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DANIEL COHEN, Plaintiff / Appellant, v. WEG & MYERS, P.C., Defendants / Respondent	SUPERIOR COURT OF NEW JERSEY APPPELLATE DIVISION CIVIL ACTION DOCKET No.: A-02082-22 On appeal from the Superior Court of New Jersey, Monmouth County, Law Division, Docket No.: MON-L-1054-18 Hon. Linda Grasso Jones, J.S.C.

Plaintiff / APPELLANT'S BRIEF

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PROCEDURAL HISTORY

On or about March 26, 2018 Plaintiff, Daniel Cohen, ("Cohen") initiated the action below by filing a Complaint which alleged excessive overbilling, improper charges, damages relating to W&M's inattentiveness, refusal to perform work on his behalf, and failure to properly represent Cohen in the Sollecito matter. (See Complaint Pa1).

After a Motion to Dismiss was denied, Defendant, Weg & Myers, P.C. ("W&M") filed an Answer on or about July 23, 2018 which in addition to denying the allegations of the Complaint, included a Counterclaim for breach of contract alleging non-payment of legal fees and seeking additional legal fees, interest, costs and disbursements. (See Answer Pa7).

Cohen filed an Answer to the Counterclaim denying same on or about September 14, 2018 (see answer to counterclaim Pa23).

Parties exchanged discovery and after many delays related to Covid, among other things, trial was held between November 29, 2022 and December 6, 2022. Judgment was in favor of Defendant. This appeal follows.[1]

STATEMENT OF FACTS

[1] There are 7 Transcripts relevant to this brief:
1T – 9/16/22 ; 2T – 11/29/22; 3T – 11/30/22; 4T – 12/1/22; 5T – 12/2/22; 6T – 12/5/22; 7T – 12/6/22.

Plaintiff, Daniel Cohen ("Cohen") was a party in litigation entitled Sollecito v. Cohen bearing docket number MON-L-2815-15 in Superior Court Monmouth County, NJ. (Pa1). Cohen asked Defendant, the Law Firm Weg & Myers, P.C., ("W&M") and specifically its managing partner, Dennis D'Antonio to represent him in that matter. (Pa1-2)

Cohen paid a retainer of $50,000 to W&M and signed the retainer agreement. (Pa2). W&M did not honor its own retainer agreement and did not provide any invoices to Cohen for several months (Pa2). When W&M finally did send Cohen an invoice, it showed excessive and unreasonable billing. (Pa2). The bill was substantially inflated and contained numerous instances of "Double billing" (Pa2). Cohen refused to pay the inflated bill and W&M ceased work on behalf of Cohen in the Sollecito matter. (Pa2-3).

Cohen filed suit alleging damages resulting from the above (Pa3-4). W&M denied the allegations and filed a counterclaim for the unpaid invoices (Pa-7-22).

During Discovery, Expert Reports are Exchanged

During discovery, the parties exchanged expert reports (Pa36 – Pa52). Both the expert who was disclosed for Mr. Cohen, Mr. Ouda, and the expert that was disclosed for W&M, Mr. Wikstrom, reviewed essentially the same items. These include: The pleadings in this case, the parties answers to

interrogatories, the Retainer agreement between Plaintiff and Defendant, the legal bills at issue, correspondence, deposition transcripts. In addition, Mr. Ouda also reviewed Pleadings in a since discontinued New York Action between the parties to this action and Mr. Wikstrom also reviewed a Court order of August 30, 2019, additional legal bills (from other counsel), and Mr. Ouda's report. (Pa36 & Pa50). Notably, neither expert reviewed the underlying files (which are referred to below as the "Sollecito file", the "21 Bankers Boxes" and "Exhibit D4").

Mr. Ouda specifically stated in his report that the invoices were not descriptive. None of the billing is descriptive at all. Pa38. He pointed out that a substantial amount of time spent reviewing the file and documents. 92.25 Hours was spent reviewing the file and 161 hours were spent reviewing documents. And moreover that this type of general file review is very suspicious because it doesn't describe what was done or why it was done. Pa38. Furthermore, he noted that when questioned at depositions, W&M's witnesses could not recreate what files or documents were reviewed or indicate what work was performed on any specific date. Pa38.

2 months before trial Cohen Reports Judge Grasso-Jones to FBI for Harassment, Bias, Corruption, and weaponizing the Sheriff's Department

Over two months before the Trial in this matter, specifically on September 16, 2022, Mr. Cohen appeared before Judge Grasso-Jones on a different matter, the matter of Arbus, Maybruch, & Goode, LLC v. Daniel Cohen, et. al., Docket # MON-L-002646-20. (1T Pg. 1). That appearance was Post-Judgement; a Judgement had previously been issued against Mr. Cohen, and the Plaintiff in that matter was in the process of collection. (1T Pg. 4 Lines 5-8).

As will be shown in great detail below, Mr. Cohen had 2 major complaints at that 9/16/2022 appearance, which again was before Judge Grasso-Jones, but in a separate action, not this action. The first major complaint against Judge Grasso-Jones related to bias, harassment, and corruption on her part for which he had reported her to the FBI. (1T Pgs. 15 – 17). The second major complaint related to how he had been targeted by the Sheriff's officers. (beginning at 1T Pg. 9).

More specifically, already in that other matter on September 16, 2022 over 2 months before trial in this matter, Mr. Cohen indicated very clearly on the record that: "Your Honor… You continue to rule against me no matter what happens…You are unfair. You are not objective. (1T Pg. 7, Lines 14-19). Mr. Cohen further complained to Judge Grasso-Jones, that he had just spoken with the FBI field office in New Jersey and that they will be

investigating this entire matter, including Judge Grasso-Jones (1T. Pg. 13, Line 16 - pg. 14, Line 2). Mr. Cohen continued, to Complain to Judge Graso-Jones that she made every possible ruling against him and he had never seen a judge act like that in his life. (1T Pg. 14, lines 17-20). Mr. Cohen reiterated that Judge Grasso-Jones will be hearing from the FBI field office in Newark, New Jersey because she allowed plaintiff/counsel for plaintiff in that action to weaponize the courts. (1T Pg. 15, Lines 2-7). Mr. Cohen complained of corruption, (1T, Pg. 15, Lines 16-17), bias, (1T, Pg. 15, line 21), continuous and harassment and inappropriate judicial conduct including allowing the other side to use the court as a weapon. (1T, Pg. 16, lines 15-22). Mr. Cohen reiterated that he has informed federal authorities of Judge Grasso-Jones's harassment and corruption (1T, Pg. 17, lines 2-6). Mr. Cohen invited Judge Grasso-Jones to contact the federal field office in Newark New Jersey, and ask for the Corruptions Unit, if she wanted to confirm that they are investigating her. (1T Pg. 17, lines 11-14). Mr. Cohen again complained of the bias and said it was not "justice" (1T Pg. 18, lines 6-8). He put his foot down, saying to Judge Grasso-Jones, "I did nothing wrong, and all you to is harass me. It stops today." (1T, Pg. 18, lines 22-23.)

As stated above, another major concern of Mr. Cohen's during the 9/16/2022 hearing was how the Sheriff's department was being used against

him. More specifically, a Sheriff's officer had been sent to his house and he was concerned that he was going to be arrested (1T, Pg. 9, lines 4-6). Mr. Cohen further stated indignantly, to Judge Grasso-Jones that she is allow the other side to use the court as a weapon with the specter of arrest and the use of the sheriff's office in a civil matter. (1T, Pg. 16, Lines 20-24) He went on, to complain that it is illegal that Judge Grasso-Jones is seeking to have him arrested (1T, pg. 18, lines 20-21). In fact Judge Grasso-Jones realized Cohen's concern regarding being arrested and even commented that was why she had scheduled that appearance on Zoom rather than in person (1T, Pg. 9, lines 14-15). Judge Grasso-Jones further explained, that the Sheriff had gone to Mr. Cohen's residence pursuant to her Order. (1T, Pg. 10, lines 4-9). Though she explained it was for the purpose of inventory rather than arrest. Id.

In that exchange, on September 16, 2022, Mr. Cohen repeatedly accused Judge Grasso-Jones of bias, harassment, permitting the weaponizing of the courts, and corruption, targeting the Sheriff's officers against him, and further explained that he had reported those allegations to the FBI. He explicitly stated that he wasn't getting justice. Nevertheless, Judge Grasso-Judge did not recuse herself from acting as trial judge in this matter.

At Trial, Cohen complained of Bias, Badgering, and Harassment

Cohen retained new counsel in this action about a month before trial. (5T, Pg. 29, lines 14-17) and (4T, Pg. 314, lines 2-3). The trial in this action began on November 29, 2022. The second day of testimony in this action commenced with cross-examination at about 9:15am on November 30, 2022. (3T Tr. Pg. 13, lines 9 and 20-21). Very quickly, Mr. Cohen began to feel that Counsel for W&M was badgering him and Judge Grasso-Jones was not doing anything to prevent it. Specifically, Mr. Cohen stated to Judge Grasso-Jones, "he's [referring to counsel for W&M] badgering me, and you're allowing it." (3T Pg. 29, line 12). "[D]on't let him badger me" (3T, pg. 29, line 23). "I will not be badgered on this witness stand, ma'am." (3T, pg. 30, lines 1-2) "But…you allowed it to go on, and I'm getting badgered." (3T pg. 30, lines 5-8). "You overruled [my attorney's objection about counsel for W&M badgering me] and he badgered me again." (3T, pg. 32, lines 10-11).

After more back and forth of this nature, Judge Grasso-Jones finally asked the Jury to leave the courtroom at about 9:35, after only about 20 minutes of testimony, (3T, Pg. 34, line 3) and Mr. Cohen made it clear to Judge Grass-Jones that he again felt that she was biased against him; he stated, "you're allowing him to badger me. You're biased against me, and you're continuing to allow it." (3T, Pg. 34, lines 19-21). And in case he wasn't clear the first time, Mr. Cohen repeated the allegation just a short time later, telling

Judge Grasso-Jones, "you're biased." (3T, Pg. 35, line 21). Not long after, Mr. Cohen told the Judge that he was being "harassed." (3T, Pg. 41, line 15). The following day, following the event with the sheriff, which will be discussed in more detail below, Mr. Cohen again informed Judge Grasso-Jones that he was being "harassed constantly" in her courtroom. (4T, Pg. 107, lines 23-24).

At Trial, Cohen is Accosted by Sheriff's officer and altercation ensues in earshot of the Court and the Jury

In this action, Judge Grasso-Jones also got a sheriff involved, in the middle of trial. Specifically, On November 30, 2022, Judge Grasso-Jones asked a Sheriff's officer to sit in at the trial (3T, pg. 43, lines 16-25). Despite, the prior angst regarding the sheriff's officers confronting Mr. Cohen (as described above regarding the occurrences reflected on the Sept. 16, 2022 transcript) There is no indication in the record that Judge Grasso-Jones ever instructed the Sheriff's officer regarding how to interact with Mr. Cohen. On December 1, 2022, during the trial, Mr. Cohen, who was not on the witness stand at the time, left the Courtroom to use the bathroom. Notably, Judge Grasso-Jones noted on the record that she had not previously ever instructed Mr. Cohen that he was not free to do so (4T Pg. 71 line 18 – pg. 72, line 2). When Mr. Cohen left the court room, the sheriff's officer followed him out and questioned him in the hallway. (4T, Pg. 56 line 19 – pg. 57, line 14). The

Sheriff's officer wanted to ask the judge if Mr. Cohen was allowed to use the bathroom. (4T, Pg. 58, lines 14-17). A Juror had noted that s/he heard a fight going on outside. (4T, Pg. 55, line 22). Mr. Cohen's counsel requested a Mistrial at the time. (4T, Pg. 59, lines 20-21). Judge Grasso-Jones stated explicitly to Mr. Cohen's attorney, that is was his own client shouting that the jurors heard; Judge Grasso-Jones heard his voice and stated that everyone heard his voice. (4T Pg. 60, lines 14-18). And further, Judge Grasso-Jones repeated that the voice everyone heard shouting was Mr. Cohen's. (4T, Pg. 73, lines 9-10). Mr. Cohen's attorney argued, the altercation in the hallway was believed by Mr. Cohen to have been generated by law enforcement and he believed that prejudiced the case and asked for a mistrial on that basis.

Later that morning, Judge Grasso-Jones addressed the matter regarding going to the bathroom directly with Mr. Cohen. Mr. Cohen pointed out that he had to leave the courtroom due to his colitis (4T, Pg. 107, line 3) and that he tried to raise his hand ask Judge Grasso-Jones first, but she didn't look at him (4T, Pg. 106, lines 8-9), and that at least until being confronted by the Sheriff, he didn't interrupt the Court, he walked out as quietly as possible (4T, Pg. 106, lines 21-24); he did it with respect to the court proceedings. (4T, Pg.107, lines 15-16). But he felt like he was being harassed constantly. (4T, Pg. 107, lines 23-24).

Trial Judge admitted into evidence prejudicial documents that were never exchanged in discovery

From the very beginning of the trial in this matter, Mr. Cohen and his attorney were objecting to the so-called 21 bankers boxes in the court room in full view of the jury. Specifically, beginning on page 14 of the 11/29/2022 Transcript, from the very first day of trial, Mr. Cohen's attorney noted both their presence and their prejudicial nature following even before any jury selection was done. (2T Pg. 14, lines 13-21). He complained that the 21 boxes would bias the jury and bend the case towards W&M. (2T Pg. 15, lines 4-10). Mr. Cohens attorney further complained that the documents could appear to be more voluminous than they are due to the presence of "duplicates…several duplicates." (2T, Pg. 16, lines 16-25). Judge Grasso-Jones allowed the 21 boxes to remain in the courtroom (2T Pg. 18, line 4).

On December 1, the matter was raised again by Mr. Cohen's attorney. By that time, the documents had been removed from the boxes and were sitting in piles on W&M's table. Again Mr. Cohen's attorney complained of prejudice of these "piles and piles of documents" but Judge Grasso-Jones overruled the objection. (4T, Pg. 29, line 13 – pg. 30, line 20).

The entire time that the 21 boxes and piles and piles of documents had been sitting in front of the jury they had never been admitted into evidence

until December 2, 2022, (as recorded at 5T, Pg. 60, line 20). But the admittance of that voluminous file into evidence did not occur simply. Mr. Cohen's attorney objected to that as well. The 21 boxes (and the documents they contain) which were also referred to during trial as the Sollecito file and also as Exhibit D4, were never exchanged in discovery.

Although W&M's counsel reported to Judge Grasso-Jones that they had been duly exchanged, (5T, Pg. 28, lines 3-13); Mr. Cohen's attorney questioned that and objected. (5T, Pg. 30, lines 12 – 18); Judge Grasso-Jones overruled the objection (5T, Pg. 31, lines 10-11). However, W&M's own sworn witness, the managing partner of the Weg & Myers law firm, Dennis D'Antonio, contradicted his own attorney and said that W&M knew that they would be suing Mr. Cohen for fees so they packed the Sollecito file (the 21 boxes) away in a storage facility and did not open it again until trial. (5T, Pg. 32, line 18 – Pg. 33, line 4). It was therefore literally impossible for Mr. Cohen's attorney to see the inside of the 21 bankers boxes at any time prior to trial. More pointedly, it is even impossible for W&M's own attorney to have seen the inside of the 21 bankers boxes before trial to even certify that they had been turned over to counsel for Mr. Cohen.

Judge Grasso-Jones Admitted Highly Prejudicial Character evidence with little probative value

Judge Grasso-Jones permitted testimony and evidence regarding past and outside allegations by others, lawsuits, and judgments against Mr. Cohen. Even in the opening statement, W&M's attorney referred to Mr. Cohen not paying third parties (in addition to W&M) and those third parties getting Judgments against Mr. Cohen. (2T pg. 126, line 25 – pg. 127, line 10).

The assertions carried into the cross examination of Mr. Cohen and the testimony of W&M's witness as well. On Cross-examination, Mr. Cohen was asked "do you recall that you entered into a consent judgment with Mr. Sodini's firm?" (3T pg. 193, line 4-5). Mr. Cohen's attorney objected arguing that the question going to character propensity would be prejudicial and the prejudice would outweigh any probative value. (3T, Pg. 194, line 7-13). Judge Grasso-Jones overruled finding that since Mr. Cohen indicated he negotiates bills down, the evidence of a consent judgment is admissible. (3T, Pg. 198, line 2 – pg. 199, line 3; pg. 199, line 23 – pg. 200, line 13.). In the Summation, W&M's attorney again focused on other judgments already entered against Mr. Cohen in other matters on different sets of facts, thereby polluting the jury by saying the Cohen didn't pay Maybruch so he got a

judgment; and Cohen didn't pay Sodini so he got a judgment too. (6T, Pg. 236, line 21 – pg. 237, line 7).

Judge Grasso-Jones repeatedly Admonished Mr. Cohen in front of the Jury

During his testimony, Mr. Cohen wanted to explain to the Jury that the opening statement of W&M's attorney was "false" and "incorrect". A lengthy colloquy between Judge Grasso-Jones and Mr. Cohen, in front of the jury and over three pages of transcript shows Judge Grasso-Jones repeatedly asking Mr. Cohen seemingly rhetorical questions such as "who decides the law in this case?" and when Mr. Cohen answered "Okay. Okay", Judge Grasso-Jones repeats the question to Mr. Cohen again in front of the jury: "No, why don't you answer my question? Who decides the law that applies to this case?". A short while later, Judge Grasso-Jones stated, still in front of the jury, "I decide the law. And what I'm telling you is as a matter of law, your statements with reference to the attorney who represents the adversary are inappropriate" See colloquy between Judge Grasso-Jones and Mr. Cohen, (2T, Pg. 155, line 16 – Pg. 158, line 18).

It is notable that the above happened as indicated as a result of Mr. Cohen wanting to say that W&M's attorney's opening statement was "false" and "incorrect." Another related event happened also slightly earlier than that

where Judge Grasso-Jones specifically instructed Mr. Cohen to use those words rather than say W&M's attorney was a liar. (2T, Pg. 142, line 18 – pg. 143, line 5). Specifics of that admonishment, in front of the jury, included Judge Grasso-Jones being rhetorical again with Mr. Cohen by saying: that anyone who has little children knows the difference between saying someone's a liar versus the information is incorrect. Id. Which suggested to the jury that Mr. Cohen was no better than a child.

However, despite Judge Grasso-Jones's apparent concern for character attacks from witnesses, Judge Grasso-Jones apparently had a different view when Mr. Cohen was the subject of snide and insulting remarks. Judge Grasso-Jones permitted W&M's witness to say of Mr. Cohen from the stand, "he's not a good guy. He's a bad guy" (5T, Pg. 102, lines 22-23). Also "Daniel Cohen is a con artist." (5T, Pg. 101, line 18). All with no admonishment of W&M's witness by Judge Grasso-Jones at all.

Cohen's Expert being Precluded while W&M's expert is not

On the second day of trial, Mr. Cohen had asked Judge Grasso-Jones to reconsider a prior order which had limited Mr. Ouda's testimony precluding him from testifying regarding the contents of the legal bills including the lack of description of the work performed and amounts of the legal bills. (See Generally Tr. 3T Pg. 5 – Pg. 12). In

maintaining her original determination, Judge Grasso-Jones stated that a review of the underlying Sollecito file (the 21 Bankers boxes) was so fundamental, that Mr. Ouda's failure to do so rendered his findings a Net Opinion. (3T Pg. 10, line 5 – Pg. 12, line 6). Yet Judge Grasso-Jones permitted W&M's expert to testify in his opinion that the billing was reasonable (6T, Pg. 93, lines 2, 12-14). Again, that is despite the fact as indicated above, both experts reviewed essentially reviewed the same material, and neither reviewed the Sollecito file, which had been sealed away in storage from before any lawsuit was filed until it was unsealed in court, as discussed above. The existence of the 21 Bankers boxes was never even disclosed by W&M to Cohen in this case at any time prior to trial.

Relatedly, W&M's expert was even permitted to testify at trial even though it was someone named Jeffrey Kampf (6T, Pg. 70, line 24), not the same expert as David Wikstrom who was disclosed during discovery (Pa51-Pa52).

Jury was tainted by highly prejudicial summation by W&M which Judge Grasso-Jones did not address at all

During his summation, counsel made highly prejudicial, incurable, statements regarding Mr. Ouda not testifying that the legal bills

were unreasonable. (6T pg. 237, line 15 - pg. 238, line 9). And Judge Grasso-Jones permitted the jury to listen to those words despite the fact that the reason Mr. Ouda didn't testify to such, as stated above was due to Judge Grasso-Jones's own order precluding same. Specific statements by W&M's counsel during summation included: that Mr. Ouda "didn't say that the bills were unreasonable. He didn't say the bills were excessive. He didn't say that the bills were not necessary. He didn't offer that opinion. So he's not on the same wave length as his own, as his own client, Mr. Cohen, who said well they're unreasonable… He didn't say one time that the bills were excessive, unreasonable and not fair, not one time." Id.

After the weekend, on December 5, 2022, Cohen formally requested a mistrial because Judge Grasso-Jones had not recused herself. (6T, Pg. 215, lines 2-12.) Cohen's counsel did not understand the details of the argument, he had only been retained about a month before the trial (5T, Pg. 29, lines 14-17) and (4T, Pg. 314, lines 2-3). But Mr. Cohen himself had been complaining of bias and harassment from the beginning of Trial. Moreover Mr. Cohen's attorney made many objections based on prejudice and other grounds and W&M made many objections as well and in a great majority, the Court ruled against Mr. Cohen.

ARGUMENT

A. Judge Grasso-Jones should have recused herself due to bias stemming from an FBI complaint made by Cohen against Judge Grasso-Jones. (Raised below, 6T, Pg. 215)

The New Jersey Supreme Court has stated that there is a

> bedrock principle articulated in Canon 1 of the Code of Judicial Conduct that '[a]n independent and honorable judiciary is indispensable to justice in our society.' To that end, judges are required to maintain, enforce, and observe "high standards of conduct so that the integrity and independence of the judiciary may be preserved.
>
> Judges are to "act at all times in a manner that promotes public confidence," id. Canon 2(A), and "must avoid all impropriety and appearance of impropriety," id. commentary on Canon 2 (emphasis added). Indeed, as this Court recognized nearly a half century ago, "`justice must satisfy the appearance of justice.'" State v. Deutsch, 34 N.J. 190, 206, 168 A.2d 12 (1961) (quoting Offutt v. United States, 348 U.S. 11, 14, 75 S.Ct. 11, 13, 99 L.Ed. 11, 16 (1954)). That standard requires judges to "refrain ... from sitting in any causes where their objectivity and impartiality may fairly be brought into question." Ibid. In other words, judges must avoid acting in a biased way or in a manner that may be perceived as partial. To demand any less would invite questions about the impartiality of the justice system and thereby "threaten[] the integrity of our judicial process."

DeNike v. Cupo, 958 A. 2d 446, 453-454. (N.J. 2008).

In this case, the Trial Judge, should have recused herself. Over two months before the Trial in this matter, specifically on September 16, 2022, Mr. Cohen appeared before Judge Grasso-Jones on a different matter, the matter of Arbus, Maybruch, & Goode, LLC v. Daniel Cohen, et. al., Docket #

MON-L-002646-20. (1T Pg. 1). That appearance was Post-Judgement; a Judgement had previously been issued against Mr. Cohen, and the Plaintiff in that matter was in the process of collection. (1T Pg. 4 Lines 5-8). Already in that matter, Mr. Cohen indicated very clearly on the record to Judge Grasso Jones that she continues to rule against him no matter what happens; she is unfair and not objective. (1T Pg. 7, Lines 14-19). Mr. Cohen further notified Judge Grasso-Jones, that he had just the day before spoken personally with the FBI field office in New Jersey who will be investigating this entire matter, including Judge Grasso-Jones for continued harassment. He made extremely clear, repeatedly that he has now let the federal authorities get involved and investigate this up to the level of Judge Grasso-Jones (1T. Pg. 13, Line 16 - pg. 14, Line 2). Mr. Cohen continued his complaint that Judge Grasso-Jones made rulings against him, "every ruling possible." He said that he had never seen a judge act like this in his life, and that he was going to make sure she is removed from the matter." (1T Pg. 14, lines 17-20). Cohen advised Judge Grass-Jones that she would be hearing from the FBI field office in Newark, New Jersey. And further complained that she allowed plaintiff and plaintiff's counsel man to weaponize the courts." (1T Pg. 15, Lines 2-7). Cohen further charged that there's corruption involved, continuously against him. (1T, Pg. 15, Lines 16-17). He said that Judge Grasso-Jones has been biased. (1T, Pg.

15, line 21). And he repeated that he is taking action against the Court and will not be harassed by her, whose actions are inappropriate. Because she is continuously harassing him, and allow plaintiff to use the court as a weapon. (1T, Pg. 16, lines 15-22). He repeated that he notified the federal authorities the Judge Grasso-Jones's harassment and corruption. (1T, Pg. 17, lines 2-6). He event invited Judge Grasso-Jones to contact the Corruptions Unit at the FBI Newark office, if she's unsure, to confirm they are investigating. (1T Pg. 17, lines 11-14). He repeated the charges of bias and lack of justice (1T Pg. 18, lines 6-8). He concluded by saying he did "nothing wrong, and all you to is harass me. It stops today." (1T, Pg. 18, lines 22-23.)

In that exchange, on September 16, 2022, Mr. Cohen repeatedly accused Judge Grasso-Jones of bias, harassment, permitting the weaponizing of the courts, and corruption, and further explained that he had reported those allegations to the FBI. He explicitly stated that he wasn't getting justice. Nevertheless, Judge Grasso-Judge did not recuse herself from acting as trial judge in this matter.

The second day of testimony in this action commenced with cross-examination at about 9:15am on November 30, 2022. (3T. Pg. 13, lines 9 and 20-21). Very quickly, Mr. Cohen began to feel that Counsel for W&M was badgering him and Judge Grasso-Jones was not doing anything to prevent it.

Specifically, Mr. Cohen stated to Judge Grasso-Jones, he's being badgered by W&M's counsel and she's allowing it. (3T Pg. 29, line 12). He pleaded, "[D]on't let him badger me" (3T, pg. 29, line 23). He stood up for himself, since she wouldn't, saying, "I will not be badgered on this witness stand, ma'am." (3T, pg. 30, lines 1-2). And he repeated that she is allowing the badgering. (3T, pg. 30, lines 5-8). And he pointed out that she even overruled his attorney's objections regarding the badgering and it is happening again (3T, pg. 32, lines 10-11). After more back and forth of this nature, Judge Grasso-Jones finally asked the Jury to leave the courtroom at about 9:35, after only about 20 minutes of testimony, (Tr. 3T, Pg. 34, line 3) and Mr. Cohen made it clear to Judge Grass-Jones that he again felt that she was biased against him; he stated, "you're allowing him to badger me. You're biased against me, and you're continuing to allow it." (3T, Pg. 34, lines 19-21). And in case he wasn't clear the first time, Mr. Cohen repeated the allegation just a short time later, telling Judge Grasso-Jones, "you're biased." 3T, Pg. 35, line 21). Not long after, Mr. Cohen told the Judge that he was being "harassed." (3T, Pg. 41, line 15). The following day, following the event with the sheriff, which will be discussed in more detail in the next section, Mr. Cohen again informed Judge Grasso-Jones that he was being "harassed constantly" in her courtroom. (4T, Pg. 107, lines 23-24).

After the weekend, on December 5, 2022, Cohen formally requested a mistrial because Judge Grasso-Jones had not recused herself. (6T, Pg. 215, lines 2-12.) Cohen's counsel did not understand the details of the argument, he had only been retained about a month before the trial (5T, Pg. 29, lines 14-17) and (4T, Pg. 314, lines 2-3). But Mr. Cohen himself had been complaining of bias and harassment from the beginning of Trial. Moreover Mr. Cohen's attorney made many objections based on prejudice and other grounds and W&M made many objections as well and in a great majority, the Court ruled against Mr. Cohen.

Without the benefit of knowing what had happened on September 16, 2022, each of the various rulings at trial might have been disregarded as merely discretionary acts on the part of Judge Grasso-Jones, but when viewed in light of the history, there can be no doubt that at the very least an appearance of bias (if not actual bias) due to Mr. Cohen reporting to the FBI claims of corruption, bias, harassment, and weaponizing of the court created a dark cloud over the proceeding seriously calling into question whether justice was even possible for Mr. Cohen.

The relevant law is clear; "it is not necessary to prove actual prejudice on the part of the court to establish an appearance of impropriety; an objectively reasonable belief that the proceedings were unfair is sufficient."

DeNike v. Cupo, 958 A. 2d 446, 455. (N.J. 2008) (internal quotations omitted). As stated by the Supreme Court, the relevant standard is "Would a reasonable, fully informed person have doubts about the judge's impartiality?" Id. Mr. Cohen provided numerous complaints during the pendency of the trial about Judge Grasso-Jones's bias and refusal to prevent harassment by W&M's counsel. As will be further detailed there were numerous specific times during the trial where Judge Grasso-Jones's rulings would provide at least a reasonable doubt regarding her impartiality. Moreover, each of those would also be independent grounds for reversal as well. As in DeNike, "a full retrial is required to restore public confidence in the integrity and impartiality of the proceedings, to resolve the dispute in particular, and to promote generally the administration of justice." Id, at 456.

In this particular situation, Mr. Cohen's own attorney was unaware of the colloquy of September 16, 2022. Therefore he did not formally make a motion to have Judge Grasso-Jones removed from the matter. Mr. Cohen himself was unaware that he had such a right. Nevertheless, that is not fatal. Rule 1:12-1(g) of the Rules of Judicial Conduct states "[t]he judge of any court shall be disqualified on the court's own motion and shall not sit in any matter, if the judge (g) when there is any other reason which might preclude a fair and unbiased hearing and judgment, or which might reasonably lead counsel or the

parties to believe so." Thus the party need not even move; Judge Grasso-Jones should have disqualified herself in light of the fact that Mr. Cohen made allegations of criminal conduct regarding her to the FBI. And she knew about it - over two months prior to the start of trial.

In Chandok v. Chandok, 968 A. 2d 1196, (App. Div. 2009) recusal was found to be required and the judgment "c[ould] not [be] sustain[ed]" where the Judge had previously "filed a complaint against [the attorney for one of the parties] which, in [that attorney's] fair description of the pleadings, alleged "that [that attorney] acted deceitfully, that [the attorney] had embezzled funds, and that [the attorney] had assaulted him [the judge] which resulted in his calling the police." Id, at 1202. That was so even though the allegations had happened 8 years earlier. Id. Here, the Plaintiff himself, Mr. Cohen, had made criminal allegations regarding Judge Grasso-Jones to the FBI only 2+ months before trial. This Judgment cannot be sustained either.

In In re Advisory Letter No. 7-11, 61 A. 3d 136 (N.J. 2013), the Supreme Court stated

> justice must satisfy the appearance of justice. The purpose of our judicial disqualification provisions is to maintain public confidence in the integrity of the judicial process, which in turn depends on a belief in the *impersonality* of judicial decision making. Even a "righteous judgment" will not find acceptance in the public's mind unless the judge's impartiality and fairness are above suspicion. In other words, judges must avoid acting in ... a manner that may be

> *perceived* as partial, otherwise the integrity of the judicial process will be cast in doubt.

Id at 142,143 (emphasis in original) (internal citations omitted).

There is a complete lack of impartiality in this case where over 2 months before trial the trial judge was accused by a party of corruption and bias and those allegations were brought by that party to the FBI and the Judge was aware of that. "A trial judge not only has the right but, moreover, has the obligation to recuse himself on his own motion if he is satisfied that there is good cause for believing that his not doing so might preclude a fair and unbiased hearing and judgment, or... might reasonably lead counsel or the parties to believe so." State v. McCann, 919 A. 2d 136, 142 (App. Div. 2007). In James v. City of East Orange, 246 N.J. Super. 554 (App. Div. 1991) the court commented regarding the Judge's "castigation and belittling treatment of plaintiff's attorney in the jury's presence," Id, at 563, stating "Plaintiff's dismay with the censorious language addressed to her attorney by the judge is not to be lightly dismissed." Id at 564. In Panitch v. Panitch, 770 A. 2d 1237 (App. Div. 2001), it was pointed out that a distinguishing characteristic of that comment was that "the language was used during trial and in the presence of the jury." Id, at 1240. Here there are multiple instances where the Judge had a back and forth disputes with Mr. Cohen within the jury's presence.

B. Mistrial should have been Granted Due to Jude Grasso-Jones precipitating an Altercation between Cohen and Sheriff's officers within earshot of the Jury. (Raised below, 4T, pg. 70)

During the September 16, 2022 appearance in the other matter; one of Mr. Cohen's chief concerns, which he explained repeatedly, was that a Sheriff's officer had been sent to his house and he was concerned that he was going to be arrested (1T, Pg. 9, lines 4-6). Mr. Cohen further stated indignantly, to Judge Grasso-Jones, you…allow him to use the court as a weapon…No one gets arrested on a civil matter…so go send the sheriff again." (1T, Pg. 16, Lines 20-24) He went on, "then you (indiscernible) to have me arrested. That's illegal." (1T, pg. 18, lines 20-21). In fact Judge Grasso-Jones had commented that was why she had scheduled that appearance on Zoom rather than in person (1T, Pg. 9, lines 14-15). Judge Grasso-Jones further explained, that the Sheriff had gone to Mr. Cohen's residence pursuant to her Order, albeit not to arrest him, but to take an inventory. (1T, Pg. 10, lines 4-9).

In this action, Judge Grasso-Jones also got a sheriff involved, in the middle of trial, and that turned out to further prejudice the trial against Mr. Cohen. Specifically, On November 30, 2022, Judge Grasso-Jones asked a Sheriff's officer to sit in at the trial (3T, pg. 43, lines 16-25). Despite, the

prior angst regarding the sheriff's officers confronting Mr. Cohen (as described above regarding the occurrences reflected on the Sept. 16, 2022 transcript) There is no indication in the record that Judge Grasso-Jones ever instructed the Sheriff's officer regarding how to interact with Mr. Cohen. On December 1, 2022, during the trial, Mr. Cohen, who was not on the witness stand at the time, left the Courtroom to use the bathroom. Notably, Judge Grasso-Jones noted on the record that she had not previously ever instructed Mr. Cohen that he was not free to do so (4T, Pg. 71 line 18 – pg. 72, line 2). When Mr. Cohen left the court room, the sheriff's officer followed him out and questioned him in the hallway. (4T, Pg. 56 line 19 – pg. 57, line 14). The Sheriff's officer wanted to ask the judge if Mr. Cohen was allowed to use the bathroom. (4T, Pg. 58, lines 14-17). A Juror had noted that "there's a fight going on outside." (4T, Pg. 55, line 22). Mr. Cohen's counsel requested a Mistrial at the time. (4T, Pg. 59, lines 20-21). Judge Grasso-Jones stated explicitly to Mr. Cohen's attorney, "It was your client shouting that the jurors heard. I heard his voice, you heard his voice, everyone heard his voice. And the juror indicated they can't hear the witness because of the shouting in the hallway." (4T, Pg. 60, lines 14-18). And further, "The voice we heard shouting, I'll tell you, was Mr. Cohen's." (4T, Pg. 73, lines 9-10). Mr. Cohen's attorney argued, the altercation in the hallway was believed by Mr.

Cohen to have been "generated by law enforcement. And he respectfully believes that prejudices his case and asks for a mistrial on that basis." W&M's attorney opposed the motion for a mistrial arguing that it was "a contrivance by the plaintiff [i.e. Mr. Cohen]….that it was plaintiff who caused the interruption."

However, neither W&M, nor their counsel, nor Mr. Cohen's counsel for that matter were aware of the proceedings on September 16, 2022 in the other lawsuit where Mr. Cohen was very plainly agitated by sheriff's officers who had shown up at his home while children were home at the time. No, the only people in the courtroom on December 1, 2022 who were aware of the prior events were Mr. Cohen and Judge Grasso-Jones. Judge Grasso-Jones had been fully aware of how upset Mr. Cohen had been the last time she ordered a sheriff's officer to confront him – and that it had led him to call the FBI and assert charges of bias, and harassment, and corruption, and weaponizing the court. The Judge was aware of that. Mr. Cohen was aware of that. Mr. Cohen felt that history was repeating itself just because he needed to use the bathroom and had not been instructed that he needed to ask prior permission. Despite W&M's counsel's supposition that Mr. Cohen "caused" the interruption; it was actually Judge Grasso-Jones who engineered the circumstances while knowing full well the prior history. Later that morning,

Judge Grasso-Jones addressed the matter regarding going to the bathroom directly with Mr. Cohen. Mr. Cohen pointed out that he had to leave the courtroom due to his colitis (4T, Pg. 107, line 3) and that he tried to raise his hand ask Judge Grasso-Jones first, but she didn't look at him (4T, Pg. 106, lines 8-9), and that at least until being confronted by the Sheriff, he didn't interrupt the Court, he walked out as quietly as possible (4T, Pg. 106, lines 21-24); he did it with respect to the court proceedings. (4T, Pg.107, lines 15-16). But he felt like he was being harassed constantly. (4T, Pg. 107, lines 23-24).

In considering the impact of outside influences on a jury, the Supreme Court has stated:

> It is well settled that the test for determining whether a new trial will be granted because of … the intrusion of irregular influences is whether such matters could have a tendency to influence the jury in arriving at its verdict in a manner inconsistent with the legal proofs and the court's charge. If the irregular matter has that tendency on the face of it, a new trial should be granted without further inquiry as to its actual effect. The test is not whether the irregular matter actually influenced the result, but whether it had the capacity of doing so. The stringency of this rule is grounded upon the necessity of keeping the administration of justice pure and free from all suspicion of corrupting practices. It is said to be imperatively required to secure verdicts based on proofs taken openly at the trial, free from all danger by extraneous influences.

Panko v. Flintkote Co., 7 N.J. 55, 61-62 (N.J. 1951).

After quoting from Panko, the Appellate Division in Barber v. ShopRite of Englewood & Associates, Inc., 966 A. 2d 93 (App. Div. 2009) stated "the trial judge must make a probing inquiry into the possible prejudice

caused by any jury irregularity, relying on his or her own objective evaluation of the potential for prejudice rather than on the jurors' subjective evaluation of their own impartiality." Id, at 107. It is particularly noteworthy that as stated above in the first section, it is highly questionable, in light of the Mr. Cohen's allegations to the FBI 2 months prior to trial, whether Judge Grasso-Jones could possibly make such an "objective evaluation" in fact whether she could remain objective at all.

Nevertheless, at the time of the fight in the hallway, Judge Grasso-Jones did say to Mr. Cohen's attorney: "It was your client shouting that the jurors heard. I heard his voice, you heard his voice, everyone heard his voice. And the juror indicated they can't hear the witness because of the shouting in the hallway." (4T, Pg. 60, lines 14-18). And further, "The voice we heard shouting, I'll tell you, was Mr. Cohen's." (4T, Pg. 73, lines 9-10). And of course, as discussed above, the situation was precipitated by Judge Grass-Jones, not instructing Mr. Cohen he could not leave to go the bathroom and by Judge Grasso-Jones placing the Sheriff's officer in the Court room and not advising the officer about Mr. Cohen's prior experiences with sheriff's officers.

C. Judge Grasso Prejudiced the jury by allowing them to look at 21 Bankers Boxes and piles of documents which should never have been

admitted into evidence; the sheer volume of which was prejudicial to Cohen. (Raised below multiples times, including 2T, pg. 15; and 5T, pg. 30)

From the very beginning of the trial in this matter, Mr. Cohen and his attorney were objecting to the so-called 21 bankers boxes in the court room in full view of the jury. Specifically, beginning on page 14 of the 11/29/2022 Transcript, from the very first day of trial, Mr. Cohen's attorney noted the following even before any jury selection was done.

Mr. Nigen, Cohen's attorney, complained that the 21 boxes in the line of sight of the jury would be prejudicial. (2T Pg. 14, lines 13-21). He further complained that the 21 boxes would tend to bias the jury and bend the case in favor of W&M, (2T Pg. 15, lines 4-10). He also said that the boxes will likely contain "duplicates…several duplicates. So it looks a lot more voluminous" and again pointed out how prejudicial that would be. (2T, Pg. 16, lines 16-25). Judge Grasso-Jones allowed the 21 boxes to remain in the courtroom (2T Pg. 18, line 4).

On December 1, the matter was raised again by Mr. Cohen's attorney, Mr. Nigen. By that time the boxes had been opened and the contents set in "piles and piles of documents" on the defense table which was clearly

prejudicial. And he asked that they, not being in evidence, be removed. Judge Grasso-Jones overruled the objection, allowing the piles of documents to stay. 3T, Pg. 29, line 13 – pg. 30, line 20.

These are but two examples of several that show that Mr. Cohen's attorney repeatedly argued that both the boxes and their contents could prejudice the jury by their sheer volume without showing any more detail of what is actually contained in the documents. As Mr. Cohen's attorney stated: "it would be prejudicial for the jury to view such piles and piles of documents with the indication they're related to work done for his case," (3T Pg. 29, lines 19-21) and "some of these will probably be duplicates of transcripts, several duplicates. So it looks a lot more voluminous than what the actual work might have been." (2T, pg. 16, lines 17-20).

The entire time that the 21 boxes and piles and piles of documents had been sitting in front of the jury they had never been admitted into evidence until December 2, 2022, (as recorded at 5T, Pg. 60, line 20). But the admittance of that voluminous file into evidence did not occur simply. Mr. Cohen's attorney objected to it.

There are multiple conflicting accounts within the record regarding whether the 21 boxes, (also referred to as the Sollecito file and Exhibit D-4) were ever exchanged during discovery in this matter. Mr.

Cohen's attorney raised this concern and despite the confusion and conflicting accounts, where even W&M's witness's testimony conflicted with that of his own attorney on the issue, nevertheless Judge Grasso-Jones overruled Cohen's objection and admitted D-4 into evidence.

On December 2, Mr. Cohen's attorney questioned whether that file, the documents in the 21-boxes, had been produced as discovery in this case or only as discovery in the underlying Sollecito matter (where W&M served as attorneys for Mr. Cohen). 5T, Pg. 25, line 21 – Pg. 26, line 3
In response, W&M's attorney actually said that he had received the documents in discovery in this matter from Mr. Cohen's prior counsel. 5T, Pg. 27, lines 19-23.

Then Judge Grasso-Jones sought clarification, asking "So the files were actually produced to you?" to which W&M's attorney responded. "Yes" and "that's right." 5T, Pg. 28, lines 3-13

Then Mr. Nigen, whom the court should recall only became attorney for Mr. Cohen about a month prior to trial, asked for evidence to confirm that the entire file had indeed been provided as discovery in this case. 5T, Pg. 28, lines 14 – 17. But Judge Grasso-Jones denied that request, noting that since he was in the case for only a month, he doesn't actually know what

was exchanged in discovery, and what was not. Therefore, Judge Grasso-Jones indicated that he was not even in a position to object. 5T, Pg. 28, line 18 – Pg. 30, line 8.

Despite that, Mr. Cohen's attorney formally objected anyway. 5T, Pg. 30, lines 12 – 18. Judge Grasso-Jones stated: "Of course it's prejudicial", (5T, Pg. 30, line 19), and she overruled the objection. (5T, Pg. 31, lines 10-11).

However, what is very interesting is that W&M's own sworn witness, the managing partner of the Weg & Myers law firm, Dennis, D'Antonio, contradicted his own attorney's account very shortly thereafter. Whereas (as indicated above) W&M's *attorney* had told Judge Grasso-Jones that he got the file from Cohen's attorney: 5T, Pg. 27, lines 19-23. His client, W&M's *managing partner* testified under oath to something very different regarding the Sollecito file that was in the 21 boxes, Exhibit D-4. Specifically he said that before bringing suit, they packed up the file in bankers boxes, "sealed them" and put them "into a storage facility" then they were shipped to the courtroom and the seals were cut open in court "yesterday". And that last point was repeated for clarification: "And so the unsealing of the Sollecito file didn't take place until it was shipped here to the courtroom, and you did that here?" To which Mr. D'Antoni answered, "Very noisy, yes." 5T, Pg. 32, line 18 – Pg. 33, line 4

So, W&M's witness testified that they did not get the Sollecito file (D-4) from Cohen's attorney in discovery in this case, nor did they provide it to Cohen's attorney in discovery in this case; rather, they provided it to the attorney that took over the Sollecito matter from W&M and boxed up a copy of that – that's what D-4 is. That boxed up file was sealed and was not opened until in court at trial. It was actually not possible to provide it to Cohen's counsel in discovery in this case. It had been packed away before suit, at a time when they knew they were "going to sue Daniel Cohen" before actually suing him; and it was not opened until in court.

D-4, the 21 boxes containing the Sollecito file had sat sealed in the courtroom prejudicing the jury for days. And after W&M's own witness testified that it could not have possibly been exchanged in discovery in this case, Judge Grasso-Jones moved it into evidence over the repeated objection of Mr. Cohen's attorney. In explaining her ruling to allow D-4 into evidence, Judge Grasso-Jones stated that since Mr. Cohen's attorney had a copy of the Sollecito file to work with in the Sollecito action (since W&M was no longer representing them in that action), therefore someone on Mr. Cohen's legal team absolutely had the file. 5T, Pg. 52, lines 9-15.

But that's simply not fully accurate. The file may have been provided to Mr. Cohen's subsequent counsel in the Sollecito matter. That

subsequent counsel likely went through the materials and created a file, marking documents, making notes in a manner that was useful to them for litigating the Sollecito matter. However, that all started before this action (between W&M and Cohen) started. Documents used in the Sollecito action were not preserved by Cohen's attorney as the "W&M's file" for this action.

Further, W&M's own witness testified that D-4, the 21 boxes of material were *absolutely not* exchanged in discovery in this matter. It would have been impossible. And that's despite W&M's counsel informing the Court that D-4 had been exchanged in discovery in this matter.

So the 21 boxes that had been sitting in front of the jury for days and then opened to "piles and piles" of documents had never been exchanged in discovery (which was conceded to be impossible by W&M's own witness). Yet Judge Grasso-Jones let the sheer volume of them prejudice the jury and admitted D-4 into evidence.

D. Judge Grasso-Jones Erred in Barring Cohen's Expert's Testimony even though W&M's expert had the same deficiency. (Raised below, 3T, pg. 5)

Judge Grasso-Jones severely limited the testimony which could be elicited from Mr. Cohen's expert, Mr. Ouda. On November 30, 2022, Judge Grasso-Jones heard a Motion to Reconsider that determination. And she stated

"there's some stuff that's so fundamental to what the expert needs to look at to render an opinion that if they don't look at it, it's a net opinion" and she continued that the 21 bankers boxes, the Sollecito file are so fundamental in that way. So, to give an opinion regarding whether reviewing that file was reasonable or not, without looking at the file, is a net opinion because it depends on how big the file is, it depends on what it is. 3T Pg. 10, line 5 – Pg. 12, line 6.

So essentially, Judge Grasso-Jones's view was that the file, the 21 boxes of material discussed above were so fundamental, that not reviewing them resulted in the expert's opinion being rendered a Net Opinion.

There are several problems with position of Judge Grasso-Jones. Most basically, is what is sometimes stated as "what's good for the goose is good for the gander." W&M's expert also did not review the file, the 21 boxes. It has already been established that those boxes, that file had been in storage sealed in boxes until unsealed in court. Neither expert reviewed those 21 boxes, the file because those files were not provided in discovery. In fact, a comparison of the documents reviewed by Cohen's expert and the documents reviewed by W&M's expert show an almost identical list. These include: The pleadings in this case, the parties answers to interrogatories, the Retainer agreement between Plaintiff and Defendant, the legal bills at issue,

correspondence, deposition transcripts. In addition, Cohen's expert also reviewed Pleadings in a since discontinued New York Action between the parties to this action, and W&M's expert also reviewed a Court order of August 30, 2019, additional legal bills (from other counsel), and Mr. Ouda's report. (Pa36 & Pa50). Notably, neither expert reviewed the underlying files (which are referred to below as the "Sollecito file", the "21 Bankers Boxes" and "Exhibit D4").

Yet Judge Grasso-Jones permitted W&M's expert to testify in his opinion that the billing was reasonable (6T, Pg. 93, lines 2, 12-14). And at the same time, and for the exact same offense – not reviewing the 21 boxes of file, Cohen's expert was barred from testifying that the bills were not reasonable. Not only was the ruling on the expert completely improper, but it reflects such a double standard that the bias of Judge Grasso-Jones discussed above is clear.

Another, separate issue is that among the items that Mr. Ouda specifically stated in his report is that the invoices were not descriptive. "None of the billing is descriptive at all." Pa38. "An area of concern is the substantial amount of time spent reviewing the file and documents. 92.25 Hours were spent reviewing the file and 161 hours were spent reviewing documents. This type of general file review is very suspicious because it doesn't describe what was done or why it was done." Pa38. "When questioned

at depositions, the Firms attorneys could not recreate what files or documents were reviewed or indicate what work was performed on any specific date." Pa38.

Thus if the invoices do not show for instance that the contents of box "x" for the purpose of "y", and if W&M's own attorneys could not figure out what was reviewed and why on any given date, for any given invoice entry, then what good would it have done for Mr. Ouda to have reviewed the 21 boxes himself? The time that would be reasonable to review of a complex document to find internal inconsistencies for the purpose of basing a summary judgment motion on it might very different than the time that would be reasonable to review the exact same document for simply creating a chronological history of the case.

A review of the 21 boxes in the vacuum created by the non-detailed billing would not have been productive.

E. **W&M's expert should have been precluded from testifying as not disclosed in discovery** (not raised below)

In addition to the above argument that W&M's expert suffered from the exact same "deficiency" that Cohen's expert suffered from, namely that he did not review the 21 boxes of the file, W&M's expert suffered from an additional deficiency as well.

He was not disclosed during discovery as the expert to be testifying. As pages Pa51-Pa52 show, the Expert that was expected to testify was named David Wikstrom. That is not the expert who testified at trial. At trial, the name of the expert who testified for W&M was named Jeffrey Kampf. (6T, Pg. 70, line 24). Judge Grasso-Jones should not have permitted this expert to testify.

F. **Mistrial should have been Ordered in light of W&M's highly prejudicial summation.** (not raised below)

Another completely separate ground for appeal is also related to Mr. Cohen's expert, but in a completely different way. As explained above, the reason that Cohen's expert did not testify as to the reasonableness of the billing was only because he was barred from doing so by an Order of Judge Grasso-Jones. So after Mr. Ouda not testifying due to the Order, W&M's attorney during summation stated the following, without being stopped by judge Grasso-Jones. Shockingly, W&M's attorney stated during summation that Cohen's expert didn't say that the bills were unreasonable. He didn't say the bills were excessive. He didn't say that the bills were not necessary. He didn't offer that opinion. So he's not on the same wave length as his own, as his own client, Mr. Cohen, who said they're unreasonable and if that weren't enough, W&M's attorney actually repeated a short while later that Cohen's expert didn't say one time that the bills were excessive, unreasonable and not fair, not one time.

6T pg. 237, line 15 - pg. 238, line 9.

In a very similar case of an attorneys arguments during summation regarding the absence of barred expert testimony, the Supreme Court has stated, “Summation commentary, however, must be based in truth, and counsel may not "misstate the evidence nor distort the factual picture.” Bender v. Adelson, 901 A. 2d 907, 919 (N.J. 2006). “When summation commentary transgresses the boundaries of the broad latitude otherwise afforded to counsel, a trial court must grant a party's motion for a new trial if the comments are so prejudicial that "it clearly and convincingly appears that there was a miscarriage of justice under the law." R. 4:49-1(a).” Id. “[W]e agree that counsel's comment asking the jury to draw an adverse inference from defendants' failure to call any independent cardiologists necessitates a new trial.” Id. The Supreme Court also stated in that matter that the missing witness doctrine was not available in that case, because “[g]iven the trial court's order barring the [] expert[testimony], [same was] not within defendants' power to produce.” Id, at 921.

Thus Judge Grasso-Jones’s error in permitting W&M’s expert while precluding Cohen’s expert, despite the fact that both had reviewed the same records, was compounded by the extremely prejudicial summation by W&M’s attorney.

G. **Judge Grasso-Jones Admonished Cohen in the presence of the Jury.**

(Not raised below)

Judge Grasso-Jones further contaminated the perception of the jury towards Mr. Cohen on the very first day of Trial by getting into a snarky and rhetorical exchange with him right in front of the jury. As background, Mr. Cohen felt that W&M's attorney, Mr. Slimm, had made certain false and/or misleading claims during his opening statement. Then part-way through Mr. Cohen's direct examination, Mr. Cohen was apparently about to say something about what said by Mr. Slimm during the opening, and Mr. Slimm interrupted with an objection (2T Pg. 152, line 17), a sidebar was held, and then *after the sidebar*, an extended exchange took place (over 3 pages of transcript) in front of the jury in which Judge Grasso-Jones repeatedly challenging Mr. Cohen with seemingly rhetorical questions such as "who decides the law in this case?" and when Mr. Cohen answered "Okay. Okay", Judge Grasso-Jones repeats the question to Mr. Cohen again in front of the jury: "No, why don't you answer my question? Who decides the law that applies to this case?". A short while later, Judge Grasso-Jones stated, still in front of the jury, "I decide the law. And what I'm telling you is as a matter of law, your statements with reference to the attorney who represents the adversary are inappropriate" See

colloquy between Judge Grasso-Jones and Mr. Cohen, 2T, Pg. 155, line 16 – Pg. 158, line 18).

This exchange which occurred over more than 3 pages of the transcript is not the only time that Judge Grasso-Jones admonished Mr. Cohen in front of the jury. Such activity should have happened outside the presence of the jury as it could reasonably have been foreseen to poison their disposition to Mr. Cohen.

It is notable that Mr. Cohen had used the words "false" and "incorrect" rather than "untruthful" or "lying." Mr. Cohen was clearly trying to abide by the court's determination, specifically that of another admonishment that occurred earlier that day (again the first day of trial) and again in front of the jury (2T, Pg. 142, line 18 – pg. 143, line 5). Specifics of that admonishment, in front of the jury, included Judge Grasso-Jones being rhetorical again with Mr. Cohen by saying: that anyone who has little children knows the difference between saying someone's a liar versus the information is incorrect. Id. Which foreseeably impressed upon the jury that Mr. Cohen was no better than a child.

However, despite Judge Grasso-Jones's apparent concern for character attacks from witnesses, Judge Grasso-Jones apparently had a different view when Mr. Cohen was the subject of snide and insulting remarks.

As stated earlier, what's good for goose, is good for the gander. But Judge Grasso-Jones permitted W&M's witness to say of Mr. Cohen from the stand, "he's not a good guy. He's a bad guy" (5T, Pg. 102, lines 22-23). Also "Daniel Cohen is a con artist." (5T Pg. 101, line 18). But no admonishment of W&M's witness by Judge Grasso-Jones at all.

H. Judge Grasso-Jones Admitted highly prejudicial character evidence over repeated objections. (raised below 3T, Pg. 194)

In addition to impugning Mr. Cohen's character through bald insults, Judge Grasso-Jones also permitted improper prejudicial character evidence to be admitted over repeated objections of Cohen's attorney.

Specifically Judge Grasso-Jones permitted testimony and evidence regarding past and outside allegations by others, lawsuits, and judgments against Mr. Cohen. The purpose being prejudicial and not probative to show that other courts have ruled against Cohen, so this jury should as well. An example of this can be found as early as the opening statement of W&M's attorney. He said that Mr. Cohen didn't pay a former attorney, Mr. Sodini, so Sodini now has a judgment against Mr. Cohen; He also said that another attorney, "a fellow, a very good lawyer" also didn't get paid by Cohen, and so he also now has a $200,000 judgment against Mr. Cohen. (2T pg. 126, line 25 – pg. 127, line 10).

The assertions carried into the cross examination of Mr. Cohen and the testimony of W&M's witness as well. On Cross-examination, Mr. Cohen was asked "do you recall that you entered into a consent judgment with Mr. Sodini's firm?" (3T pg. 193, line 4-5). Mr. Cohen's attorney objected arguing that the question going to character propensity would be prejudicial and the prejudice would outweigh any probative value. (3T, Pg. 194, line 7-13). The court laid out the legal rules citing to NJ Rule of Evidence 4:03 and 4:04. And then Judge Grasso overruled the objection finding that since Mr. Cohen indicated he negotiates bills down, the evidence of a consent judgment is admissible. (3T, Pg. 198, line 2 – pg. 199, line 3; pg. 199, line 23 – pg. 200, line 13.)

But that doesn't follow. If Mr. Cohen admitted to regularly negotiating bills down, then *he's already admitted it*, any further evidence to show that's what he does in other case with other parties is by definition more prejudicial than probative, because he's already admitted it, there's no need for additional evidence of that. Moreover, admitting to a negotiation is not the same as evidence regarding a Judgement. A Judgement is a legal finding. Nevertheless Judge Grasso-Jones let in evidence of the consent Judgment regarding Mr. Cohen's lawsuit with Mr. Sodini. And then Mr. Cohen was asked about a "judgment… just shy of $200,000" by another attorney against

him. (3T, Pg. 204, line 8-9); again Cohen's attorney objected and again Judge Grasso-Jones overruled.

In the testimony of W&M's lawyer we find those matters brought up again, "That's why Sam Maybruch had to sue him to get a judgment to get paid. That's why Sollecito had to sue him to get a judgment to get paid." (5T, Pg. 102, lines 10-12). In W&M's summation, the point is even clearer: Cohen didn't the attorney Maybruch, so they ended up with a judgment, Cohen didn't pay Sodini, and they ended up with a judgment. (6T Pg. 236, line 21 – pg. 237, line 7).

It is clear that Mr. Cohen admitted to negotiating his bills, so no evidence was necessary to establish that; yet, Judge Grasso-Jones admitted evidence of judgements against Mr. Cohen and didn't think that the prejudicial nature outweighed the probative nature…of judgments.

CONCLUSION

In conclusion, it is abundantly clear that Judge Grasso-Jones was accused by Mr. Cohen of bias, harassment, and corruption. Judge Grasso-Jones was aware that allegations of such had been made to the FBI. Nevertheless, Judge Grasso-Jones did not recuse herself and ended up making not just one or two, but several prejudicial rulings against Mr. Cohen.

Specifically, Judge Grasso-Jones permitted, even precipitated an altercation between Mr. Cohen and sheriff's officers within earshot of the jury; and Judge Grasso-Jones even commented that everyone heard Mr. Cohen's voice shouting. Also, Judge Grasso-Jones permitted 21 bankers boxes and piles and piles of documents to sit in front of the jury even though they should never have been admitted into evidence because they were never exchanged in discovery, and indeed could not have been because W&M had them sealed away in storage first opened at trial.

With regards to Mr. Cohen's expert, Judge Grasso-Jones made multiple errors. She precluded his testimony because he did not review the 21 bankers boxes of material (which could not have been reviewed since they had not been provided in discovery); yet he permitted W&M's expert who likewise did not review the very same 21 bankers boxes of documents. Then that error was compounded when Judge Grasso-Jones permitted W&M's attorney to draw conclusions in summation from the fact that Mr. Cohen's expert did not testify that the billing was not reasonable.

Finally, Judge Grasso-Jones permitted insults to fly against Mr. Cohen, while admonishing him, in front of the jury (rather than outside of its presence) against similar activity, and she permitted highly prejudicial

evidence regarding third-party judgments to be admitted as evidence against Mr. Cohen.

For all these reasons, Mr. Cohen was unable to have a fair trial, or at least the appearance of impartiality is reasonably in question. The Judgment must be reversed and a new trial ordered.

Respectfully Submitted,

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DANIEL COHEN Plaintiff/Appellant, vs. WEG & MYERS, P.C. Defendant/Respondent.	SUPERIOR COURT OF NEW JERSEY APPELLATE DIVISION DOCKET NO: A-2082-22 CIVIL ACTION On appeal from the Superior Court of New Jersey, Law Division, Monmouth County, Docket No: MON-L-1054-18 Sat Below: Hon. Linda Grasso Jones, J.S.C. Date Submitted: September 5, 2023

BRIEF OF DEFENDANT/RESPONDENT WEG & MYERS, P.C.

On the Brief:
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PROCEDURAL HISTORY

On March 26, 2018 Plaintiff, Daniel Cohen, filed a Complaint in the Superior Court of New Jersey, Law Division, Monmouth County, under Docket No. MON-L-1054-18 (Pa1).

On July 23, 2018, Defendant, Weg & Myers' P.C. ("Weg & Myers" or "W&M") filed an Answer to Plaintiff's Complaint, which included a Counterclaim for breach of contract alleging non-payment of legal fees and seeking additional legal fees, interest, costs and disbursements. (Pa7).

On September 14, 2023 Cohen filed an Answer to the Counterclaim. (Pa23).

After the parties exchanged discovery, trial was held between November 29, 2022 and December 6, 2022. The jury rendered a unanimous verdict in favor of Defendant, Weg & Myers' P.C. in the amount of $244,759.59. (Pa30).

On February 7, 2023, the trial court properly entered Judgment upon the Jury Verdict in the amount of $244,759.59 and awarded contractual prejudgment interest in the amount of $182,825.33 from April 7, 2018 through December 6, 2022 (Pa28).

This appeal followed. (Pa32).

STATEMENT OF FACTS

The underlying construction defect litigation was filed in the matter of Sollecito Custom Homes, LLC v. Daniel Cohen, et al., in the Superior Court of New Jersey, Law Division, Monmouth County, under Docket No: MON-L-2815-15. (Da1).

The gravamen of the Sollecito Complaint was that after moving his family into the newly constructed home, Cohen terminated Sollecito, and refused to pay any part of the unpaid balance owed pursuant to the construction contract. (See Sollecito Custom Homes, LLC v. Daniel Cohen v. Sollecito Custom Homes, LLC, et al., in the Superior Court of New Jersey, Law Division, Monmouth County, Docket No: MON-L-2815-15). (Da1).

By June of 2017, Cohen had already had been represented by many firms, including Pryor Cashman; Ansell, Grimm & Aaron, LLP; Becker and Poliakoff, LLP; and Stark & Stark[1]. (Da21-Da23). On June 1, 2017, Cohen, by his then counsel Stark & Stark, filed a Third Amended Answer, Counterclaim and Third Party Complaint. The Third Party Complaint named approximately 20 contractors, subcontractors, firms, and trades building the house along with a breach of contract action against Chubb Insurance Company. The Amended

[1] Following the termination of Weg & Myers, Mr. Cohen went through 3 additional law firms: Arbus & Maybruch; Anderson & Kill; and McCarter and English.

Answer included 21 Affirmative Defenses to the Sollecito Complaint. The Third Party Complaint against the third-party defendants contained 134 paragraphs, with thirteen separate counts against 22 vendors, subcontractors, and engineers/architects. Additionally, there was a breach of contract claim against Chubb Insurance Company. This is the litigation Weg & Myers substituted into[2]. (Da23).

At the time of the substitution by Weg & Myers, the underlying case had been pending since July of 2015. Discovery had been undertaken, but depositions had not yet been conducted, and experts had not yet been retained. There were also outstanding discovery demands that had to be compiled with. There was an existing Order requiring the completion of discovery by October 12, 2017 (later extended to March 1, 2018). The Court Order also required that W&M be ready to proceed with the depositions in two and a half months. The deposition of Mr. Cohen was court-ordered to begin on November 17, 2017.

The Retainer Agreement was signed on September 8, 2017. (Da66). The terms provided that hourly fees for associates would be billed at a rate not to

[2] Mr. D'Antonio testified that the fact that many prior lawyers had handled this matter, made it exceedingly difficult for Weg & Myers to step into the case. (4T:153:20-25).

exceed $395.00 per hour, and partners were billed at $650.00 and $750.00. (Da66) The retainer also made the client responsible for disbursements.

The following language appears in the retainer agreement:

> We will use our best judgment and skill in working on your matter, and we reserve the right to make decisions about delegating work assignments to our attorneys or employees best suited to each assignment. We will attempt to accomplish completion of your matter and provide our services at the lowest cost to you consistent with our highest standard for quality and efficiency.

(Da73).

The existing files were assembled by Stark & Stark, and ultimately delivered to W&M in boxes and by a DVD. The file consisted of 21 bankers' boxes, consisting of over 60,000 pages. (Da65). The files consisted of pleadings, Motions, correspondence, discovery, original documents, architectural drawings, and plans. In addition to reviewing thousands of pages of documents that had been previously exchanged, there were outstanding discovery demands that had to be complied with prior to the commencement of depositions. The first deposition was court-ordered on November 17, 2017, giving W&M only five weeks to be prepared to proceed with depositions. The legal time that would ordinarily be expended over the duration of the case had to be compressed into a few months. (Pa40).

In order to meet this substantial undertaking, W&M assembled a team. Lawyers had to be re-deployed from other billable cases that they had been working on. (Da65). The team consisted of two associates: Jason Engelstein and Jason Kosek, who billed at the rate of $350.00 and $300.00 per hour respectively. The associates were initially tasked with reading and digesting the contents of the files and preparing discovery responses. (Pa40). That was done under the direct supervision of William (Bill) Parash, a partner who was billed at the rate of $650.00 an hour. William Parash was also tasked with the responsibility of lining up potential expert witnesses, and conducting an on-site inspection of the house with the prospective experts. The final team member was Dennis D'Antonio, who had overall responsibility for the pre-trial preparation, conducting depositions, and ultimately would serve as lead trial counsel. (Pa42). Mr. D'Antonio was a seasoned trial lawyer[3].

Following the retention of W&M, a Motion for *pro hac vice* admission was filed and granted. (Da77). A Motion was also made to allow for additional time to complete discovery, ultimately extending the deadline by several months. (Da85). On September 28, 2017, William H. Parash of W&M, Daniel Cohen, and Daniel Cohen's engineer conducted the site inspection of Daniel Cohen's property. There was at least one site visit in the

[3] His hourly rate was, at that time, $750.00 per hour. (Pa41).

company of a potential expert witness. (Da67). There were settlement discussions with several of the third-party defendants. Four depositions were initially conducted, including two depositions of Mr. Cohen. (Da68).

During this time, Mr. Cohen's presence at W&M offices at Federal Plaza in Lower Manhattan was a constant. (Da68). He engaged in numerous discussions about evidentiary issues, the necessity to review all of the evidence and prior proceedings, discovery obligations and difficulties, the retention of experts, settlement discussions with some of the third-parties, and his preparation for his depositions and the depositions of the parties. (Da68). During that time, Mr. Cohen was well informed and highly complementary of W&M's efforts.

After testifying on two occasions, Cohen's third deposition was scheduled for February 15, 2018. For the time period from June 2017 until February 2018, Mr. Cohen was billed 443 hours in legal fees, in the amount of $163,460.00, and reimbursable disbursements in the amount of $9,408.60. The breakdown of attorney time billed for that period was as follows: Jason Kosek 75.25; Jason Engelstein 150; William Parash 150; Dennis D'Antonio 51.50; Others 15.75. (Da89).

In the communications that followed the invoice, Cohen wrote in an e-mail that "I am not paying your firm $70k per month, it's that simple case

closed. The bill should have been 20-25k per month for three months at most and I wouldn't have said a thing."[4] (4T:143:19-21). Cohen's complaint was that the time spent by William Parash and the associates reviewing the files was a waste of time, and that they instead should have focused only on doing depositions and the expert reports. All explanations of why W&M could not litigate a case without familiarizing itself with the evidence and prior proceedings fell on deaf ears. Cohen had no interest in reviewing the bona fides of the invoices. Rather than attempting to understand the billings, or resolve any billing issues in good faith, Cohen gave W&M an ultimatum. Either agree to waive the fee and convert the case to a 20% contingency fee, or we "will let the Courts decide in a couple of years". W&M declined to waive the earned fee and convert to a 20% contingency. Consequently, the firm was terminated effective the evening of February 1, 2017. (Da69).

After Weg & Myers, P.C. was terminated as counsel by Daniel Cohen, on February 13, 2018, Weg & Myers, P.C. substituted out of the action under MON-L-2815-15. (Da115). That Substitution of Attorney was provided to

[4] Cohen only paid the initial retainer of $50,000.00. When he issued a payment on account of $100,000.00, he stopped payment on that check.

Arbus, Maybruch & Goode, along with the entire file, under MON-L-2815-15.[5]

After Weg & Myers, P.C. filed an action in the Supreme Court of New York, County of New York[6], seeking to recovery fees due and owing, plaintiff filed the current action in the matter of Daniel Cohen v. Weg & Myers, P.C., in the Superior Court of New Jersey, Law Division, Monmouth County, under Docket No: MON-L-1054-18, on March 26, 2018. (Pa1).

On July 23, 2018, the New York action was discontinued and defendant/counterclaimant Weg & Myers, P.C. filed its Answer and Counterclaim in the New Jersey action. (Pa7).

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[5] After Weg & Myers, P.C. was terminated, Mr. Maybruch handled the underlying construction defect case, and also was the attorney for plaintiff in this action. Mr. Maybruch was counsel until he filed a Motion to be Relieved as Counsel. (Da121). On August 24, 2020, Mr. Maybruch filed a fee Complaint against Daniel Cohen. (Da124). On February 11, 2022, an Order for Judgment was entered by Judge Jones against Daniel Cohen for in the amount of $141,817.74, plus $25,914.64 in interest, plus attorneys' fees and costs in the amount of $31,662.26, for a total of $199,394.64. (Da148). The Arbus Judgment was affirmed by this Court in Arbus, Maybruch & Goode, LLC v. Cohen, 475 N.J. Super. 509 (App. Div. 2023). After Sam Maybruch got out of the case, Matthew Weisberg came in to represent plaintiff. However, Mr. Weisberg got out on September 9, 2022.

[6] Weg & Myers, P.C. voluntarily discontinued the New York matter without prejudice before Mr. Cohen appeared. (Da150). When the New Jersey arbitration panel declined to arbitrate the matter, Mr. Cohen filed a malpractice action in New Jersey (Pa1). Weg & Myers' action for attorneys' fees was brought in the form of a Counterclaim.

After the full exchange of discovery, on February 16, 2021, defendant/counterclaimant filed its Motion to Strike the opinions of plaintiff's expert, Peter Ouda. (Da152). On April 5, 2021, the Honorable Linda Grasso Jones, J.S.C. entered an Order and Opinion. (Da154-Da166). That Order and Opinion struck the opinions of plaintiff's expert, Peter Ouda. The Court ruled that Ouda could not testify that Weg & Myers, P.C.'s invoices were unreasonable, unnecessary, or excessive because Mr. Ouda failed to satisfy the expert reporting standards, rendering his opinion a net opinion.[7] (Da154-Da166).

In the Court's Rider and Statement of Reasons of November 18, 2022 (Da169), the Court noted that the first Motion *in limine* sought to bar the introduction of testimony and the report of Cohen's expert, Peter Ouda, at trial. The second Motion *in limine* sought to bar any evidence by Cohen in support of a

[7] As set forth in greater detail under Section IV of the Legal Argument, the trial court, in its Statement of Reasons, held that in reaching his opinion that the invoices issued by Weg & Myers were unreasonable, Mr. Ouda looked only at the retainer agreement between Cohen and Weg & Myers and the legal bills sent to Cohen. However, the trial court properly noted that Mr. Ouda never looked at the discovery requests prepared, the discovery responses prepared, or the voluminous documents received or propounded by Weg & Myers in the underlying matter. The trial court properly held that an expert's opinion must have some factual basis, and the retainer agreement and the invoices issued did not provide a factual basis for a determination that Weg & Myers spent too much time and charged too much for the drafting of discovery responses or reviewing the voluminous documents (which Ouda never saw).

claim for damages, and to preclude Cohen from claiming or arguing that he had sustained damages.

The trial before the Honorable Linda Grasso Jones, J.S.C. occurred between November 29, 2022 and December 6, 2022. (See 2T through 7T).

At the beginning of trial, the Court found that there was no malpractice claim in the Complaint, and there was no expert report on malpractice. (4T:23:11-19). Plaintiff's counsel confirmed that it was a breach of contract case. (4T:23:21-22). Counsel confirmed that malpractice was different than a breach of contract claim. (4T:23:21-25). The Court recognized that the case was about whether the bills were reasonable. (4T:25:4-13).

The Court noted that Cohen himself provided his opinion, not as an expert, but based upon his review of lawyer bills, and he thought the bills were excessive. (4T:27:22-25). The Court ruled that Cohen was permitted to offer his lay opinion on the bills in an effort to support his claim that the bills were excessive. (4T:28:8). However, the Court ruled that Cohen was not permitted to bring a claim of legal malpractice because there was no evidence of malpractice in the case. (4T:28:8-20). The Court did grant the defense Motion to preclude plaintiff from arguing or proceeding on a claim of legal malpractice. (4T:28:12-14). The Court denied the defense Motion to preclude the plaintiff's expert's testimony on excessive billing. (4T:28:17-20).

During the course of trial, Lee Nigen, counsel for plaintiff, argued to the trial court that the Cohen construction defect case files should be removed from the courtroom as being prejudicial. (4T:29:14-17). Defense counsel argued that these were the Weg & Myers files from the underlying Sollecito case[8], which contained the documents that Weg & Myers received from the Stark & Stark firm, as well as the documents Weg & Myers created while they were handling the litigation. (4T:30:1-6). The documents were for the purposes of Weg & Myers' proofs at trial. (4T:30:13-14 and 18-19). Accordingly, the Court properly overruled plaintiff's objection.[9] (4T:30:20-21).

During the course of the trial, Mr. Cohen repeatedly sought to disrupt the trial with his behavior and outbursts. One example of Mr. Cohen's disruptive behavior involved an outburst outside the presence of the jury in the hallway wherein Mr. Cohen started shouting at a Sheriff's officer, who he accused of infringing on his rights to use the bathroom.

The Court instructed plaintiff's counsel that he should discuss the matter with Mr. Cohen, and if Mr. Cohen did not want to come back to the courtroom,

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[8] The Sollecito litigation started two years before Weg & Myers substituted in the case. (4T:138:5-18). The Retainer Agreement was signed September 8, 2017. (4T:138:21). The *pro hac vice* Order was entered by Judge Gummer on October 13, 2017. (4T:138:20-25).

[9] These documents were all copied and produced to the Maybruch firm following Weg & Myers termination in the construction defect case.

then he would be escorted from the building if he continued to make noise in the hallway. (4T:60:22-25). The trial had to move forward, and plaintiff's counsel was advised of that. (4T:61:6-9). At that point, plaintiff's counsel stated, "And I do commend the Sheriffs on their professionalism." (4T:67:10-11). Plaintiff's counsel advised the Court that Mr. Cohen would be returning to the courtroom. (4T:68:24-25). Thereafter, plaintiff's counsel advised the Court that plaintiff wanted to move for a mistrial. (4T:69:14-18). Plaintiff's counsel argued that Mr. Cohen wanted a mistrial because of what "… he feels was generated by law enforcement. And he respectfully believes that prejudices his case and asks for a mistrial on that basis. And I realize that ruling is within the discretion of the Court, Your Honor." (4T:70:15-19). The Court denied the application for a mistrial. (4T:73:20-22).

The Court conducted the *voir dire* of the jurors. (7T:10-20). During the voir dire, the jurors all stated that they heard voices in the hallway, but did not hear what the voices were saying, did not recognize the voices; and would not consider the voices from the hallway in their deliberations. (7T:10:1-9 to 7T:20:25).

During Dennis D'Antonio's direct examination, Mr. D'Antonio testified as to the communications with Daniel Cohen regarding the invoices for legal services performed. Specifically, following the January 2018 invoice, Cohen

called and commented that it was a "big bill" and "It's too much". (4T:143:19-21).

Also, Mr. D'Antonio identified Exhibit D-8, which was an email chain beginning January 31, 2018. (4T:145:16-25). Mr. D'Antonio identified his January 31, 2018, 2:56 p.m., email responding to Cohen's January 31, 2018, 2:46 p.m. email. Mr. D'Antonio told Cohen to look at the bills carefully, and asked him if he wanted to speak about them. (4T:151:7-12). Then, Cohen responded at 3:02 p.m., on January 31, 2018, that he would be traveling, and they could speak on Monday. (4T:151:9-16).

Mr. D'Antonio responded on January 31, 2018, at 6:07 p.m., explaining that when they were retained, on September 8, 2017, it was active litigation with numerous defendants, and they were being asked to step into the case and get up to speed. (4T:151:23-25). Mr. D'Antonio explained that the firm had received the construction defect case files from prior counsel and opposing counsel, which contained in excess of 60,000 pages, all of which had to be read. (4T:153:1-5).

Discovery demands had been defaulted on, and Cohen had to be brought into compliance by producing documents, which had to be read before they were produced. (4T:153:6-10). Also, there were privileged communications

which had to be reviewed and removed. Mr. D'Antonio also explained in his email that the firm billed 443 hours during this period.

Mr. D'Antonio told Cohen to "dial down" the "inflammatory rhetoric" which was "insulting". He pointed out that he [D'Antonio] had not billed Cohen for all of the time he spent on the case. He also made it clear that the firm will "sit tight and not engage in any further billing until you direct us to continue with the case." (4T:154:18-22).

Mr. Cohen responded, stating that he wanted Mr. D'Antonio to waive the bill and agree to continue the case on a 20% contingency. (4T:155:1-11). Mr. Cohen never questioned any particular entry on the invoice, and never asked Mr. D'Antonio to explain anything. He never came in to meet with Mr. D'Antonio to go over the invoice, despite being invited to do so. Rather, Mr. Cohen issued an ultimatum: to convert the retainer into a 20% contingency or Weg & Myers would be terminated and "you can chase me and take me to Court to try to get paid and I'll see you in five years." (4T:155:15-22).

Mr. D'Antonio refused that offer.

During Mr. D'Antonio's testimony, the trial court observed that Cohen was snickering, and making jeers and laughs during this testimony. (4T:168:18-25). Outside the presence of the jury, the trial court made it clear to plaintiff's counsel that the court found that Cohen's behavior was "willful

and it is wrong" and advised plaintiff's counsel that the Court would instruct plaintiff, and then instruct the jury to disregard his conduct. (4T:171:16-17).

The Court instructed Cohen regarding the laughing and snickering he was doing, which was not appropriate. (4T:172:12-25). The Court instructed Cohen to behave in the courtroom without laughing and snickering while someone was testifying. (4T:172:20-25). Cohen was instructed not to do it anymore. The jury was instructed to disregard Cohen's laughing and snickering, and that they should not consider it in their deliberations. (4T:173:1-7).

The Court found that Cohen's behavior on the stand was unacceptable. (3T:93:20-21). Additionally, during Cohen's cross examination by Weg & Myers' counsel, Mr. Cohen refused to answer simple questions regarding who was the party to the lawsuit and on numerous occasions, called counsel for Weg & Myers a liar. (3T:93:23-25).

The Court did provide the jury with an instruction that a witness cannot make personal comments about attorneys, just as counsel cannot call another attorney a liar. (3T:105:1-25). The Court explained that an instruction was being given regarding comments made by Cohen concerning defense counsel, and that the jury should disregard the same, and not consider those comments because they were not evidence. (3T:105:21-25). In addition, Cohen was

instructed that he should refrain from making attacks on counsel, and should not be calling anyone a liar in the case. (3T:106:1-7).

Plaintiff's counsel, in addition to moving for a mistrial, also made a Motion for Recusal after the evidence was heard. (6T:216:1-5). Defense counsel pointed out that the Motion for Recusal was made too late because the evidence was in, everyone had rested. (6T:218:11-15). In addition, there was no evidence to justify a recusal, and no evidence that the Court favored one side or the other. (6T:218:16-20). At that point, Mr. Cohen started to laugh, and then stated, "What, are you going to chastise me for laughing? It's a joke, what he's saying, Your Honor[10]." (6T:218:20-25). The jury was not present during that statement. (6T:219:3-6). Mr. Cohen then stated, "It's obvious that this is -- as biased as could be. It's biased --." (6T:219:12-16).

The Court cautioned plaintiff to remain silent, and that his case was finished. (6T:219:18-21). The Court told plaintiff that there should be no shouting out, no chuckling, and no laughing. She explained that he had been noticed a couple of times that his behavior was not acceptable. (6T:219:17-23). The Court advised Cohen that if he does it again within the presence of the jury, or outside the jury's presence, he will be removed, and not allowed to

[10] Referring to defense counsel.

come in for the rest of the trial. (6T:219:24-25). Cohen then stated, "Yes, Your Honor, I understand. It's obvious." (6T:220:4-5).

The Court denied all of plaintiff's request for a mistrial and for recusal. (6T:221:1-2). The Court noted that in terms of the confrontation in the hallway, the Court was not there, and neither were the jurors. (6T:221:2-4).

Following the verdict, Plaintiff's counsel then made a Motion for Judgment Notwithstanding the Verdict. (7T:80:1-5). Plaintiff's counsel argued that the jury was only out for about 25 minutes, and that indicated "undue prejudice." (7T:80:8-12). Plaintiff's counsel argued that the jury did not evaluate the evidence. (7T:80:12-15). Also, plaintiff argued that there was no evidence to support a verdict for breach of contract. (7T:80:16-20).

The Court ruled that the evidence was quite strong in favor of the Counterclaim. The Court could not conceive of how it would set aside the jury's verdict in this case. (7T:81:18-25). The Court ruled that jurors do not have to read the documents. (7T:83:21-25). The jurors can decide the case based upon any of the evidence presented. (7T:83:23-25). The Court was satisfied that the verdict should stand. (7T:84:1-5).

On January 20, 2023, the Honorable Linda Grasso Jones, J.S.C. entered an Order granting contractual pre-Judgment interest in the amount of $182,825.33 to Weg & Myers, for the time period of April 7, 2018 through

December 6, 2022. (Pa28). The Order of January 20, 2023 also provided that Weg & Myers, P.C. was entitled to receive post-Judgment interest at the rate established pursuant to the NJ Rules of Court, from December 7, 2022, as the pre-Judgment interest granted above runs through December 6, 2022. (Pa28).

The Honorable Linda Grasso Jones, J.S.C. entered, on February 7, 2023, Judgment in favor of Weg & Myers, P.C. against Daniel Cohen, in the amount of $244,759.59. (Pa28). Also, the Judgment Upon Jury Verdict awarded contractual pre-Judgment interest in the amount of $182,825.33 to defendant Weg & Myers, P.C., for the time period of April 7, 2018 through December 6, 2022, for a total amount of $427,584.92. (Pa28).

This appeal followed. (Pa32).

ARGUMENT

I. PLAINTIFF COHEN'S CLAIM THAT JUDGE GRASSO-JONES SHOULD HAVE RECUSED HERSELF LACKS MERIT (6T:215:1)

There is no merit regarding Mr. Cohen's argument that trial judge should have recused herself. Therefore, the Appellate Division should reject Plaintiffs' arguments.

Canon 1 of the Code of Judicial Conduct states that "[a]n independent and honorable judiciary is indispensable to justice in our society." Judges are

required to maintain, enforce, and observe "high standards of conduct so that the integrity and independence of the judiciary may be preserved." Ibid.

Judges are to "act at all times in a manner that promotes public confidence," Id. Canon 2(A), and "must avoid all impropriety and appearance of impropriety," Id. commentary on Canon 2 (emphasis added). Indeed, as the Supreme Court recognized nearly a half century ago, "'justice must satisfy the appearance of justice.' " State v. Deutsch, 34 N.J. 190, 206 (1961) (quoting Offutt v. United States, 348 U.S. 11, 14 (1954)). That standard requires judges to "refrain ... from sitting in any causes where their objectivity and impartiality may fairly be brought into question." Ibid. In other words, judges must avoid acting in a biased way or in a manner that may be *perceived* as partial. To demand any less would invite questions about the impartiality of the justice system and thereby "threaten[ ] the integrity of our judicial process." State v. Tucker, 264 N.J. Super. 549, 554 (App. Div. 1993), certif. denied, 135 *N.J.* 468 (1994).

Here, Plaintiff's basis to recuse Judge Grasso Jones has nothing to do with Judge Jones' alleged bias or impartiality, but fully pertains to Plaintiff's disagreement with the rulings made against him. Plaintiff, during numerous times at trial, disregarded decorum in the courtroom, was combative with

opposing counsel and disrespected the trial judge and court staff. (6T:215; 5T:29; 4T:107:23-24).

Plaintiffs' baseless and unsubstantiated alleged complaint to the FBI about Judge Grasso Jones, was Plaintiffs attempt to forum shop to get a different judge assigned to his case. This was further alleged by Plaintiff to further delay the trial, which was done repeatedly by Plaintiff prior to the trial.

If Plaintiff is upset with the rulings made at trial, he has the right to appeal the same. However, recusal of a trial judge is not warranted simply because a litigant is unhappy with a ruling or with the result at trial. If the same is permitted, then every litigant that is unhappy with a court ruling can move for a recusal to attempt to obtain a different result, which is nonsensical.

Therefore, the trial judge properly denied Plaintiff's recusal motion.

II. THE INCIDENT BETWEEN DANIEL COHEN AND THE SHERIFF'S OFFICER WAS SOLELY CAUSED BY DANIEL COHEN AND DID NOT CREATE A JURY ISSUE (4T:70:1)

In an obvious attempt to create a mistrial after Plaintiff's malpractice cause of action was dismissed at trial, Plaintiff created an altercation with the Sheriff's officer task with guarding the courtroom. Now, Plaintiff brazenly argues that Judge Grasso Jones created this altercation. This argument is incomprehensible at best and disingenuous when reviewing the record.

During the course of trial, Plaintiff became verbally aggressive at times. An example of one outburst is the following:

> THE WITNESS: No, he's badgering me, and you're allowing it. So, I'm going to be combative against him.
>
> THE COURT: Okay, Mr. Cohen.
>
> THE WITNESS: Well, don't let him badger me then.
>
> THE COURT: Mr. Cohen.
>
> THE WITNESS: I will not be badgered on this witness stand, ma'am.
>
> THE COURT: Okay. I think I heard an objection from your attorney.
>
> THE WITNESS: -- you allowed it to go on, and I'm getting badgered.
>
> THE COURT: What did I tell you earlier? What happens when your attorney makes an objection?
>
> THE WITNESS: But you allowed him to continue badgering me.
> …
>
> THE WITNESS: The whole jury saw this, and you allowed it to continue. You want it to continue over? We can do this all day.
>
> MR. NIGEN: May I request a brief recess.
>
> THE COURT: Okay. Would you like to have an opportunity to speak with your client, counsel?
>
> MR. NIGEN: Yes, I would.

(3T:29:12-33:1).

After a brief recess, the following colloquy took place:

> THE COURT: Okay. We're back on the record. Counsel for plaintiff, are we ready to proceed?
>
> MR. NIGEN: I believe we are, Your Honor.
>
> THE COURT: Okay. I will let you know that Mr. Cohen's behavior in this courtroom is unacceptable.
>
> THE WITNESS: Thank you, Your Honor. You want me not to testify.
>
> THE COURT: I am absolutely not indicating you can't testify.
>
> THE WITNESS: You're allowing him to badger me. You're biased against me, and you're continuing to allow it.
>
> THE COURT: Okay. See -- okay. Mr. Cohen –
>
> THE WITNESS: I'm watching you. I'm watching you do it, Your Honor.
>
> THE COURT: Mr. Cohen. Okay. Mr. Cohen, you don't govern this courtroom.
>
> THE WITNESS: Okay.
>
> THE COURT: If you don't like what happens in this trial, you are always free to file an appeal.
>
> THE WITNESS: Okay.
>
> THE COURT: But you need to follow my instructions.

THE WITNESS: I hear you. So, why don't you make your ruling now and we'll file the appeal then. Want to do that?

THE COURT: Sir. Mr. Cohen –

THE WITNESS: Want me to leave now, ma'am? Want me to leave the court?

THE COURT: Okay. Counsel?

MR. NIGEN: Yes, Your Honor.

THE COURT: I'm not quite certain why – does Mr. Cohen have a medical condition that –

THE WITNESS: Yeah, I do, against you, I do.

THE COURT: -- that prohibits –

THE WITNESS: Because you ruled against me, and you're biased.

THE COURT: -- that prohibits him from –

THE WITNESS: Testifying? I have a medical condition. I do. So, you want me to –

THE COURT: From being able to file instructions?

THE WITNESS: Yes, I do.

MR. NIGEN: Perhaps there should be an inquiry on that issue, Judge.

THE WITNESS: Yes. We should have an inquiry.

(3T:34:10-36:5).

Based on Plaintiff's conduct, a Sheriff's officer was asked by the trial court judge to sit in the courtroom due to maintain decorum:

> THE COURT: So, if the jury's not in for right now, I'm going to ask a sheriff's officer to come down and then we can pick up outside the presence of the jury if you're client -- it's not for me to determine whether your client has a medical condition. It's not for me to inquire. It would be your client indicating that either he has a condition under the ADA that requires a reasonable accommodation, or if you're client's position is that he had a medical condition that will prohibit him from providing testimony, it would be your obligation to ask your client the questions and potentially to provide the documentation on that issue.

(3T:36:22-37:19).

Thereafter, the Sheriff's officer was asked to sit in the courtroom to maintain order and remained in the courtroom for the duration of trial.

During the direct examination of Dennis D'Antonio, Plaintiff created an altercation in the hallway with the Sheriff's officer tasked with guarding the courtroom. Mr. Cohen started this argument by leaving the court room to use the rest room while the jury was empaneled. After one juror indicated that she could not concentrate because there was shouting in the hallway, the jury was sent back to the jury room. (4T:56:19-23). The Sheriff's Officer advised that Mr. Cohen, while in the hallway, complained that the Sheriff's Officer was infringing on his right to use the bathroom. (4T:57:6-11).

The Court advised plaintiff's counsel that with shouting in the hallway, the Court could not bring the jury back. (4T:57:12-16.) The Court explained to plaintiff's counsel that if Mr. Cohen wanted to use the men's room, he could do so, and return to the courtroom so they could continue on with the trial. (4T:59:25).

The Court instructed plaintiff's counsel that he should discuss the matter with Mr. Cohen, and if Mr. Cohen did not want to come back to the courtroom, then he would be escorted from the building if he continued to make noise in the hallway. (4T:60:22-25).

Counsel was instructed by the Court to check with Mr. Cohen to see if he had gone to the bathroom, and to come back into the courtroom so the trial could proceed. (4T:67:4-7). At that point, plaintiff's counsel stated, "And I do commend the Sheriffs on their professionalism." (4T:67:10-11). Plaintiff's counsel advised the Court that Mr. Cohen was asked to return to the courtroom. (4T:68:24-25).

Then, plaintiff's counsel advised the Court that plaintiff wanted to move for a mistrial. (4T:69:14-18). Plaintiff's counsel argued that Mr. Cohen wanted a mistrial because of what "… he feels was generated by law enforcement. And he respectfully believes that prejudices his case and asks for a mistrial on

that basis. And I realize that ruling is within the discretion of the Court, Your Honor." (4T:70:15-19).

The defense objected to the mistrial since it was plaintiff who caused the interruption. (4T:70:22-25). The Court explained to plaintiff's counsel that it was Cohen who left the courtroom, and that it was the Court's expectation that anyone who was seated should not leave without asking permission to do so since he was a party to the litigation. (4T:71:19-23). Plaintiff's counsel stated that was a "fair expectation." (4T:71:24-25). In addition, the Court pointed out that it was never advised prior to trial of any medical issue involving Mr. Cohen. (4T:72:17-20).

The Court also pointed out that it was Cohen who, while in the hallway, created a problem. (4T:73:7-13). The noise in the hallway was created by Mr. Cohen. The Court denied the application for a mistrial. The Court pointed out that maybe Mr. Cohen was unhappy with the way the trial was going, and wanted another opportunity to start again. (4T:73:20-22).

The jury was polled later in trial, and they indicated they had no idea what was happening, and that the incident would not have any bearing on their impartiality in deciding this case. (7T:10:22-7T:20:10-19).

Therefore, Plaintiff creating noise in the hallway, which the jury did not attribute to Plaintiff, did not justify a mistrial.

III. THE TRIAL COURT PROPERLY PERMITTED THE JURY TO LOOK AT THE DOCUMENTS THAT COMPRISED OF DANIEL COHEN'S CLIENT FILE (2T:15; 5T:30)

In connection with the underlying action, Weg & Myers, P.C. received the construction defect case files from Daniel Cohen's prior counsel, and other parties to the litigation. In connection with the underlying action, Weg & Myers, P.C. diligently and thoroughly reviewed the documents produced.

The presence of the construction defect case files in the courtroom was not unfairly prejudicial to Plaintiff. Once Plaintiff accused Weg & Myers of fraud, fraudulent billing practices and overbilling, Weg & Myers had the right to come forward to defend itself and show that the work billed for was performed and to show the monumental task Weg & Myers' undertook when it substituted into the Sollecito matter from Stark and Stark. (Da77). Therefore, the construction defect case files and documents were highly relevant to the issues tried before the jury.

During the course of trial, Lee Nigen, counsel for plaintiff, argued to the trial court that the construction defect case files from the underlying case should be removed from the courtroom as being prejudicial. (4T:29:14-17). Defense counsel argued that these were the Weg & Myers files from the

underlying Sollecito case[11], which contained the litigation documents received from the Stark & Stark firm, as well as the documents they created while they were handling the litigation[12]. (4T:30:1-6). The documents were for the purposes of Weg & Myers' proofs at trial. (4T:30:13-14 and 18-19). In addition, these documents were present in the courtroom since the beginning of trial. Mr. Nigen never sought leave of trial to review these boxes and never cross-examined Mr. D'Antonio about the files or the invoice entries.

Accordingly, the Court properly overruled plaintiff's objection. (4T:30:20-21).

Therefore, since the documents in the courtroom comprised of the Weg & Myers files from the underlying Sollecito case, which they received from the Stark & Stark firm, as well as the documents they created while they were handling the litigation, and were properly entered into evidence, the trial court

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[11] The Sollecito litigation started two years before Weg & Myers substituted in the case. (4T:138:5-18). The Retainer Agreement was signed September 8, 2017. (4T:138:21). The *pro hac vice* Order was entered by Judge Gummer on October 13, 2017. (4T:138:20-25).

[12] Mr. D'Antonio testified, on December 2, 2022, that he turned the Sollecito file over to successor counsel, Sam Maybruch. (4T:32:12-17). The original Sollecito file was put into banker boxes, and delivered to Sam Maybruch. Before doing that, Weg & Myers copies the entire file in order to keep a record, and that is what was boxed up and brought to the courtroom. (4T:32:18-25). That copy was made, printed, put into boxes, sealed, and put into a storage facility. (4T:33:22-25).

properly permitted these files and documents to be presented to the jury during trial.

IV. THE TRIAL COURT PROPERLY BARRED DANIEL COHEN'S EXPERT FROM TESTIFYING BASED ON THE NET OPINION STANDARD (3T:5)

During the case before the trial court, the trial court properly held that Plaintiff's expert, Peter Ouda, could not testify that Weg & Myers' invoices were unreasonable, unnecessary or excessive. (3T:5). The trial court's holding was proper based on the net opinion that was authored.

This case stemmed from a dispute over the alleged nonpayment of counsel fees. Plaintiff knew he was required to serve an expert report to substantiate the claims in the case. However, he submitted the inadmissible, worthless, net opinion of Peter Ouda. (Pa36). The Ouda report failed to cite any rules, regulations, standards, treatises, articles, case law, or Rules of Professional Conduct. Rather, it was nothing more than Ouda's personal opinion. See, Kaplan v. Skoloff & Wolfe, P.C., 339 N.J. Super. 97 (App. Div. 2001); see also, Pomerantz Paper Corp v. New Community Corp., 207 N.J. 344 (2011).

As properly noted by the trial court in its analysis in limiting Mr. Ouda's testimony, an expert's report must provide factual support for the opinion offered, and must also provide as a basis for the opinion an accepted standard

of conduct within the defendant's profession. An expert's personal opinion will not suffice as a basis for the opinion offered.

A legal malpractice action has three essential elements: "(1) the existence of an attorney-client relationship creating a duty of care by the defendant attorney, (2) the breach of that duty by the defendant, and (3) proximate causation of the damages claimed by the plaintiff." Jerista v. Murray, 185 N.J. 175, 190-91 (2005) (quoting McGrogan v. Till, 167 N.J. 414, 425 (2001)). Of course, in a legal malpractice case, an expert must rely upon standards accepted by the legal community, and not his own personal views. See, Carbis Sales, Inc. v. Eisenberg, 397 N.J. Super. 64, 79 (App. Div. 2007) (citing, Kaplan v. Skoloff & Wolfe, P.C., 339 N.J. Super. 97, 103 (App. Div. 2001)). "[I]f an expert cannot offer objective support for his or her opinions, but testified to a view about a standard that is 'personal' it fails because it is a mere opinion." Pomerantz Paper Corp. v. New Cmty. Corp., 207 N.J. 344, 373 (2011) "To be admissible as evidence, the expert's opinion must be based on standards accepted by the legal community and not merely on the expert's personal opinion." Stoeckel v. Twp. Of Knowlton, 387 N.J. Super. 1, 14 (App. Div.), certif. denied, 188 N.J. 489 (2006).

The sources of expert opinion are restricted to those deemed reliable, N.J.R.E. 703, and "[t]he corollary of that rule is the net opinion rule, which

forbids the admission into evidence of an expert's conclusions that are not supported by factual evidence or other data." State v. Townsend, 186 N.J. 473, 494 (2006). "Simply put, the net opinion rule 'requires an expert to give the why and wherefore of his or her opinion,'" Ibid. (quoting Rosenberg v. Tavorath, 352 N.J. Super. 385, 401 (App. Div. 2002)), rather than "bare conclusions, unsupported by factual evidence." Buckelew v. Grossbard, 87 N.J. 512 524 (1981). This rule "frequently focuses … on the failure of the expert to explain a causal connection between the act or incident complained of and the injury or damage allegedly resulting therefrom." Ibid.

In restricting Mr. Ouda's testimony at trial, the trial court properly held that while his report cites to RPC 1.5 and to the case law addressing an attorney's obligation to their client, he failed to apply any RPC 1.5 factor to this case. The trial court properly held that without any such analysis by Ouda, his mention of RPC. 1.5(a) did not provide an analysis of Weg & Myers' invoice based upon a recognized legal standard; it was insufficient for Ouda to simply indicate that RPC 1.5(a) is the recognized standard. Likewise, Ouda's mention of case law addressing an attorney's responsibility to their client and other general issues (i.e., a lawyer's fiduciary duty to his client) did not provide any standard supporting Ouda's opinion that the invoices issued by

Weg & Myers were unreasonable or violated Weg & Myers' obligation to Cohen.

The trial court also properly held that "[t]he expert's opinion must be based on standards accepted by the legal community and not merely on the expert's personal opinion." Stoeckel, 287 N.J. Super. at 14. "Evidential support for an expert opinion is not limited to treatises or any type of documentary support, but may include what the witness has learned from personal experience." Rosenberg, 352 N.J. Super. at 403 (citation omitted). Ouda indicated, in his report, that in his experience in fee arbitration proceedings billing by more than one attorney in a firm for conferences is not allowed, and indicates that such billing would in his experience typically not be permitted by a court reviewing an attorney's invoices for a determination of reasonableness. However, the trial court properly noted that it was unaware of any legal authority (and none was provided to the trial court) indicating that as a matter of law billing by more than one attorney in a law firm for consultation with each other is prohibited, but rather, the trial court properly expected that any such analysis would be performed utilizing the RPC 1.5(a) factors.

The trial court properly held that while Mr. Ouda was permitted to rely upon his personal experience in providing an opinion in this matter, his blanket statement that in fee arbitration and court proceedings billing by more than one

attorney on intra office conferences would not be permitted was unsupported by reference to authority, as Mr. Ouda did not provide an analysis of the invoice entries under the RPC factors. (Da161). In addition, no analysis was provided by Mr. Ouda as to whether the attorneys were working under a limited time frame, which might necessitate work by more than one attorney in the firm at the same time, or the experience level of the attorneys involved and the nature of the work performed, which might allow for less experienced (and less expensive attorneys) to perform some work and more experienced (and more expensive) attorneys to perform other tasks, with the attorneys sharing information with each other in intra office conferences. (Da161).

The trial court properly held that Mr. Ouda opinion did not provide an analysis based upon a recognized legal standard for his opinion that the invoices by Weg & Myers in the underlying matter were unreasonable. (Da161). The trial court properly concluded that Mr. Ouda's opinion in his report (that Weg & Myers' fees are unreasonable, unnecessary and excessive) was a net opinion. (Da161).

The trial court also properly held that Mr. Ouda's expert opinion lacked factual basis regarding his opinion, "the time spent preparing routine discovery demands was unreasonable. Preparing discovery demands is a rather routine undertaking. (Da161). A firm of this size probably has forms that it works off

of." Ouda concluded in his report that the time spent on answering discovery requests was also excessive, noting, "there is no way that a competent law firm should take [the amount of time billed] to prepare or answer discovery served upon them. (Da161).

In reaching his opinion that the invoices issued by Weg & Myers were unreasonable, Ouda looked only at the retainer agreement between Cohen and Weg & Myers and the legal bills sent by Weg & Myers to Cohen. Ouda did not look at the discovery requests prepared by Weg & Myers, the discovery responses prepared by Weg & Myers, or the documents received or propounded by Weg & Myers in the underlying matter. (Da162).

The trial court properly held that an expert's opinion must have some factual basis, however, and the retainer agreement entered into between Cohen and Weg & Myers, and the invoices issued, did not provide a factual basis for a determination that Weg & Myers spent too much time and thus charged too much for the drafting of discovery responses (which Ouda never saw), the drafting of discovery requests (which Ouda never saw), and/or the review of the documents generated in discovery (which Ouda also never saw). (Da163). The trial court held that Mr. Ouda's opinion, in his report, that Weg & Myers spent too much time on the work as set forth in the invoices, and that the invoices generated by Weg & Myers were unreasonable in amount, had no

factual support and was barred under the net opinion rule, "which forbids the admission into evidence of an expert's conclusions that are not supported by factual evidence or other data." Townsend, 186 N.J. at 494. (Da163).

Also, the issues surrounding Mr. Ouda's testimony was decided by the trial court prior to trial. This ruling was never contested by Plaintiff prior to trial and Plaintiff never made a Motion to preclude Weg & Myer's expert from testifying at trial.

Therefore, since the trial court properly held that Plaintiff's expert, Peter Ouda, could not testify that Weg & Myers' invoices were unreasonable, unnecessary or excessive based on the net opinion that was authored, the April 6, 2021 Order limiting Mr. Ouda's testimony should be affirmed.

V. THE TRIAL COURT PROPERLY PERMITTED WEG & MYERS EXPERT TO TESTIFY AS THE EXPERT WAS A SIGNATORY TO THE REPORT (FAILED TO BE RAISED BELOW)

Plaintiff's argument, that Weg & Myers expert should have been precluded from testifying at trial should be rejected. The argument, that Mr. Kampf was not disclosed during discovery, was not raised at the trial level and should not be considered by this Court. This Court should decline to consider questions or issues not properly presented to the trial court when an opportunity for such a presentation is available "unless the questions so raised on appeal go to the jurisdiction of the trial court or concern matters of great

pubic interest." Nieder v. Royal Indemnity Ins. Co., 62 N.J. 229, 234 (1973) (quoting Reynolds Offset Co., Inc. v. Summer, 38 N.J. Super. 542, 548 (App. Div. 1959)). Since Plaintiff has failed to raise this issue before the trial court, does not go to the jurisdiction of the trial court and does not concern a matter of "great public interest", this argument should not be considered by this Court.

Also, this argument is inaccurate and should be disregarded. Plaintiff was served with Mr. Wikstrom and Mr. Kampf's expert report in discovery. Mr. Kampf, along with Mr. Wikstrom, were both disclosed in discovery as testifying experts for Weg & Myers and this report was authored and signed by both David Wikstrom, Esquire and Jeffrey Kampf, Esquire. (Pa40).

Therefore, Plaintiff's argument on appeal hold no merit and should be disregarded.

VI. DANIEL COHEN NEVER RAISED ISSUES WITH WEG & MYERS SUMMATION BELOW; THEREFORE, THIS ARGUMENT SHOULD NOT BE CONSIDERED ON APPEAL (FAILED TO BE RAISED BELOW)

Plaintiff argues that a mistrial should have been ordered in light of Weg & Myers "highly prejudicial" summation. However, no arguments were raised below to the trial court, and Plaintiff's current appellate issue should be

disregarded by this Court. See, Reynolds Offset Co., Inc. v. Summer, 38 N.J. Super. 542, 548 (App. Div. 1959).

The absence of objection to summation comments by opposing counsel is significant. Tartaglia v. UBS PaineWebber, Inc., 197 N.J. 81, 128 (2008) (appellate courts may regard "counsel's failure to object to summation remarks as 'speaking volumes about the accuracy of what was said'")

Notwithstanding the above, the summation presented on behalf of Weg & Myers was not unfairly prejudicial and was in line with the evidence presented in this case. Plaintiff's expert offered an opinion as to the reasonableness of the legal billing. Based on the net opinion propounded by Plaintiff's expert, Mr. Ouda was barred from testifying as to the alleged unreasonableness of the legal bills. (3T:5). Therefore, the summation on behalf of Weg & Myers was accurate that Mr. Cohen's expert did not say that the bills were unreasonable, excessive or not necessary.

In barring Mr. Ouda's net opinion, the trial court properly held that an expert's opinion must have some factual basis. The trial court also held that Mr. Ouda's opinion that Weg & Myers spent too much time on the work as set forth in the invoices, and that the invoices generated by Weg & Myers were unreasonable in amount, had no factual support and was barred under the net opinion rule, "which forbids the admission into evidence of an expert's

conclusions that are not supported by factual evidence or other data." Townsend, supra, 186 N.J. at 494.

Therefore, the trial court properly held that Plaintiff's expert, Peter Ouda, could not testify that Weg & Myers' invoices were unreasonable, unnecessary or excessive based on the net opinion that was authored, and therefore, was proper commentary during summation.

Weg & Myers counsel, during summation, also properly commented on Mr. Cohen's admitted practice of not paying legal bills and the numerous judgments against Plaintiff since Plaintiff opened the door to this issue and Mr. D'Antonio properly testified regarding this issue. (3T:198:12-20). Specifically, during Mr. D'Antonio's testimony, Mr. Cohen's counsel opened the door wide for this testimony. Specifically:

> Q And from your -- then from your perspective, sir, what do you view as his, quote, unquote, "true colors"?
>
> A You really want me to answer that? I will answer that.
>
> Q I do.
>
> A Okay. I think Daniel Cohen is a con artist. I think he's -- he's been through nine lawyers or eight lawyers on this case. I think he was taught by his father not to pay bills. When he gets a bill, other than his mortgage company, whether it's from a home improvement contractor, a plumber, Sollecito, a lawyer, to not pay the bill and basically say let's

> negotiate and here's what we'll do, and I want you to take less. And I do think Daniel Cohen knew he wasn't getting our bills. He knew that. He let us work on the case. He gave us instructions on the case. And he knew that when we gave him a bill when we finally realized he wasn't getting a bill, he had enormous leverage over us because now we owed him -- he owed us a lot of money. And he used that to try to coerce us into a contingency fee.
>
> And I -- and it's not just with me that he's did that. That's why Sam Maybruch had to sue him to get a judgment to get paid. That's why Sollecito had to sue him to get a judgment to get paid. And there are other lawyers who've had to sue your client to get paid. So I think Daniel Cohen is a bad guy, and I think he's taken advantage of a lot of people. And it's -- and he reached a point where people are fed up with him and they're standing up to him. And I'm one of those people.
>
> Q So that's everyone, right, he ever deals with?
>
> A He has a -- yeah, not everyone. I'm sure his mother loves him, but he's not a good guy. He's a bad guy.

(5T:101:12-102:23).

Therefore, Weg & Myers' summation was proper and the Judgment against Plaintiff should be affirmed.

VII. THE TRIAL COURT PROPERLY ADMONISHED DANIEL COHEN IN THE PRESENCE OF THE JURY BASED ON THE REPEATED OUTBURSTS OF MR. COHEN DURING TRIAL (FAILED TO BE RAISED BELOW)

Plaintiff's argument, that the trial judge improperly admonished Plaintiff in front of the jury, was never raised below and should be disregarded by this Court. See, Reynolds Offset Co., Inc. v. Summer, 38 N.J. Super. 542, 548 (App. Div. 1959).

Plaintiff's argument also lacks merit and should not be considered on alternate grounds. During the course of Mr. Cohen's testimony, Mr. Cohen, in the presence of the jury, made personal ad hominem attacks against Weg & Myers' counsel by claiming "you keep lying to the jury and it's not true." (3T:83:23). The trial judge, repeatedly during trial, had to remind Mr. Cohen of courtroom decorum, and to stop the personal attacks on counsel. Specifically, during his testimony, Mr. Cohen, indicating that counsel for Weg & Myers' was lying to the jury, led to the jury being sent out of the courtroom on their morning break. The following discussion took place:

> THE COURT: Okay. The jury has left. We are still on the record. Counsel, would you like to be heard?
>
> MR. SLIMM: Yes, Your Honor, please. You told this witness earlier yesterday that he was to stop making personal comments about counsel. He's criticized counsel, which is me, said that I lied in an opening statement.

MR. COHEN: You did.

MR. SLIMM: Here we go. You heard what he said.

MR. COHEN: I'm sorry, ma'am, he did.

THE COURT: Okay. Mr. Cohen –

MR. COHEN: Yes, ma'am.

THE COURT: -- there is a certain taking turns that happens in a trial.

MR. COHEN: Yes, ma'am.

THE COURT: It's your turn when you're sitting on the witness stand and you're asked a question and you answer the question.

MR. COHEN: Yes, ma'am.

THE COURT: It's not your turn, and I think you know it's not your turn. And we've cleared that you don't have a medical condition that requires you without your control to say things, to -- to shout out. There's no medical reason that you're doing it. So, I have to think that you're doing it, and I've already explained to you the process, so I have to think you're doing it knowing that you're not supposed to do it. And I will tell you, personally, I don't think it's a good look in front of the jury. I don't decide this case, the jury does. But it's inappropriate to do it even when the jury is not here. So, you have an attorney, you have hired an attorney to represent you. He speaks for you. That's what happens when you hire an attorney. And counsel filed a motion to be admitted, as they say, pro hac vice. You hired an attorney from out of the area, who's not licensed to practice in New Jersey, but he is required to follow all the New Jersey court rules, and

> he is representing you. And you speak through him, unless you are on the witness stand providing testimony in response to questions on direct or cross-examination. That is how it works.

(3T:85:1-86:21).

The trial court provided Mr. Cohen ample opportunity to cease making personal attacks on counsel for Weg & Myers, but he refused to do so. Therefore, the trial judge was correct in admonishing Mr. Cohen before the jury for the personal attacks he made on counsel.

Therefore, based on the repeated outbursts from Plaintiff during the course of trial, in the presence of the jury, the trial judge was correct in admonishing Plaintiff to cease his improper behavior during trial.

VIII. THE EVIDENCE OF MR. COHEN'S PATTERN AND PRACTICE OF NOT PAYING HIS ATTORNEYS WAS PROPERLY PERMITTED BY THE TRIAL COURT (3T:194)

When asked if it is his practice and policy to negotiate every bill that comes in, whether it is a law firm or a vendor, Cohen testified, "I try to minimize my expense, yes." (3T:186:16-19). Cohen testified that his father told him years ago to try to negotiate as much as you can because every dollar saved is a dollar earned. (3T:186: 22-25). He testified that he cannot negotiate his Mortgage or a utility bill, but regarding service providers who work at his pleasure and leisure, if he thinks a bill is inappropriate or excessive, he will

negotiate it. (3T:187:13-14). That includes everyone, including law firms. (3T:187:16).

Also, on the issue of the practice of Cohen to negotiate down all bills, the Court held that questions regarding the same were appropriate. (3T:198:12-20). The Court noted that in his deposition, Cohen testified that is what he does, and that it is good business practice. If he gets a bill from a lawyer, he negotiates it down. (3T:200:1-4).

Therefore, the questions and evidence of Mr. Cohen's past repeated history of not paying his attorneys was appropriate for the jury to consider. (3T:200:4-10).

CONCLUSION

For the reasons set forth above, it is respectfully submitted that February 7, 2023 Judgment in favor of Weg & Myers, P.C. be affirmed.

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BY: */s/ John L. Slimm*
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DANIEL COHEN, Plaintiff / Appellant, v. WEG & MYERS, P.C., Defendants / Respondent	SUPERIOR COURT OF NEW JERSEY APPPELLATE DIVISION CIVIL ACTION DOCKET No.: A-02082-22 On appeal from the Superior Court of New Jersey, Monmouth County, Law Division, Docket No.: MON-L-1054-18 Hon. Linda Grasso Jones, J.S.C.

Plaintiff / APPELLANT'S REPLY BRIEF

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PROCEDURAL HISTORY

Procedural History has been previously set forth in the Plaintiff's Appellant's Brief. Same is incorporated by reference herein.

STATEMENT OF FACTSSTATEMENT OF FACTS

Statement of Facts has been previously set forth in the Plaintiff's Appellant's Brief. Same is incorporated by reference herein.

ARGUMENT

A large portion of the Statement of Facts presented by Defendants is not directly relevant to the issues presented on appeal. Instead Defendants repeat the factual allegations previously presented at Trial. Whether Defnedants choose not to address the issues raised on appeal is not Plaintiff's decision, but we felt it noteworthy to point out.

Nevertheless, certain facts alleged by Defendants do further support Plaintiff's arguments and we do wish to emphasize at least an example of that: particularly at the bottom of page 8 of the Defendant's Brief, in footnote #4, that Defendants again point out that Mr. Maybruch, a non-party to this action filed a Complaint and secured a Judgment against Plaintiff herein, Mr. Cohen. Such allegations are not relevant to this action, and as clearly explained in **Section H** of Plaintiff's Brief in chief (pages 46-48 therein) they are not

probative, because Plaintiff already admitted that he negotiates his bills. Clearly the prejudicial nature of that character evidence outweighs any probative value. It is surprising that Defendants included those same claims in their Brief in this Appeal, but it is indicative that they continue to flout fair rules of evidence and suggests that they may not think they can prevail without resorting to such tactics.

A. Judge Grasso-Jones should have recused herself due to bias stemming from an FBI complaint made by Cohen against Judge Grasso-Jones. (Raised below, 6T, Pg. 215).

Defendants concede that "justice must satisfy the appearance of justice" (Def. Brief Pg. 18) which "requires judges to 'refrain…from sitting in any causes where their objectivity and impartiality may fairly be brought into question." (Def. Brief, Pg. 18-19) (internal citations omitted). Nevertheless, Defendants argue that "Plaintiff's basis to recuse Judge Grasso-Jones has nothing to do with Judge Jones' alleged bias or impartiality." This is a strange allegation to make considering the entire beginning of section A of the arguments section of Plaintiff's brief (pages 21-22 therein) goes into specifics of the hearing – in a separate action – on September 16, 2022 (over two months before trial in this matter) showing that Mr. Cohen had actually notified Judge Jones *on the record* that he had already called the FBI to report

her wrongdoing. Thus, Judge Jones had reason to be biased. Almost the entire rest of Plaintiff's brief are repeated examples which show where bias apparently reared its head.

Defendant's argue that Plainitff's calling of the FBI was "Plaintiff's attempt to forum shop to get a different Judge assigned to his case" (Def. Brief Pg 19). However, no facts are presented to substantiate that pure speculation. Rather, as is clear from the transcript from that date Judge Grasso had the Sheriff appear at Mr. Cohen's residence was the day before: 9/15/2022. (1T, pg. 10, lines 4-7). That is when Mr. Cohen called the FBI in response. It was not Mr. Cohen who chose when the Sheriff would appear at his house, it was the Court, his opponents and the Sheriff. Mr. Cohen simply felt injured and wronged by the event that he did not ask for and he called the FBI and reported Judge Jones of, among other things, corruption. And Mr. Cohen told Judge Jones that he had done so the very next day. There is absolutely no evidence anywhere to suggest any sort of forum shopping.

B. Mistrial should have been Granted Due to Jude Grasso-Jones precipitating an Altercation between Cohen and Sheriff's officers within earshot of the Jury. (Raised below, 4T, pg. 70)

Defendants argue that "Plaintiff created the altercation with the Sheriff's officer." (Def. Brief, Pg. 20). Again this is without any factual support. The only relevant people in the hallway when and where the altercation occurred were the Sheriff's officer and Mr. Cohen. Both Mr. Cohen and the Sheriff's officer agreed that it was the sheriff's officer, not Mr. Cohen, who initiated the contact between them in the hallway. (4T Pg. 56, Line 19 – Pg. 57, line 14). Even Defendants in their brief sort of acknowledge this and therefore appears to qualify their position by stating "Mr. Cohen started this argument by leaving the court room to sue the rest room." (Def. Brief, Pg. 24). That is a puzzling way to start an argument, especially in light of the fact that even Judge Jones conceded that she never informed Mr. Cohen that he was not permitted to use the bathroom. (4T, Pg. 71, line 18 – Pg. 72, line 2).

Defendants further state that the "jury was polled later in the trial, and they indicated that they had no idea what was happening." (Def. Brief, pg. 26). While such a poll did occur several days after the fact, in the immediate aftermath of the event in the hallway, Judge Jones made a clear statement on the record they everyone did know what had happened. Specifically, a Juror had noted that "there's a fight going on outside." (4T, Pg. 55, line 22). Mr. Cohen's counsel requested a Mistrial at the time. (4T, Pg. 59, lines 20-21).

Judge Grasso-Jones stated explicitly to Mr. Cohen's attorney, "It was your client shouting that the jurors heard. I heard his voice, you heard his voice, everyone heard his voice. And the juror indicated they can't hear the witness because of the shouting in the hallway." (4T, Pg. 60, lines 14-18). And further, "The voice we heard shouting, I'll tell you, was Mr. Cohen's." (4T, Pg. 73, lines 9-10). Mr. Cohen's attorney argued the altercation in the hallway was believed by Mr. Cohen to have been "generated by law enforcement. And he respectfully believes that prejudices his case and asks for a mistrial on that basis." W&M's attorney opposed the motion for a mistrial arguing that it was "a contrivance by the plaintiff [i.e. Mr. Cohen]….that it was plaintiff who caused the interruption." As they did then, Defendants are again arguing that Mr. Cohen caused the interruption, but even the Sheriff's officer admitted that it was he who initiated the contact, not Mr. Cohen.

The facts simply do not support the arguments presented by Defendants.

C. Judge Grasso Prejudiced the jury by allowing them to look at 21 Bankers Boxes and piles of documents which should never have been admitted into evidence; the sheer volume of which was prejudicial to Cohen. (Raised below multiples times, including 2T, pg. 15; and 5T, pg. 30)

It is very difficult to understand the argument of Defendants on this point, however in Footnote 12, at the bottom of page 27 of their brief, they concede that their own witness testified 21 bankers boxes of evidence was never turned over to Mr. Cohen's attorney in this matter.

D. Judge Grasso-Jones Erred in Barring Cohen's Expert's Testimony even though W&M's expert had the same deficiency. (Raised below, 3T, pg. 5)

Defendants argue that Plaintiff's testimony was properly barred because he (Mr. Ouda) "did not provide an analysis of the invoice entries under the RPC factors." (Def. Brief Page 32); further and interestingly, Defendants underlined the following argument in their brief for emphasis: "Ouda did not look at the discovery requests prepared by Weg & Myers, the discovery responses prepared by Weg & Myers, or the documents received or propounded by Weg & Myers in the underlying matter." (Def. Brief, Page 33). In actuality neither Defendants expert, nor Plaintiff's expert did the kind of analysis that Defendants underlined or that the court held only Plaintiff's expert to. In fact, the reason that neither Mr. Ouda nor Defendants expert did such an analysis is because, as conceded by Defendants own witness, Defendants boxed up the 21 bankers boxes and never turned them over to

either Plaintiff or Defendants own expert. Those Bankers boxes were secured in storage from before any lawsuit was filed until they were unsealed in open court. (5T. Pg. 32, line 18 – Pg. 33, line 4).

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E. **W&M's expert should have been precluded from testifying as not disclosed in discovery** (not raised below)

Defendants argue that their expert's report was provided to Plaintiff. However, at no time was any CV ever provided. Indeed except for an extremely very quick statement of his name, which could have very easily been missed, Plaintiff had absolutely no way of knowing that the expert was not the expert whose CV had been provided. No explanation has been given as to why one person's CV was provided and another person called to testify. This certainly has at least the appearance of an attempt to pull the wool over the eyes of someone and a dirty tactic.

F. **Mistrial should have been Ordered in light of W&M's highly prejudicial summation.** (not raised below)

Defendants do not even seriously attempt to argue that they were allowed to argue on summation that Plaintiff didn't even have an expert witness who disagreed with Defendants' expert regarding the reasonableness oof the fee despite the fact that the only reason Plaintiff's witness did not so testify is due

to the preclusion of such testimony by the court. Instead the cite a case regarding the "accuracy of what was said." Such case law is wholly irrelevant. The law is clear and was cited clearly in the Paintiff's Brief on page 43 therein. Defendant's cannot do what they did and such a tactic is highly prejudicial as the last thing the Jury hears before deliberating and it is cause for reversal..

G. **Judge Grasso-Jones Admonished Cohen in the presence of the Jury.**

(Not raised below)

Defendants apparently misunderstood, our arguments. It was not that Judge Jones was not permitted to admonish Plaintiff, it was that she should not have done it in front of the Jury because doing in doing so Judge Grasso-Jones further contaminated the perception of the jury towards Mr. Cohen on the very first day of Trial by getting into a snarky and rhetorical exchange with him right in front of the jury. As one example provided in the brief (among others therein), an extended exchange took place (over 3 pages of transcript) in front of the jury in which Judge Grasso-Jones repeatedly challenging Mr. Cohen with seemingly rhetorical questions such as "who decides the law in this case?" and when Mr. Cohen answered "Okay. Okay", Judge Grasso-Jones repeats the question to Mr. Cohen again in front of the jury: "No, why don't you answer my question? Who decides the law that

applies to this case?". A short while later, Judge Grasso-Jones stated, still in front of the jury, "I decide the law. And what I'm telling you is as a matter of law, your statements with reference to the attorney who represents the adversary are inappropriate" See colloquy between Judge Grasso-Jones and Mr. Cohen, 2T, Pg. 155, line 16 – Pg. 158, line 18).

And as further stated in the brief, Judge Jones' admonishments were very one sided (likely stemming from the bias retaing to the call to the FBI): specifically, despite Judge Grasso-Jones's apparent concern for character attacks from witnesses, Judge Grasso-Jones apparently had a different view when Mr. Cohen was the subject of snide and insulting remarks. But Judge Grasso-Jones permitted W&M's witness to say of Mr. Cohen from the stand, "he's not a good guy. He's a bad guy" (5T, Pg. 102, lines 22-23). Also "Daniel Cohen is a con artist." (5T Pg. 101, line 18). But no admonishment of W&M's witness by Judge Grasso-Jones at all.

H. Judge Grasso-Jones Admitted highly prejudicial character evidence over repeated objections. (raised below 3T, Pg. 194)

Defendant simply states what they did was okay because Plaintiff admitted to negotiating his bills. But that misses the whole point. If he admitted, there was no probative value in rehashing it and escpeically by claiming he had judgments issued against him. That is designed to prejudice a

jury and has little to no probative value because the fact they allege they are trying to provide evidentiary support for has already been admitted.

CONCLUSION

For all these reasons, Mr. Cohen was unable to have a fair trial, or at least the appearance of impartiality is reasonably in question. The Judgment must be reversed and a new trial ordered.

Respectfully Submitted,

/s/ Jeffrey Lubin

Jeffrey Lubin, Esq.