

United States District Court Southern District of Texas

Case Number: 04-3618

ATTACHMENT

Description:

State Court Record State Court Record Continued

Administrative Record

Document continued - Part _____ of _____

Exhibit to: _____
number(s) / letter(s) _____

Other: Appendices A + B

APPENDIX A

**EXAMPLES OF NOVOTNY'S INABILITY TO ANSWER QUESTIONS
ABOUT THE EXPENSE RECORDS**

1. BY MR. ESSMYER:

Q This is a summary of expenses in the different cases?

A It appears to be. I do not believe I prepared that document, so I don't have any knowledge of what - -

Q You're talking about the second page of what's been marked for identification purposes Exhibit #80, which is part of Defendant's Exhibit #42.

A The first and the second page.

Q All right.

A I do not believe that I prepared that document.

Q But you are the one that pulled it from the Brio expense file and put it into Defendant's Exhibit #42?

A Yes, sir.

[Transcript D5, p. 30, lines 8 - 20].

2. MR. ESSMYER: If I may, Your Honor. My only question to her is, does she know whether this expense item, because the other is - -

THE COURT: She answered that she does not know.

MR. ESSMYER: Okay. And that's my only point. So, you - -

THE COURT: Okay. And it's clear she doesn't.

[Transcript D5, p. 33, lines 9 - 15].

3. BY MR. ESSMYER:

Q I'm asking you, have you gone through here to make sure there's not duplicate deductions from deductions that are made elsewhere within the documents that we

have before us? You haven't done that, have you?

THE WITNESS: I'm thinking of what I've gone through, Your Honor.

THE COURT: I understand. Take your time to cogitate.

(Pause)

A I went through the documents on the prior exhibit, #42-A. I pulled out - - I looked at the contract labor in #42-A, because we also looked at the check register and testified to the Court last week that there was some contract - - there was personnel that we had put down at Brio and hadn't been reimbursed for, and we had gone through the check register, not in court, but separately, and looked at some of those contract figures that we had never billed, we had never gotten reimbursed for, and so I did go back and look at some things. I have not verified everything on the activity report, cross-referenced it somewhere else.

Q All right. Nor have you actually added up the items, which you relied upon, was the number at the bottom of Defendant's Exhibit #42, 92021, and I believe it's page 12.

A No, I have not.

Q It's page 16. I'm sorry.

[Transcript D5, p. 34, line 4 through p. 35, line 5].

4. BY MR. ESSMYER:

Q All right. I have a couple of other questions in regards to this run, this expense run. Have you verified if the revenue number shown by 92021 is correct or not correct?

A No, I have not.

THE COURT: When you say 'revenue number', which number are you referring to?

MR. ESSMYER: \$3,684,685.92, which shows in two places. First of all, it shows on page 16 under fee.

THE COURT: All right.

MR. ESSMYER: And, secondly, it shows in the summary page, which is page 17, under revenue.

THE COURT: All right. Thank you.
And your testimony was you had not verified that figure?

THE WITNESS: That is correct.

THE COURT: All right. Thank you. You may proceed.

[Transcript D5, p. 35, line 11 through p. 36, line 3].

5. BY MR. ESSMYER:

Q You had \$127,963.22 in-house copy charges. That's what the summary page says. Is that not correct?

A It doesn't say in-house copy charges.

Q Copy charges.

A Copy charges is what the summary page says, yes.

Q What per page count or costs were you charging the clients at that time?

A For in-house copy charges, I believe we were charging 15 cents a page.

Q All right. Now, have you gone through and figured out if you've used the copies that were made in this case on, for instance, the Brio/Davenport/Galveston federal case?

A I don't believe we have. No, I've not gone through and determined that. However, based on where the Galveston case, how far the Galveston case proceeded, I don't know that we did.

Q All right. You cannot tell the Court that some of these copy charges actually are related to, for instance, the Lee case, as opposed to the Allen case?

A No, I cannot.

[Transcript D5, p. 36, lines 4 - 24].

6. BY MR. ESSMYER:

Q All right. The last question that I have, and I believed I asked you, because it's very important to a contingent lawyer because these are after-tax dollars. Why did nobody ever close out this file, close out this case? That is, say, I am taking the expenses and applying them against the revenue and, therefore, I'm taking a tax deduction for my expenses, which I've already prepaid to the IRS?

A On the accounting system?

Q Yes.

A Because Sherry left the firm.

Q All right. So, these may have been for tax purposes closed out. In other words, taken away from the revenue or properly accredited, but this file was never closed.

A The accounting system, basically - - we have a separate accounting program, or not an accounting program. After Sherry left, Sherry was the bookkeeper that brought over this program and knew it backwards and forwards. After Sherry left the firm, the system was used more as an expense, a check-writing system and expense accumulation system for the office. The tax system is done on a separate program by the CPA.

Q So, the bottom line testimony over that is, this was never finalized. Sherry left and she didn't - -

A I have no idea. I'm just telling you, I have not - - I do not know the system in terms of closing out cases. And so, if it is not closed - - to the extent that it's not closed out, then it was never finalized. I don't recall exactly when Sherry left the firm, but I know it was after the Brio settlement. And, after she left the firm, the next bookkeeper that came in used the plaintiff system, like I said, as an expense accumulation program and a check-writing system.

[Transcript D5, p. 37, line 11 through p. 38, line 15].

7. Q And so we don't really know from here how much money was associated with the O'Quinn/Lee case, do we?

A (No verbal response)

Q You can't tell if the Lee case brought in four million dollars, settled for four million dollars, at \$100 or \$2,000.

A That's correct.

Q And again - -

A From that.

Q - -we're showing expenses on a case that has been ended, and yet there's no finalization of the document, is there? There's no closeout.

A Correct, on that documents, correct.

Q Like I said, it was a long ways to Tipperary, but we really don't know what the revenue on the Lee case is from Defendant's Exhibit #42, 92027. All we know is how much money was logged there as advanced attorney's fees from John O'Quinn. Is that fair?

A That's fair.

[Transcript D5, p. 43, lines 1 - 18].

8. BY MR. ESSMYER:

Q All right. Do you know why the unreimbursed expenses weren't written off?

A No.

Q Is there a separate program for tax purposes with your firm which makes sure that those were actually written off?

A No.

Q What was done for tax purposes? Where would we go to look for those documents?

A My CPA.

Q All right. Does the CPA have a separate run, which may show whether or not these expenses were written off?

A I don't know.

[Transcript D5, p. 44, lines 6 - 18].

9. Q All right. "Let me ask you this." Why was - - did you have any reason to leave this off your summary?

A I believe that I thought - - there were - - I tried to leave off the case expenses where we were - - were the ad litem fees. I think that I pulled that thinking that there was related to the ad litem fees.

Q All right. You will agree with me, now, that that's not. That's the main file for the Aguilar/Lee - -

A Yes, sir.

Q - - Lee - - Aguilar/Lee/Melendez/O'Quinn settlement.

A I believe you're right.

[Transcript D5, p. 49, lines 14 - 24].

10. BY MR. ESSMYER:

Q Did you compare the billing from American Case Management, the \$8,137.50, to see if their billing also occurred on any of the sheets that are in Exhibit #42?

A (No verbal response)

Q You didn't, did you?

A No.

Q And in regards to Barrister Records and Reporting, you did not compare those numbers to see if any of those unpaid bills were also registered in any of the other exhibits, other pages of Exhibit #42, did you?

A What I'm saying is, the activity reports were paid invoices. These numbers came off the bankruptcy schedules as unpaid amounts.

Q I understand what you're saying, but there may have been errors one way or the other, and I'm asking you and all I'm trying to point out to the Court is, you didn't go back and check with any of these to find out whether they were listed already in the documents above or not, did you?

A No.

[Transcript D5, p. 57, lines 5 - 24].

11. BY MR. ESSMYER:

Q Was there some reason you only put one of the lines in? You didn't put the one from 2000 on.

A I don't recall. I think it might be a mistake.

[Transcript D5, p. 61, lines 17 - 20].

12. BY MR. ESSMYER:

Q Can you tell us what assigned proceeds means?

A No.

Q Now, this is the one that didn't get included, did it?

A It appears it's not on that #42-A.

Q And if we look at the first page of this document, we see settlement figures, don't we?

A Correct.

Q And we see similar figures down the side for each plaintiff, don't we?

A Correct.

Q Do you know what happened to the fees in that case?

A No.

[Transcript D5, p. 61, line 25 through p. 62, line 11].

13. BY MR. ESSMYER:

Q So, if we look at the attorney's fees attributable to Alaniz for Ms. Davenport, we find that it totals \$550,033.30.

THE COURT: Is that a question?

BY MR. ESSMYER:

Q That's right, isn't it, ma'am?

A That's what it says, yes, sir.

Q Okay. So the only point I make out of this is this document, as far as it says that the fee in this case was zero, is totally incorrect, isn't it?

A That would appear.

Q I we go to 92028, which is on your Exhibit #42-A.

A Yes, sir.

Q This is the Smithson general account.

A Yes, sir.

Q If we look at Plaintiff's Exhibit #12, 000814 again, Smithson was a Holland case, wasn't it?

A Correct.

Q So, Ms. Rainey is charging expenses - -

THE COURT: Ms. Rainey - -

BY MR. ESSMYER:

Q Ms. Davenport is charging - -

THE COURT: It's Ms. Davenport, not Ms. Rainey.

BY MR. ESSMYER:

Q Ms. Davenport is charging expenses to Smithson when it was a Robin Holland case.

A Those Smithson expenses, correct.

Q And, again, it says the fee was zero, correct?

A Correct.

Q But Smithson actually was a \$4,279,462 settlement, correct?

A Mr. Essmyer, I presented to you that Sherry had left the firm and none of these were closed out. But, yes, you're right.

Q So you can't tell the Court if any of these are accurate or inaccurate, can you, ma'am?

MS. DAVENPORT: Objection, Your Honor. Mr. Essmyer - -

THE COURT: Overruled. Overruled. That's a fair question and I want it answered.

MS. DAVENPORT: Okay.

BY MR. ESSMYER:

A I can tell you they are not finalized in terms of the settlements that came out of John Eddy's office.

Q Obviously, there was a fee in Holland, wasn't there?

A Correct.

Q And it doesn't show a fee in Holland, does it?

A There was a fee in Smithson.

Q I'm sorry. Holland was the lawyer. There was a fee in Smithson, correct?

A There was a fee to Holland in Smithson.

Q All right. Ms. Davenport testified yesterday she got a portion of the fee in Smithson, correct?

A If she testified to that, that's correct.

Q All right. And this document doesn't show any fee attributable to the Smithson case, does it?

MS. DAVENPORT: Objection, Your Honor. Mischaracterizes the full document because on the face page of Exhibit #11 there is attributable in the total fees I received, the fee in the Holland case.

MR. ESSMYER: All right. But we're talking about Defendant's #42. The question relates to Defendant's Exhibit #42.

THE COURT: Yeah, objection overruled, Ms. Davenport. What Mr. Essmyer is doing is testing the accuracy, he's testing the accuracy of Defendant's Exhibit #42.

MS. DAVENPORT: Okay.

THE COURT: So the question is a fair one to ask.

MS. DAVENPORT: All right, Your Honor.

BY MR. ESSMYER:

A There is no fee input into our Exhibit #42, into the activity report.

Q 92025, which is on #42-A. It says Brio/Reavis general account, correct?

A Yes, sir.

Q There's no case associated with this, is there?

A I beg your pardon.

Q There's no case. We can't tell what case these expenses were generated from, can we?

A (No verbal response)

Q I know it's only \$40.89 - -

THE COURT: Let her answer the question you've asked.

BY MR. ESSMYER:

A At one point we took a Brio client, I believe. When we set up this account there was a case.

Q As we sit here in this courtroom, you've said this should be charged against Mr. Rainey. You can't tell us who the client is for 92025, can you?

A Not sitting here right now, I can't.

[Transcript D5, p. 69, line 16 through p. 73, line 4].

14. Q I'm confused as to why these expenses weren't charged to the O'Quinn, 96103 of the appeal, 96106. Do you know why these weren't charged? If this is the Melendez case, it's Plaintiff's Exhibit #4, again, why they weren't sent to Mr. O'Quinn and reimbursement sought because they were all from the Melendez case at the time Mr. O'Quinn was carrying the case.

A I do not know.

Q Can you tell me what this document actually represents? You can't, can you, other than what it says on it face, Brio/Melendez general account versus Pulte Home Corp.

A What else would you want me to tell you about it?

Q Well, the main question I have is just these should have been reimbursed by John O'Quinn when he settled the Melendez case, and you don't know why, do you?

A I don't know that they were or weren't. And if they weren't, I don't know why.

Q And you don't know what the association of this accounting is to 96103 or 96106, which you've already looked at, do you?

A (No verbal response).

Q Those are the ones Mr. O'Quinn - -

THE COURT: Hold on. Hold on. You've asked her a question. I want to hear an answer.

BY MR. ESSMYER:

A I don't know what those are, sitting here. I don't have #42 up here, and if you would refresh my memory what 96103 or 96106 are, I may be able to answer the question.

(Pause)

Q Good question. It's the next document.

A Okay.

Q But these are the federal court Melendez'. You see, I'm confused.

A I do not know. I didn't set these accounts up, so I do not know.

Q All right. Is it fair to say that many of these accounts that you've tendered to the Court, you don't know the purpose for them or how they were set up, or what they relate to. That's fair, isn't it?

A No.

Q Well - -

A The purpose of them was to collect expenses in the various Brio accounts. The accounts were, as the system was, set up by Sherry Freeman.

Q All right. But you don't understand the system, obviously, because you can't tell me how 92023, the Brio/Melendez general account versus Pulte relates to the Melendez federal court case or the Melendez state court case, 96106 and 96103, right?

A The - -

Q Right?

A Not without looking at more documentation.

[Transcript D5, p. 73, line 13 through p. 75, line 14].

15. BY MR. ESSMYER:

Q And, again, you can't tell us what case this relates to, can you, this expense item?

A That expense item is set up in a - - let me see. I don't know what it's for, if that's what you're asking.

[Transcript, D5, p. 76, lines 4-7].

BY MR. ESSMYER:

Q All right. As we sit here, you have no personal knowledge what this service is for, do you, ma'am?

A Not without seeing the detail, no.

Q And you have no personal knowledge of what case this should be charged to within the Brio cases, do you?

A 92021

Q Well, 92021 is which case? That's the Brio/Allen general account, right?

A Okay.

Q And we've already covered that, right?

A Well, this is a subaccount form 92021, which is why it says 92021-9999.

Q You can't tell me why there's no subaccount, though, can you?

A Because Sherry set up a subaccount.

Q Okay. But you have no personal knowledge why there's a subaccount, do you?

A No, I do not.

Q 9022

A 92022?

Q 92022.

A Okay.

Q Brio/Anderson general account. What was the Anderson case?

A I don't recall.

Q Was the Anderson case settled by Mr. O'Quinn?

A I don't recall.

Q Was the Anderson case settled by Williams & Bailey?

A I do not recall.

Q Was the Anderson case one of the cases which Ms. Davenport had reached an agreement with Mr. Rainey over?

A I do not recall what the Anderson case was.

Q But you have included the Anderson case in your summary of expenses.

A I believe the Anderson case might have been like the Williams case, where a client came in and we did not ultimately sue on that client.

Q But you don't know that as we're sitting here, do you, ma'am?

A No, sir, I told you I don't recall.

[Transcript D5, p. 77, line 7 through p. 78, line 21].

17. BY MR. ESSMYER:

Q But the billing on this for No.2, Abigail Lindsey, is for contract labor, is it not?

A Correct.

Q And you can't tell us what that contract labor was doing, can you?

A Not looking at this document, no.

Q In fact, it's sort of out of place. It's the only thing on the after [sic] December 31, 1999 document, isn't it?

A It is the only thing on the document.

Q Was a case even ongoing at that time?

A Which case?

Q That's because you can't tell what case it's associated with, can you?

A It's a general account set up.

Q General account for what?

A Mr. Essmyer, I'm looking at the same document you are. I don't have the detail of it behind me.

Q And you didn't look at the detail before you prepared your summary shown by #42-A, did you?

A No, I did not.

[Transcript D5, p. 79, lines 5 - 24].

18. BY MR. ESSMYER:

Q And while we're on that subject, though, there was a fee in the ad litem case, wasn't there?

A No, there was no fee.

Q There was never a fee?

A Well, there were fees. There were just not expenses. We did not get any of our expense money.

Q Right, but the Court did give fees, and this shows no fees, again, right?

A Correct.

Q So there's another instance where the runs are wrong, right?

A Where the runs are incomplete.

[Transcript D5, p. 81, lines 10 - 21].

19. BY MR. ESSMYER:

Q All right. You have not looked in the 92020-99, Brio general overhead account, to find out if the fees - - I'm sorry, the expenses - - I keep calling them fees. The expenses that went along with the Benjamin Greek case were not included in the general Brio overhead account, have you?

A Did the general Brio overhead account have expenses in 2002?

Q What I'm asking you, ma'am, did you - -

A No, I have not made that search.

Q And you don't know if these expenses, which are shown by this document, which is in your Defendant's Exhibit #42, aren't packed in with - - would you - - let me restate it.

You can't tell the Court that those aren't in the other numbers before the Court, right, can you?

A I have not made that search.

[Transcript D5, p. 83, line 16 through p. 84, line 5].

20. Q Ms. Novotny, Mr. Wells did not spend 100 percent of his time on Brio, did he?

A He was working down at John Eddie's office. I don't know what else he would work on but Brio down at John Eddie's office.

Q I'm sorry. Perhaps my question wasn't clear.
Do you know if Mr. Wells' time was spent 100 percent on Brio?

A I do not know.

Q But, his time was 100 percent billed to Brio, wasn't it?

A I believe he was down at Brio.

Q It was - - the question though is; did you bill 100 percent of his salary to Brio?

A I do not know.

[Transcript D6, p. 25, lines 5 - 18].

21. BY MR. ESSMYER:

Q Well, it's true that Mr. Demewsio was doing the same thing, wasn't he?

A No, I don't know that. I think Mr. Demewsio was hired to work on Brio.

Q All right. You know - - I'm sorry.
But, you do know?

A To my recollection, Gary Demewsio worked on Brio.

Q All right, 100 percent. Never worked on another case a day in his life. If I bring you the document with his name on a Pleading, it would be a surprise to you?

A I'm just saying from what - - my answer was; from what I remember, Gary Demewsio worked on Brio.

Q And his entire salary was walled. Even if he was working on something else trying to help out in an emergency.

A Uh-huh. I can't speculate on that. I don't know.

[Transcript D6, p. 27, lines 6 - 20].

22. BY MR. ESSMYER:

Q Let me say it another way.
Some of that office space was used for other cases as the time arose and as the occasion arose, was it not, Ms. Novotny?

A I don't know that. I believe it was rented for Brio.

I believe that the Brio file was worked on in those offices - - in that space.

Q You were the office manager, weren't you, ma'am?

A Yes.

Q So, if you don't know, who would know?

MS. DAVENPORT: Objection, your Honor, ask and answer. She stated - -

THE COURT: No, that objection I'm going to overrule. I need to hear an answer on this.

THE WITNESS: I ran the office because no one else did. Okay. I did not ride heard over everyone's task list.

I know that we took on that additional space as Brio space and we had *Brio* boxes and file cabinets and paralegals there to work it.

I don't know if they worked other files. I don't believe that space - - in that space. I think the people we put in that space were put there to work on Brio.

We had other paralegal space in the front offices that worked other files.

[Transcript D6, p. 35, line 12 through p. 36, line 11].

23. BY MR. ESSMYER:

Q Do you have Defendant's Exhibit 35 in your hand, ma'am?

A Yes, sir.

Q Do you have personal knowledge as to what specifically was the purpose for the payment Mr. Rainey by the Davenport Law Firm of \$10,000.00 shown by Exhibit 35?

(Pause)

A I know that this was outside of his salary. It was an extra bonus check - -

Q Right

A - - some type of additional money given to Ron at this time.

Q That's all you know, isn't it?

A That's what I know.

Q You don't know if it's for Brio work or some other case, do you?

A I - -

Q You can't - - you don't have personal knowledge of that other than what your sister - - Ms. Davenport has told you; is that fair?

A I know it was not for another case.

Q All right. You don't know what this is for other than it was not his regular salary, correct?

A Yes.

Q And the same thing is true of Exhibit 36, isn't it?

A Yes.

MR. ESSMYER: I object that she has no personal knowledge that this be deducted from Brio money - -

THE COURT: Well, she said she knows that it was not for any other case. So I'm assuming by that answer that she is - - that I am to infer from her testimony that she does know that it was for Brio related.

Am I correct?

THE WITNESS: It was - - it wasn't an - - it wasn't another case payment. Okay? I know that much. I don't - - it was extra money paid, like a bonus, when we had some money, it was paid to him. But I - what - - I don't know that it was out of - - it wasn't out of a Brio settlement.

Do you understand what I'm saying?

Ron got certain payments out of referrals or something like that. This was not that kind of money. This was extra money over and above his paycheck. That's all I really can tell you.

THE COURT: So you don't know whether it has any connection with the Brio litigation or not?

THE WITNESS: I don't recall that it was paid as a Brio advance or bonus.

THE COURT: All right. That's Exhibit 25 - - Exhibit 35. How about Exhibit 36?

THE WITNESS: Both of those were paid close together, within - -

THE COURT: Do you know - - do they have anything to do with the Brio litigation? Do you know one way or the other?

THE WITNESS: I don't know one way or the other.

THE COURT: All right. Then I'll sustain the objection.

[Transcript D6, p. 109, line 9 through p. 111, line 13].

APPENDIX B

**CROSS EXAMINATION OF NOVOTNY REGARDING
GROSS FEES AND GROSS EXPENSES**

BY MR. ESSMYER:

Q Now, if I follow what you've argued to the Court here today, from Plaintiff's Exhibit 11, first page. You're arguing that the 932,117.10 which was administrative - - split administrative costs with Williams and Bailey should be deducted.

A Did you take that back?

(Conversations Held off Record)

Okay. I'm sorry. Now, the split administrative costs?

Q Yes, should be deducted.

A I don't know where you're - -

Q They should be an expense related to Brio.

A It doesn't have anything to do with this, the question you're asking me.

Is that correct?

Q I'm asking you if your argument to the Court is; that this 932,117.10 should be an expense directly attributed to Brio?

A Oh, I didn't know where that was. I'm sorry. Okay. I see it.

Q Well, I still need an answer.

A Yes.

Q All right. And I take you also - - this is from your document, Defendant's Exhibit 42 - - 42 A.

That's your argument that the 1,423,429.77 in Valorie Davenport administrative expenses for the Brio litigation.

Do you want to see the 42 A?

A Yeah - - I'm not.

Q That's the number you have listed on it unless I wrote it down wrong.

A But, - - okay. That is the number I've listed on 42 A. I think we agreed there was a mistake on one of the - -

Q Well - - before you do that, you get this number, correct?

A Correct.

Q And then I believe from Defendant's Exhibit 52 A; you urge that there's another 140,278.76.

Now, I understand we had the argument or dispute over questioning whether that's duplicate of the others and we don't know.

But, all I'm saying is; that is the number you want as a Brio expense from Defendant's Exhibit 52 A.

Correct?

A Well, I believe I told you that it wasn't - - I didn't believe it was a duplicate expense because the expenses on 42 had been paid and those are off the Bankruptcy Schedules which have not been paid.

Q All right.

A So, they would not be duplicative of what's in 42.

Q That is the number on 52 A.
Correct?

A Correct.

Q If you add these (indicating) up and you subtract it from this (indicating) number, you come up with \$3,717,473 - - I'm going to round it off.

A I have no idea.

Q What - - you need a pencil and paper so you can - -

A If you want me to add it, I do.

MR. ESSMYER: May I hand it to the witness, your Honor?

THE COURT: You may.

THE WITNESS: I'll write it down.

BY MR. ESSMYER:

Q Would you like a calculator also?

A No, I can do it.

(Pause)

Okay. That's close.

[Transcript D6, p. 38 line 21 through p. 41, line 10].

APPENDIX C

THE DEBTOR'S COMPLAINTS ABOUT RAINEY

1. BY MR. ESSMYER:

Q All right. Did you have any complaints in regards to his work on the Allen case?

A Yeah.

Q And what was that?

A Ron - - I thought - - well, first of all, I thought Ron was a lot better manager than he was. And he had a lot of problems because he'd wait till the last minute and then he would want everybody to come in and answer like 150 sets of interrogatories over the weekend and people would have things to do and they wouldn't want to do it and he wanted to fire them.

Q All right.

A Like LaDonna (phonetic), and then they'd get real mad and they'd get mad at Ron. You know, and Ron is brilliant. Ron really is. He's a great researcher, but he is also really bad in terms of time and he's a sweet guy.

Q Right.

A But he's just not - - he doesn't do things like that well. And when he went down to join in, he had a lot of problems.

[Transcript D1, p. 32, line 22 through p. 33, line 15].

2. BY MR. ESSMYER:

Q In the time frame from July of '96 through September the 1st or September the 15th of 1997, were you having financial problems?

A Cause[d] (sp) by Mr. Williams pulling the funding and Mr. Rainey not taking the depositions and doing the work he was supposed to be doing.

Q So I take that as a "yes?"

A You're right.

[Transcript D1, p. 134, lines 6 - 13].

3. BY MS. DAVENPORT:

And then when that money - - when he was down at John Eddie's office and he was not as effective and he was afraid - -and he kept calculating.

[Transcript D1, p. 150, lines 3 - 6].

4. BY MR. ESSMYER:

Q Let me go back on - - let's start with some of the easy ones.

You say he's contributorily negligent because he caused you to lose your funding from Williams and Bailey; is that fair?

A Yes.

[Transcript D1, p. 162, lines 17 - 22].

5. BY MS. DAVENPORT:

Well, it doesn't matter when I - - when I lost my funding if Mr. Rainey did not perform the duties that I hired him to perform in a reasonable manner.

[Transcript D1, p. 163, lines 1-3].

6. BY MS. DAVENPORT:

I mean, I don't think - - I don't think Ron worked that case like I thought he should have worked it and I told him to work on it, but at the same time, I don't have any problem with Ron getting 10 percent out of the Allen litigation.

[Transcript D1, p. 166, lines 8-11].

7. BY MS. DAVENPORT:

But, for example, I filed a motion under our Texas Rule 76(a) and it wasn't set for a hearing. I mean we did end up - - we got the right to the documents, but I was the one who finally had to go in with the other side and say turn these over, because I couldn't get Mr. Rainey to move forward on those kind of critical things.

[Transcript D3, p. 180, lines 10 - 15].

8. BY MS. DAVENPORT

Ms. Davenport: But Ron was frustrated in watching the value of the case drop and he was concerned about his money.

The Court: Well do you think he was negligent?

Ms. Davenport: You know - -

The Court: Was he not fulfilling the duties that you expected him to fulfill?

Ms. Davenport: Yes, your Honor.

The Court: All right.

Ms. Davenport: And I actually think he was more timid than I thought he would be. You know, and I don't know if - - if you don't judge somebody's character correctly, if that's really negligent. But if it's - - if he didn't have the wherewithal to stand up and assert his ideas and take his position forward, maybe that's not negligence, maybe I just made the wrong call - - I have somebody playing in the wrong position. You know?

[Transcript D3, p. 181, lines 3 - 18].

9. BY MR. ESSMYER:

If Mr. Rainey - - you testified Mr. Rainey was negligent in the Brio litigation, ma'am. Correct?

A Yes.

Q If he was negligent, why did you want him back on the case?

A Because I knew what I could use what Ron did well to prevent extraordinary expenses in finalizing the Galveston litigation.

Q It's true, is it not, ma'am, that you never sent him a letter saying; your work is deficient? There is no written document that says; Mr. Rainey, your[you're] (sp) negligent - -

A No.

Q -- is there?

A No

[Transcript D4, p. 18, lines 3 - 17].