1 think once you have the entitlement established, you look
2 at the fees the same way you would always look at fees.
3 Finally, I want to clarify something. When I
4 said that AME has disrespect for this Court, what I meant
5 by that is not for the Court as an institution, not for
6 the persona of the Judges, Judge Allen and yourself, but
7 I think absolutely there's disrespect for the order of
8 July 21, 2006 because what they're doing continues to fly
9 in the face of the facts that the Court has found.
10 And I would point out that when Mr. Anthony
11 tries to pretend that the federal case is some wholly
12 different animal, his own brief, filed only recently, on
13 page 4 says otherwise. In the full paragraph in the
14 middle of that page, it says, AME could not bring any
15 counterclaim in this action; thus, it filed its federal
16 case. And they may say I'm excerpting that unfairly, so
17 I'll just say you can read the whole paragraph to
18 yourself, but that is comparable to the statements made
19 directly to me, which I have already testified to, and
20 there has always been a linkage between these two cases,
21 and it has always sprung from the fact that they want to
22 litigate the fraud issue notwithstanding the default
23 order. Thank you.
24 THE COURT: With regard to the motion to strike
25 as to whether, with regard to AME, the breach of contract

1 count, the fraud count and the conspiracy count state a
2 valid cause of action, at least the lawyers agree on the
3 law, that if, even in default, there is no valid cause of
4 action stated in the pleading, then that would be a void
5 order for the Court to order damages with regard to that
6 pleading. So the question becomes whether there are
7 sufficient facts in the pleading that would support a
8 claim against AME for, first, contract and then fraud and
9 then conspiracy.
10 Paragraph 10, even with Mr. Marrs stopping
11 before Fidelity, states at least a first blush -- beyond
12 a first blush cause of action for breach of contract; in
13 preparing for the closing, Fidelity and AME jointly
14 delivered to the Kiritsises' attorney loan documents
15 which conformed to the oral representations that Fidelity
16 had made to the Kiritsises as to the essential
17 characteristics of the loan, and at the closing, those
18 documents were duly executed. AME and Fidelity acting in
19 tandem here with Fidelity, according to the pleading,
20 having made the representations that the documents being
21 delivered by Fidelity and AME, containing the statements
22 made by Fidelity, enough to state a cause of action for
23 breach of contract. And especially -- and this will
24 apply to the other two counts -- especially in the light
25 of the language in Landcraft, which provides that while

1 the pleading may need some amplification, either through
2 a bill of particulars or may be a candidate for
3 amendment, I can't say in the language of Landcraft that
4 that language is wholly insufficient to state a claim for
5 breach of contract. So the motion with regard to breach
6 of contract is denied, the motion to strike.
7 Likewise, with regard to the counts for
8 conspiracy and fraud, the pleading, starting at paragraph
9 15, demands from lawyers that the Kiritsises execute a
10 new promissory note to replace the genuine note, changes
11 in the interest rate from the genuine note, the language
12 used by the parties of the bogus note -- I will call the
13 second note -- the writing by Duer on the second note or
14 on the note that he was acting as an attorney-in-fact,
15 creating a new document purporting to be a promissory
16 note from the Kiritsises, then tied up -- and other
17 paragraphs throughout with regard to actions taken,
18 cutting signatures off one document -- allegations in the
19 bill of complaint -- and placing them on yet another
20 document, fabricating additional documentation purporting
21 to substantiate the content, AME and Fidelity having
22 cooperated to copy, cut and paste one set of
23 circumstances in one document and placing them on
24 another, actions which allege both conspiracy and fraud.
25 Again, while they may need to be amplified through a bill

1 of particulars, AME did not get the opportunity to do
2 that because of their default. So there are causes of
3 action properly stated with regard to AME and Fidelity.
4 The motion to strike is denied.
5 The issue of attorney's fees, obviously,
6 they've put on enough evidence to survive a motion to
7 strike. Even if I should agree with Mr. Anthony that
8 some of the claims on which they should prevail should
9 not be the subject of attorney's fees, that would be
10 something that I would need to delve further into the
11 documents if I accept his argument that Hiss does not
12 apply and that some of the claims under which they
13 prevailed -- or motions under which they did not prevail
14 would not be subject to fees. And so the motion to
15 strike with regard to attorney's fees is denied. I will
16 reread Hiss. I don't know if I will read 60 cases citing
17 Hiss, but I will reread Hiss and the other cases that
18 you-all have cited to see who is correct as to whether
19 motions on which they did not prevail would not be
20 considered.
21 I can tell you both at this juncture, I am
22 still not inclined to consider the fees associated with
23 the federal case litigation here in state court. I think
24 it's not appropriate for me to do so. And I take no
25 umbrage at either side, the statement that to proceed in