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April 7, 2003

Via Hand Delivery

Lorraine Christine Hoffman, Esq.
Assistant Staff Counsel
The Florida Bar
Cypress Financial Center, Suite 835
5900 North Andrews Avenue
Fort Lauderdale, Florida 33309

Re.: Complaint of Eliot Bernstein against Christopher Wheeler, Esq.
The Florida Bar File No. 2003-51, 109 (15C)

Dear Ms. Hoffman:

This letter is in response to your March 7, 2003 letter to Christopher Wheeler and the accompanying bar complaint filed by Eliot Bernstein. As you would expect, Mr. Wheeler and Proskauer take this matter very seriously. Obviously, if you need any further information or documentation, we welcome the opportunity to assist in that regard.

Before addressing the specific allegations contained in the bar complaint, we believe that it is important to provide you with the factual background that gave rise to Mr. Bernstein's allegations. The complaint relates to an attorney-client relationship between Proskauer and several corporations bearing the name "Iviewit," of which Mr. Bernstein was a principal. Mr. Wheeler and numerous other Proskauer attorneys represented Iviewit as general corporate counsel from approximately December 1998 through May 2001, when Proskauer withdrew from its representation due to Iviewit's nonpayment of Proskauer's legal bills. During this two and a half year relationship, approximately twenty Proskauer attorneys in two of its national offices, including Mr. Wheeler, performed a vast array of corporate, securities, restructuring, and refinancing work for the Iviewit entities.

Iviewit fell victim to the same plague that affected many "dot.com" companies during this time period -- a lack of funding. As a result, Iviewit suffered financial problems, and amounts owed to Proskauer continued to grow. Ultimately, Iviewit owed Proskauer a total of almost \$370,000 for legal services by the time Proskauer ceased to represent it. When Iviewit was unable to arrive at a

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satisfactory payment arrangement, Proskauer filed a lawsuit in May 2001 in Palm Beach County Circuit Court (the "Litigation") seeking to collect its attorneys' fees. The action is entitled *Proskauer Rose LLP v. Iviewit.com, Inc. et al.*, Case No. CA 01-04671 AB (the "Litigation"), and is currently set for trial before the Honorable Jorge Labarga on May 28-29, 2003. A copy of the Amended Complaint filed in the Litigation is attached hereto as **Exhibit 1**.

On January 28, 2003, after the Litigation had been pending for over 21 months, Iviewit sought leave to assert what it contended was a **\$10 billion** counterclaim, raising allegations similar to those contained in Mr. Bernstein's bar complaint. A copy of the proposed counterclaim is attached hereto as **Exhibit 2**. The Court denied Iviewit's motion for leave to amend by order dated February 4, 2003, a copy of which is attached as **Exhibit 3**. Mr. Bernstein's bar complaint followed on the heels of that denial.

Although the bar complaint purports to be sworn to under penalty of perjury by Mr. Bernstein, Mr. Bernstein's deposition was taken recently in the Litigation. At that time, Mr. Bernstein offered sworn testimony of what he described as a conspiracy to steal his technology, which, according to Mr. Bernstein, was set in motion by Mr. Wheeler, along with such alleged co-conspirators as Mr. Rubenstein, Iviewit's former President (Brian Utley), special counsel at the nationally known law firm of Foley & Lardner (William Dick), and another lawyer previously employed by the law firm Meltzer, Lippe, Goldstein & Schlissel, LLP (Raymond Joao).¹ According to Mr. Bernstein's sworn testimony, this plot -- all the members of which Mr. Bernstein was never able to consistently identify -- involves an alleged death threat made by Iviewit's former President and Chief Operating Officer, which, as Mr. Bernstein testified, has caused him to fear for his life and, as we will show below, has caused Mr. Bernstein to believe that Proskauer is "evil."

Obviously, there was no murder plot, no conspiracy, and no attempt on the part of anyone to injure Mr. Bernstein or his business. We point this out only to highlight the rather extreme and unfounded nature of the accusations leveled against a whole host of attorneys, at several law firms throughout the United States. We respectfully suggest that, viewed in context, the bar complaint is simply an ill-advised litigation tactic that is utterly devoid of any factual or legal support.

I. The Issues Raised in the Bar Complaint

As far as we can discern from Mr. Bernstein's bar complaint, he appears to raise four main issues. They are summarized below, and our response is noted.

A. **Patent Work**: Mr. Bernstein alleges that Proskauer mishandled certain patent work. To the contrary, as we show below (see Section III), there is overwhelming testimonial and documentary evidence showing that **Proskauer simply never performed patent work for Iviewit.**

¹ Mr. Bernstein also filed similar complaints with the New York Departmental Disciplinary Committee against Messrs. Joao and Rubenstein. Those complaints are currently pending.

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Iviewit's patent work was handled entirely by other law firms. Whether there were any errors or omissions with the patent work is immaterial. Proskauer simply did not perform that work.

B. Misrepresentations: Mr. Bernstein alleges that Mr. Wheeler misrepresented: (i) Brian Utley's background while recommending him for a position with Iviewit; (ii) patent attorney William Dick's background; (iii) that Raymond Joao was a Proskauer attorney; and (iii) that Kenneth Rubenstein was a Proskauer partner when he was not. As will be shown below (see Section IV), none of these accusations have any merit.

C. Conflicts of Interest: Mr. Bernstein alleges that Proskauer: (i) represented other clients with a conflict of interest to Iviewit; (ii) failed to disclose the prior representation of Brian Utley; and (iii) somehow improperly accepted Iviewit stock during the course of performing services for it. The reality is there was no conflict in Proskauer's representation of Iviewit, and while the Proskauer firm accepted shares of stock that were offered by Iviewit, we are aware of no ethical prohibition to accepting stock under such circumstances. (see Section V, below).

D. General Work: Mr. Bernstein alleges that Proskauer: (i) engaged in unnecessary and duplicative work; (ii) redacted information from billing statements; and (iii) lacked competence, diligence, and failed to communicate with Iviewit. Quite to the contrary, the deposition testimony and documentary evidence prove that Proskauer's representation of Iviewit was in full compliance with all ethical standards and otherwise of the quality to be expected of a national law firm. (see Section VI, below).

II. Proskauer's Representation of the Iviewit Companies

The work performed by Proskauer for Iviewit for over two and a half years was quite substantial, as it involved over twenty Proskauer lawyers in two of its national offices. Eliot Bernstein and his father, Simon Bernstein, initially approached Mr. Wheeler in late 1998 to secure Proskauer's services in forming corporations to manage, market, and facilitate the sale of a form of computer imaging technology. During the two and a half years when Proskauer represented the Iviewit companies, Proskauer acted as general corporate counsel and was responsible for, among many things, corporate formation, securities work, restructuring, and refinancing. Indeed, Proskauer's files for its representation over two and a half years fill 17 cartons. The work was complex and vast, and Proskauer's statements attached hereto as **Exhibit 4** paint a clear picture of the type of demands made by Iviewit – all of which were carried out to the satisfaction of Iviewit's principals, including Mr. Bernstein.

Not only is there no documentary evidence to support the allegations made by Mr. Bernstein in the bar complaint, Mr. Bernstein's claims are squarely contradicted by the testimony of former principals of Iviewit, several of whom ran the day-to-day operations of the Iviewit entities. Brian Utley, Iviewit's former President and COO, Raymond Hersh, Iviewit's former CFO, and Gerald Lewin, CPA, a former member of the board of directors, have all testified in depositions in the Litigation that

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they were satisfied with Proskauer's services, and that Iviewit did not pay the bills subject to the pending Litigation because of Iviewit's financial problems.

III. Proskauer Did Not Perform Patent Work For Iviewit

Mr. Bernstein's bar complaint is replete with allegations concerning alleged improper patent work. Both Proskauer attorneys and corporate representatives of Iviewit have confirmed under oath that there is no truth to any of these assertions. Rather, Iviewit's patent work was performed by Raymond Joao, who at the time was employed by Meltzer Lippe, and thereafter by William Dick of Foley & Lardner. This is confirmed by the depositions taken during the course of the Litigation, including that of Iviewit's former President and COO, Brian Utley, who testified that "Rubenstein and Mr. Wheeler, I'll repeat, had nothing to do with the patents. . . ." (Deposition of Brian Utley ("Utley Dep.") at 150-9).

When asked to opine as to the veracity of an interrogatory answer submitted by Mr. Bernstein during the course of the Litigation which suggested that Proskauer played a role with respect to Iviewit's patent work, Mr. Utley was unequivocal in his response:

Q. The answer to [Eliot Bernstein's] Interrogatory 20 in Subparagraph Roman Numeral XI, 11, it says: "Chris Wheeler agreed to investigate charges that Rubenstein and the name J-O-A-O, which I think is Joao. . . . [w]ere forging and changing patent documents and leaving inventors off patents. Wheeler and Utley suggest using their friend William D-I-C-K, and then it looks like it's cut off, Foley & Lardner to correct the gross negligence uncovered in Rubenstein/Joao work."

How do you respond to that statement?

A. Well, Rubenstein was never involved in any of that work.

Q. Is that a misrepresentation?

A. That's a misrepresentation.

Q. Were there any charges by you or anyone at Iviewit that Joao was forging and changing patent documents and leaving inventors off patents?

A. No.

Id. at 83-15.

Gerald Lewin, a certified public accountant and principal of the CPA firm of Goldstein, Lewin & Company in Boca Raton testified similarly. He testified that he was initially approached by Eliot Bernstein's father, Simon Bernstein, who is also Mr. Lewin's neighbor, and asked to be a consultant for the Iviewit entities. (Deposition of Gerald Lewin ("Lewin dep.") at 7-14). Mr. Lewin agreed and ultimately became a member of Iviewit's board of directors. *Id.* at 9-1. Mr. Lewin introduced Eliot

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and Simon Bernstein to Mr. Wheeler at Proskauer, after the Bernstein's asked Mr. Lewin for a referral to a national law firm to represent the Iviewit entities. *Id.* at 8-3.

Like Mr. Utley, Mr. Lewin testified that Proskauer did not perform patent work for Iviewit and that the patent work was handled by other law firms. *Id.* at 10-25; 17-16; 50-8. Mr. Lewin also testified that, as a member of the board of directors, he never heard anyone complain that Proskauer did work improperly for Iviewit (*Id.* at 15-3), that he was never aware of any problems with Proskauer's bills (*Id.* at 19-19), and that the only reason why Proskauer's bills were not paid was because Iviewit had financial problems. *Id.* at 14-17.

Kenneth Rubenstein, who was also deposed in connection with the Litigation, could not have been clearer as to the scope of Proskauer's representation:

- Q. Did you ever opine with regard to the validity of any patent applied for or received by Iviewit.com?
- A. Like I say, I was not in any way involved with getting patents for Iviewit.
- Q. What were you involved with, if you were, with Iviewit?
- A. The only thing I did for Iviewit is I referred them to another patent lawyer.
- Q. And who is that?
- A. A guy named Ray Joao.
- Q. And where did Mr. Joao work?
- A. I believe he was working at the time at my former law firm, Meltzer Lippe.

(Deposition of Kenneth Rubenstein ("Rubenstein dep.") at 23-4).

Finally, it should be noted that Proskauer's invoices also confirm that Proskauer did not perform patent work. Rather, Proskauer's role was limited to referring the patent work to other law firms. Thus, regardless of whether Mr. Bernstein is pleased or displeased with the patent-related services provided to Iviewit, Proskauer simply did not provide those services. In short, Mr. Bernstein's accusations that Proskauer somehow performed patent work at all, much less performed patent work improperly, is demonstrably false.

IV. No Misrepresentations Were Made To Eliot Bernstein

In his complaint, Mr. Bernstein alleges that Mr. Wheeler somehow misrepresented the credentials of several people to Iviewit, most notably Brian Utley, Iviewit's former President and COO. According to Mr. Bernstein, Mr. Wheeler misrepresented the background of Mr. Utley in order to induce Iviewit to hire him.

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It is worth noting that, at the time of his hiring as the President of Iviewit, Mr. Utley was retired from a **thirty-seven year career with IBM**, serving as the Vice-President and General Manager in charge of the Boca Raton, Florida operations. Contrary to Mr. Bernstein's allegations, Mr. Wheeler merely introduced Mr. Utley to Simon Bernstein and advised him that he first met Mr. Utley in 1990 on a social level and subsequently served with him on the Florida Philharmonic and Florida Atlantic University Foundation Boards. (Deposition of Christopher Wheeler ("Wheeler dep.") at 113-18, 131-20). The introduction was made because Simon Bernstein was looking for someone to run Iviewit and asked Mr. Wheeler for a recommendation. Mr. Wheeler disclosed his social relationship with Mr. Utley to Simon Bernstein and told him that Mr. Utley was the site manager of IBM's Boca Raton office when they first met in 1990. *Id.* at 115-12, 117-1. Mr. Wheeler advised Mr. Bernstein to explore with Mr. Utley whether he was a good fit for Iviewit. *Id.* at 115-12. At no point did Mr. Wheeler submit any "false resumes" on behalf of Mr. Utley and he is unaware of the existence of any such document.

Mr. Bernstein also alleges that Mr. Wheeler misrepresented to Iviewit that Raymond Joao and Kenneth Rubenstein were associated with Proskauer Rose when, according to Mr. Bernstein, they were not. Yet again, there is no truth to Mr. Bernstein's claim. As for Mr. Joao, Mr. Wheeler never represented Mr. Joao as being a Proskauer attorney at any point. At that time, Mr. Joao was an attorney with Meltzer Lippe, and he was retained by Iviewit to perform patent work.

As for Mr. Rubenstein, he is a partner at Proskauer, resident in the firm's New York office. At no point did Mr. Wheeler misrepresent anything concerning him. To the contrary, Mr. Wheeler simply represented to Iviewit that Mr. Rubenstein was a partner of Proskauer. Mr. Rubenstein joined Proskauer in June 1998 as a partner. Proskauer did not begin to provide legal services to Iviewit until 1999. Thus, Mr. Rubenstein was a Proskauer partner at the time Proskauer first commenced work for Iviewit.

Mr. Bernstein raises similar allegations of misrepresentations concerning William Dick, special counsel to Foley & Lardner in that firm's Milwaukee office. Here again, there is no truth to Mr. Bernstein's claim that Mr. Wheeler misrepresented anything concerning Mr. Dick.

V. No Conflicts Of Interest Existed In Proskauer's Representation Of Iviewit

Mr. Bernstein also alleges the existence of a conflict of interest on the part of Mr. Wheeler based on his prior representation of Mr. Utley in other matters. At the time Mr. Wheeler introduced Mr. Utley to Mr. Bernstein, Mr. Wheeler disclosed that Proskauer had previously formed a corporation for Mr. Utley in approximately 1993. At the time the introduction was made, Mr. Utley was not a current client of the firm. In short, there was no conflict of interest arising out of Mr. Wheeler merely introducing Mr. Utley to Iviewit.

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Mr. Bernstein's bar complaint also makes vague accusations that Proskauer represented clients in conflict with Iviewit, failed to disclose such representations and/or secure conflict waivers from Iviewit, and improperly accepted company stock from Iviewit. These accusations are baseless.

As far as acceptance of stock is concerned, it was Mr. Bernstein who wanted to grant some shares of Iviewit stock to Proskauer. For Mr. Bernstein to now complain about this tells volumes as to his motivation and as to the credibility of his accusations. Indeed, Mr. Wheeler testified in his deposition in the Litigation that Mr. Bernstein wanted to grant shares of Iviewit stock to Proskauer because Mr. Bernstein felt that "all members of his team should be stakeholders in his company." (Wheeler dep. at 62-24). Mr. Utley also testified that it was Mr. Bernstein's "personal decision" (Utley dep. at 241-9) to grant a small interest in Iviewit, LLC (a corporation that is no longer in business) to Proskauer "because of the quality of work that [Proskauer] had performed for the company over the prior six months." *Id.* at 238-19. Mr. Utley also confirmed that this grant of stock to Proskauer "had no bearing on the billings." *Id.* at 240-18. In sum, there is no ethical prohibition to Proskauer accepting this gift of stock from Mr. Bernstein.

The fact that Mr. Bernstein gave a gift to Proskauer of a small percentage of stock in Iviewit, if anything, provides further evidence to refute Mr. Bernstein's conspiracy theory. If Proskauer owned 2.5 percent of Iviewit, LLC, why would, as Mr. Bernstein alleges, Proskauer engage in a conspiracy to cause \$10 billion in damages to Iviewit? Such conduct would be directly adverse to Proskauer's economic interest by causing Proskauer to lose \$250 million. Simply put, Mr. Bernstein's allegations make no sense.

Mr. Wheeler similarly denies Mr. Bernstein's allegation that Proskauer represented clients in conflict with Iviewit without obtaining conflict waivers from Iviewit. It is telling that Mr. Bernstein chose not to identify any of the alleged clients of Proskauer with which a conflict existed, or otherwise identify what the conflict was. Although Mr. Bernstein alludes to some alleged conflict involving Warner Bros., there is no merit to any such claim. While it is true that Proskauer provides legal services to Warner Bros. in various contexts, none of them involve taking a position adverse to Iviewit and, in fact, none of them even related to Iviewit at all.

Aside from a brief review, at the request of Iviewit, of a draft form confidentiality agreement that Iviewit sent to Warner Bros., we performed no work for Iviewit that is in any way related to its dealings with Warner Bros. The confidentiality agreement reviewed by Proskauer was one of more than one hundred sixty such form confidentiality agreements obtained by Iviewit. Indeed, at the time the Warner Bros. confidentiality agreement was reviewed, Mr. Wheeler was unaware that Warner Bros. was a client and, to our knowledge, no lawyer in our Boca Raton office provided any legal services to Warner Bros.

Proskauer's only other involvement with Iviewit concerning Warner Bros. was at the urging of Mr. Utley, who suggested that Mr. Rubenstein call his contact at Warner Bros. to simply suggest that Warner Bros. talk to Iviewit. At a later date, Stephen Lamont, an Iviewit representative, sought to

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enlist Mr. Rubenstein's assistance by having him essentially vouch for Iviewit's product to Warner Bros. Mr. Rubenstein declined this request, citing Proskauer's existing relationship with Warner Bros.

VI. Proskauer Was Diligent and Competent in its Representation of Iviewit

Although Mr. Bernstein's complaint makes vague references to unsubstantiated allegations of lack of competence and diligence, the deposition testimony of Iviewit's corporate representatives confirms that Proskauer's work was thorough and of high quality.

Mr. Utley was the principal of Iviewit who dealt with Mr. Wheeler and Proskauer attorneys on a day-to-day basis (Utley dep. at 16-2) and who was responsible for directing Proskauer to perform legal work. *Id.* at 23-18. In response to pointed questions, Mr. Utley testified as follows:

- Q. Do [you] feel that Proskauer ever committed a malpractice in its representation of Iviewit?
A. No.

Id. at 37-2.

- Q. Did anyone ever complain or state at any board meetings of Iviewit that Proskauer performed poorly with respect to legal work?
A. No.

Id. at 66-6.

Mr. Utley was asked whether he was ever dissatisfied with Proskauer's representation of the Iviewit entities. He testified that his only complaints dealt with some "duplicative effort" on Proskauer's bills which were addressed by Mr. Wheeler and handled to Mr. Utley's satisfaction. *Id.* at 26-16. Mr. Utley also testified that he received and reviewed Proskauer's bills on a monthly basis (*Id.* at 31-10), that the bills were "reasonably accurate" (*Id.* at 29-22), that he "didn't find any problems with the bills" (*Id.* at 31-18), and that the bills are currently owed. *Id.* at 35-12. Utley also testified that the quality of Proskauer's work "was never an issue" at any Iviewit board meeting. *Id.* at 74-17.

Raymond T. Hersh was hired by Iviewit as a financial advisor to the Iviewit entities in April 2000 (Hersh dep. at 8-15), then later assumed the position of CFO in July 2000. *Id.* at 9-14. Mr. Hersh confirmed that it was he who "reviewed all bills that came in from all vendors and suppliers of services." *Id.* at 16-13. Mr. Hersh testified that Eliot and Simon Bernstein had made the initial decision to hire Proskauer. *Id.* at 12-14. Further, Mr. Hersh confirmed that the reason why Proskauer's bills were not paid by Iviewit was simply due to lack of funding. *Id.* at 14-15.

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Mr. Hersh, like Mr. Utley, also confirmed that Iviewit was satisfied with the services provided by Proskauer:

Q. Generally, were you satisfied with the services performed by Proskauer Rose?

A. Yes, I was.

Q. Do you know if Brian Utley was?

A. I know that he was.

Q. What about Ray – I'm sorry. What about [Simon] Bernstein or Eliot Bernstein?

A. I believe they were generally satisfied with the nature and quality of the work.

Q. Do you know if anyone from Iviewit ever complained to Proskauer about the substance of its representation of the Iviewit companies? And let me clarify by saying not – not the bills, but the actual work performed.

A. I understand. That's why I'm hesitating because I want to be able to respond to that distinction. I don't recall any of the principals of the company ever quarreling with the quality of the work.

Id. at 33-22.

Q. And there was never discussions at those board meetings that Proskauer shouldn't be paid or that there was a problem with Proskauer's bills as far as the substance of the work?

A. No, I never heard that.

Id. at 40-4.

Finally, Mr. Hersh, having been shown Iviewit's answer and affirmative defenses in the Litigation, characterized the affirmative defenses as "nonsense," a "[ruse]" (*Id.* at 44-17), and "not a true statement." *Id.* at 46-13.

Similarly, Gerald Lewin testified that he never heard anyone complain that Proskauer did work improperly for Iviewit (Lewin dep. at 15-3), that he was not aware of any problems with Proskauer's bills (*Id.* at 19-19), and that the only reason why Proskauer's bills were not paid was because Iviewit had financial problems. *Id.* at 14-17. Moreover, Mr. Lewin testified that he felt that Proskauer's bills were due and owing (*Id.* at 33-14), and that he was not aware of any objections by Iviewit to any of Proskauer's bills. *Id.* at 33-17.

Proskauer was not alone in being left unpaid by Iviewit. Hersh testified that all of the other law firms used by Iviewit were still owed money when he left the company in April 2001. Hersh depo. at 13-

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20. Mr. Lewin testified that "probably all the law firms" that did work for Iviewit stopped work due to nonpayment (Lewin dep. at 40-1), and that, as of the time of his deposition in September 2002, Iviewit had owed his accounting firm "[f]ifty some thousand dollars" for "[a]bout three years." *Id.* at 35-15. Finally, Utley testified that Foley & Lardner stopped doing work for Iviewit because of Iviewit's nonpayment of its bills. (Utley dep. at 22-4).

VII. Mr. Bernstein's Accusations Must Be Considered In Light Of His Recent Deposition Testimony

Mr. Bernstein's deposition testimony in the Litigation, taken just over a month ago, provides important context for consideration of his charges. Almost irrespective of the topic of questioning being pursued, Mr. Bernstein's testimony drifted into tales of murder, conspiracy, and theft involving several lawyers of national law firms and well respected businessmen and philanthropists:

* * *

A. . . . Well, my attorney Caroline has been working with people to protect me. Utley came out after being terminated, and they found patents had been written into his own name going to his house without assignment to the company, et cetera.

And [Utley] came out and basically told me that my life was in danger if I continued to pursue to be vocal about the fact that, you know, his background was clouded and that these patents were found -- well, that malfeasances were occurring is how I could basically couch that. And he said that him and Chris [Wheeler] would bring the company down brick by brick.

Q. Utley said this?

A. Yes.

Q. When was this?

A. This was around the end of 2000, in the January period.

Q. So you started learning about a conspiracy around that time?

A. Well, you know, the real -- you know, again, you ask about conspiracies. And you know, with hindsight, I could basically call it a conspiracy. But the real first conspiracies I learned of -- if you're asking for the whole conspiracy, is Ray Joao's work.

(Deposition of Eliot Bernstein ("Bernstein dep.") at 47-11).

As seen below, the alleged conspirators are numerous:

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- Q. You have no idea why Mr. [Hank] Powell was fired from Crossbow?
A. Perhaps for being involved in this conspiracy to steal my technologies.
Q. Mr. Powell was involved in the conspiracy?
A. I am not sure if Crossbow is involved, although they were referred to us by Chris Wheeler who spearheads the conspiracy. But, you know, you don't find these things out when there's a conspiracy until after the conspiracy is over.

Id. at 59-17.

- Q. -- was [Maurice] Buchsbaum involved in the conspiracy?
A. Buchsbaum is related to Chris Wheeler, so we're not sure yet 100 percent.

Id. at 60-10.

- Q. What did [Utley] tell you when he threatened your life?
A. He said: If you continue to expose these issues and pursue a course against me and Proskauer, we will kill you.
Q. Who is "we"?
A. Mean him, Chris Wheeler and Mike --
Q. Are you paraphrasing or are you quoting him?
A. I'm quoting him. And we will bring you down brick by brick by brick, your companies.
Q. He said: We will kill you --
A. Yes.
Q. -- and we will bring you down brick by brick?
A. Correct. So I called my wife and moved her into a hotel in California. She packed up overnight to move our children into a hotel. And we so lived in a hotel until we could get adequately --
Q. When was this?
A. We told everybody this.
Q. When was this?
A. This is right around January of 2001.

Id. at 93-14.

- Q. Did Mr. Utley threaten you in person or over the phone?
A. In person.
Q. Do you feel that he had the means to kill you?

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- A. Well, he was touting Mr. Wheeler and Proskauer as being uncovered at this point for some of these malfeasances, like his background education.
Yeah.
Q. Do you feel that he had the means to kill you, is the question.
A. Yes. With those he was saying he's conspiring with absolutely.
Q. Who was he conspiring with to kill you?
A. Mr. Wheeler, Mr. Bill Dick of Foley & Lardner. These are some major law firms.
Q. So you felt at the time that if Mr. Utley was going to kill you, he was going to do it in conspiracy with Foley & Lardner and Proskauer Rose?
A. With members of those firms that he's good friends with.

* * *

- Q. What other law firms were conspiring with Wheeler, Utley, and Proskauer?
A. Meltzer, Schnitzel & Gold (ph)--
Q. Meltzer Lippe --
A. Meltzer Lippe Schnitzel & -- I think Goldstein or something.

Id. at 98-10.

- Q. Have you feared for your life because of this lawsuit?
A. You bet, every single day. I've hidden my children off the streets. I'm scared to death to leave my house. My wife is scared to death to leave the house.

* * *

- Q. Do you think Proskauer Rose wants you dead?
A. Yes.
Q. Why?
A. Well, the technologies are valued to be worth billions; that, in itself, is a motive.

* * *

- Q. Why did you come here today if you are afraid for your life?
A. I fear no evil.

* * *

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- Q. --in your mind you agreed to come here for your deposition today if this firm wants you dead.
A. I fear no evil. I fear no evil.
Q. Is Proskauer evil?
A. Yes. Because of these actions, yes.

Id. at 107-24.

- Q. Why do you come [to Proskauer's offices] and -- you have been here about three days now to review the files.
A. Yeah.
Q. Why do you come here and spend the day here when you fear for your life?
Why don't you just have Kinko's come and pick the files up and copy them for you?
A. I fear no evil, A, okay; I expressed that on the record before.

* * *

You know, if I died tomorrow from a hiccup, perhaps, everybody would look back here.

- Q. At Proskauer?
A. Absolutely.
Q. And think that --
A. Chris Wheeler.
Q. -- that they orchestrated an accidental death?
A. Correct. Or something, or purposely done.

Id. at 125-14.

- Q. Do you think your lawyer fears for his life?
A. I asked him that the other day.
Q. What did he say?
A. He said he fears nobody. He doesn't care that you are big. He doesn't care how big you are, he is not afraid of you.
Q. Do you think he is?
A. Yeah.
Q. You think he's in fear for his life because of this lawsuit?
A. Yes. I think it has run across his mind that he is sitting on a can of worms that could lead to the destruction of three large law firms.

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Id. at 117-1.

Q. Why did you move back to close proximity of Proskauer Rose, if you are in fear for your life of Proskauer?

A. I study the art of war, so deception and distance are often key tactics to warfare.

Somebody made a threat on me in their home ground, so I left their home ground to a ground where I have many legal friends. People to help me protect myself.

Q. Here?

A. No, California. I don't know shit here.

So -- and that's why I'm scared here. And I was scared for collateral damage to people like my parents, and whatnot, so I broke ties with them, hardly talked to them over the last year and a half, didn't let them see their grandchildren, never flew back here, okay.

Now I am prepared to wage war and have my evidence and guns in lie, I have no fear of --

Q. When you say "guns," are you speaking metaphorically?

A. Yes, of course.

Q. Okay.

A. And so, it's best to be here so that I can present my case, and I am not worried about you anymore killing me too much.

Q. Proskauer?

A. Proskauer, because now I think you've realized that there's a lot of people behind it that you didn't see coming, or you weren't paying attention and suddenly you've got a case.

Id. at 118-19.

As can be seen, the "truth" regarding the Litigation and the claims asserted by Mr. Bernstein's bar complaint proved to be a fluid concept in his deposition. As the deposition demonstrates, a person is either supporting Mr. Bernstein fully and unconditionally or is part of a conspiracy to destroy him. Mr. Bernstein's response to questions concerning Mr. Lewin and his possible involvement in a conspiracy is telling in this regard:

Q. Was [Gerald] Lewin part of the conspiracy?

A. Gerri just referred me to Chris [Wheeler].

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- Q. [w]ere you on the telephone during Gerri Lewin's deposition?
A. No.
Q. He testified in his deposition that the only reason the bills weren't paid was because there wasn't any money?
A. **Well, then, we might have a problem with him being involved in the conspiracy.**

Id. at 186-25.

Mr. Bernstein's deposition testimony concerning his claim of "destruction" of documents is equally telling. Without a shred of evidence, Mr. Bernstein was willing to swear to the "destruction" of documents simply because he had not seen them:

- Q. Did you ever see with your eyes anyone at Proskauer destroying any documents pertaining to Iviewit?
A. No.
Q. Did anyone ever tell you that they saw anyone at Proskauer destroying documents relating to Iviewit?
A. No.

Id. at 169-13.

- Q. So you are still sticking to your story that Proskauer destroyed documents --
A. In my interpretation --
Q. -- but you have no personal knowledge of whether they did?
A. -- of the word destruction, because they are not present in any records that the company can now get, yes, they have been, since Mr. Wheeler was keeping records of them.
Q. So destroyed means missing to you?
A. Yes.

Id. at 238-6.

VIII. Conclusion

In order to assist you in your review of this matter, we have endeavored to provide you with specific references to deposition testimony and documents which refute Mr. Bernstein's assertions. In the process, we hope we have answered any questions you may have concerning Proskauer's representation of Iviewit. Mr. Bernstein's accusations are simply unfounded and scandalous. As can

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be seen, Iviewit's own officers and directors have given sworn testimony refuting each and every assertion made by Mr. Bernstein. Our files are open and available for your review should you have any questions concerning this matter or need any additional information or documentation.

We thank you for giving us the opportunity to be heard.

Very truly yours,

Matthew Triggs

Matthew Triggs

Encl.

cc: Mr. Eliot I. Bernstein (with enclosures)