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SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK CIVIL TERM PART 30

-----x
KEVIN AND JUANITA VENESKI,

Index
100011-98

Plaintiffs

-against-

QUEENS-LONG ISLAND MEDICAL GROUP, PC and
LAURENCE SOKOLOSKY, MD,

Defendants.

-----x

60 Centre Street
New York, New York
July 24, 2007

B E F O R E:
HONORABLE SHERRY KLEIN HEITLER,
Justice

A P P E A R A N C E S:

FOR THE PLAINTIFFS:
HARRIS D. LEINWAND, ESQ.
350 Fifth Avenue
New York, New York

FORMER ATTORNEY FOR PLAINTIFFS:
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299 Broadway
New York, New York 10007

CLAUDETTE GUMBS, Senior Court Reporter
60 Centre Street
New York, New York 10007
646.386.3693

1 Proceedings

2 THE COURT: Please be seated.

3 Go first, Mr. Cousins, for Veneski.

4 MR. COUSINS: Your Honor, this is a
5 motion by plaintiffs' original attorney, Mr.
6 Cousins, me -- I hate to talk in the first person
7 --

8 THE COURT: Exactly.

9 MR. COUSINS: -- to request at least a
10 temporary vacature of your order of January and
11 the hearing which you had indicated unequivocally
12 you would hold before rendering the decision on
13 the original motion because of your statements
14 made on a number of appearances, either without
15 counsel or when Mel Sacks represented me, we
16 understood and I -- both Mel and I understood
17 that you were going to hold a hearing and we had
18 a great, great deal of evidence to present at
19 that hearing, bearing on the issue not only of
20 compensation but more importantly, to address the
21 Court's concern of why I proceeded in the matter
22 in which I proceeded with respect to the Veneskis
23 and when the decision came down about the
24 hearing, I made a motion -- one of my great
25 concerns was that the record on appeal was
26 woefully inadequate because it didn't contain

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2 scores of documents which were relevant to
3 answering the question of why I did what I did
4 when I did it.

5 What the Court didn't know at the time,
6 because it didn't have the information, both
7 evidentiary and testimonially, is that when I
8 accepted a gift from the Veneskis, and had Kevin
9 sign a US federal gift tax return, it was the
10 only way at the time I could protect him from
11 this Thomas A DiClemente.

12 THE COURT: Excuse me.

13 Are you part of the hearing?

14 MR. COUSINS: Yes, that is Mr. Veneski.

15 MR. VENSKI: I am Kevin Veneski. This
16 is my wife, Mrs. Juanita Veneski.

17 MR. COUSINS: I am happy. I have not seen him
18 in months. Years.

19 The situation in which I found the
20 Veneskis, through absolutely no fault of theirs
21 or mine, began not in the order in which I
22 learned it, but in the following chronological
23 order. Thomas -- Thomas DeClemente who owns
24 many companies, he is not a member of the New
25 York bar, he is a member of the New Jersey bar,
26 who as we speak is now in his third month of

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disciplinary hearings in Trenton based on a formal complaint which I have attached as an exhibit for conduct which is very similar to what he did involving the Veneskis, Brandes, Rogovin and myself, but it is not the same conduct; it had to do with the same forgery, misrepresentation, theft by deceit involving Bridge View Bank in New Jersey, forging the signature of its bank president, creating a power of attorney and that touches on something that he did here and also, lending money to sitting judges in Superior Court, Bergen County who he then had decide numerous cases involving himself and his corporations and I mention those not to besmirch anybody, but those are the actual proceedings going on in Trenton as we speak and the first count of the complaint against him is the forgery and giving people mortgages -- misleading them into believing that he had mortgages from Bridge View Bank when in fact he was lending them the money at three points greater than the bank was then charging and when the people were sending in their mortgage payments each month to the bank, they thought they were putting down their mortgage account

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numbers, what they actually were were DeClemente's various savings accounts that he had set up in the bank and this went on for a number of years involving different commercial real estate transactions.

How he finally got caught is one of the people whose property was mortgaged in the belief that it was Bridge View Bank was three doctors in New Jersey. One of them wanted to retire and the other two decided to buy him out, redo the office and refinance the property. So they had an attorney who contacted Bridge View bank and either directly spoke with Mr. Buzzetti, Albert Buzzetti, the president or speaking to a secretary and Mr. Buzzetti was standing next to the telephone, but to make a long story short, the question was posed by the attorneys, should we still deal with your attorney, your meaning Bridge View Bank's attorney Thomas DeClemente, and in the words as been reported to me, Mr. Buzzetti said he directed to his secretary and I quote and forgive me for being in quotation marks "Who the hell is Thomas DeClemente?" And that is of course what led to his indictment by a Bergen County grand jury for forgery, theft by deceit,

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et cetera.

Mr. DeClemente avoided going to trial by going into something we don't have here in New York. They have a program in New Jersey called the Pretrial Intervention Program, where, if a person agrees to go into rehabilitation, counseling and therapy and follow the orders of the court in connection therewith, at the end of the probationary period, the Court dismisses the case. You are allowed to do that just once and once only in your lifetime and Mr. DeClemente got into that program and so, the case never went to trial. At the end of his probation and rehabilitation, the charges against him were dismissed.

Your Honor, I speak at this point from virtually either firsthand knowledge or knowledge so directly from the sources that it is practically the same thing. That indictment and the ultimate dismissal of it in the New Jersey Pretrial Intervention Program triggered a phone call from the Bergen County prosecutor's office to the Office of the Attorney Ethics in Trenton, which led to a lengthy, lengthy investigation. To that point I knew nothing of it.

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2 In March of 2006, I believe it was
3 March 30th exactly, the Office of Attorney Ethics
4 of the New Jersey Supreme Court filed formal
5 disciplinary proceedings against Thomas
6 DeClemente, containing basically in Count 1 a
7 recitation of the Bergen County indictment,
8 involving Bridgeview Bank and the forgeries and
9 the power of attorney and his scheme to obtain
10 funds from people who thought that the bank had a
11 mortgage on the property.

12 Count 2 involved Bergen County Judge
13 named Judge Sciuto, who was censured and found
14 guilty, but he resigned and -- waived a hearing,
15 but they found the charges so serious they went
16 through a complete hearing in New Jersey Supreme
17 Court anyway, and Mr. DeClemente, who is a
18 litigation funder and a funder of other sorts,
19 was -- arranged through family, both in the
20 States and in Italy, to lend money to the judge,
21 this Judge Sciuto who was then sitting on Mr.
22 DeClemente's cases involving Legal Asset Funding,
23 First England Funding. He has another one called
24 -- Legal Capital, LLC and deciding the cases, as
25 you might suspect, in favor of plaintiff
26 DeClemente.

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And Mr. DeClemente's name appears prominently in the decision of the New Jersey Supreme Court and I mention that because that constitutes Count 2 of the disciplinary proceeding against Mr. DeClemente that is pending as we speak and has been going on since March 30th of last year.

The actual hearing itself began in June of this year, continued into July, and is continuing in September. Whether it will end in September or go into October, I will be informed, but at this moment I don't know, but the information that I am giving you is 100 percent accurate, coming direct from the Office of Attorney Ethics in Trenton with whom I have been cooperating since I first learned of the events in the case and learned of what was going on there.

Now, when Kevin Veneski and his wife first approached me to represent them in Veneski versus Queens/Long Island Medical Group, we had a number of things we wanted to do and were both committed to doing: Number one, I wanted to get them the largest recovery I could, commensurate with Mr. Veneskis injuries and Number 2, we both

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2 wanted to challenge the constitutionality and the
3 ethics of the sliding scale fee system that we
4 have since I think it is 1958, Judicial Law
5 Section 474(a)2, and the reason for that is the
6 second a client signs a retainer with a lawyer in
7 New York, that under statute, there is a conflict
8 of interest because the more the lawyer recovers,
9 the less his fee is. The more he invests in a
10 case to get the maximum recovery for the client,
11 the less his return on the money.

12 So, the incentive -- under that retainer
13 a lawyer is disincentived to get maximum recovery
14 for his client. I personally have discussed this
15 with numerous members of the bar and I sit on one
16 of the committees of the bar involving medical
17 malpractice and in fact we are meeting tomorrow
18 night at 132 Nassau Street but the other thing
19 that I want to do, because I am a sole
20 practitioner I have been with Lipsig. I have
21 been with Fuchsberg seven years. I was with
22 Schneider Klieinick and Weitz, all phenomenal
23 firms, but I don't have a volume practice. I
24 don't have a volume practice. I enjoy a small
25 practice, being able to handle every aspect of a
26 case from initial intake through depositions,

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2 pleading, trials, appeal; everything that has to
3 be done on a case and I enjoy getting to meet my
4 clients, most of whom I remain friends with my
5 entire life.

6 Mr. Veneski felt the same way. In fact,
7 when our case was completely over, completely
8 finished, he had no reason to -- he was not
9 beholden to me in any shape, manner or form. On
10 his own, I didn't know about it, Mr. Veneski went
11 to Washington DC to visit with members of
12 Congress and their staff to speak out against the
13 federally imposed caps. That has nothing to do
14 with legal fees in New York, has nothing to do
15 with New York at all. He did it because, as you
16 know, the federal government has been trying to
17 pass caps to curtail or basically limit the
18 rights of medical malpractice victims throughout
19 the United States and Mr. Veneski feels so
20 strongly about that that he went to Washington,
21 DC and met with members of Congress and their
22 staff under a program that was sponsored by the
23 American Trial Lawyers Association and they will
24 only permit people to go whose cases are
25 completely over.

26 Mr. Veneski went. I didn't go, had

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2 absolutely nothing to do with it and he came back
3 and told me it was one of the most rewarding
4 experiences of his life, he was very glad he went
5 and felt it was very important. He met numerous
6 other people who had been victims of medical
7 malpractice and there was -- so this was our game
8 plan and the other thing I wanted to do and for
9 this I tell you I am very grateful to Judge
10 Sklar. I wanted to demonstrate to other members
11 of the medical malpractice bar that if we took a
12 case and ran with it like Jimmy Brown or maybe --
13 but on the football field he was pretty fast, and
14 that was OJ Simpson, but if we took a case and
15 ran with it like crazy and never let it sit, we
16 could get the absolutely top dollar for our
17 client without having to deal with the draconian
18 effects of Judiciary Law 474(a)2.

19 By that, you can do everything that
20 needs to be done, lay out whatever amount of
21 money is required to do it and get the case
22 resolved and get your money out and go on to the
23 next case and still make a living and do the best
24 job you can for your client without having to put
25 your own self interest, which is understandable,
26 but it conflicts with your clients, putting your

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own self interest ahead of the client because of the staggering amounts of disbursements that a medical malpractice cases requires. The average figure is probably a hundred thousand. The Veneski case in disbursement was well over that and I put virtually every other case aside and in one year, with Judge Sklar's assistance, did everything on this case. There was no stone unturned. Every motion that should or may have been made that was appropriate was made. Every deposition that should have been taken was taken. There was nothing -- no corners were cut. I dotted all -- crossed all of my t's and dotted all of my i's and brought the case to the point where the day of jury selection -- first of all, I did it all within one year, from beginning to end and got it on the calendar.

When the case came up for trial, I had mastered the medicine so thoroughly, which involves Coumadin, warfarin, mitral valves and a score of multitude of different disciplines, the day of jury selection in 1999 December, the defendants actually conceded liability. I had had two different doctors both employed by the defendants testifying against each other; the

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2 cardiologist Lisa Shepherd who wrote the INR
3 order to maintain the patient's Coumadin range
4 within a certain parameter, high and low, and the
5 defendant Sokolsky, who didn't follow it.

6 So, it is almost unheard of and I know
7 your Honor has heard many, many malpractice
8 cases, for defendants to concede liability before
9 trial. It may settle during trial, but to
10 actually formally concede liability in a medical
11 malpractice case in my -- this is the only case
12 it has occurred in my entire career which now
13 spans approximately 35 years.

14 Had it not been for the -- the verdict
15 came in in February of 2000 and I dare say and I
16 cannot say with certainty, had it not been for
17 the reversal on appeal but more importantly, the
18 collapse in solvency of Medical Liability Mutual
19 Insurance Company, I would have been able to
20 recoup, bring this case to a conclusion, get the
21 absolute maximum recovery possible from the
22 defendant; that there was three million in
23 policies and still get my money out and make a
24 small profit, keep my office open, pay my rent
25 and do that which I love to do more than anything
26 else in the world, which is to represent injured

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2 people with meritorious cases. That is what I
3 live for.

4 The -- had it not been for the collapse
5 of group counsel and then the stay and you know
6 the story, I think it would have been documentary
7 evidence that you can take a small number of
8 cases, do everything, work them to perfection,
9 bring them to trial, win them, even win the
10 appeals and still come out having made a few
11 dollars on the case, because obviously we still
12 have expenses, overhead and everything else.

13 Where things went wrong here and it had
14 nothing to do with Mr. Veneski, had nothing to do
15 with me, one of the funders from whom I had
16 obtained funds and I dealt with this person
17 before, Thomas DeClemente, I had dealt with him
18 in a case Overeem against Neuhoff, N-e-u-h-o-f-f,
19 that was the only time and I had problems with
20 him. They charge usurious interest rates, but I
21 had no problems with him and the reason was
22 another -- another competitor plaintiff,
23 DeClemente, who was a former client of his Core
24 Funding Group, originally of Ohio. Then they --
25 now they are presently in Texas had nothing to do
26 with the case. When the case was over, whatever

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I owed him I paid him with the interest and he testified there were no problems in the case and I say testified, because he was examined under oath in New Jersey by someone else in the lawsuit pending before Judge Olivieri.

So, the second case I had occasion to deal with Mr. DeClemente was the Veneski case. Unbeknownst to me and certainly unbeknownst to Mr. Veneski, Thomas DeClemente, in addition to being a litigation -- predatory lender, litigation funder, is also an attorney and in that capacity as an attorney, he represented Core Funding, another litigation funding company in a lawsuit against Allstate Insurance Company in Hudson County. Mr. DeClemente won the case and then went back to Core Funding and indicated he wanted a higher fee. He wanted to renegotiate the fee arrangement. It apparently was a commercial transaction and Core funding, whose president is Tom Emmick, E-m-m-i-c-k, and I try not to use the first names, Tom DeClemente and Tom Emmick et cetera et cetera et cetera.

DeClemente after he won the case, went back to Emmick to try to renegotiate the fee. Emmick refused, saying you agreed to what you

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2 agreed to and we paid you and that is the end of
3 it. DeClemente then brings a lawsuit against
4 Core Funding and tomorrow Emmick personally in
5 Hudson County Superior Court which is the county
6 where Mr. DeClemente's office is presently
7 located in Secaucus.

8 The suit was successful and rather than
9 appeal it, Mr. DeClemente turns to what Judge
10 Olivieri refers to as self help. Core Funding,
11 who had loaned me some of the money for the
12 Veneski case and also, had done one prior case
13 with me in which DeClemente was not involved and
14 who I had an excellent relationship with, Core
15 Funding had an interest as collateral only in a
16 case that I am handling called Brandes before
17 Judge Weiss in the Supreme Court, Queens County,
18 Brandes against North Shore University Hospital.
19 DeClemente also had a security interest in that
20 case, strictly in case I lost the Veneski case,
21 which is I am possible, because by the time Mr.
22 DeClemente advanced one cent to me on the Veneski
23 case, liability had already been conceded, but
24 not truthfully, because it is redundant, but when
25 Core Funding loaned me money to handle the
26 Veneski case, that was way back at beginning

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2 before liability was conceded and they indeed in
3 fact took a risk. If I lost the case while I
4 still owed them the money, it was a loan, not an
5 investment. Nevertheless, it would make it more
6 difficult to repay the loan. So, Core Funding
7 had security interest -- in just plain English,
8 collateral in some of my other cases. So if I
9 lost the Veneski case, they still knew there
10 were funds coming in to be paid back and that was
11 reasonable and I didn't have a problem with that,
12 but because of the bad blood between Emmick and
13 DeClemente, DeClemente decides I will use the
14 term self help, he is not going to pursue the
15 lawsuit that he had brought against Core Funding
16 in New Jersey.

17 He decides he is going to steal in
18 excess of one million dollars of my legal fee or
19 prospective legal fee in the Brandes case. And
20 he does this through a series of forged
21 documents, letters to Fumuso, Kelly, DeVerna,
22 Snyder, Swart and Farrell in Long Island. They
23 represent North Shore University Hospital and a
24 number of other defendants in that case which is
25 pending and we are not far from trial now before
26 Judge Weiss.

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2 In his letters, and these are all in
3 evidence, so I am not saying anything that you
4 have not seen at least half dozen times, in these
5 letters Mr. DeClemente states unequivocally that
6 he purchased and I quote purchased my entire
7 legal fee in the Brandes case.

8 THE COURT: What I really would like to
9 know, Mr. Cousins, if you could move towards why
10 we are here today. I am aware of the fact that
11 there were issues between you and Mr. DeClemente
12 and possibly other litigants in various cases,
13 but I would like to bring it forward now to what
14 we are dealing with today, which is your motion
15 for renewal and/or reargument on the motion.

16 Go ahead, sir.

17 MR. COUSINS: I would like to jump
18 forward to 2004, which is when I had to make a
19 decision; either I press my application for
20 increased compensation at your Honor's
21 discretion, or I put my self interest aside and
22 go to the aid of my friends and clients the
23 Veneski family, with whom I have become very
24 close. I have been a guest in their home many
25 times. I know their children. I happen to adore
26 both of them. I admire Kevin beyond belief for

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his recovery, especially from his 1988 automobile accident and we were like two peas in a pod and as close as people can be and I consider them my dear friends to this very moment.

THE COURT: So what happened Mr. Cousins? What happened that their attitude no -- what happened for -- using your expression, to the two peas in the pod, to take this type of a turn? What happened?

MR. COUSINS: I -- I don't mean pressured. I urged, strongly urged Mr. Veneski to hire Harris Leinwand, because I could not represent Mr. Veneski in my bankruptcy against myself and before doing so, I had -- I don't do bankruptcy and I don't know any bankruptcy lawyers. I am coming right -- I am answering your question directly, leaving out a lot as to how it got to that point and I asked Jim Glucksman of Rattet Pasternak in White Plains if he could recommend a bankruptcy lawyer who would represent the Veneskis -- represent their interests in my bankruptcy and he had indicated that he previously a number of years earlier worked for Harris Leinwand and I asked him would Mr. Leinwand represent the Veneskis for

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2 absolutely no more than \$5,000 because there was
3 only one thing for him to do there and that was
4 to show -- he needed a Metrocard to get to court
5 and a Timex watch to be there on time. I had
6 already done all of the work and the thing to do
7 was to argue the motion that I had already made
8 to dismiss the New Jersey action against the
9 Veneskis for lack of jurisdiction. And Mr. --
10 there are e-mails a quarter of inch high thick
11 confirming all this. Mr. **Leinwand**, whom I spoke
12 with, spoke to Mr. Glucksman and **confirmed he**
13 **would do it and charge absolutely no more than**
14 **\$5,000**, because the one thing that drove me and
15 drives me constantly and is the reason for every
16 single thing that I have ever done here is I
17 don't want, I still don't want to see the
18 Veneskis have to take the money that Kevin needs,
19 the recovery from his medical malpractice case
20 and pay it to lawyers defending the lawsuit by
21 Core Funding in which Kramer Levin represents
22 Core Funding or pay it to any lawyers. I do it
23 for free and I have defended the Veneskis
24 successfully now for two years now.

25 I am a member of the federal court in
26 Pennsylvania. I was admitted pro hoc vice in New

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2 Jersey, Hudson Superior Court and I never charged
3 them a penny. I have no intentions of charging
4 them anything and I have done this because they
5 are the dearest, sweetest people and one of the
6 nicest clients I have ever had. Kevin may not
7 understand everything that I have done or why I
8 have done it, because I have kept him as far away
9 from this DeClemente as it is possible to do.
10 He knows nothing. He has -- does not know
11 anything about my financial arrangements, is not
12 a party to any of the contracts, but Mr. Leinwand
13 had a slightly different agenda.

14 After agreeing with both me and Jim
15 Glucksman to represent the Veneskis and do what
16 was asked of him for \$5,000, he did not do it.
17 When the case was remanded back to New Jersey
18 Superior Court, I sent e-mails and asked him to
19 please make the motion. Bear in mind I had
20 already won the case in Pennsylvania, just res
21 judicata, they are out, finished, just a
22 mechanical action. It was free for the asking
23 and I actually spent all of Christmas/New Year's
24 last year -- I made the motion myself because he
25 refused to do it in New Jersey, to dismiss the
26 action against the Veneskis and I sent him a

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2 e-mail putting him in a corner, saying would you
3 make a motion, and he sent me an e-mail 2 to
4 3 inches high and on the screen it is in color
5 and he sends me this huge e-mail response which I
6 can print out, but it would be black and white,
7 no, I will not make the motion and he has been
8 keeping them in this case -- I have seen some of
9 his bills. I don't know if they have all been
10 paid, but I have seen the bills.

11 THE COURT: What is the answer to my
12 question? Why are the Veneskis now taking a
13 position that they are no longer peas in a pod,
14 using your expression, with you?

15 MR. COUSINS: Because Harris Leinwand
16 who is coordinating the whole thing coming right
17 to the -- and I know exactly what this is. Mr.
18 Veneski gave Mark Adler, a New Jersey attorney, a
19 fine attorney, member of both New York and New
20 Jersey bars and former ADA in Nassau County,
21 specific instructions, that is, Kevin doesn't
22 want anything back from me. He intended to give
23 me the gift which I used to get him out of a New
24 York lawsuit brought by Core Funding and -- but
25 you asked me to skip a lot, so I am. If it
26 seems a little disjointed, forgive me.

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So --

THE COURT: I didn't ask you to skip a lot. I asked to you get to this motion, which is a very specific motion, Mr. Cousins.

MR. COUSINS: Had Harris Leinwand done what he was asked to do, the Veneskis would have been out of the this case over a year ago. Instead, he has billed over -- approaching a hundred thousand dollars already and has not done anything that he was asked to do and I did everything so the Veneskis would not incur any expenses. They don't owe Thomas DeClemente anything, but where the idea came from and I am sure this is DeClemente's idea in the letter which is an exhibit that your Honor has, and that Mr. Veneski wrote in his own handwriting, I didn't know anything about it, to Mark Adler, he said I gave the gift to Mr. Cousins. I intended to. I want him to have it and I do not want it back. The only thing I want Mr. Cousins to do is indemnify us if we are required to pay anything to Mr. DeClemente, which of course makes perfect sense.

The problem is, from Mr. Leinwand's point of view is that the Veneskis have no

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2 liability to DeClemente or any of his companies,
3 they are not party to any of the contracts, they
4 don't have any knowledge or information and they
5 don't know anything, so in order to -- for
6 DeClemente and I already won the case in
7 Pennsylvania --

8 The only way the Veneskis could possibly
9 have any liability to DeClemente is to
10 renegotiate or change all of their prior
11 testimony which they have given under oath which
12 is true, both by way of affidavit and deposition.
13 They know nothing, never signed anything other
14 than the consent to assignment, which is nothing
15 more than an assignment of their obligation to me
16 on disbursements, but they are not parties to any
17 contracts, never spoke to DeClemente, never wrote
18 to DeClemente. They don't even know DeClemente,
19 but by Mr. **Leinwand** prodding the Veneskis for a
20 deposition two years after all discovery is
21 completed in New Jersey and recanting their
22 testimony and in essence testifying against
23 themselves, he is creating nonexistent
24 liabilities, creating liability towards --
25 between the Veneskis to Mr. DeClemente and for
26 all this, he **is billing and billing and billing**

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2 and billing and billing for absolutely no reason
3 whatsoever and the Veneskis are -- I want to
4 know, I understand, your Honor, I have a gag
5 order against me, which I don't think you know.
6 Mr. DeClemente obtained it from Judge Olivieri
7 and I am not permitted to talk to the Veneskis at
8 all and they have been cut off from Mark Adler,
9 straight as an arrow and who would love to
10 testify before you.

11 They -- I don't think ever spoke to
12 Allan Brady and Grabowski, Walter Grabowski in
13 Pennsylvania who is a fabulous lawyer was my
14 local counsel there and is still acting as local
15 counsel there, but both Mr. Adler and Mr.
16 Grabowski, when I retained them for the Veneskis,
17 all agreed and honored the following agreement:
18 They would charge the absolute minimum amount of
19 money necessary to do what needs to be done with
20 local counsel, but they were both willing to let
21 me do 100 -- 99 percent of the work on behalf of
22 the Veneski, because I didn't want the Veneskis
23 to have to spend any money defending the
24 DeClemente lawsuits in New York, New Jersey or
25 Pennsylvania and whatever perception the Veneskis
26 have of Norman Cousins suddenly being their worst

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2 enemy instead of their best friend came from
3 Harris Leinwand because they have been cut off
4 from communication with any other lawyer and that
5 is why their perception what have is going on is
6 different than what it was, and on the advice of
7 Harris Leinwand, who I am not sure got it from
8 DeClemente, both initially Kevin Veneski
9 discharged me and then Juanita Veneski discharged
10 me and at that point DeClemente gets a gag order
11 against me from going to them and it has remained
12 that way ever since. So, that is why the
13 Veneskis have the perception that they have.

14 I stopped because I wanted to address
15 your question specifically, which is how did they
16 go from being two peas in a pod and that is the
17 answer.

18 THE COURT: Yes. So now let's go to
19 your motion as to your renewal and reargument.

20 What is your argument relative to
21 renewal?

22 MR. COUSINS: The only way and what
23 forced -- no, I cannot say forced. This was my
24 decision. I also would like to say I just came
25 back from spending ten days with my sister in
26 California and it is -- gave me an opportunity to

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2 reflect on the last four years, because if I had
3 the opportunity to make the same choice that I
4 did when DeClemente first brought a third party
5 action before Judge Mukasey in federal court and
6 Core Funding started the lawsuit -- may I now go
7 back to chronological order?

8

THE COURT: I will give you about ten
9 minutes more, so whatever you feel you want to
10 tell me, Mr. Cousins -- I mean, I have papers
11 before me in which you request a hearing.

12

MR. COUSINS: Yes.

13

THE COURT: I thought that you would be
14 using your time to discuss that, so whatever time
15 you feel that you want to take on your motion to
16 renew and re-argue, I suggest that you take it
17 now.

18

Obviously, I am not aware of everything
19 that is going on in New Jersey or before Judge
20 Olivieri. I am aware of the papers that are
21 before me and frankly was interested in hearing
22 your argument relative to these papers rather
23 than the history, but it is your right, sir, in
24 oral argument to tell me whatever you want but I
25 would appreciate it if you address the papers
26 before me why you believe this Court should grant

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you renewal or re argument on the motion.

MR. COUSINS: The proper way in New York to obtain a fee increase application under Judiciary Law 474(a)4 is to make the motion that I made before you. Now, the question really is why wasn't it made sooner and the answer is, when we -- we started out, not only for a fee increase application but to challenge the constitutionality of the statute and I will give you the precise date, this is back before Judge Lippman, I served the attorney general June 23, 2000 with notice of intention to challenge constitutionality of the statute and put it on the record and filed it with Judge Lippman.

Obviously, what got sidetracked was although Judge Lippman upheld the verdict in it is entirety, as you know, the defendants took an appeal and any fee increase application has to abide the outcome of the appeal. You don't do it in the middle of the proceeding, you do it at the end but what interrupted that process was DeClemente and I have only told you one of the things that he did the forgery and the attempted theft of \$1 million in the Brandes case.

In the Veneski case that is the case at

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2 bar, Mr. DeClemente forged my name again for the
3 same reason. He had, shall we say, a dispute
4 with Core Funding. He forged my name on a
5 document he created called a Notice of Security
6 Fund Assignment and if your Honor looks at that
7 document, you will note that that is not my
8 signature. In fact, under oath he has admitted
9 signing it without my consent, knowledge or
10 permission.

11 THE COURT: Mr. Cousins, I settled this
12 case at a certain point, is that correct?

13 MR. COUSINS: Yes.

14 THE COURT: To be specific, on
15 November 19th, 2002.

16 Your clients were sworn in, said they
17 understood everything, et cetera.

18 Let's move forward from that date. You
19 make an application for an increased fee. Is
20 that correct?

21 MR. COUSINS: Yes, your Honor.

22 THE COURT: All right. I do not need
23 the application. You are here today saying
24 Judge, look at this again, I am re-arguing and
25 renewing.

26 Please tell me now if you want -- this

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2 is the second time I am asking you what your
3 argument is on that specific question.

4 MR. COUSINS: On that specific question,
5 your Honor, had none of this stuff with
6 DeClemente ever happened, that just would have
7 been the only aspect before you on that aspect
8 which is why I kept it clean when I made the
9 motion because I did not want to drag all of this
10 into it, trying a case to a verdict, winning the
11 case, prosecuting an appeal which involved a
12 record probably three feet wide, I know you have
13 seen it, having to go back -- two appeals, one
14 pertaining to the collateral source which I took
15 and the other pertaining to the defendants,
16 because of the admission of the expert witness
17 for which the Appellate Division said Judge
18 Lippman should not have received into evidence we
19 have to go back and retry damages and I retried
20 their case again, which ultimately led to the
21 settlement before you.

22 The work and effort that I put into that
23 case made it a financial disaster. You simply
24 cannot keep an office open and put the quality of
25 work, effort and devotion into this case that I
26 have done without a fee of something approaching

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2 one third. The Yolango against Popp which is
3 the Court of Appeals standard, I met every single
4 one of the criteria. In the Contorino against
5 Florida Ob/Gyn, which the Second Department
6 reversed, I believe it was Supreme Rockland and
7 granted the fee increase application, since that
8 motion, your Honor, there has been another Second
9 Department case involving -- I forget the
10 plaintiff, but I know the law firm is Conway
11 Farrell Curtin and Kelly where the case didn't go
12 to verdict, it was settled during trial, but
13 because of the effort put into the case for trial
14 preparation and waiting for jury selection and
15 preparing all of the witnesses, the Appellate
16 Division reversed, I believe it was Judge Levine
17 in Brooklyn who denied the application and
18 granted it, granted the increased fee application
19 and regardless of everything else that happened
20 in this case, your Honor, which is no fault of
21 Kevin Veneski's or mine, the amount of work that
22 Mr. Cousins, that I put into this case warrants
23 the application, was fully supported by the
24 client and he was under no obligation to do so
25 and there is not -- I know of no appellate
26 authority in the First or Second departments to

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2 the contrary and there has been no pronouncement
3 on this since Yulango versus Popp.

4 I put every case aside to work on this
5 one, turned down numerous other opportunities,
6 both per diem and contingency cases. I did
7 everything on this case myself. I delegated
8 nothing to a secretary or paralegal and this case
9 was one of the finest examples of preparation and
10 trial of a medical malpractice case and it was
11 done -- again I have to thank Judge Sklar for
12 that -- in literally record breaking time. It
13 was done in one year and everything else that
14 came after your Honor is really irrelevant to
15 that one application.

16 THE COURT: Thank you.

17 Mr. Leinwand.

18 MR. LEINWAND: A leave to renew has to
19 meet three conditions. He meets none of them.
20 Leave to re-argue must be made within 30 days of
21 notice of entry. It wasn't.

22 The Veneskis are here. They oppose the
23 fees and disbursements. They came of their own
24 volition. I didn't even want them here, but Mr.
25 Cousins in various proceedings is saying that
26 they are his friends, support everything and they

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want it known it is not me who is opposing it, it is they who oppose it. He did not serve the fee application on me. He served it on them and they contacted me to oppose it.

Cousins said before the special referee there is no dispute with the Veneskis about disbursements or fees, which is absurd.

At the time of the so-called gift, Kevin was fairly brain damaged. He has improved substantially since then. He claims he was not at Jackson Avenue Steakhouse. He claims he did not see the gift tax return, he did not sign it. He did not see it completed two months later, supposedly after he signed it. He says he did not cross out attorney's fee and write gift.

Mr. Cousins alleges that he gave him a blank 709 gift tax return to sign. He alleges that he had an accountant fill it out two months later, date it two months later. He alleges that at the Jackson Avenue Steakhouse, he was there with Kevin alone and he asked Kevin to cross out attorney's fees and write gift and Kevin did. Even based upon that, Kevin had no lawyer to consult, no time to think, nobody to consult with and he is being importuned to make a

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gift.

The cases that Cousins cites and the canons of ethics that he cites do not fall within any rare exception where a client could make a gift, certainly not an uneducated client who makes a gift of over \$450,000 to someone for the work that he did. That is not a gift.

The note that Cousins and Adler had Kevin write to Adler -- says right on it, it is for the work done, which is contrary to a gift. That is compensation.

Adler -- as Cousins has said, Cousins tried to have me, Walter Grabowski and Adler do his bidding and his let him just do everything and us just sign papers and Judge Olivieri found the conflict. He said he was working for nothing, for Cousins -- for Veneski, but he was hurting him. He was not bringing accusations of Kevin against him with regard to the fee, the disbursements or otherwise, or separating him from Legal Asset Funding. He said he was doing Kevin a favor by not providing discovery documents, because it showed he was asking for a fee of a third and shows various other things that he had gotten the so-called gift, all of

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2 this which he was asked for in discovery and he
3 didn't provide. There was contempt for failure
4 to act against both Cousins and Veneski. Veneski
5 was ordered under the case management order to
6 appear for deposition and he purged that contempt
7 so he not in contempt.

8 Mr. Cousins has been called to account
9 six times. He has been held in contempt and
10 substantiated. I have been awarded legal fees.
11 DeClemente has been awarded legal fees twice. He
12 has not paid any of them. Legal Asset Funding
13 had been awarded a judgment of a million five.
14 There is a decision June 28, 2000, and there is
15 an order granting that -- the decision finds that
16 Mr. Veneski violated various fiduciary duties,
17 took money he should not have taken --

18 THE COURT: Who?

19 MR. LEINWAND: I am sorry, Mr. Cousins.
20 And Justice Gonzalez in Rogovin has a few orders
21 against Mr. Cousins with regard to disbursements
22 and found that he altered a check in that case.
23 And I have those orders here and I have submitted
24 them to the referee. I would like to submit what
25 I submitted to the referee to you and it is very
26 different from what he says and all of the

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2 arguments which he has made, which you may not
3 have followed, he has made them before here, made
4 them in Brandes, made them in Rogovin, Justice
5 Gonzalez' case and made them days and days of
6 trial before Judge Olivieri before he made the
7 decision and DiClemente had -- DiClemente had a
8 power of attorney and he signed Mr. Cousins' name
9 pursuant to that power of attorney and he knows
10 that.

11 He repeats a lot of things which I would
12 like to go into today which have been corrected
13 before.

14 In fact, the relationship between
15 Cousins and Veneski was attorney/client. Mr.
16 Cousins used undue influence on the Veneskis.

17 The cases that Cousins cites with regard
18 to gifts say you, the Court, should have strict
19 scrutiny. Cousins claims he saved the Veneskis
20 from harm. His idea of saving them from harm of
21 a suit by Core is to take money from them and pay
22 Core, so he does not get sued by Core. The
23 danger of the suit is that you might lose and
24 have to pay, so I don't see how that is helping
25 them. It is absurd.

26 Cousins claims that his papers were --

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2 he dates them June 15, 2007. They were not
3 served on that day. They were late again. There
4 was no promise by your Honor of an evidentiary
5 hearing which he talks about on Page 18. In
6 fact, the opposite.

7 Your Honor said to submit papers, that
8 there would be no hearing, because half a dozen
9 times he had not submitted papers by a deadline.
10 We came to court and you gave him an extension
11 and said he would for the have to bill the
12 Veneskis for coming back and continuing a hearing
13 and there was no hearing, so I have a transcript
14 of that and I annexed it to the papers
15 previously.

16 Mr. Cousins says he does a very thorough
17 job and in order to do that, you have to get a
18 third or it is not economically sensible. He
19 says the more you get for the client, the less
20 you get for yourself, which is not quite true,
21 because you are getting ten percent on the
22 balance.

23 He did not separately identify motions
24 to re-argue and renew, which are required. He
25 has come up with no new facts. He has not
26 presented new facts and new law which are new to

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2 him; I don't think they are facts, just
3 allegations which we think are false, but he knew
4 them all along. He didn't present them. He
5 should have if he felt that they existed. We
6 never saw the 709 tax return. He obviously
7 claims he has had it right along.

8 He is citing no new law, no new facts,
9 no facts he didn't have before, no justification
10 for failure to provide them.

11 He made a tactical choice, he claims, to
12 withhold these documents and I have got cases
13 from Page 8 to Page 10 which show that that
14 tactical choice not to provide facts that you
15 have access to or could get is not adequate
16 grounds for a motion to re-argue or renew.

17 Even if he inadvertently had not
18 submitted them, that would not have been
19 sufficient for cases as on Pages 11 and 15 of my
20 papers.

21 If Kevin had signed the 709 return, he
22 would not be surprised. So, he is saying he
23 wanted to surprise us at an evidentiary hearing,
24 but if Kevin had signed the 709 return, given it
25 to Cousins and got it back completed, he would
26 not be surprised by receiving it. He denies here

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2 it -- he denies he did not write gift on there
3 and cross out attorney fee, did not sign a 709 --

4 THE COURT: Just one minute, counsel.

5 (Pause in proceedings.)

6 MR. LEINWAND: A lawyer cannot accept a
7 gift from a client, certainly not under these
8 circumstances. He cannot take more than the
9 statutory amount provided by 474(a) without a
10 court order, or before there is a court order.

11 Mr. Cousins has filed papers in other
12 cases which show that he knows that. As far as
13 the equities, he is asking for extraordinary
14 relief and even if he were entitled to a third,
15 you cannot take the third and then ask for it and
16 you would not have clean hands and the court
17 would not be able to award what he took before
18 the -- he had a court order authorizing him to do
19 it.

20 Cousins controlled Kevin. He is the one
21 who says that their interest is to fight the
22 constitutionality of 474(a). This is not
23 something that Kevin would come up with himself
24 or fully understand himself. Cousins did not
25 comply with his fiduciary duties to Kevin; he
26 didn't in terms of disbursements that he took,

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going to spas, expensive dinners, having his girlfriend read the depositions so the jury would not fall asleep.

Kevin's affidavit you have. He talks about the fact that he didn't write gift, didn't sign the 709, didn't go to the Jackson Avenue Steakhouse on that occasion. He talks about what happened with Adler and Adler should not have given that note to Cousins. He is here now. You know, because Cousins sometimes says Kevin does not sign the affidavits or I sign them for him or he does not understand them and would support what he said in that affidavit.

I have submitted an affirmation basically with regard to the fact that these motions are late, that you know what? Brophy testified to as what you said at an earlier, his recollection of what you said at an earlier hearing did not -- you were saying basically that was a serious matter and Mr. Cousins should get an attorney, which we took to mean a criminal attorney. It didn't mean there was going to be a hearing but anyway, later on at other hearings you said there would not be a hearing.

So June 5th, you advised Cousins to

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2 retain counsel. I, in the July 12th cross
3 motion, showed reasons why there was no need for
4 hearing, just from the documents themselves.

5 THE COURT: Repeat that again, counsel.

6 MR. LEINWAND: In the July 12, 2006 cross
7 motion, I showed that there was no need for a
8 referee, there was no need for a hearing and on
9 August 21st, you said submit orders, there will
10 be no hearing and you said the same thing on
11 October 24th and I have the transcript which I
12 have submitted.

13 THE COURT: To these papers, counsel, or
14 other papers? To these papers or to other
15 papers?

16 MR. LEINWAND: The papers before your
17 Honor on this motion for rehearing.

18 THE COURT: Because you have tabs, so
19 -- exhibit what, counsel?

20 MR. LEINWAND: I am sorry. I think that
21 is an exhibit to my affirmation. Yes.

22 I have submitted the transcript of a
23 hearing before your Honor. I don't find it
24 right here. But I could.

25 THE COURT: Well you said it was
26 attached to your affirmation.

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2 MR. LEINWAND: Yes, but did you see it
3 there.

4 THE COURT: Neither do I.

5 MR. LEINWAND: I have it and I know I
6 submitted it to your Honor.

7 THE COURT: All right. Go on.

8 MR. LEINWAND: Paragraph 42 of Cousins'
9 papers, he says what he said today, that Kevin is
10 his dear friend but -- and he took 454,000 from
11 him in order to stop the Core action, and as he
12 states, these people he borrowed from which he
13 claims he is doing Kevin a favor by borrowing at
14 60 or 70 percent interest. They don't have a
15 valid claim against Kevin in our view, and Kevin
16 should not have had to pay 454,000 to resolve the
17 Core action.

18 Also, he says he saved Kevin \$350 by
19 paying his accountant to prepare the 709 return
20 but 350 pales compared to the 454,000.

21 Today Mr. Cousins made his arguments
22 which I will respond to, but he is trying to
23 muddy the waters and delay matters and the
24 Disciplinary Committee is saying there is
25 litigation pending, so they don't make their
26 decision.

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2 He talks about my e-mails and again, on
3 Page 66, my e-mail of March 21, 2007, Exhibit 10
4 -- you have to look at my Exhibit 11 and my
5 Exhibit 11 in response -- shows what he left out
6 of the e-mail, he is asking always, he is late,
7 asking for more time, all sorts of things and I
8 did move in the bankruptcy court when I was first
9 retained to dismiss LES(ph) claim and I did move
10 in New Jersey for summary judgment.

11 In fact, on August 1st, Judge Olivieri
12 will make a decision on that. It is not easy to
13 get summary judgment. The Pennsylvania
14 decisions of Judge Caputo came down long after I
15 was retained and they weren't -- the motion for
16 summary judgment is based upon those decisions
17 and our motion was made shortly after those
18 decisions were final.

19 With regard to what Mr. -- I would like
20 to respond to Mr. Cousins oral argument. He
21 made all of these arguments with regard to
22 DiClemente. He submitted papers, when Mel Sacks
23 was alive and he submitted those papers about
24 those complaints against DiClemente, he submitted
25 them before and certainly in the Olivieri matter,
26 raised all of the issues, crossed DiClemente for

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days and Judge Olivieri awarded DiClemente judgment, awarded him legal fees against Cousins, not on that, but on other things for various contempts.

He says Kevin's problems are no fault of Cousins but I disagree with that. I think he is getting involved with the lenders has caused him trouble, which has caused Kevin trouble and his focusing on not accepting 474(a) and it is one thing to attack the constitutionality, but it is the law and one has to live with it.

He is now saying that the law since '85, I think it was '84, but he is always saying it is a new law and now finally he is acknowledging that the law is over 20 years old.

Kevin goes to Washington, DC, said we pay for it, finally paid for it, badgers other clients with regard to 474(a), badgers Ben Overeem, who is the son of Mrs. Overeem who just died and took him many years to get money that Cousins was holding because he was claiming he was going to get a third on appeal he took many, many years ago and didn't pursue and has testified a few times that Overeem didn't want the money, but Overeem wrote the Disciplinary

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2 Committee, has been seeking the money for years.
3 The only reason he got it was he saw your
4 decision in the Law Journal and called Cousins
5 who took his call, but even after Overeem was
6 paid, he still wrote to the Disciplinary
7 Committee and I have a copy that of letter.

8 THE COURT: But let's stick with this
9 case. I gather it is your position that your
10 clients do not owe Mr. Cousins any additional
11 compensation, and in fact, if anything, Mr.
12 Cousins owes your clients money. Is that
13 correct?

14 MR. LEINWAND: Yes. As per --

15 THE COURT: And also, that no hearing is
16 necessary in this case. Is that it?

17 MR. LEINWAND: Yes.

18 THE COURT: What else do you need to
19 tell me, counsel, on this motion?

20 MR. LEINWAND: Nothing more.

21 I just would like to submit what I
22 submitted to the referee because it has these
23 orders of Olivieri and decisions --

24 THE COURT: Show them to your
25 adversary.

26 MR. LEINWAND: He has them.

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THE COURT: If there is no objection, the Court will take them. If there is an objection, then the Court will not take them as there has been a formal submission of the papers which I have read and I will read again.

MR. COUSINS: Your Honor, I object. They are not on this case and there are no sir replies and I object to any further submissions unless it is done through a hearing.

THE COURT: But were some of these referred to in your arguments today.

MR. COUSINS: No. No.

THE COURT: None was? Okay.

MR. COUSINS: No.

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THE COURT: The Court will make its decision on the papers before it.

Thank you, Judge.

MR. LEINWAND: Thank you.

MR. COUSINS: Judge, I will not add anything but -- one of the things I attached as an exhibit is a decision by Judge Crispino on a motion made by Marty Edelman which resulted in a fee granted under a medical malpractice of a third.

THE COURT: Okay.

MR. LEINWAND: Thank you, your Honor.

* * *

Certified that the foregoing is a true and accurate transcript of the original stenographic minutes of this case.

Claudette Gumbs
Senior Court Reporter