

# **EXHIBIT 35**

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF NEW YORK

D.A. ELIA CONSTRUCTION CORP.\*

APPELLANT,

-vs-

DAMON & MOREY, LLP

APPELLEE.

\* \* \* \* \*

Docket No.04-CV-975A  
Buffalo, New York  
June 23, 2005  
10:00 a.m.

CIVIL PROCEEDINGS HELD BEFORE

THE HONORABLE RICHARD ARCARA,

CHIEF FEDERAL DISTRICT COURT JUDGE.

APPEARANCES:

DAMON & MOREY, LLP.

By: DANIEL F. BROWN, ESQ.  
298 Main Street, 1000 Cathedral Place  
Buffalo, New York 14202  
Appearing Pro Se.

FEUERSTEIN & SMITH, LLP  
By: DAVID SMITH, ESQ.  
17 St. Louis Place  
Buffalo, New York 14202  
Appearing for the Debtor.

Accurate Reporting  
By: Darlene L. Jerge, Court Reporter  
403 Main Street, Suite 627B  
Buffalo, New York 14203.

1 Morey should not have been drafting a  
2 complaint. The defense of that complaint was  
3 billed to Damon & Morey and Damon & Morey paid  
4 in excess of twenty-three thousand dollars in  
5 fees for the defense of that action.

6 THE COURT: All right. Anything further?

7 MR. BROWN: Your Honor, we would only note that the  
8 standard of review --

9 THE COURT: You never charged the debtor for any  
10 fees on that?

11 MR. BROWN: Not on that, no. The standards of  
12 review, Your Honor, is an abuse of discretion,  
13 it's misstated in the Appellant's brief. And  
14 we would submit that under that standard the  
15 order below should be affirmed.

16 THE COURT: All right. I will consider the matter  
17 submitted.

18 MR. BROWN: Thank you.

19 MR. SMITH: Thank you, Your Honor.

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