury did
16 find matters outside of the evidence. There's
17 nothing in this case that was presented that
18 established a duty for me to file -- for me to refile
19 the case after it was 40J. The case is governed by a
20 contract. It is not a case of word of mouth. The
21 contracts specifically states how you are to proceed
22 as far as filing and who's responsible for the filing
23 fees. And the evidence deduced at trial shows that
24 the clients were pay the filing fee. The lawyer at
25 no time took that obligation on. And the clients

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1 were aware of their obligation to do so. They signed
2 the contract willing. They paid in accordance with
3 the contract. There's no mention in the contract
4 anywhere of a 40J.

5 And so, 40J -- the duty that he's talking about
6 and the statute of limitations and all of this, none
7 of that is applicable because there's no statute of
8 limitations if there's no duty. And there was no
9 duty to just file a 40J. There's no rule in the rule
10 book that says so. There's nothing in my contract
11 that requires that.

12 THE COURT: All right. Thank you, Mr. Henry.

13 I understand the grounds for each of the
14 motions. I find there was sufficient evidence to
15 support the verdict of the jury. And the court notes
16 that many of the issues being raised by the Defendant
17 were contested. And there was contradictory evidence
18 as to a number of them. For all of those reasons I'm
19 compelled to deny those motions.

20 Anything else from the Plaintiff?

21 MR. ORMOND: No, Your Honor.

22 THE COURT: From the Defendant?

23 MR. HENRY: Yes, Your Honor.

24 THE COURT: Yes, sir.

25 MR. HENRY: At this point, I move to declare the

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1 proceedings a mistrial. And the basis of that motion
2 is as follows. First of all, Mr. Mitchell knew one
3 of the jurors, which was brought up during a bench
4 conference that was never pursued to find out what
5 the scale of his knowledge of that witness was, nor
6 did he reveal that to the Court during the time the
7 case was going. That's an issue that I needed to be
8 brought up because I mentioned that at the bench that
9 we needed to get further information from him. We
10 never did that. And that he knew one of the jurors,
11 I don't know how well but the fact that he did. And
12 the fact that we lost a juror in the case and had to
13 seat a alternate. Those are irregularities with the
14 jury. And also, with him knowing that juror, that's
15 further irregularity.

16 And we introduced evidence in the case about the
17 mediation conference. Which is clearly prohibited by
18 the mediation Rule 8. And I know they're trying to
19 rely on the exception that says that there's no
20 confidentiality to information that comes out that's
21 used to prove malpractice during the mediation.
22 There was no evidence that came out during the
23 mediation that would have supported a claim for
24 malpractice. They are harping on reinstatement of
25 the case under -- after 40J. That's not an issue for

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1 the one issue in mediation. And that issue did not
2 get addressed during the mediation as far as
3 reinstatement, that's not an issue that came up.
4 Because wouldn't have to reinstate the case after
5 mediation. Because the case was still pending during
6 that time. So, that couldn't have been an exception
7 because it doesn't even fall within the language
8 anticipated by the rule.

9 So, that's not to -- that kept all of that
10 information in the status of confidentiality. They
11 signed the confidentiality agreement with the
12 mediator as required by the -- they breached that
13 confidentiality when they brought that information
14 up. And that is unfair -- unfair presentation and it
15 works substantial prejudice on my case.

16 THE COURT: All right.

17 MR. HENRY: For that reason I move to declare
18 and enter proceedings a mistrial.

19 THE COURT: All right, Mr. Henry.

20 Mr. Ormond.

21 MR. HENRY: Oh, in addition, there was clearcut
22 evidence of perjury. And that evidence is in the
23 record in the form of receipts. Showing that these
24 witnesses lied about trying to start the case by
25 paying the fees. Understanding that they had the

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1 obligation to pay the fees in the case to get the
2 case going.

3 THE COURT: All right, thank you, Mr. Henry.
4 Mr. Ormond.

5 MR. ORMOND: Well, first of all, Your Honor, I'm
6 not sure now is the time to make the motion for a
7 mistrial. I'm pretty sure it's not. However, I
8 believe one issue was perjury. I understand that
9 Mr. Henry believes that one of the witnesses or both
10 of the witnesses stated things that were untrue, at
11 least, from his perspective. I'm sure that the
12 opposite is also true. That does tend to happen in
13 these cases. I'm not sure I have been involved in
14 those where there wasn't some of that.

15 Perjury would be a criminal issue, as you
16 indicated, that he could take that up with the
17 solicitor, if he wishes. If there's solid enough
18 evidence. I've not indicated to my clients what they
19 can do. I don't think that would be -- I've never
20 heard of that being an issue in a mistrial. Even if
21 it happened, I don't think that's an issue for a
22 mistrial. Number two, the witness, trying to recall
23 what we discussed. What my recollection is, Your
24 Honor, is that I approached the bench because
25 Mr. Mitchell said he recognized one of the jurors. I

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1 didn't ask him how well he knew him, I just thought I
2 would approach the bench. We approached the bench
3 and I do believe we discussed this absent the court
4 reporter. My recollection -- I did return to the
5 bench. I asked him how well he knew him?

6 He said, I don't know him, I just see him
7 around, I know of him.

8 That's the quote. I don't think we took that up
9 later.

10 THE COURT: I think it was our intent to take it
11 up later and find out which juror it was.

12 MR. ORMOND: Right.

13 THE COURT: Explore the relationship further.

14 MR. ORMOND: That's right. That wasn't done but
15 I'm not sure the Court would have done it or would
16 have needed to do it once they knew that Mr. Mitchell
17 didn't know the person, he just knew of the person.

18 THE COURT: Which juror was that?

19 MR. ORMOND: Your Honor, he described his shirt.
20 And I cannot, to be honest, I forgot, to be honest.
21 And I'm not sure which juror it was. It might have
22 been the one that dismissed or left. I don't think
23 it was, though. I'm not sure we ever established
24 which juror it was but he, obviously, recognized him
25 as one of people on the jury. I don't know his name.

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1 THE COURT: Okay.

2 MR. ORMOND: And Mr. Mitchell did not know his
3 name, just saw him around and knew of him.

4 As far as the alternate juror, I think every
5 third trial I'm on an alternate juror comes on.
6 There was no objection to that. If I recall, we did
7 discuss it with the Court and we were okay with the
8 alternate juror being placed on the jury venire. I
9 would have been fine with 11 or less jurors, I don't
10 know, but we had 12 jurors. The alternate, that's
11 why they're an alternate. I really don't know what
12 to say other than that.

13 THE COURT: All right. Thank you, Mr. Ormond.

14 MR. ORMOND: Your welcome.

15 MR. HENRY: There was no problem with placing
16 the alternate, Your Honor. That's not issue in the
17 case. I'm not raising that concern. My only concern
18 is I was not given an opportunity to explorer how
19 well Mr. Mitchell knew the juror that he knew. And
20 we did discuss further inquiry being made, we didn't
21 make it. So, I have a concern over how well he might
22 have known that person. I didn't get a chance to
23 explore that. If we had explored that, I could have
24 moved to strike that juror and continue with what we
25 had. But I wasn't given that opportunity. So,

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1 because of that, I think that's jury irregularity.

2 THE COURT: My recollection on that,
3 Mr. Mitchell wasn't here for the jury selection.

4 MR. HENRY: He wasn't for the jury selection but
5 he was here -- he recognized the jury today. This is
6 the first day he was here. The juror was already
7 seated. And we were in the process of going through
8 the case. We took a break -- not a break but
9 Mr. Ormond asked to approach the bench for a bench
10 conference and that's when we came up. And during
11 the conference he alerted the Court that Mr. Mitchell
12 said he recognized one of the jurors. So, I wanted
13 to know how well he knew him. I asked him, How well
14 does he know the person? And he said he didn't know,
15 he would find out. He came back to the table, we
16 resumed the trial and nobody ever got to the issue
17 because you said check with him later.

18 And during the jury qualification, that's one of
19 the issues that comes up. But because Mr. Mitchell
20 wasn't here, the juror didn't have a chance to let to
21 the court know that he knew his or her. Mr. Mitchell
22 didn't have a chance to tell the Court, I know this
23 person they may not need to be on the jury. Because
24 the juror was already seated before he came in. And
25 that was the disadvantage of him not being here on

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1 the day that the jury was selected. So, that put me
2 in the position where I've already got a jury and
3 he -- there's the taint, a possible taint, one of the
4 one jurors, that I don't get to learn about until
5 we're in trial.

6 THE COURT: All right, sir, I understand. I
7 actually don't know what the question was to the
8 juror during jury qualification. Normally, I don't
9 merely ask jurors if they know somebody. I normally
10 ask them if they are friends with somebody or close
11 acquaintances. But nevertheless. . .

12 MR. ORMOND: Your Honor, he was on the witness
13 list and that was stated to the today jury. Along
14 with other witness that were not here.

15 THE COURT: Yes, sir.

16 MR. HENRY: Your Honor, with all due respect,
17 Mr. Mitchell wasn't present. So, the juror didn't
18 have an opportunity to give any kind of answer to
19 that question because he didn't see Mr. Mitchell. So
20 Mr. Mitchell wasn't here for jury qualification, he
21 wasn't here for jury selection. He wasn't even here
22 for the first day of trial.

23 THE COURT: So, any prejudice to you, Mr. Henry,
24 at this stage, though, based on what we know or don't
25 know, would merely be speculative as whether there

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1 was any prejudice.

2 MR. HENRY: But the question is, does it impact
3 the administration of justice or is there a question
4 of it's a possibility of impacting justice. And
5 that's why they have questionnaires and ask the
6 jurors before we get started.

7 THE COURT: I understand. I understand your
8 grounds for your motion, I'm going to deny it.

9 MR. HENRY: Just make a note of it for the
10 record, Your Honor.

11 THE COURT: Certainly. Anything else?

12 MR. HENRY: That's it for the Defense.

13 THE COURT: Anything else?

14 MR. ORMOND: No, Your Honor.

15 THE COURT: All right, we're adjourned.

16 MR. ORMOND: Thank you.

17 (WHEREUPON, the proceedings were concluded.)
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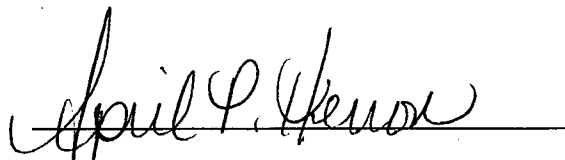
CERTIFICATE OF REPORTER

STATE OF SOUTH CAROLINA)
COUNTY OF GREENVILLE)

I, APRIL P. HERRON, Official Court Reporter for
the Thirteenth Judicial Circuit of the State of South
Carolina, do hereby certify that the foregoing is a true,
accurate and complete Transcript of Record of the
proceedings had and evidence introduced in the trial of
the captioned case, relative to appeal, in the Court of
Common Pleas for Richland County, South Carolina, on the
13-14 day of May, 2019.

I do further certify that I am neither of kin,
counsel nor interest to any party hereto.

December 16, 2019


APRIL P. HERRON, Court Reporter

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