

**Selz & Muvdi Selz, P.A.**

Attorneys At Law  
214 Brazilian Avenue, Suite 220  
Palm Beach, FL 33480

---

Steven M. Selz  
Liliana M. Selz

Tel: (561) 820-9409  
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**FAX TRANSMITTAL COVER SHEET**  
**FAX Number: (561) 364-5502**

**Individual & Firm: ELIOT BERNSTEIN.**

**From: STEVEN M. SELZ, ESQ.**

**Date & Time: 6/4/03 10:00 A.M.                      File # \_\_\_\_\_**

**Total number of Pages (INCLUDING this cover sheet) 20**

**RE: IVIEWIT.COM**

**Document(s) Attached: INFORMATION ON DEPO OF RUBENSTEIN YOU REQUESTED AND COPY OF LETTER RECEIVED TODAY AS TO WHEELER DEPO.**

**Comments: AS DISCUSSED- NEED TO KNOW BY THIS FRIDAY WHAT YOU INTEND OR I WILL HAVE TO WITHDRAW- CAN'T AFFORD TO CONTINUE WORK WITHOUT PAYMENT.**

**A copy or the original of the attached document will not follow unless otherwise noted below. Copy/Original sent by:**

**Regular Mail     Federal Express     Courier**

**PLEASE NOTIFY US IMMEDIATELY OF ANY PROBLEMS WITH THE TRANSMISSION AT (561) 820-9409.**

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IN THE CIRCUIT COURT OF THE  
15<sup>TH</sup> JUDICIAL CIRCUIT IN AND  
FOR PALM BEACH COUNTY,  
FLORIDA

PROSKAUER ROSE L.L.P.,  
a New York limited partnership,

CA 01-04671 AB

Plaintiff,

v.

IVIEWIT.COM, INC., a Delaware  
corporation, IVIEWIT HOLDINGS,  
INC., a Delaware corporation, and  
IVIEWIT TECHNOLOGIES, INC.,  
a Delaware corporation.

Defendants.

---

**DEFENDANTS' MOTION TO COMPEL TAKING OF FOREIGN  
DEPOSITION AND FOR APPOINTMENT OF A COMMISSIONER**

Defendants, IVIEWIT.COM, INC., IVIEWIT HOLDINGS, INC. and  
IVIEWIT TECHNOLOGIES, INC., by and through their undersigned counsel, hereby  
move this Court for an Order requiring Kenneth Rubenstein, Esq. as a partner of the  
Plaintiff, to submit to the taking of his deposition in New York City, New York and  
appointing Esquire Deposition Services in New York City, New York, as a  
Commissioner for the taking of the deposition of Mr. Rubenstein and in support of  
this Motion would state:

1. That based on the prior testimony of deponents to this matter and the



personal knowledge of the Defendants corporate representative, Elliot Bernstein, Kenneth Rubenstein was involved directly in the providing of services to the Defendants both prior to his employment with the Plaintiff and subsequently during his employ with the Plaintiff.

2. That Kenneth Rubenstein (“Rubenstein”) is an attorney currently employed by the Plaintiff and who works out of the Plaintiff’s New York City offices.

3. That the Defendants intend to take the deposition of Rubenstein in New York City, New York, prior to the trial of this matter due to the knowledge of Rubenstein as to the services provided by the Plaintiff to the Defendants; however, counsel for the Plaintiff has refused to make Rubenstein available as set forth in the attached Exhibit “A”.

4. That Esquire Deposition Services, located at 216 E. 4<sup>th</sup> Street, 8<sup>th</sup> Floor, New York City, New York 10017, should be appointed Commissioner to take the deposition of Rubenstein.

WHEREFORE the Defendants, move this Honorable Court for the entry of an order directing that Kenneth Rubenstein be submitted for deposition and permitting the Defendants to take the deposition of Rubenstein in New York and appointing Esquire Deposition Services, located at 216 E. 4<sup>th</sup> Street, 8<sup>th</sup> Floor, New York City, New York 10017 as Commissioner to take the deposition of Rubenstein.

I HEREBY CERTIFY that a true and correct copy of the foregoing has been provided by U.S. Mail and fax transmission this 24<sup>th</sup> day of October, 2002 to: Christopher W. Prusaski, Esq., Proskauer Rose, LLP, 2255 Glades Road, Suite 340 W, Boca Raton, FL 33431.

SELZ & MUVDI SELZ, P.A.  
214 Brazilian Avenue, Suite 220  
Palm Beach, FL 33480  
Tel: (561) 820-9409  
Fax: (561) 833-9715

By: \_\_\_\_\_

STEVEN M. SELZ

FBN: 777420

IN THE CIRCUIT COURT OF THE 15TH  
JUDICIAL CIRCUIT IN AND FOR PALM  
BEACH COUNTY, FLORIDA

CASE NO. CA 01-04671 AB

PROSKAUER ROSE LLP, a New  
York limited liability partnership,

Plaintiff,

v.

IVIEWIT.COM, INC., a Delaware corporation,  
IVIEWIT HOLDINGS, INC., a Delaware  
corporation, and IVIEWIT TECHNOLOGIES,  
INC., a Delaware corporation,

Defendants.

---

**PLAINTIFF'S RESPONSE TO DEFENDANTS' MOTION TO COMPEL  
TAKING OF FOREIGN DEPOSITION AND FOR THE APPOINTMENT  
OF A COMMISSIONER AND MOTION FOR PROTECTIVE ORDER**

Plaintiff, Proskauer Rose LLP ("Proskauer"), responds to the Defendants' Motion to Compel Taking of Foreign Deposition and for Appointment of a Commissioner served under certificate of service dated October 24, 2002 (the "Motion") and further moves, pursuant to Rule 1.280(c) of the Florida Rules of Civil Procedure, for a the entry of a protective order as to the taking of the deposition of Kenneth Rubenstein ("Mr. Rubenstein"), and as grounds states as follows:

1. This is an action by Proskauer to collect unpaid attorney's fees from the Defendants, all former clients of Proskauer.
2. The Defendants' have not alleged, in any pleading, that Proskauer failed to properly perform the work undertaken on their behalf. Notwithstanding Defendants' failure to plead any such allegation, Defendants are now putting forth an eleventh hour attempt to turn this

matter into a malpractice case (and delay the trial of this matter set for the week of December 16, 2002) and are attempting to harass a Proskauer attorney (who lives in New Jersey and works in New York) who never billed any time to the Iviewit matter.<sup>1</sup>

3. Specifically, Defendants are attempting to compel Mr. Rubenstein, a partner in Proskauer's New York office, to appear for a deposition. The Motion was filed because Proskauer has refused to produce Mr. Rubenstein for his deposition.

4. The Motion is misleading and misrepresents the discovery in this matter. Citing no particular deposition testimony, Defendants' motion at paragraph 1 states that prior testimony of the deponents in this matter has revealed that Rubenstein was "involved directly in the providing of services to the Defendants. . . ." Nothing could be further from the truth.

5. Contrary to the Defendants' baseless statement that Rubenstein was involved in the representation of Proskauer, Brian Utley, Defendants' former President and Chief Operating Officer, testified in his deposition as follows:

- At Elliot Bernstein's request, Rubenstein recommended another law firm to handle Defendants' patent matters (BU:70-4, 23);<sup>2</sup>
- "Rubenstein was never involved" in any of the work, and Defendants' interrogatory answers stating otherwise are a "misrepresentation." (BU:84-5, 7, 21);
- "[o]ther than referring Iviewit to [outside counsel], Rubenstein never did any work for Iviewit" (BU:121-3);

---

<sup>1</sup> Proskauer filed a motion in limine directed to the issue of whether the Defendants can put on proof of any alleged wrongdoing by Proskauer, as the defense was never pled in any of the pleadings in this matter. The motion in limine is set for hearing on November 5, 2002.

<sup>2</sup> The abbreviation "BU\_\_" followed by a page and line number refers to the transcript of the Deposition of Brian Utley dated August 22, 2002.

- Utley never met Rubenstein (BU:121-19);
- Rubenstein had no active role with Iviewit (BU:138-11, 24);
- “Rubenstein and Mr. Wheeler, I’ll repeat, had nothing to do with the patents and therefore, I object to them being included in the question.” (BU:150-9);


Copies of the pages of the transcript of the Deposition of Brian Utley cited above are attached hereto.

6. Defendants’ eleventh-hour desire to depose Mr. Rubenstein is nothing more than a blatantly transparent attempt to harass Mr. Rubenstein, who billed no time in the Defendants’ representation. Although Defendants plan to take the deposition of Christopher Wheeler, Proskauer’s corporate representative, the Defendants’ intent to harass Rubenstein is further made clear by the fact that the Defendants have never attempted to take the deposition of any of the myriad of Proskauer attorneys who actually did provide legal services for the Defendants.

WHEREFORE, Proskauer respectfully requests that the Court deny the Defendants’ motion to compel Mr. Rubenstein’s deposition, enter a protective order consistent with this motion, and grant any further relief that is reasonable and just.

This 25 day of October, 2002.

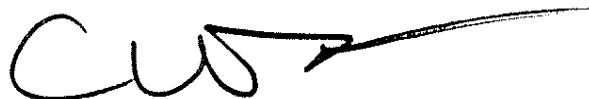
PROSKAUER ROSE LLP  
2255 Glades Road, Suite 340W  
Boca Raton, Florida 33431  
Telephone: (561) 241-7400  
Facsimile: (561) 241-7145



Matthew Triggs  
Florida Bar No. 0865745  
Christopher Prusaski  
Florida Bar No. 0121525

CERTIFICATE OF SERVICE

I certify that on October 25, 2002, a copy of the foregoing was furnished by U.S. Mail and facsimile to Steven Selz, Esq., Selz & Muvdi Selz, P.A., 214 Brazilian Avenue, Suite 220, Palm Beach, FL 33480.



---

Christopher W. Prusaski

**PROSKAUER ROSE LLP**

2255 Glades Road  
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**Matthew Triggs**  
Member of the Firm

Direct Dial 561.995.4736  
mtriggs@proskauer.com

June 13, 2003

**Via U.S. Mail**

Steven M. Selz, Esq.  
Selz & Muvdi Selz, P.A.  
214 Brazilian Avenue, Suite 220  
Palm Beach, FL 33480

Re: Proskauer Rose LLP v. Iviewit.com, Inc.

Dear Steve:

Notwithstanding the Court's recent order regarding Mr. Rubenstein's deposition, I have enclosed a copy of an affidavit of Mr. Rubenstein through which he answers the questions that he previously declined to answer in his deposition.

Sincerely,



Matthew Triggs

MT/kr  
Enclosure



IN THE CIRCUIT COURT OF THE  
FIFTEENTH JUDICIAL CIRCUIT IN  
AND FOR PALM BEACH COUNTY,  
FLORIDA

CASE NO. CA 01-04671 AB

PROSKAUER ROSE LLP, a New  
York limited liability partnership,

Plaintiff,

v.

IVIEWIT.COM, INC., a Delaware corporation,  
IVIEWIT HOLDINGS, INC., a Delaware  
corporation, and IVIEWIT TECHNOLOGIES,  
INC., a Delaware corporation,

Defendants.


---

**NOTICE OF FILING AFFIDAVIT OF KENNETH RUBENSTEIN**

Plaintiff, Proskauer Rose LLP, by and through its undersigned counsel, hereby gives  
notice of the filing of the original Affidavit of Kenneth Rubenstein dated June 10, 2003.

This 13<sup>th</sup> day of June, 2003.

PROSKAUER ROSE LLP  
Attorneys for Plaintiff  
One Boca Place, Suite 340W  
2255 Glades Road  
Boca Raton, Florida 33431  
Telephone: (561) 241-7400  
Facsimile: (561) 241-7145



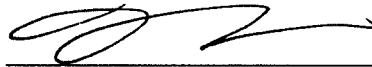
---

Matthew Triggs  
Florida Bar No. 0865745  
Christopher Prusaski  
Florida Bar No. 0121525



**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that on this 13<sup>th</sup> day of June, 2003, a true and correct copy of the foregoing has been furnished by U.S. Mail to Steven M. Selz, Esq., Selz & Muvdi Selz, P.A., 214 Brazilian Avenue, Suite 220, Palm Beach, Fl 33480.



---

Matthew Triggs

IN THE CIRCUIT COURT OF THE  
FIFTEENTH JUDICIAL CIRCUIT IN  
AND FOR PALM BEACH COUNTY,  
FLORIDA

CASE NO. CA 01-04671 AB

PROSKAUER ROSE LLP, a New  
York limited liability partnership,

Plaintiff,

v.

IVIEWIT.COM, INC., a Delaware corporation,  
IVIEWIT HOLDINGS, INC., a Delaware  
corporation, and IVIEWIT TECHNOLOGIES,  
INC., a Delaware corporation,

Defendants.

---

**AFFIDAVIT OF KENNETH RUBENSTEIN**

STATE OF NEW YORK     )  
  ) ss  
COUNTY OF NEW YORK )

Before me, the undersigned authority, personally appeared Kenneth Rubenstein who,  
under oath, states as follows:

1. My name is Kenneth Rubenstein. I am over the age of 18 years, I have personal  
knowledge of the matters set forth herein, and I am competent to testify as to those  
matters.
2. On November 20, 2002, I was deposed in the matter of Proskauer Rose LLP v.  
Iviewit.com, Inc. et. al., pending the in the Fifteenth Judicial Circuit in and for Palm  
Beach County Florida, Case No. CA01-07671-AB.

3. On page 25, line 7 of that transcribed testimony, I was asked "Did you have any discussions with Warner Bros. about IViewIt?" My answer to this question is as follows:  
Answer: I had one communication with Warner Bros. related to Iviewit. Mr. Utley, former CEO of Iviewit, who knew that Proskauer did work for Warner Bros., requested that we help open a channel of communication for Iviewit. I contacted Greg Thaggard at Warner Bros. and told him that he might be interested in speaking with Iviewit. I also told him that, as both Iviewit and Warner Bros. were clients, I would not get involved in any relationship between Iviewit and Warner Bros.
4. On page 27, line 18, I was asked "Did you ever talk to anyone at Warner Bros. with regarding to IViewIt?" My answer to this question is as follows:  
Answer: See my response above contained in paragraph 3.
5. On page 29, line 22, I was asked "When did you represent Warner Bros., sir?" My answer to this question is as follows:  
Answer: I started working on projects concerning Warner Bros. starting in about 1996.
6. On page 41, line 6, I was asked "Could you tell me about the cases that you have been involved with? Just naming the cases." [Requesting names of patent cases he has litigated.] My answer to this question is as follows:  
Answer: Some patent cases we worked on are: SMARTS v. Avesta Technologies, Inc.; Hauppauge Computer Works, Inc. v. Advanced Interactive, et al.; Nova v. Sensys and Standard Microsystems v. Datapoint.

7. On page 47, line 7, I was asked "Have you ever discussed IViewIt Technologies with him?" [Chris Cookson] My answer to this question is as follows:

Answer: No.

8. On page 57, line 6, I was asked "Does that committee ever obtain waivers of conflicts from clients?" My answer to this question is as follows:

Answer: Waivers are sometimes obtained.

9. On page 75, line 20, I was asked "So you refuse to answer whether or not you had communicated to those parties with regard to IViewIt; is that correct?" [Warner Bros. and Sony] My answer to this question is as follows:

Answer: I never communicated with Sony about Iviewit. The only communication I had with Warner Bros. related to Iviewit was identified above.

FURTHER AFFIANT SAYETH NAUGHT.

Kenneth Rubenstein  
Kenneth Rubenstein

Date: June 10, 2003

VIRGINIA V. WURTHMAN  
Notary Public, State of New York  
No. 03-9820204  
Qualified in Bronx County  
Commission Expires July 31, 2006

Before me, the undersigned notary public, appeared Kenneth Rubenstein, who is personally known to me or produced \_\_\_\_\_ as identification and who did take an oath.

Virginia V. Wurthman  
Notary Public  
Commission No. 03-9820204

IN THE CIRCUIT COURT OF THE  
15<sup>TH</sup> JUDICIAL CIRCUIT IN AND  
FOR PALM BEACH COUNTY,  
FLORIDA

PROSKAUER ROSE L.L.P.,  
a New York limited partnership,

CA 01-04671 AB

Plaintiff,

v.

IVIEWIT.COM, INC., a Delaware  
corporation, IVIEWIT HOLDINGS,  
INC., a Delaware corporation, and  
IVIEWIT TECHNOLOGIES, INC.,  
a Delaware corporation.

Defendants.

---

**ORDER ON DEFENDANTS' MOTION TO APPOINT FOREIGN  
COMMISSIONER AND TO COMPEL DEPOSITION OF KENNETH  
RUBENSTEIN**

This matter coming before the Court on the Defendants' Motion to Appoint Foreign Commissioner and to Compel the Taking of Deposition as to Kenneth Rubenstein, Esq. and the Court having heard argument of counsel for both Plaintiff and Defendants and otherwise being advised in the premises and having considered the grounds for the Motion and considered applicable law, it is FOUND,

ORDERED AND ADJUDGED as follows:

1. Defendants' Motion for Appointment of Foreign Commissioner and to

compel the taking of the deposition of Kenneth Rubenstein, Esq. is hereby granted.

2. Esquire Deposition Services, located at 216 E. 4<sup>th</sup> Street, 8<sup>th</sup> Floor, New York City, New York 10017, is hereby appointed Commissioner to take the deposition of Kenneth Rubenstein, Esq. in this matter, which deposition is to be conducted telephonically at a mutually convenient date for the parties prior to November 15, 2002, ON AN OTHERWISE AGREED BY THE PARTIES.

DONE AND ORDERED at West Palm Beach, Palm Beach County, Florida this 31<sup>st</sup> day of October, 2002.



CIRCUIT COURT JUDGE

Copies to:

Steven M. Selz, Esq.  
214 Brazilian Ave., #220  
Palm Beach, FL 33480

Christopher W. Prusaski, Esq.  
Proskauer Rose, LLP  
2255 Glades Road, Suite 340 W  
Boca Raton, FL 33431

1

2

3 IN THE CIRCUIT COURT OF THE  
4 15th JUDICIAL CIRCUIT IN AND  
5 FOR PALM BEACH COUNTY, FLORIDA

6 -----X

7 PROSKAUER ROSE L.L.P.,

8 Plaintiff,

9 vs. CA 01-04671 AB

10 IVIEWIT.COM, INC., a Delaware  
11 corporation, IVIEWIT HOLDINGS,  
12 INC., a Delaware corporation,  
13 and IVIEWIT TECHNOLOGIES,  
14 INC., a Delaware corporation,

15 Defendants.

16 -----X

17

18

19

20 DEPOSITION OF KENNETH RUBENSTEIN

21 New York, New York

22 Wednesday, November 20, 2002

23

24

25

26 Reported by:  
27 WENDY D. BOSKIND, RPR  
28 Job No. 142586

29

□

Ken Rubenstein Deposition

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November 20, 2002  
11:06 a.m.

Deposition of KENNETH RUBENSTEIN,  
held at the offices of Proskauer Rose  
LLP, 1585 Broadway, New York, New York,  
pursuant to Notice and Agreement,  
telephonically pursuant to a Court  
Order, before Wendy D. Boskind, a  
Registered Professional Reporter and  
Notary Public of the State of New York.

□

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

PROSKAUER ROSE LLP



5 Ken Rubenstein Deposition  
Attorneys for Plaintiff  
6 2255 Glades Road  
7 Suite 340 West  
8 Boca Raton, Florida 33431-7360  
9 BY: CHRISTOPHER W. PRUSASKI, ESQ.

10  
11  
12 SELZ & MUVDI SELZ, P.A.  
13 Attorneys for Defendants  
14 214 Brazilian Avenue  
15 Suite 220  
16 Palm Beach, Florida 33480  
17 BY: STEVEN M. SELZ, ESQ.  
18 (telephonically)

19  
20  
21 ALSO PRESENT:  
22 ELIOT BERNSTEIN, ESQ.  
23 (telephonically)

24  
25  
1  
2 K E N N E T H R U B E N S T E I N ,  
3 business address at Proskauer Rose  
4 LLP, 1585 Broadway, New York, New York,  
5 having first affirmed before the Notary  
6 Public, (Wendy D. Boskind), was examined  
7 and testified as follows:

□

Ken Rubenstein Deposition

8

9 EXAMINATION BY

10 MR. SELZ:

11 Q. Mr. Rubenstein, my name is  
12 Attorney Steve Selz, I represent the  
13 Defendants in the case of Proskauer Rose  
14 versus IViewIt.com.

15 I am going to ask you a series of  
16 questions in this deposition, and the first  
17 thing I need to know is whether or not you  
18 have had your deposition taken previously.

19 A. I have had my deposition taken  
20 previously.

21 Q. On how many occasions has that  
22 taken place, sir?

23 A. Several.

24 Q. "Several", more than a dozen?

25 A. No.

□

5

1 Rubenstein

2 Q. More than five?

3 A. No.

4 Q. Can you give me an approximate  
5 number? Two or three?

6 A. I would say three or four.

7 Q. Okay, three or four. So you are  
8 familiar with the way a deposition works; is  
9 that correct, sir?

10 A. Yes.

11 Q. So if I ask you a question, unless  
12 you ask me to rephrase it or somehow revise  
13 the structure of the question, I will presume  
14 then that you have understood what I have  
15 asked you as it is posed.

16 A. If I think your question is of  
17 improper form, unclear, or harassment, I am  
18 going to object.

19 Q. Okay, I believe that would be not  
20 for you to do but Mr. Prusaski, as your  
21 counsel.

22 A. I will put any objection I want on  
23 the record, in addition to Mr. Prusaski.

24 Q. So, you are representing yourself?

25 A. No, I am not, he is representing

□

6

1 Rubenstein  
2 me, but I am going to put objections on the  
3 record, if I want to.

4 Q. That's fine.

5 Now, starting off with, sir, could  
6 you please state your full name?

7 A. Kenneth Rubenstein.

8 Q. "Kenneth Rubenstein." And where  
9 is your place of employment currently,  
10 Mr. Rubenstein?

11 A. Proskauer Rose.

12 Q. Where is that located?

13 A. 1585 Broadway, New York.

14 Q. And how long have you been  
15 employed with Proskauer Rose?  
16 A. About four, four-and-a-half years.  
17 Q. Somewhere between 1997 and 1998  
18 was your first date of employment?  
19 A. I think it was in 1998.  
20 Q. Do you remember a month?  
21 A. Possibly June.  
22 Q. June. Where were you employed  
23 prior to your employment with Proskauer Rose?  
24 A. I was with a law firm, Meltzer,  
25 M-E-L-T-Z-E-R, Lippe, L-I-P-P-E.

□

7

1 Rubenstein  
2 Q. Meltzer Lippe is located where?  
3 A. Mineola, New York.  
4 Q. Do you have an address that you  
5 can recall?  
6 A. On Willis Avenue, but I don't have  
7 the address right now.  
8 Q. Prior to Meltzer Lippe -- and  
9 approximately what were the dates of your  
10 employment at Meltzer Lippe?  
11 A. About 1993 to 1998.  
12 Q. And what did you do at Meltzer  
13 Lippe?  
14 A. I was an attorney.  
15 Q. Did you have any specialization?  
16 A. I was a patent attorney.

- 17 Q. Are you still a patent attorney?  
18 A. Yes.  
19 Q. Is that your role at Proskauer  
20 Rose currently, is a patent attorney?  
21 A. Yes.  
22 Q. Are you a partner of Proskauer  
23 Rose?  
24 A. Yes.  
25 Q. Are you a shareholder of Proskauer

□

8

- 1 Rubenstein  
2 Rose?  
3 A. One or the other, either partner  
4 or shareholder.  
5 I think it's a partnership.  
6 Q. It's a partnership. Do you have  
7 any ownership interest in the partnership in  
8 the sense of obligations that go beyond what  
9 some of the other partners have? In other  
10 words, do you have an equity share? Do you  
11 have any other claims with regard to an  
12 interest in Proskauer Rose?  
13 A. I have no idea.  
14 Q. Prior to Meltzer Lippe, where were  
15 you employed, sir?  
16 A. Another law firm.  
17 Q. Do you remember the name of that  
18 law firm?  
19 A. Marmorek, M-A-R-M-O-R-E-K,

Ken Rubenstein Deposition  
20 Guttman, G-U-T-T-M-A-N, & Rubenstein.

21 Q. Were you the "Rubenstein" in the  
22 name of the firm?

23 A. Yes.

24 Q. And you were a partner in that  
25 firm?

9

1 Rubenstein

2 A. Yes.

3 Q. What were the dates of your  
4 employment in that firm --

5 A. Oh --

6 Q. -- Marmorek Guttman & Rubenstein.

7 A. -- probably starting in the  
8 Eighties, mid-Eighties, until 1993.

9 Q. And what was the area of your  
10 practice, when you were with Marmorek --

11 A. M-A-R-M-O-R-E-K.

12 Patent law.

13 Q. Patent law. And your dates -- you  
14 say you left Marmorek Guttman & Rubenstein and  
15 went to Meltzer Lippe and then to Proskauer  
16 Rose, but at all times you were a patent  
17 lawyer --

18 A. Yes.

19 Q. -- is that a correct statement?

20 A. Yes.

21 Q. Is that a correct statement, sir?

22 A. Yes.

23 Q. You have to wait until I finish  
Page 8

Ken Rubenstein Deposition

24 the question.

25 A. No, you are not getting the

□

10

1 Rubenstein

2 answers clearly in your head. You should take  
3 better notes.

4 MR. SELZ: Move to strike as  
5 non-responsive.

6 (MOTION TO STRIKE.)

7 A. That's fine, move to strike it.

8 Q. Sir, during that entire period of  
9 time, then, you were a patent lawyer; is that  
10 a correct statement of fact?

11 A. Yes.

12 Q. Are you familiar with something  
13 that's called "pan and zoom technology"?

14 A. I am not sure what you mean by  
15 that.

16 Q. Well, let me start very simply,  
17 and say this. Are you familiar with a concept  
18 that an image can be enlarged while being  
19 transmitted on a narrow bandwidth?

20 A. I don't know what you are talking  
21 about.

22 Q. Okay. Well, let me go back to  
23 this, then, sir. Are you familiar at all with  
24 the technology involved with IViewIt.com?

25 A. No.

1 Rubenstein

2 Q. Do you have any information at all  
3 with regard to any of the IViewIt entities?

4 A. Not at this time, no.

5 Q. "Not at this time." Did you have  
6 any information at any time in the past, sir?

7 A. Not that I know of right now.

8 Q. Do you have any files or records  
9 indicating that you had any dealings with --  
10 and I will go through a list here --  
11 IViewIt.com, Inc.?

12 A. Not that I know of.

13 Q. IViewIt, LLC?

14 A. Not that I know of.

15 Q. UViewIt?

16 A. Not that I know of.

17 Q. IViewIt, Inc.?

18 A. Not that I know of.

19 Q. Have you ever heard of an  
20 individual named Eliot Bernstein?

21 A. I might have.

22 Q. Well, sir, that's either a "Yes"  
23 or "No" question.

24 A. Like I said, I think he works for  
25 IViewIt, and I may have heard his name.



Ken Rubenstein Deposition  
Rubenstein

1

2 Q. How about what is called the MPEG  
3 Patent Pool, have you heard of that?

4 A. Yes, I have.

5 Q. Why don't you tell me what that  
6 is.

7 A. Decline to answer at this time.

8 Q. Why do you decline to answer?

9 A. Irrelevant to this deposition.

10 Q. I'm sorry, irrelevancy is not an  
11 objection that would allow you not to answer,  
12 sir.

13 A. Make a motion to the judge. If he  
14 orders me to tell you about it, I will tell  
15 you.

16 MR. SELZ: Chris, are you  
17 instructing your client not to answer?

18 MR. PRUSASKI: I am going to put  
19 an question for relevancy based on the  
20 court's granting of the motion and  
21 limiting on the record, and if  
22 Mr. Rubenstein declines to answer then  
23 he is declining to answer.

24 And, just so I don't have to keep  
25 objecting, Mr. Selz, to make this

□

13

1

Rubenstein

2 easier, my objection is continuing in  
3 nature as to any questions regarding any

4 Ken Rubenstein Deposition  
5 transactions for IViewIt that you are  
6 going to ask Mr. Rubenstein if he was  
7 involved in based on the court's  
8 granting of the motion and limiting.

9 MR. SELZ: Let me go on the record  
10 and say the discovery documents that  
11 have been produced by the Defendants --  
12 Plaintiff in this matter indicate  
13 various dealings in which Proskauer Rose  
14 was affiliated including dealings with  
15 H. Wayne Huizenga, CrossBow Ventures,  
16 Wachovia, a number of other entities  
17 which are part of the discovery and have  
18 been produced by the Plaintiffs pursuant  
19 to a valid request for production, so to  
20 the extent you are claiming it's subject  
21 to any motion and limited, that's fine  
22 with regard to the trial, and the  
23 discovery you produced on your own  
24 pursuant to a request for production  
25 which has not been held invalid includes  
these very matters.

□

14

1 Rubenstein  
2 A. So why don't you tell me more  
3 particularly what you want to know.

4 MR. PRUSASKI: Mr. Selz, let me  
5 just respond to that.

6 There were never any affirmative

7 Ken Rubenstein Deposition  
8 defenses asserted by the Defendants in  
9 this matter that have anything to do  
10 with particular transactions, the  
11 defenses involved whether the bills  
12 were --

13 MR. SELZ: Let's go --

14 MR. PRUSASKI: I get to finish  
15 because --

16 MR. SELZ: Go ahead and finish.

17 MR. PRUSASKI: Thank you.

18 There were never any affirmative  
19 defenses asserted by the Defendants in  
20 this matter relating to anything other  
21 than the amount of the bills. And, so,  
22 to the extent that the court granted our  
23 motion limiting it, the Defendants can't  
24 put any evidence of any particular  
25 transactions or alleged wrongdoing by  
Proskauer on at trial, but to that

□

15

1 Rubenstein  
2 extent I am going to ask Mr. Rubenstein  
3 to answer your questions. If I feel  
4 that they are becoming overreaching, I  
5 will make -- or if you are extending too  
6 far into what I think is a violation of  
7 the court's granting of the motion of  
8 limiting, I will make another objection.

9 MR. SELZ: And let me go on the

10 Ken Rubenstein Deposition  
11 record, the motion of limiting is fine  
12 with regard to anything presented at  
13 trial. It certainly does not preclude  
14 the scope of discovery from including,  
15 in a deposition, questions which may  
16 lead to discoverable evidence concerning  
17 the bills and the services that were  
18 provided, which is the basis for the  
19 affirmative defenses.

19 MR. PRUSASKI: And I am aware that  
20 you have some latitude with respect to  
21 discovery under the rules.

22 MR. SELZ: And I think we have  
23 pretty significant latitude under the  
24 rules.

25 And with regard to your client,

□

16

1 Rubenstein  
2 Mr. Rubenstein, indicating he is  
3 refusing to answer, I believe you should  
4 instruct him right now, under Florida  
5 law, he doesn't have the right to refuse  
6 to answer.

7 A. All right, I will answer the  
8 question.

9 MR. PRUSASKI: I just said a  
10 minute ago we will go ahead.

11 A. Anything you want to know about  
12 the MPEGLA patent pool, that's public

13 information, it's is on a web site,  
14 MPEGLA.com. You should go look at that  
15 web site. Any public information that I am  
16 entitled to tell you is on that web site.

17 Q. Well, I am going to ask you, sir,  
18 in this deposition to give me that  
19 information.

20 A. And I am just telling you to go  
21 look at the web site.

22 MR. SELZ: Let the record show the  
23 witness is refusing to respond to a  
24 direct question.

25 A. That is an incorrect

□

17

1 Rubenstein  
2 characterization of the record.

3 The record shows that I told you a  
4 place where you can get the answer very  
5 easily. There is no reason for you to make me  
6 sit here and waste my time repeating to you  
7 things you can easily read about.

8 Q. Well, sir, this is your testimony  
9 at your deposition.

10 A. That's right, which you are making  
11 me do. I consider the deposition nothing but  
12 harassment, considering that I had nothing to  
13 do with the company. It's just a form of  
14 harassment.

15 You go read the web site, if you

16 want to know about it.

17 Q. Okay, so you are refusing to  
18 answer?

19 A. I am not refusing.

20 Q. Other than advising me to go to a  
21 web site --

22 A. I am not refusing to answer. I  
23 did answer. Please stop characterizing my  
24 testimony. I told you the answer. I told you  
25 all publicly-available information about the

□

18

1 Rubenstein

2 MPEG patent pool can be found at  
3 [www.MPEGLA.com](http://www.MPEGLA.com). You are free to go read it.  
4 Please go read it and you will learn all you  
5 need to know about it.

6 Q. So you are not going to tell me  
7 what the "MPEG patent pool" is?

8 A. I told you you could go read it.

9 Q. Okay.

10 MR. SELZ: Chris, do you want to  
11 instruct your witness, or deponent, or  
12 client, at all in that matter?

13 MR. PRUSASKI: Do you have any  
14 specific questions with respect to  
15 IViewIt in the MPEG patent pool?

16 MR. SELZ: Yes.

17 A. All right, so why don't you ask me  
18 those questions.

19 MR. SELZ: I want Mr. Rubenstein  
20 to first explain to me what the "MPEG  
21 patent pool" is, and then I will ask him  
22 questions concerning exactly how it  
23 relates to IViewIt.  
24 In other words --  
25 A. Okay, I will answer both your

□

19

1 Rubenstein  
2 questions.  
3 Q. Go ahead.  
4 A. The "MPEG patent pool" is a  
5 collection of patents owned by a group of  
6 companies related to the MPEG 2 video  
7 compression standard and, as far as I know, it  
8 has nothing whatsoever to do with IViewIt.  
9 Q. So it has no technology -- the  
10 MPEG patent pool uses no technology in any way  
11 related to any of the IViewIt entities or  
12 their intellectual properties; is that your  
13 testimony?  
14 A. No, it's not my testimony.  
15 Q. Okay.  
16 A. My testimony is, it's a group of  
17 patents chosen according to very specific  
18 criteria related to the MPEG 2 standard and,  
19 to my knowledge, has nothing to do with  
20 IViewIt.  
21 And please do not characterize my

22 words. Please do not rephrase them. If you  
23 don't know what I said, you can ask the  
24 reporter to read it back. But do not  
25 characterize my testimony.

□

20

1 Rubenstein

2 MR. SELZ: Again, let the record  
3 reflect the deponent is not being  
4 responsive.

5 A. I am being very responsive.  
6 Please stop characterizing my testimony. And  
7 please stop putting things on the record that  
8 are incorrect.

9 Q. Mr. Rubenstein, I am asking you  
10 questions, and I am asking --

11 A. And you are not listening to the  
12 answers very carefully, so -- I don't know how  
13 much experience you have taking depositions --

14 MR. SELZ: Again, let the record  
15 reflect that --

16 A. Stop interrupting my answers. Do  
17 not interrupt me.

18 Q. Mr. --

19 A. Do not interrupt me.

20 Q. Mr. Rubenstein --

21 A. Let me finish.

22 Are you going to proceed to  
23 continue to interrupt me or not?

24 Q. If you want to answer the



Ken Rubenstein Deposition  
25 questions, I have no problem.

□

21

1 Rubenstein

2 A. Look, I answered your questions.

3 You are unable to keep track of what I am

4 saying.

5 So, please, if you don't know what

6 I said, ask the reporter to read it back, but

7 please do not characterize my testimony in

8 your own words.

9 Q. Okay --

10 A. Just don't do it.

11 Q. What I am asking you is this. Do  
12 any of the members of the MPEG patent pool use  
13 any of the technologies of IViewIt?

14 A. I would have no idea.

15 Q. Who is the person in charge of the  
16 MPEG patent pool, sir?

17 A. Like I say, I advise you to check  
18 their web site if you want to know information  
19 about that patent pool.

20 Q. Well, again --

21 A. It's not me.

22 Q. Are you involved with the MPEG  
23 patent pool, sir?

24 A. Yes.

25 Q. What is your position --

□

22

Ken Rubenstein Deposition

1 Rubenstein

2 A. I am counsel to MPEG, LLC.

3 Q. Do you advise the MPEG patent pool  
4 with regard to legal issues?

5 A. That's privileged information.

6 Q. Not whether or not you advised  
7 them on legal issues.

8 A. You are asking me -- I am not  
9 going to discuss with you anything about  
10 anything I do with any other client in this  
11 law firm.

12 Q. Well, sir, I am not asking you the  
13 substance of what you have advised them, I am  
14 simply asking you whether or not you advised  
15 them.

16 A. I told you, I am their counsel.

17 Q. Okay. Have you ever seen any of  
18 the intellectual properties or technologies  
19 that IViewIt has developed for scaled video?

20 A. Not that I recall at this time.

21 Q. Were you ever involved in any  
22 patent applications for scaled video  
23 technologies for IViewIt.com?

24 A. No.

25 Q. Did you ever review any patent

□

23

1 Rubenstein

2 application at all for IViewIt --  
Page 20

Ken Rubenstein Deposition

3 A. Not that I recall.

4 Q. Did you ever opine with regard to  
5 the validity of any patent applied for or  
6 received by IViewIt.com?

7 A. Like I say, I was not in any way  
8 involved with getting patents for IViewIt.

9 Q. What were you involved with, if  
10 you were, with IViewIt?

11 A. The only thing I did for IViewIt  
12 is I referred them to another patent lawyer.

13 Q. And who is that?

14 A. A guy named Ray Joao.

15 Q. And where did Mr. Joao work?

16 A. I believe he was working at the  
17 time at my former law firm, Meltzer Lippe.

18 Q. And what date was this?

19 A. I don't recall.

20 Q. So, you were employed by Proskauer  
21 Rose at this time?

22 A. Yes.

23 Q. And you referred IViewIt to  
24 Meltzer Lippe?

25 A. I referred IViewIt to Ray Joao,

□

24

1 Rubenstein  
2 who I believe was working at Meltzer Lippe at  
3 that time.

4 Q. Who did you speak to at IViewIt,  
5 sir?

Ken Rubenstein Deposition

6 A. I don't recall.

7 Q. Did you keep any notes of your  
8 conversation with regard to this referral?

9 A. No.

10 Q. Did you speak to Mr. Joao with  
11 regard to this referral?

12 A. I don't recall.

13 Q. Why did you refer this matter to  
14 Meltzer Lippe?

15 A. Because it wasn't work I wanted to  
16 undertake myself.

17 Q. And why was that?

18 A. Because I am not generally in the  
19 patent prosecution business, in most cases.

20 Q. Did you ever meet with any members  
21 of the board of directors of IViewIt.com?

22 A. Not that I know of.

23 Q. Were you ever involved in any  
24 meetings with anyone concerning IViewIt.com?

25 A. No, not that I know of.

□

25

1 Rubenstein

2 Q. How about any representative from  
3 Real 3 D?

4 A. Never heard of it.

5 Q. How about Warner Bros.?

6 A. Warner Bros. is a client here.

7 Q. Okay. Did you have any  
8 discussions with Warner Bros. about IViewIt?

Ken Rubenstein Deposition

9 MR. PRUSASKI: Objection.  
10 A. Any --  
11 MR. PRUSASKI: Instruct him not to  
12 answer.  
13 (DIRECTION NOT TO ANSWER.)  
14 A. Any conversation I made or had  
15 with Warner Bros. would be confidential. I am  
16 not saying there was or was not such a  
17 conversation, it would be privileged.  
18 Q. I am not asking you for the  
19 contents of the conversation, I want to know  
20 if there was one.  
21 A. I am not saying -- I don't know if  
22 there was one.  
23 And if there was, I wouldn't tell  
24 you about it, anyway.  
25 Q. How about Hollywood.com?

□

26

1 Rubenstein  
2 A. Never heard of it.  
3 Q. Did you ever have any discussions  
4 with anyone at Proskauer Rose concerning the  
5 IViewIt Technologies?  
6 A. Not that I recall.  
7 Q. Did you have any discussions with  
8 anyone -- let's say Chris Wheeler,  
9 particularly, at Proskauer Rose with regard to  
10 anything at IViewIt?  
11 A. I might have, but I don't recall

Ken Rubenstein Deposition

12 anything about it at this time, if I did.

13 Q. Did you ever counsel anyone at  
14 IViewIt concerning any matters regarding the  
15 patent or patent applications?

16 A. Not that I recall.

17 Q. Did you keep any files yourself  
18 with regard to IViewIt and any communications  
19 with IViewIt?

20 A. I don't think so, no.

21 MR. PRUSASKI: Objection, asked  
22 and answered.

23 Q. Did you ever play a role as an  
24 advisory board member for IViewIt?

25 A. Not that I know of, no.

□

27

1 Rubenstein

2 Q. Well, sir, I am a little  
3 confused. You normally would recall that you  
4 would be on a board of directors --

5 A. I don't think I was on any such  
6 board.

7 To my knowledge, I was on no such  
8 board.

9 Q. And you never had any  
10 communications with any board member from  
11 IViewIt; is that a correct characterization --

12 A. I had a -- probably a phone call  
13 or two with Brian Utley. I am not sure if  
14 he's a board member or not.

Ken Rubenstein Deposition

15 Q. And what were the contents of your  
16 conversation with Mr. Utley?

17 A. I don't recall.

18 Q. Did you ever talk to anyone at  
19 Warner Bros. with regard to IViewIt?

20 A. You are asking for privileged  
21 information, sorry.

22 Q. Well, whether or not you had  
23 communications --

24 A. No, you are asking for the content  
25 of communications.

□

28

1 Rubenstein

2 Q. No, I am not asking for the  
3 content.

4 A. Yes, you are.

5 Q. Please listen to my question.

6 MR. PRUSASKI: Mr. --

7 Q. The question was, did you ever  
8 discuss any matters concerning IViewIt with  
9 anyone from Warner Bros., period. I am not  
10 asking you for the content because, clearly,  
11 if you want to assert a claim of privilege on  
12 that, and Warner Bros. is a client of yours,  
13 then you can assert it, but I am asking you  
14 whether or not you had any discussions at  
15 all. I am not asking you for the contents.

16 A. I am --

17 MR. PRUSASKI: Mr. Selz, I am  
Page 25

Ken Rubenstein Deposition

18 going to object. I am instructing  
19 Mr. Rubenstein not to answer. It's  
20 privileged attorney/client  
21 communication.

22 (DIRECTION NOT TO ANSWER.)

23 MR. SELZ: Not the fact of whether  
24 or not he had any discussions --

25 MR. PRUSASKI: I am not arguing.

□

29

1 Rubenstein  
2 We are not allowed, under the Florida  
3 rules, to argue objections. I am  
4 instructing him not to answer.

5 MR. SELZ: I understand.

6 MR. PRUSASKI: And I can't argue  
7 with you.

8 MR. SELZ: Just so the record is  
9 clear, your objection is it's  
10 privileged, whether or not he even spoke  
11 to Warner Bros.

12 MR. PRUSASKI: Yes, about IViewIt.

13 MR. SELZ: About IViewIt.

14 MR. PRUSASKI: Yes.

15 Q. Do you know who Greg Thagard is?

16 A. Yes, I do.

17 Q. Who is he?

18 A. He used to work at Warner Bros.

19 Q. He doesn't work with Warner Bros.  
20 anymore; is that correct?



Ken Rubenstein Deposition

21 A. Correct.  
22 Q. When did you represent Warner  
23 Bros., sir?  
24 A. Oh, that's not -- that's  
25 privileged information, sorry.

□

30

1 Rubenstein  
2 MR. PRUSASKI: I am going to  
3 object for relevancy, and instruct the  
4 witness not to answer. It's also  
5 privileged.  
6 (DIRECTION NOT TO ANSWER.)  
7 MR. SELZ: I don't think case law  
8 supports the position that when he  
9 represented a client --  
10 MR. PRUSASKI: Are we going to  
11 argue every time there is an objection?  
12 MR. SELZ: No, no, no.  
13 A. We will litigate out the issue.  
14 We will litigate it out. You know, make a  
15 motion. We will fight it. We will see who  
16 wins.  
17 Q. Mr. Rubenstein again, you know,  
18 this is your deposition --  
19 A. I don't --  
20 Q. -- I appreciate the fact that you  
21 want to express your opinion. However,  
22 Mr. Prusaski can tell you, this is not how  
23 depositions are conducted in the state of

Ken Rubenstein Deposition

24 Florida.

25 A. Fine. I am not discussing

□

31

1 Rubenstein  
2 anything about Warner Bros. The objection has  
3 been put on the record. Let's move on.

4 MR. PRUSASKI: And, Mr. Selz, just  
5 to make it clear, I am going to instruct  
6 the client not to answer any questions  
7 about any Proskauer clients under claim  
8 of privilege and under claim of  
9 harassment and under claim of the fact  
10 that you are not allowed to put any of  
11 this on at trial.

12 MR. SELZ: Well --

13 MR. PRUSASKI: And we can litigate  
14 that with Judge Labarga.

15 Q. Now, I am asking you specifically,  
16 sir, with regard to any specific meetings, how  
17 about Real 3 D?

18 A. I never heard of Real 3 D.

19 Q. You never heard of them, okay.  
20 That's what I was going to say.

21 Are you aware of any meeting that  
22 happened between yourself and any  
23 representatives of IViewIt, other than you  
24 have already described?

25 A. Not that I recall. I may have

□

1 Rubenstein  
2 also had a conversation with Lamont, but I am  
3 not sure.  
4 Q. Lamont, you spoke to Stephen  
5 Lamont?  
6 A. Possibly, yes.  
7 Q. And that was concerning IViewIt?  
8 A. Maybe, yes.  
9 Q. Do you recall what the contents of  
10 that conversation were?  
11 A. No.  
12 Q. How about Zackirul Shirajee, do  
13 you know who he is?  
14 A. No.  
15 Q. How about Jude Rosario?  
16 A. Don't know who he is.  
17 Q. How about any awareness on your  
18 part of any IViewIt inventions regarding zoom  
19 imaging?  
20 A. I have no knowledge at this point  
21 in time of IViewIt technology.  
22 Q. So you have no knowledge of scaled  
23 video?  
24 A. I didn't say that. I said I have  
25 no knowledge of what IViewIt technology is at

□

Ken Rubenstein Deposition  
Rubenstein

1

2 this point in time.

3

Q. Okay, why don't you explain to me  
4 "scaled video", to the best of your  
5 knowledge.

6

A. I don't know what you mean by  
7 "scaled video".

8

why don't you explain to me what  
9 you are talking about.

10

Q. well, what does that mean to you?  
11 You seemed to indicate earlier in your answer  
12 that you had some idea of what I was talking  
13 about.

14

A. well, "scaled video" might refer  
15 to changing the sizes of video images.

16

Q. And how is that accomplished?

17

A. I don't know. At this point in  
18 time, I am sure there is a variety of  
19 techniques to do it.

20

Q. Are you aware of any such  
21 techniques that IViewIt was using?

22

A. No.

23

Q. Are you aware of any camera zoom  
24 applications used in the IViewIt technology?

25

A. No.

□

34

1

Rubenstein

2

Q. How about combined scaled video  
3 zooming video applications?

Ken Rubenstein Deposition

4           A.     Not that I know of.  
5                     I am not saying they don't or do  
6 exist, I am saying I don't know.  
7           Q.     Of course, it's to the best of  
8 your knowledge, sir, I am not expecting you to  
9 be on omniscient.  
10                    How about game applications?  
11           A.     I have no knowledge of what  
12 IViewIt's doing.  
13           Q.     How about what they have done in  
14 the past?  
15           A.     I have no knowledge of what they  
16 have done in the past at this point in time.  
17           Q.     Is it that you have no knowledge  
18 or you can't recall?  
19           A.     I don't know if I knew in the past  
20 or didn't know in the past, I don't know now.  
21           Q.     So, in other words, sir, you have  
22 no knowledge as to any technology that IViewIt  
23 uses; is that correct?  
24           A.     At this point in time, that is  
25 correct.

□

35

1                    Rubenstein  
2           Q.     Did you have such knowledge in the  
3 past?  
4           A.     I don't know whether I did or did  
5 not, I don't know now.  
6           Q.     So, then, sir, you wouldn't have

7 any ability to know whether or not any of your  
8 clients are using IViewIt technology; is that  
9 correct?

10 A. I would have no idea.

11 Q. So it is possible, then, they  
12 might be infringing on IViewIt's technologies?

13 MR. PRUSASKI: Object to the form.

14 A. What do you mean by "infringing"?

15 Q. Well, making use of IViewIt  
16 technologies without the benefit of royalties  
17 or some other kind of licensing.

18 A. I have no knowledge that IViewIt  
19 has any proprietary rights in anything. And I  
20 have no knowledge about what IViewIt's  
21 technology is. So I have no knowledge about  
22 who could be doing what.

23 Q. If IViewIt had technologies  
24 concerning scaled video, let's say, and there  
25 was some legally-protected interest in that

□

36

1 Rubenstein  
2 technology, as a patent lawyer, would you  
3 opine that the use of that by any other third  
4 party would require either a licensing or  
5 payment of a royalty?

6 A. I --

7 MR. PRUSASKI: Object to the form.

8 Q. You may answer the question.

9 A. I will answer the question. I

10 would not have an answer to that question in  
11 the abstract, you are asking for complex legal  
12 analysis of a situation where you are only  
13 giving a vague hypothetical fact pattern, so  
14 it's not possible to give an answer to that  
15 question.

16 Q. well, let me restate it, then,  
17 maybe I can make it clearer for you, sir.

18 Let's say that IViewIt has  
19 technology for camera zoom applications and  
20 that technology is patented, and a client of  
21 yours is making use of that technology without  
22 the benefit of paying either a royalty or a  
23 licensing agreement. would there be legal  
24 liability?

25 MR. PRUSASKI: Object to the

□

37

1 Rubenstein

2 form.

3 A. why don't you explain more clearly  
4 what you are trying to say.

5 Q. I thought I was trying to be  
6 clear. Okay, let me try again.

7 Let's say specifically, and I  
8 don't know if this particular entity is a  
9 client of yours or not, but Sony used camera  
10 zoom applications which were subject to a  
11 patent or a patent pending by IViewIt.com, and  
12 Sony made use of these technologies without

13 either a licensing agreement or without paying  
14 a royalty. Would Sony be liable for damages  
15 for use of this patented technology to  
16 IViewIt?

17 A. Well, Sony's a client of the firm,  
18 so I am not going to discuss what kind of  
19 advice I might or might not give to Sony in  
20 particular circumstances, you are asking for  
21 privileged information.

22 Q. Okay. Then, instead of Sony we  
23 will make it company X.

24 A. Like I say, you are asking for a  
25 legal conclusion of mine, how I might advise a

□

38

1 Rubenstein  
2 client in a particular fact pattern without  
3 knowing the details. In order to answer that  
4 question, I would have to study the patent in  
5 question, the file history of the patent  
6 before The Patent Office, the prior art of  
7 record. I might have to look for other prior  
8 art. I would also have to study what the  
9 particular client is doing. I might have to  
10 study what other proprietary rights the  
11 company in question who owns those rights  
12 might have before I would even conceive and  
13 think about answering a question like that.  
14 Q. We are doing this -- obviously,  
15 you have the right to object if it's Sony.



16 what I am saying assuming, arguendo, this is a  
17 valid and binding patent intellectual  
18 property, that it is only enforceable under  
19 the patent that's in place, and that there is  
20 a clear case of infringement.

21 A. I answered the question to the  
22 best of my ability already. It's on the  
23 record.

24 If you want, we can ask the  
25 reporter to read it back.

□

39

1 Rubenstein

2 Q. Your statement to me in response,  
3 sir, was that you needed more specifics and  
4 that you were unclear, and that you would have  
5 to --

6 A. No, I told you that in order for  
7 me -- I am going to repeat this once, just so  
8 we are understanding it -- I told you in order  
9 to advise a client in a particular situation,  
10 I would have to study the patents in question,  
11 the file histories of the patents before the  
12 U.S. Patent Office, I would have to study the  
13 prior art of record, I might study other prior  
14 art, I would have to study the claims of the  
15 patent, I would have to try to understand  
16 their scope, I would have to try to understand  
17 the technology that someone was trying to  
18 apply the patents to, I would try to

19 understand whether there were other  
20 proprietary rights besides patents in  
21 question, and before I could answer the  
22 question. I can't answer your question in the  
23 abstract, it doesn't have a simple  
24 straightforward "Yes" or "No" answer.

25 Q. well, assuming that all your

□

40

1 Rubenstein  
2 review of the prior art and your review of the  
3 application of the Patent Office and your  
4 review of all those other documents that you  
5 just mentioned indicated that it was a valid  
6 and duly-enforceable patented right with  
7 regard to a technology that was clearly  
8 infringing on that patent right, would your  
9 answer remain the same?

10 A. I answered the question to the  
11 best of my ability.

12 Q. How long have you been a patent  
13 lawyer, sir?

14 A. You know how long, at least --

15 Q. Go back --

16 A. -- more than 20 years.

17 Q. And how many patent cases have you  
18 litigated?

19 A. I have litigated a number of them.

20 Q. How many is "a number of them"?

21 A. Quite a few.

22 Q. More than 50?  
23 A. Probably not.  
24 Q. More than 20?  
25 A. Maybe.

□

41

1 Rubenstein

2 Q. Have any of those patent cases  
3 dealt with an infringement claim?

4 A. They generally deal with  
5 infringement claims.

6 Q. Could you tell me about the cases  
7 that you have been involved with? Just naming  
8 the cases.

9 MR. PRUSASKI: Objection.  
10 Don't answer the question, it's  
11 privileged.

12 (DIRECTION NOT TO ANSWER.)

13 MR. SELZ: The name of the cases  
14 are privileged?

15 MR. PRUSASKI: Yes. And it's  
16 harassment. He is a 20-year patent  
17 lawyer at one of the largest law firms.  
18 Why don't we need to go over this?

19 MR. SELZ: It seems to me he is  
20 being very evasive about a lot of these  
21 things.

22 MR. PRUSASKI: I don't think so.  
23 You are asking a really simple  
24 question that doesn't have a simple

25 answer.

□

42

1 Rubenstein

2 A. Yes, you are asking a question  
3 that doesn't have a simple "Yes" or "No"  
4 answer.

5 MR. PRUSASKI: And it is a  
6 hypothetical, and he is not an expert.

7 Q. Have you ever met with Mr. Chris  
8 wheeler?

9 A. I don't think I ever met him, no.

10 Q. Did you ever speak with him?

11 A. Possibly, yes.

12 Q. Do you have any specific  
13 recollection as to when you spoke with him?

14 A. No.

15 Q. Have you ever billed any services  
16 to IViewIt or any of the IViewIt entities?

17 A. As far as I know, I have not.

18 Q. Have you been included on a  
19 billing statement for IViewIt --

20 A. As far as --

21 Q. -- on Proskauer Rose.

22 A. As far as I know, I have not.

23 Q. Did Mr. wheeler ever consult with  
24 you, to the best of your recollection, with  
25 regard to any issues concerning IViewIt?

□

43

Ken Rubenstein Deposition

1 Rubenstein

2 A. He might have, but I would not  
3 recall the details at this time.

4 Q. would you have taken any  
5 contemporaneous notes of those conversations?

6 A. Probably not.

7 Q. would you keep any other records  
8 of those conversations?

9 A. I am not a big note taker of phone  
10 conversations, so the answer would be no.

11 Q. would those conversations have  
12 been reflected in any billing records that you  
13 might keep?

14 A. Like I say, to my knowledge, I  
15 never billed any services to IViewIt.

16 Q. well, I don't think that was my  
17 question.

18 My question was, sir, if you did  
19 have a conversation with Christopher wheeler  
20 with regard to IViewIt, would it have been  
21 reflected on your billing records?

22 A. Probably not, because it would  
23 have been a minor short conversation.

24 Q. Did you ever come down to Florida  
25 to meet with anyone from IViewIt?

□

44

1 Rubenstein

2 A. No.

Ken Rubenstein Deposition

3 Q. Did you ever make any  
4 representation to any party that you can  
5 recall with regard to IViewIt or its  
6 technologies?

7 A. Not that I recall.

8 MR. PRUSASKI: Object to the form.

9 Q. Let me rephrase that. Have you  
10 ever spoken to any third party with regard to  
11 IViewIt's technologies?

12 A. Not that I recall at this time.

13 Q. Did you ever meet with anyone  
14 named Stephen Filipek?

15 A. I don't know who he is.

16 Q. Were you ever included in any  
17 business plan of IViewIt as a consultant or  
18 any other representation as being involved  
19 with the company?

20 A. Not that I know of at this time.

21 Q. If you were included on that  
22 business plan as a consultant or advisor to  
23 IViewIt, would you have consented to that or  
24 would you have had to have consented to that?

25 A. I don't know whether I would have

□

45

1 Rubenstein  
2 had to consent to it or not, and I don't know  
3 if I would have consented or not.

4 Q. Have you ever seen a business plan  
5 for IViewIt?

Ken Rubenstein Deposition

6 A. I don't know, I might have. I  
7 might not have, I don't know.

8 Q. How about, did you ever speak to  
9 anyone at Brian Utley?

10 A. I did have one or two phone  
11 conversations with him.

12 Q. With regard to IViewIt?

13 A. Yes.

14 Q. And what were the contents of  
15 those conversations?

16 A. I --

17 MR. PRUSASKI: Asked and answered.

18 MR. SELZ: I'm sorry.

19 A. And I will just answer it again,  
20 for convenience, I don't know the details at  
21 this point in time.

22 Q. How about Gerald Stanley?

23 A. I don't know who he is.

24 Q. Wayne Smith?

25 A. I don't think I ever had a

□

46

1 Rubenstein  
2 conversation with Wayne Smith about IViewIt.  
3 And Wayne Smith is a Warner Bros. in-house  
4 attorney and, therefore, any conversation I  
5 did have with him would be privileged.

6 Q. How about David Colter?

7 A. I am not sure who he is. I am  
8 just not sure.





Ken Rubenstein Deposition

12 answer.

13 (DIRECTION NOT TO ANSWER.)

14 Q. Did you ever become aware of any  
15 problems with Raymond Joao's work as with  
16 regard to patents for IViewIt?

17 A. Not that I recall at this time.

18 Q. Does Proskauer Rose maintain  
19 patent counsel, other than yourself?

20 A. There are a number of patent  
21 people in the law firm.

22 Q. Was there any particular reason  
23 why IViewIt's patent applications were not  
24 handled by Proskauer Rose?

25 A. Well, like I said, generally, I

□

48

1 Rubenstein

2 don't do patent prosecution work, as a general  
3 matter.

4 Q. Did you see anything wrong or  
5 faulty with Mr. Joao's work?

6 A. Like I say, I have no knowledge of  
7 his work at this time, and don't recall ever  
8 seeing anything faulty with it.

9 Q. Was there ever a time when  
10 Mr. Joao was no longer employed by Meltzer  
11 Lippe, to the best of your knowledge?

12 A. I think he did leave after a  
13 certain period of time.

14 Q. And where did he go to work?

Ken Rubenstein Deposition

15 A. I have no idea.  
16 Q. Do you have any knowledge as to  
17 why Mr. Joao left or --  
18 A. No.  
19 Q. If you would just let me finish my  
20 question, I would appreciate it.  
21 MR. PRUSASKI: What was the  
22 question?  
23 MR. SELZ: I was going to finish  
24 the question.  
25 Q. Did you have any knowledge as to

□

49

1 Rubenstein  
2 why Mr. Joao left or whether or not he was  
3 terminated?  
4 A. No.  
5 Q. Okay. So you have no knowledge,  
6 sir, then, of any of the patent applications  
7 for IViewIt.com?  
8 A. Not at this time, no.  
9 Q. How about with regard to any of  
10 the trademark or copyright applications?  
11 A. No, none whatsoever.  
12 Q. Have you ever heard of a company  
13 called Zeosync, Z-E-O-S-Y-N-C?  
14 A. I am not sure at this time.  
15 Q. You are not sure whether or not  
16 you have ever heard of it?  
17 A. Yeah. Yeah, I don't think I know

Ken Rubenstein Deposition

18 at this time. I am not sure. What do they  
19 do?

20 Q. Well, if you don't know what they  
21 do and you don't know who they are, then  
22 that's your answer.

23 A. All right, that's fine.

24 Q. Who recommended that IViewIt go to  
25 Meltzer Lippe for their patent work?

□

50

1 Rubenstein

2 A. I probably suggested it.

3 Q. And was that suggestion  
4 communicated in writing?

5 A. Probably not.

6 Q. And, if you can recall, who did  
7 you communicate with at IViewIt concerning  
8 your recommendation?

9 A. I don't recall.

10 Q. Did you ever meet with Eliot  
11 Bernstein?

12 I think you might have said that  
13 you never met with him before.

14 A. I don't think I ever met with him.

15 Q. Okay, and you said you don't know  
16 who Jude Rosario is; correct?

17 A. Correct.

18 Q. And you don't know who Zackirul  
19 Shirajee is; correct?

20 A. Correct.

Ken Rubenstein Deposition

21 Q. How about Jeffrey Friedstein?  
22 A. I don't know who he is.  
23 Q. Are you aware of whether or not  
24 Proskauer Rose accepted any stock from  
25 IViewIt?

□

51

1 Rubenstein  
2 A. I would have no knowledge of that.  
3 Q. Were you ever asked to evaluate  
4 for Proskauer Rose the inventions that IViewIt  
5 had?  
6 A. Not that I recall, no.  
7 Q. Did you ever see a video that led  
8 you to believe that a company called Visual  
9 Data was infringing upon IViewIt?  
10 A. I never heard of Visual Data.  
11 Q. Are you aware of any of the  
12 billings that Proskauer Rose presented to  
13 IViewIt for services?  
14 A. To my knowledge, I have never seen  
15 any such bill.  
16 Q. Did you have any discussions with  
17 any other partner or associate at Proskauer  
18 Rose concerning the billings to IViewIt?  
19 A. Not that I could recall.  
20 Q. Okay. When I refer to "IViewIt",  
21 I mean --  
22 A. You mean all of those entities.  
23 Q. Correct.

Ken Rubenstein Deposition

24 A. And the answer is, not that I  
25 could recall.

□

52

1 Rubenstein

2 Q. Did Mr. Wheeler talk with you at  
3 all about any infringement problems or patent  
4 rights at IViewIt?

5 A. Not that I recall.

6 Q. And you earlier testified you have  
7 never heard of a company called Visual Data;  
8 is that correct?

9 A. Not that I can recall at this  
10 time.

11 Q. Do you know an individual named  
12 Gerald Lewin?

13 A. Gerald Lewin?

14 Q. Yes.

15 A. You mean the former CEO of Time  
16 Warner?

17 Q. Yes.

18 A. Well, I know the name, but I don't  
19 know him personally.

20 Q. How about Brian Utley?

21 A. Well, I told you already I had a  
22 few telephone conversations with him.

23 Q. Other than those telephone  
24 conversations, do you know anything of  
25 Mr. Utley?

1 Rubenstein

2 A. No.

3 Q. How about Gerald Stanley, of  
4 Real 3 D?

5 A. I never heard of him and never  
6 heard of Real 3 D.

7 Q. You said that earlier.

8 How about Boca Research?

9 A. Never heard of Boca Research.

10 Q. How about Wayne Huizenga Jr. or  
11 Sr.?

12 A. Well, I know the name, I don't  
13 know them personally.

14 Q. How about Chris Brandon?

15 A. Never heard of him.

16 Q. Robert Henniger?

17 A. Never heard of him.

18 Q. Sportsline?

19 A. Sportsline, S-P-O-R-T-L-I-N-E?

20 Q. Correct.

21 A. I never heard of it.

22 Q. Hollywood.com, I think you  
23 testified to earlier.

24 A. You asked me about that, and I  
25 answered it already.

Ken Rubenstein Deposition  
Rubenstein

1

2 Q. Correct.

3 How about Big E?

4 A. I never heard of it.

5 Q. Sensormatic?

6 A. S-E-N-S-O-R-M-A-T-I-C?

7 Q. Right.

8 A. I never heard of it.

9 Q. How about Sensormatics? I'm  
10 sorry.

11 A. I don't think I heard of it,  
12 either way, to my knowledge right now.

13 Q. How about CrossBow Ventures?

14 A. Well, I only know about it because  
15 it was mentioned in some conversation to me  
16 prior to this deposition, but I don't have any  
17 knowledge of them, never met with them, never  
18 had any dealing with them.

19 Q. And what conversation was this,  
20 prior --

21 A. In preparation for this  
22 deposition.

23 Q. Okay. Do you have any idea who  
24 they are?

25 A. I know they are a venture

□

55

1 Rubenstein

2 capitalist, something like that.

3 Q. Are they a client of Proskauer

Ken Rubenstein Deposition

4 Rose?

5 A. I don't know.

6 Q. When Proskauer Rose would  
7 represent a new client, would a conflict check  
8 be run?

9 A. I think that's the normal  
10 procedure of this and most other law firms.

11 Q. When you were contacted or spoke  
12 to Mr. Wheeler with regard to IViewIt.com, did  
13 you either request that Mr. Wheeler confirm  
14 the conflict check had been run or did you  
15 conduct one yourself?

16 A. I did not conduct one myself  
17 because the client came in through Mr. Wheeler  
18 and he -- in the normal procedure, it would be  
19 up to him to do the conflict check.

20 Q. Okay, so you relied on the fact  
21 that Mr. Wheeler had done one?

22 A. I relied on the fact that it would  
23 be the normal procedure in this law firm for  
24 him to have done it.

25 Q. But you can't tell me whether or

□

56

1 Rubenstein

2 not today, as you sit here, whether or not one  
3 was done.

4 A. I would say it would be the normal  
5 procedure in this law firm for it to be done.

6 Q. But do you have any personal



7 knowledge which would indicate to you directly  
8 that a conflict check had been run with regard  
9 to IViewIt?

10 A. Well, the fact is, in this law  
11 firm they would not assign a client billing  
12 number to the client without a conflict check  
13 being done, and I understand the client  
14 billing number was assigned, so that means a  
15 conflict check was done --

16 Q. And --

17 A. -- or would normally have been  
18 done.

19 Q. Normally, but what I am asking you  
20 very specifically is, sir, you do not know for  
21 a fact whether or not a conflict check was  
22 run?

23 A. Not at this point in time, I do  
24 not know.

25 Q. And if there was a conflict found,

□

57

1 Rubenstein  
2 what would be the normal procedure?

3 A. It would go to the -- there is a  
4 committee that -- in this law firm, that deals  
5 with those issues.

6 Q. Does that committees ever obtain  
7 waivers of conflicts from clients?

8 A. They might.

9 MR. PRUSASKI: Don't answer the

10 Ken Rubenstein Deposition  
question, it's privileged.

11 (DIRECTION NOT TO ANSWER.)

12 Q. Do you maintain any files or any  
13 documents concerning IViewIt?

14 MR. PRUSASKI: Him personally?

15 MR. SELZ: In his business records  
16 or in his records for Proskauer Rose at  
17 the offices in New York.

18 A. Not that I know of, no.

19 Q. Do you know of any patenting of  
20 inventions for IViewIt?

21 A. Like I say, I was not involved as  
22 their patent counsel, other people served as  
23 their patent counsel.

24 Q. Are you aware of any of the  
25 particulars of any of those patents?

CLICK HERE TO SEE  
CONTRADICTIONARY EVIDENCE

□

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1 Rubenstein

2 A. I was not --

3 MR. PRUSASKI: This --

4 A. I will repeat it again, I was not  
5 involved as their patent counsel, other people  
6 were. And, at this point in time, I have no  
7 knowledge of their patent applications.

8 MR. PRUSASKI: Mr. Selz, you are  
9 repeating yourself now.

10 MR. SELZ: I'm sorry, Chris.

11 MR. PRUSASKI: Eliot needs to type  
12 some new questions.

Ken Rubenstein Deposition  
13 A. Maybe he didn't get a good night's  
14 sleep.

15 (Pause.)

16 MR. PRUSASKI: Do you have  
17 anything else?

18 MR. SELZ: Yes, I do. Just give  
19 me a minute. (Pause.)

20 Q. Sir, do you have any knowledge or  
21 have you reviewed any of the billing  
22 statements that Proskauer Rose provided to  
23 IViewIt in this matter?

24 A. No.

25 MR. PRUSASKI: Objection, asked

□

59

1 Rubenstein

2 and answered.

3 Q. Are you aware of any of the  
4 services provided by Proskauer Rose to IViewIt  
5 in this matter?

6 A. I have no idea.

7 Q. (Pause.)

8 MR. PRUSASKI: Do you have  
9 anything else?

10 MR. SELZ: Yes. Just give me a  
11 couple of minutes, I am just thinking  
12 through this stuff.

13 MR. PRUSASKI: Nothing personal,  
14 Mr. Selz, but you are really repeating  
15 yourself at this point.

Ken Rubenstein Deposition

16 MR. SELZ: I am trying not to.  
17 MR. PRUSASKI: I mean, you asked  
18 him twice if he has seen the bills  
19 within like three minutes.  
20 MR. SELZ: (Pause.)  
21 Q. Are you aware of any individuals  
22 involved in the MIT Multimedia Lab?  
23 A. Personally, no, not at this point.  
24 Q. When was the last time you spoke  
25 to Brian Utley? You indicated you had a

□

60

1 Rubenstein  
2 couple of conversations with him. When was  
3 the last discussion held, that you can recall?  
4 A. I am not sure.  
5 Q. Was it more than a year ago?  
6 A. Probably.  
7 Q. Do you remember the contents of  
8 that conversation at all?  
9 A. No. And you asked me that  
10 already.  
11 Q. I know I did. I am trying to help  
12 to refresh your recollection.  
13 A. You asked me at least three times  
14 that question, so now you are at the point of  
15 wasting my time, so I would appreciate it, if  
16 you want to ask me some questions, please ask  
17 me questions you did not ask me already.  
18 Q. Is there anyone else, other than

Ken Rubenstein Deposition

19 Brian Utley at IViewIt, that you ever had any  
20 discussions with?

21 MR. PRUSASKI: You have asked  
22 that, about five times.

23 A. You asked me that already.

24 MR. PRUSASKI: And he said no.

25 A. And I answered it already. You

□

61

1 Rubenstein  
2 will see the transcript, and you will see the  
3 answer.

4 Q. Okay, fine.

5 MR. PRUSASKI: Mr. Selz, is your  
6 client sending you questions over the  
7 computer?

8 MR. SELZ: No, no, I have got my  
9 notes that I have made to ask questions,  
10 and I am just trying to correspond  
11 Mr. Rubenstein's answers with my  
12 questions.

13 MR. PRUSASKI: Are you  
14 communicating with him electronically?

15 MR. SELZ: No, I am not.

16 MR. PRUSASKI: Has he been on the  
17 phone the whole time?

18 MR. SELZ: Yes.

19 MR. PRUSASKI: He is in  
20 San Diego?

21 MR. SELZ: Yes.

22 Ken Rubenstein Deposition  
MR. PRUSASKI: Let the record  
23 reflect he is taking out time --  
24 MR. SELZ: He is sitting in the  
25 room next to his wife, waiting for his

□

62

1 Rubenstein  
2 wife to go into labor and go into the  
3 hospital and --  
4 MR. PRUSASKI: And he could have  
5 sat in the same room a week-and-a-half  
6 ago to have his deposition taken. If he  
7 is able to appear at depositions on the  
8 telephone, he could have had a  
9 deposition taken at his house.  
10 MR. SELZ: He can cut out any  
11 minute he wants with me, but he can't do  
12 it with you, if you have a deposition  
13 scheduled.  
14 MR. PRUSASKI: We could have  
15 accommodated him just fine.  
16 MR. SELZ: I am going to put you  
17 on hold for a minute.  
18 (Pause in proceedings.)  
19 MR. SELZ: Okay, Chris, I have  
20 been talking to Eliot, he is going to  
21 check on his wife, who is in the next  
22 room. Let's take a ten-minute break and  
23 come right back.  
24 MR. PRUSASKI: Okay. I expect you

25 Ken Rubenstein Deposition  
both to have some new questions or I

□

63

1 Rubenstein  
2 need to go, because we are both very  
3 busy.

4 MR. SELZ: I understand, so is  
5 everyone.

6 MR. PRUSASKI: So, it's 12:02, we  
7 will see you promptly at 12:12 with new  
8 questions.

9 Do you want to call us back at  
10 this number?

11 MR. SELZ: I will call you back at  
12 this number.

13 (Recess taken: 12:04 p.m.-  
14 12:16 p.m.)

15 Q. Did you ever receive a letter from  
16 Stephen Lamont with regard to IViewIt  
17 technology?

18 A. A letter from Stephen Lamont?

19 Q. Yes.

20 A. Not that I know of at this time.

21 Q. Okay.

22 MR. SELZ: Chris, can you give me  
23 the fax number there? I will fax you a  
24 copy of this letter, for the witness --  
25 for the deponent to review.

□

64

Ken Rubenstein Deposition

1 Rubenstein

2 A. I don't know how we are going to  
3 orchestrate that.

4 Q. You have got a fax up there?

5 A. We do. We've just got to --

6 MR. PRUSASKI: It's not something  
7 that can be delivered immediately?

8 THE WITNESS: Right.

9 MR. SELZ: What I will do is, I  
10 will continue with other questions until  
11 it's delivered.

12 MR. PRUSASKI: The fax number is  
13 969-2900. And you will need to have it  
14 delivered to Mr. Rubenstein's office  
15 immediately.

16 A. It will probably come out in my  
17 E-mail, so we will have to have someone print  
18 it out.

19 MR. SELZ: Let me just go and take  
20 care of that.

21 Hold on for a moment.

22 (Pause in proceedings: 12:17 p.m.-  
23 12:25 p.m.)

24 MR. SELZ: Okay, we are back on.

25 A. Okay.

□

65

1 Rubenstein

2 Q. Okay.



Ken Rubenstein Deposition

3                   Now, Mr. Rubenstein, have you  
4 looked at any of the billing statements that  
5 Proskauer Rose produced to IViewIt in this  
6 matter at all?

7           A.     Okay, so, number one, you asked me  
8 that, I answered it already.

9                   Number two, I would like to note,  
10 for the record, that we took a break at 12:02,  
11 you were supposed to come back at 12:12, you  
12 were late, and the first thing you did, upon  
13 coming back, was take another break of about  
14 nine or ten minutes so you could send me a  
15 fax, which could have been sent here in  
16 advance. And you are wasting my time by  
17 asking me questions that I have already  
18 answered.

19          Q.     What did you do to prepare for  
20 this deposition?

21          A.     I met with my attorney.

22          Q.     Did you review any documents?

23          A.     I reviewed answers to  
24 interrogatories briefly that were prepared by  
25 Mr. Bernstein.

□

66

1                   Rubenstein

2          Q.     Did you review any other  
3 documents?

4          A.     I reviewed a brief segment of  
5 Mr. Utley's deposition -- actually, I did not

Ken Rubenstein Deposition

6 review anything from Mr. Utley's deposition,  
7 that's a mistake. I may have discussed it  
8 with my attorney, but you are getting into  
9 privileged information, so I cannot answer it  
10 any further.

11 Q. So those are the only things that  
12 you reviewed?

13 A. The only thing I looked at was  
14 Mr. Bernstein's answers to interrogatories,  
15 and I did meet with my attorney.

16 Q. Are you aware, sir, that your name  
17 is referenced in billing statements from  
18 Proskauer Rose to IViewIt more than a dozen  
19 times?

20 A. No, I am not.

21 MR. PRUSASKI: Object to the form.

22 Q. Can you think of any reason, sir,  
23 why your name would be mentioned more than a  
24 dozen times in billing statements from  
25 Proskauer Rose to IViewIt?

□

67

1 Rubenstein

2 A. I had a few conversations with  
3 different people about the company over time,  
4 as I have testified.

5 Q. And you testified that the  
6 conversations took place between you and Chris  
7 wheeler and you and Brian Utley.

8 A. Right.

Ken Rubenstein Deposition

9 Q. Correct?  
10 A. Possibly -- I don't know if there  
11 was anyone else.  
12 Q. Do you have any recollection now  
13 as to any other conversations?  
14 A. No.  
15 Q. Now, with regard to E-mails, were  
16 you aware of any E-mails that you received  
17 from anyone concerning IViewIt?  
18 A. I don't know at this point in  
19 time.  
20 Q. Do you have records of E-mails  
21 that you received?  
22 A. I would not know at this point in  
23 time.  
24 Q. Are they normally kept as part of  
25 your files?

□

68

1 Rubenstein  
2 A. I don't know at this point in  
3 time.  
4 Q. I had asked you previously, sir,  
5 whether or not you had any information on  
6 Mr. David Colter.  
7 Do you recall that?  
8 A. Yes, and I said I wasn't sure who  
9 he was, and I suggested you might want to  
10 refresh my recollection, and you declined to  
11 do so.

Ken Rubenstein Deposition

12 Q. Okay. would it refresh your  
13 recollection, sir, if I tell you that  
14 Mr. Colter was with Warner Bros.?

15 A. You know, I may have heard the  
16 name, but I don't think I ever had any  
17 dealings with him, although I am not sure.

18 Q. But you do have dealings with  
19 Warner Bros.; is that correct?

20 A. Like I said, Warner Bros. is a  
21 client.

22 Q. Right. would there be any reason  
23 why your name would be mentioned in E-mails,  
24 that you can think of, from Warner Bros. to  
25 someone at AOL?

□

69

1 Rubenstein

2 A. I don't know.

3 I mean, I do work -- they are part  
4 of the same company, they are clients of the  
5 firm, and so, I can't really discuss it  
6 because of privilege.

7 Q. Sir, you had indicated earlier you  
8 had no idea with regard to any of the  
9 intellectual properties or patents for  
10 IViewIt; is that correct?

11 A. Not at this point in time.

12 Q. Did you ever issue any opinion to  
13 anyone as to the validity of those patents?

14 A. Not that I know of.

Ken Rubenstein Deposition

15 Q. Did you ever provide any  
16 information at all with regard to the validity  
17 of any of these patents?

18 A. Not that I know of.

19 Q. So it's possible that you have in  
20 the past but you don't recall?

21 A. I don't recall having involvement  
22 with these patents. I was not the patent  
23 counsel.

24 Q. Now, sir, we have faxed you a copy  
25 of a letter. I don't know if you have

□

70

1 Rubenstein  
2 received it.

3 A. We don't have it yet.

4 Q. Okay, could you find out if that's  
5 available?

6 A. All right. We will put you on  
7 hold.

8 Q. Thank you.

9 (Pause in proceedings.)

10 Q. Okay, are you with me?

11 A. Yes.

12 Q. Do you have the fax?

13 A. No, I do not. Like I say, you  
14 should have sent it up here yesterday or in  
15 advance.

16 Q. That's fine, that's fine. I was  
17 expecting that maybe you would have a better

Ken Rubenstein Deposition

18 recollection of some of these events, and  
19 maybe that was my incorrect presumption,  
20 considering that I guess the communication  
21 from Stephen Lamont occurred relatively  
22 recently --

23 A. Well, when did it occur?

24 Q. Well, that's what I was going to  
25 ask you, first of all, if you can recall.

□

71

1 Rubenstein

2 A. Well, you asked me about that, and  
3 I told you I may have spoken to him once, but  
4 I don't recall the details right now.

5 Q. Now, with regard to what we talked  
6 about earlier was the conflict of interest and  
7 whether or not Proskauer Rose's position in  
8 representing IViewIt constituted a conflict  
9 with other clients, I think you mentioned that  
10 you expected Mr. Wheeler to do the conflict  
11 check; is that correct?

12 A. Yes.

13 Q. Are you aware of any conflict of  
14 interest between IViewIt and any of your own  
15 clients?

16 A. No.

17 MR. PRUSASKI: What's the  
18 relevancy of that, Mr. Selz?

19 MR. SELZ: I think it goes to  
20 whether or not IViewIt should have been

Ken Rubenstein Deposition

21 represented by Proskauer Rose in the  
22 first place.

23 MR. PRUSASKI: Oh, is that a new  
24 theory that you haven't pled?

25 MR. SELZ: Is that an objection?

□

72

1 Rubenstein

2 MR. PRUSASKI: Yes, it's objection  
3 to relevance.

4 MR. SELZ: Okay, so noted for the  
5 record.

6 Q. Mr. Rubenstein, you had indicated  
7 that you are not aware of any conflicts  
8 between IViewIt and any of your other clients;  
9 is that correct?

10 A. Not at this point in time, no.

11 Q. Were you aware of any conflicts in  
12 the past?

13 A. Not that I know of.

14 Q. Would there be any records kept of  
15 any conflict check that was run by Mr. Wheeler  
16 or any other --

17 A. I don't know.

18 Q. Would you let me finish my  
19 question, please.

20 -- Mr. Wheeler or any other  
21 partner or associate of your firm.

22 A. I don't know what records there  
23 might be.

Ken Rubenstein Deposition

24 Q. You indicated there was a conflict  
25 committee. Does that conflict committee meet

□

73

1 Rubenstein  
2 in New York or do they meet in Florida or is  
3 there any particular location for their  
4 meetings?

5 MR. PRUSASKI: Objection,  
6 relevance.

7 You can answer this question, but  
8 it's not going to get much further.

9 A. I assume they meet in New York.

10 Q. Is there any particular reason for  
11 that assumption?

12 A. Most of the law firm is in  
13 New York.

14 Q. Sir, I am a little confused about  
15 some of your earlier testimony. I had asked  
16 you whether or not you had spoken with any of  
17 your clients concerning IViewIt and its  
18 technology, and your response was to claim  
19 privilege. Is that still the case, you are  
20 claiming privilege with regard to any of those  
21 communications?

22 MR. PRUSASKI: Yes.

23 A. Yes.

24 Q. Okay. I am going to just say at  
25 this point that you testified that there were



1 Rubenstein  
2 only two occasions that you had spoken with  
3 third parties Mr. Utley and Mr. Wheeler that  
4 you can recall with regard to IViewIt; is that  
5 correct?

6 MR. PRUSASKI: I don't recall that  
7 being his testimony.

8 A. That's not my testimony.

9 Q. What was your testimony?

10 A. We will have to have it read  
11 back. I don't remember exactly what I said --

12 Q. Okay.

13 A. -- in response to which particular  
14 question right now.

15 Q. Well, let me pose a new question,  
16 sir, and I think I have asked you this before,  
17 and I am going to pose it again because I am  
18 unclear now.

19 You have communicated with third  
20 parties with regard to IViewIt; is that  
21 correct?

22 A. Well, what do you mean by "third  
23 parties"?

24 Q. People or entities other than  
25 IViewIt.

Ken Rubenstein Deposition  
Rubenstein

1

2 A. Uh -- I might have, I might not  
3 have, I am not sure right now.

4 Q. And those third parties you are  
5 saying are clients of yours, is that why you  
6 are asserting a privilege?

7 A. Well, it depends who you mean by a  
8 "third party". You know, "third party" is a  
9 vague term.

10 why don't you name some particular  
11 third parties and I will answer the question,  
12 if I have haven't answered it already.

13 Q. I think you said that you were  
14 asserting a privilege with regard to Warner  
15 Bros., I think you said --

16 A. Well, Warner Bros. is a client  
17 here.

18 Q. Right. And Sony.

19 A. Sony is a client here.

20 Q. Right. So you refuse to answer  
21 whether or not you had communicated to those  
22 parties with regard to IViewIt; is that  
23 correct?

24 A. Correct, or anything else I might  
25 have communicated to them.

□

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1 Rubenstein

2 Q. Well, I am not asking you about  
3 anything else, because, really, frankly, sir,

4 that's not only not relevant but, clearly,  
5 that would be privileged, but I am asking you  
6 with regard to simply IViewIt --

7 A. Well, you know, that's our  
8 position, our position is that any  
9 conversation with those entities is  
10 privileged.

11 Q. Okay, and if there was a  
12 discussion -- are you saying there was no  
13 discussion or are you saying there was a  
14 discussion that was privileged?

15 A. I am not saying there was a  
16 discussion, I am not saying there was not a  
17 discussion, I am saying it's privileged.

18 Q. So you can't simply answer no,  
19 there was no discussion --

20 A. I am not saying there was, I am  
21 not saying there was not, I am saying it's  
22 privileged.

23 MR. SELZ: I am going to certify  
24 that question, we will take it up with  
25 Judge Labarga and see what his

□

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1 Rubenstein  
2 determination is about that.

3 (RULING SOUGHT.)

4 Q. Now, with regard to any other  
5 issues concerning IViewIt.com or any IViewIt  
6 entities, have you had any communications

7 since the filing of this lawsuit with anyone  
8 concerning IViewIt?

9 A. Well, I don't know when the  
10 lawsuit was filed.

11 Q. Since 2001, have you had any  
12 communications with anyone concerning IViewIt  
13 Technologies or any of the IViewIt entities?

14 A. Not that I recall at this time.

15 Q. Have you spoken to Ray Joao with  
16 regard to it?

17 MR. PRUSASKI: Asked and  
18 answered.

19 A. You asked me about Ray Joao  
20 already.

21 Q. Since 2001.

22 A. Not that I know of at this time.

23 Q. Sir, have you ever been involved  
24 in setting up corporations for clients?

25 A. No.

□

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1 Rubenstein

2 Q. Have you ever made any  
3 representations to any company or any entity  
4 with regard to the advisability of setting up  
5 corporations for them?

6 A. Not that I know of.

7 Q. Who would you refer that to at  
8 Proskauer Rose if there was --

9 A. I am not sure, it would depend on

10 the particular situation.  
11 Q. Do you have any idea what  
12 Mr. Wheeler's specialization is?  
13 A. No.  
14 Q. Have you ever spoken with him with  
15 regard to the legal services he was providing  
16 to IViewIt?  
17 A. You asked me that --  
18 MR. PRUSASKI: Asked and  
19 answered.  
20 A. -- already and I answered it.  
21 Q. And what was your answer again,  
22 sir, "No"?  
23 A. I don't remember the exact  
24 question you asked, so I don't remember the  
25 exact wording of my answer, what the question

□

79

1 Rubenstein  
2 was -- but the question was asked and  
3 answered.  
4 Q. Do you have that fax yet?  
5 A. No. We will call my secretary  
6 again.  
7 I will put you on hold.  
8 Q. Okay.  
9 (Pause in proceedings.)  
10 A. Okay, the fax is coming, so we are  
11 just going to put you on hold for a minute.  
12 Q. Thank you?

13 Ken Rubenstein Deposition  
(Pause in proceedings: 12:35 p.m.-  
14 12:41 p.m.)  
15 A. All right. We have your letter.  
16 Q. Do you ever recall seeing this  
17 letter?  
18 MR. SELZ: Let's get it marked,  
19 first of all, by the court reporter as  
20 Defendants' 1.  
21 A. The letter is dated today, and I  
22 never saw it before.  
23 Q. Have you ever seen the contents of  
24 this letter?  
25 A. No. I haven't read the letter

□

80

1 Rubenstein  
2 yet.  
3 Q. Okay.  
4 A. I note that the letter is two-plus  
5 pages long, I haven't read it. The letter is  
6 dated today, November 20, 2002, and it's  
7 unsigned, so this is a letter you guys,  
8 IViewIt, created today.  
9 Q. Well, I think that's a presumption  
10 that you are putting into the record, sir.  
11 A. Well, the letter I have in front  
12 of me is dated today.  
13 Q. Let me go ahead.  
14 First of all, let's get it marked  
15 as Number 1, Defendants' 1.

Ken Rubenstein Deposition

16 MR. PRUSASKI: Objection to the  
17 predicate, he has never seen it before.  
18 MR. SELZ: Let me ask him a  
19 question about it first. I haven't even  
20 examined him on it. Let me -- Chris,  
21 this is my deposition of him, and I  
22 appreciate the fact that he wants to get  
23 this over, but that isn't an excuse for  
24 him to jump the gun.  
25 MR. PRUSASKI: I have a right to

□

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1 Rubenstein  
2 make objections as I see fit, and I am  
3 not taking instructions out of practice  
4 law from you.  
5 MR. SELZ: That's fine. I am just  
6 saying, let me get it marked first.  
7 (Deposition Exhibit Defendants' 1,  
8 letter dated, November 20, 2002, with  
9 fax transmittal cover sheet, was marked  
10 for identification, as of this date.)  
11 Q. Mr. Rubenstein, do you have in  
12 front of you what's been marked as Defendants'  
13 Number 1? Is that correct?  
14 A. Yes.  
15 Q. Okay, could you please read it for  
16 me?  
17 MR. PRUSASKI: Out loud?  
18 Q. No, to yourself.

19           A.     well, I will scan it, but I want  
20 to note it's a two-page letter, I have not had  
21 an opportunity to study it. So if you ask me  
22 questions about the letter, I am going to tell  
23 you I have not had an opportunity to study it.  
24           Q.     Okay, then I will go through the  
25 letter paragraph by paragraph with you to see

□

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1                   Rubenstein  
2 if you recall any of it.  
3                   Do you ever recall receiving a  
4 correspondence from Stephen Lamont?  
5           A.     Like I say, I haven't had a chance  
6 to study your letter.  
7           Q.     I am not talking about this  
8 particular --  
9           A.     I don't recall any correspondence  
10 from Stephen Lamont at this point in time.  
11          Q.     Do you ever recall a request by  
12 Wayne Smith of Warner Bros. as to IViewIt's  
13 pending patents?  
14          A.     No. It might be that somebody at  
15 IViewIt asked me to talk to Warner Bros. and I  
16 declined. That might be the fact.  
17          Q.     Are you aware of any  
18 confidentiality agreement executed by Warner  
19 Bros. with regard to IViewIt?  
20          A.     No.  
21          Q.     Have you ever seen any such



22 agreement?

23 A. Not that I could recall.

24 Q. Again, sir, this letter refers to  
25 you being on the advisory board of IViewIt

□

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1 Rubenstein

2 between fall of 1999/spring of 2000.

3 A. I was never on any advisory board  
4 of IViewIt.

5 Q. Did Stephen Lamont ever meet with  
6 you in person?

7 A. I think I -- as I testified, I may  
8 have had a conversation with him, I don't know  
9 if it was in person or not.

10 Q. You previously testified that you  
11 had never reviewed any of IViewIt's  
12 technologies; is that correct?

13 A. I never testified to that. What I  
14 told you is, I don't have any knowledge of it  
15 right now.

16 Q. Okay.

17 A. I don't know whether I reviewed it  
18 or not.

19 Q. So it's possible, then, sir, that  
20 you did review it.

21 A. Like I said, I answered the  
22 question. You asked me, I answered it. I  
23 don't know whether I reviewed it or not. I  
24 have no knowledge of it right now. I was not

Ken Rubenstein Deposition  
25 their patent attorney, I was not involved with

□

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1 Rubenstein

2 their patents.

3 Q. Okay, if you don't have a  
4 recollection of reviewing it, but then it's  
5 possible that you had; is that correct?

6 MR. PRUSASKI: Anything's  
7 possible. I think we could stipulate to  
8 that.

9 A. Right, I don't think it's possible  
10 but -- and I don't think it happened.

11 Q. Do you have any clearer  
12 recollection of it because of this letter?

13 A. No, I don't have a detailed  
14 recollection or any recollection of it at this  
15 point in time.

16 Q. And, again, I think you had  
17 testified that you don't know anyone -- Greg  
18 Thagard, you don't know Greg Thagard?

19 A. I do know Greg Thagard.

20 Q. Who is Greg Thagard?

21 A. He used to work at Warner Bros.

22 Q. Does Mr. Thagard, to the best of  
23 your knowledge, have any information  
24 concerning IViewIt?

25 A. I don't know at this point in

□

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Ken Rubenstein Deposition

1 Rubenstein

2 time.

3 Q. What, to the best of your  
4 recollection, was Greg Thagard's role with  
5 regard to IViewIt?

6 A. I don't know what he might or  
7 might not have done with respect to IViewIt.

8 Q. Who is Greg Thagard?

9 A. He is a person who worked at  
10 Warner Bros.

11 Q. Well, what was his position --

12 A. He was in technical -- in the  
13 technology side of the company.

14 Q. Do you have any idea where  
15 Mr. Thagard is currently?

16 A. No. I believe he left the  
17 company.

18 Q. How about Chris Cookson, did you  
19 ever have any conversations with Chris Cookson  
20 concerning IViewIt Technologies?

21 A. Like I say, Chris Cookson works  
22 for Warner Bros., and any conversations I had  
23 with Warner Bros. are privileged. So, I am  
24 not saying I had a conversation, I am not  
25 saying I did not have a conversation, I am

□

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1 Rubenstein

2 saying you are asking for privileged material.

Ken Rubenstein Deposition

3 Q. And David Colter?

4 A. I am not sure I ever had any  
5 dealings with him.

6 Q. And who is David Colter?

7 A. You asked and I answered that  
8 question already.

9 Q. So you have never seen this  
10 correspondence, you don't recall seeing this  
11 correspondence from Mr. Lamont; is that  
12 correct?

13 MR. PRUSASKI: It's dated today.

14 A. It's dated today.

15 MR. PRUSASKI: It's marked  
16 "Draft". It's impossible for us to  
17 have seen it before. And the return  
18 address is an empty house in Los Angeles  
19 County.

20 Q. Have you ever seen the contents of  
21 this letter before?

22 A. I have never --

23 MR. PRUSASKI: He answered these  
24 questions, no?

25 A. I have never seen the letter

□

87

1 Rubenstein

2 before.

3 Q. How about the E-mails that were  
4 faxed over to you, as well? There is an  
5 E-mail that's dated August 6, 2001. Have you

Ken Rubenstein Deposition

6 ever seen that E-mail before?

7 A. Is this an E-mail from David  
8 Colter to Heidi Krauel?

9 Q. Correct.

10 MR. PRUSASKI: The one dated  
11 August 1, 2001?

12 MR. SELZ: Correct.

13 A. Right, I see the E-mail.

14 Q. Okay.

15 MR. SELZ: Let's get it marked as  
16 2.

17 (Deposition Exhibit Defendants' 2,  
18 fax transmittal cover sheet and E-mails,  
19 was marked for identification, as of  
20 this date.)

21 Q. Sir, do you have any reason to  
22 know why your name is mentioned in that  
23 E-mail?

24 A. No, because I don't recall giving  
25 any opinions about the patents.

□

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1 Rubenstein

2 Q. And you never, to the best of your  
3 recollection, had any discussions with  
4 Mr. Thagard with regard to same, either?

5 A. Like I say, any discussion I might  
6 have or might not have had with Mr. Thagard  
7 would be privileged.

8 Q. I am going to put you on hold for  
Page 79

Ken Rubenstein Deposition

9 just a minute.

10 (Pause.)

11 MR. SELZ: Okay, we are back on.

12 Okay, I have got nothing further  
13 at this time. However, we are going to  
14 have to go to Judge Labarga with regard  
15 to your refusal to answer on some of  
16 these issues with your claim of  
17 privilege, so we may have to come back  
18 and conclude with those questions at a  
19 later date.

20 MR. PRUSASKI: Fine.

21 THE WITNESS: We will take it  
22 under advisement.

23 We are not committing to come back  
24 or not.

25 MR. SELZ: That's fine.

□

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1

2 (Time noted: 12:48 p.m.)

3

4

5

\_\_\_\_\_

KENNETH RUBENSTEIN

7

8 subscribed and affirmed

9 before me this \_\_\_\_ day

10 of \_\_\_\_\_, 2002.

11 \_\_\_\_\_



Ken Rubenstein Deposition

15 by the witness.

16 I further certify that I am not  
17 related to any of the parties to this  
18 action by blood or marriage, and that  
19 I am in no way interested in the  
20 outcome of this matter.

21 IN WITNESS WHEREOF, I have  
22 hereunto set my hand this 26th day  
23 of November, 2002.

24  
25 \_\_\_\_\_  
WENDY D. BOSKIND, RPR

□

1  
2 November 20, 2002

3 I N D E X

4 WITNESS	EXAMINATION BY	PAGE
5 Kenneth Rubenstein	Mr. Selz	4
6		
7 -----	EXHIBITS-----	
8 Defendants' 1, letter dated, November 20,		
9 2002, with fax transmittal cover sheet.....		81
10 Defendants' 2, fax transmittal cover		
11 sheet and E-mails.....		87
12		
13		
14 (DIRECTION NOT TO ANSWER.).....		25
15 (DIRECTION NOT TO ANSWER.).....		28
16 (DIRECTION NOT TO ANSWER.).....		30
17 (DIRECTION NOT TO ANSWER.).....		41

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Ken Rubenstein Deposition

18 (DIRECTION NOT TO ANSWER.)..... 47  
19 (DIRECTION NOT TO ANSWER.)..... 57  
20  
21 (MOTION TO STRIKE.) ..... 10  
22  
23 (RULING SOUGHT.)..... 77  
24  
25

□

1  
2 STATE OF NEW YORK ) Pg\_\_of\_\_Pgs  
3 ss:  
4 COUNTY OF NEW YORK )  
5 I wish to make the following changes,  
6 for the following reasons:  
7 PAGE LINE  
8 \_\_\_\_ \_\_\_\_ CHANGE: \_\_\_\_\_  
9 REASON: \_\_\_\_\_  
10 \_\_\_\_ \_\_\_\_ CHANGE: \_\_\_\_\_  
11 REASON: \_\_\_\_\_  
12 \_\_\_\_ \_\_\_\_ CHANGE: \_\_\_\_\_  
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Ken Rubenstein Deposition

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25 REASON: \_\_\_\_\_

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J

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# PROSKAUER ROSE LLP

**Christopher W. Prusaski**  
Attorney at Law

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June 2, 2003

Mr. Kenneth A. Schanzer  
Ken Schanzer & Associates, Inc.  
209 N. 20th Avenue  
Hollywood, FL 33020

**Re: Proskauer Rose LLP v. Iviewit.com, Inc., et al.**  
**Case No. CA 01-04671 AB**

Dear Mr. Schanzer:

Please find enclosed an Errata Sheet executed by Christopher C. Wheeler for the transcript of his deposition taken on November 21, 2002.

Sincerely,



Christopher Prusaski

CWP:km

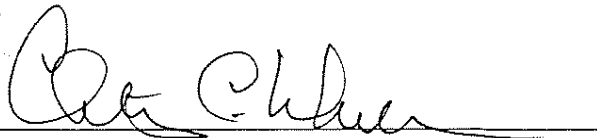
Enclosure

cc: Steven Selz, Esq. (w/enclosure)

I, **Christopher C. Wheeler**, do hereby declare under the penalties of perjury that the foregoing testimony is true and correct (with the exception of the following changes listed below):

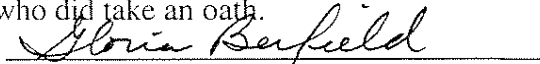
**ERRATA SHEET**

<u>PAGE</u>	<u>LINE</u>	<u>CORRECTION</u>	<u>REASON</u>
40	11	Were not pixilated and which were not distorted.	error in transcription
70	23	Rick Rochon.	spelling
71	7	Cris Brandon.	full name
96	16-17	Should be "many" of the confidentiality agreements.	clarification
118-119	23-1	There was also a matter of giving advice regarding a credit card account guaranteed by Mr. Utley that was unrelated to Iviewit and billed separately to Mr. Utley.	additional recollection
124	11-18	I do not have a recollection of when companies were formed without reviewing the exact history of each company.	clarification
135	3	Eliot should be Utley.	typo
197	15	Reference to J. Zammas is incorrect, although I do not, at this time, recall who I referenced.	typo
205	19-21	From that standpoint, it is my understanding that the patent work had not been completed regarding the video product, but that I did not know if the copyright and trademark work had or had not been completed regarding the video product.	clarification



Christopher C. Wheeler

Sworn to and subscribed before me this 2<sup>ND</sup> day of JUNE ~~May~~, 2003 by Christopher C. Wheeler, who is personally known to me and who did take an oath.

  
 Notary Public -- State of Florida  
 My commission expires:

 Gloria Berfield  
 MY COMMISSION # DD179765 EXPIRES  
 February 21, 2007  
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Attn: STEVEN M. SELZ, ESQ.

Description	Total
PROSKAUER VS. IVIEWIT	
DEPOSITION OF CHRISTOPHER C. WHEELER	
Attendance of Reporter (ALL A.M. & P.M.)	150.00
Original and One Copy; Pages: 222	810.30
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IN THE CIRCUIT COURT OF THE  
15TH JUDICIAL CIRCUIT, IN AND  
FOR PALM BEACH COUNTY, FLORIDA

---

PROSKAUER ROSE LLP, a New York  
limited liability partnership,

Plaintiff,

vs.

No. CA 01-04671 AB

IVIEWIT.COM, INC., a Delaware  
corporation, IVIEWIT HOLDINGS, INC.,  
a Delaware corporation, and IVIEWIT  
TECHNOLOGIES, INC., a Delaware  
corporation,

Defendants.

---

Palm Beach, Florida  
November 21, 2002  
10:26 o'clock a.m.

DEPOSITION  
OF  
CHRISTOPHER C. WHEELER

-----

**Certified Copy**

1 APPEARANCES:

2 PROSKAUER ROSE LLP  
By: MATTHEW TRIGGS, ESQ.  
3 Appearing on behalf of the Plaintiff.

4 SELZ & MUVDI SELZ, P.A.  
By: STEVEN M. SELZ, ESQ.  
5 Appearing on behalf of the Defendants.

6 Also Present:

7 Eliot I. Bernstein (by telephone)

8

9

-----

10

11

12

Deposition of CHRISTOPHER C. WHEELER, a witness  
13 of lawful age, taken by the Defendants, for purposes  
14 of discovery and for use as evidence in the  
15 above-entitled cause, pursuant to notice heretofore  
16 filed, before KENNETH A. SCHANZER, Registered  
17 Diplomate Reporter and Notary Public, in and for the  
18 State of Florida at Large, at 214 Brazilian Avenue,  
19 Palm Beach, Florida.

20

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CHRISTOPHER C. WHEELER	
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1 Thereupon:

2 CHRISTOPHER C. WHEELER

3 a witness, being first duly sworn in the  
4 above-entitled cause, testified under oath as follows:

5 MR. TRIGGS: Before we get going, I do  
6 want to put on the record that Mr. Bernstein is  
7 attending this deposition by telephone. It's my  
8 understanding that he also attended the  
9 deposition that we had yesterday by telephone,  
10 notwithstanding what was represented to the  
11 court, whenever it was, we were in front of the  
12 judge last week?

13 MR. SELZ: Actually --

14 MR. TRIGGS: Week before. Just want to  
15 make sure that it's clear so that we can at the  
16 appropriate time deal with the fact that -- And  
17 I'm pleased that he's able to spend the time on  
18 the phone, pleased he's able to participate in  
19 the deposition.

20 One other thing I'd just like to make  
21 clear for the record, and that is,  
22 Mr. Bernstein, you are not taping this  
23 deposition, are you?

24 MR. SELZ: Can you hear us?

25 MR. BERNSTEIN: No, I can't hear anything.

1 Can you guys speak up?

2 MR. TRIGGS: Mr. Bernstein, you are not  
3 taping this deposition, are you?

4 MR. BERNSTEIN: No.

5 MR. TRIGGS: All right.

6 MR. SELZ: Are you still there?

7 MR. BERNSTEIN: Yeah. Is the court taping  
8 the deposition?

9 MR. SELZ: Yeah, the court reporter is  
10 recording the deposition on transcription.

11 MR. BERNSTEIN: Okay.

12 MR. SELZ: Okay. Can you hear us better  
13 now?

14 MR. BERNSTEIN: Yeah. A little bit.

15 MR. SELZ: While we're going on the record  
16 with regard to that particular issue, let me  
17 likewise state that we have offered the  
18 Plaintiff an opportunity to depose Mr. Bernstein  
19 telephonically, and Mr. Prusaski indicated that  
20 he was unwilling to do so, and we offered that  
21 Mr. Bernstein is at his home on the phone and  
22 awaiting the imminent birth of his child. His  
23 wife is in the other room, and because of that,  
24 as was stated before we went on the record, it  
25 may be necessary for him to take breaks on a

1 regular basis to check on his wife's condition  
2 and to make sure that she doesn't need anything.

3 So with all that in mind, let's move  
4 forward.

5 MR. TRIGGS: And to be clear, absolutely,  
6 should we take his deposition, in San Diego or  
7 wherever he resides now, if he needed to take a  
8 break for his wife's condition, we would have no  
9 objection whatsoever to him doing that.

10 MR. SELZ: I don't think - I don't think  
11 that was the concern. It was expressly the  
12 OB-GYNs letter, but given all that, let's go  
13 forward.

14 MR. TRIGGS: Yes, we do want to be there  
15 and be in the same room with Mr. Bernstein when  
16 his deposition is taken.

17 MR. SELZ: Okay. With all that in mind,  
18 let's see if we can proceed.

19 DIRECT EXAMINATION

20 Q. (By Mr. Selz) Okay. Mr. Wheeler, could  
21 you please state your full name for the record?

22 A. Christopher C. Wheeler.

23 Q. And Mr. Wheeler, what is your current  
24 occupation?

25 A. I'm an attorney.

1 Q. And do you practice on your own or do you  
2 practice with a firm?

3 A. I practice with Proskauer Rose.

4 Q. Do you have a separate P.A. or do you  
5 practice as a partner of that?

6 A. No, I am a partner there.

7 Q. And which office do you practice out of?

8 A. I practice -- My office is in the Boca  
9 Raton office.

10 Q. And what's the address of that office?

11 A. 2255 Glades Road, Boca Raton, Florida.

12 Q. And how long have you been practicing as  
13 an attorney with Proskauer Rose?

14 A. Since November of 1990.

15 MR. BERNSTEIN: Can you have him speak up  
16 or closer to the phone?

17 MR. SELZ: Let's see if I can move this as  
18 close as I can. Put it in the center of the  
19 table. That's about as good as I can do.

20 Q. Okay. So prior to your employment with  
21 Proskauer Rose, where were you employed?

22 A. I was a partner at Gunster Yoakley.

23 Q. Gunster Yoakley's offices located in Palm  
24 Beach or located some place else?

25 A. Well, I was - I was in both -- For

1     sometime I was in their Boca Raton office and for  
2     sometime I was in their West Palm office.

3             Q.     And prior to Gunster Yoakley?

4             A.     Prior to Gunster Yoakley I was with - I  
5     was - I was with Fleming, O'Bryan and Fleming. Then  
6     there was a hiatus of one month until we joined  
7     Gunster Yoakley, I was with Wheeler and Kanouse.

8             Q.     When was that with regard to Fleming,  
9     O'Bryan and Fleming?

10            A.     From 1972 to 1983.

11            Q.     And then your employment with Gunster  
12     Yoakley was from 1983 to --

13            A.     Right. A month at Wheeler and Kanouse's.  
14     It was a changeover. And then we went immediately  
15     into Gunster Yoakley from 1983 to 1990.

16            Q.     Okay. Prior to Fleming, O'Bryan and  
17     Fleming?

18            A.     I graduated from law school.

19            Q.     Okay. Are you admitted to practice in any  
20     other state other than the State of Florida?

21            A.     No.

22            Q.     Have you taken any specialization or  
23     certification?

24            A.     No.

25            Q.     How would you characterize the principal

1 practice that you have, what type?

2 A. Transactional.

3 Q. Real estate transactional, business  
4 transactional?

5 A. Both.

6 Q. Do you do any corporate work?

7 A. Yes.

8 Q. Establishing corporations, setting up  
9 corporations for clients?

10 A. Yes.

11 Q. Is that part of your transactional  
12 practice?

13 A. Yes.

14 Q. Do you do any intellectual properties  
15 work?

16 A. No.

17 Q. Do you do any work advising clients with  
18 regard to patents or patent rights?

19 A. No. Only directing them to the -- When  
20 they come in, when our corporate clients come in, we  
21 direct them to the proper people.

22 Q. Now, when you say the proper people, you  
23 mean the proper people within Proskauer Rose?

24 A. Sometimes.

25 Q. And if a client came in with an

1 intellectual property question, such as iviewit  
2 situation, who would you refer them to?

3 MR. TRIGGS: Object to the form.

4 THE WITNESS: Can I answer that?

5 MR. TRIGGS: Sure. If you can answer the  
6 question, fine.

7 A. I -- It would depend on the -- Normally we  
8 would contact our IP people, either in Washington or  
9 in New York, and ask their advice as to how it should  
10 be handled.

11 Q. Now, when a new client comes into  
12 Proskauer, is there a procedure that you have for  
13 establishing a new client file?

14 A. Yes.

15 Q. Okay. What is that procedure, sir?

16 A. We have a business intake file and a - and  
17 that's submitted, together with a conflict check.

18 Q. Okay. Was that done, to the best of your  
19 knowledge, with regard to iviewit?

20 A. To the best of my knowledge, it was.

21 Q. Okay. When I say iviewit, in this case  
22 there are about, I believe, about eight or nine  
23 iviewit entities and a uview entity as well. So when  
24 I refer to iviewit, generally I'm going to refer to  
25 all of those entities consolidated and combined.



1           A.     And to answer your question, iviewit you  
2 have to understand, an iviewit didn't exist when it  
3 came into our office. The Bernsteins existed, so it  
4 was done with respect to the Bernsteins.

5           Q.     So a conflict check was done with  
6 regard --

7           A.     Well, to the best of my knowledge, it was.  
8 But that would be our procedure.

9           Q.     Okay. Do you know if a conflict check was  
10 actually run with regard to the Bernsteins?

11          A.     I don't know exactly, but it would be  
12 difficult to open a file in our firm without a  
13 conflict check, if not impossible.

14          Q.     Now, as part of the conflict check  
15 procedure, is - is an interview conducted to find out  
16 what the type of business is going to be operated and  
17 potential transactions are going to be involved or is  
18 it simply a name conflict that's run?

19                 MR. TRIGGS: Object to the form.

20          A.     It's --

21          Q.     Let me restate it. How does a conflict  
22 check work at your offices?

23          A.     The new matter sheet -- A conflict check  
24 generally is a check of names.

25          Q.     So it would be more for whether there was

1 a transaction involving an existing client and that  
2 party previously?

3 A. It's - it's a complex procedure, but there  
4 are a series of questions, and they're answered both  
5 with respect -- If it was a corporate entity coming  
6 in, you'd view it and you'd take the principals, you'd  
7 try to identify the principals, you'd try to identify  
8 potential adverse parties in the transaction, and you  
9 would list them all in the sheet. But - so it's not  
10 solely names.

11 If you came in and you were a corporation  
12 and you wanted me to negotiate a contract with John  
13 Doe or John Doe, Inc., across the street, we would try  
14 to fill it out as comprehensively as possible.

15 Q. Okay. Now, with regard to the retainer of  
16 Proskauer Rose by iviewit in this particular matter,  
17 do you recall when Proskauer Rose started doing work  
18 for iviewit?

19 A. Approximately --

20 MR. TRIGGS: Just object to form. How are  
21 you going to clarify the various iviewit  
22 entities, or are you? Are you just going to  
23 sump sort of lump it all --

24 Q. Well, I'm just going to say, when did they  
25 start representing any, and that was my statement.

1 And that's why, unless I specify a certain entity,  
2 what I want you to do is answer as if I'm asking with  
3 regard to each one of those various entities rather  
4 than running through the litany of each one.

5 A. That's fine. I think approximately  
6 January of '99.

7 Q. And how did iviewit first come to  
8 Proskauer, if you recall?

9 A. They were referred to us, I believe, by  
10 Jerry Lewin to my partner, Al Gortz.

11 Q. And what is Mr. Gortz's area of practice?

12 A. He's a - what we call personal planning  
13 lawyer. Estate planning.

14 Q. Had he done any work that you know of for  
15 any of the principals of iviewit?

16 A. Now or prior to that time?

17 Q. Prior to that time.

18 A. I don't know whether he had done it prior.

19 Q. How about now?

20 A. I believe he did -- Well, he did work  
21 subsequent for them.

22 Q. Do you know who he did any work for?

23 A. He did it for Sy and -- I don't know if he  
24 did it for Eliot or not.

25 Q. Okay. So to the best of your

Lewin deposition states he introduced Wheeler for patent counsel not portal and corporate counsel. Wheeler tries to hide that he knew of technologies at this point. Very strange.

[Click here for Lewin](#)

1 recollection, who came in to meet with you the first  
2 time from iviewit? The first time you met any  
3 representative.

4 A. To the - to the best of my knowledge, in  
5 January I met with Mr. Gortz and both Mr. Bernsteins,  
6 and I believe Mr. Lewin as well.

7 Q. And at that time, what was discussed?

8 A. The preliminary discussion as to the  
9 nature of what their work was going to be,  
10 establishment of a corporation, and they were going to  
11 prepare a business plan and send it over to us.

12 Q. Was there any discussion as to Proskauer  
13 Rose attempting to assist them in any way with regard  
14 to obtaining financing or funding that you can recall?

15 A. I don't recall that.

16 Q. How about with regard to any intellectual  
17 properties matters?

18 A. I don't recall that in that meeting.

19 Q. Was there any discussion as to what the  
20 principal product or service that iviewit was going to  
21 provide would be?

22 A. It was a -- There was a discussion. I'm  
23 not so sure we - we got our arms around it until a  
24 subsequent meeting, but it was a system, a portal --  
25 It seemed that Mr. Bernstein was going to set up a

1 portal, and he had - he had - he had an idea how to  
2 set up a better portal, and - by which to present  
3 products and - and --

4 Now, this was a - this was the first  
5 discussion, preliminary.

6 Q. Right.

7 A. Right.

8 Q. So the portal --

9 A. It wasn't - I mean, it wasn't a long  
10 discussion that we had, to my recollection.

11 Q. Okay. And this portal, what was its  
12 purpose again?

13 A. Well, they were going to use  
14 Mr. Bernstein's techniques to demonstrate products on  
15 it.

Tries to hide invention as "technique"

16 Q. Okay. What was the technique that  
17 Mr. Bernstein was going to --

18 MR. TRIGGS: Let me just object to the  
19 form. I think your question was aimed at asking  
20 him what was discussed in the meeting. It's not  
21 quite coming out that way, but I'll just object  
22 to the form.

23 MR. SELZ: Okay. I think I already asked  
24 him that question.

25 A. He had a - he believed - a technique by

1 which he was going to use on this portal and market it  
2 to various potential customers to display on his - on  
3 his portal.

4 Q. Okay. And this technique involved what in  
5 particular?

6 MR. TRIGGS: Object to the form.

7 Q. What was the technique -- I'll rephrase  
8 it. What was the technique that Mr. Bernstein  
9 discussed with you?

10 A. Well, he didn't discuss it at length at  
11 that time. So, I mean, we - that remained to be seen.

12 Q. That was in January of 1999.

13 A. Right.

14 Q. Now, subsequent to that initial meeting,  
15 was there ever any retainer agreement signed by  
16 iviewit?

17 A. Yes.

18 Q. Do you know when that took place?

19 A. It took place a few months later.

20 Perhaps - perhaps by midyear.

21 Q. By July or thereabouts as you --

22 A. A written agreement you're talking about?

23 Q. Right.

24 A. Right.

25 Q. Now, at the time this meeting took

Later in his  
deposition  
Wheeler  
states that  
it was  
shown to  
him at first  
meeting.  
PERJURY

1 place --

2 A. I mean, you're saying, was there a  
3 retainer, a written fee agreement signed.

4 Q. Yes.

5 A. And that was not signed till months later.

6 Q. Now, what's the --

7 A. We undertook services earlier.

8 Q. Okay. Now, you earlier talked about the  
9 fact that your firm has a strict policy with regard to  
10 conflict checks. Is that correct?

11 A. As to opening files and conflict checks,  
12 yes.

13 Q. Do they also have a policy with regard to  
14 retainer agreements?

15 A. They do now.

16 Q. Did they in 1999?

17 A. I don't recall, but I don't think it was  
18 the same policy.

19 Q. Are there any policies and procedures  
20 manuals from that date, around January of 1999, which  
21 would cover that topic?

22 A. I don't know.

23 Q. Are you -- You're a partner in that law  
24 firm, is that correct?

25 A. Right.

1 Q. Are you part of the - or are you privy to  
2 shareholders meetings at which internal policies of  
3 the firm are discussed?

4 A. Absolutely. And there may be a policy  
5 letter on it. I just don't recall seeing it. I mean,  
6 we definitely have a policy as to it.

7 Q. Would you characterize that in your  
8 experience at Proskauer Rose as usual or unusual that  
9 a client was brought in with services without a  
10 written retainer agreement?

11 MR. TRIGGS: Object to form.

12 A. Presently it would be unusual. At that  
13 time it would not be as unusual, and the explanation  
14 is, we've tightened up our procedures over the years  
15 since that time. So it could have been perfectly  
16 conceivable, just by way of clarification, to submit a  
17 letter saying we were going to get a written fee  
18 agreement and - and there not be proper follow-up,  
19 internal follow-up on it for a matter of months at  
20 that time, but now there are systems in place where  
21 there is follow-up on it.

22 Q. Okay. Now, the corporate offices of  
23 iviewit that we're talking about, where were they  
24 located at this point in time?

25 A. They didn't exist, but --



1 Q. Subsequent to your meeting. Subsequent to  
2 your meeting with the Bernsteins.

3 A. They didn't exist either. Most of the --  
4 I don't know where -- I know Eliot was operating out  
5 of his home, and then when they had any serious  
6 meetings, it seemed to be out of our offices. They  
7 borrowed our conference room or whatever. And I don't  
8 know where else they had meetings.

9 Q. Now, after that initial meeting in  
10 January, was there any agreement reached with regard  
11 to representation of Proskauer Rose for iviewit?

12 MR. TRIGGS: Object to the form.

13 A. After the initial meeting?

14 Q. Yes.

15 A. Well, we agreed to undertake certain  
16 matters on their behalf and they agreed to pay for  
17 them.

18 Q. Okay. What were the certain matters you  
19 agreed to represent them in?

20 MR. TRIGGS: Object to form. At what  
21 point in time?

22 MR. SELZ: At the initial meeting.

23 A. Well, they were going to start a business,  
24 and as they brought in their business questions and  
25 the formation of their corporation and all the other

1 ancillary matters as they developed we would undertake  
2 to represent them or help them find the proper  
3 representation.

4 Q. And that first step, was that something  
5 that you were chiefly responsible for in setting up  
6 these corporations?


7 A. It was not done under my supervision.

8 Q. Okay. Who exactly did the work?

9 A. Well, we had combination of lawyers. But  
10 I would - and I'd have to go back and look at exactly  
11 who did that. But I believe either Mara Lerner or  
12 Rocky Thompson. Rocky -- Probably most of it was  
13 charged to Rock - the - the charge to Rocky Thompson  
14 to oversee the work. He may have had subordinates  
15 that handled legwork for him.

16 Q. Now, who advised the client, in this case,  
17 iviewit, or the individuals who were establishing  
18 iviewit as to the structuring of these corporations?

19 MR. TRIGGS: Object to the form.

20 A. The structuring, I don't know. I would  
21 imagine most of the structuring was designed by   
22 Mr. Thompson.

23 Q. You had stated earlier in testimony that  
24 part of your work is corporate work.

25 A. Right.

Complete falsification  
Wheeler handled  
aspects and attended  
board meetings  
and Lewin were in  
charge of all  
corporations.

Rocky  
Thompson  
may have  
handled the  
transactions  
but all the  
structuring  
was done by  
Wheeler  
directly.

1 Q. Setting up corporations. Is it in  
2 your opinion -- Strike that. Can you opine to me  
3 today why iviewit has approximately eight or nine  
4 different entities rather than one corporation in this  
5 particular matter?

6 A. Not without reviewing it, but I can -- I  
7 can't opine to it, but I can speculate, but --

8 MR. TRIGGS: Wait. You are not supposed  
9 to be speculating.


10 THE WITNESS: We're not supposed to  
11 speculate. Okay.

12 MR. TRIGGS: Answer the questions he's  
13 asking you.

14 THE WITNESS: Okay. That's fine.

15 A. I can't opine to why they have it without  
16 having to examine the record closely.

17 Q. Okay. Now, were you the attorney chiefly  
18 responsible for the relations between this client,  
19 this particular client, iviewit, the iviewit entities,  
20 and Proskauer Rose?

21 A. On the transactional matters. 

22 Q. On transactional matters.

23 A. Right.

24 Q. What other matters was Proskauer Rose  
25 representing iviewit with respect to?

1 A. Well, on the Bernsteins as a whole, it  
2 would be Al Gortz on their - on their estate plans and  
3 their trusts and everything else.

4 Q. Okay. Excepting that, because that's  
5 dealing with the Bernsteins individually. I'm talking  
6 about iviewit and the iviewit entities.

7 A. Okay. Well, the transactional and all the  
8 ancillary matters to the transactional matters I was  
9 in charge of, yes.

10 Q. Were there any other matters that you're  
11 aware of that Proskauer Rose represented iviewit in,  
12 other than transactional matters?

13 A. No. But transactional is pretty  
14 comprehensive.

15 Q. Okay. What does transactional matters  
16 include, in your definition of that word?

17 A. Well, as I mentioned at the beginning,  
18 when a corporation comes in, they have a whole realm  
19 of activities that they - they deal with, and in the  
20 case of iviewit, it ran in everything from setting up  
21 the corporation to the license agreements, to setting  
22 up the web site, to negotiating employment agreements,  
23 to - to doing real estate leases, to doing subleases,  
24 to helping them in connection with borrowing money. I  
25 mean, any - what every business does.

Wheeler  
contradicts  
his  
statements  
from a  
page ago  
where he  
states he  
was not  
the partner  
in charge  
and now  
he is.

1                   If you're -- In our case, it also  
 2 involved, when a corporation comes in, they - they do  
 3 want to take care of some of their intellectual  
 4 property work, and there was copyright and trademark  
 5 work that had to be dealt with, which we contacted our  
 6 trademark and copyright people, and it became clear  
 7 that - that there was a technology that - that Eliot  
 8 thought he was developing that had to be addressed,  
 9 and the question of how to help - how to handle the  
 10 patent had to be addressed.

11           Q.     And how was the trademark, copyright and  
 12 patent questions addressed?

13           A.     Well, our counsels were contacted, various  
 14 counsels who handle various matters like that were  
 15 contacted in New York, and certain of the matters, the  
 16 copyright and trademark, were handled internally,  
 17 which we routinely do. And other matters, in this  
 18 case the patent matter was referred out to another  
 19 patent counsel.

20           Q.     And do you remember who that patent  
 21 counsel was?

22           A.     It was a gentleman named Ray Joao at a  
 23 firm, Meltzer, et cetera.

24           Q.     Meltzer Lippy?

25           A.     I believe so.

Wheeler attempts to claim that inventions were made after meeting him, much of the evidence proves otherwise and statements made under deposition by Lewin, S. Bernstein and E. Bernstein

Copyright work Proskauer bills for and Foley bills for is all missing and was never filed. Source codes etc.

1 Q. At the time that matter was referred out,  
2 was there another individual who worked on the patent  
3 matter as well as Meltzer Lippy, if you're aware of  
4 that person? Anyone other than Ray Joao?

5 A. No, I - by the time I was in the process,  
6 the only one I knew of was Ray Joao.

7 Q. How about Ken Rubenstein?

8 A. I don't believe Ken --

9 MR. TRIGGS: Object to form. What's your  
10 question about Ken Rubenstein?

11 Q. Was he involved in the patent process or  
12 any of the proceedings or services provided with  
13 regard to the patents?

14 MR. TRIGGS: Object to the form.

15 A. No. He - he was -- First of all, I don't  
16 believe he worked -- I believe he worked at Proskauer  
17 at the time and not at Meltzer - Meltzer Lippy. Is  
18 that the name of the firm? And secondly, he - his  
19 involvement was only to -- He - he - he obviously is  
20 a - one of our patent contacts and his - his --

21 Q. Now, when you mean he, you mean Ken  
22 Rubenstein?

23 A. Ken Rubenstein.

24 MR. TRIGGS: Let him answer the question.  
25 You can ask any clarifying questions after he's

Freudian slip, which statement is correct? Did Rubenstein work and Proskauer at the time or did he not. I view it claims Rubenstein was not and evidence also suggests same.

Click Here to See Rubenstein not at Proskauer as late as January 99

1 done. And Chris, if you can answer the question  
2 he's asking you.

3 A. Okay. So the answer is no, Rubenstein  
4 didn't do any patent work on it.

5 Q. Now, with regard to the services provided  
6 to the iviewit entities, you stated previously there  
7 is no written retainer agreement for the first part of  
8 the relationship, is that correct?

9 A. Correct.

10 Q. And you said that went on until about  
11 midyear you thought? Midyear 1999. Is that correct?

12 A. That's correct.

13 Q. So from January through approximately July  
14 there was no written retainer agreement?

15 A. No written agreement.

16 Q. Okay. What was the oral agreement, to the  
17 best of your recollection?

18 A. The oral agreement was we - they would  
19 come in and request services, we would provide the  
20 services, and they would pay for them at our normal  
21 hourly rates.

22 Q. And what was the normal hourly rates?

23 A. I don't know what they were at that time.

24 Q. Was there any discussion at that point in  
25 time as to what the hourly rates were?

1           A.     I don't recall a discussion, but I'm  
2 relatively certain there was.

3           Q.     Did you keep any contemporaneous notes of  
4 that meeting?

5           A.     I don't know. I would have to check.

6           Q.     Was there ever any confirming letter sent  
7 to the Bernsteins with regard to the initial meeting  
8 to set up the iviewit entities?

9           MR. TRIGGS: Object to form. Confirming  
10 letter regarding what?

11          MR. SELZ: Regarding the meeting which I  
12 think was part of my question with the  
13 Bernsteins.

14          A.     I don't know.

15          Q.     If that letter existed, would it be in  
16 your files?

17          A.     If that letter existed, I presume it would  
18 be in my file.

19          Q.     And do you make it a habit of keeping  
20 contemporaneous notes when you have a meeting with a  
21 new client?

22          A.     In some cases yes, and in some cases no.  
23 It depends on the nature of the meeting.

24          MR. BERNSTEIN: Can everybody speak up? I  
25 can't hear a thing.



1 MR. SELZ: Okay.

2 MR. BERNSTEIN: So if you could enunciate,  
3 it would be greatly appreciated.

4 Q. So, with regard to that oral agreement,  
5 you said it was that you were providing services at  
6 whatever your rates were at that time.

7 A. Correct.

8 Q. Was there any discussion, to the best of  
9 your recollection, as to a flat fee or a fee of a  
10 certain figure to set up a corporation?

11 A. No.

12 Q. It was just going to be charged on an  
13 hourly basis?

14 A. Correct.

15 Q. Is there any policy with regard to  
16 Proskauer or with regard to the transactions that  
17 you're involved with of charging a flat fee for  
18 establishing a corporation?

19 A. No.

20 Q. That's always on an hourly basis?

21 A. No. That's not what you asked. You asked  
22 if there is any policy, and the answer is no, there is  
23 no policy. It - I don't know if anyone has ever  
24 quoted a fixed fee for the establishment of a  
25 corporation. It's not our usual practice.

1 Q. Do you know how much time was spent  
2 establishing the corporations for iviewit, the  
3 entities?

4 MR. TRIGGS: Object to the form.

5 A. No.

6 Q. How much time do you think would be a  
7 reasonable amount of time to establish a corporation  
8 in the State of Florida?

9 MR. TRIGGS: Object to form. What do you  
10 mean by establishing a corporation?

11 MR. SELZ: Okay. Let me be more specific.

12 Q. What do you think a reasonable time spent,  
13 sir, would be for drafting and preparing Articles of  
14 Incorporation for a new corporation?

15 A. It would depend on the complexity of the  
16 corporation and what you were doing and how it was  
17 being handled.

18 So I mean, as you and I know, a  
19 corporation can be set up for - you can just set up a  
20 dummy corporation for a few hundred dollars or less  
21 than a thousand dollars. But if you're setting up a  
22 complex structure and there is more involved, it could  
23 run into many, many thousands of dollars.

24 Q. Okay. In this particular situation with  
25 iviewit --

1           A.     But you're presuming that all we were  
2 doing was just setting up a corporation, and I mean,  
3 the bills speak for themselves and you have copies, so  
4 you can see that there is much more involved than just  
5 setting up a corporation.

6           Q.     We'll go through the bills, but in the  
7 meantime, my question to you goes back to the point of  
8 you had answered, said that there was a range,  
9 depending on the complexity of the corporation to be  
10 set up.

11          A.     Right. I can't give you a ceiling because  
12 it could be a highly complex matter for - for a  
13 corporation, it could be - there could be a lot more  
14 involved, and it would be trying to establish a range  
15 in litigation.

16          Q.     Well, let's go back to this particular  
17 situation involving iviewit. Were those complex  
18 corporations?

19          A.     They weren't supposed to be.

20          Q.     They were supposed to be simple  
21 corporations to set up.

22          A.     Right.

23          Q.     Okay. Was that communicated with you at  
24 the first meeting with the Bernsteins or was that  
25 communicated with you at some other time?

1 A. In the initial meeting we anticipated  
2 setting up a fairly simplified structure. It's just  
3 going to be a portal and we'd go from there.

4 Q. Okay. And the portal was to consist of  
5 what entity, if you recall?

Is there an Iviewit Corporation??

6 A. I don't recall. Probably iviewit  
7 Corporation.

8 Q. And the other entities that were set up,  
9 what was the purpose for those, if you know?

10 A. I don't recall at that time. That  
11 developed at a subsequent time. It was not at the  
12 initial meeting.

13 Q. Do you recall what the purpose was for  
14 those additional corporations to be formed?

15 MR. TRIGGS: Object to form.

16 A. Well, at one --

17 Q. I'll rephrase it. Were there additional  
18 corporations formed after the initial one?

19 A. Yes.

20 Q. Do you know what the purpose of those  
21 additional corporations was?

22 MR. TRIGGS: Object to form.

23 A. Not each and every one. ←

24 Q. Okay. Were you advising iviewit with  
25 regard to the formation of those corporations?

1 A. Only in part.

2 Q. And your advice was to form additional  
3 corporations?

4 A. We reviewed it. Sometimes his advice came  
5 from other advisors and sometimes it came from his  
6 accountant, so --

7 MR. TRIGGS: All right. We're going to do  
8 this. Let's actually let Chris answer the  
9 question before you jump in with the next one  
10 and raise your hand and chop him off. And  
11 Chris, just do me favor and just listen to the  
12 question he's asking you, and just answer that  
13 question.

14 THE WITNESS: Okay. Fine.

15 MR. SELZ: That was really a yes or no on  
16 that.


17 Q. So the question was, with regard to the  
18 formation of these other corporations, did you give  
19 in view of advice as to the formation of these other  
20 corporations? Yes or no.

21 A. Yes.

22 Q. And did you advise them to form these  
23 other corporations?

24 A. In some situations, yes; in some  
25 situations, no.

1 Q. Okay. Why don't we be more specific,  
2 then. In what situations did you advise them to form  
3 new corporations?

4 A. I don't recall. 

5 Q. Okay. In what situations did you advise  
6 them not to form corporations?

7 A. It wasn't a question of advising them not.  
8 It was a question of advising them or talking to them  
9 about the advice of other counsel.

10 So the other counsel or - may have given  
11 them advice and we would have been giving them our  
12 advice on top of them by way of clarification, whether  
13 it was an appropriate thing to do or not.

14 Q. Okay. This other counsel was internal  
15 within Proskauer Rose or outside Proskauer Rose?

16 A. No, outside Proskauer Rose.

17 Q. Now, with regard to --

18 MR. TRIGGS: Hold on a second. Eliot,  
19 Mr. Bernstein, do you have the ability to mute  
20 on your end? I can hear the typing over the  
21 phone. You will be able to hear us and you  
22 won't be chopping in and out. You'd probably be  
23 able to hear us better if you've got a mute on  
24 that end.

25 MR. SELZ: Can you hear it, Eliot?

1 MR. TRIGGS: He might have muted it.

2 MR. SELZ: I think he probably did.

3 Q. Okay. Going back to these corporations,  
4 so the corporate structure involved was partly based  
5 on your advice, is that correct?

6 A. Yes. The firm's advice.

7 Q. The firm's advise. And you were  
8 effectively the lead counsel on this client file?

9 A. Absolutely. ←

Contradicts prior statement  
regarding Thompson being the  
lead attorney.

10 Q. Now, sir, you were --

11 MR. SELZ: Let's get this marked as one.

12 (Thereupon, said document was marked as  
13 Defendant's Exhibit Number 1 for identification  
14 by the reporter.)

15 Q. Okay. Here, I'll give you this marked  
16 copy. That way Matt can take a look at the additional  
17 copy I made for him.

18 Okay, sir. I have shown you --

19 A. Let me read it.

20 Q. Sure.

21 MR. BERNSTEIN: Hey, hello, Steve?

22 MR. SELZ: Yeah.

23 MR. BERNSTEIN: Can we take a break?

24 MR. SELZ: Sure.

25 MR. BERNSTEIN: Okay. My wife's going to

1 use the phone real quick.

2 MR. SELZ: Okay. So we'll take -- Want  
3 to take a ten-minute break?

4 MR. TRIGGS: Sure.

5 MR. BERNSTEIN: Can we give her legs 15  
6 minutes would probably be --

7 MR. SELZ: Why don't we make it 20 to be  
8 on the safe side. Give you a chance to take  
9 care of whatever you have to do. We'll come  
10 back on at like 11:22 or so.

11 MR. BERNSTEIN: Great.

12 MR. SELZ: Okay?

13 MR. BERNSTEIN: Thanks so much.

14 MR. SELZ: Thank you. So we'll take a  
15 break.

16 (Brief recess, after which the proceedings  
17 resumed at 11:22 A.M.)

18 MR. SELZ: Okay. We're back on.

19 MR. TRIGGS: And Steve, as I mentioned I  
20 think when we were on break, perhaps as we were  
21 going off break, I have no problem if Eliot  
22 takes as long as he needs for any family issues  
23 while the deposition is ongoing, but I can't be  
24 having these, as it turned out to be a 25-minute  
25 break repeatedly.



1 MR. BERNSTEIN: Matter of fact, we left a  
2 message, and if she calls back, I might have to  
3 break off and have my wife talk to her. The  
4 doctor.

5 MR. SELZ: This was just for the OB-GYN.

6 MR. BERNSTEIN: Correct.

7 MR. TRIGGS: Yeah, I'm just saying, I'm  
8 here for a deposition. Let's go forward with  
9 the deposition.

10 MR. SELZ: I understand.

11 MR. TRIGGS: If Eliot needs to do  
12 something with his family, I understand that,  
13 but that shouldn't stop us from moving forward  
14 here.

15 Q. (By Mr. Selz) Okay. With that noted,  
16 let's go back on to what we started with, and that is,  
17 I handed you a letter that you were reading. Is that  
18 correct, Mr. Wheeler?

19 A. Right. I read it.

20 Q. Okay. It's been marked as Defendant's  
21 Number 1 for purposes of this deposition. Is this a  
22 letter that you penned?

23 A. Yes.

24 Q. Okay. That's your signature at the end of  
25 the letter?

1 A. Yes.

2 Q. And it's dated February 18th, 1999.

3 A. Right.

4 Q. Now, there is fax transmittal information  
5 on the top of that letter, too?

6 A. Right.

7 Q. Do you recognize that fax transmittal  
8 information?

9 A. Yes.

10 Q. And is that fax transmittal information  
11 from Proskauer Rose's office in Boca Raton?

12 A. It's from our office.

13 Q. And that letter is addressed to?

14 A. Eliot.

15 Q. Eliot Bernstein?

16 A. Bernstein. Right.

17 Q. Okay. Now, I want to direct your  
18 attention more specifically, sir, to paragraph three.

19 It's actually numbered three --

20 A. Right.

21 Q. -- on that first page?

22 A. Right.

23 Q. And it talks about a discussion with a  
24 Mr. Ken Rubenstein? You -- I'm sorry. Go ahead.

25 A. You mean a potential discussion.

1 Q. Okay.

2 A. Okay.

3 Q. So you were contacting Ken Rubenstein?

4 A. I was trying to.

5 Q. Did you ever contact Mr. Rubenstein?

6 A. I can't tell you I did or didn't. I'd  
7 have to see the follow-up.

8 Q. Would that be reflected in the billing  
9 statements that you provided to iviewit?

10 A. Yes.

11 Q. Do you know if Mr. Rubenstein's name is  
12 mentioned in the billing statements to iviewit --

13 A. Yes.

14 Q. -- from Proskauer Rose?

15 A. Yes. They might answer it -- Right.

16 Q. Are you aware of whether or not the  
17 conference call referenced in that paragraph number  
18 three ever took place?

19 A. No, I'm not.

20 Q. And it says specifically, and I quote,  
21 since there seems to be some confusion as to what Ken  
22 needs in order to determine the patentability of your  
23 process?

24 A. Right.

25 Q. I'm arranging a conference call between

This was for the second video invention in February and Rubenstein had already reviewed the imaging

CLICK HERE TO SEE WHEELER  
LETTER REFERENCED AT DEPOSITION

1 you, me and Ken in which we can discuss it.

2 A. Right.

3 Q. So was that statement on your part in this  
4 letter precipitated by some specific discussion with  
5 Mr. Bernstein?

6 A. I don't recall.

7 Q. Did you ever have a discussion with  
8 Mr. Bernstein about Proskauer Rose providing an  
9 opinion with regard to the patentability of any of  
10 these processes?

CLICK HERE TO SEE WHEELER OPINION ON THE PROCESSES, CONTRADICTS DEPOSITION STATEMENT

11 A. No.

CLICK HERE TO SEE WHEELER HUIZENGA OPINION ON TECHNOLOGIES

12 Q. What was the process that was being  
13 discussed or was mentioned in your letter or reference  
14 to Eliot?

15 MR. TRIGGS: Object to form.

16 Q. Let me rephrase it. What process were you  
17 referring to in your letter?

18 A. We were referring to Eliot's technology.  
19 Whatever that technology was.

Tries here to act as if he does not know the technology. Tries to distance himself from knowing of the inventions

20 Q. Okay. Well, let's go back to that, to the  
21 technology issue, because I think you had provided a  
22 little testimony about that before, saying it was a  
23 portal?

24 A. Right.

25 Q. Okay. Was there anything more specific on

CLICK HERE TO SEE WHEELER PARTNER LETTER REFERENCING THE TECHNOLOGIES AND CONTRADICTS HIS PORTAL STATEMENTS

This imaging  
has nothing to  
do with a  
portal??

1 that portal that you can recall?

2 A. You mean at this stage?

3 Q. Or at any point now. What he's referring  
4 to.

5 A. It had been described to me as his imaging  
6 were large images versus small images.

7 Q. Okay. And what was unique about that?

8 MR. TRIGGS: Object to the form.

9 A. It was what was available on the Internet.

10 It was represented to me that what was available on  
11 the Internet at that time was small pictures and they  
12 couldn't be enlarged without pixilation.

13 Q. And what is pixilation?

14 MR. TRIGGS: Object to form.

15 A. Well, I'm not an expert on this. So I  
16 mean, you should ask an expert. But I was told,  
17 pixilation was some form of distortion.

18 Q. So it's your understanding that pixilation  
19 is that when an image is enlarged, it distorts?

20 A. Correct.

21 Q. And this process, I'm going to use the  
22 words that you used, the process that Mr. Bernstein  
23 had presented --

24 A. Right.

25 Q. -- somehow avoided this problem?

1 A. Right. Purportedly it avoided the  
2 problem.

3 Q. Was it demonstrated to you at any point in  
4 time?

5 A. Not at that time

Lie - Wheeler saw the technology, after Lewin per Lewin deposition. Inventions were already discovered when we met Wheeler, he saw them at the very first meeting. Lewin depo contradicts Wheeler

6 Q. How about subsequently?

7 A. Oh, absolutely.

Wheeler corrects his deposition with the text in yellow or gray

8 Q. Okay. And did the process, as  
9 demonstrated, do what it purported to do?

10 A. I saw large pictures on a screen which  
11 were pixilated which were not distorted

Line 11 - p 40 Were not pixilated and which were not distorted - reason=error in transcription

12 Q. Which were not distorted.. And they had  
13 been enlarged from a small picture or a small --

14 A. I don't know what they had been enlarged  
15 from.

16 MR. TRIGGS: And, Steve, I'm not going to  
17 shut down your line of examination because to do  
18 that I'd need to terminate the deposition, but  
19 quite frankly, I can't see the relevance at all  
20 on this line of inquiry.

21 MR. SELZ: That's fine.

22 MR. TRIGGS: I mean, all I'm telling you  
23 is, at some point I will have to terminate the  
24 deposition and file an appropriate motion if we  
25 continue to hit on areas that just appear to be

1 doing nothing more than harassing at this point.

2 MR. SELZ: Well, with all due respect to  
3 your objection, obviously, speaking objections  
4 aren't appropriate, certainly in a deposition,  
5 but with regard to that, I think it's actually  
6 something that's referenced in Mr. Wheeler's own  
7 letter.

8 So I think I certainly have an ability to  
9 inquire as to what this process was that he was  
10 referencing.

11 MR. TRIGGS: You're wasting time, is what  
12 you're doing.

13 MR. SELZ: Well, you're certainly entitled  
14 to your opinion.

15 Q. Okay. Now, with regard to this image, was  
16 there something also, pan and zoom, or something of  
17 that nature, that was demonstrated to you?

18 A. I'm not familiar with that.

Utter lie, Wheeler is fully cognizant of zoom and pan from start.

19 Q. How about something called -- I'm sorry.

20 A. It wasn't demonstrated at all at this  
21 stage.

CLICK HERE TO SEE WHEELER OPINION ON ZOOM AND PAN IMAGING TECH

22 Q. I'm talking about at any time during your  
23 representation of iviewit?

24 A. Okay. I'm not familiar with the terms,  
25 pan and zoom.

CLICK HERE TO SEE WHEELER LETTER TO PARTNERS ON ZOOM AND PAN, CONTRADICTS HIS DEPOSITION.

CLICK HERE TO SEE WHEELER MANAGEMENT REFERRAL AND 15 YEAR FRIEND UTLEY STEALING ZOOM AND PAN PATENTS.

Wheeler has full access to the invention patent, trademarks, copyrights and trade-secrets, he is at every technology disclosure meeting with major partners. His offices do licensing deals for the technologies and now he tries to act as if he does not know the inventions. Evidence proves these statements false.

42

1 Q. How about - how about full-screen video?

2 MR. TRIGGS: Object to form. What about  
3 full screen video?

4 Q. Are you familiar with the term?

5 A. Not in any technical sense.

6 Q. Okay. It isn't in your opinion or your  
7 knowledge any way related to the process that  
8 Mr. Bernstein was involved with?

9 MR. TRIGGS: Object to the form,  
10 foundation.

11 A. The process was larger pictures than  
12 available on - presently available on the Internet, as  
13 I understood it.

14 Q. So it was basically an enlargement of a  
15 picture without pixilation. That was your  
16 understanding of the process.

17 A. Right.

18 Q. That you referred to in your letter.

19 A. Correct.

20 Q. Was there any other technology that you  
21 were aware of that iviewit had developed?

22 A. No.

23 Q. Were there any specific applications that  
24 were discussed between iviewit and yourself in the  
25 sense of the purpose of these corporations?

ABSOLUTE LIE,  
EVIDENCE  
CONTRADICTS  
THIS  
STATEMENT  
LATER IN HIS  
DEPOSITION  
BY SAYING HE  
LEARNED OF  
VIDEO  
INVENTION ON  
THE WAY  
BACK FROM A  
MEETING AT  
REAL3D/INTEL,  
WHICH IS  
ALSO A LIE

Lie - He is aware of all  
inventions.



1 MR. TRIGGS: Object to the form.

2 Q. Let me rephrase it. Were there any  
3 specific applications that were discussed with you as  
4 to this technology?

5 MR. TRIGGS: Object to the form. At what  
6 point in time?

7 Q. During your representation of iviewit.

8 A. Yes. During our representation, there  
9 were suggestions that it could be used in various  
10 industries or in - in - that - various industries  
11 could take advantage of it.

12 Q. Okay. And when was the first time that  
13 was discussed?

14 A. I don't recall.

15 Q. Was it prior to the signed retainer  
16 agreement, prior to July?

17 A. Yes, it was prior to the signed retainer  
18 agreement.

19 Q. Was it -- It was after the first meeting  
20 is what you're saying.

21 A. Oh, yes.

22 Q. Okay.

23 A. Well, I don't recall -- Yes, it was  
24 probab -- I don't know if it was at -- Maybe perhaps  
25 examples were thrown out at the first meeting. I

Contradicts  
page 40 of  
depo his  
statement that  
he said at first  
meeting he  
was not aware  
of any  
technology.  
Perjury.


1 don't recall.

2 Q. Now, that same paragraph three talks  
3 about -- And I'll refer you to the last sentence of  
4 that paragraph? Well, actually, let's go to the next  
5 sentence after the one I referred you to previously  
6 which was, after that discussion, I will also provide  
7 you with a proposal as to how we should proceed and  
8 what fees and costs will be involved? Do you know if  
9 this was ever done?

10 A. I don't know if it was done.

11 Q. Where would that proposal have come from,  
12 if it was prepared?

13 MR. TRIGGS: Object to the form.

14 A. It could have come from me or it could  
15 have come from our IP people. 

16 Q. IP meaning intellectual property?

17 A. Right. Or it could not have come.

18 Q. Okay. If it - if it was produced in any  
19 kind of form, that would exist in the files of  
20 Proskauer Rose?

21 A. I'm sure it would.

22 Q. How about the last sentence of that same  
23 paragraph?

24 A. What would you like to know?

25 Q. Well, we will need to give you a more

why is he proposing patent fees if he was not patent counsel. Why did Rubenstein need more info if he only referred to Joao. Makes no sense.

Why are IP evaluating technologies and drafting cost estimates if they were never intellectual property counsel??

1 definite answer and thereafter receive authorization  
2 from you as to the expenditure of these monies?

3 A. Right.

4 Q. Do you know if that was ever done with  
5 regard to the --

6 MR. TRIGGS: Object to the form. If what  
7 was ever done?

8 Q. (By Mr. Selz) If there was a definite  
9 answer?

10 MR. TRIGGS: As to what?

11 MR. SELZ: As to whether or not or what  
12 the expenses would be of the patent, which is  
13 what was referenced I believe earlier on.

14 A. I'd have to check the file.

15 Q. Okay. Now, it also references an  
16 authorization for expenditures?

17 A. Right.

18 Q. Okay. Was that same kind of procedure  
19 done with any of the other work for iviewit?

20 MR. TRIGGS: Object to form.

21 Q. Well, let me strike the question. I'll  
22 rephrase it.

23 Did you ever seek authorization from  
24 iviewit for any corporate expenditures?

25 A. Yes.

1 Q. Okay. And when was that done?

2 A. Well, this is a long-term of - from time  
3 to time when on certain of the copyright expenses I  
4 believe we received - called up and said, is it all  
5 right to go ahead and spend money on this. That's my  
6 recollection. On - because they were - as the letter  
7 says, they were watching their dollars.

8 On the -- And there may have been  
9 subsequently, years - years later as - there may have  
10 been times where we wanted to make sure that we were  
11 authorized to proceed on certain projects where there  
12 was a question.

13 Q. Okay. When you say where there was a  
14 question, when would that take place? Do you have any  
15 specific examples to give me?

16 A. No, I don't.

17 MR. TRIGGS: Object to form.

18 Q. Do you ever recall personally receiving  
19 any authorization from any individual at iviewit or  
20 any corporate representative of iviewit for  
21 expenditures?

22 MR. TRIGGS: Object to form. Just by  
23 expenditures, are you talking about  
24 out-of-pockets or are you talking about  
25 performing legal services?

Copyright work is all missing but Wheeler admits to existence of it. Proskauer billed for it, It was all the source codes.

1 MR. SELZ: Either one.

2 A. I received requests all the time for legal  
3 services.

4 Q. Okay. How about with regard to --

5 A. From many representatives.

6 Q. Okay. And were there any discussions at  
7 those various points of time as to costs of those  
8 legal services, how they would be provided?

9 A. I'm sure at times there were, at times  
10 there weren't.

11 Q. And who specifically did you talk to?

12 MR. TRIGGS: Object to form. At what  
13 point in time and for what services?

14 Q. For any legal services provided for  
15 iviewit, from the beginning of your representation to  
16 the date you terminated services.

17 A. Numerous officers.

18 Q. And could you name those officers for me,  
19 please?

20 A. I can give you - name some.

21 Q. Okay.

22 A. Sy Bernstein, Eliot Bernstein, Brian  
23 Utley, Raymond Hersh, Guy Iatona, Tony. Even, I  
24 believe, Jim Armstrong, was he from New Jersey?

25 Q. Sir, have you ever seen the complaint that

1 has been filed in this action by Proskauer Rose?

2 A. Yes.

3 MR. SELZ: Let's get this marked as number  
4 two, if we could.

5 (Thereupon, said document was marked as  
6 Defendant's Exhibit Number 2 for identification  
7 by the reporter.)

8 Q. Have you ever seen this document before?

9 A. Yes.

10 Q. Did you work on the preparation of this  
11 document at all?

12 A. I don't recall.

13 Q. When was the first time you saw the  
14 complaint?

15 A. Before it was filed.

16 Q. That was on or about May 2nd of 2001?

17 A. Right.

18 Q. I'd reference you to what's been attached  
19 to that complaint as Exhibit Number 1.

20 A. Right.

21 Q. Do you recognize that correspondence?

22 A. Yes.

23 Q. Is that the retainer, the written retainer  
24 agreement you testified to earlier in the deposition?

25 A. Our engagement agreement.

1 Q. Okay. Prior to this, you said there was  
2 an oral agreement?

3 A. Yes.

4 Q. And this engagement agreement is with what  
5 entity?

Wheeler does not sue Iviewit LLC and sues companies he has no retainer with. At the time we are not aware of corporate shadow companies so we think it is an oversight.

6 A. Iviewit LLC.

7 Q. Are there any other engagement agreements  
8 or retainer agreements of any sort other than this one  
9 that's in writing?

10 A. Not to my knowledge.

11 Q. So this is the only one that references  
12 hourly billing rates for services to be provided?

13 MR. TRIGGS: Object to form. You're  
14 talking about in writing, correct?

15 MR. SELZ: Correct.

16 A. Right. I should -- Right. The  
17 confirmation letters as to subsequent agreements  
18 served to supplement this, however.

19 Q. Well, I guess that's your - your position  
20 as plaintiff in this case.

21 MR. TRIGGS: Let's not argue. If you've  
22 got a question to ask --

23 MR. SELZ: I will.

24 MR. TRIGGS: -- ask a question.

25 MR. SELZ: I will.

1 Q. With regard to this agreement, sir, it's  
2 limited strictly to iviewit LLC, is that correct?

3 A. It's addressed to iviewit LLC, yes.

4 Q. Was Brian Utley the president of iviewit  
5 LLC at that time, to the best of your knowledge?

6 A. Yes.

7 Q. And above the signature line it says  
8 iviewit LLC?

9 A. Right.

10 Q. Now, at the time that this complaint was  
11 filed, sir, were there more entities than iviewit.com,  
12 Inc., iviewit Holdings, Inc., and iviewit  
13 Technologies, Inc., for which Proskauer Rose had  
14 provided services?

This group is the  
shadow companies  
- we do not know  
two exist at this  
time for some of  
these

15 MR. TRIGGS: Object to the form. At what  
16 point in time?

17 MR. SELZ: At the time the complaint was  
18 filed.

19 MR. TRIGGS: Still providing at that time  
20 or --

21 MR. SELZ: No.

22 MR. TRIGGS: Let me just get my objection  
23 out. Are you talking about had they ever  
24 provided work for those - for those companies or  
25 were there amounts owed still outstanding?



1 MR. SELZ: I think your objection would  
2 properly be an objection to form of the  
3 question.

4 MR. TRIGGS: Yes.

5 MR. SELZ: Because as you're aware, we're  
6 not supposed to have speaking objections in the  
7 depositions. At least in theory.

8 Q. Okay. With regard to --

9 MR. SELZ: So I'll take it as an objection  
10 to form.

11 MR. TRIGGS: Which is what it was.

12 Q. With regard to the three named entities in  
13 the complaint, at the time this complaint had been  
14 filed, which was May of 2002 or 2001, rather, I'm  
15 sorry, May of 2001, had Proskauer Rose provided  
16 services to any other entities, iviewit entities,  
17 other than iviewit.com, Inc., iviewit Holdings, Inc.,  
18 and iviewit Technologies, Inc.?

19 MR. TRIGGS: Object to the form.

20 A. Prior to this time? Yes.

21 Q. Could you show me where in the attached  
22 exhibit to that complaint, which is Exhibit B, it  
23 delineates services provided to any of the other  
24 entities?

25 MR. TRIGGS: Object to the form.

1           A.     Can I show you without examining all this?  
2 I don't have - I mean --

3           Q.     I want --

4           A.     Can I show you? No, I can not show you.

5           Q.     Well, is there anything in that Exhibit B  
6 that you can point out to me that would show or  
7 indicate that the services that are being sued on  
8 apply to any other entity other than -- They're all  
9 titled client name, iviewit.com, Inc., from what I  
10 see.

11                   MR. TRIGGS: Object to the form. Same  
12 objection as stated previously in terms of basis  
13 for it.

14                   THE WITNESS: Do you want me to answer  
15 this question?

16                   MR. TRIGGS: Yeah. If you can answer the  
17 question, absolutely.

18           A.     Well, I don't have the detail provided  
19 beyond this. I mean, I have the - I have the cover  
20 pages, but I - I don't have - the detail is not on  
21 there.

22           Q.     Okay. So this is not actually a bill,  
23 then. Is that what you're telling me?

24           A.     No, it was a bill, but there were also  
25 detailed pages, as you know, well know.

1 Q. So this was what, a summary sheet of a  
2 bill?

3 A. This was the face page of the bill.

4 MR. TRIGGS: For the record, the reason  
5 for attaching the face page rather than the  
6 entire bill --

7 MR. SELZ: Well, it's actually --

8 MR. TRIGGS: -- is to preserve  
9 attorney-client privilege issues when you are  
10 filing a complaint against a client.

11 MR. SELZ: With regard to that, sir, and  
12 obviously, you know, if you've got an objection,  
13 Matt --

14 MR. TRIGGS: All I'm saying is, any  
15 suggestion that the entire bill is not being put  
16 out there for some purpose is just - it's flat  
17 out wrong, and I just want to establish why it  
18 was the way it was done.

19 MR. SELZ: You've got an opportunity on  
20 cross to elicit whatever testimony you want from  
21 him as to whatever was done.

22 MR. TRIGGS: Thanks, Steve.

23 MR. SELZ: Appreciate it.

24 Q. So with regard to this, sir, there is  
25 nothing that you can show me on the face of any of

1 these statements that's attached as an exhibit to the  
2 complaint, Exhibit B to the complaint, which would  
3 indicate services provided to any particular entity  
4 other than it says client name, iviewit.com, Inc. Is  
5 that a true and correct statement?

6 MR. TRIGGS: Object to form.

7 A. Yeah.

8 Q. Now, looking at Count I of the complaint,  
9 breach of contract --

10 A. Okay.

11 Q. -- okay, it references what's been called  
12 the agreement, which is attached as -- And that's the  
13 engagement agreement that's attached?

14 MR. TRIGGS: Object to the form.

15 Q. Is that correct?

16 A. Yes.

17 Q. And that's the agreement which is between  
18 Proskauer Rose iviewit and iviewit LL --

19 A. Wait, let me read this here.

20 Q. I apologize. I thought you were done with  
21 your answer.

22 A. Yes, you are correct.

23 Q. The complaint references -- And I'll refer  
24 you to paragraph eight of the complaint?

25 A. All right.

1 Q. It says, Proskauer entered into an  
2 agreement with defendants, iviewit.com, Inc., iviewit  
3 Holdings, Inc., and iviewit Technologies, Inc.?

4 A. Right.

5 Q. Collectively referred to as iviewit?

6 A. Right. Correct.

7 Q. But we've already established, sir, isn't  
8 it true, that this engagement agreement was only with  
9 regard to iviewit LLC?

10 A. Right. But we entered into an agreement.  
11 We didn't say a written agreement.

12 Q. Okay. You prepare corporate documents all  
13 the time. Is that correct, sir?

14 A. Yes.

15 Q. You prepare transactional documents all  
16 the time. Is that correct?

17 A. Correct.

18 Q. And you're familiar with the use of what's  
19 called a defined term.

20 A. Correct.

21 Q. Where within the agreement it's  
22 capitalized so that people can identify what's been  
23 referenced?

24 A. Correct.

25 Q. I would reference you then to paragraph

1 18. We're going back to Count I of the complaint.  
2 You'll notice that the word agreement is capitalized?  
3 And iviewit is another defined term using all three  
4 entities?

5 A. All right.

6 Q. So, isn't it true, sir, that this exhibit  
7 is contrary to the allegations in the complaint on  
8 Count I?

9 MR. TRIGGS: Object to form.

10 A. I don't know. I'd have to study it.

11 Q. Well, let's do it right now. The  
12 agreement that you have already testified to is  
13 between Proskauer Rose and iviewit LLC, is that  
14 correct?

15 MR. TRIGGS: Object to form. What  
16 agreement?

17 MR. SELZ: The agreement as defined in the  
18 complaint.

19 MR. TRIGGS: Object to form.

20 Q. I'll restate the question. The agreement  
21 as defined in the complaint and attached to the  
22 complaint as an exhibit, sir, is between Proskauer  
23 Rose LLP and iviewit LLC. Is that a correct  
24 statement?

25 MR. TRIGGS: Object to the form.

1           A.     Let me answer your original question. I  
2 don't think it's contrary to the form because we said  
3 we entered into a small cap agreement in paragraph  
4 eight similar to the one in large initial cap  
5 agreement.

6                     So iviewit does refer to the three  
7 corporations, but what we're saying is there is an  
8 agreement that's similar to the - to the initial cap  
9 agreement.

10           Q.     Okay. Show me where in the complaint it  
11 says that, sir, because maybe I'm a little confused.

12           A.     On page 8 it says, provided legal  
13 services, retained Proskauer on the same terms and  
14 conditions as those in engagement agreement between  
15 Proskauer and iviewit, LLC herein referred.

16                     So it's the same terms. We're simply  
17 referring to the terms and conditions as provided in  
18 that agreement.

19           Q.     Okay. Was there ever any writing --

20           A.     No.

21           Q.     Between -- Let me finish my question, if I  
22 could.

23                     Was there ever any writing in which any of  
24 these other entities, the iviewit.com, Inc., iviewit  
25 Holdings, Inc., or iviewit Technologies, Inc., assumed

1 the obligations under the agreement between Proskauer  
2 Rose LLP and iviewit LLC?

3 A. I don't know.

4 MR. TRIGGS: Object to the form.

5 A. I don't know.

6 Q. So then your understanding of the  
7 allegations in the complaint, sir, is that the iviewit  
8 entities as referred to in the complaint assumed the  
9 obligations under the agreement with iviewit LLC?

10 MR. TRIGGS: Object to form. Misconstrues  
11 testimony.

12 MR. SELZ: He can correct me if I'm wrong.

13 A. You'll have to repeat that.

14 Q. Okay.

15 A. Let me tell you what my understanding is.

16 It's my understanding that paragraph 18 does not  
17 contradict on its face what we had recited in  
18 paragraph eight, and that's essentially what you asked  
19 me.

20 Now, as to your question about writings --

21 Q. Well, actually there are -- I'm sorry, go  
22 ahead.

23 A. As to your question about writings,  
24 there - there is, by virtue of the numerous  
25 confirmation agreements between myself and - and other



1 officers of the company, there is reference to I  
2 believe at least iviewit.com, Inc., because all future  
3 bills were sent - were - and all future bills were  
4 sent to them as well, as referenced by this bill. Not  
5 that they were improper. The company could have told  
6 us they were improper.

7 Q. Well, how about iviewit Holdings, Inc.,  
8 and iviewit Technologies, Inc.?

9 MR. TRIGGS: Object to form. What's the  
10 question?

11 MR. SELZ: With regard to the assumption  
12 he's talking about right now. Let me rephrase  
13 it.

14 Q. With regard to the assumption that you  
15 just talked about in your testimony, sir, does that  
16 also apply to iviewit Holdings, Inc., and iviewit  
17 Technologies, Inc.?

18 MR. TRIGGS: Object to form.

19 A. Well, I'm not -- I haven't - I don't know  
20 of exact writings. I'd have to check our files to see  
21 if there are ones by which there are references to  
22 Holdings and Technology.

23 Q. Well, let's go back to the invoices or the  
24 face sheets that are attached to the complaint. Are  
25 any of those addressed to either iviewit Holdings,

1 Inc., or iviewit Technologies, Inc.?

2 A. No, but they're only face sheets.

3 Q. And what is the address that's on the top  
4 of each one of those sheets, sir?

5 A. Address of the operational company that  
6 took care of the affairs for all of these companies.

7 Q. Were there other entities that services  
8 were provided for besides iviewit.com, Inc., iviewit  
9 Holdings, Inc., and iviewit Technologies, Inc.?

10 MR. TRIGGS: Object to form. At what  
11 point in time?

12 Q. From the beginning of Proskauer Rose's  
13 representation to the date services were terminated?

14 A. I believe there were, but I couldn't tell  
15 you the exact dates.

16 Q. Are you familiar with any of the other  
17 names of any other entities that were performed by  
18 your law firm?

19 A. Not precisely.

20 Q. How about uviewit?

21 A. Well, I could say the word uviewit, but I  
22 don't know if it was uviewit.com, Inc., or -- But I  
23 mean, that's what I mean by not precisely.

24 Q. Okay. Are you aware that there are more  
25 than three entities, though?

1 A. I am aware that there - there - through  
2 the history there were a number of entities and there  
3 were mergers and consolidations, and some went out of  
4 existence and some still exist.

5 Q. Were there Florida corporations formed as  
6 well?

There are at least 3 or more Florida companies Wheeler set up

7 A. Not to my knowledge. Or not to my  
8 recollection. I don't know.

9 Q. How about an entity, iviewit Technologies,  
10 Inc., a Florida corporation?

11 A. I would have to go back and refresh  
12 myself.

13 Q. And that would have been formed by either  
14 Rocky Thompson or Mara Lerner, if it was?

15 MR. TRIGGS: Object to form. Speculation.

16 A. It would probably have been formed under  
17 the supervision of Rocky Thompson.

18 Q. Now, Mr. Wheeler, was there ever an  
19 agreement at any point in time that Proskauer Rose  
20 would receive or take ownership of stock in iviewit?

21 A. An agreement?

22 Q. Yes.

How does he receive the stock if there is no stock agreement???

23 A. No.

24 Q. Did Proskauer Rose ever take any ownership  
25 or stock in iviewit?

How do you take stock without an agreement or than stealing stock.

1 A. Yes.

2 Q. And when did that take place?

3 A. I'm - I believe in the early months,  
4 sometime perhaps in February or March, although it  
5 could have been any time before June of '99.

6 Q. Okay. At any time before June of '99?

7 A. Right.

8 Q. And why would it be -- Why would it be  
9 before June of 1999?

10 A. Well, I'm familiar with some  
11 reorganizations, and I'm familiar with some papers in  
12 that time, and it showed the Proskauer ownership. So  
13 I know it occurred before that time.

14 Q. So was it -- It was close to the  
15 inception of the relationship between Proskauer Rose  
16 and iviewit?

17 A. I don't think it was -- I think it was  
18 perhaps midway between January and June, but I'd have  
19 to check my records to tell you exactly when.

20 Q. And what was the purpose of Proskauer  
21 holding an ownership interest or shares in the  
22 corporation?

23 MR. TRIGGS: Object to form.

24 A. Eliot wanted to - wanted us to own shares  
25 in the corporation. He felt that - that - that

1 everyone should - that all members of his team should  
2 be stakeholders in his company.

3 Q. Okay. There was no discussion as to  
4 whether or not there was any value to those shares?

5 A. Well, he was hoping there would be value.

6 Q. There was no discussion as to whether or  
7 not those shares had any value at the time?

8 A. No. I mean, they - I don't think they  
9 could be valued at that time. I mean, everyone could  
10 try to value something, but no, there was no  
11 discussion as to what they were valued at at that  
12 time.

13 Q. And how much interest does Proskauer Rose  
14 still hold in the iviewit --

15 A. We hold what we had at that time, but I  
16 don't know what that amounts to because I don't know  
17 what transpired in the corporation.

18 Q. Did you ever receive any communication  
19 from anyone at iviewit concerning the billing  
20 statements provided by Proskauer to iviewit, at any  
21 time during the representation?

22 A. Yes.

23 Q. Were there any objections ever raised by  
24 anyone to the billing statements?

25 A. There were questions once raised on one

1 statement by Brian Utley. We addressed them and  
2 clarified them, made some adjustments, and that was  
3 it. And that was one occasion. And there was a  
4 second occasion by which when we handled the - the -  
5 the transaction involving - when Alpine - the Alpine  
6 Fund came in and we handled that transaction, there  
7 was - there was a request by - on - request made more  
8 than once to review that bill to - because of the size  
9 of the bill.

10 Q. Do you recall how big the bill was?

11 A. I think it was in the range of between  
12 sixty and \$70,000, but I don't recall the exact  
13 amount.

14 Q. Okay. This was with regard to the work  
15 done for the Alpine Fund?

16 A. With regard to the capital coming in from  
17 the Alpine Group.

18 Q. Was there ever any discussion concerning  
19 the fact that the payment of bills to Proskauer was  
20 contingent on the ability to get funding from outside  
21 sources for iviewit?

Totally false, it was agreed bills would be paid by  
funding from investors and Rubenstein MPEGLA,  
LLC royalties

22 A. No.

23 Q. When did iviewit generally pay the bills  
24 to Proskauer Rose?

25 MR. TRIGGS: Object to form. At what

1 point in time?

2 MR. SELZ: At any time during the  
3 relationship.

4 MR. TRIGGS: Object to form. Assumes  
5 there is some uniformity.

6 A. I don't know what you mean.

7 Q. Did they pay their bills on a monthly  
8 basis?

9 A. Well, at - through the relationship?  
10 Sometimes yes. Sometimes no.

11 Q. Well, the reason why I'm asking is because  
12 the allegation of the complaint said payments were  
13 made sporadically, or infrequently, I should say.

14 A. Well, I guess that would be consistent  
15 with sometimes yes and sometimes no.

16 Q. Now, the times when bills were paid, was  
17 that related directly to funding being received from  
18 third parties?

19 A. It was related to their ability -- Well,  
20 I - I mean, I wasn't controlling the checkbook, so it  
21 was related to -- It would be speculation on my part  
22 to say when they were paying.

23 Q. Well, let me see if I understand it, sir.  
24 You are the principal attorney on this file, is that  
25 correct?

CLICK  
HERE FOR  
WHEELER  
LETTER TO  
LEWIN TO  
PAY BILLS  
FROM  
HUIZENGA  
FUNDING.  
BASICALLY  
CONTROLLI  
NG  
ACCOUNT  
WITH CPA  
LEWIN  
WHO  
REFERRED  
WHEELER.

1 A. That's correct.

2 Q. Okay. You were the one who was engaging  
3 in representing iviewit with regard to transactional  
4 matters, is that correct?

5 A. Correct.

6 Q. You were the one who was engaged in  
7 transactional matters involving funding of the  
8 corporation. Is that also a correct statement?

9 A. Correct.

10 Q. So were you or were you not aware of when  
11 the corporation received funding from third parties?

12 A. In the instances where we were handling  
13 the transactions, I was aware of it.

14 Q. Are you aware of any transactions that  
15 iviewit engaged in to obtain funding that you were not  
16 involved in?

17 A. No.

18 Q. Do you have any reason to believe there  
19 were any transactions outside those that you were  
20 involved with in which iviewit received funding from  
21 third parties?

22 A. I don't have any reason to believe it, no.

23 Q. Okay. So, sir, what I'm asking you is,  
24 when iviewit received funding from third parties, did  
25 they pay your bill?



1 MR. TRIGGS: Objection, asked and  
2 answered.

3 A. When the company had money, they paid -  
4 they paid some bills. Not my - my bill. There were  
5 many bills outstanding. Proskauer's bill.

6 Q. I'm asking specifically with regard to  
7 Proskauer's bill.

8 A. Would they make payments towards the bill?  
9 Yes.

10 Q. Was that discussed or was that part of a  
11 closing statement or any other documentation  
12 concerning obtaining financing or funding?

13 A. I'd have to check the records. I would -  
14 I would suppose, generally not. You mean, did we  
15 deduct it from the proceeds and that type of thing?

16 Q. Was it reflected -- Right. Was it  
17 reflected on the closing statement?

18 A. I have no recollection of that, but I  
19 sincerely doubt it.

20 Q. Were these funds paid -- Strike that. The  
21 funding from third parties, was that paid directly to  
22 iviewit or did it go directly to Proskauer's trust  
23 account?

24 A. It would depend on the transaction and  
25 what the funding sources required.

1 Q. Let's go to the funding sources. What  
2 transactions do you recall in which funds were  
3 received by iviewit from third parties?

4 A. Well, we received funds from an affiliate  
5 of the Huizenga Holdings people. We received funding  
6 from Alpine, the Alpine Group, and its affiliates on  
7 more than one occasion. We received funding from  
8 internal sources. The company would go to their  
9 shareholders and request additional funds, and they  
10 were paid in. And we received - received funding from  
11 a group that had - a group that we could characterize  
12 of the Bruce Prolow group. They were affiliated in  
13 some way with Bruce Prolow. And then we received --

14 And there were probably other small - I  
15 cannot remember if there were separate transactions  
16 where they would sell off in private placements stock  
17 to certain individuals that those individuals would  
18 buy in a portion or something. But I have some  
19 recollection that there may have been a few  
20 transactions like that where Eliot wanted to sell  
21 some - or some friend of the family was buying in for  
22 someone else. But I could be wrong about that.

23 Q. Anything else?

24 A. Not to - not to my recollection.

25 Q. Okay. With regard to Huizenga Holdings,

1 when did that transaction take place?

2 A. In - late in 1999. Probably around  
3 October. I'd have to look. I'd have to look, but  
4 approximately October, November.

5 Q. Okay. And that was shortly after the  
6 engagement agreement was signed?

7 A. Correct.

8 Q. Now, was that transaction being worked on  
9 by your offices on or about the date the engagement  
10 agreement was signed?

11 A. I don't know. I believe -- Let me see.  
12 We were - we were in discussions on or about that  
13 time.

14 Q. Okay. Would it be fair to say that the  
15 agreement was executed in anticipation of the  
16 transaction with Huizenga?

17 A. No.

18 Q. So your testimony here is that it was  
19 totally independent of any anticipated transaction  
20 with Huizenga Holdings?

21 A. Correct.

22 Q. At the time that Mr. Utley signed this  
23 agreement, were you aware of whether or not he had  
24 approval from the Board of Directors of iviewit to  
25 enter into this agreement?

1 A. No.

2 Q. Did you ever attend any Board of Directors  
3 meetings?

ALMOST ALL OF  
THEM FROM 98-01

4 A. Yes.

5 Q. We'll get back to that in a little bit. I  
6 want to focus on this funding issue right now, but  
7 Huizenga Holdings, how much did they invest, if you  
8 could recall?

9 A. Approximately 500,000.

May have happened months earlier - Huizenga wrote one check and then issued a second because Wheeler error and Wheeler set up new companies. What were both transaction dates?

10 Q. And that transaction closed on or about  
11 October of 1999?

12 A. Somewhere between September and November,  
13 I believe.

14 Q. Do you recall any meetings with the  
15 principals or representatives of Huizenga Holdings  
16 with regard to the transaction?

17 A. Yes.

18 Q. And when did those meetings take place?

19 A. Between September and November.

False, Wheeler is in meetings with Huizenga in May, June, July

20 Q. Do you recall who was present as a  
21 representative of Huizenga Holdings?

22 A. Well, there were a series of meetings, so  
23 at some times we had Rick Rashon, we had - we had - at  
24 one time we had Wayne Huizenga, Jr. At one time we  
25 had -- At all meetings I believe we had Chris, and his

Page 70 Line 23 Rick Rochon

1 last name escapes me. But he was -- And Ray  
2 Monteleon also we had at least one or two meetings.

3 And then --

4 You're talking about representatives of  
5 Huizenga Holdings, right?

6 Q. Correct.

7 A. Right. I can't remember Chris' last name  
8 right now. P 71 line 7 Branden - Wheeler bro good friend

9 Q. Okay. Who else was present at those  
10 meetings?

11 A. Well, there were all different ones, but  
12 at one meeting, Eliot, Jerry Lewin and Sy, and I'm not  
13 saying -- At various meetings these people were all --  
14 Eliot was at at least one, maybe two. Sy was at at  
15 least one, maybe two. Jerry Lewin was at least one.  
16 And Brian Utley was I believe at two.

17 Q. And you were present as well?

18 A. And they may have had meetings without me.  
19 Yes, I was present.

20 Q. Okay.

21 A. They may have had other meetings without  
22 me.

23 Q. At those meetings that you attended with  
24 Huizenga Holdings and the representatives from  
25 iviewit, to the best of your recollection, what was

1 discussed?

2 A. Well, at the first one they showed - they  
3 showed the technology, and at the subsequent meetings  
4 we discussed possible ways of getting ownership or  
5 Huizenga investing in it. Actually, it was an  
6 affiliate of Huizenga Holdings.

7 Q. Okay. Now, the first meeting where the  
8 technology process was demonstrated, what exactly  
9 occurred, to the best of your recollection?

10 A. Eliot took out the - set up his - his  
11 screen and whatever and showed them - he had a disc,  
12 and it didn't connect directly to the Internet, but it  
13 was to be representative of that, and he ran the disc  
14 and showed them his product on the screen.

15 Q. Okay. Did you have any discussions with  
16 any of the representatives from Huizenga Holdings as  
17 to the process or the product that was demonstrated?

18 MR. TRIGGS: Object to the form. When?

19 MR. SELZ: At this meeting.

20 A. Well, I'm not so sure. What do you mean,  
21 as the process?

22 Q. Well, did you discuss anything concerning  
23 the, for lack of a better term I'll call it the  
24 invention that Eliot had demonstrated at that meeting?

25 A. Well, we said this is a technique that

1 Eliot had developed, a process, that we're in - that  
2 we're interested in getting investors to invest in  
3 this project and pursue it. And, yes. So I mean, we  
4 showed him what it was, but we didn't go into all the  
5 details. Eliot's the one who knew all the details.

6 Q. Was any - excuse me. Was any -- I'm  
7 sorry, go ahead.

8 A. Actually -- Right. We showed them.  
9 Right.

10 Q. Was any representation made as to whether  
11 or not the process was patented at that point?

12 A. No. There was - there was - there was  
13 discussion as to what process it was going through at  
14 that point, in the patent process.

15 Q. And what was that discussion?

16 A. That it was going through Ray Joao and -  
17 and that certain patents were going through a  
18 provisional patent process.

19 Q. Okay. Was Ken Rubenstein ever mentioned?

20 A. I don't recall.

21 Q. Or the MPEG patent pool --

22 A. I don't recall.

23 Q. -- or DVD usage or --

24 A. I don't recall.

25 Q. Nothing along those lines that you can

1 recall?

2 A. No.

3 Q. Now, with regard to the procedure at this  
4 particular meeting, were there minutes kept of that  
5 meeting? Was it a meeting of the Board of Directors  
6 or was it just an informational meeting? We'll start  
7 from the beginning.

8 MR. TRIGGS: Which question do you want  
9 him to answer?

10 MR. SELZ: That's what I'm going to start  
11 with.

12 Q. Was this a Board of Directors meeting or  
13 was it just an informational meeting with Huizenga  
14 Holdings?

15 A. It was just an informational meeting.

16 Q. Was there any Board of Directors meetings  
17 at which the discussions and the outcome of the  
18 meeting with Huizenga Holdings was discussed among the  
19 board?

20 A. I don't recall.

21 Q. Were there any minutes kept of the board  
22 meetings, to the best of your recollection?

23 A. Well, to my recollection, meetings were  
24 kept once Brian Utley arrived. Minutes were kept once  
25 Brian Utley arrived.



1 Q. Prior to that?

2 A. I don't believe so, but I don't know.

3 Q. If there are services billed in Proskauer  
4 Rose's statements for minutes of meetings and  
5 preparation of those, would you presume that minutes  
6 were prepared?

7 MR. TRIGGS: Object to form. Are you  
8 going to show him the statement?

9 MR. SELZ: I'm just asking him the  
10 question if there's bills --

11 A. If there's bills, we prepared minutes,  
12 yes.

13 Q. So the bills accurately reflect the  
14 services provided?

15 A. Right. But the minutes -- Yes.

16 Q. Do you know if there is any  
17 memorialization of that meeting with Huizenga  
18 Holdings? If there is any memo that you wrote or any  
19 letter that you wrote to any representatives of  
20 Huizenga Holdings?

21 A. I don't know.

22 Q. Were they represented by counsel at that  
23 point?

24 A. No. Well, they were represented, but  
25 counsel wasn't there.

1 Q. Did you have any communication with any  
2 counsel for Huizenga Holdings?

3 A. Ultimately, we did.

4 Q. And who was that?

5 A. I don't recall. I think it may have been  
6 internal counsel right there on the premises.

7 Q. So they were in-house counsel?

8 A. I believe that's who we talked with.

9 MR. TRIGGS: Steve, again, it's your depo,  
10 but this is the day that you got Mr. Wheeler's  
11 deposition without an order from the court  
12 prolonging the process. I just don't see how  
13 this issue is covering anything remotely close  
14 to being relevant to the case.

15 MR. SELZ: Well, I think all services  
16 provided by Proskauer Rose to iviewit are  
17 relevant to the case.

18 MR. TRIGGS: I agree that we're billing  
19 for certain work and you're entitled to inquire  
20 into that, but that does not give you the right  
21 to pull a filibuster in the deposition. You're  
22 entitled to ask him questions that are relevant  
23 to the case.

24 All I'm saying is, we are here today. I  
25 will not give up Mr. Wheeler again for

1 deposition without an order from the court. We  
2 will take it before Judge Labarga if it gets to  
3 that. I'm just giving you notice now so that  
4 you can plan your time however you want to plan  
5 your time.

6 MR. SELZ: Well, I can tell you right now,  
7 obviously this is covering approximately  
8 \$400,000 worth of billing by Proskauer Rose over  
9 a period of in excess of two years. So there is  
10 certainly a substantial amount of information to  
11 be gleaned not only from the billing statements,  
12 but also from the transactions, the events that  
13 occurred in this whole relationship.

14 So to the extent that you're attempting to  
15 limit me to one day of deposition time, I think  
16 the notice is pretty clear, continues from  
17 day-to-day until completed, and I think that's  
18 the way it's proposed under the Rules of Civil  
19 Procedure.

20 MR. TRIGGS: I'm just telling you, you  
21 will have a day's worth of time with  
22 Mr. Wheeler, absent a ruling from Judge Labarga  
23 that gives you more time in what is essentially  
24 a collection case.

25 So you can just plan your time however you

1 want to plan your time. We'll take it before  
2 the judge if it gets to that, and I am  
3 absolutely willing to live with whatever Judge  
4 Labarga rules.

5 MR. SELZ: That's fine. And I appreciate  
6 everything you are saying now, Matt. I mean,  
7 you are certainly entitled to take your  
8 position.

9 Q. So going back to moving this deposition  
10 forward, now that - after that first meeting with  
11 Huizenga Holdings, was there any contact or  
12 communication that you can recall between yourself and  
13 Ken Rubenstein concerning the meeting or the outcome  
14 of the meeting?

15 A. No. Not that I recall.

16 Q. Do you recall how many times you spoke to  
17 Ken Rubenstein specifically with regard to iviewit or  
18 the process or technology that Mr. Bernstein had  
19 developed?

20 A. How many times?

21 Q. Yes.

22 A. Very few.

23 Q. Now, with regard to Huizenga Holdings,  
24 after that first meeting, when did the second meeting  
25 take place, the best of your recollection?

1 A. On Huizenga Holdings?

2 Q. Yes.

3 A. Well, to the best of my recollection, it  
4 was moved ahead. Perhaps within a week or two weeks.

5 Q. And you prepared the transactional  
6 documents for that?

7 A. Well, there were negotiations. They -  
8 they had not - they had not decided, but ultimately,  
9 yes. Yes, we prepared the documentation.

10 Q. And you previously -- I'm sorry, go ahead.

11 A. It changed a number of times, at the  
12 request of Huizenga Holdings.

13 Q. Did it change as to the amount of funding  
14 or only as to the terms of the agreement?

15 A. Well, the amount was never set till the  
16 end, so - but it changed as to the format and how they  
17 wanted to approach it.

18 I can't tell you exactly how, but I can  
19 recall there being changes from what we had originally  
20 started.

21 Q. Were there ever any - were there any  
22 representations made by either yourself or anyone else  
23 at any of the meetings you attended with regard to the  
24 applications of the process or technology in the  
25 meetings with Huizenga Holdings?

1 A. With regard to the what?

2 Q. The meetings, the process or technology at  
3 the meetings with Huizenga Holdings?

4 A. The process or technology. Oh, I see what  
5 you're saying.

6 Well, I mean, they were inquiring. They  
7 were doing their own due diligence, so they asked  
8 questions of Eliot, and Eliot would respond to them.

9 Q. Are you aware of any specific inquiries  
10 they made to anyone else other than Eliot?

11 A. I believe they sent a team up. They  
12 engaged a patent counsel. My recollection is they  
13 engaged a patent counsel who went up - who inquired  
14 into the process. And I think the way they inquired  
15 was they reviewed it. You know, I don't know what  
16 else they did, but they - they did engage someone.

17 Q. Do you recall who that was?

18 A. No, but they did their own review.

19 MR. SELZ: I suggest we take a lunch break  
20 in about another 10 minutes till about 12:30, 1  
21 o'clock. Half an hour lunch break?

22 MR. TRIGGS: If you can eat that fast here  
23 in Palm Beach, that's fine.

24 MR. SELZ: If you want to take longer, I  
25 mean --

1 THE WITNESS: No, I'd rather do it  
2 shorter. You show us where the fast food is.

3 MR. TRIGGS: It's Chris' show.

4 MR. SELZ: Yeah, you just go -- There is a  
5 place just across the street. Actually,  
6 Hamburger Heaven.

7 MR. TRIGGS: It's Palm Beach's equivalent  
8 of fast food?

9 MR. SELZ: Yes, that or the sub shop down  
10 the street. It's the choice of places.

11 Q. (By Mr. Selz) So the funding for Huizenga  
12 came through sometime in October you said; October,  
13 November?

14 A. I'd have to go back to check, but some --  
15 It came in the fall of that year.

16 Q. What was the first payment that iviewit or  
17 any of the iviewit companies made for those services,  
18 prior to - rendered prior to that date? If you can  
19 recall.

20 A. I don't recall. Payment to us?

21 Q. Payment to Proskauer.

22 A. I don't know. I don't know if there was  
23 one. I'd have to check.

24 Q. Well, let's go back to the complaint real  
25 quick. The first summary sheet that you're showing

1 attached to the complaint is dated January 31st, 2000.

2 Looking at Exhibit B.

3 A. Okay. So what is the nature of your  
4 question? I'm sorry.

5 Q. The nature of my question was --

6 A. I mean, there were bills before this.  
7 There were - there were ones starting in June, I  
8 believe, of 1999, and then you will have one of  
9 August.

10 We didn't -- We commenced services in  
11 January. We didn't bill them until June. So I mean,  
12 our ledger sheets would show when they made payments.

13 Q. Okay. Because I'm looking at the same  
14 statements again.

15 A. Okay.

16 Q. So you got that sheet that shows January  
17 31st, 2000, invoice for eighty-five thousand three  
18 fifteen fifty-four?

19 A. Okay.

20 Q. And the same date for an additional  
21 \$1,300? Looks like disbursements and charges?

22 A. Right. Then the February statement.

23 Q. Then the February statement. And that  
24 includes prior invoices for -- It's referencing  
25 invoice dates from August --



1 A. August.

2 Q. -- September, October, December.

3 A. Right.

4 Q. The question I have is, do you know why  
5 those invoices or summary sheets are not attached to  
6 the complaint in this matter?

7 A. No.

8 Q. Do you know if Proskauer Rose is not  
9 making any claims for sums due or sums due under those  
10 prior invoices?

11 A. No. I don't know why they're not  
12 attached.

13 Q. Now, the next funding that we talked about  
14 was the Alpine Fund?

15 A. Correct.

16 Q. When did that take place?

17 A. Well, I - I think it was in the spring of  
18 2000.

19 Q. And do you recall the amount of that  
20 funding?

21 A. No, I don't. I think -- I don't.

22 Q. Did you prepare the transactional  
23 documents for that?

24 A. Well, they were prepared under my  
25 supervision, but we had specific - I mean, it would

1 have been prepared under Mr. Thompson's supervision as  
2 well. So I don't - I don't recall the exact amount.  
3 It was more than Huizenga's 500,000. But I can't  
4 remember what amount we essentially ended up with.

5 Q. Okay. There were meetings that you  
6 attended with Alpine Fund's representatives? Is that  
7 a true and correct statement?

8 A. I can recall a meeting, but there were not  
9 a lot of meetings that I attended with their  
10 representative, no.

11 Q. Do you recall who was present at those  
12 meetings?

13 A. Well, I recall Hank Powell on one, maybe  
14 two, or could have been three occasions or something.  
15 But a meeting would be a misnomer. Maybe I was in a  
16 meeting with him on one occasion, maybe I met him and  
17 then he continued on with other people on the others.

18 Q. When these - when these meetings took  
19 place with iviewit with these prospective investors,  
20 where did the meeting take place?

21 A. Well, it depends what period of time  
22 you're talking about.

23 Q. Let's go to Huizenga Holdings.

24 A. In their offices.

25 Q. In Huizenga's offices?

1 A. Right.

2 Q. And how about with regard to Alpine?

3 A. I believe iviewit had - by the spring they  
4 had leased their offices, so they were in the iviewit  
5 offices. And I don't -- Since I didn't attend them,  
6 I don't know if any were held in the Alpine offices.

7 Q. You didn't attend any of the meetings with  
8 Alpine?

9 A. I - I don't recall attending -- I mean, I  
10 recall an initial meeting with Hank Powell, but I  
11 don't recall attending meetings with Alpine.

12 Q. And Iviewit's offices are directly across  
13 the hall from Proskauer Rose's office?

14 A. Right.

15 Q. Or they were during that time, is that  
16 correct?

17 A. They were from late 1999.

18 Q. Do you know when they ceased being a  
19 tenant in the building where you guys are located?

20 A. No. It was sometime after this complaint  
21 was filed. It was after - it was after May 2nd, 2001.

22 Q. Now, with regard to Alpine Fund, was there  
23 any payment that you can recall that was made to  
24 Proskauer by iviewit immediately after the funding of  
25 the Alpine transaction?

1 A. I believe so.

2 Q. Was it a substantial payment?

3 MR. TRIGGS: Object to form.

4 Q. How much of a payment was it?

5 A. I don't know.

6 Q. Was it more than \$50,000?

7 A. I don't know.

8 Q. Was it more than a hundred thousand  
9 dollars?

10 A. I don't know. It may have been a lump sum  
11 payment, it may have been in installments. I don't  
12 know.

13 Q. And you say this was approximately the  
14 spring - the spring of 2000 you said. Can you show me  
15 anywhere in the billing statements where it shows a  
16 payment in approximately the spring of 2000?

17 A. I mean, without the ledgers, I can't tell  
18 you what the payments are from.

19 Q. Okay. Well --

20 A. I mean, I couldn't tell you even with the  
21 ledgers, but I guess we can put two and two together  
22 by seeing the dates and whatever. But I can't tell  
23 you by looking at this. I could be --

24 I mean, bills -- You need like a forensic  
25 accountant because bills disappear, so those bills

1 disappearing could have been attributable to payments  
2 made from this or any other way.

3 Q. Okay. But my question to you, sir, was --

4 A. I don't recall. I recall funds being  
5 available, and I recall receiving a payment.

6 Q. Okay. But you don't find them reflected  
7 that you see anywhere in those billing statements?

8 A. Well, I can't identify them, if you're  
9 asking me that, no.

10 Q. The reason for my question, sir, is really  
11 because you recall a payment being made, but it  
12 appears, at least from the face of these statements,  
13 which are summaries, and which apparently do show some  
14 payments being made, that a payment isn't reflected in  
15 the spring of 2000.

16 A. What these show are outstanding invoices  
17 at the bottom. So if an invoice disappears, the  
18 presumption would be - in reading this, the  
19 presumption would be that the bill was paid. And then  
20 if it doesn't disappear, a partial payment was made  
21 against the amount. That's where you show the  
22 payment.

23 For instance, on the 10 - on the bill  
24 for - of 10/12/99, which would be presumably for the  
25 September services, it shows an amount, \$42,000 owing,

1 but 28,000 had been paid from some source, so 13,000  
2 is still owing on that.

3 But obviously if you go back to the  
4 statement that you looked at first, let's go back to  
5 your one in January - not January, February - as to  
6 past due invoices, you show a statement from - you  
7 show a statement of 8/24 where still 40,000 was owing  
8 and a statement of 9/25. By the time you get to this  
9 one down in May, you see those have disappeared. So  
10 apparently payments had been made.

11 Q. Was there ever an understanding that bills  
12 due and owing Proskauer by iviewit would be paid when  
13 funds were received by third parties?

14 A. No.

15 MR. TRIGGS: Objection. It's already been  
16 asked and answered. Try it again.

17 MR. SELZ: Well, let's break. It's 12:32.

18 MR. TRIGGS: Let's see if we can get back  
19 by 1 o'clock-ish, if possible.

20 MR. SELZ: Okay.

21 THE WITNESS: We'll be here.

22 (Thereupon, a lunch recess was had at  
23 12:32 P.M.)

IN THE CIRCUIT COURT OF THE  
15TH JUDICIAL CIRCUIT, IN AND  
FOR PALM BEACH COUNTY, FLORIDA

---

PROSKAUER ROSE LLP, a New York  
limited liability partnership,

Plaintiff,

vs.

No. CA 01-04671 AB

IVIEWIT.COM, INC., a Delaware  
corporation, IVIEWIT HOLDINGS, INC.,  
a Delaware corporation, and IVIEWIT  
TECHNOLOGIES, INC., a Delaware  
corporation,

Defendants.

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Palm Beach, Florida  
November 21, 2002  
1:21 o'clock p.m.

DEPOSITION

OF

CHRISTOPHER C. WHEELER

-----

**Certified Copy**

1 APPEARANCES:

2 PROSKAUER ROSE LLP

By: MATTHEW TRIGGS, ESQ.

3 Appearing on behalf of the Plaintiff.

4 SELZ & MUVDI SELZ, P.A.

By: STEVEN M. SELZ, ESQ.

5 Appearing on behalf of the Defendants.

6 Also Present:

7 Eliot I. Bernstein (by telephone)

8

9

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10

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12

Deposition of CHRISTOPHER C. WHEELER, a witness

13

of lawful age, taken by the Defendants, for purposes

14

of discovery and for use as evidence in the

15

above-entitled cause, pursuant to notice heretofore

16

filed, before KENNETH A. SCHANZER, Registered

17

Diplomate Reporter and Notary Public, in and for the

18

State of Florida at Large, at 214 Brazilian Avenue,

19

Palm Beach, Florida.

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## 1 DIRECT EXAMINATION (Continued)

2 Q. (By Mr. Selz) Okay. Let's go back on.  
3 Okay. Mr. Wheeler, I think we finished off going  
4 over some of the applications of payments. The  
5 questions were dealing with whether or not iviewit  
6 made payments when funding was received from  
7 third-party sources, and you were referencing me to  
8 payments that were reflected on here, and  
9 disappearing invoices, ones that went away?

10 A. Right.

11 Q. Do you have any idea what the total dollar  
12 figure between the statement which shows allegedly  
13 unpaid amounts and the total amounts paid by iviewit  
14 to Proskauer Rose were?

15 A. No.

16 Q. If I told you it was approximately  
17 \$867,000, would you think that was excessive or do you  
18 think that was about right?

19 A. You're suggesting that's what our total  
20 billings were to the client?

21 Q. Paid and unpaid, according to the  
22 allegation.

23 A. Fees and costs?

24 Q. Correct.

25 A. I'd say that could probably be accurate.

1 Q. And to your knowledge, how much did  
2 iviewit raise in total from third parties for  
3 investment purposes?

4 A. I - I don't - I have not totaled it.

5 Q. Okay. You said that Huizenga came up with  
6 half a million dollars.

7 A. Right.

8 Q. And Alpine came up with some number  
9 greater than half a million dollars?

10 A. Well, I don't know. I think that Alpine  
11 came through with money two or three times, as I  
12 recall.

13 Q. Okay.

14 A. So I mean, I don't know if they were up to  
15 two million or three million or -- And I don't - I  
16 can't recall the amounts that were put in by the  
17 shareholders themselves. And I don't know what the  
18 final Prolow money was. I think the final Prolow  
19 money was perhaps 200 to \$500,000 or something else.

20 Q. Well, I don't mean we've addressed Prolow  
21 yet, so --

22 A. Well, you did ask me the question.

23 Q. Yeah. I did. You're right. So you don't  
24 really have a total that you figured between these  
25 amounts?

1 A. No, I didn't focus on it.

2 Q. Okay. Now, the third source of funding  
3 that you talked about was internal sources? That was  
4 from within, current shareholders of iviewit, is that  
5 correct?

6 A. Right.

7 Q. What transactional documents or what  
8 transactions did you work on for internal purposes?

9 A. Well, I think additional stock was sold to  
10 those people, I believe, or -- I know they all made -  
11 they were all asked to make loans, so I think  
12 debentures, some form of note, some form of  
13 Subscription Agreement. So they all -- But I'd have  
14 to go back and check the exact details. But they -  
15 they, quote, loaned money to the company and - and I  
16 think a substantial sum came in that way, too.

17 Q. Okay. When you talked about they, who  
18 exactly are you referring to?

19 A. The existing shareholders.

20 Q. Who were they, if you can recall at that  
21 time?

22 A. They were - I mean, they were Jerry Lewin  
23 and they were Sy Bernstein and they were the other  
24 shareholders. You'll have to look at a  
25 shareholder's --

1 Q. Okay.

2 A. And I'm not so sure everyone participated,  
3 but to a great extent, many did.

4 Q. Now, Bruce Prolow was another individual  
5 who you indicated - Prolow, rather, was an individual  
6 you indicated also invested?

7 A. Well, he had a group. I mean, he was a  
8 person introduced to the company, but he - he -- I  
9 don't know how his money came in. I don't know how it  
10 was -- Don't know if it came in from one or two  
11 investors or whatever.

12 MR. TRIGGS: Just do this. If this will  
13 speed us up, the question was asked I think is  
14 something about whether Bruce Prolow put money  
15 in. Just - he wants you to answer the question  
16 that he's asking, and it will speed us up if you  
17 just answer the question he's asking.

18 A. I don't know.

19 Q. Okay. Do you know how much money came in  
20 from Mr. Prolow?

21 A. No.

22 Q. Were you involved in preparing the  
23 transactional documents with regard to any funding  
24 that Mr. Prolow provided to iviewit?

25 A. I can't remember.

1 Q. And you also indicate, I think there was  
2 another source of funding, private placements, that  
3 you thought had taken place, is that correct?

4 A. There may have been some money sold to  
5 some individuals. Some - some stock sold to some  
6 individuals. Correct.

7 Q. Were there any transactional documents  
8 that your offices prepared with regard to those sales?

9 A. Oh, yes. I assume we prepared all of them  
10 or most of them. Anyone that was properly done. I  
11 mean, we'd certainly want to know about it.

12 Q. How about confidentiality agreements, were  
13 those prepared by your offices?

14 A. Yes. p 96 Line 16-17 Should be "many" of the confidentiality agreements - reason =  
clarification

15 Q. And were those prepared --

16 A. To my - to the best of my knowledge, most  
17 of them that were signed was prepared by my office.

18 Q. Now, with regard to the confidentiality  
19 agreements, those were prepared and signed prior to  
20 the initial presentation to these potential investors  
21 or is it after the initial presentation, as you  
22 recall?

23 MR. TRIGGS: Object to form.

24 A. Instructions were - they were to be signed  
25 prior to any initial presentation. Now, I'm not - how

1 the company or its - what the company or its people  
2 did, I didn't control. But in most cases, I believe  
3 before there was any discussion, any documentation  
4 sent out or any presentation, I believe the agreements  
5 were secured.

6 Q. Okay. And you were present at the initial  
7 meeting with Alpine. Was there any -- You said there  
8 was subsequent funding?

9 A. I don't know if it was the initial  
10 meeting.

11 Q. I take it back.

12 A. I said one meeting.

13 Q. You were at one meeting you said, Hank  
14 Powell was at three meetings?

15 A. I don't know how many they had with  
16 Alpine.

17 Q. Okay.

18 A. But I can remember on three occasions, on  
19 approximately three occasions, meeting Hank Powell.

20 One being a longer meeting, the other two being -- I  
21 don't remember them having any substance to them.

22 Although I don't think I was present for the entire  
23 meeting.

24 Q. Did you bill iviewit for your attendance  
25 at Board of Directors meetings?

1 A. Yes.

2 Q. Did you discuss with them beforehand there  
3 would be a charge for your attendance at Board of  
4 Directors meetings?

5 A. I was asked to attend the Board of  
6 Directors meeting as an attorney, just like I was  
7 asked to do all the other things as an attorney.

8 Q. Now, who would make that request to you?

9 A. Sy Bernstein.

10 Q. Okay. Sy Bernstein made all these  
11 requests to you to appear as attorney for --

12 A. Well, he wasn't there at every meeting,  
13 but he made it clear from the very meeting that he  
14 wanted me at all meetings, including those, and they  
15 called me over, and he made it clear that he wanted me  
16 to try to be with Eliot at all meetings where Eliot  
17 was making presentations.

18 Q. Okay. And this was --

19 A. At the outset -- Go ahead. Started  
20 anticipating your question.

21 Q. No. That's okay. These meetings that you  
22 attended, was it from the very outset of iviewit?

23 A. Well, my - my participation was minimal up  
24 to the time of where it started really ramping up. So  
25 for the first two months, January, February. But



1 maybe in March it started really ramping up, and  
2 then - and then that's - it's probably in that time  
3 where Sy made it very clear that he wanted the best of  
4 the best and he wanted people to be with Eliot at all  
5 times and not to be left alone and whatever.

6 Q. So this was March 2000 is what we're  
7 talking about, or thereabouts?

8 A. Guessing. Right.

9 Q. But it wasn't back in September or October  
10 of 19 --

11 A. Oh, no, not at all.

12 Q. Now, at those -- I'm sorry, go ahead.

13 A. He set the tone in the Spring.

14 Q. Okay. So March, April of 2000 is when  
15 things started ramping up, according to your  
16 recollection?

17 A. Right. And he set the tone as to how he  
18 wanted to be represented on what he considered were  
19 very important matters at the time.

20 Q. Okay. Do you receive billing summaries on  
21 a client-by-client basis as part of Proskauer Rose's  
22 billing structure?

23 MR. TRIGGS: Object to the form. What do  
24 you mean?

25 Q. Generally, do you receive payables and

1 receivables journals on each client that you are  
2 providing services to as a means of tracking your  
3 billable time and the progress of a client in payable?

4 A. We have a series of reports, but I receive  
5 a ledger sheet showing work-in-progress, past dues,  
6 accounts receivable for all - for - cumulative - for  
7 all clients. I mean, on a line by line item. I can  
8 get more detail, if I want. I can ask for more  
9 detail, but it's not broken out -- It's not a  
10 singular client. It's sheets that come in.

11 Q. Right. I understand what you're saying.  
12 So it's a computerized printout showing your entire -  
13 if I understand this correctly - your entire client  
14 list?

15 A. Right.

16 Q. And then showing aging reports --

17 A. Right.

18 Q. -- on receivables that are due?

19 A. Right. And we have one for  
20 work-in-progress as well, and aged as well.

21 Q. With the iviewit billing statements, were  
22 there ever any discussions about the balances that  
23 were due on those clients, since you were - since you  
24 were the principal partner in charge of that file?

25 MR. TRIGGS: Object to the form. What do

1           you mean?

2           Q.     Were there any internal discussions within  
3 Proskauer about how to handle the past due amounts on  
4 the iviewit matters?

5           MR. TRIGGS:  And just to be clear, I'm  
6 assuming you're only asking prior to any  
7 discussions regarding pursuing a claim --

8           MR. SELZ:  Correct.

9           MR. TRIGGS:  -- against --

10          MR. SELZ:  Correct.

11          MR. TRIGGS:  Iviewit-- iviewit, because  
12 that would be covered by --

13          MR. SELZ:  I don't want him to disclose  
14 any attorney-client or work product.

15          MR. TRIGGS:  Do you understand the time  
16 frame that he's talking about here?  Prior to  
17 where any decision was made to pursue a claim  
18 against iviewit is the way Steve is limiting  
19 question.

20          A.     Of course.  Yes.

21          Q.     Okay.  And what were those discussions  
22 involving?

23          A.     Discussion says they - we've generated  
24 this much in work-in-progress, we better bill it.  
25 We've generated this much in accounts receivable,

1 we're going to have to discuss with them how they're  
2 going to make arrangements to pay it.

3 Q. Okay. Were there any specific  
4 recommendations that were made that you ever  
5 memorialized in any kind of way to iviewit?

6 A. Well, you have my correspondence and you  
7 see that there were many things that we proposed and  
8 many agreements that is we had that they felt that  
9 they could fulfill. But the --

10 Q. Now, I'm sorry, I missed this question  
11 before. I think I've just got to reach one last -  
12 come back to these meetings with Alpine and Huizenga,  
13 Prolow.

14 Do you recall the meetings that you were  
15 present involving those parties that you made any  
16 representations to anyone concerning the product or  
17 invention or its viability or economic feasibility or  
18 the potential for profit?

19 A. No.

20 Q. So you never made any representation to  
21 any party with regard to anything concerning the  
22 invention or the process or however we're going to  
23 describe this particular zoom and pan or enlargement  
24 without pixilation?

25 A. No, no. I mean, what would I have said?

1 What you see is what you get. Look at - this is what  
2 we have, and this is what the company intends to do.

3 Q. Was there ever any representation made  
4 that you can recall that the technology, to the extent  
5 that it was going to be protected or was in a soon to  
6 be protected form, would be compensated by royalties  
7 almost immediately?

8 A. No.

9 Q. Was there any discussion with regard to  
10 any kind of digital camera usage for the technology  
11 that you can recall?

12 A. Digital camera usage? Not to my  
13 knowledge.

14 Q. Was there ever anything with a Nikon  
15 camera that was presented at any board meeting or any  
16 meeting with investors?

17 A. Never heard of it.

18 MR. TRIGGS: Steve, I'm not -- Again, I'm  
19 not going to shut down this line, but how - do  
20 me a favor and explain to me how this line of  
21 questioning has anything to do with the claims  
22 that we've got out there.

23 MR. SELZ: Well, I think it --

24 MR. TRIGGS: Whether there was a  
25 presentation regarding a Nikon camera? How does

1 that have anything to do with what we're here  
2 about?

3 MR. SELZ: His involvement with the  
4 conduct of the business of the board of  
5 directors. If there was a presentation made and  
6 he was assisting the company, that's something I  
7 guess you're claiming compensation for.

8 I'm just trying to narrow down times when  
9 he was actually there and the times when he was  
10 actually making or assisting, I should say, the  
11 Board of Directors or the representatives of  
12 iviewit with regard to a presentation to  
13 potential investors.

14 MR. TRIGGS: With all due respect, I think  
15 you're just pulling a filibuster on topics such  
16 as that. I want to just see if we can advance  
17 it regarding issues that are relevant to the  
18 case.

19 Q. Now, your earlier testimony, sir, was that  
20 the agreement of the iviewit entities, as far as you  
21 were concerned, was traveling under this September  
22 8th, 1999, engagement letter, engagement agreement, is  
23 that correct?

24 MR. TRIGGS: Object to the form.

25 A. I'm not so sure I understand your

1 question.

2 Q. Okay. I believe your earlier testimony  
3 was that the iviewit entities were responsible for  
4 payment to Proskauer Rose pursuant to the terms of the  
5 September 8th, 1999, engagement agreement with iviewit  
6 LLC.

7 A. Well, I believe they're pursuant to our  
8 oral agreements as well, but I believe that - I  
9 believe that the oral agreements are - are  
10 comprehended by that as well. In other words, I think  
11 you can flush out the oral agreements by that  
12 agreement as well.

13 Q. Okay. So what was the -- Then I'm  
14 confused. What were the terms of the oral agreements  
15 that you testified to earlier?

16 A. The terms of the oral agreements is we  
17 would perform services on an hourly basis as we were  
18 asked to perform them.

19 Q. Okay. And that was --

20 A. And we started that way, and everyone  
21 acted under those agreements.

22 Q. And that was your understanding? And  
23 those preceded this agreement or they came subsequent  
24 to? And when I mean the agreement --

25 A. Well, this memorialized some of the terms

1 of our agreement. It happened to be addressed to one  
2 of the entities, but these memorialized the agreements  
3 that we were acting under with all the parties.

4 Q. Was Brian Utley involved with iviewit or  
5 any - or the Bernsteins or any of the other parties  
6 prior to September --

7 A. No, but he was in charge then.

8 Q. So let me finish the question, if you  
9 could.

10 MR. TRIGGS: No.

11 A. I thought that was the finish. I'm sorry.

12 Q. Prior to his signing this agreement on -  
13 apparently on behalf of iviewit LLC?

14 A. Well, I don't know when Brian started --

15 MR. TRIGGS: Let him get the whole  
16 question out.

17 THE WITNESS: I thought that was the whole  
18 question.

19 Q. That is the whole question. Okay. Go  
20 ahead.

21 A. Was Brian Utley -- Prior to him signing  
22 this agreement, was Brian Utley active with the  
23 corporation is what you're saying. Before September  
24 8th, 1999.

25 Q. Correct.



1           A.     I believe so. I'd have to go back and  
2 look and see when he started. The company would know  
3 that better than I would.

4           Q.     Who were the oral agreements entered into  
5 with? Specifically, what individuals did you meet  
6 with to discuss these other oral agreements?

7           A.     With the other representatives and members  
8 of the directors, and the Bernsteins primarily because  
9 they were the primary shareholders.

10          Q.     Okay. So you met with the Bernsteins, you  
11 had an oral agreement with them, and then this - this  
12 agreement came subsequently?

13          A.     Yeah. I don't think the Bernsteins deny  
14 that we had any agreement with them. The - I mean, Sy  
15 has said to me many times that his problem was not -  
16 his fees weren't the problem; his problem was, he  
17 didn't have the cash to pay them and he didn't want to  
18 pay our agreements until he had the cash to pay them.

19          Q.     Well, with regard to this, what I'm trying  
20 to ascertain is, because part of this complaint has  
21 alleged quantum meruit, so the value of the services  
22 provided.

23          A.     Right.

24          Q.     And generally quantum meruit in a written  
25 contract are mutually exclusive. You can't get one if

1 you've got the other. You either have  
2 that's been breached or quantum meruit

3 So what I'm trying to ascertain  
4 portion of the claims that are being  
5 complaint deal with the quantum meruit  
6 portion of the claims deal with the c  
7 because --

8 MR. TRIGGS: Tell me when

9 Q. Okay. Because, sir, they  
10 unfortunately, state a total sum of 36  
11 being due and owing, and I just need t  
12 which.

13 MR. TRIGGS: Let me object

14 And also, just for the record, y  
15 under the complaint, when as you  
16 an amended complaint that's out

17 I don't think quantum meruit

18

1 with regard to this written agreement which was  
2 attached to the prior form of the complaint.

3 So it's your position from my  
4 understanding, sir, that this - these prior oral  
5 agreements with the Bernsteins were merged into this  
6 1999 agreement signed by Brian Utley?

7 A. I didn't say they were merged in.

8 Q. Okay.

9 A. I said that I believed we always had the  
10 oral agreements, and I expected to be paid, and we had  
11 an understanding with them that we were going to be  
12 paid. They requested, we continued to render  
13 services. And that was far past the September date.  
14 I mean, into October, November, December. They didn't  
15 stop asking for services on all of their items.

16 What I am saying is, we attempted to flush  
17 out more and memorialize on what basis, at least as to  
18 one of the entities, and that's all that - all that  
19 was, as to one of the entities, so that everyone  
20 understood the basic terms and conditions.

21 It was signed at that time because a lot  
22 of housekeeping items were being taken care of because  
23 they finally had management in there. Sy wasn't  
24 attending the management day-to-day. Eliot was  
25 inventing day-to-day.

1                   So I mean, the great happenstance that  
2 they signed some agreement at that time just when  
3 Mr. Eliot came, he was attending to a lot of  
4 housekeeping details. Not just with us, but many,  
5 many, many of them that had been left because they  
6 didn't have management until that time.

7                   Q.     Okay. Well, I'm just - again --

8                   A.     I leave it up to my lawyer to talk  
9 whether - pleading in the alternative as to quantum  
10 merit or contract.

11                  Q.     That's fine. I'm just curious, though,  
12 did Proskauer Rose consider this an enforceable  
13 agreement?

14                  MR. TRIGGS: Object to form. What are you  
15 referring to as this?

16                  MR. SELZ: The Exhibit 1 to the - or  
17 Exhibit A to the initial complaint filed in this  
18 matter.

19                  MR. TRIGGS: Object to form.

20                  Q.     Let me put it this way. When you signed  
21 this engagement agreement on behalf of Proskauer  
22 Rose -- And let me strike that. Let me go.

23                  Back. Were you authorized on behalf of  
24 Proskauer Rose LLP to sign an engagement agreement  
25 with iviewit?

1 A. Yes.

2 Q. And is that authorization the basis for  
3 your authoring this letter to Brian Utley of iviewit  
4 LLC dated September 8th, 1999, and attached to the  
5 initial complaint filed in this matter as Exhibit A?

6 MR. TRIGGS: Object to form. You just  
7 lost me there, Steve.

8 MR. SELZ: Okay.

9 THE WITNESS: Yeah, I lost him, too.

10 Q. Was your authorization to engage -- Was  
11 your authorization by Proskauer Rose to sign a  
12 retainer agreement or engagement letter on behalf of  
13 Proskauer Rose the basis for you sending this letter  
14 to Mr. Brian G. Utley at iviewit LLC?

15 MR. TRIGGS: Object to form.

16 Q. Again, which is attached to the complaint  
17 as Exhibit A.

18 A. I'm still not sure I understand.

19 Q. Want me to break it down for you?

20 A. I still don't understand your question.

21 Q. My first question to you was were you  
22 authorized.

23 A. I am.

24 Q. And you said yes. And then I said, was  
25 that the reason why or was that the basis for your

1 being able to send out this letter.

2 A. Well, it's certainly not the reason why  
3 because I'm authorized. Was it the basis for sending  
4 out the letter?

5 Q. You were acting --

6 A. I can't tell you what the basis was for  
7 sending out the letter.

8 Q. Is it a fair statement then, sir, that  
9 when you sent this September 8th, 1999, engagement  
10 agreement to Brian Utley, that you had been authorized  
11 to do so by Proskauer Rose?

12 A. Yes.

13 Q. And that that engagement letter or  
14 engagement agreement contained the terms upon which  
15 Proskauer Rose was willing to accept representation of  
16 iviewit LLC?

17 A. Yes.

18 Q. And that it was sent to Mr. Brian G. Utley  
19 with the intent that he execute it on behalf of  
20 iviewit LLC?

21 A. Yes.

22 Q. Now, were there other entities other than  
23 iviewit LLC that existed at that time?

24 A. I don't know. I'd have to go back and see  
25 when they existed and when they didn't. Some other

1 entities did exist at that time.

2 Q. Can you explain to me, sir, why none of  
3 those other entities were listed on this engagement  
4 agreement?

5 A. No.

6 Q. Was Mr. Utley your sole contact at this  
7 point in time, September 8th, 1999, for this kind of,  
8 as you said, housekeeping matters at iviewit?

9 A. For housekeeping matters. But, no, not  
10 sole. We still talked to Sy and Eliot about certain  
11 things.

12 Q. Were any correspondence or engagement  
13 agreements similar to this - strike the  
14 correspondence - engagement agreements similar to this  
15 sent to either Sy Bernstein or Eliot Bernstein at the  
16 same time?

17 A. I don't know.

18 Q. How long have you known Brian Utley, sir?

19 A. Known him since approximately 1990.

20 Q. 1990? And --

21 A. I mean, around there.

22 Q. And how do you know Mr. Utley?

23 A. I knew him socially first. I knew him  
24 primarily through a mutual friend, and we sat on some  
25 philanthropic organizations' boards. That's how I

1 know him --

2 Q. Okay.

3 A. -- primarily.

4 Q. And who recommended Mr. Utley to iviewit?

5 MR. TRIGGS: Object to form.

6 THE WITNESS: Shall I answer that  
7 question?

8 MR. TRIGGS: Sure. If you can.

9 Q. Let me rephrase it first. Did you  
10 recommend to Sy Bernstein or Eliot Bernstein that they  
11 engage Mr. Utley as an employee of iviewit?

12 A. No, I introduced him.

13 Q. Okay.

14 A. And I said -- I introduced him.

15 Q. And how did you introduce Mr. Utley?

16 A. Well, Sy was - was saying that he had to  
17 get someone to run his company, and as was Jerry Lewin  
18 and as was, I think, everyone, although I didn't  
19 recall talking to everyone, but - and so he - he had  
20 said, if you know anybody, and he didn't say it I'm  
21 sure to just me, we're out looking for someone to run  
22 the company. Eliot's got to do what he does best over  
23 here and we need someone to run the day-to-day  
24 affairs, and I think he may have considered even other  
25 alternatives. People from his family or whatever.



1 Q. Okay.

2 A. So --

3 Q. So you introduced Mr. Utley to Sy and  
4 Eliot?

5 A. I said to -- I happened to run into  
6 Mr. Utley and I said, gee, there's this company run by  
7 these nice folks and they have what appears to be  
8 something unique, at least as you look at it in - in  
9 its field, and would you have any interest, and he  
10 said he may, but he'd have to examine it closely and  
11 talk to the people and the principals and that.

12 And I went to Sy Bernstein and I said, I  
13 know of a person. I don't know whether he'd have  
14 interest or not. He said he may if he meets and  
15 discusses it with you. But he'd have to review the  
16 technology very closely, and - and I said, do you have  
17 any interest. This is who he is. He's a social  
18 friend. And he is a - he is a - he - he's well - well  
19 respected in town and he's a - he was former site  
20 manager of IBM.

21 So he's an older gentleman, has depth of  
22 experience. I know he's had other big jobs at IBM,  
23 but I don't know exactly what they have been. You  
24 know, you'd have to see if he's a good fit for you and  
25 scrutinize him and go from there. He said, yes, I'd

1 have -- They said, yeah, we'd like to meet him.

2 MR. TRIGGS: All right. Just to be clear,  
3 I think the question that was asked is whether  
4 you introduced Brian Utley to Sy Bernstein.  
5 That -- So all I'm saying is if you can --

6 THE WITNESS: The answer is yes.

7 MR. TRIGGS: -- focus on the question he's  
8 asking --

9 THE WITNESS: Okay. The answer --

10 MR. TRIGGS: If he wants to ask you a  
11 follow-up, he will ask you a follow-up.

12 MR. SELZ: Exactly. So I don't get blamed  
13 for this one, I mean, I understand obviously  
14 I've got a - you know, if your client wants to  
15 explain, he's entitled to explain.

16 THE WITNESS: Okay. The answer is yes.

17 MR. TRIGGS: I think Chris, in all  
18 fairness, is trying to speed up the process by  
19 anticipating your follow-up, but just focus on  
20 what he's asking you.

21 MR. SELZ: Thank you.

22 Q. (By Mr. Selz) Now, when you first knew  
23 Mr. Utley back in 1990 he was working for --

24 A. IBM.

25 Q. -- IBM in Boca Raton?

1 A. Uh-huh. He was the site manager, or the  
2 equivalent of the title.

3 Q. And when you introduced him to Sy and  
4 Eliot Bernstein, do you know what he was doing at that  
5 point in time?

6 A. He was working at a - and running a - a -  
7 what could we call it, a company that was  
8 manufacturing - developing and manufacturing greens  
9 cutting equipment. It's called Diamond Turf, I think.  
10 Or something like that.

11 Q. Do you know if he was terminated from his  
12 job at Diamond Turf or did he leave voluntarily?

13 A. I don't know which.

14 Q. At the time that he took the job with  
15 iviewit, do you know if he was gainfully employed at  
16 that point or not?

17 A. No. I don't know if he was still employed  
18 by Diamond Turf or not.

19 Q. Did you ever see Mr. Utley's resume?

20 A. I don't recall if he was -- Did I ever see  
21 his resume? Not to my recollection.

22 Q. Did he ever provide you with any  
23 background information?

24 A. He could have, but I don't recall it.

25 Q. C.V. or anything of that nature to give to

1 the Bernsteins?

2 A. I don't recall.

3 Q. Are you aware of any patents that  
4 Mr. Utley holds?

5 A. No. No, I'm not.

6 Q. Have you ever -- I'm sorry, go ahead.

7 A. I'm not aware of anything other than if he  
8 referenced patents in his own deposition, but I  
9 didn't - I didn't follow that closely in his  
10 deposition.

11 Q. So you - you read a transcript of his  
12 deposition?

13 A. Yes.

14 Q. Now, with regard to his - I'll take  
15 Mr. Utley's employment by iviewit, have you ever  
16 represented Mr. Utley personally in any matters?

17 A. We formed a corporation for him in - I  
18 believe in 1993.

19 Q. Do you recall the entity, the corporation?

20 A. I think it was a consulting corporation.

21 We just formed it. I mean, we just formed it. That's  
22 all we did.

23 Q. Right.

p 188-119 line 23-1 There was also a matter of giving advice regarding a credit card guaranteed by Utley that was unrelated to Iviewit and billed separately to Utley - ad  
recollection

24 A. We didn't do any more work for him.

25 Q. Just formed the consulting corporation?

1 A. Right.

2 Q. Did you ever advise anyone at iviewit  
3 other than, obviously, Mr. Utley, who knew that you  
4 had represented him in the past, that you had  
5 represented Mr. Utley at one point?

6 A. No.

7 Q. Was there any - any question of any  
8 conflict?

9 A. No.

10 Q. Was there any employment agreement signed  
11 by Mr. Utley between Mr. Utley and iviewit?

12 A. Yes.

13 Q. And who prepared the employment agreement?

14 A. Proskauer.

15 Q. And did you not think that potentially  
16 posed a conflict?

17 A. No.

18 Q. And who did you represent in the  
19 preparation of that employment agreement?

20 A. The company. We did not represent  
21 Mr. Utley.

22 Q. So there was no waiver of conflict, no  
23 conflict letter, nothing went out with regard to  
24 Mr. Utley and iviewit?

25 A. No.

1 MR. TRIGGS: Object to form.

2 Q. Did Proskauer assist Mr. Utley in  
3 prosecuting any patents or having any other  
4 intellectual properties protected by copyright or  
5 trademark?

6 A. No.

7 Q. Are you aware of any claims by Diamond  
8 Turf that Mr. Utley improperly received intellectual  
9 properties or patented them that belonged to Diamond  
10 Turf?

11 A. Aware that --

12 Q. Mr. Utley is alleged to have improperly  
13 received or taken intellectual properties of Diamond  
14 Turf.

15 A. By Diamond Turf? No.

16 Q. Okay. On the amended complaint --

Why are exhibits missing?

17 MR. SELZ: Let's get this marked.

18 (Thereupon, said document was marked as  
19 Defendant's Exhibit Number 3 for identification  
20 by the reporter.)

21 Q. All right, sir. We had an earlier  
22 discussion regarding the original complaint filed in  
23 this action. You now have before you what's been  
24 marked as Defendant's Exhibit Number 3, which is  
25 docket entry number nine in the court file. It's the

1 amended complaint. I'm going to reference you to  
2 paragraph 15, which is Count I. And paragraph seven,  
3 which is the factual background.

4 Now, the allegations of paragraph seven  
5 say prior to the commencement of this action,  
6 Proskauer entered into an oral agreement with  
7 defendants --

8 A. Right.

9 Q. -- to provide legal services on their  
10 behalf.

11 Who were these oral agreements entered  
12 into, and which entities were they entered into for?

13 MR. TRIGGS: Object to the form.

14 Q. Well, let's break it down. With whom did  
15 Proskauer enter the oral agreements for services?

16 A. With officers of - of - of each of the  
17 companies.

18 Q. Okay. Which officers and which companies?

19 A. Well, whatever officer came in and said I  
20 need this work done. I mean, when they requested  
21 work, we said, fine, we'll do the work.

22 I mean, from the very beginning we had an  
23 understanding with the Bernsteins that they would be  
24 coming in, they would be having work. No one knew  
25 what the structures were going to be, but whatever

1 those structures would be, they'd pay for it.

2 Q. So it was --

3 A. I suppose you'd say the Bernsteins,  
4 technically.

5 Q. So my understanding from your testimony  
6 just now is that someone came into your office, it was  
7 an officer of the corporation --

8 A. Well, they gave us work. But at the  
9 inception of the project, the Bernsteins engaged us,  
10 said, fine, let's commence work. We started work.  
11 They brought in projects. We accepted the work. We  
12 did them. We didn't differentiate between - because  
13 of we were changing things to protect them or because  
14 certain corporations were set up for tax purposes or  
15 for others, we didn't differentiate between them.  
16 We - we - when a project had to be done and - and that  
17 project came in, we did it.

18 Q. Did you open up separate files for each  
19 one of these separate entities?

20 A. I'd have to look and see what we did.

21 You mean, a separate file for iviewit  
22 Holdings, Inc., a separate file for iviewit  
23 Technologies, Inc.?

24 Q. Yes.

25 A. The files may have been opened for - for



1 organizational purposes, but not for billing purposes.

2 Q. So --

3 A. To retrieve the information on a timely  
4 basis so -- But I don't know. The answer may be no.  
5 The answer may be just - they may just be all under  
6 one big file and still broken down. I'd have to see  
7 the filing system.

8 Q. Now, going back to my question, I'm just  
9 trying to get an answer on this particular point. You  
10 indicated that you had met with officers and  
11 directors, you said Sy and Eliot Bernstein, or some  
12 other officers or directors of these entities.

13 A. Well, they were the initial clients, I  
14 mean, before they delegated some of their  
15 responsibilities away.

16 Q. Okay. Now, Sy and Eliot Bernstein when  
17 they first came into your offices, you indicated none  
18 of these corporate entities had been formed, is that  
19 correct?

20 A. I believe that's correct.

21 Q. Because your offices were the offices  
22 responsible for the initial formation of the iviewit  
23 entity, is that correct?

24 A. Right.

25 Q. Do you have any idea approximately how

1 long after the initial meeting with Sy and Eliot  
2 Bernstein these corporations were formed?

3 A. These meaning these three?

4 Q. These three, which is iviewit.com, Inc.,  
5 iviewit Holdings, Inc., iviewit Technologies, Inc.

6 A. Well, it's a difficult question in that  
7 some - there were some name changes. So some of these  
8 may have been in existence by a prior name and through  
9 merger picked up this name.

10 Q. Okay.

11 A. So - but they were formed between January  
12 and June.

p124 l11-18 I do not have a recollection of when companies were formed without reviewing the exact history of each Company. - Clarification

13 Q. January and June of?

14 A. '99.

15 Q. Of '99.

16 A. Right. Now, some may not have been  
17 formed - I mean, some were formed sooner rather than  
18 later.

19 Q. So the initial discussions that were had,  
20 the oral agreement that's referenced here in Count I,  
21 and referencing back to paragraph seven, occurred  
22 prior to the formation of these entities. Is that  
23 what you're saying?

24 MR. TRIGGS: Object to form.

25 A. Yes.

1 long after the initial meeting with Sy and Eliot  
2 Bernstein these corporations were formed?

3 A. These meaning these three?

4 Q. These three, which is iviewit.com, Inc.,  
5 iviewit Holdings, Inc., iviewit Technologies, Inc.

6 A. Well, it's a difficult question in that  
7 some - there were some name changes. So some of these  
8 may have been in existence by a prior name and through  
9 merger picked up this name.

10 Q. Okay.

11 A. So - but they were formed between January  
12 and June.

13 Q. January and June of?

14 A. '99.

15 Q. Of '99.

16 A. Right. Now, some may not have been  
17 formed - I mean, some were formed sooner rather than  
18 later.

19 Q. So the initial discussions that were had,  
20 the oral agreement that's referenced here in Count I,  
21 and referencing back to paragraph seven, occurred  
22 prior to the formation of these entities. Is that  
23 what you're saying?

24 MR. TRIGGS: Object to form.

25 A. Yes.

1 Q. Okay. And that's the claim for the  
2 contractual basis for Proskauer Rose's --

3 A. A portion of the claim. But I mean, it  
4 was reinforced on a consistent basis because they  
5 continued to bring us legal work, and it was the same  
6 people who continued to come in and request that the  
7 work be done and continued to extract legal services  
8 from us, even to the point of forming these  
9 corporations. They were advised on a - on a weekly  
10 basis as to what was going on. Came in and were part  
11 of it. The bills, detailed bills, reflect that.

12 Q. The first billing statement that's  
13 attached to the amended complaint is January 31st,  
14 2000. Do you have any reason to believe there was any  
15 balance of fees due and owing prior to this statement?

16 MR. TRIGGS: Object to form. At what  
17 point in time?

18 Q. From the inception of any services  
19 provided to --

20 MR. TRIGGS: Same objection.

21 A. Could you please repeat that?

22 Q. Sure. Okay. Attached to the amended  
23 complaint as part of Exhibit B is a statement dated  
24 January 31st, 2000, invoice number 343838, showing a  
25 total due of \$85,315.54.

1 A. Right.

2 Q. Was this invoice submitted or, strike  
3 that, was this invoice attached to the amended  
4 complaint because it's the first invoice in which  
5 monies are due from or alleged to be due from  
6 iviewit.com, Inc., to Proskauer Rose?

7 A. I don't know.

8 Q. There are apparently earlier invoices,  
9 aren't there, sir?

10 A. It would appear from the February bill  
11 that there are earlier invoices.

12 Q. And the earlier invoices showing a balance  
13 or remaining balance due, is that correct?

14 A. Right. But I don't know. Our ledgers as  
15 to what bills were paid and that would speak for  
16 itself. I don't - I don't have those.

17 Q. So those ledgers would reflect how the  
18 payments were applied?

19 A. Correct. As would the correspondence to  
20 the company, because when a bill was paid, we would -  
21 it's our normal practice to send out a letter saying  
22 we received a certain amount of money and this is how  
23 it's been applied.

24 Q. And did you do that with regard to the  
25 iviewit matters?

1 A. I'd have to review my correspondence. But  
2 that would be our normal protocol.

3 Q. So if I understand your testimony, sir,  
4 your position is that this oral agreement referenced  
5 in the factual background, paragraph seven, is  
6 something that continued through the formation of  
7 these new entities?

8 A. Yes.

9 Q. Even though it was entered into prior to  
10 the formation of the entities themselves?

11 MR. TRIGGS: Object to the form.

12 A. Yes.

13 Q. If that was the case, sir, then why was it  
14 necessary for you to write or, strike that, for you to  
15 provide a written engagement letter or why did you  
16 feel it was necessary for you to provide a written  
17 engagement letter to iviewit LLC which was attached to  
18 the initial complaint?

19 A. I don't remember.

20 Q. So you felt you had an oral agreement  
21 which you felt traveled for all the entities, is that  
22 correct?

23 A. Right.

24 Q. But then sometime in September, around  
25 September 8th, 1999, you determined that it was

1 necessary to have a written engagement agreement.

2 A. Well, we determined that we were going to  
3 secure a written engagement letter. Right.

4 Q. And --

5 A. And I don't remember the exact reasoning  
6 other than the fact that perhaps -- I don't know the  
7 exact reason. I don't recall the thought process.

8 Q. So in your mind, was that written  
9 engagement agreement superseding the oral agreement?

10 A. No.

11 Q. So the oral agreement still stayed in  
12 place?

13 A. Right.

14 Q. Did the oral agreement no longer apply to  
15 iviewit LLC?

16 A. I didn't think about it.

17 Q. Well, you must be a detail guy because you  
18 do transactional work. So focus on details is  
19 important in transactions.

20 A. Absolutely.

21 Q. Is there some reason why you did not focus  
22 on that detail in this particular situation?

23 A. It was an administrative detail that I did  
24 not focus on.

25 Q. Was that your same explanation for why it

1 only included one entity?

2 A. I don't know why it only included one  
3 entity.

4 Q. Is there anyone else in your firm other  
5 than yourself who would be responsible for matters  
6 concerning the billing or payment on this particular  
7 file, the iviewit files?

8 MR. TRIGGS: Object to form.

9 Q. Let me strike the question. Did anyone  
10 direct you to get an engagement agreement from iviewit  
11 LLC?

12 A. No.

13 Q. And you undertook that on your own  
14 authority?

15 A. Yes.

16 Q. How long had Mr. Utley been engaged with  
17 iviewit at that time?

A. I don't know.

Q. Now, you had earlier testified that there  
were some questions raised in some of these billing  
statements, is that correct? One in particular I  
22 think you said?

23 MR. TRIGGS: Form.

24 A. Right.

25 Q. Was there ever any --



1 A. I think I said two in particular.

2 Q. And I think you said that had been  
3 addressed with the client?

4 A. The one - the one time that certain  
5 entries were - one statement that were raised by  
6 Mr. Utley, we sat down, went over them and addressed  
7 them and made whatever modifications we felt  
8 necessary. Yes.

9 Q. And what were those modifications that  
10 were made?

11 A. I don't recall.

12 Q. Was it an adjustment to the amount of the  
13 bill?

14 A. I'm sure it was.

15 Q. Did anyone else -- Strike that. At these  
16 board meetings that you attended for iviewit, were  
17 there ever any board members who expressed concern as  
18 to the amount of the billing statements by Proskauer?

19 A. Not in my presence.

20 Q. No one ever mentioned that they were  
21 concerned about the amount of money that was being  
22 spent with Proskauer for legal services?

23 A. You're talking about at the board  
24 meetings?

25 Q. At board meetings.

1 A. No.

2 Q. Now, you have known Mr. Utley since 1990 I  
3 think you testified to.

4 A. Right.

5 Q. Do you know him socially or how do you  
6 know him exactly?

7 MR. TRIGGS: Object to form. Asked and  
8 answered.

9 A. Socially. Well, I know him socially.  
10 Yes.

11 Q. Are you --

12 A. Primarily.

13 Q. Do you serve on any committees together,  
14 any boards together, anything of that nature?

15 MR. TRIGGS: Asked and answered.

16 A. Not any longer.

17 Q. Did you in the past?

18 A. Yeah.

19 Q. And where was that?

20 A. Well, we served on the board at the  
21 Florida Philharmonic in the early '90s together. And  
22 we served on the board of the FAU Foundation, Florida  
23 Atlantic University Foundation, in recent history.

24 Q. What's recent history?

25 A. Well, he's been on for some time. I have

1 been on, I don't know, for the last four or five  
2 years. But he doesn't serve any longer on that board.

3 Q. Why doesn't he serve any longer, if you  
4 know?

5 A. Because he's moved.

6 Q. Moved to?

7 A. Minnesota.

8 Q. Minnesota. Okay.

9 You need some more to drink?

10 A. No, I'm all set.

11 Q. Okay. Now, one of the damages alleged in  
12 the complaint is titled prejudgment interest. Is  
13 there any contractual basis that you can point out to  
14 me, any oral agreement, or in the engagement letter,  
15 that would provide for prejudgment interest?

16 A. I can't point it out.

17 MR. TRIGGS: Object to form.

18 Q. Okay. Let's restate it. Was there ever  
19 any provision in the oral agreement between Proskauer  
20 Rose and iVIEWIT with regard to payment of prejudgment  
21 interest?

22 A. Not to my knowledge.

23 Q. Was that ever memorialized with regard to  
24 prejudgment interest in the engagement letter which  
25 you penned in September 8th, 1999?

1 A. Not to my knowledge.

2 Q. Does the engagement letter say anything  
3 about the right to recover attorney's fees, should it  
4 be necessary to bring legal action against iviewit for  
5 the fees due and owing?

6 A. No.

7 Q. Was that ever part of an oral agreement  
8 that you have alleged as a basis for the cause of  
9 action in this complaint?

10 A. No.

11 MR. TRIGGS: Steve?

12 MR. SELZ: Yeah.

13 MR. TRIGGS: On that point, I just want  
14 to -- I'll say it out of Mr. Wheeler's  
15 presence, if you prefer, I leave that to you,  
16 but on that subject, as I'm sure you're aware --

17 Do you want Chris to leave for this little  
18 piece? I leave it to you completely.

19 MR. SELZ: No, you can have him here.

20 Doesn't matter.

21 MR. TRIGGS: It's just -- I mean, I think  
22 both the complaint and the amended complaint  
23 reveal, the basis for fees is not a - by  
24 contract. It is by --

25 MR. SELZ: Right.

1 MR. TRIGGS: -- 57.105. So why spend the  
2 time going over whether it's contained in a  
3 written or oral contract. Clearly, if it was,  
4 we'd be suing you for it.

5 MR. SELZ: Well --

6 MR. TRIGGS: Relating it back to  
7 prejudgment interest, it's a legal issue. It's  
8 a -- You know.

9 MR. SELZ: Okay.

10 Q. I got to refer you back also to Exhibit 2,  
11 which is again that engagement letter, second page.  
12 I'm going to direct you to the - I guess it's going to  
13 be the third full paragraph from the top? It starts,  
14 we may from time to time? There is a one sentence  
15 paragraph effectively in the middle there.

16 A. Uh-huh.

17 Q. Okay. Were there ever any -- Based on  
18 that paragraph which says that you can - you may  
19 either request or your own initiative provide you with  
20 an estimate of fees or costs, was that ever done in  
21 any situation concerning the services provided to  
22 iviewit?

23 A. I can't remember, but there may have been  
24 in 2000, there may have been an inquiry as to how much  
25 do you think this is going to cost, and we would tell

1 them when they were trying to watch their costs.

2 Q. Was --

p135 l3 Eliot should be Utley - reason = typo

3 A. Mr. Eliot was trying to be very  
4 conscientious and watch the costs.

5 Q. Were you ever told that Mr. Utley was  
6 limited or had a legal, a monthly legal budget of  
7 \$5,000?

8 A. No.

9 Q. When you and Mr. Utley met socially, did  
10 you ever discuss the business of iviewit?

11 A. Discuss the business? Sometimes.

12 Q. Did you ever discuss the situation  
13 regarding the attorney's fees?

14 A. No.

15 Q. Did you ever discuss anything concerning  
16 any services provided by Proskauer Rose to iviewit?

17 A. Well, in the sense that all his  
18 business -- In the sense that we provided services for  
19 all of his business, it was obviously yes.

20 Q. Did anyone ever advise you that iviewit  
21 was -- Strike that.

22 All right, sir. I'm going to direct you  
23 to the same question I had with regard to the  
24 complaint in this matter, and that is the breach of  
25 contract count and the quantum meruit count. And

1 again my question relates to the fact that both  
2 sections, both quantum meruit and a breach of  
3 contract, recite the sum of \$369,460.97 being due and  
4 owing.

5 MR. TRIGGS: What's your question?

6 Q. My question is, is it your position that  
7 the oral contract or the written contract and the  
8 quantum meruit counts are for the same services?

9 MR. TRIGGS: Object to the form. Also,  
10 objection to the extent you're asking a legal  
11 conclusion of him.

12 Q. Let me rephrase it. The breach of  
13 contract count, sir, calls for damages of \$369,460.97.  
14 Is that true and correct?

15 A. Yes.

16 Q. What services are those related to? Are  
17 they related to the services set forth in Exhibit B to  
18 the amended complaint?

19 A. That was -- They relate to the services  
20 for all unpaid invoices which we have - all invoices  
21 which remain unpaid.

22 Q. Okay. And with regard to Count IV, the  
23 quantum meruit count?

24 A. They relate to the same.

25 Q. They relate to the same services?

1 A. (Witness nods.)

2 Q. Okay. Do you have any reason to believe  
3 that those services are distinguishable in any way  
4 from one another, the ones under the quantum meruit  
5 and the contract count?

6 A. I don't know the answer to that.

7 Q. Well, they both reference Exhibit B. Is  
8 that -- Is that what you're saying? I don't know.

9 MR. TRIGGS: You got a question there,  
10 Steve?

11 MR. SELZ: Yeah, I'm going to come up with  
12 one. Give me a minute while my brain fades.

13 Q. Okay, sir. So if I understand it, then,  
14 the invoices attached to Exhibit B are the basis for  
15 both the quantum meruit count and the breach of  
16 contract count, is that correct?

17 A. Yes.

18 Q. And there are no other invoices, to your  
19 knowledge, which would be claimed under either one of  
20 those two counts. Is that also correct?

21 A. Let me look. Well, I guess I'm confused.  
22 Where does it reference in the quantum meruit, Exhibit  
23 B?

24 Q. It doesn't. That's what I'm trying to  
25 find out. And maybe I misspoke earlier. I think what



1 it does is --

2 MR. TRIGGS: And again, Steve, I have a  
3 little - want to try to speed us along on this  
4 part. I'd like to do it without -- Again, I  
5 leave it to you on that point. If you want  
6 Chris here, fine, if you don't, that's fine,  
7 too, but I think I can short circuit your  
8 questions regarding quantum meruit versus breach  
9 of contract.

10 THE WITNESS: I can throw away my can  
11 here.

12 MR. TRIGGS: Yeah, why don't we do that.

13 MR. SELZ: Here.

14 THE WITNESS: I can go to the bathroom.

15 (Thereupon, the following proceedings were  
16 had out of the presence of the witness.)

17 MR. TRIGGS: Just put this on the record.  
18 I'm not taking shots at you. You know we're  
19 allowed to plead alternative pleadings.

20 MR. SELZ: Yeah, I know.

21 MR. TRIGGS: And if you look at what  
22 actually is contained within the quantum meruit  
23 claim, it does not rely on any alleged  
24 agreement. It just goes paragraphs one to six,  
25 and then it picks up with paragraph 33.

1 MR. SELZ: Right, but it's the same exact  
2 amount, 369,460.97.

3 MR. TRIGGS: All I'm saying is, you know  
4 we're allowed to plead alternative theories. We  
5 believe we have an enforceable agreement with  
6 all the three entities we sued. We also  
7 believe, if there is some conclusion to the  
8 contrary, we're entitled to be paid the value of  
9 the services rendered, and the value of those  
10 services is 369,000 and change.

11 So I'm happy that Chris has stepped out.  
12 I don't want you to think that I'm coaching him  
13 in that regard. I don't think we're really  
14 advancing the process by trying to trip him up  
15 on legal theory of --

16 MR. SELZ: No. I'm just trying to find  
17 out what the basis is to make sure there is no  
18 misunderstanding on my part, because you didn't  
19 reference the Exhibit B or the services  
20 provided.

21 MR. TRIGGS: I think if you would just  
22 look at the - what we proposed as the pretrial  
23 stipulation that we were due to have filed  
24 yesterday that that would make it clear that  
25 we're not trying to double dip and we're not

1 seeking a total of seven hundred some odd  
2 thousand, if that's the question. We're just  
3 not doing that. We have no intention of doing  
4 that.

5 MR. SELZ: Okay.

6 MR. TRIGGS: So -- Let's see if we can  
7 grab him here.

8 (Informal discussions off the record.)

9 Q. (By Mr. Selz) Okay. Now, the --

10 MR. SELZ: This is number five I think  
11 we're up to?

12 (Thereupon, said document was marked as  
13 Defendant's Exhibit Number 4 for identification  
14 by the reporter.)

15 Q. (By Mr. Selz) Okay? Mr. Wheeler, with  
16 regard to the engagement agreement, that was with  
17 iviewit LLC, is that correct?

18 A. The written engagement agreement.

19 Q. Correct.

20 A. Right.

21 Q. And there was - your earlier testimony was  
22 there was no other written engagement agreement with  
23 any other entity, is that correct?

24 A. Not that I'm aware of.

25 MR. TRIGGS: Object to the form.

1 Q. Was there any other written engagement  
2 agreement with any other iviewit entity?

3 A. Not that I can recall.

4 MR. SELZ: See? We can avoid that.

5 MR. TRIGGS: If you want me to clarify,  
6 I'll clarify, but I don't think that's right.

7 Q. Okay. So, at this point in time, are you  
8 aware of the status of iviewit LLC?

9 A. No.

10 Q. Do you have any files or records as to the  
11 current status of iviewit LLC?

12 A. No.

13 Q. Okay. Are you aware that iviewit LLC has  
14 been dissolved?

15 A. Am I aware of that? No, I'm not.

16 Q. Okay. What's been presented to you as  
17 Defendant's Number 4 is a printout from the Florida  
18 Department of State showing a revocation for annual  
19 report on iviewit LLC.

20 Have you seen annual report notices like  
21 this or, rather, printouts from the Florida Department  
22 of State before?

23 A. Not in this exact format, but, yes.

24 Q. Do you have any reason to believe that  
25 this is not a true and accurate reflection of the

1 current status of iviewit LLC?

2 A. I have no reason to believe that.

3 MR. BERNSTEIN: Excuse me, what exhibit is  
4 that?

5 MR. SELZ: That's number four.

6 MR. BERNSTEIN: In which, the complaint?

7 MR. SELZ: No, no. This is a separate  
8 sheet. It's a separate sheet pulled off from  
9 the Florida Department of State.

10 MR. BERNSTEIN: Okay. On the iviewit LLC?

11 MR. SELZ: LLC. Correct.

12 MR. BERNSTEIN: No dot-com LLC?

13 MR. SELZ: Correct.

14 MR. BERNSTEIN: Okay. Thank you.

15 Q. So, sir, assuming that this statement is  
16 correct and that iviewit LLC is no longer an active  
17 and validly existing corporation under the laws of the  
18 State of Florida, the con - or the engagement letter  
19 between Proskauer Rose and that corporation, iviewit  
20 LLC, does that - does that call that into question in  
21 your mind?

22 A. Call what into question?

23 MR. TRIGGS: Objection to the form.

24 Q. The engagement agreement and the  
25 continuing validity of it. Bear with me.

1 MR. TRIGGS: Object to the form.

2 Q. Go ahead.

3 A. In our amended complaint, I'm not so sure  
4 we even are referring to this agreement anymore, are  
5 we?

6 Q. No. You're not.

7 A. So why would it - why would it change my  
8 mind about anything?

9 Q. That's what I'm asking you, if it does.  
10 If it doesn't, then you say no, it doesn't.

11 A. It doesn't.

12 Q. Okay.

13 MR. TRIGGS: Are you suggesting that the  
14 Bernsteins should be sued as last directors  
15 there?

16 MR. SELZ: It's up to you guys. Not me.  
17 You choose your causes of action. Not me.  
18 Maybe you want the trial stricken and the matter  
19 stricken to amend the --

20 MR. TRIGGS: Give me justice.

21 MR. SELZ: In one way or another.

22 Okay. Okay, now we're up to five.

23 (Thereupon, said document was marked as  
24 Defendant's Exhibit Number 5 for identification  
25 by the reporter.)

1 MR. BERNSTEIN: Can I ask that everybody  
2 speak up? It's very hard to hear.

3 MR. SELZ: Sure, Eliot.

4 MR. BERNSTEIN: Thank you.

5 THE WITNESS: Okay.

6 MR. TRIGGS: Let's just switch here so --

7 Q. (By Mr. Selz) Okay. This is an invoice  
8 or statement dated June 18th, 1999 --

9 A. Right.

10 Q. -- to iviewit Corporation.

11 A. Okay.

12 Q. Is iviewit Corporation one of the  
13 defendants in this action, sir?

14 A. I don't believe so.

15 Q. Now, you had indicated to me that when you  
16 initially met with the Bernsteins it was Al Gortz who  
17 had referred or been referred the case?

18 A. Correct.

19 Q. Okay. I'm showing - here's a - this  
20 billing statement which is dated June 18th, 1999,  
21 starts out with an entry in January of 1999. Is that  
22 the first entry of services, to the best of your  
23 recollection, in this matter?

24 A. I believe so. I can't tell if this is -  
25 is - if this is page 2 or there's another page that

1 should be in here. I suppose the face page is page 1.  
2 This is page 2. But to the best of my recollection,  
3 that's probably the first entry.

4 Q. Well, was the name of the entity formed  
5 iviewit Corporation?

6 MR. TRIGGS: Object to the form.

7 A. I'd have to be - go back and check.

8 Q. Well, let's go through the -- I don't know  
9 if the entries are going to give you any --

10 A. They don't help me.

11 Q. Don't help your recollection.

12 A. No, they don't, except they're corporation  
13 documents. Iviewit Corporation formation documents.  
14 So iviewit as iviewit.

15 Q. Well, let's go down to the entry for  
16 January 13th, 1999, entry by R. Foster. Who is R.  
17 Foster? It's on the first page.

18 A. R. Foster was a paralegal.

19 Q. Okay. So his time would be billed at what  
20 rate?

21 A. It would be billed at whatever the rate  
22 for paralegals was at that time.

23 Q. So that entry January 13th, 1999,  
24 preparation of Articles of Incorporation, bylaws and  
25 organizational minutes for iviewit Corporation --



1 A. Oh, all right.

2 Q. -- does that refresh your recollection?

3 A. Yes.

4 Q. How about the next entry? I mean, we  
5 talked about the fact that you were doing  
6 transactional work and involved with the business  
7 side. You indicated in your earlier testimony you had  
8 nothing to do with regard to the intellectual property  
9 side or the transactional side of the whole  
10 transaction.

11 A. That's correct.

12 Q. I'm looking at an entry dated January  
13 14th, 1999, for a half hour. I'm assuming .5 is a  
14 half hour billing increment time?

15 A. Right.

16 Q. Follow up on status on intellectual  
17 property review and iviewit Corporation new  
18 incorporation?

19 A. Right.

20 Q. What intellectual property review were you  
21 involved with?

22 MR. TRIGGS: Object to the form.

23 Q. What did you review in that billing  
24 statement in that particular entry, sir? What did you  
25 do in that particular entry?

1           A.     Well, I can't tell you exactly what I did  
2 a couple of years ago, but this would reflect that  
3 this was logistics. I was -- On the status of the  
4 intellectual property review. In other words, how  
5 were we going to handle the review of the intellectual  
6 property matters. And you can't tell as to what  
7 portion of this component relates to that and what  
8 portion of that relates to new incorporation. I mean,  
9 it was all built into one bundle. But obviously, I  
10 was make an inquiry as to how we were going to handle  
11 that.

12           Q.     And who were you making that inquiry to?

13           A.     It doesn't say.

14           Q.     The follow up on new corporation, would  
15 that have been internal within the firm?

16           A.     Yes.

17           Q.     Do you have any reason to believe the  
18 follow-up on the intellectual property would have been  
19 made to any other party besides within the firm?

20           A.     Well, it's internal right now because it  
21 hadn't been referred out yet.

22           Q.     How about, who is G. Goldman? Is that a  
23 member of the firm as well?

24           A.     That was an associate. I'm sorry -- Yes,  
25 that was an associate.

1 Q. Gregg Goldman?

2 A. Gregg Goldman.

3 Q. Okay. I'm referring you to the entry of  
4 January 26, 1999.

5 A. Which one?

6 Q. January 26, 1999.

7 A. Right. I don't know Mr. Goldman. I mean,  
8 I did not talk to Mr. Goldman, that I can recall.

9 MR. TRIGGS: Again, Steve, on this topic,  
10 I'm not going to instruct Mr. Wheeler not to  
11 answer based on relevancy, but you know that  
12 this June 18 statement is not an invoice that we  
13 contend is unpaid and doesn't form the basis of  
14 our claims. So you're again not covering topics  
15 that are relevant to the case.

16 MR. SELZ: Well, I think I'm covering a  
17 topic which is relevant. Based on his earlier  
18 testimony, there were no issues concerning  
19 patents and the only scope of Proskauer's work  
20 was simply transactional or with regard to  
21 trademark or copyright, which is what his  
22 earlier testimony was.

23 MR. TRIGGS: If your bottom line  
24 suggestion is that Proskauer did any improper  
25 patent related work, as you know, that subject

1 was dealt with --

2 MR. SELZ: Well, but --

3 MR. TRIGGS: -- by means of a motion in  
4 limine.

5 MR. SELZ: Wait, is this a speaking  
6 objection, then?

7 MR. TRIGGS: No.

8 MR. SELZ: Okay.

9 MR. TRIGGS: I'm pointing out the law on  
10 this piece and the status of this case.

11 MR. SELZ: I understand that. But I  
12 certainly have a right to inquire as to whether  
13 or not he was mistaken in his earlier testimony  
14 about the scope of Proskauer's representation of  
15 iviewit or not. And I'm not - I can't be  
16 limited because of his earlier testimony.

17 MR. TRIGGS: Look, and like I said, I'm  
18 not instructing him not to answer. All I'm  
19 telling you is, as I indicated earlier, that I  
20 think a day is fair with Mr. Wheeler, and choose  
21 your time wisely.

22 A. Goldman is obviously an associate who  
23 worked for us and was, I'm sure, in coordination with  
24 Ms. Robbins working on looking at the business plan to  
25 see how we should approach, whether there was

1 something we could get our arms around that could be  
2 patented. It hadn't been decided how it was going to  
3 be handled yet.

4 Q. Okay.

5 A. I mean, identifying whether it was even  
6 worthwhile. And obviously they conducted on line  
7 Internet search, even seeing if there were -- I'm not  
8 exactly familiar with how they - what they do on line  
9 on their Internet searches, but they look for  
10 conflicts and they look for - look for -- They look -  
11 they - they research and look for items whether it  
12 seems like it's been handled before. But I can't - I  
13 can't speak in detail to it because I'm not an expert  
14 in that area. So that's obviously more logistics on  
15 that.

16 Q. Okay. How about on the next page, page 3  
17 of that statement, January 28th, 1999, A. Gortz?

18 A. That's my partner.

19 Q. Okay. That's Al Gortz?

20 A. Right.

21 Q. .75?

22 A. Right.

23 Q. Ken Rubenstein call, looks like CF, call  
24 from?

25 A. Conference --

1 Q. Conference?

2 A. -- with Mara Robbins regarding the  
3 confidentiality agreement. So Mr. Gortz had a  
4 conference with Mara Robbins as to the confidentiality  
5 agreement. He also had a conference with Eliot  
6 Bernstein and Ken Rubenstein, perhaps introducing  
7 them.

8 This again was all at the initial stages,  
9 saying this is a new client, we want you to know him,  
10 we're probably going to - he's probably going to be in  
11 touch with you, and we're going to have some issues to  
12 review here.

13 Q. How about the 02/01/1999, conference as to  
14 status of intellectual property work?

15 A. Well, yeah, that --

16 MR. TRIGGS: What's the question?

17 MR. SELZ: I want him to see if he can  
18 explain the entry.

19 Q. What intellectual property work were you  
20 talking about in that particular entry?

21 A. I don't know.

22 Q. Don't have any recollection of what it was  
23 for?

24 A. No.

25 Q. Is there any place where there would be a

1 more complete description of the service provided?

2 A. No.

3 Q. How about on 2/16/99, .25, conference with  
4 Mr. Bernstein, call to Mr. Rubenstein. Is that Ken  
5 Rubenstein?

6 A. Yes.

7 Q. Can you recall what you spoke to  
8 Mr. Rubenstein about?

9 A. No.

10 Q. I didn't think so. How about the next two  
11 entries down, 2/17/99, .25, call to Mr. Rubenstein re:  
12 patent advice?

13 A. Right.

14 MR. TRIGGS: What's your question?

15 Q. Do you recall what that entry involves or  
16 what - what you would explain to Mr. Rubenstein about  
17 with regard to patent advice?

18 A. It would be logistics, once again.

19 Q. Now, by logistics you mean --

20 A. How are we going to handle this. Is -  
21 is - are you signing it, are we going to refer it out,  
22 are we going to - did you receive - did you receive  
23 the matter, did you -- But he - he would be definitely  
24 a patent person. So the IP there would be patent.  
25 Right. But it didn't mean we were dealing with

1 substantive matters.

2 Q. Well, to determine logistics, would you  
3 have to look at the substantive matters at all?

4 MR. TRIGGS: Object to form.

5 Q. If you know. I mean, I'm --

6 MR. TRIGGS: Are you asking him what he  
7 did?

8 A. I don't know. I don't do IP work.

9 Q. Sir, with regard to services provided, we  
10 talked about corporations and formation of  
11 corporations early on, and you testified that  
12 obviously the more complex the corporate setup, the  
13 more expensive the services would be in establishing a  
14 corporation.

15 Do you consider preparation of an  
16 application for an employer identification number, an  
17 SS-4, to be a complicated matter?

18 A. No.

19 Q. How about preparation of a fictitious name  
20 application?

21 A. No.

22 Q. How long do you think those should take,  
23 respectively?

24 A. I don't know, but that's a paralegal  
25 putting in that time. I don't consider those



1 unreasonable periods of time.

2 Q. How about the entry 2/23/99, .25, review  
3 of correspondence re: patent matters, do you have any  
4 recollection of who that correspondence was from?

5 A. No. I'd have to see what the  
6 correspondence was. But --

7 Q. How about with regard to the entries on  
8 the next page, 2/26/99? L. Gardner, 2.0, prepare  
9 proof of publication, file fictitious name  
10 application, obtain FEIN number, letter to E.  
11 Bernstein regarding FEI number. I understand it's a  
12 paralegal, but weren't those some of the same services  
13 billed earlier on this billing statement?

14 A. Right. But she could have been -- One's  
15 preparing -- I mean, she could continue with the  
16 preparation of it. And we don't know it's the same  
17 one.

18 Q. Now, this --

19 A. Two hours at \$75 or, let's say it was \$65.  
20 I don't know what it was at that time. It was \$60.  
21 It would be \$120.

22 MR. TRIGGS: Steve, we'll write that one  
23 off. You guys cut the check for the balance.  
24 How about that?

25 Q. How about 3/24/99? .50. Call to

1 Mr. Lewin; conference with Mr. Healy regarding  
2 copyright; conference with patent counsel.

3 A. I see it.

4 Q. Okay?

5 MR. TRIGGS: What's your question?

6 Q. Do you have any specific recollection of  
7 who that patent counsel was?

8 A. No.

9 Q. How about --

10 A. But I believe it's Ray Joao and myself. I  
11 have no recollection, but I believe that's who it is.

12 Q. How about the entry, 3/31/99?

13 A. Of?

14 Q. K. Healy.

15 A. Uh-huh.

16 Q. .25, TC with K. Rubenstein re: patent  
17 advice.

18 A. With Eliot Bernstein.

19 MR. TRIGGS: What's your question?

20 A. Oh, K. Rubenstein.

21 Q. Re: patent advice?

22 MR. TRIGGS: What's your question?

23 Q. Do you have any knowledge as to what that  
24 entry involves?

25 A. No. It's not my entry.

1 Q. Does it change your earlier testimony that  
2 Proskauer Rose was providing any patent advice or any  
3 intellectual properties advice to iviewit?

4 A. No, because if you go up to 3/29/99, the  
5 same Guy, Kevin Healy, it shows he had a telephone  
6 conference with Raymond Joao regarding patent pending.  
7 So chances are he was responding to Ken Rubenstein  
8 tell Ken Rubenstein that he got Ray Joao involved.

9 Q. Well, that's speculation, because you  
10 don't know for sure.

11 A. You're right.

12 MR. TRIGGS: Steve, you are the one who  
13 asked him a question --

14 MR. SELZ: No, I didn't.

15 MR. TRIGGS: -- about a billing entry.

16 That's not his name.

17 A. You asked me if it changed my mind, and I  
18 said no. And I'm telling you the reason why it  
19 wouldn't change my mind.

20 Q. That's fine. How about Real 3D, there is  
21 an entry here on 4/30/99, confirm appointment with  
22 Real 3D?

23 A. Right.

24 MR. TRIGGS: What's the date again?

25 MR. SELZ: It's 4/30/99.

1 A. All right.

2 Q. Who is Real 3D?

3 A. Real 3D was a corporation that was up in -  
4 near Orlando. Central Florida. And they were  
5 purported to be the - as Jerry Stanley, their  
6 president, was purported to be one of the preeminent  
7 imaging experts and imaging companies. I don't know  
8 if the company would be called imaging company, but he  
9 would certainly be called imaging expert in the world.

10 Q. And there was I guess some sort of a  
11 meeting that you were having with them, if you can  
12 recall?

13 A. Well, I can recall very definitely.

14 Q. Go ahead.

15 A. What do you want to know about the  
16 meeting?

17 Q. Well, the meeting took place, obviously.  
18 When and where did it take place?

19 A. The company, Sy and his colleagues, Eliot,  
20 were reaching out and - and trying to establish  
21 contacts that they felt would be useful in many  
22 different domains. Whether it be customers who  
23 could - they could put on their web site, whether it  
24 be financiers who could help them finance their  
25 project, or whether it be --

1           So I made some calls, and through - to  
2 some other people I thought who were important in the  
3 technology field. They referred me and had - were -  
4 and the call I made was at 4/20/99 with Mr. Ferguson.  
5 They referred me to Mr. Stanley. They were doing a  
6 very gracious thing, and said Mr. Stanley, and also  
7 opened up the introduction to Jerry Stanley. I did  
8 not know him. So I called Stanley. He agreed to come  
9 down and look at the iviewit technology.

10           He came down and set up and met with - and  
11 saw the presentation. He was impressed, and he  
12 invited Eliot and - and - to come up and make a  
13 presentation to his entire staff. And I suppose you  
14 must know the rest about Real 3D and whoever they are,  
15 so I don't need to go into that.

16           MR. TRIGGS: Just answer the questions.

17           Just open up this door a little bit.

18           Q. Did you attend that meeting with Real 3D?

19           A. I attended both the presentations since I  
20 had set it up, and I - I attended the meeting up in  
21 Orlando where we went up.

22           Q. Do you recall when that meeting took  
23 place?

24           A. Yes. Took place on - took place on -- The  
25 meeting up there took place on 5/25.

1 MR. TRIGGS: Just to be clear for the  
2 record, Steve, just so we're both on the same  
3 page, he's getting the date by reviewing the --

4 THE WITNESS: The bill.

5 MR. TRIGGS: -- the bill.

6 MR. SELZ: That's fine.

7 Q. That was the eleven hour charged trip to  
8 Orlando for meeting with Real 3D?

9 A. We left in the morning and came back in  
10 the night. Drove. By caravan.

11 Q. Do you have any idea what this 4/26/99  
12 entry is, 1.0, rewrite iviewit letter?

13 A. I don't know which one that is.

14 Q. 4/26/99?

15 A. No, I see the entry, but I don't know  
16 which letter that was.

17 Q. Now, you said you did transactional work.  
18 Do you also do any intellectual properties work at  
19 all?

20 A. No.

21 Q. Were you involved with reviewing the  
22 trademark or any of those other things?

23 A. No.

24 Q. Okay. Then I'm going to refer you to an  
25 entry on 5/4/99.

1           A.     Right.  It says, review status of  
2 trademark.  Doesn't say review the trademark.

3           Q.     So all you did was review the status?

4           A.     I reviewed whether it was being followed  
5 through on, the logistics, and how it was coming, and  
6 it was a follow-up.  That's my responsibility.

7           Q.     Okay.  I'm going to refer you to entry of  
8 5/11/99.

9           A.     Uh-huh.  By who?

10          Q.     J. Zamas.

11          A.     Okay.  Paralegal.

12                   MR. TRIGGS:  What's your question?

13          Q.     Well, do you have any knowledge with  
14 regard to what was done for that entry, the  
15 preparation of Articles of Incorporation,  
16 organizational documents for iviewit.com, Inc.?

17          A.     I assume it means exactly what it says.  
18 That we were preparing Articles of Incorporation.

19          Q.     Did you review any documents for  
20 iviewit.com, Inc.?

21          A.     Did I review any documents?

22          Q.     Yes.  Organizational documents for  
23 iviewit.com, Inc.?

24          A.     I don't know.  I'd have to look through  
25 here.  Are you talking about me individually?

1 Q. Yes.

2 A. Or are you talking about Proskauer?

3 Q. No, you individually.

4 A. I - I can't tell. And it wouldn't be -- I  
5 can't tell.

6 Q. Okay. Now, earlier in your testimony you  
7 talked about the fact that Proskauer does not do work  
8 on a fixed-fee basis or that the fixed-fee basis was  
9 not the agreement with regard to any services  
10 provided?

11 A. Well, that's --

12 MR. TRIGGS: Object to form.

13 Q. Let me go back. I'll start from the  
14 beginning, please.

15 Your earlier testimony was that the  
16 services you provided to iviewit were not on a fixed  
17 fee basis; but, rather, were on an hourly basis, is  
18 that correct?

19 A. Yes. The corporate services.

20 Q. I don't know if that was your testimony or  
21 it was just --

22 A. Well, I'm clarifying it.

23 Q. Okay. The corporate services were on a  
24 fixed-fee basis?

25 A. Right.



1 Q. Were there any services that were provided  
2 on a fixed-fee basis?

3 A. I'm not sure. Perhaps - perhaps some of  
4 the copyright stuff may have been done on a fixed-fee  
5 basis. Trademark and copyright.

6 Q. Was there a separate agreement setting  
7 forth the fixed-fee basis for that trademark and  
8 copyright work?

9 A. No, but we charged them consistent with  
10 our - our overall agreement. We certainly weren't  
11 going to charge them differently than we charged  
12 anybody else. If it was a fixed fee, we'd charge  
13 them.

14 Copyright and trademark, I'm not totally  
15 familiar with them, but they - they are - there are  
16 certain items that are charged simply on a fixed-fee  
17 basis. Certain searches and whatever.

18 Q. How about with regard to the entry on  
19 5/17/99?

20 MR. TRIGGS: What's your question?

21 MR. SELZ: Let me -- I want to direct him  
22 in the right direction first.

23 MR. TRIGGS: I just want you to ask him a  
24 question.

25 MR. SELZ: Okay.

1 THE WITNESS: Okay. Whose entry?

2 Q. Your entry.

3 A. Okay.

4 Q. There is - there's actually three entries  
5 during that day. Conference on various contracts.

6 Conference with Mr. Bernstein and review of iviewit  
7 agreements.

8 Do you have any recollection of what those  
9 services were?

10 A. No. What was your question?

11 Q. My question is, do you have any  
12 recollection as to what those services were for?

13 A. I don't have any recollection.

14 Q. Do you have any recollection of a CD-ROM  
15 licensing agreement being part of the transactions or  
16 part of the work that you did?

17 A. A CD-ROM licensing agreement.

18 Q. Licensing agreement.

19 A. I don't have any - I don't have any  
20 familiarity with it, other than the entry shown as -  
21 shown for the Silver. Chances are that was something  
22 that was handled separate and apart from me.

23 Q. I know. But you were the lead person on  
24 the iviewit files, is that correct?

25 MR. TRIGGS: Objection, argumentative.

1 MR. SELZ: No, not argumentative.

2 A. Right. But it doesn't mean I knew I every  
3 detail on everything - every file.

4 Q. And you met with the board and with the  
5 Bernsteins on a regular basis.

6 A. Not at this stage.

7 Q. Okay. This is early on.

8 A. This is early on.

9 Q. Okay. So these corporations were just  
10 being formed at this point?

11 MR. TRIGGS: Object to form.

12 A. All of this organizational work was just  
13 being done at this time.

14 Q. Do you have any recollection as to whether  
15 or not there was any transactional work that you were  
16 involved with with transferring the technology rights  
17 or any of the technology agreements from Eliot  
18 Bernstein or whoever the inventors were to the  
19 corporations?

20 A. I have - I have recollections of that  
21 being done. Correct.

22 Q. And would you look at the technology  
23 agreements to be able to determine what assets were  
24 being transferred?

25 A. I'm not sure I understand.

1 Q. Okay. Did you look at the technology  
2 agreements to determine what assets were going to be  
3 transferred from, let's say, Eliot Bernstein to the  
4 corporation?

5 MR. TRIGGS: Object to form.

6 A. Technology --

7 MR. TRIGGS: Foundation.

8 A. -- agreements. I don't know what a  
9 technology agreement is. What do you mean?

10 Q. Technology licensing agreements.

11 A. Oh.

12 MR. TRIGGS: What's the question?

13 MR. SELZ: Did he look at the technology  
14 licensing agreements to determine what assets  
15 were being transferred from the individual to  
16 the corporation.

17 MR. TRIGGS: Object to form. Foundation.

18 Whenever you get to it --

19 A. I'd have to see the technology. I'd have  
20 to see the documents that you are talking about to  
21 understand your question.

22 I'm not sure whether I understand -- Are  
23 you saying, did I look at the agreements that  
24 transferred the - Eliot's rights to the other  
25 companies and --

1 Q. Correct.

2 A. I - I may not - I may or I may have not  
3 looked at the agreements, depending upon who had  
4 reviewed them and the level of comfort that we had  
5 with the person handling it.

6 MR. TRIGGS: Steve, when you get to a  
7 breaking point, take like a five-minute break.

8 MR. SELZ: You want to take a five-minute  
9 break?

10 MR. TRIGGS: That's fine with me. Two to  
11 five minutes. Whatever you guys want. I want  
12 to be quick. I want to get the maximum  
13 deposition coverage.

14 MR. BERNSTEIN: I need about fifteen.

15 MR. SELZ: How about compromise, say, at  
16 ten?

17 MR. BERNSTEIN: Okay.

18 (Brief recess.)

19 Q. (By Mr. Selz) Okay. Who is Hassan Mia?

20 A. He was -- Hassan Mia?

21 Q. Yeah. Hassan Mia.

22 A. He was a friend of Eliot -- Is it Eliot  
23 Cohen?

24 Q. Yeah.

25 A. He was a friend of someone's. Eliot or

1 one of Eliot's contacts who flew in from the West  
2 Coast, and he had been purported to be associated  
3 with - had sold one of his first high tech companies  
4 out and - and then was involved in some way with Real  
5 Player or Real Audio or whatever, but my sole contact  
6 was when he flew in for the weekend and we met him.  
7 Or I believe that's my sole contact.

8 What date is that?

9 Q. 5/24/99. I suspect that's a weekday.

10 A. No, I think it was a weekend. They flew  
11 in on a weekend. Wait a minute. 4/24. Let me see.

12 Q. 5/24.

13 A. 5/24.

14 Q. Because you've also got a conference that  
15 day with - or, rather, D. Thompson had a conference  
16 with you regarding confidentiality issues.

17 A. Okay. Well, maybe Hassan Mia was here  
18 twice for longer periods of time. Or I could have  
19 talked to Thompson separately.

20 Q. How about this one for 5/26/99, the  
21 1.0-hour entry?

22 MR. TRIGGS: What's your question?

23 Q. It says, review of patent; set up patent  
24 conference; arrange follow-up on shares. You reviewed  
25 the patent?

1           A.     Well, I reviewed what I had. We came  
2 back -- If you noticed, we went on the trip on 5/25.  
3 At that meeting, for the first time, Eliot displayed  
4 to all of us a new product. A video product. And I  
5 was driving with his - with his father and with Jerry  
6 Lewin in one car and Eliot was in another car, and as  
7 we were driving back I said - I asked the question, I  
8 said, this new product, is this - what have you done  
9 on the patent on this? And Eliot told us all - he was  
10 on the phone, he was in another car - he told us all  
11 that they hadn't done any work on that yet.

12                     So what I did was, I - Eliot had - as he  
13 had the patents, he wanted us to lock them up, so I  
14 had them locked up. So I pulled - when we returned, I  
15 pulled up the locked up patents out to make sure I had  
16 them. So I was reviewing them, and we determined we  
17 were going to have to set up a conference to make sure  
18 he was covered with Joao and everybody to see what to  
19 do in view of this new development.

20                     So reviewing the patent -- There's  
21 reviewing the patent and reviewing the patent. If  
22 you're saying reviewing it substantively, no.  
23 Reviewing it to see that I have what was supposedly  
24 the patent in the right thing and what everyone was  
25 going to talk about in the conferences, yes.

1 Q. Okay. Well, maybe I misunderstood part of  
2 your earlier testimony. You said you looked at the  
3 patents to figure out whether or not - maybe I'm  
4 mistaken - they covered the issue and whether or not  
5 to bring it to Joao's attention?

6 A. No, I wasn't looking to see if it covered  
7 the issue. I was looking to see if -- I was looking  
8 to see what I had in my filing cabinet Eliot had been  
9 giving to me and to store away for him. And since we  
10 were going to be talking in anticipation of the  
11 conference saying I better pull this out, it was a  
12 logistical thing, because I had no idea when we  
13 started talking to Joao or whatever what he was - what  
14 they were going to be referring to, because there was  
15 not - whether it was going to be one patent, two  
16 patents, three, if some were modifications or  
17 whatever. So I was reviewing to see what I had.

18 Q. Okay. Well, let's go on to the last page,  
19 the next page of the bill, I should say.

20 A. Right.

21 Q. Which is page 18.

22 A. Right.

23 Q. And I'm going to direct you to - actually,  
24 let's see, there is 5/27/99.

25 A. Right.



1 Q. It says 1.5, entry for you: Overview of  
2 iviewit patent matters and corporate matters?

3 A. Right.

4 Q. What did that entail?

5 A. It would entail sitting down, taking a  
6 piece of paper and seeing where we are on each thing;  
7 who is doing what on corporate; who is doing -- Now  
8 that we've gone to this weekend, now that we've gone  
9 to these conferences, now that we see and really  
10 giving myself an overview of who is doing what and who  
11 is following through and on what patent matters and on  
12 what corporate matters. Again, more logistical.

13 Q. I'm sorry, that's -- The only distinction  
14 between that and the entry on 5/26 is what?

15 MR. TRIGGS: Object to the form. I think  
16 he's testified as to what the entries were. You  
17 want him to tell you again?

18 Q. What's the difference in the entry on 5/26  
19 which says, review of patents and set up patent  
20 conference, and 5/27, overview of patent matters?

21 A. Well, first of all, overview, it's  
22 overview of patent matters and corporate matters. So  
23 I was looking at -- I mean, a portion of it was the  
24 patent matters, but a portion of it was the corporate  
25 matters. So it's quite distinguishable on that. And

1 as far as review of the patent, it was actually  
2 looking at the real patent documents for the first  
3 time to sort them out in anticipation of a conference  
4 call we were going to have which resulted from Eliot  
5 telling us he had not followed up with Joao in doing  
6 the video.

7 And so, I mean, there were a bunch of  
8 documents. So it was organizing, putting them  
9 together in anticipation of the whole conference.

10 Q. Okay. And 5/28/99, D. Thompson II,  
11 conference with D. Thompson it appears, according to  
12 that?

13 A. Right. Re: patents and confidentiality  
14 agreements?

15 Q. Correct.

16 MR. TRIGGS: What's your question?

17 Q. I don't see an entry for a meeting you had  
18 with D. Thompson on that date.

19 A. I probably missed it. We don't always put  
20 down our time.

21 Q. So it's a freebee. Is that how that one  
22 works?

23 A. I would say that mine is probably subsumed  
24 by 5/28, a meeting as to patent issues and management  
25 matter.

1 Q. And how about 5/31, review of patent and  
2 other materials?

3 MR. TRIGGS: Again, what's your question?

4 Q. What did that entry entail, if you can  
5 recall?

6 A. I don't recall.

7 MR. SELZ: Number six?

8 (Thereupon, said document was marked as  
9 Defendant's Exhibit Number 6 for identification  
10 by the reporter.)

11 Q. (By Mr. Selz) During the summer, were  
12 there any other discussions that you could recall with  
13 Ken Rubenstein regarding the patents or the  
14 intellectual properties of iviewit?

15 MR. TRIGGS: Object to form. During what  
16 period of time?

17 Q. During the period of time that we've  
18 discussed for the first bill, which was January 1999  
19 through May '99.

20 A. What was the question?

21 Q. Can you recall any other conversations or  
22 discussions you had with Ken Rubenstein?

23 A. Other than as reflected in there?

24 Q. Other than as are reflected in these  
25 billing statements.

1 A. No.

2 Q. Do you recall a corporation named I.C.,  
3 Inc.?

4 A. I.C., Inc.?

5 Q. Yeah.

6 A. How do you spell that?

7 Q. Capital I capital C, Inc.?

8 A. Where is it?

9 Q. It's on page four.

10 A. No.

11 Q. Do you know if any corporation, I.C.,  
12 Inc., was ever formed?

13 A. No.

14 Q. In that same entry, it also says  
15 preparation, certificate of cancellation of iviewit  
16 LLC? Do you have any knowledge of that?

17 A. I don't have any recollection of it.

18 Q. And this is after the September 8th, 1999,  
19 engagement letter, is that correct?

20 A. Correct.

21 Q. And iviewit LLC was the party that entered  
22 that engagement letter with Proskauer Rose, is that  
23 correct?

24 MR. TRIGGS: Objection. You have now  
25 covered that issue about five, six times.

1 MR. SELZ: This is my twelfth.

2 A. Yes.

3 Q. Yes?

4 MR. TRIGGS: Date hasn't changed, Steve.

5 MR. SELZ: Time hasn't, either.

6 MR. TRIGGS: Apparently.

7 Q. Who is Mr. Assaf, A-s-s-a-f?

8 A. Mr. Assaf.

9 Q. I'm sorry, Assaf.

10 A. He was an investor.

11 Q. Any particular organization that he was  
12 with, Mr. Assaf?

13 A. He was chairman of Sensomatic Electronics  
14 Corporation. But he was al - he's also a great  
15 philanthropist in town and a - and he's invested in  
16 considerable number of corporations. So they asked -  
17 I - they were constant -- Sy and Jerry and everybody  
18 else was constantly asking for new sources, so they  
19 asked me to talk to him, so I did --

20 Q. Okay.

21 A. -- to see if he had any interest. And he  
22 actually did come over once, and I don't know if this  
23 is the first time or the second time --

24 Q. There's an entry --

25 A. -- or the third time that I talked to him.

1 Q. Okay.

2 A. But on one occasion he did come over and  
3 see the product.

4 Q. There's something here, it says 1/05/2000,  
5 C. Wheeler, .5, follow-up on status of lawsuit  
6 preparation, review of news articles? Do you recall  
7 what that was for?

8 A. Don't honestly know.

9 Q. Do you remember a lawsuit that was ever  
10 filed by any iviewit of the iviewit entities?

11 A. No, but I'd have to go back and check my  
12 notes to see whether there were.

13 Q. Would that be normally handled by the  
14 litigation department at Proskauer Rose?

15 A. But this says status of lawsuit  
16 preparation. So if one of my large clients comes in  
17 and is a corporation and we have a lawsuit, it  
18 wouldn't be unusual for me, as I - just to place a  
19 call and say, how are we coming on that lawsuit, Matt,  
20 how are we coming on that lawsuit, David, or whatever.  
21 Review of news articles could have obviously been  
22 articles relating to - to this.

23 Now, as to lawsuit, I don't - I don't - I  
24 don't know. I'd have to go back and check and see  
25 what lawsuit we had going or what litigation related

1 things we had going. It could have been -- At one  
2 time, I don't know if - I can't say whether this is  
3 the time or not, but there were occasional matters  
4 that - that came in that were threatened or whatever.

5 For instance, Jim -- For instance, the  
6 person from New Jersey, Armstrong wanted to get his  
7 money back or - and so he threatened a lawsuit, and  
8 this could have been a response letter or something  
9 else like that.

10 From time to time there were peripheral  
11 litigation matters. I don't know if any of them  
12 blasted into full-fledged lawsuits. I don't recall.

13 Q. Okay. How about on -- Let's see, we've  
14 got the ninth page of that billing statement.

15 A. All right.

16 Q. 1/11/2000, 1.0, conference with  
17 Mr. Bernstein regarding patents and infringement.  
18 That doesn't sound administrative to me. Could you  
19 describe what that activity was?

20 MR. TRIGGS: Object to the preface as  
21 argumentative.

22 MR. SELZ: I'll retract that.

23 Q. Could you describe for me what that was  
24 dealing with, sir?

25 A. I can't remember. But Eliot was disturbed

1 that - at times that people may have been trying to  
2 steal his patents. So I believe he came in and talked  
3 to me about it.

4 Q. And the same day there is another  
5 conference with Eliot Bernstein for an hour.

6 A. Right.

7 Q. And a one-hour conference with Mr. Utley.

8 A. Right.

9 Q. And a one-hour conference with Mr. Joao.

10 A. Right.

11 Q. And another one-hour conference with  
12 Mr. Thompson and Mrs. Robbins regarding work.

13 A. Right.

14 Q. Whatever that was.

15 A. Right.

16 Q. And another half hour conference with  
17 Mr. Lewin regarding patents.

18 A. Right.

19 Q. And then another half hour conference with  
20 Mr. Bernstein, Mr. Utley, regarding status of patents  
21 and corporate setup.

22 A. Right.

23 Q. And then you've got another entry for 8.75  
24 hours -- I'm sorry. That's Robbins. I'm sorry.

25 A. Robbins.



1 Q. I'm sorry.

2 A. You are going to commend me on working so  
3 hard.

4 Q. I was going to say, you got to cut back.  
5 So you have - but again, it references --  
6 Do you have anything with regard to that - those ones  
7 referencing patents, the 1/11/2000 to --

8 A. I don't recall exactly. So - I mean, it  
9 would be speculation. I would believe they're all  
10 related, to be honest with you.

11 Q. Again, I know you have answered this, but  
12 I just want to make sure, you don't have any more  
13 comprehensive notes as to the services provided, other  
14 than what's contained in these billing statements, is  
15 that correct? You don't have a handwritten billing  
16 statement that has a more complete description of the  
17 services?

18 A. No, no, no.

19 Q. Or you don't have some interim billing  
20 statement and then it's produced or redacted or  
21 whatever?

22 A. No. Here's the name of the person, Cris  
23 Branden was his last name, at Huizenga Holdings --

24 Q. Okay. Thank you.

25 A. -- that we were concerned about.

1 Q. Okay. Now, there's a - there's an entry  
2 here which is 1/12/2000 with J. Zamas.

3 A. It's a paralegal.

4 Q. Paralegal. Right.

5 A. All right.

6 Q. Okay. Fax Articles of Amendment for  
7 Iviewit Holdings, Inc., uview.com, Inc., to  
8 CorpAmerica for filing, work on due diligence.

9 A. 1/11 is this?

10 Q. I'm sorry, 1/12.

11 A. Wrong page.

12 MR. TRIGGS: Page 11.

13 Q. Page 11.

14 A. Okay.

15 Q. 1/12.

16 A. 1/12.

17 Q. J. Zamas.

18 A. Fax Articles of Amendment for Iviewit  
19 Holdings, Inc. and uview.com and to CorpAmerica for  
20 filing. All right.

21 Q. Okay. Those entities, uview.com, Inc.,  
22 and Iviewit Holdings, Inc., aren't parties to this  
23 action, are they?

24 MR. TRIGGS: Iviewit Holdings, Inc.?

25 MR. SELZ: Iviewit -- You've got --

1 A. Iviewit Holdings, Inc., is.

2 Q. Is, but uview.com, I'm sorry, isn't.

3 A. Well, uview.com was, as I recall -- I  
4 mean, I have to go back and look at our charts and  
5 things like that. But it might have been a  
6 predecessor to one of these. That's my point. I  
7 mean, there were name changes. As we did mergers and  
8 that, just like in any corporate matters, once you  
9 effect the merger and make the transfers, then  
10 sometimes you change the name again.

11 So I don't know the answer to that  
12 question. Iviewit Holdings, Inc., is definitely a  
13 party to this. Uview.com, Inc., I think became  
14 something else. I think the name was changed.

15 Q. How about this entry, January 14th, 2000,  
16 page 12. It's under D. Thompson II. .75, conference  
17 and analysis with attorneys C. Wheeler and G. Coleman  
18 regarding securities and technology issues.

19 A. Right.

20 Q. Do you recall what that was involving?

21 MR. TRIGGS: Object to form.

22 A. Conference and analysis with attorneys  
23 regarding -- Well, I don't know if it was one  
24 conference or two. So what -- You talk to Gayle  
25 Coleman regarding securities. I don't know if it was

1 a conference with the two of us or two separate  
2 conferences. So, no, I don't recall what it is.

3 Q. How about on January 14th, 2000, it says  
4 conference with Mr. Utley and Mr. Rubenstein?

5 A. Uh-huh.

6 Q. Is that Ken Rubenstein?

7 A. Uh-huh.

8 Q. You have to say yes or no for the court  
9 reporter.

10 A. Yes. I'm sorry.

11 Q. Do you have any recollection as to what  
12 that conference was about?

13 A. No.

14 Q. Was that in person or was that telephonic?

15 A. Telephonic. I mean, Utley was probably  
16 with me in person, and Rubenstein was probably on the  
17 line.

18 Q. Do you have any recollection at all what  
19 you discussed?

20 A. No.

21 Q. And this was past the initial formation  
22 phase of the corporation? This was in January of 2000  
23 already, is that correct?

24 A. Correct.

25 Q. What was Investech, if you know?

1 MR. TRIGGS: Point him to a place in the  
2 bill.

3 A. That was Huizenga's subsidiary. That was  
4 the affiliated company. That was his - that's his  
5 high tech affiliate. I believe that's correct.

6 Q. How about - I don't know if you have any  
7 information on this, but let me ask it to you. It's  
8 on January 14th, 2000, G. Coleman.

9 A. Uh-huh.

10 Q. 3.25 entry. It's a telephone conference  
11 with Martha re: private offering memorandum; telephone  
12 conference with E. Lewin re: audited financial  
13 statements; interoffice conference with R. Thompson.  
14 Then it goes, preparation of revisions to intellectual  
15 property risk factors.

16 A. Uh-huh.

17 Q. Interoffice conference with C. Wheeler  
18 regarding potential intellectual property  
19 infringement.

20 A. Uh-huh. She was doing a Private Placement  
21 Memorandum, so she was explaining how she was  
22 approaching it.

23 Q. Would she prepare some kind of --

24 A. Well, I mean, it says the disclosure.  
25 There was a private placement they were putting

1 together. I don't think the private placement ever  
2 came to fruition. I think it was called off. I could  
3 be wrong. Maybe the document was used. I'd have to  
4 go back and check.

5 Q. When iviewit LLC was dissolved, did you  
6 ever make an attempt to get any other signed retainer  
7 agreement?

8 A. No.

9 Q. Or signed engagement agreement from any of  
10 the other entities?

11 A. No.

12 Q. Was there any particular reason why you  
13 didn't?

14 A. No.

15 Q. There's an entry on the next page, page  
16 14, 1/17/2000, G. Coleman. I don't know if you've got  
17 any information about this. But it says, conference  
18 with E. Lewin regarding financial information;  
19 telephone conference with K. Rubenstein regarding  
20 potential or possible infringement it says.

21 A. Uh-huh.

22 Q. Do you have any information about that at  
23 all?

24 A. No.

25 Q. Did you --

1           A.     But since he was doing a securities  
2 document, I - I mean, it speaks for itself. She was  
3 probably talking to him about doctrinaire matters.

4           Q.     Was there ever a Share Exchange Agreement  
5 that was executed with Investech?

6           A.     I'd have to check my files. I - I think  
7 there was a Share Exchange Agreement that was executed  
8 by virtue of the re -- There was a reorganization  
9 approximately about this time, and we needed the  
10 cooperation of all the shareholders. So I believe  
11 that that's - it was part of that - that, but I have  
12 to check to be certain.

13          Q.     How about Crate Investments?

14          A.     Where is - what page?

15          Q.     Page 17. January 26 entry. Conference  
16 with Brian Utley - it's not your entry - but regarding  
17 Alpine and Crate Investments.

18          A.     Whose entry is it?

19          Q.     D. Thompson.

20          A.     With Alpine and Crate Investments. I'm  
21 not familiar with Crate Investments. But there were  
22 numerous -- I mean, they had a list of investors they  
23 were trying to get to invest, so --

24          Q.     How about the next entry. It says - it's  
25 an entry from you, .25, conference as to follow-up on

1 our money?

2 A. Okay.

3 Q. Whose money is that?

4 MR. TRIGGS: What - what's the date there?

5 MR. SELZ: January 26, 2000.

6 A. I don't know what that means.

7 Q. Was it money for the -- Well, strike that.  
8 You already said you don't know.

9 A. It doesn't sound appropriate. I think  
10 it's more of a typo. It must - handwriting. I don't  
11 know what our means, so I don't know. It might be  
12 something else.

13 I mean, it doesn't sound like in  
14 character.

15 (Thereupon, a document was marked as  
16 Defendant's Exhibit Number 7 for identification  
17 by the reporter.)

18 Q. Okay. How about the entry on - this is on  
19 the third page of this billing statement at the very  
20 bottom. It's 3/10/2000. C. Wheeler. 25, conference  
21 with B. Utley and M. Robbins regarding preparation of  
22 employment agreement.

23 Do you recall whose employment agreement  
24 that was?

25 A. I think it was -- No, I don't recall, but



1 obviously -- Oh, it was Armstrong's employment  
2 agreement. Surrounding items make it clear.

3 Q. Who is Armstrong?

4 A. He's a friend of Eliot's from New Jersey  
5 who Eliot brought into the company. Right. Jim  
6 Armstrong his name was.

7 Q. Another question with regard to an entry  
8 on 3/22/2000. It's on the next page, page 5. It's  
9 towards the bottom. .25. Arrange review of  
10 confidentiality agreement.

11 How do you arrange the review of  
12 confidentiality agreement?

13 A. Talk to the person that said you need to  
14 do a confidentiality agreement. So - and she did,  
15 because on the next entry she had a meeting with Brian  
16 Utley regarding confidentiality agreements.

17 Q. And that took a quarter of an hour, 15  
18 minutes?

19 A. Well, I had to tell her what was involved  
20 and what we were going to be doing and whatever.

21 Q. What's 3Com NDA, if you know what that is?

22 A. Where is that?

23 Q. It's on page 6 under an entry dated

1 obviously someone they were working with.

2 Q. How about under 3/27/2000, .25, follow-up  
3 on trademark matters? When you follow up on a matter  
4 like that -- Let me go back for a second. When you  
5 follow up on a matter like that, what do you do, do  
6 you call one of the other people who is working on the  
7 trademark and ask them what's going on, basically?

8 MR. TRIGGS: Object to the form. Are you  
9 talking about that particular entry or are you  
10 talking about a general policy?

11 MR. SELZ: Generally.

12 Q. When your billing statement says follow up  
13 on trademark matters, you are not actually doing the  
14 trademark matter, you are calling someone who is  
15 working on it and asking them what the status is? Is  
16 that what that is?

17 A. Yeah. You can tell from the - again, the  
18 surrounding issues. There were trademark issues, and  
19 they were talking to me about them and what it  
20 probably - I mean, we can only speculate, but there  
21 was some follow-up on -- Some question was raised on a  
22 trademark matter and I followed up to make sure it was  
23 taken care of. Whatever the proper person.

24 Sometimes it was delegated to a local  
25 person who was charged with coordinating with New York

1 and getting things done. Sometimes, if I knew the  
2 person directly in New York who was handling, I could  
3 call him directly. It's follow-up. In most cases -  
4 and in this issue, follow-up would generally mean  
5 turning to the person here in Boca Raton who was  
6 handling it.

7 Q. Now, do you know if those trademarks for  
8 the iviewit entities were ever completed?

9 A. Well, I mean, there were - trademarks -  
10 trademarks and copyrights?

11 Q. Correct.

12 A. Were always in different states of - of  
13 being processed.

14 Q. Okay. But you were following up on them  
15 to make sure they were completed, presumably, is that  
16 right?

17 MR. TRIGGS: Objection, argumentative.

18 Q. You were following up on them for what  
19 purpose, sir?

20 A. I was following up to see the status.

21 Q. Okay. And why would you follow up to  
22 check the status?

23 MR. TRIGGS: Again, are you referring to  
24 this specific entry or generally follow up in  
25 general?

1 MR. SELZ: In general.

2 Q. Follow-up in general, why would you  
3 follow-up?

4 MR. TRIGGS: Object to the form  
5 irrelevant.

6 A. There can't be a general follow-up. There  
7 has to be a follow-up to check on a specific item,  
8 where it was or --

9 Q. Let me rephrase the question, then. With  
10 regard to this particular item, what was the purpose  
11 of the follow-up?

12 A. I don't know.

13 Q. Would it be a fair characterization, sir,  
14 to make sure that you followed up to make sure things  
15 were completed?

16 A. No.

17 Q. Why else would you follow up on a matter?

18 A. We would follow up to find out what the  
19 present status of that copyright or trademark was,  
20 because they - if it had been completed, if it had  
21 been filed, if it was being challenged or --

22 I'm not totally conversant with it, but  
23 following up is at what stage of the process is it,  
24 and so we can report back to the client. You have a  
25 valid trademark, you don't have a valid trademark,

1 it's going to cost you more money to continue  
2 prosecution of this trademark being challenged.

3 I mean, there could be many different - it  
4 could be in the - its status could be in many  
5 different categories.

6 Q. Okay. So it could be at many different  
7 stages of the prosecution of a trademark or copyright?

8 A. Absolutely.

9 Q. Now --

10 A. And there seems to be quite a bit of  
11 activity with other people involved in the trademark  
12 and copyright issues at this time. So obviously  
13 something was going on.

14 Q. I'm going to refer you down to 3/30/2000,  
15 the next page.

16 A. 3/30?

17 Q. Yes.

18 A. Okay.

19 Q. There's two entries. One is .5 conference  
20 with B. Utley re: NBA?

21 A. Right.

22 Q. That's Brian Utley?

23 A. Right.

24 Q. Do you have any idea what NBA is?

25 A. Yes, National Basketball Association.

1 Q. What was the National Basketball  
2 Association with?

3 A. He wanted us to see if we could sell the  
4 product to the NBA.

5 Q. And did you undertake that?

6 A. We placed calls. We represent the NBA, or  
7 we do a lot of their work, and we placed calls, but  
8 not successfully.

9 Q. Okay. And that same day there is another  
10 entry, .25, conference with B. Utley regarding  
11 copyright?

12 A. Right.

13 Q. Do you have any recollection of what that  
14 entry was dealing with?

15 A. No. He obviously had a question.

16 Q. Okay. The last entry on that page.

17 A. You're right to pick up on that. Right.

18 Q. Preparation of memo to C. Wheeler re:  
19 copyright matters.

20 A. Right.

21 Q. Do you recall what that's dealing with?

22 A. No, but I would imagine it's all related.  
23 It flows.

24 MR. TRIGGS: While you're marking the  
25 next, I'm stepping out for two seconds.

1 MR. SELZ: Okay.

2 (Thereupon, a document was marked as  
3 Defendant's Exhibit Number 8 for identification  
4 by the reporter.)

5 MR. SELZ: I'm going to hit the bathroom,  
6 too, so I'll take a break.

7 (Brief recess.)

8 MR. SELZ: Okay. We're back on.

9 MR. BERNSTEIN: Hello?

10 MR. SELZ: Eliot, you're there?

11 MR. BERNSTEIN: Yeah.

12 MR. SELZ: Okay. Just want to make sure  
13 you're still with us.

14 MR. BERNSTEIN: Yeah.

15 Q. (By Mr. Selz) Okay. I'm going to refer  
16 you to what's been marked as number eight, defendant's  
17 number eight. It's a statement dated May 30th, 2000.  
18 At that point it shows a bunch of balances on the  
19 right-hand side. Remaining balances.

20 A. Right.

21 Q. And payment of 28,525.72.

22 A. (Witness nods.)

23 Q. Are you aware if there are any other  
24 payments to that point in time on the invoice?

25 MR. TRIGGS: Object to the form. As to

1           what invoice, the 10/12/99 invoice?

2           Q.     (By Mr. Selz) As to any of the amounts  
3 reflected on the invoice. This invoice. If there  
4 had been any other statements. Because you  
5 previously stated that some of the payments would  
6 disappear if they're paid off.

7           A.     Right, but I'd have to compare them. I  
8 can't tell what's been paid from this. I can tell a  
9 payment's been made on 10/12/99.

10                     (Thereupon, Mr. Bernstein was speaking,  
11 but was not able to be heard by the reporter.)

12                     THE REPORTER: I'm sorry, I can't hear  
13 him.

14                     MR. SELZ: Eliot, he can't -- Eliot, this  
15 is not an opportunity for you to be making  
16 comment, unfortunately, so --

17                     MR. BERNSTEIN: Oh.

18           Q.     So you said earlier, you testified earlier  
19 you got ledger sheets or some other way of  
20 ascertaining whether or not there were other payments  
21 that were made?

22           A.     Yeah. We keep ledger sheets.

23           Q.     And approximately how much was due and  
24 owing from iviewit.com, Inc., at this point to  
25 Proskauer Rose, according to this invoice?



1 MR. TRIGGS: Object to form.

2 A. According to this invoice?

3 Q. According to this invoice. The total that  
4 was due at that point in time in May of 2000.

5 A. Well, you'd have to add this 14,000 plus  
6 these other columns.

7 Q. Over \$300,000. Would that be a true  
8 statement?

9 A. One hundred, two hundred, three -- Yes,  
10 it's over \$300,000.

11 Q. Okay. And that was a year before the  
12 lawsuit was filed, approximately. Is that true and  
13 correct statement of fact?

14 A. When was the lawsuit filed?

15 Q. May of 2001.

16 A. Okay.

17 Q. May 2nd, 2001.

18 A. Okay.

19 Q. So Proskauer Rose was owed over \$300,000  
20 on May 30th, 2000. Did you ever advise iviewit that  
21 you would cease doing work for them if they didn't pay  
22 their bill?

23 A. We constantly advised iviewit that they  
24 had to make payment arrangements to - or we would  
25 cease doing the work. We would be left no choice not

1 to. We weren't interested in carrying the balances  
2 forever.

3 Q. Were those payment arrangements made?

4 A. A number of times we entered into payment  
5 agreements.

6 Q. Okay. After this invoice was submitted?

7 A. I don't know when. I'd have to see the  
8 times. It may be before or may be after. And - but  
9 it - to suggest that we were --

10 MR. TRIGGS: Just answer his question.

11 THE WITNESS: All right. Go ahead.

12 Q. Okay. Going back to the billing statement  
13 itself --

14 A. Okay.

15 Q. -- I'm looking at an entry 4/6/2000 --

16 A. Okay.

17 Q. -- for three hours; attend board meeting.

18 A. Correct.

19 Q. Do you recall what that board meeting was  
20 with reference to?

21 A. No, but there should be minutes on it,  
22 which the company prepared.

23 Q. Okay. 4/12/2000, the next page. .5.

24 Conference with M. Robbins regarding trademark and  
25 other issues?

1 A. Right.

2 MR. TRIGGS: What's your question?

3 Q. Do you have any recollection as to what  
4 that conference with M. Robbins specifically dealt  
5 with?

6 A. It dealt with the issues on her next  
7 entry, five - for five hours and a quarter.

8 Q. That's dealing with Armstrong employment  
9 agreement?

10 A. Not all of them. But at least the  
11 trademark matter.

12 MR. TRIGGS: You want to talk to Eliot  
13 about whatever is beeping in the background  
14 there?

15 MR. SELZ: Eliot?

16 MR. BERNSTEIN: Yeah.

17 MR. SELZ: Do you have to take care of  
18 something there? Sounds like there's something  
19 beeping in the background there.

20 THE WITNESS: No, I think it's --

21 MR. BERNSTEIN: I don't hear anything.

22 MR. SELZ: Okay. It's --

23 MR. TRIGGS: Sorry.

24 THE WITNESS: It's a machine out there.  
25 It's a Xerox machine down there.

1 MR. SELZ: Okay.

2 Q. Okay. So you got - you want to mute us,  
3 Eliot, so that way we don't hear your background sound  
4 a little bit?

5 Was there a web agreement that you're  
6 familiar with? Some kind of Internet web agreement  
7 that iviewit was involved with?

8 A. I don't - I don't recall it. I don't  
9 recall the details of it.

10 (Thereupon, a document was marked as  
11 Defendant's Exhibit Number 9 for identification  
12 by the reporter.)

13 Q. What is Lineberger?

14 A. There's a wealthy investor, Jim  
15 Lineberger, who was also affiliated with J. Zammas and  
16 his sons, Jamie Lineberger, and we were trying to get  
17 them interested in this project.

18 Q. Did anything ever come of that?

19 A. No, but the materials - I believe the  
20 materials were sent to him.

21 Q. Well, we talked earlier about the  
22 dissolution of iviewit LLC, if you recall.

23 A. Right.

24 Q. Okay. And then I'm going to direct your  
25 attention to an entry 12/07/2000. It should be 2001,

1 by the looks of it. No, it's 2000, I'm sorry, because  
2 it's a carryover from December. But it's by M.  
3 Robbins, last entry, 6.0? Do you recall if iVIEWIT  
4 LLC was reinstated or restored?

5 A. I don't know what was involved in that, to  
6 be honest with you. It was more ministerial stuff  
7 that they were going through.

8 Q. Why was it ministerial? What was the --

9 A. Well, they didn't have to get me involved,  
10 obviously, whatever it was. Mara Robbins was  
11 overseeing it. It's clear that -- So I don't - I  
12 don't know what was involved in that. Rocky Thompson  
13 was overseeing it. I just don't know what was going  
14 on there.

15 Q. How about on 12/08, next page, page five,  
16 where you have - you've got three entries dealing  
17 with --

18 A. I mean, this is all part of a potential  
19 reorganization that was going on at that time and a  
20 changing of the corporation. So I don't - it had been  
21 determined for tax and other various reasons. Go  
22 ahead.

23 Q. No. 12/08. It says conference with  
24 Mr. Hersh re: capitalization; conference as to  
25 priorities on projects?

1 A. Right.

2 Q. And then it goes conference as to opinion  
3 and bridge loan. What sort of opinion, if you can  
4 recall, were you referencing in that entry?

5 A. Well, on some of the matters they needed  
6 opinions for the - from the firm on some of the loans.  
7 For instance, if you go up and look at 12/08, Rocky  
8 was dealing with that issue, so obviously we had - we  
9 had a conference about it.

10 Q. It doesn't - I guess it says conference.  
11 Then it says review - next entry - review of  
12 additional correspondence re: opinion. It was an  
13 opinion with regard to - I would ask you what the  
14 contents of the opinion were, if you knew, if you can  
15 recall.

16 A. No, but I - once again, I cannot recall,  
17 but I think you can tell by the surrounding entries  
18 what was involved and who was working on it, because  
19 they were reporting to me.

20 Q. And would that opinion have included any  
21 kind of representation with regard to the intellectual  
22 properties or the assets held by iviewit?

23 A. I doubt it, because if you look at the  
24 surrounding entries it says opinion letter provision  
25 on outstanding shares. Those types are drafts.

1 Company Certificate as Exhibit to opinion, et cetera,  
2 et cetera. There were more - I would imagine they  
3 were corporate matters. We wouldn't have opined - we  
4 never opined to the intellectual property.

5 Q. And then on the next page, 12/13/2000, it  
6 says review opinion on iviewit closing? Towards the  
7 bottom. Do you have any recollection of what that  
8 entry is involving?

9 A. Well, this was obviously related to with  
10 Mr. Bell. So it was additional financing. Mr. Bell  
11 was - was representing Alpine.

12 Q. It says, dealing with the closing with  
13 Alpine?

14 A. Must be dealing with additional money from  
15 Alpine. Or - or it could be a combination thereof,  
16 because on the next page there is discussion of Prolow  
17 and financing. So some of the parties investing money  
18 needed opinions from us. They would be opinions on  
19 the corporate status.

20 Q. So they would just be an opinion letter  
21 saying the corporation was in good standing. Is that  
22 what you're saying?

23 A. I don't think so. They would probably be  
24 more advanced than that. But they would be related to  
25 the corporate standing, outstanding shares, that sort

1 of thing.

2 Q. So representation with regard to --

3 A. I'd have to see them exactly to tell you.

4 Q. Now, we talked earlier that there were -  
5 there were intellectual properties that were involved,  
6 and let's see if I have a billing entry.

7 A. Are we done with this exhibit?

8 Q. Yeah. We are.

9 MR. BERNSTEIN: Steve?

10 MR. SELZ: Yeah.

11 MR. BERNSTEIN: What was that? I missed  
12 the last part.

13 MR. SELZ: No, I didn't finish it.

14 MR. BERNSTEIN: Okay.

15 Q. Okay. We started talking about some of  
16 these entries. We've got --

17 Okay. I think we already talked about  
18 there were some entries here dealing with intellectual  
19 property review and incorporation. We went over that.  
20 Let's see.

21 Do you know if Ken Rubenstein ever billed  
22 on any of the matters or any references that he had  
23 for any of the work for iviewit?

24 A. I don't believe he did.

25 Q. Do you know why that would be the case?



1           A.     I think his time was minimal on it, and it  
2 was --

3           Q.     Back in, let's see, what was this? June  
4 of 1999, was - let's see, I'm sorry, January '99 --  
5 Here. February of 1999. Was Mr. Rubenstein  
6 affiliated or associated with Proskauer Rose? Let's  
7 see, which exhibit is that?

8           A.     February of 1999?

9           Q.     Yes.

10          A.     So we started work in January of 1999.

11          Q.     Correct.

12          A.     I believe so.

13          Q.     Let me just double-check my notes. 2/17.  
14 There is an entry here, 2/17/99, dealing with  
15 telephone call to Mr. Rubenstein regarding patent  
16 advice. I think you already said you don't have any  
17 specific recollection what was said at that  
18 conference, is that correct?

19          A.     Right. But -- Right.

20          Q.     Does Proskauer Rose maintain any kind of  
21 records regarding Internet web site visits in  
22 correlation to the billing provided to iviewit? In  
23 other words, did you keep any kind of log as to time  
24 spent doing - other than the billing statements  
25 themselves - any kind of log keeping track of how much

1 time was spent Internet searching for different  
2 aspects of the corporate work?

3 MR. TRIGGS: Object to the form.

4 MR. SELZ: Okay.

5 MR. TRIGGS: I have no idea where you're  
6 going with that.

7 MR. SELZ: It's going to the billing.

8 Q. When you were - the billing statements  
9 themselves were prepared, was there any kind of  
10 separate log kept for Internet time spent or anything  
11 dealing with the Internet research that I think is  
12 referenced in here as well?

13 MR. TRIGGS: Same objection.

14 A. I don't know of any separate logs. I  
15 don't know how they keep the -- The only Internet logs  
16 that I know of are -- The only services that we have  
17 are Lexis/Nexis, which is a research.

18 Q. Right.

19 A. You're as familiar with how that is kept  
20 as I am.

21 Q. Right.

22 A. I honestly don't know the mechanism by  
23 which they tie in for their searches on copyright and  
24 trademark.

25 Q. Now, with regard to Jay Joao, Ray Joao,

1 was there ever a time when it was represented that Ray  
2 Joao was involved with Proskauer, was involved with  
3 Proskauer directly, either as a partner or associate  
4 or anything of that nature?

5 A. Not to my knowledge.

6 MR. TRIGGS: Object to form.

7 A. To who?

8 Q. To anyone who attended a board meeting or  
9 anything of that nature.

10 A. Not to my knowledge.

11 Q. Do you recall any meetings with  
12 Mr. Stanley?

13 A. Jerry Stanley.

14 Q. Yes.

15 A. Yes.

16 Q. And what were those meetings dealing with,  
17 if you can recall?

18 A. He was Real 3D. He was the expert from  
19 Real 3D.

20 Q. Right. Who came down from Orlando I think  
21 you said?

22 A. Right. He had been out - I contacted him  
23 when he was out visiting Intel. Real 3D had been part  
24 of General Electric. Had been sold to -- I believe it  
25 was part of General Dynamics at that time, and so I

1 contacted him, and he was kind enough on one of his  
2 journeys in South Florida to stop and see the product.

3 Q. Okay.

4 A. I explained that.

5 Q. Right. At that point in time, can you  
6 recall if all the copyright and trademark protections  
7 for Iviewit's products were in place?

8 MR. TRIGGS: Object to form.

9 A. Well, no. Okay. The -- I'm not the right  
10 person to ask that question because I wasn't doing the  
11 trademark and copyright. But if - but I - I can tell  
12 you that I've already said on the record that when we  
13 were driving back from the meeting in Orlando --

14 Q. Right. The video product.

15 A. That we discovered that Eliot advised his  
16 dad and Jerry Lewin and myself that he had not done  
17 anything with Ray Joao on the video.

18 Q. Okay.

19 A. So the answer to your question is, from  
20 that standpoint, after that meeting I knew that he had  
21 not put anything in place.

22 Q. Okay. How about with regard to any of the  
23 other aspects of U.S. products?

24 A. I was not aware.

25 Q. You were checking on the status of the

1 copyrights and the trademark?

2 MR. TRIGGS: Object to form. As to when?

3 Q. As to when this occurred, back in -- When  
4 was it?

5 MR. TRIGGS: What occurred?

6 Q. 4/21/99 or thereabouts. The meeting with  
7 Mr. Stanley.

8 A. There were certain times when it's  
9 reflected I was checking on the status of copyrights  
10 and trademarks.

11 Q. All right. Was there ever a nondisclosure  
12 agreement that you're aware of that Mr. Stanley  
13 signed?

14 A. Yes. I believe they signed -- My  
15 recollection is they signed nondisclosure agreements.  
16 They signed confidentiality agreements.

17 Q. Okay. Which is basically, obviously, the  
18 same thing, nondisclosure.

19 A. Correct.

20 Q. The business plan itself for iviewit, did  
21 that include references to the intellectual properties  
22 that iviewit held?

23 A. It depends on what stage you meant the  
24 business plan.

25 Q. Okay. The latest iteration of the

1 business plan that was produced or that you were  
2 involved with, did it contain representations  
3 concerning intellectual properties?

4 A. We weren't intimately involved in the  
5 business plan, so I really don't recall the latest  
6 reiteration. No.

7 Q. Do you know if Ken Rubenstein was ever  
8 listed as an advisor to the board of directors or an  
9 advisor to iviewit in any documents?

10 MR. TRIGGS: Object to the form. By whom?

11 Q. (By Mr. Selz) Do you know if Ken  
12 Rubenstein was listed --

13 A. In any documents?

14 Q. -- by iviewit or - in any documents that  
15 were submitted to any third parties as an advisor or  
16 was represented as an advisor to the board?

17 A. Not - not that I'm aware of.

18 Q. What was the last business plan for  
19 iviewit that you can recall seeing?

20 A. Well, I don't recall. I don't -- I  
21 actually don't recall the last business plan. I mean,  
22 the reason is, everything kept on changing so much.

23 Q. Was there ever any problem with  
24 erroneously issued stock or anything of that nature  
25 that you're familiar with?

1 A. I don't - I have no recollection of it.

2 Q. Okay. There's an entry here of 5/12/99  
3 just want to reference you to. Conference with Joao;  
4 meeting with Thompson to arrange for confidentiality  
5 agreements and generic agreements?

6 A. Uh-huh.

7 Q. Do you remember what those generic  
8 agreements were?

9 A. Yeah, they were a generic form of a  
10 confidentiality agreement so the company could use it  
11 without coming back to us each time.

12 Q. So it was basically like a  
13 fill-in-the-blank form?

14 A. As much as we could do it. Perhaps.  
15 There might have been more than one. There might have  
16 been the one that you use in this instance, the one  
17 that you use in that.

18 Q. One for a potential investor, one for an  
19 employee, one for a different situation than that? Is  
20 that what you're referring to?

21 A. Right. Right.

22 Q. Do you recall --

23 A. Well, not exactly an employee. I don't  
24 know. There would have been -- My recollection is we  
25 were looking at a couple of variations of it for

1 different type of investors. One for individual  
2 investor, one from a corporation who had employees,  
3 you know, because we wanted to cover their employees.

4 Q. Right.

5 A. That type of thing.

6 Q. So you wanted to extend it to employees?

7 A. If you're a big investor and you just  
8 had -- That would cover your accountants and your  
9 financial advisors and something. One for -- A  
10 corporation would be set up differently.

11 Q. Okay. With regard to the nondisclosure  
12 agreements, the confidentiality agreements that we  
13 talked about, was that something that went through or  
14 was the responsibility of Proskauer Rose with  
15 Mr. Utley? Let me strike that question.

16 MR. SELZ: I'll try it again.

17 MR. TRIGGS: Change your question.

18 MR. SELZ: I'll try it again.

19 Q. Okay. With regard to the confidentiality  
20 agreements, did Mr. Utley undertake to get those  
21 signed and return them to Proskauer Rose or did  
22 Proskauer Rose transmit them directly to, let's say,  
23 the employee or investor and get those back?

24 A. When?

25 MR. TRIGGS: Object to the form.



1 Q. Why don't you tell me if it was both or  
2 during --

3 A. Well, Mr. Utley wasn't there to --

4 Q. Well, in the beginning, but to the extent  
5 that Mr. Utley was there.

6 A. I don't think there was a set procedure.  
7 I think it was - it was our hope, so that we could  
8 reduce legal costs, that Mr. Utley or - or under his  
9 supervision that - that iVIEWIT really, it wasn't  
10 really - iVIEWIT could get their own confidentiality  
11 agreements and then would ultimately send them - us  
12 copies and we'd be a repository of them.

13 It was -- I don't think it always worked  
14 out that way. I think sometimes, because they were  
15 just shorthanded or because of the nature of what they  
16 were doing, everything was moving so quickly, they  
17 called us and said, by the way, can you get a  
18 confidentiality agreement.

19 Also, you have to understand, not everyone  
20 accepted the generic confidentiality agreement.  
21 Often - oftentimes they were altered by the other  
22 side, so they had to send them to us for our input.  
23 And oftentimes larger, more - larger companies, some  
24 of the giants, would - had their own.

25 Q. Talking about something like the NBA or

1 something like that might have their own?

2 A. Well, something like, yeah, the NBA or one  
3 of the big companies out in Hollywood or something.  
4 Or some of the high tech companies had their own very  
5 specific ones that they would substitute.

6 Q. So you'd have to review those, obviously.

7 A. Unfortunately.

8 Q. So it didn't really work out with the idea  
9 so easily with the generic form?

10 A. Well, it did for many. There - I know  
11 these bills are voluminous, but the - the number of -  
12 the number of points and contacts which iviewit made  
13 in the period of time which they were very active was  
14 considerable. I mean, they - they approached a lot of  
15 people and talked to a lot of potential investors. So  
16 the generic thing served its purpose many times, but  
17 not at all times.

18 Q. Do you know if - if Mr. Thompson, D.  
19 Thompson, did anything to evaluate a software  
20 agreement or anything of that nature?

21 First of all, let's start with the more  
22 basic question. Who is D. Thompson in your firm?

23 A. He's a senior counsel in our firm.

24 Q. Okay. What is his specialization?

25 A. Corporate law.

1 Q. Corporate law. Does he have any  
2 background in software or intellectual properties?

3 A. Intellectual properties, I don't know, but  
4 software, it would depend on the nature of the  
5 agreement.

6 Q. Okay. So you think he's qualified to  
7 prepare a software agreement or a software licensing  
8 agreement?

9 A. Well, he's qualified to prepare it. It  
10 doesn't mean that he wouldn't call on other resources  
11 within our firm to help him.

12 Q. Do you have any idea how much total time  
13 was spent preparing confidentiality agreements for  
14 iviewit?

15 A. No.

16 Q. Do you have any idea or do you have any  
17 opinion as to what would be a reasonable amount of  
18 time to prepare a generic confidentiality agreement?

19 MR. TRIGGS: Object to the form.

20 A. No, I don't. I'd have to -- I mean, it  
21 would depend on the nature of the agreement and nature  
22 of the company and -- I mean, it's a lot of variables.

23 Q. Okay. Do you have a generic  
24 confidentiality agreement?

25 A. We have a lot of them.

1 Q. Okay. Have you ever prepared one  
2 yourself?

3 A. Yes.

4 Q. How long did it take you to prepare that?

5 MR. TRIGGS: Object to form. Which one?

6 Q. The range. Give me the range of time that  
7 it took to prepare the least complicated to the most  
8 complicated.

9 A. I don't even recall. The - the  
10 agreement - the generic agreement could take as long  
11 as a day, eight hours, to prepare. Depends on the  
12 nature of the company.

13 Q. And those --

14 A. You're also consulting -- I mean,  
15 oftentimes you're consulting with the patent attorney  
16 or whatever, making sure it's - suffices for him or --  
17 I mean, because it's - that it covers all the bases as  
18 far as he's concerned.

19 You know, don't forget, you're talking  
20 about the complexities of - and especially affiliates  
21 and -- I mean, have you ever seen it?

22 Q. Yeah, I have.

23 A. Okay. So I mean, there is one page ones  
24 that could take an hour to prepare and there's 15 page  
25 ones that are very complex that could take a couple of

1 days to prepare.

2 Q. Now, with regard to the confidentiality  
3 agreements that we're talking about here, did you draw  
4 from existing agreements that the firm already had,  
5 that Proskauer Rose already had in their -- I guess  
6 you keep a computer system or some kind of storage  
7 bank of preexisting forms.

8 MR. TRIGGS: Object to the form.

9 Foundation.

10 Q. Okay. Let me start again, then.  
11 Mr. Wheeler, isn't it true that Proskauer Rose has  
12 forms from past representation of other clients that  
13 it keeps?

14 A. Sure.

15 Q. And that it -- Isn't it also true that it  
16 uses those as the basis for many times new documents  
17 that it produces for other clients?

18 A. Many times they do.

19 Q. I'm not saying always, obviously.

20 A. Right.

21 Q. But many times.

22 A. Correct.

23 Q. In this particular case, the  
24 confidentiality agreement that was prepared for  
25 iviewit, was that something that was produced from

1 wholecloth?

2 A. No.

3 Q. In other words, without reference to past  
4 agreements?

5 A. I don't recall.

6 Q. Were you personally involved in the  
7 preparation of that?

8 A. In one iteration of it, I was.

9 Q. Okay. Which iteration?

10 A. Early in the game, before -- Early in the  
11 game.

12 MR. SELZ: What time you got? Five?

13 MR. TRIGGS: Five of.

14 MR. SELZ: Five of five? I've got to go.

15 MR. TRIGGS: Let me just put on the record  
16 that we're prepared to continue on as long as it  
17 takes today, tonight, to wrap this up. I want  
18 it to be done in one day. Mr. Selz has  
19 indicated he has a commitment. I gave him fair  
20 notice that I thought that one day was the  
21 appropriate amount of time.

22 If you need to go, then what I'd like to  
23 do is operating under the assumption that a  
24 motion would be granted and that this would be  
25 limited to one day, let me just ask Mr. Wheeler

1 a couple of questions and then I think we'll --

2 MR. SELZ: Well, I've got to go. I  
3 really, really have to --

4 MR. TRIGGS: You can stay if you want to  
5 stay, if you want to go, go, but my questions  
6 are starting now.

7 MR. SELZ: Okay. Go ahead. How long are  
8 you going to be?

9 MR. TRIGGS: I think I'll be able to get  
10 you out of here in a minute or two. Mr.  
11 Wheeler --

12 MR. SELZ: Go ahead.

13 MR. BERNSTEIN: Are we done with our  
14 questions?

15 MR. SELZ: No, we're not done with our  
16 questions yet. I'm saying, I'm letting him do a  
17 limited cross.

18 CROSS EXAMINATION

19 Q. (By Mr. Triggs) Mr. Wheeler, you were  
20 asked questions about Mr. Utley and the negotiation  
21 of an employment contract with Mr. Utley. Do you  
22 recall that testimony?

23 A. Yes.

24 Q. At the time that the employment agreement  
25 was being prepared on behalf of iviewit, was Mr. Utley

1 a Proskauer, an existing Proskauer client?

2 A. No.

3 Q. You were also asked a whole series of  
4 questions about the entities that have been sued here  
5 and about oral arrangements regarding payment and one  
6 written agreement concerning payment. Do you recall  
7 generally that line of examination?

8 A. Yes.

9 Q. In the amended complaint, Proskauer has  
10 sued three different iviewit entities; iviewit.com,  
11 Inc., iviewit Holdings, Inc., and iviewit  
12 Technologies, Inc. Are you aware of that?

13 A. Yes.

14 Q. Did those entities request that Proskauer  
15 perform legal services?

16 A. Yes.

17 Q. Through representatives of those entities?

18 A. Right.

19 Q. And did Proskauer perform legal services  
20 for those entities?

21 A. Yes.

22 Q. And by and large, I understand that Mr.  
23 Selz has spent some time hitting on particular invoice  
24 entries, but by and large, are those the entities that  
25 Proskauer was performing the legal services for?



1 MR. SELZ: Objection to form.

2 Q. That's at issue in the amended complaint.

3 A. Yes.

4 Q. And also, just to cover what I think is a  
5 ministerial issue, but in terms of who was actually  
6 being billed, the legal entity that was being billed  
7 for the invoices that are attached to the complaint  
8 reflect who it was who was being billed on a monthly  
9 basis?

10 A. Iviewit.com, Inc.

11 MR. TRIGGS: That's all I have.

12 MR. SELZ: Okay. Okay, Eliot. We're done  
13 for right now. Hello?

14 MR. BERNSTEIN: Yeah. What does that  
15 entail?

16 MR. SELZ: Well, we're going to go ahead  
17 and we're going to renotice, and they're going  
18 to probably object and we're going to go in  
19 front of Judge Labarga.

20 MR. BERNSTEIN: Okay.

21 MR. SELZ: Okay? You got it.

22 THE WITNESS: Okay. Go.

23 AND FURTHER DEPONENT SAITH NOT

24 (Deposition adjourned at 5:03 p.m.)

25

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WITNESS CERTIFICATE

I, CHRISTOPHER C. WHEELER, do hereby  
certify that I have read the foregoing transcript of  
my deposition given on November 21, 2002; that,  
together with any additions or corrections attached  
hereto, it is true and correct.

\_\_\_\_\_  
WITNESS

STATE OF FLORIDA )  
COUNTY OF BROWARD )

SUBSCRIBED AND SWORN TO before me  
this \_\_\_ day of \_\_\_\_\_, 2002, by the witness  
who has produced a \_\_\_\_\_ as  
identification and who did not take an additional  
oath.

\_\_\_\_\_  
NOTARY PUBLIC

My Commission expires:



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## REPORTER'S DEPOSITION CERTIFICATE

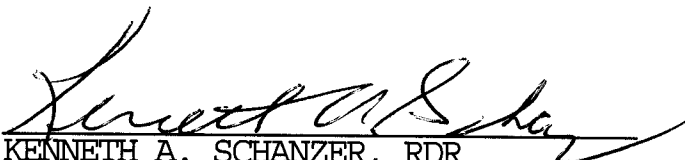
STATE OF FLORIDA )

COUNTY OF BROWARD )

I, KENNETH A. SCHANZER, Registered Diplomate Reporter, certify that I was authorized to and did stenographically report the deposition of CHRISTOPHER C. WHEELER; that a review of the transcript was requested; and that the transcript is a true and complete record of my stenographic notes.

I FURTHER CERTIFY that I am not a relative, employee, attorney or counsel of any of the parties, nor am I a relative or employee of any of the parties' attorney or counsel connected with the action, nor am I financially interested in the action.

DATED this 2nd day of January, 2003.



KENNETH A. SCHANZER, RDR

KEN SCHANZER & ASSOCIATES, INC.  
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Hollywood, Florida 33020  
(954) 922-2660

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PROSKAUER ROSE LLP, etc.,

Plaintiff,

vs.

No. CA 01-04671 AB

IVIEWIT.COM, INC., etc., et al.,

Defendant.  
-----/

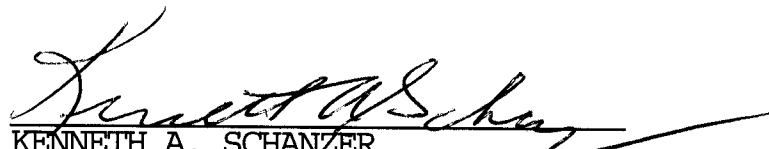
DATE: January 2, 2003

To: CHRISTOPHER C. WHEELER  
c/o MATTHEW TRIGGS, ESQ.  
2255 Glades Road, Suite 340 West  
Boca Raton, FL 33431

The deposition taken in the above entitled cause is now ready for signature. Please call this office to arrange a convenient time to sign same; or if you wish to waive the signing of the deposition, please so advise.

If this deposition has not been signed by January 16, 2003, or prior to the trial of said cause, or the signature thereto waived, we shall consider such delay a waiver of signature and proceed according to the applicable Rules of Civil Procedure.

Very truly yours,

  
KENNETH A. SCHANZER,  
Registered Diplomate Reporter

1 IN THE CIRCUIT COURT OF THE 1  
2 FIFTEENTH JUDICIAL CIRCUIT IN AND  
3 FOR PALM BEACH COUNTY, FLORIDA

4 CASE NO. CA 01-04671 AB

5 PROSKAUER ROSE LLP, a New  
6 York limited liability partnership,

7 Plaintiff,

8 -vs-

9 IVIEWIT.COM, INC., a Delaware corporation  
10 IVIEWIT HOLDINGS, INC., a Delaware  
11 corporation, and IVIEWIT TECHNOLOGIES,  
12 INC., a Delaware corporation,

13 Defendants.

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COPY

TELEPHONIC DEPOSITION

The following is the telephonic  
deposition of BRIAN UTLEY, VOL. I, taken before  
Traci R. Sandstrom, Court Reporter, Notary  
Public, pursuant to Notice of Taking Deposition,  
at 5841 Cedar Lake Road, St. Louis Park,  
Minnesota 55416, commencing at approximately 9:00  
a.m., August 22, 2002.

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2

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DEPOSITION REFERENCE INDEX

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P R O C E E D I N G S

1  
2 Whereupon, the deposition of BRIAN  
3 UTLEY, VOL. I was commenced at 9:00 a.m. as  
4 follows:

5 \*\*\*

6 BRIAN UTLEY,

7 after having been first duly sworn, deposes  
8 and says under oath as follows:

9 \*\*\*

10 EXAMINATION

11 By MR. PRUSASKI:

12 Q. Mr. Utley, my name is Chris  
13 Prusaski, and I'm taking your deposition today in  
14 the matter of Proskauer Rose versus Iviewit.com,  
15 Inc., et al, which is a matter pending in Palm  
16 Beach County Circuit Court.

17 Have you ever had your deposition  
18 taken before?

19 A. Yes.

20 Q. How many times?

21 A. Oh, several. Probably four or five.

22 Q. Okay. The reason I'm asking is just  
23 to generally give you a background of how  
24 depositions, and I think you know. Briefly I'll  
25 tell you that if I ask any questions which you

1 don't understand or for any reason you'd like me 5  
2 to rephrase them or re-ask them in a way that's  
3 more understandable to you, please tell me and  
4 I'll be happy to do so.

5 If you have any need to take a break  
6 for any reason, just tell me and we'll  
7 accommodate you any way we can. If you answer a  
8 question, it's assumed that you understood the  
9 question. Do you understand that?

10 A. I do.

11 Q. Okay. Can you spell your name,  
12 please.

13 A. Brian, B-R-I-A-N, G. Utley,  
14 U-T-L-E-Y.

15 Q. What's your address, sir?

16 A. It's 9541 Virginia Avenue South,  
17 Bloomington, Minnesota, 55438.

18 Q. How old are you, Mr. Utley?

19 A. 69.

20 Q. And what is your occupation?

21 A. I'm retired from IBM.

22 Q. How long did you work with IBM?

23 A. 37 years.

24 Q. And could you give us the benefit of  
25 explaining what your role in that company was.

1 A. Well, as I retired, I was the vice 6  
2 president and general manager in charge of Boca  
3 Raton, Florida operations and represented IBM to  
4 the state of Florida from a governmental  
5 position.

6 Q. What were the years that you worked  
7 for that company?

8 A. 1955 through 52. I'm sorry, through  
9 92.

10 Q. And what have you done since 1992?

11 A. I've managed a manufacturing  
12 company, was the president of Iviewit.com and was  
13 the CEO of another company, InternetTrain.

14 MR. SELZ: I'm sorry, could you have  
15 the -- is the speaker phone close to the  
16 deponent?

17 MR. PRUSASKI: I'll move it.

18 MR. SELZ: I'm having trouble  
19 hearing him.

20 THE WITNESS: I'll try to speak up.

21 MR. SELZ: Okay, thank you.

22 By MR. PRUSASKI:

23 Q. Did you do anything to prepare for  
24 this deposition today?

25 A. No. I've had no conversations

1 regarding this deposition. 7

2 Q. Did you review any documents?

3 A. I did not.

4 Q. When was the last time you had any  
5 contact with anyone from Iviewit? And before we  
6 get too far into the deposition, I just want to  
7 tell you that when I say Iviewit, I'm referring  
8 to any of the Iviewit entities. If I want to  
9 specify one entity in particular, I'll give you  
10 the name of the entity. So when I use the term  
11 generally Iviewit, I'm referring to Technologies,  
12 Holdings, dotcom, Inc., LLC; do you understand  
13 that?

14 A. Um-hum.

15 Q. When was the last time you had any  
16 contact with anyone from Iviewit?

17 A. I had a conversation with Bill  
18 Kasser several months ago.

19 Q. And what did you discuss?

20 A. I really -- frankly, I don't recall  
21 the context of the conversation.

22 Q. Okay. Have you spoke to Si or Eliot  
23 Bernstein lately?

24 A. I have not.

25 Q. When did you first become involved

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with Iviewit?

A. It was in July of 99.

Q. And could you explain how you became involved with Iviewit.

A. I was introduced to Eliot Bernstein by Chris Wheeler for the purpose of reviewing the imaging technology which Eliot had developed and with the potential or possible interest of becoming involved in the company.

Q. What was your experience in the past reviewing imaging technology?

A. Well, as a senior person at IBM and having been involved in developing many IBM products, I had experience in imaging and imaging technologies along the way.

Q. As you understood it, Sir, what was the purpose of the Iviewit companies when you became involved?

A. The purpose of the companies was to continue the evolution of the technologies, which were had provisional patents filed and to commercialize those technologies.

Q. At the time you were approached in July of 99, which of the Iviewit entities, if at all, had been formed?

1 A. I'm trying to recollect. The 9  
2 operating company was Iviewit.com, LLC.  
3 Q. Was that in existence at the time  
4 you were first approached about these companies?  
5 A. Yeah.  
6 Q. Were any of these other entities?  
7 A. Yes. It was subordinated to  
8 Iviewit, LLC, which in turn was 95 percent owned  
9 by U-View, subchapter S corporation.  
10 Q. Where was the company located when  
11 you first became involved?  
12 A. I believe the official address of  
13 the companies was Eliot Bernstein's home.  
14 Q. Where is that?  
15 A. I don't recall the exact address but  
16 in Boca Raton.  
17 Q. What were you told your role in the  
18 companies would be?  
19 A. President and COO.  
20 Q. Who made that representation to you?  
21 A. My initial discussion regarding that  
22 was with Si Bernstein.  
23 Q. What was his role in the companies  
24 to be?  
25 A. He was represented as the chairman

1 of the board. 10

2 Q. Did there come a time when you  
3 became the president and COO of the companies?

4 A. Beg your Pardon?

5 Q. Did there come a time when you  
6 actually became the president and COO of the  
7 companies?

8 A. Yes.

9 Q. When was that?

10 A. That was in August of 99.

11 Q. Did the company have any employees  
12 at that time?

13 A. There were, apart from Eliot and  
14 myself -- I was the first actual employee of the  
15 company -- there were three associates of Eliot  
16 who had been involved with him in conducting  
17 feasibility work with the technologies, but they  
18 were not formally employees of the company at  
19 that time.

20 Q. Which of the Iviewit entities were  
21 you the president and COO of?

22 A. The -- my employment agreement  
23 stated Iviewit.com, LLC, but operationally I  
24 managed all of the companies.

25 Q. As the president?

1 A. Yes. 11

2 Q. Who were the other officers?

3 A. Si Bernstein, Eliot Bernstein, Jerry

4 Lewin, Chris Wheeler was the representing

5 attorney.

6 Q. At Proskauer?

7 A. Yes.

8 Q. Who were the directors of the

9 companies?

10 A. Well, those are the board members

11 that I mentioned, the directors.

12 Q. Okay, thank you. What were your

13 day-to-day responsibilities? Could you describe

14 that, please.

15 A. Basically to run the company,

16 develop, build the company.

17 Q. And for how long did you do that?

18 A. Until April of 2001.

19 Q. Almost two years?

20 A. Yes.

21 Q. Who had decision making authority

22 with respect to the financial matters of the

23 companies?

24 A. I suppose I did subject to the board

25 approval.



1 Q. Do you still have anything to do 12

2 with the Iviewit companies today?

3 A. No.

4 Q. I'd like to turn the focus of the

5 questioning now to Proskauer Rose. When did

6 Proskauer Rose first become involved with

7 representing the Iviewit companies?

8 A. As I recall from documents, which

9 were in the company at that time, I believe it

10 was about January of 99. I could be off by a

11 month or so.

12 Q. That was prior to your coming

13 aboard?

14 A. Yes. At least six months before I

15 came on board.

16 Q. Do you know if Proskauer was still

17 representing the Iviewit entities at the time

18 when you left in April 2001?

19 A. I'm not aware that there was any

20 action to disengage from Proskauer.

21 Q. Who made the decision to hire

22 Proskauer?

23 A. I don't know.

24 Q. Were any other attorneys or law

25 firms ever used by Iviewit to your knowledge?



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for Iviewit?

A. They filed -- I'll backup.

We had filled through the New York firm provisional patent applications. The New York, the last act of the New York law firm was to convert one of those to a formal filing. The remaining provisionals were filed, refiled as formal applications by the Milwaukee firm.

Q. Did Proskauer Rose perform patent work for Iviewit?

A. Not as such.

Q. Can you explain what you mean by that.

A. Well, Proskauer did not handle any of the actual patent paperwork, the filings or the actual development of the filing material, but acted as a consultant, if you will, in recommending the New York law firm.

Q. What type of work did Proskauer Rose do for Iviewit?

A. Corporate work.

Q. General corporate work?

A. Um-hum.

Q. Was that the purpose for which Proskauer was hired?

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A. As far as I know, yes.

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Q. What was your -- could you explain your role with respect to directing Proskauer to do certain corporate work.

A. Well, of course, we had, we required activity relative to equity, the equity program, the managing of the equity records; the development of the -- excuse me -- of the money raise paperwork, that kind of work was handled by Proskauer. Also Proskauer acted as the keeper, if you will, of the corporate records.

Q. Who at Iviewit was responsible for directing Proskauer to do work?

A. Well, I think the people who actually requested work of Proskauer were either myself or Si Bernstein or Eliot Bernstein.

Q. Do you know if Proskauer was initially paid a retainer by Iviewit?

A. I'm not aware that any retainer was paid.

Q. Do you recall the attorneys at Proskauer with whom you had dealings while they represented Iviewit?

A. My dealing were primarily with Chris Wheeler, although a number of staff attorneys

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were involved.

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Q. Who was the person at Iviewit that had primary responsibility to deal with Chris Wheeler?

A. From an organizational point of view, it would be myself.

Q. Could you explain what your current affiliation with the Iviewit entities is right now?

A. I have no affiliation.

Q. Do you have any idea what their current business plan is?

A. I have no idea.

Q. Okay. I would like to talk for a few minutes about the Iviewit entities separately, starting with Iviewit.com, Inc. Can you explain its role and when it was formed, please.

A. It was formed in December of 99. At that time, we went through a complete restructuring of Iviewit, converting the U-View subchapter S into a C-corp, which, as I recollect, became Iviewit, Inc.

Q. Iviewit.com, Inc.

A. No.

1 Q. Iviewit, Inc.? 17

2 A. Iviewit.com, LLC became subordinated  
3 to Iviewit.com, Inc. Operationally Iviewit.com  
4 replaced Iviewit, LLC but Iviewit, LLC held some  
5 leases in its name and so therefore we retained  
6 that company for the purpose of managing those  
7 leases.

8 Q. With respect to the reorganization  
9 that we're discussing right now, what law firm or  
10 entity was involved with handling the matters for  
11 this reorganization?

12 A. Proskauer.

13 Q. Besides this reorganization  
14 involving Iviewit.com, Inc., were there any other  
15 legal matters that Proskauer did work for this  
16 company?

17 A. Yes. When we had dealings with our,  
18 in the financial community when we raised money,  
19 Proskauer handled all of the legal matters  
20 relating to the, both the equity and the  
21 promissory note aspects of those raises.

22 Q. And this was work performed for  
23 Iviewit.com, Inc.?

24 A. It was actually performed for  
25 Iviewit, Inc.

1 Q. I'd like to focus on the work that 18

2 was performed right now for Iviewit.com if you  
3 could.

4 A. Okay. Well, Iviewit.com, Inc. was  
5 the operational company. The money that came  
6 into Iviewit, Inc. actually flowed directly into  
7 Iviewit.com and all disbursements were from  
8 Iviewit.com, Inc.

9 Q. The disbursements for the other  
10 Iviewit entities were from Iviewit.com, Inc.; is  
11 that correct?

12 A. Yes.

13 Q. Who were the principals of  
14 Iviewit.com, Inc.?

15 A. I was the president and COO.

16 Q. With respect to the work that  
17 Proskauer performed for Iviewit.com, Inc., who  
18 from the company directed Proskauer to do the  
19 work?

20 A. Who directed Proskauer to do the  
21 work?

22 Q. Yes, sir.

23 A. For the financial matters, it was  
24 myself. On occasion, Si Bernstein would solicit  
25 work, primarily, as I recall, related to the

1 stocks. In the very early days, there was a, 19  
2 mostly before I arrived on the scene, Si and  
3 Eliot used Proskauer services to arrange for  
4 meetings with potential financial sources and  
5 also with people who would be able to establish  
6 the validity of the technology.

7 Q. Okay. We were talking about  
8 Iviewit.com Inc. I'd like to shift now to  
9 Iviewit Holdings, Inc.

10 A. Um-hum.

11 Q. And can you explain, please, what  
12 the purpose of that company is or was.

13 A. It was established as the transition  
14 to a C-corp from U-View, LLC.

15 Q. Who performed that transition work?

16 A. Proskauer.

17 Q. Do you recall when it was formed?

18 A. December of 99.

19 Q. Who were the principals of Iviewit  
20 Holdings, Inc.?

21 A. I was the president and COO.

22 Q. Besides the transition work to a  
23 C-corp from U-View, LLC, what other work did  
24 Proskauer do for Iviewit Holdings, Inc.?

25 A. Well, part of that transition



1 involved, as I mentioned earlier, 95 percent of 20  
2 the equity in Iviewit, LLC was held by U-View.  
3 The other 5 percent was outside of the S-corp.  
4 And in order to perform the transformation, it  
5 was not possible to move the other 5 percent of  
6 stock holders directly into Iviewit Holdings  
7 because of tax consequences. Therefore, a  
8 subordinate company was created, which was  
9 Iviewit Technologies, Inc.

10 Q. And we'll get to that one in just a  
11 moment.

12 A. Okay.

13 Q. Who paid the bills for the work done  
14 for Iviewit Holdings, Inc., the legal work to  
15 Proskauer?

16 A. Checks were issued by Iviewit.com.

17 Q. Inc.?

18 A. Inc.

19 Q. And the legal work performed by  
20 Proskauer for Iviewit.com, Inc., what entity paid  
21 the legal bills for that work?

22 A. Iviewit.com, Inc.

23 Q. Okay. Let's talk -- you  
24 transitioned us nicely into Iviewit Technologies,  
25 Inc., and the same line of questioning, sir, what

1 was its purpose? 21

2 A. Twofold. One, it was the point of  
3 entry, if you will, for the remaining 5 percent  
4 equity holders. Secondly, Iviewit Technologies,  
5 Inc. was assigned the intellectual property  
6 rights.

7 Q. What firm performed the legal work  
8 for Iviewit Technologies, Inc.?

9 A. For corporate matters, Proskauer  
10 Rose and for intellectual property, our patent  
11 attorneys.

12 Q. Do you remember what company that  
13 was?

14 A. Well, until April of 2000, that was  
15 the New York firm, Meltzer, Lipper & something or  
16 other.

17 Q. Was Foley & Lardner ever involved?

18 A. Foley & Lardner became involved.  
19 That's the Milwaukee firm. They became involved  
20 in April of 2000.

21 Q. After Meltzer?

22 A. Um-hum. Yes.

23 Q. Why did the company choose to switch  
24 Meltzer to Foley & Lardner?

25 A. Because Meltzer decided to



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companies.

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Q. You were the president and COO?

A. Yes.

MR. PRUSASKI: Could we go off the record, please. We're going to go off the record for a minute.

(Discussion had off the record.)

(Whereupon, a break was taken from 9:31 to 9:51.)

MR. PRUSASKI: Okay, let's go on the record, please.

By MR. PRUSASKI:

Q. Mr. Utley, before the break I asked you who were the principals of Iviewit Technologies, and I believe you indicated you were the president and COO; is that correct?

A. Yes.

Q. Who at Iviewit directed Proskauer to do work for Iviewit, Technologies Incorporated?

A. I did.

Q. Do you know what the current status of Iviewit Technologies is?

A. No.

Q. And if I asked you this as far as Iviewit Technologies, Inc. before the break, I'm

1           sorry, I'm going to ask you again. What entity           24  
2           paid for the legal bills for Proskauer's work for  
3           Iviewit Technologies, Inc.?

4                       MR. SELZ: I think that was asked  
5           and answered.

6                       MR. PRUSASKI: I can't remember if I  
7           asked it as to this company or not.

8                       MR. SELZ: I think you asked it as  
9           to all the companies, so.

10          By MR. PRUSASKI:

11                      Q.        You can answer the question.

12                      A.        The bills of Iviewit Technologies,  
13           Inc. were disbursed by Iviewit.com, Inc.

14                      Q.        Do you recall what entity paid the  
15           Foley & Lardner bills for Iviewit Technologies,  
16           Inc.?

17                      A.        Iviewit.com, Inc.

18                      Q.        And the same as to the Meltzer firm?

19                      A.        Yes.

20                      Q.        Do you know if the Meltzer firm's  
21           bills were fully resolved by Iviewit?

22                      A.        I believe they were.

23                      Q.        Did Iviewit ever have any trouble  
24           paying its bills?

25                      A.        Yes.

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Q. Can you explain.

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A. Well, funding was a constant issue that I had to deal with because we, you know, we very quickly depleted the funding that we had received and therefore required careful management of the available cash.

Q. I'd like to shift our questioning now to Proskauer Rose's representation of the Iviewit entities.

How do you describe the Iviewit -- how do you describe Iviewit's satisfaction with Proskauer's services?

MR. SELZ: Object to the form of the question.

THE WITNESS: There were a number of discussions that took place, principally between Si Bernstein and Chris Wheeler over the size of the bills and the number of hours charged to Iviewit.

By MR. PRUSASKI:

Q. What was the substance of those conversations?

A. I was not involved directly in those conversations, but from my perspective, there was no outcome from those discussions.

1 Q. What was Si Bernstein's problem with 26

2 bills, if there was problem?

3 A. They were too large.

4 Q. Why were they too large?

5 A. He felt that the, both the hours  
6 charged and the rates were excessive.

7 Q. Did Mr. Bernstein know what  
8 Proskauer's rights were at the time Proskauer  
9 became involved in representing Iviewit?

10 A. I have no knowledge.

11 Q. Did you feel that the rates were too  
12 high?

13 A. I felt that the rates were  
14 comparable to a Proskauer Rose type of  
15 representation.

16 Q. Was there ever a time when you were  
17 dissatisfied with Proskauer's representation?

18 A. There were times when I observed  
19 that there appeared to be some duplicative effort  
20 within the organization.

21 Q. Did you address that with Chris  
22 Wheeler?

23 A. I mentioned it to Chris and Chris  
24 made some changes in assignment.

25 Q. Were you satisfied with Chris

1 Wheeler's changes? 27

2 A. Yes.

3 Q. Do you recall if the bills  
4 reflecting Chris Wheeler's changes in assignment  
5 were ultimately paid?

6 A. When I left, the bills had been  
7 accruing for a very long time, and so the short  
8 answer would be, no.

9 Q. Why were the bills accruing for a  
10 long time at the time you had left?

11 A. I was directed by Si Bernstein not  
12 to disburse funds to resolve the outstanding  
13 balances.

14 Q. Why did he direct you to do that, or  
15 to not disburse funds?

16 A. To preserve cash.

17 Q. Did it have anything to do with his  
18 dissatisfaction with Proskauer's work or was it  
19 to preserve cash?

20 MR. SELZ: Objection; calls for  
21 speculation.

22 THE WITNESS: I can't answer that  
23 question.

24 By MR. PRUSASKI:

25 Q. Was the companies having financial



1 difficulties at that time? 28

2 A. Yes.

3 Q. Do you believe that's the reason why  
4 no further funds were disbursed to Proskauer?

5 A. Well, of course, since the cash  
6 situation was difficult, that was clearly a  
7 reason.

8 Q. Do you have reason to believe --

9 A. The question --

10 Q. I'm sorry.

11 A. The question really arose from the  
12 view of what priorities should be applied in  
13 disbursing funds.

14 Q. To creditors?

15 A. To creditors.

16 Q. Do you have any other reason to  
17 believe that -- I'm sorry, strike that.

18 Was there any other reason besides  
19 the companies' cash situation why funds were not  
20 disbursed to Proskauer?

21 A. There was -- Si Bernstein expressed  
22 dissatisfaction with the billings frequently.

23 Q. I believe you've stated that his  
24 dissatisfaction were what now?

25 A. With the rates charged and the hours

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charged.

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Q. Okay. Was this communicated to  
Chris Wheeler?

A. He communicated that directly to  
Chris Wheeler.

Q. Do you know if Chris Wheeler ever  
did anything in response to those communications?

A. Chris, as I understand it, Chris  
reviewed the billings and reviewed the charges  
and responded that they were accurate and  
consistent with their billing practices.

Q. Had you reviewed the bills?

A. Yes, I saw the bills.

Q. Did you feel that they were  
consistent?

MR. SELZ: Objection to the form of  
the question. Consistent to what?

THE WITNESS: I didn't understand  
that.

By MR. PRUSASKI:

Q. Did you -- I'll re-ask the question.  
You reviewed the bills?

A. Yes.

Q. Did you believe that they were  
unreasonable?

1 A. I felt that they were reasonably 30

2 accurate.

3 Q. Did you feel that there were  
4 services billed by Proskauer that weren't  
5 performed by Proskauer?

6 A. No.

7 Q. Did you feel that there were  
8 services performed by Proskauer that Proskauer  
9 did not have permission of the companies to  
10 perform?

11 A. No.

12 Q.. Did Si Bernstein frequently complain  
13 to creditors about their bills?

14 A. He primarily focused on Proskauer  
15 Rose.

16 Q. Was there anyone else with Iviewit  
17 that concurs with your analysis of Proskauer's  
18 bills?

19 A. I can't answer that.

20 Q. Did you ever hear Si Bernstein  
21 specifically recall any instances where Proskauer  
22 billed for work that wasn't performed?

23 A. No.

24 Q. Do you recall Si Bernstein  
25 specifically complaining about work that

1 Proskauer billed that Proskauer didn't have 31

2 permission to do?

3 A. No.

4 Q. Do you agree with Si Bernstein's  
analysis of Proskauer's bills?

A. I do not.

Q. How often did Proskauer send bills  
to Iviewit?

A. Monthly.

Q. Who received them?

A. I did.

Q. Were they reviewed by you right  
away?

A. Yes.

Q. And who else reviewed them?

A. Depending on who was handling the  
books at the time, the financial analyst.

Q. If there were any problems that you  
found with the bills, what did you do?

A. I didn't find any problems with the  
bills.

Q. Okay. Do you know how much Iviewit  
paid Proskauer in total?

A. I don't.

Q. Who made the decision to pay

Proskauer's bills?

32

A. I did.

Q. Was that one of your job duties?

A. Yes.

Q. Did anyone else have the duty at Iviewit to -- I'm sorry, strike that.

Did anyone else at Iviewit have the responsibility to determine whether the bills would be paid?

A. Well, it was delegated to Raymond Hersh the last few months of Iviewit.

Q. What were the months and year?

A. Well, Raymond came into the picture, we employed him, as I recall, late 2000, and he continued until the office was closed at the end of April 2001.

Q. Why was the office closed in April of 2001?

A. The business was moved to California operationally.

Q. Did Mr. Hersh ever express to you any objection with respect to Proskauer's bills?

A. He felt that the bills were high.

Q. Did he have any specific reason to feel that they were high?

A. He just felt the rates were high.

33

Q. The rates charged per hour by the attorneys?

A. Yes.

Q. Do you know if the rates charged per hour by attorneys, changed at all during the time that Proskauer represented Iviewit?

A. Actually they went down because in the early phases of the company, most of the work was performed by Chris Wheeler directly, then as the work load increased, it was delegated down to staff members, associates and thereby, the rates were reduced.

Q. Did Si and Eliot Bernstein know this?

A. Yes.

Q. Were Iviewit's bills for -- strike that.

Did Iviewit normally pay its bills to Proskauer on time?

A. No.

Q. Why?

A. Preserving cash.

Q.. Did that have anything to do with Proskauer?

A. Well, as the largest creditor, it was the, the action that would have impacted cash reserves the most. And Si Bernstein, again, instructed me not to make those payments.

When we received a funding, I did make payments and we had a number of discussions, that is Si Bernstein and I had a number of discussions over how much those payments should be.

Q. Do you recall any bills specifically withheld for payment because of Iviewit's objections to the bills?

A. No.

Q. At the time when Si Bernstein was complaining to you that he felt Proskauer's bills were too high, was he still directing Proskauer to do work for the companies?

A. Yes.

Q. Same for Eliot Bernstein?

A. Yes.

Q. Do you know if there ever came a time when Proskauer ever stopped representing Iviewit?

A. No.

Q. Did Iviewit ever fire Proskauer from

representing them?

35

A. I'm not aware of them ever being fired.

Q. Did Proskauer occasionally send letters to Iviewit demanding payment?

A. Yes.

Q. How often?

A. Well, at least once a month.

Q. Did you review the bills that were, that Proskauer alleged to be overdue?

A. Yes.

Q. Did you feel that the bills were owed?

A. Yes.

Q. Did Iviewit ever enter into any payment arrangements with Proskauer?

A. Yes.

Q. Why was that?

A. I made several agreements with Proskauer for scheduled payments, but my agreements were usurped by Si Bernstein.

Q. What do you mean usurped?

A. He directed me not to honor those agreements.

Q. Do you feel you bound the company in



those agreements?

36

A. I did.

Q. Do you feel that Si Bernstein had a right -- did you think the companies -- strike that.

Do you think the company's not honoring the agreement at the direction of Si Bernstein was justified?

A. No.

Q. Why?

A. We had a responsibility to pay our bills.

Q. Okay.

A. And we had no basis for singling out Proskauer Rose among the creditors.

Q. Do feel Proskauer Rose was singled out?

A. I think as the bills became so large that there was clearly no path to resolving the total bill in the short term, and as the bills continued to accumulate, it became just a larger and larger burden.

Q. Okay. I'm going to ask you a couple of questions that I didn't at the beginning about Proskauer's particular work. I'm sorry to jump

back to that so bear with me, please.

Do feel that Proskauer ever committed a malpractice in its representation of Iviewit?

A. No.

Q. How would you respond to someone else's allegation that they did?

MR. SELZ: Objection to the form of the question. I think it calls for speculation too. Is this a hypothetical you're asking him, Chris?

By MR. PRUSASKI:

Q. How do you respond to an accusation that Proskauer Rose did bad work for Iviewit with respect to patents?

A. The only work that Proskauer Rose did was to find a, and recommend a particular patent attorney in another firm.

Q. Was that done properly?

A. That was done before I became involved with the company.

Q. Okay. Do you know what the status of Iviewit, LLC's bankruptcy is?

A. I believe it's in Chapter 7.

Q. Currently?

A. Yes.

Q. In a bankruptcy proceeding?

A. Yes.

MR. PRUSASKI: Mr. Selz, I'm going to show the witness some exhibits. The first one is the Amended Complaint, which you have a copy of.

By MR. PRUSASKI:

Q. Mr. Utley, I'm going to show you a document that I'm going to mark Exhibit 1, which is entitled Amended Complaint. I'm going to ask you to look at it and tell me if you've ever seen it before.

(Whereupon, Exhibit No. 1 was marked for identification.)

THE WITNESS: (Witness complies.)

No.

By MR. PRUSASKI:

Q. Do you recognize the invoices that are attached to the document?

A. They appear to be familiar.

Q. Are those the invoices that Proskauer Rose sent to Iviewit?

A. As I say, they appear to be familiar, typical of the invoices that I was

receiving.

39

Q. If you look on the invoices, the first one is dated January 31, 2000. It's about seven pages into the document.

A. Um-hum.

Q. It indicates that the client's name is Iviewit.com, Inc. Were most of the invoices sent to that entity?

A. I believe so. Again, this was, I assume, this was because Iviewit.com, Inc. was the operating company.

Q. If Proskauer did work for Iviewit Technologies or Iviewit Holdings, would the work for those companies be sent, the bills sent to Iviewit.com, Inc.?

A. Yes.

Q. Was that the way that the company wanted the bills to be sent?

A. We did not make any specific request in terms of how the bills should be addressed.

Q. Okay. What were the distinctions -- how do you describe the distinction between the different entities as to how they should be billed?

A. We didn't make any distinction

between the entities.

40

Q. Could you elaborate on that.

A. We didn't make any distinction.

Q. Okay. How many separate bank accounts did the entities have?

A. I don't recall. There were a number of bank accounts that were held, that were in place before I joined the company and we basically used two accounts when I was there. One was the checking account and the other was a, a savings account. Both in the name of either dotcom, LLC or dotcom, Inc.

MR. PRUSASKI: Mr. Selz?

MR. SELZ: Yeah.

MR. PRUSASKI: I'm going to show Mr. Utley the document that's Exhibit 9 of the documents that I provided you a few days ago.

(Whereupon, Exhibit No. 2 was marked for identification.)

By MR. PRUSASKI:

Q. Mr. Utley, I'm going show you a document which is a letter dated October 12th, 1999, which we'll mark as Exhibit 2, and I'll ask you to look at that and tell me if you've ever seen it before.

1 A. (Witness complies.) Yes.

41

2 Q. Can you explain what that document  
3 is.

4 A. Well, it's a request for additional  
5 payment. At that time, Iviewit had just received  
6 a \$500,000 investment from Huizenga Holdings,  
7 H-U-I-Z-E-N-G-A. And I'm not aware that any  
8 payment had been made to Proskauer since services  
9 started in, early in the year, January or so in  
10 99. We made an initial payment of 75,000 when we  
11 received the \$500,000 investment from Huizenga  
12 Holdings, and this was a request for an  
13 additional 75,000.

14 Q. Were there points in time where  
15 Proskauer didn't bill Iviewit for several months  
16 or allowed Iviewit not to pay for several months?

17 A. I recall reviewing the account prior  
18 to the time I joined the company, and if my  
19 memory serves me correctly, it had accrued to  
20 \$285,000 by the time that I joined the company.  
21 That's a recollection. I'm not aware that any  
22 payment had been made.

23 I do recall a June statement  
24 summarizing the activities over the prior several  
25 months.

Q. You're referring to June of 99?

42

A. Yes.

Q. Okay.

MR. PRUSASKI: Mr. Selz, I'm going to show Mr. Utley the Document No. 10 that I gave you a few days ago.

(Whereupon Exhibit No. 3 was marked for identification.)

By MR. PRUSASKI:

Q. Mr. Utley, I'm going to show you a document marked Exhibit 3, which is a letter dated March 9th, 2000 and I'll ask you to look at that and tell me if you've ever seen it before.

A. (Witness complies.) Yes.

Q. Can you explain what that document is?

A. Well, it's a request for additional payment summarizing the outstanding balance and requesting a specific amount be paid to take care of specific invoices which had been received.

Q. Did you receive the document?

A. This document?

Q. Yes.

A. Yes.

Q. And I don't know if I asked the

previous document, which was Exhibit 2, did you  
receive that as well?

43

A. Yes.

Q. Okay. If you look at the second  
paragraph, it indicates that there is an  
outstanding account due of \$259,494. Do you know  
why that much in attorneys fees had accrued?

A. Well, as I mentioned, the  
outstanding amount by the time that I came,  
joined the company was approaching 300,000.  
There had been at least two separate filings for,  
corporate filings. The initial filings were for  
a C-corp, which was later modified to an S-corp.

(Whereupon, deposition interrupted  
by person entering the conference  
room.)

THE WITNESS: And in addition to  
that, Proskauer provided services to Iviewit,  
introductions, meetings, conference rooms, travel  
to Orlando to meet with the companies there for  
technology reviews; and so there was a, there was  
a lot of activity that took place in the early  
days of the company where the Proskauer was  
acting as, basically as an agent for the company.

By MR. PRUSASKI:



Q. At whose request?

A. At Bernstein's request.

Q. And the letter also indicates that we have not taken a retainer on this matter. Can you explain why Iviewit didn't pay a retainer to Proskauer?

A. I was not involved in those discussions. It was prior to my time.

MR. PRUSASKI: Mr. Selz, the next is Document 11.

(Whereupon, Exhibit No. 4 was marked for identification.)

By MR. PRUSASKI:

Q. Mr. Utley, I'm going to show you a document marked Exhibit 4, a letter dated March 24th, 2000. I'm going to ask you to look at the document and tell me if you've ever seen it before.

A. Yes.

Q. Did you receive a copy of this letter?

A. I did.

Q. Can you describe what it is?

A. It was, it is a letter to Si Bernstein confirming that I had made an

1 arrangement to make payments on a schedule and it 45  
2 states that Si Bernstein had put a hold on the  
3 agreement that I had made to make periodic  
4 payments.

5 Q. Why was a hold put on that  
6 agreement?

7 A. Si Bernstein did not agree with  
8 disbursing those funds.

9 Q. Okay. What ultimately -- how was  
10 that ultimately resolved?

11 A. I don't recall.

12 Q. Do you know why Si Bernstein had a  
13 problem with disbursing those funds?

14 MR. SELZ: That's asked and  
15 answered.

16 By MR. PRUSASKI:

17 Q. Answer the question, please.

18 A. I think as I had stated earlier, he  
19 had a general feeling that the charges were  
20 excessive.

21 Q. Okay. Were payment arrangements  
22 ultimately made with Proskauer after this March  
23 24th, 2000 letter?

24 A. I believe there were several  
25 arrangements made.

Q. Okay.

MR. PRUSASKI: Mr. Selz, Document 12  
is next.

(Whereupon, Exhibit No. 5  
was marked for identification.)

By MR. PRUSASKI:

Q. I'm going to show you, Mr. Utley, a  
document marked Exhibit 5, a letter dated March  
31st, 2000, and I'll ask you if you've ever seen  
this document before?

A. Yes.

Q. Did you receive a copy of it?

A. I did.

Q. And can you describe what it is?

A. It's a request that -- it was a  
report of having reviewed past due accounts and  
proposals made by Si Bernstein. It responds to  
those in the negative and requests that a payment  
plan be initiated immediately.

Q. What were Si Bernstein's requests to  
Proskauer?

A. I don't recall. At least one of  
those requests, I believe, was for part of this  
money to be translated into equity, part of  
the --

1 Q. The bills?

2 A. -- the bills to be translated into  
3 equity in Iviewit.

4 Q. Shares of stock?

5 A. Yes.

6 Q. And Proskauer rejected that?

7 A. Yes. I'm not sure if that came up  
8 on this specific occasion, but I do know that  
9 that was one of Si's proposals that he made from  
10 time to time.

11 Q. Do you know if the meeting that this  
12 letter references, in that meeting Si Bernstein  
13 objected to the size of the bills?

14 A. I wasn't in the meeting.

15 Q. Okay.

16 MR. PRUSASKI: Document 13,  
17 Mr. Selz.

18 (Whereupon, Exhibit No. 6  
19 was marked for identification.)

20 By MR. PRUSASKI:

21 Q. Mr. Utley, the next document I'm  
22 going to show you is marked as Exhibit 6. I'll  
23 ask you -- it's an April 10th, 2000 letter. I'll  
24 ask you to look at the document and tell me if  
25 you've ever seen it before.

A. Yes.

Q. Did you receive a copy of that?

A. I did.

Q. Can you explain what it is, please.

A. It was thanking me for a payment of \$25,000 and requesting a confirmation that this was part of the payment plan that we previously agreed to.

Q. Had you previously agreed to a payment plan?

A. Yes.

Q. Okay. Was this a payment plan that was separate from the one referenced in the March 24th, 2000 letter, which is Exhibit 4, that states that Chris Wheeler put a hold on the arrangement?

A. You mean that Si Bernstein put a hold?

Q. Yes.

A. Yes. And the one that's also referenced in the March 31st letter that we just discussed.

Q. Okay. So at this point, there's been three separate payment arrangements?

A. It's the same payment arrangement

documented in three separate letters. It was referenced in the March 24th letter; it was referenced in the March 31st letter, and it's referenced in the April 10th letter.

Q. Okay. So this payment arrangement that Si ultimately wanted to put a hold on, was eventually agreed to?

A. Not by Si.

Q. By you?

A. By me.

Q. Okay.

A. I made the agreement in the first place.

Q. If you knew that Si had objected to the payment plan, why did you agree to it?

A. He objected to it after I made the agreement.

Q. Okay.

MR. PRUSASKI: Document No. 14,  
Mr. Selz.

(Whereupon, Exhibit No. 7  
was marked for identification.)

By MR. PRUSASKI:

Q. Mr. Utley, I'm going to show you a document marked Exhibit No. 7. It's a letter or

1 a memo dated April 11th, 2000. I'll ask you if  
2 you've ever seen it before?

50

3 A. Yes.

4 Q. Is that your signature on the  
5 letter?

6 A. It is.

7 Q. And did you deliver it to Chris  
8 Wheeler?

9 A. I did.

10 Q. And can you explain what it is.

11 A. I'll read it. "Regarding the  
12 proposed payment plan, it is our intent to  
13 fulfill the agreement."

14 Q. Is this referencing the \$25,000 --

15 A. Yes.

16 Q. -- every two weeks payment plan in  
17 the April 10th letter?

18 A. Yes.

19 Q. Were any payments made pursuant to  
20 that payment plan?

21 A. Okay. I don't recall.

22 Q. Do you feel that this document bound  
23 the company?

24 A. I did.

25 Q. Okay. Do you recall how much was

owing about at that time to Proskauer?

51

A. I don't.

Q. I'm going to show you a document marked Exhibit 8.

MR. PRUSASKI: Mr. Selz it's No. 15.

MR. SELZ: Okay.

(Whereupon, Exhibit No. 8 was marked for identification.)

By MR. PRUSASKI:

Q. A letter dated April 19th, 2000. I'll ask you to look at it and tell me if you've ever seen it before.

A. Yes.

Q. Did you receive a copy of it?

A. I did.

Q. Does the -- what does the letter describe?

A. It confirms receipt of my letter confirming the payment plan, the fact that the first payment was made on April the 7th, and it elaborates that the remaining payments would be due every two weeks. It also expresses an understanding that in the event of a financing or capital investment, the past due balance would be paid on receipt of those funds.



Q. Was it your understanding that after April 19th, 2000 -- let me ask you that in a non-leading way.

52

So after the payment arrangement was entered into, what was your understanding as to Iviewit's responsibilities to Proskauer?

A. To continue with the payment plan.

Q. Was that done?

A. I don't recall what the subsequent payment was.

Q. I'm going to show you a document that's marked Exhibit No. 9.

MR. PRUSASKI: Mr. Selz, it's the next document. I'm going in order.

MR. SELZ: Okay.

(Whereupon, Exhibit No. 9 was marked for identification.)

By MR. PRUSASKI:

Q. A letter dated May 15th, 2000. I'll ask you to look at it and tell me if you've ever seen it before.

A. Yes. It recognizes a payment received on April the 27th and details against which invoices the payment would be applied and includes a reminder that the next payment would

be due on May the 15th.

53

Q. Okay. At the time that you received that letter, did you verify that those amounts were correct?

A. They were, yes.

Q. Okay. Did you feel that they were due and owing at the time?

A. Yes.

(Whereupon, Exhibit No. 10 was marked for identification.)

By MR. PRUSASKI:

Q. I'm going to show you a document marked Exhibit 10, a letter dated May 30th, 2000. I'm going to ask you to look at it and tell me if you've ever seen it before.

A. Yes.

Q. Did you sign that document?

A. No.

Q. Who did?

A. My secretary.

Q. At your request?

A. Yes.

Q. Okay. Was the letter transcribed accurately?

A. Yes.

Q. Okay. And you delivered it to

54

Mr. Wheeler?

A. Yes.

Q. Can you explain the substance of the letter, please.

A. Well, it says that due to our cash position, that I was only able to make a partial payment. I did make a partial payment and it reaffirms that normal payments would resume as soon as cash reserves would permit.

Q. Did Si and Eliot Bernstein know that the \$25,000 payments were being made?

A. Yes.

Q. What was their position on that?

A. Well, on several occasions I was challenged as to why I made those payments.

Q. Was that ever resolved?

A. Resolved after the fact.

Q. Let me ask what -- after they challenged the payments, were other payments made?

A. Yes. I think we have a record of at least three payments here.

Q. Okay. Since they challenged you on the first payment?

A. Yes.

Q. Why did you continue making the payments?

A. Well, I continued payments as I could and as I thought was prudent at my discretion.

Q. Did Si and Eliot Bernstein, after they objected to you making the first payment of \$25,000, did Si and Eliot Bernstein continue directing Proskauer to do work?

A. Yes.

(Whereupon, Exhibit No. 11 was marked for identification.)

By MR. PRUSASKI:

Q. I'm going to show you a document marked Exhibit 11, which is a letter dated December 29th, 2000. I'll ask you to look at the document and tell me if you've ever seen it before.

A. Yes.

Q. Did you receive a copy of it?

A. I did.

Q. Could you explain the substance of the letter, please.

A. It states that Iviewit will commence

payments of \$30,000 starting in December 2000 and on the 15th of each month thereafter, that the current monthly bills will not exceed \$5,000 a month and 5,000 of the \$30,000 payment would be applied to current bills and 25,000 to the outstanding balance.

56

Q. Was this a different payment arrangement than the previous one?

A. Yes.

Q. And why was this payment arrangement entered into?

A. We had received a promissory note funding from Crossbow and so we were disbursing funds because of that funding.

Q. And at this point in time, were the Bernstein's still directing Proskauer to do work for the companies?

A. Yes.

(Whereupon, Exhibit No. 12 was marked for identification.)

By MR. PRUSASKI:

Q. The next document is marked Exhibit 12, a letter dated January 4th, 2001. I'm going to ask you to look at this document and tell me if you've ever seen it before.

A. Yes.

Q. Did you receive this letter?

A. Yes.

Q. And can you explain what the letter, the substance of the letter is, please.

A. Yes. It confirms receipt of \$30,000 and identifies how it would be applied against the receivables.

Q. Was that payment made pursuant to the arrangement describe in the December 29th letter?

A. Yes.

Q. The accounts receivable balance of \$66,844.60 described in the letter, at that time you received the letter, do you know if that money was due and owing Proskauer?

A. I believe it was, yes.

THE WITNESS: Can I take a break?

MR. SELZ: Sure.

(Whereupon, a break was taken from 10:50 to 10:59.)

MR. PRUSASKI: What's my last question?

(Whereupon, the requested portion was read back.)

(Whereupon, Exhibit No. 13 was

58

marked for identification.)

By MR. PRUSASKI:

Q. The next document I'm going to show you is marked Exhibit 13. It's a letter dated January 8th, 2001. I'll ask you to look at this document and tell me if you've ever seen it before.

A. Yes. It's a request for the January payment of \$30,000, which had not been made by January the 18th.

Q. Did you receive this letter from Chris Wheeler?

A. Yes.

Q. Okay. Why wasn't the \$30,000 payment due on the fifteenth made?

A. I could only surmise that it was because of insufficient funds.

Q. Iviewit had insufficient funds?

A. Yes.

Q. Do you believe that the payment was due and owing?

A. Yes.

Q. The letter describes in the 4th sentence, the first clause: "If the payments are

continually delinquent," do you feel that's an  
accurate description by Chris Wheeler of  
Iviewit's payment history?

59

A. Yes.

(Whereupon, Exhibit No. 15 was  
marked for identification.)

By MR. PRUSASKI:

Q. The next document I'll show you is  
being marked Exhibit 15, a letter dated March  
28th, 2001 consisting of four pages total.

MR. SELZ: Chris, is that 14 or 15?

MR. PRUSASKI: It's 15. The January  
18th letter was 14.

THE WITNESS: There's two January  
8th letters. These are both the same, 13 and 14.

MR. PRUSASKI: Oh. I'm sorry.  
Steve I mismarked. This is going to be 14.

MR. SELZ: Okay. That's what I  
thought.

MR. PRUSASKI: Sorry. Thanks for  
pointing that out.

MR. SELZ: No problem.

(Whereupon, Exhibit No. 14 was  
marked for identification.)

By MR. PRUSASKI:



Q. Sir, I'm going to correct myself.

60

This is going to be Exhibit 14, a March 28th, 2001 letter consisting of four total pages. I'll ask you to look at it and tell me if you've ever seen it before.

A. Yes.

Q. Did you receive this from Chris Wheeler?

A. Yes.

Q. Could you describe what it is.

A. It's detailing about standing invoices and an acknowledgement of \$7,000 which has been paid.

Q. Did you review the invoices listed in this letter when you received the letter?

A. They were reviewed by accounts payable.

Q. Were they found to be due and owing?

A. Yes.

MR. SELZ: I didn't catch that. Who reviewed them?

THE WITNESS: Accounts payable.

By MR. PRUSASKI:

Q. Who comprised the accounts payable?

A. Bill Kasser at that time.

K-A-S-S-E-R.

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Q. At the time this March 28th, 2001 letter was received, were Si and Eliot Bernstein still directing Proskauer to do work?

A. Yes.

Q. Were you directing Proskauer to do work?

A. I was, although I don't believe at that point in time there was very much work being done.

Q. Why was that?

A. Because of the state of the company.

Q. How do you describe the state of the company at the time of the March 28th, 2001 letter?

A. Well, the company was in the retrenchment mode and we did not -- we did not activate much work.

Q. What do you mean by retrenchment mode?

A. We were in the mode of determining how we would shrink the company and what the operational activity of the company would be between California and Boca.

Q. Was the company experiencing

financial problems at the time?

62

A. Yes.

(Whereupon, Exhibit No 15 was  
marked for identification.)

By MR. PRUSASKI:

Q. I'm going to show you a document  
marked Exhibit 15, a letter dated April 16th,  
2001, and ask you to tell me if you've ever seen  
that document before.

A. I don't recall it specifically but I  
assume this is a letter that I did receive.  
Yeah, I think so.

Q. Can you describe the substance of  
the letter.

A. It confirms notification of a  
\$25,000 retainer requirement for additional  
services and requests of Ross Thompson, a senior  
staff attorney, to prepare a status report of  
ongoing projects for Mr. Miller, who was brought  
in to assist in closing the Boca operation.

Q. Is this after you left the company  
that this letter was sent or before?

A. It was shortly before.

Q. And who was Mr. Miller again?

A. He is an attorney who was brought in

to basically wind down the Boca operation.

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Q. Was he a solo practitioner or a firm attorney?

A. I believe he was an independent attorney.

Q. What was Mr. Miller's first name?

A. Ross.

Q. Did you ever have conversations with Mr. Miller about Proskauer's bills?

A. Yes.

Q. And what did you talk about?

A. I told him --

MR. PRUSASKI: Hold on a second.

Steve?

MR. SELZ: Yeah, I think my client got disconnected. I'll have to call him right back.

MR. PRUSASKI: Okay.

MR. SELZ: Okay, Eliot, you're back?

MR. BERNSTEIN: Yep.

MR. SELZ: Okay. Sorry. Okay, go ahead.

MR. PRUSASKI: I'll re-ask my last question.

MR. SELZ: Thank you.

By MR. PRUSASKI:

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Q. What did you and Mr. Miller discuss pertaining to Proskauer's bills?

A. We discussed the outstanding balances.

Q. Whose idea was it to bring Mr. Miller into the company?

A. The board of directors.

Q. Eliot and Si Bernstein included?

A. Yes.

Q. They both concurred with bringing him aboard?

A. Yes.

Q. And what was Mr. Miller's position with respect to Proskauer's bills?

A. I don't recall any specific position.

Q. Do you know if Mr. Miller felt the bills weren't due and owing?

MR. SELZ: Calls for speculation.

THE WITNESS: The direction that he was given by the board, of which I was a party, was to reach a settlement of all outstanding payables.

By MR. PRUSASKI:

Q. Was the settlement because of Iviewit's financial condition?

A. Yes.

Q. Okay. Do you know if Mr. Miller ever reached a settlement with Proskauer?

A. I don't.

Q. You don't know?

A. No.

Q. Were you present at all of the meetings of the board of directors for Iviewit?

A. I was through April of 2001.

Q. Were any Proskauer attorneys ever present at any of those board meetings?

A. At many of them, but I don't specifically recall which board meetings.

Q. Do you know if Si or Eliot Bernstein ever mentioned during those board meetings that Proskauer was billing for work that they didn't have permission to perform?

A. No.

Q. You don't know or you never heard them say that?

A. I never heard them say that.

Q. Okay. Do you know if Si or Eliot Bernstein -- or let me allow my question to

encompass anyone present at the meeting. Did anyone present at the board meetings ever complain or state that Proskauer was billing for work that they didn't do?

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A. No.

Q. Did anyone ever complain or state at any board meetings of Iviewit that Proskauer performed poorly with respect to legal work?

A. No.

(Whereupon, Exhibit No. 16 was marked for identification.)

By MR. PRUSASKI:

Q. I'm going to show you a document marked Exhibit 16, which is a letter dated April 16th, 2001, total two pages, ask you to look at this document and tell me if you've ever seen it before.

Oh, wait a second, I'm showing you the same letter as pervious. I'm sorry. I did it again.

MR. PRUSASKI: Hold on a second, Steve. I mismarked another exhibit.

MR. SELZ: Okay.

(Whereupon, Exhibit No. 16 was re-marked for identification.)

By MR. PRUSASKI:

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Q. The document I wanted to show you, which is going to be marked Exhibit 16 is a letter dated April 16th, 2001, attaching, with a three-page attachment, four pages in total. I'm going to show you that and ask you if you've ever seen it before?

A. Yes.

Q. Did you receive that letter and the attachment?

A. I believe so.

Q. Obviously the letter states that it's attaching a list of outstanding invoices due and owing. Did you or anyone in the company do a reconciliation as to whether these invoices were due?

A. Bill Kasser was requested to review them.

Q. Did Bill Kasser do the reconciliation?

A. As far as I know, he did.

Q. Do you know what his findings were?

A. I did not receive any notice of any discrepancies.

Q. Okay. Were you still with the



company on April 16th?

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A. Yes.

(Whereupon, Exhibit No. 17 was  
marked for identification.)

By MR. PRUSASKI:

Q. Show you a document marked Exhibit  
17, a letter dated April 27th, 2001, consisting  
of two pages. I'm going to ask you if you've  
ever seen this document before?

A. Um-hum.

Q. That's a yes?

A. Yes.

Q. And did you receive it?

A. Yes.

Q. And what is the substance of the  
letter?

A. It says: Since no payment had been  
received, effective immediately, representation  
was going to be terminated and a request was made  
for payment in full and in the event that is not  
received or an arrangement not made, the  
litigation department would be requested to take  
action.

Q. At the time you received the letter,  
did you dispute the amount listed in Paragraph 2

of 369,460.97 as due and owing?

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A. No.

Q. Why?

A. Well, it had been enumerated on the prior letter of April 16th.

Q. Okay. And no one in accounts -- had anyone in accounts payable given you any indication that this amount was due?

A. No.

Q. How long after you received the letter of Proskauer's terminating representation did you leave the company?

A. Three days.

Q. April 30th?

A. Yeah.

Q. Okay.

MR. PRUSASKI: Steve, I need to review my notes for a moment.

MR. SELZ: Okay.

(Whereupon, a short break was taken.)

By MR. PRUSASKI:

Q. I'm going to ask you some questions I made notes on during your previous testimony so we're going to move backwards in time and I

apologize for that.

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A. Okay.

Q. Who is Ken Rubenstein?

A. Ken Rubenstein is an intellectual property department head at Proskauer Rose in New York, and he is the person who recommended Meltzer as the patent attorneys to take care of the Iviewit intellectual property matters.

Q. What's your background in IP?

A. Well, I hold a number of patents. I, as general manager of a major IBM facility, an intellectual property department of patent attorneys reported to me. I was involved in promoting IBM's intellectual property activities. I sold an IBM company with intellectual property attributes and a portfolio that went with the company. So I've been involved in various aspects of intellectual property for many years.

Q. Do you believe that one of the reasons why you were brought into Iviewit was because of your intellectual property background?

A. Yes.

Q. Who from Iviewit directed the firm that Rubenstein recommended to do the IP work?

A. Before I joined the company, it was

Eliot Bernstein.

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Q. Was he satisfied with that firm's work?

A. I don't recall any complaint.

Q. Did you have any complaints?

A. No.

Q. Do you know if any intellectual property work for Iviewit was ever mishandled by any law firms?

A. No.

Q. Do you recall Proskauer ever agreeing to accept fixed fees for work, that's fixed fees for doing work for Iviewit?

A. No.

Q. Would you know if they did?

A. Subsequent to my employment, yes.

Q. I asked you if any law firms had mishandled any patent work for Iviewit. Do you know if any law firms failed to do necessary patent work for Iviewit?

A. I'm not aware of any law firms that did not complete their assignments.

Q. Did you oversee, subsequent to the beginning of your employment, the work done by the patent attorneys?

A. Yes.

Let me come back. On the provisional, the initial provisional filings, on later review, did not cover all aspects of the material that should have been covered; and that was corrected in the formal filings.

Q. By what firm was involved in that?

A. That was Meltzer.

Q. Proskauer never had anything to do with that?

A. No.

Q. Did Proskauer ever submit bills for intellectual property work that they didn't do?

A. No. Not that I'm aware of. The only billings were for trademark registration work that was done.

Q. Was that done correctly?

A. Yes.

Q. Can you explain to what extent Proskauer did trademark registration work?

A. It was handled out of the New York office and Iviewit, as a name for instance, and the graphics representing Iviewit were registered.

Q. Correctly?

A. Yes.

Q. I'm going to read a statement to you from Iviewit's interrogatory answers. It says:

"At several board meetings, the billings of Proskauer and the work products were repeatedly questioned by all board members and Chris Wheeler, who attended these meetings and was fully aware of major concerns in the total bills and incompetence of product or failing to produce work results."

Is that an accurate statement?

A. No.

Q. Okay. Based on your previous testimony?

A. Yes.

Q. Another statement I'll read to you from Iviewit's interrogatory answers.

"Gerald Lewin, Murice, Buchsbaum --  
B-U-C-H-S-B-A-U-M --

A. Buchsbaum.

Q. -- Buchsbaum, Brian Utley, Ross Miller, Aden Foley, William Kasser and Larry Mondragon -- sorry, Ms. Court Reporter -- were all commissioned by the board to investigate the billings and inferior work products, especially

in relationship to the patent pool errors and  
missing copyrights."

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Is that an accurate statement?

A. Well, some of those names I don't  
recognize.

Q. Were these people who were  
commissioned by the board of directors to  
investigate Proskauer's billings?

A. If I can rephrase that.

Q. Sure.

A. At several meetings, the magnitude  
of the Proskauer billings was discussed, and Si  
agreed to discuss those billings with Chris  
Wheeler, but there were no, there were no details  
or specifics regarding failure to complete work  
or work completed but not requested.

Q. What about incompetence of work?

A. That was never an issue.

Q. What about patent pool errors and  
missing copyrights, was that ever an issue?

A. Patent pool errors were not within  
the scope of Proskauer work.

Q. What is a patent pool error?

A. A patent pool is something that  
industry participants will create. For instance

and specifically in the MPEG area, there is a patent pool that Ken Rubenstein is personally involved with relating to licensing the usage of MPEG based intellectual property. And the reason this pool is established is because the licensors basically formed a consortium or a pool for the purpose of granting rights so that people in the industry could practice the collection of intellectual property, which was held across a number of different companies. So they form a pool and the pool collects the royalties and then distributes the royalties across the pool members.

Q. Was there ever patent pool errors?

A. There was no such pool that Iviewit has ever been involved.

Q. So were there any patent pool errors?

A. There was no patent pool.

Q. Do you have any idea what Eliot Bernstein is referring to in his interrogatory answers?

A. No.

Q. Were there any missing copyrights?

A. No.



Q. Does Eliot Bernstein have patent or copyright experience?

A. No.

Q. Does Si?

A. No.

Q. The interrogatory answers refer to correspondence between Ross Miller and Proskauer relating to negotiating settlement to the overstated bill. It was agreed to settle at \$100,000 but the deal was never consummated. I'll ask you, Mr. Utley, are you aware of any settlement agreements like that?

A. No.

Q. Do you have any idea what Mr. Bernstein is talking about?

A. No.

Q. Do you know if Mr. Hersh ever entered into any agreements with Proskauer to settle the bills?

A. If he did, it would have been with my knowledge and approval.

Q. Do you know if -- I'm going to refer to another interrogatory answer, which I can't quote because it's not in context. It's responding to a question.

Do you know if there were any abuses

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by Attorneys Wheeler or Rubenstein with respect to NDA's for their respective clients or patent pools that they oversaw?

A. I'm not aware of anything.

Q. Did the board ever -- well, I'm going to quote this one because it's important that I do.

We asked Iviewit in Interrogatory No. 15 if they ever complained to or otherwise notified Proskauer Rose that Proskauer allegedly failed to perform any work, and they said yes, and we asked them to explain their communicating to Proskauer about these things; do you understand?

A. I understand.

Q. Okay. The response, and I'll quote it, was there were, quote, demands by the board to limit Mr. Utley and Mr. Wheeler from running up substantial bills without board approval. Mr. Utley was limited in incurring Proskauer or other expense items, especially whereas his friends were concerned, to a maximum of \$5,000. Mr. Wheeler is aware of this and proceeds to bill far in excess for work Mr. Utley requested

without board approval, end quote. Is that an  
accurate statement?

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A. No.

Q. Were there ever demands by the board  
to limit your authority?

A. Not my authority. There was  
requests to minimize the amount of work that  
would be allocated to Proskauer. And the problem  
that I had was that much of the work that was  
done by Proskauer was not requested by me but was  
requested by the Bernstein's.

Q. So how do you characterize the  
statement that I just read to you?

A. I think it's a misrepresentation.

Q. Did you ever allow Proskauer to  
perform work without board approval, proper board  
approval, as I'm referring to this interrogatory  
answer?

A. Well, day-to-day work does not  
require board approval.

Q. I asked Iviewit in Interrogatory 17  
and 18 to list the particular invoices billed by  
Proskauer which they believe work was billed but  
not at Iviewit's request, and they specified some  
work and I want to run over it with you briefly.

1 They refer to Distance Learning, acquisition and  
2 merger work with New Jersey Distance Learning  
3 Company. Does that ring a bell?

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4 A. Um-hum.

5 Q. Did Proskauer do any work with  
6 respect to that?

7 A. A small amount of work related to  
8 the potential structuring of a merger or  
9 acquisition on the part of Iviewit.

10 Q. Who requested Proskauer to do the  
11 work?

12 A. I did.

13 Q. Did the Bernstein's know that  
14 Proskauer did that work?

15 A. Yes.

16 Q. Did they ever complain about it?

17 A. Si did not. Eliot did.

18 Q. What did Eliot say about it?

19 A. Well, he didn't think that we should  
20 be involved in distance learning.

21 Q. Would you describe that as a  
22 disagreement among management?

23 A. Yes.

24 MR. SELZ: Object to the form of the  
25 question.

By MR. PRUSASKI:

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Q. Another category is setup corporations: I-Media, I-Learnit, InternetTrain, etc., name searches and trademarks. Did Proskauer do any type of work related to that?

A. I'm not aware that they did.

Q. Trademark applications is another category listed in the interrogatory answers. Do you know if Proskauer did any work related to trademark applications?

A. Yes.

Q. And I believe you previously said the New York office did?

A. Yes.

Q. Who requested that Proskauer do this work?

A. It was started before I joined the company and it continued while I was involved with the company.

Q. So who would have requested it before you joined?

A. It was requested from the Bernstein's through Chris Wheeler.

Q. Another category where Proskauer billed for work that it alleges was not performed

at Iviewit's request was Christopher Wheeler

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attending board meetings. Who requested

Mr. Wheeler to attend Iviewit board meetings?

A. This was a practice that started before I joined the company.

Q. Was there ever a time where Christopher Wheeler was asked to stop attending board meetings?

A. No. No. The only exception to his presence was if subject matter would be discussed that he should be excluded from.

Q. Do you think it's unreasonable for him to bill his time for attending a board meeting for his client?

A. No.

Q. Another category is entire corporate organizations and reorganization were all recommended by Proskauer Rose and were to be small incorporation fees for setup of Mr. Wheeler's corporate scheme, instead there are mass billings for this work. How do you respond to that statement?

A. Well, the first two occurred before I joined Iviewit, but my understanding of what transpired is that Proskauer was first directed

1 to form a C-corp. Friends of the family --

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2 Q. Directed by whom?

3 A. By Bernstein's.

4 Q. Okay.

5 A. Friends of the family in Los  
6 Angeles, after the fact, strongly recommended  
7 that it be, the corporate structure be modified  
8 to an S-corp for tax purposes. So it was  
9 restructured into an S-corp. That was U-View  
10 fees.

11 Then after I joined the company and  
12 we began to explore the capital markets, it  
13 became evident that an S-corp was a handicap and  
14 for investment purposes, we needed to be a  
15 C-corp. And so the board made the decision late  
16 1999 to convert to a C-corp.

17 The problem that we had to deal with  
18 and that compounded Proskauer's work effort was  
19 the complexity of the structure that had to be  
20 migrated that had been created with the S-corp  
21 and the multiple investments in the S-corp and  
22 Iviewit, LLC and preserving tax status for those  
23 investors in Iviewit, LLC. So we were migrating  
24 basically three companies into three new  
25 companies and preserving one company for

accounting purposes.

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Q. In Iviewit's answer to Interrogatory No. 20 in Subparagraph Roman Numeral X, they said that several meetings were held with Chris Wheeler and Simon Bernstein, chairman of the board, regarding excessive billings and controlling Mr. Utley and Mr. Wheeler and the billings for personal conferences they held daily. How do you respond to that statement?

A. We didn't hold personal conferences daily, and if we had personal meetings, they were not charged.

Q. Is that a misrepresentation, then?

A. That's a misrepresentation.

Q. The answer to 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.

A. Joao.

Q. Joao.

A. Yeah.

Q. Were 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.

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

A. No.

Q. How do you respond to that  
statement?

A. That it's inaccurate.

Q. Did you and Mr. Wheeler suggest  
using, who's described as your friend, at Foley &  
Lardner to correct gross negligence in the  
Rubenstein/Joao work?

A. Well, Rubenstein, as I said, was not  
involved in the work.

Q. Okay. I'm sorry, I shouldn't have  
said that, but I'm reading again off the  
interrogatories.

A. But it is accurate to say that when we brought in Foley & Lardner, who was referred to me by a person who was responsible for intellectual property for IBM for the entire Far East and who worked for me as an intellectual property manager, when we brought Foley & Lardner in, it was to assume control of the portfolio and to bring it up to a level that would be necessary for formal filings. And in that process, we, you know, we discovered that there were some things that in hindsight should have been treated differently in the original filings.

Q. Was there ever an agreement by Proskauer that they wouldn't bill over \$5,000 a month or was that an estimate?

A. It was a request by Proskauer to not ask for work that would involve more than \$5,000 of charges a month.

Q. Were the Bernstein's aware of this request?

A. Yes.

Q. Did they continue to request work in excess of that amount?

A. Well, I think it's very difficult to directly attach a work request to a specific

amount since it's, there's, the \$5,000 is the  
product of a number of work elements, and no  
single work element would be identified with  
\$5,000.

Q. Did Si or Eliot Bernstein ever want  
to get rid of Proskauer's Iviewit attorneys?

MR. SELZ: Objection to form.

MR. PRUSASKI: I'll rephrase it.

I'll withdraw the question.

By MR. PRUSASKI:

Q. Who's Steven Lamont?

A. I don't know him.

Q. Have you heard his name before?

A. I've heard the name.

Q. Did he ever have anything to do with  
Iviewit at the time when you worked there?

A. No.

Q. He was never present at any board  
meetings obviously?

A. No.

MR. PRUSASKI: I'm going to review  
my notes again for a minute.

MR. SELZ: How you doing on time?

MR. PRUSASKI: I'm getting to the  
end. I'm going over my notes.

MR. SELZ: Okay. What I would

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suggest is how about we see if we can finish you  
up, we take a lunch break and then I'll do my  
cross; how does that sound?

MR. PRUSASKI: Sure.

THE WITNESS: No, I can't do that.

MR. PRUSASKI: You're strapped for  
time?

THE WITNESS: Right.

MR. SELZ: Okay, well, then we'll  
take a five or ten minute break and then we'll  
start right into the cross.

MR. PRUSASKI: Okay.

THE WITNESS: Okay.

MR. PRUSASKI: (Looking through  
documents.)

By MR. PRUSASKI:

Q. I believe you testified earlier that  
you had had at least a conversation with Chris  
Wheeler in the past about a discrepancy on a bill  
when you received it?

A. What I discussed with him was the  
fact that it appeared that there was redundancy  
in the work effort, that is, more than one person  
involved in a particular work effort, so there

was dual billing for a particular task.

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Q. Was that only on one bill?

A. It was, it was not on one bill, but on a particular piece of work.

Q. Okay. And was that communication that you had with Mr. Wheeler in writing or oral?

A. No, it was oral.

Q. And did Mr. Wheeler resolve it to your satisfaction?

A. Yes.

Q. You filed an involuntary bankruptcy action against Iviewit.com, LLC?

A. Um-hum.

Q. You have to answer yes or no.

A. Yes.

Q. Why is that?

A. Because I was owed substantial monies by Iviewit which were unresolved.

Q. And that action is pending?

A. That -- there was a judgment, a bankruptcy judgment putting the LLC into a Chapter 7.

Q. Are there any questions that I asked you today that you were unable to answer but you feel that Mr. Hersh could? I'm asking you that

because I'm planning to take his deposition in  
another week or so.

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A. I think Mr. Hersh handled specific,  
handled the accounts specifically, and so I think  
he might provide more detail than I might have  
been able to provide.

Q. Did Mr. Hersh work at your  
discretion?

A. Yes.

Q. Do you know where Mr. Hersh lives?

A. He lives, he lives in Boca -- no.  
Yes, he lives in Boca.

Q. Is it on Viastel?

A. Yes.

Q. Okay. V-I-A-S-T-E-L. Do you know  
what Mr. Kasser's role in the Iviewit companies  
is?

A. Well, when I was there, he was  
employed as an accountant.

Q. Do you know what he is now?

A. No.

Q. Did Mr. Kasser ever complain to you  
that Proskauer was submitting, or Proskauer was  
claiming monies were due and owing on bills that  
weren't received by Iviewit?

A. No.

Q. And I believe you testified that he had performed reconciliations at your request of the bills claimed by Proskauer to be due?

A. That was his job.

MR. PRUSASKI: I have no further questions. Can we take a short break, Steve, for the restroom?

MR. SELZ: Yeah. I just need to -- give me, like, 15 minutes. I just need to catch something to eat before I pass out over here.

MR. PRUSASKI: Can you stick it out for 15 minutes?

THE WITNESS: Yeah, I suppose.

MR. PRUSASKI: Do you know how long your cross is going to be?

MR. SELZ: I don't know. I mean, it could be a little bit but it's not going to be huge.

MR. PRUSASKI: Okay.

MR. SELZ: And it will obviously depend on what comes up during the cross too, but I'll --

MR. PRUSASKI: We're off the record.

(Whereupon, a break was taken from

11:50 to 12:09.) --

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EXAMINATION VIA TELEPHONE

By MR. SELZ:

Q. Mr. Utley, you're still under oath.

A. Yes.

Q. Okay. My name is Attorney Steve Selz. I represent the defendants in this action, Iviewit. And let me start out by saying that I'm going to refer to the Iviewit companies the way that Mr. Prusaski did, that is, when I say Iviewit, I mean the totality of all the companies. If I wish to break it down into a more specific entity, I'll tell you the specific entity we're talking about.

A. Okay.

Q. Great. You had indicated in your earlier testimony, Sir, you had had your deposition taken about seven or eight times before, I believe you said.

A. I said four or five.

Q. Four or five. Can you tell me what cases that was in or what that was involving, please.

A. Is that relevant to this deposition?

Q. Well, I have a right to know what



1 your experience is with lawsuits, if you're  
2 involved with anything personally concerning  
3 Iviewit, whether or not you've ever given a  
4 deposition or not.

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5 A. These were cases of insurance  
6 liability.

7 Q. Was it personal injury actions,  
8 something for you personally or was it something  
9 else?

10 A. I was not personally involved in the  
11 injury, but there was an injury claim in at least  
12 two of the depositions.

13 Q. How about the other depositions, the  
14 four depositions, what were those involving?

15 A. Oh, I was deposed as a witness in an  
16 IBM suit.

17 Q. What was that suit involving more  
18 specifically?

19 A. It was involving a suit by Data  
20 General against IBM.

21 Q. And was it suit over a contract?

22 A. It was suit over patent  
23 infringement.

24 Q. And Data General was alleging patent  
25 infringement against IBM?

A. Yes.

Q. And were you an employee of IBM at the time that you gave that testimony?

A. No.

Q. And who were you an employee of at that time?

A. I was deposed as the person responsible for the product which was claimed to be infringing on Data General product patents.

Q. Okay. And you were the person, the IP person, the IP person responsible for that particular product that Data General was claiming was infringing?

A. I was the general manager of that product group.

Q. Okay. Were you named personally in that lawsuit also or just the corporation?

A. Just the corporation.

Q. Do you have any recollection what year that lawsuit took place?

A. Well, I was deposed, it was about five years ago.

Q. About 1997 or thereabouts?

A. Yeah, thereabouts.

Q. Okay. And do you recall what court

or where the site of that lawsuit was?

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A. No.

Q. Was it in the federal court or state court?

A. I don't know.

Q. Was your deposition taken in the State of Florida --

A. No.

Q. -- or taken elsewhere?

A. It was taken in New York.

Q. In New York. Okay. Now, going back to something that Mr. Prusaski started but I don't think he completed with was some of your background information about your education. If you can just tell me from undergraduate onward what your educational background is, Sir, schools you attended, years of attendance and degree.

A. I don't have a degree.

Q. Okay.

A. I attended Weaver State University, which was then Weaver College, 1950.

Q. Okay.

A. San Fransisco City College, 1957, 1958.

Q. Okay. And you graduated from San

Francisco College or did not?

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A. I don't have a degree.

Q. Okay. So you never completed your course at San Fransisco then?

A. Right.

Q. With regard to your employment experience, you had stated your employment with IBM. What years was that from, Sir?

A. 1955 through 1992.

Q. 92. And your first employment with IBM in 1955, what position was that in if you can recall?

A. I was employed as a customer engineer.

Q. All right. And after that, you were promoted to what position?

A. In 1960 I was promoted to development engineer, electrical engineer.

Q. At that point, were you supervising a staff or working with other engineers below you at that point?

A. I was involved in design of a computer.

Q. Were you the leader of any design team or were you just an individual engineer

working as part of a team?

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A. I was part of a team.

Q. How about after your role as a design engineer, then, in 1960, what were you promoted to next?

A. I was promoted to, well, through a variety of steps, up through senior engineer.

Q. Okay.

A. And assumed management responsibility in 1965.

Q. Okay.

A. And assumed product management, product management responsibility in 1970, 1969.

Q. 1969, okay.

A. By that, product management responsibility in IBM parlance was I had worldwide development and profit responsibility for a specific product line.

Q. What product line was that in 1969?

A. That was for IBM Small Scientific and Process Control Systems.

Q. And after that, what was your next promotion or next move in IBM?

A. My next move was in 1974. I assumed responsibility for one of IBM's leading, most

advanced computer development programs.

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Q. Okay.

A. As a systems manager.

Q. I'm sorry, after that?

A. That was, that product became the System 38, one of IBM's cornerstone products.

After that I assumed, was named director of Architecture and Technology for IBM's Systems Division, responsible for the technology direction and architecture for products in five laboratories.

Q. And how many people at that point did you supervise, Sir?

A. Well, I'm supervising the work product of five laboratories.

Q. Okay. So several hundred employees at that point?

A. That would be probably in the range of 1,500 development employees.

Q. And after that?

A. After that, I became the general manager of IBM's Biomedical Business Unit.

Q. Okay. Did you have any particular experience in the biomedical field or was it just a promotion based on your past experience within

the corporate structure?

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A. It was based upon my past experience.

Q. And how about after that, Sir?

A. I sold that business and then I assumed responsibility for the introduction of the PC in Europe.

Q. Okay. So you sold the biomedical business that IBM had developed as part of some kind of purchase by another entity; is that what happened?

A. Yes.

Q. What entity was that that purchased?

A. I can't reveal that.

Q. Okay. Is there some kind of confidentiality that prevents you from disclosing that?

A. Yes.

Q. And what year about was that in?

A. That was in 1984.

Q. Okay. And after that, you said you started another project introducing the PC to Europe, was it?

A. Yes.

Q. And what position did you hold with

regard to that?

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A. I was group director for PC programs in Europe.

Q. And how long did that position last?

A. Well, that position grew over time until 1988 when I had, at that time I had responsibility for all of IBM's medium and small systems in Europe, including manufacturing and marketing.

Q. Okay. And that was through 1988 or thereabouts, you said?

A. That was through mid 1988.

Q. After that, what was the next step in IBM?

A. Then I assumed responsibility for the personal computer development worldwide based in Boca Raton.

Q. And your employment with IBM ceased, you said, about in 1992?

A. Yes.

Q. And what was the reason for the cessation of your business relationship with IBM?

A. I retired.

Q. Okay. Now, after IBM, what was your employment or where were you employed?



A. I had a consulting business. 100

Q. What was the name of that consulting business?

A. Premier Connections.

Q. Premier Connections?

A. Um-hum.

Q. Okay. Where was that based?

A. That was based in Boca Raton.

Q. What sort of consulting did that business do?

A. Basically the application of computers in business.

Q. Did you actually sell hardware or was it software or was it a combination of that plus consulting?

A. It was consulting.

Q. Okay. So you weren't actually selling any product; you were consulting with companies about establishing their own computer systems in-house; was that what it was?

A. Yes.

Q. And what was the business location for Premier Consulting?

A. It was my home address in Boca Raton.

Q. What's that?

A. Beg Pardon?

Q. What was that address, sir?

A. That was 1930 Southwest Eighth Street.

Q. Okay. And how long did you operate Premier Consulting?

A. I'm still doing it.

Q. Still doing it; it's still active, okay. Are there any other employees of Premier Consulting other than yourself?

A. No.

Q. Have there ever been any other employees of Premier Consulting other than yourself?

A. No.

Q. Have you ever had any work or did any work for a company called Diamond Turf Lawn Mower?

A. I did.

Q. When was that?

A. That was about 1995 until mid 99.

Q. Were you actually employed by Diamond Turf Lawn Mower?

A. Yes.

Q. Okay. You just failed to mention 102  
that in your previous --

A. I'm sorry, yes.

Q. Okay. And what did you do at  
Diamond Turf Lawn Mower?

A. I was president.

Q. You were president. For the full  
four years?

A. Yes.

Q. Okay.

A. My recollection is a little hazy.  
It could have been 95, 96 when I started.

Q. Okay. So you were president of this  
company for approximately three to four years?

A. Yes.

Q. And what was your role at Diamond  
Turf Lawn Mower as president; what did you do?

A. I ran the company.

Q. Did you take on the position not  
only of president but also as CFO or anything of  
that nature, or you just did strictly like a  
chief operating officer; what was your role  
exactly?

A. I suppose you could consider it to  
be a cross between a chief operating officer and

the chief engineer.

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Q. And what did Diamond Turf Law Mower do; what sort of company is that?

A. It produced maintenance equipment for golf courses.

Q. Okay. And were you working also doing engineering for the company as well?

A. Yes.

Q. And that engineering capabilities that you have, was that something you garnered through your employment with IBM or is that something that you had specific knowledge of outside of your employment with IBM?

A. Both.

Q. This was not engineering of electrical components; this was engineering of mechanical systems; is that what this was?

A. Every, virtually every mechanical system has an electrical component.

Q. Okay.

A. And a hydraulic component in this particular case.

Q. And when did you -- when you ceased worked with Diamond Turf Lawn Mower, was that an amicable leaving or was there some problem or did

everything work out okay with that?

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A. Well, there was a, there was a  
dispute over intellectual property. There was no  
intellectual property agreement in my employment  
agreement and there were certain inventions that  
I made that we were unable to resolve ownership  
of.

Q. Okay. So these were inventions that  
you developed while you were employed by Diamond  
Turf Lawn Mower?

A. Yes.

Q. Okay. Can you describe those  
inventions to me.

A. They related to hydro-mechanical  
equipment.

Q. Okay. What exactly with hydraulic  
mechanical equipment?

A. How much detail you want me to go in  
to?

Q. Well, were they related somehow to  
the operations of the hydraulics of the equipment  
or were they strictly mechanical?

A. They related to a hydro-mechanical  
system, which means that it involves the  
integration of hydraulics into a mechanically

Contradicts resume  
submitted by  
Wheeler and Utley

CLICK HERE TO  
SEE UTLEY  
RESUME  
REGARDING  
DIAMOND TURF

operating piece of equipment.

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Q. Okay. And that's what all these patents, or were all these patents or were all these inventions, rather, the subject of?

A. Yes. Almost all the equipment that Diamond Turf produced or was involved with was hydro-mechanical.

Q. Are there any current patents or patents pending or applications for patents on these things that you hold?

A. No.

Q. Who holds the patent rights or if there are any patent rights, who has applied for those?

A. I'm not aware of any one.

Q. So you're not aware of any one making claim to these intellectual properties at this point?

A. No.

Q. When were you first introduced to Iviewit or its products by Mr. Wheeler? I'm assuming that Mr. Wheeler was the one who introduced you to the company.

A. Yes.

Q. And when was the first time that you

1 got introduced to Iviewit by Mr. Wheeler?

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2 A. I believe that was July of 99.

3 Q. And what exactly did Mr. Wheeler  
4 tell you about Iviewit?

5 A. Well, he, as I recall, he told me  
6 that he had a client who had some very  
7 interesting intellectual property in the field of  
8 computer based graphics and would I have an  
9 interest, potential interest in learning more  
10 about it with the thought of potentially becoming  
11 involved with the company. He told me that he  
12 had been asked to assist in organizing the  
13 company and he was looking for someone with a  
14 technology background who could run the company.

15 Q. Okay. Did you know Mr. Wheeler  
16 prior to him contacting you about Iviewit?

17 A. I did.

18 Q. And when did you or how did you  
19 first come to know Mr. Wheeler?

20 A. He -- my first contact with  
21 Mr. Wheeler was when he came to visit me as  
22 general manager of IBM Boca Raton on a, with a  
23 client on a question of adjoining property.

24 Q. Okay. So he had a question  
25 regarding an adjoining property?

A. Right.

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Q. Was it something dealing with some real estate that was located next to IBM's facilities; is that what you're --

A. Yes.

Q. I just want to make sure I understand your answer.

A. Yes.

Q. Okay.

A. At that time I was responsible for about \$4 million worth of office and development laboratory space.

Q. Okay. And Mr. Wheeler's, one of Mr. Wheeler's clients had some interest in some of this adjoining laboratory space or real estate that you had some kind of control over?

A. I didn't have any control over it, but he wanted to review their plans, you know, from the standpoint of would there be any issue with their plans from the standpoint of IBM.

Q. Okay. And what year was that again that you said you first met Mr. Wheeler?

A. I didn't, but I think it was in 1990.

Q. 1990, okay. So you knew him for at



least nine years before you were introduced to Iviewit then?

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A. Yes.

Q. Did you keep up any communications with him or talk to him on a regular basis?

A. Well, we had a mutual friend, as it turned out, and we were involved in local philanthropic activities together, so we, yes, we had fairly frequent contact.

Q. Okay. Could you say, then, that you developed a friendship of sorts with Mr. Wheeler?

A. Yes.

Q. Other than socially and through your immediate contact through IBM, did you know Mr. Wheeler in any other setting?

A. No.

Q. No other business dealings, no other representation by yourself of Mr. Wheeler, nothing of that sort?

A. Well, I don't know how you want to classify being on the same board. We were both on the philharmonic board. We were both involved with Community Hospital. I recruited him to Florida Atlantic University Foundation Board, which I chaired.

Q. Okay. Other than that, he never  
represented you as an attorney; he never  
represented you in any case, nothing of that  
sort?

A. No.

Q. Now, when Mr. Wheeler first introduced you to Iviewit, did he specify, other than what we've already discussed, the purpose for his introduction? Did he talk to anything about a scope of employment or what your purpose would be at the company, other than what you've already described?

A. No. He said he was looking for someone with a technology background who had the potential to run the company.

Q. Now, with regard to Eliot Bernstein, Jude Resario and Zakirul Shirajee, am I pronouncing that correctly?

A. Why don't you spell it.

Q. Let's see, I got Z-A-K-I-R-U-L, last name is S-H-I-R-A-J-E-E. Do you remember meeting with those gentlemen, Eliot Bernstein and Jude Resario and Zakirul Shirajee?

A. At a later point in time, yes.

Q. Okay. What was the time that you

Contradicts Wheeler statements that he did do legal work for Utley in creating a company for Utley.

1 met with them? 110

2 A. It was after I agreed to join the  
3 company.

4 Q. Okay. So that was in the latter  
5 part or the middle part of 99?

6 A. That was late August 99.

7 Q. And what exactly were meetings  
8 consisting of when you met with those three  
9 gentlemen?

10 A. Well, Eliot introduced them to me  
11 and introduced them as having worked with him on  
12 feasibility studies relative to his invention and  
13 he indicated that perhaps we should consider them  
14 for employment by the company.

15 Q. Okay. Did he ever mention to you  
16 anything of their status as any inventors of any  
17 IP or anything of that sort?

18 A. Well, they were, I believe, they  
19 were named on several of the provisional patent  
20 filings that had already been made.

21 Q. If you could, I mean, since you were  
22 acting as president of the Iviewit entities, I'm  
23 presuming that you're aware of all the inventions  
24 or all the intellectual properties for which  
25 Iviewit has filed patents; would that be a

1 correct statement of fact, up until August, 111

2 during the term of your employment?

3 A. Yes.

4 Q. Okay. If you could, please describe  
5 for me those inventions or those intellectual  
6 properties for which Iviewit has filed patents or  
7 has made application for patents of which you're  
8 aware.

9 A. Well, I have not looked at those  
10 patents for a considerable period of time, but in  
11 general, the patents fall into two basic  
12 categories. One is a patent relating to images  
13 and images transmitted over the internet, and the  
14 other category is relating to videos which are  
15 compressed and transmitted over the internet.  
16 And the point of the patents is, the  
17 distinguishing characteristic of the patents is  
18 the fidelity with which those images and videos  
19 can be received over the internet.

20 Q. Now, we've got a couple of questions  
21 relating to that. So you gave me the two basic  
22 categories. How many different patents are  
23 involved or how many different applications for  
24 patents are involved in these technologies that  
25 you've described?

1 A. I think there are about seven. 112

2 Q. Seven of them. How about something  
3 to do with zoom and pan imaging; is there  
4 anything specific with regard to that, that was  
5 patented or for which a patent was sought?

6 A. Yes.

7 Q. Okay. And do you know whose name  
8 that patent or patent application is held in?

9 A. Well, there are two or three of  
10 them, as I recall. And on at least one of those,  
11 the names of the original members on the  
12 provisional applications are included, but on one  
13 or two of those, my name is included because of a  
14 material contribution which I made in terms of  
15 reducing to a mathematical formula the whole  
16 process of converting analog images to digital  
17 images and scaling those digital images for  
18 zooming and panning.

19 Q. Okay. And you came up with this  
20 mathematical formula, that's your contribution to  
21 the invention?

22 A. Yes. And that became integrated  
23 into the final formal patent application.

24 Q. And that -- was that, was that  
25 mathematical computation based on any specific

1 training that you've had or maybe you -- you did 113

2 indicate that you had any degree in mathematics.

3 Is that something that you have some experience

4 from from some other portion of your employment

5 or background?

6 A. I have training and experience in

7 mathematics.

8 Q. I'm sorry.

9 A. I say I have training and experience

10 in mathematics.

11 Q. How about in the scaling video

12 invention; is that part of what you've already

13 described?

14 A. That is readily derived from a

15 mathematical background.

16 Q. How about the remote control video

17 applications?

18 A. That's different.

19 Q. Okay. Now going back to --

20 A. What --

21 Q. -- the patent dealing specifically

22 with remote control applications.

23 A. What I did there was I established

24 the fact that the design point that Eliot had

25 discovered in optimizing the quality of the

1 picture that would be transmitted across the 114  
2 internet at a given speed, I identified that  
3 which he had discovered by an ad hoc process; I  
4 discovered the structural basis for that  
5 optimization.

6 Q. Okay. So that was something that  
7 was outside the scope of what he had already,  
8 what Eliot had already discovered?

9 A. It really established why it worked.

10 Q. And is your name on any patent or  
11 patent application with regard to that particular  
12 technology?

13 A. It possibly is. I don't recall how  
14 many of those my name is on since I didn't keep  
15 any of those records.

16 Q. How about camera zoom applications?

17 A. Okay. How about camera zoom  
18 applications?

19 Q. Is there any patent or patent  
20 application dealing with camera zoom  
21 applications?

22 A. Not specifically. It was, it was  
23 determined that there is a correlation between  
24 the zoom and pan that had been developed and what  
25 is being used in cameras.

1 Q. Okay. And the correlation was for 115  
2 development of future cameras or was that simply  
3 an observation that was made?

4 A. It was an observation that current  
5 camera technology incorporates zoom and pan  
6 technology.

7 Q. Okay. How about any patent or  
8 patent applications dealing with scales video or  
9 zoom video imaging applications other than what  
10 we've already discussed?

11 A. Without looking, and I apologize for  
12 this, without looking at the specific patent  
13 filings by name and number, I think, you know,  
14 we're not really going to be able to get much  
15 further on this discussion.

16 Q. Okay.

17 A. I don't want to put you off at all,  
18 but I just want to say that to pursue a detailed  
19 questioning in this specific area, I need to be  
20 able to refresh my mind with what is in the  
21 record.

22 Q. Okay. And are those documents that  
23 you have in your possession someplace?

24 A. No.

25 Q. You don't have any of the paperwork



1 with regard to Iviewit or any of the intellectual 116

2 properties we've already discussed?

3 A. None.

4 Q. Are there any other patents that you  
5 hold in your name other than the ones that we've  
6 already discussed?

7 A. Yes.

8 Q. What would those be?

9 A. Well --

10 Q. The best of your recollection.

11 Obviously I can't have you guessing but at the  
12 same time, if you can recall them, you should be  
13 able to provide me with that information?

14 MR. PRUSASKI: Is that question  
15 asked as to him personally?

16 MR. SELZ: Yes.

17 MR. PRUSASKI: All right. Let me  
18 just interpose an objection as to relevance to  
19 that line of questioning.

20 MR. SELZ: Okay.

21 By MR. SELZ:

22 Q. You can go ahead and answer the  
23 question.

24 A. Okay. My last formal patent was  
25 issued, I believe, in 1997. It was filed by IBM

1 on, it was a result of some work I did with IBM 117  
2 that relates to the ability to digitally  
3 recognize writing by a stylus on a surface. You  
4 may recognize it in palm devices.

5 Q. Okay. With regard to that, that was  
6 obviously prior to your employment with Iviewit;  
7 is that correct?

8 A. Yes.

9 Q. Has there ever been any things that  
10 you've either sought a patent for or applied for  
11 a patent since your employment with Iviewit?

12 A. No.

13 Q. Are you aware of any copyright,  
14 trademark or patent applications for either cable  
15 system, set top boxes or anything related that  
16 are similar to those of the technology that  
17 Iviewit owned or made application for?

18 A. No.

19 Q. Do you have any knowledge of any  
20 other patent or patent application, intellectual  
21 property that might infringe upon patents or  
22 applied for patents for Iviewit?

23 A. No. And just to parenthetically  
24 state, I have studiously avoided anything which  
25 might appear to be or be in any way connected

1 with that work.

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2 Q. Have you had any discussions or had  
3 any meetings with Mr. Wheeler after your  
4 ceasation of employment with Iviewit?

5 A. Only of a personal nature.

6 Q. And when was the last time you met  
7 with him?

8 A. About three weeks ago?

9 Q. And where was that? Was that here  
10 down in south Florida?

11 A. Yes.

12 Q. And what was the purpose for your  
13 trip down here?

14 A. Is that, is that -- I have to ask  
15 this question, I'm not trying avoid it, but is  
16 that anything to do with this interrogatory?

17 Q. Well, it does have to do with the  
18 person who introduced you to the company so  
19 certainly it's relevant to find out what your  
20 relationship is.

21 A. Well, let me just say this, that my  
22 visit to Boca Raton had nothing to do with  
23 Mr. Wheeler in any event. It was, we got  
24 together on a social basis as a circumstantial  
25 opportunity based on being there.

1 Q. Now, if you could for me, Sir, when 119  
2 you first met with Mr. Wheeler back in 1999, did  
3 you discuss corporate strategies or strategies  
4 for Iviewit from a patent perspective or  
5 trademark perspective?

6 MR. PRUSASKI: Object to the form.

7 By MR. SELZ:

8 Q. You can go ahead and answer.

9 MR. PRUSASKI: Just to let you know,  
10 you said when you first met with Mr. Wheeler in  
11 99. Is that with respect to Iviewit?

12 MR. SELZ: Yeah, it's with respect  
13 to Iviewit. That's why I said 99.

14 MR. PRUSASKI: Okay. Well, it  
15 confused me so I'm just clarifying.

16 MR. SELZ: Okay.

17 MR. PRUSASKI: I'll withdraw my  
18 objection then.

19 THE WITNESS: Mr. Wheeler has always  
20 represented himself to me on these matters as  
21 being unskilled and this not being his primary  
22 focus our line of business.

23 By MR. SELZ:

24 Q. Mr. Wheeler is a real estate  
25 attorney; he's not an intellectual property

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attorney?

A. Right. He's a corporate attorney.

Q. So he does corporate work, not intellectual property work?

A. That's my understanding.

MR. PRUSASKI: Objection.

By MR. SELZ:

Q. Is it your understanding that Mr. Wheeler primarily is not an intellectual property attorney?

A. That's my understanding.

Q. And he had indicated to you that he did not have experience in that particular area of intellectual property; is that a true and correct statement of fact.

A. That is a correct statement of fact. That is why I involved in the beginning Mr. Rubinstein as a consultant on that question.

Q. Okay. And Mr. Rubenstein was with what law firm?

A. Proskauer Rose.

Q. He was with Proskauer Rose in New York?

A. In New York.

Q. He was, during the whole term, he

1 was doing work, Mr. Rubenstein was doing work for 121

2 Iviewit?

3 A. I'm not aware -- other than  
4 referring Iviewit to Meltzer, Rubenstein never  
5 did any work for Iviewit.

6 Q. Okay. So Rubenstein's sole role,  
7 from what you understand, is he referred Iviewit  
8 to the Meltzer Law Firm in New York?

9 A. Yes.

10 Q. Was he ever part of an advisory  
11 board member or was he an advisory board member  
12 to Iviewit? And we're talking about  
13 Mr. Rubenstein.

14 A. I have never used him as an advisory  
15 board member?

16 Q. Are you aware of whether or not he  
17 ever attended any board meetings with the  
18 directors of Iviewit?

19 A. He never attended a board meeting.  
20 I've never met the man.

21 Q. In regard to meetings with Proskauer  
22 Rose, did you have any meetings with Proskauer  
23 Rose concerning their retainer by Iviewit?

24 A. Only in the final weeks of Iviewit's  
25 presence in Boca Raton.

1 Q. You never met with them to sign any 122

2 agreement for a retainer from Proskauer Rose?

3 A. That's correct.

4 Q. Mr. Utley, were you working with

5 Iviewit.com on or about September 8th, 1999?

6 A. I'm sorry, would you give that date

7 again.

8 Q. September 8th, 1999.

9 A. Yes.

10 Q. Okay. And you were in what position

11 at that point in time?

12 A. President and COO.

13 Q. Do you ever recall receiving a

14 letter from Proskauer Rose confirming a retainer

15 of Proskauer Rose by Iviewit?

16 A. Uuh--

17 Q. And when say Iviewit here, I mean

18 Iviewit, LLC. I guess that's Iviewit.com, LLC is

19 what it was technically, wasn't it?

20 A. Yes, I believe that's right. Well,

21 there was both an Iviewit, LLC and an

22 Iviewit.com, LLC.

23 Q. Okay. And what was the distinction

24 between the two?

25 A. Iviewit, LLC was the parent company

1 and Iviewit.com, LLC was the operating company. 123

2 Q. I thought Iviewit.com, Inc. was the  
3 operating company?

4 A. That was as of the end of 1999,  
5 December the 31st.

6 Q. So Iviewit, LLC was the parent  
7 company?

8 A. Yes.

9 Q. And then all these other companies,  
10 all the other Iviewit companies derived their  
11 existence from Iviewit, LLC?

12 A. There was one subsidiary company at  
13 that time which was Iviewit.com, LLC.

14 Q. Okay.

15 A. There was a holding company, U-view,  
16 which represented 95 percent of the stock holders  
17 and was an S-corp.

18 Q. Now, I'm going to try to see if I  
19 can jog your memory once. Do you ever recall  
20 having any conversations with Mr. Wheeler  
21 specifically about a retainer of Proskauer Rose  
22 by Iviewit, LLC?

23 A. Well, Chris has put in front of me  
24 a, excuse me, a letter of September the 8th from  
25 Chris Wheeler.



1 MR. PRUSASKI: Is that all right, 124  
2 Steve?

3 MR. SELZ: That's fine.

4 THE WITNESS: Which detailed the  
5 engagement agreement between the companies.

6 Maybe it's my problem, but I did not consider  
7 this to be a retainer since there were no fees  
8 that were escrowed in this relationship.

9 By MR. SELZ:

10 Q. Okay. But it talks about, and I'll  
11 refer to you the second paragraph of that.

12 MR. SELZ: And we might as well,  
13 since he's being examined about it, get it marked  
14 as Defendants No. 1.

15 MR. PRUSASKI: Okay.

16 (Whereupon, Defendant's Exhibit  
17 No. 1 was marked for identification)

18 By MR. SELZ:

19 Q. If you'll note the second paragraph,  
20 Sir, what does that talk about specifically; if  
21 you could read that for me?

22 A. Well, he talks about fees.

23 Q. Right. It talks about the rate  
24 that's going to be charged; is that --

25 A. Yes.

1 Q. And it talks about the fact that it 125  
2 will vary depending on which attorney is going to  
3 be been engaged with what particular services.

4 A. Yes.

5 Q. And you didn't consider this a  
6 retainer or engagement agreement?

7 A. Well, and I apologize, in my, in my  
8 mind, the retainer involved establishing an  
9 escrow amount, whereas this, as an engagement  
10 agreement, was an agreement to perform work, but  
11 there was no escrow involved. So I, you know, if  
12 I have an incorrect understanding of retainer, I  
13 apologize.

14 Q. I'm not going to bother you about  
15 that particular portion. What I'm more concerned  
16 with is, look on page 2, if you could for me, on  
17 the second, second paragraph; it's actually only  
18 a one-sentence paragraph.

19 A. The which one?

20 Q. The second, the second paragraph,  
21 the first complete line. It's a single line.  
22 It's on the second page.

23 A. It says we are waiving a retainer at  
24 this time?

25 Q. Correct.

1 A. Yes. 126

2 Q. Does that address your concerns  
3 about whether or not there was some discussion as  
4 to a retainer?

5 A. Well, it says the retainer is being  
6 waived. So, again, in my poor English, there is  
7 no retainer involved. So this is not a letter of  
8 retainment; it's a letter of engagement. But,  
9 again, if I have a misunderstanding as to what  
10 this all means, then I apologize.

11 Q. Okay. The engagement agreement, was  
12 this -- let me rephrase that.

13 In your opinion, Sir, was this the  
14 contract between Iviewit and Proskauer Rose for  
15 the providing of legal services?

16 A. Oh, yes, no question.

17 Q. An your time of signing this, you  
18 were acting on behalf of Iviewit, LLC; is that  
19 correct?

20 A. Yes.

21 Q. Okay. And the services that were  
22 provided by Proskauer Rose, which are the subject  
23 of this litigation, arose from this agreement; is  
24 that correct?

25 A. Well, again, pardon my ignorance,

1 but the services began in January of 1999 and 127  
2 this simply formalized the continuation of those  
3 services, but this did not represent the  
4 initiation of those services.

5 Q. Well, let's go back to --

6 MR. SELZ: If you could, Chris, if  
7 you could do me a favor and just hand him  
8 Defendant's No. 1?

9 MR. PRUSASKI: I put all the  
10 exhibits in front him now.

11 MR. SELZ: Thank you.

12 MR. PRUSASKI: Defendant's or  
13 Plaintiff's?

14 MR. SELZ: Plaintiff.

15 MR. PRUSASKI: Okay.

16 By MR. SELZ:

17 Q. I want to refer you back to what's  
18 been marked as Plaintiff's Exhibit No. 1. That's  
19 the Amended Complaint that you testified to  
20 earlier. You said you have never, you never seen  
21 the complaint, but you testified, I believe, that  
22 you had seen the invoices which are attached as  
23 Exhibit A to that Amended Complaint; is that  
24 correct?

25 A. Yes.

1 Q. Okay. And these are dated when? 128

2 These are dated starting January 31st, 2000?

3 A. Well, yes, the first invoice  
4 attached is dated January 31st, 2000.

5 Q. Right. And that postdates this  
6 document that's been marked as Defendant's  
7 Exhibit No. 1; is that correct?

8 A. I guess so.

9 Q. Okay. By about somewhere around  
10 four months; is that correct, Sir, from September  
11 99 to January 2000?

12 A. Yes. Yeah, it's closer to five  
13 months than four months I guess, but --

14 Q. In the meantime, going back to this  
15 what's been marked as Defendant's No. 1, was it  
16 the intention at the time you signed this  
17 retainer, we'll call it, or engagement, that it  
18 covered the relationship between Proskauer Rose  
19 and Iviewit for the providing of legal services?

20 MR. PRUSASKI: Object to the form.

21 THE WITNESS: There's an objection.

22 What --

23 MR. PRUSASKI: No, please answer, if  
24 you will.

25 THE WITNESS: Oh, okay. Yes, I

1 believe it fairly states my understanding of what 129

2 the relationship would be.

3 By MR. SELZ:

4 Q. And it was intended to cover the  
5 representation, the legal representation by  
6 Proskauer Rose of the Iviewit entities, correct?

7 A. Yes.

8 Q. Now, did Proskauer Rose at any point  
9 in time receive either directly or indirectly any  
10 interest in any of the Iviewit companies?

11 A. I believe that the Bernstein's  
12 granted a certain number of shares to Proskauer  
13 Rose at some point in time I don't recall. It  
14 was prior to my involvement with the company, but  
15 I believe that there was an allocation of shares  
16 to Proskauer Rose by the Bernstein's.

17 Q. Okay. And that's -- to your  
18 knowledge, does Proskauer Rose still hold  
19 interest?

20 A. Yes. As far as I know. I,  
21 obviously I haven't been involved from some time.

22 Q. I'm just asking to the best of your  
23 knowledge.

24 A. Yes.

25 Q. With regard to the engagement

1 agreement, was that ever the subject of any  
2 meeting of the board of directors of Iviewit? In  
3 other words, was it ever discussed at any meeting  
4 of the board of directors prior to you executing  
5 it on or about September 8, 1999 or receiving it  
6 on or about September 8th, 1999 to confirm your  
7 agreement?

8 A. I can't answer that from  
9 recollection; although, I do know that copies of  
10 this agreement were available to the primary  
11 board members at that time.

12 Q. Okay. Well, that really wasn't my  
13 question. I wanted to know whether or not you  
14 had any recollection of discussions or approval  
15 of it. And you're telling me that you can't  
16 recall?

17 A. Well, let me see if I can respond in  
18 maybe a tangential way. At the Bernstein's  
19 insistence, Chris Wheeler was always invited to  
20 and expected to participate in board meetings.

21 Q. Okay. So he was always invited to  
22 board meetings.

23 A. Right. And there was a longstanding  
24 relationship between the Bernstein's and  
25 Mr. Wheeler in bringing the, in creating the

1 company and providing services to the company 131  
2 prior to my joining them.

3 Q. So prior to 1999, September 1999 or  
4 August when you joined the company or  
5 thereabouts, there was a longstanding  
6 relationship between Mr. Wheeler and Iviewit; is  
7 that what you were saying?

8 A. Yes.

9 Q. How longstanding a relationship was  
10 that?

11 A. As I mentioned earlier, I believe it  
12 goes back to about January of 1999.

13 Q. Okay. So about eight months or so  
14 before you joined the company?

15 A. Yes.

16 Q. Are you aware of any other  
17 agreements that are in writing between Iviewit  
18 and Proskauer Rose for the providing of legal  
19 services?

20 A. No.

21 Q. Were there any other agreements,  
22 other than the agreement marked as Defendant's  
23 No. 1, which engaged Proskauer Rose to represent  
24 Iviewit?

25 A. I'm not aware of any agreements in



1 this form; however, I would just comment that 132  
2 clearly Proskauer Rose had been engaged by the  
3 Bernstein family to perform this work, which  
4 amounted to almost \$300,000 worth of billable  
5 work before I joined the company.

6 Q. Okay. Now, wait. Now, the  
7 companies that that work was done for, though,  
8 Sir, that was Iviewit, LLC; is that correct?

9 A. And so it was in -- and Iviewit,  
10 Inc. and U-View.LLC.

11 Q. Okay.

12 A. All of those.

13 Q. Iviewit, LLC.

14 A. Which represented the sum of all the  
15 companies involved in Iviewit.

16 Q. Okay. And these other companies,  
17 the Iviewit.com, Inc. the Iviewit Holdings, Inc.  
18 and Iviewit Technologies, Inc. were all formed  
19 subsequent to September 8th, 1999; is that  
20 correct?

21 A. They were formed subsequent to  
22 December the 30th, 1999.

23 Q. Okay. So they were all formed  
24 subsequent to this written agreement September  
25 8th?

1 A. Yes. But that was the third 133

2 iteration of corporate structuring that Proskauer  
3 Rose had gone through and only the first one that  
4 I had been involved with.

5 Q. Okay. But there were no other  
6 agreements, you were not privy to any other  
7 agreements between Proskauer Rose and Iviewit  
8 with regard to any other agreement for  
9 engagement; is that correct?

10 A. That's correct.

11 Q. And you were at all times, from  
12 August of 1999 through your last involvement in  
13 the company, which was, if you recall, what was  
14 the last date of your involvement with Iviewit?

15 A. It was on April the 30th, 2001.

16 Q. Okay. During that entire period of  
17 time, there were no other agreements to your  
18 knowledge between Iviewit and Proskauer Rose as  
19 to providing legal services; is that a correct  
20 statement?

21 A. No. Because we went through a  
22 number of exhibits earlier today which modified  
23 these agreements.

24 Q. Okay. So those were plans for  
25 payment of the debt, correct?



1 A. Yes. 135

2 Q. But, Sir, doesn't it say it's  
3 anticipated your currently monthly billings will  
4 not exceed \$5,000 a month?

5 A. Yes.

6 Q. Okay. Is that an agreement that the  
7 bills will be \$5,000 a month, or are you saying  
8 that it's anticipated?

9 A. Well, it says anticipated.

10 Q. Okay. This letter really, Sir,  
11 doesn't it deal with basically with the repayment  
12 of (inaudible) obligations.

13 MR. SELZ: You cut out completely  
14 you got to re-ask that. I didn't hear it.

15 MR. SELZ: (No response.)

16 MR. PRUSASKI: Steve?

17 MR. SELZ: Yeah.

18 MR. PRUSASKI: We kind of lost you  
19 right in the middle of that question.

20 MR. SELZ: Okay. Can we take a  
21 break for two minutes?

22 MR. PRUSASKI: Yeah.

23 MR. SELZ: Okay. I'll have to call  
24 you back in about -- actually make it five.

25 (Court reporter asks for question to

1 be repeated.) 136

2 MR. SELZ: Okay. Let me just repeat  
3 that last question with the answer and then I'll  
4 take a break real quick.

5 By MR. SELZ:

6 Q. Isn't it true, Sir, that this letter  
7 deals with the repayment of existing obligations  
8 between Proskauer Rose and Iviewit, not some new  
9 services, other than that line you talked about,  
10 about current bills not to exceed \$5,000 a month?

11 MR. PRUSASKI: Object to the form.

12 THE WITNESS: I understood it to be  
13 an agreement to limit services to not, not to  
14 exceed \$5,000 a month.

15 By MR. SELZ:

16 Q. Was your understanding of this  
17 letter?

18 A. Yes.

19 Q. Did this specify how much legal  
20 service were going to be charged in the sense of  
21 an hourly rate?

22 A. The understanding by implication is  
23 that it's at current billing rates.

24 MR. SELZ: Well, we'll continue in  
25 just a couple of minutes. I apologize for the

1 delay and I'll be back on in -- if you could give 137  
2 me about five minutes.

3 MR. PRUSASKI: Are you calling back  
4 or what?

5 MR. SELZ: I'll call back.

6 MR. PRUSASKI: All right.

7 (Whereupon, a break was taken from  
8 1:10 to 1:22.)

9 MR. SELZ: Okay, guys. Madam Court  
10 Reporter, could you read back my last question,  
11 please.

12 (Whereupon, the requested portion  
13 was read back.)

14 MR. SELZ: Okay, thank you.

15 By MR. SELZ:

16 Q. Sir, the current billing rates that  
17 you referred to in your prior answer, that was  
18 under the agreement with Proskauer Rose that's  
19 been marked as Defendant's No. 1; is that  
20 correct?

21 A. Yes.

22 Q. So it refers back to that agreement?

23 A. Yeah, I presume, as all the billing  
24 does.

25 Now, please note that this

1 engagement agreement refers to the parent company 138  
2 of Iviewit.

3 Q. Well, let's go to my next question  
4 on this whole thing, and that is, with regard to,  
5 with regard to the approval by the board of  
6 directors, we've talked prior about the board of  
7 directors and Ken Rubenstein, was Ken  
8 Rubenstein -- you've previously stated that he  
9 didn't have any role with regard to the company,  
10 no active role?

11 A. That's correct.

12 Q. And I hate to bounce back and forth  
13 to you about this, he was never, like, an advisor  
14 or consultant or anything like that; he was just  
15 someone who was Proskauer Rose's person who did  
16 work on IP?

17 A. Yeah, I can't speak to the  
18 discussions that may have taken place between  
19 Mr. Wheeler and Mr. Rubenstein, but --

20 Q. I'm not asking you to. I'm just  
21 saying from what you know because obviously this  
22 deposition testimony is given on your own  
23 personal knowledge.

24 A. Yes. He played no active role in  
25 the company other than having directed the

1 company to work with Meltzer and this gentleman 139

2 Rolf as the patent attorney.

3 Q. And that was his totality of his  
4 role from what you know?

5 A. Yes.

6 Now, let me parenthetically add,  
7 that I do understand and know that it was Eliot's  
8 desire to see him involved in an advisory role.

9 Q. Okay.

10 A. But that was never, that was never  
11 consummated.

12 Q. Okay. Did you ever want him to act  
13 in an advisory role?

14 A. I did not take any position on that.

15 Q. Okay. Did you ever represent that  
16 he should be in an advisory role?

17 A. No.

18 Q. Okay. So you really didn't have any  
19 opinion on what Mr. Rubenstein should or should  
20 not be doing with Iviewit?

21 A. Right.

22 Q. Okay. Did you have any discussions  
23 or correspondence at all with Rubenstein and  
24 Raymond Joao, I think it is? Is that how you  
25 pronounce it, J-O-A-O?





1 content of the conversation. It was not anything 141

2 that was material to what Iviewit did.

3 By MR. SELZ:

4 Q. How about were there any -- did you  
5 keep any notes of any of your meetings with these  
6 people at all?

7 A. Any of my notes are in the company  
8 files.

9 Q. And where are the company files, to  
10 the last of your recollection, now?

11 A. They were all sent to California.

12 Q. All sent to California. To who out  
13 in California, if you know?

14 A. Ross Miller was responsible for  
15 doing that so I think that question should be  
16 directed towards him.

17 Q. And so Ross Miller was the person  
18 who, according to your knowledge, had the custody  
19 of the corporate documents last?

20 A. Yes.

21 Q. Now, you'd said at one time in your  
22 earlier testimony that Proskauer was to act as  
23 corporate custodian of some kind. Did you mean  
24 custodian of records or custodian of the  
25 corporate books or custodian of some other

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information or documents?

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A. Well, the, you know, corporate records, such as filings of incorporation and investor related matters, that sort of thing.

Q. Okay. Do you have any knowledge of the work product produced by, by, I'm going to call him Raymond, just for ease of reference, and Foley & Lardner and if there any problems with that?

I think you testified earlier with regard to Proskauer Rose. I think opposing counsel probably asked you with regard to that too, but I just want try to see if I can flush it out a little bit more.

A. Well, there was the, the provisional patent filings in certain cases appeared to be, I would say, skimpy.

Q. In what sense?

A. Skimpy in terms of details of the invention, descriptions of the invention.

Q. Okay. So in other words, they were not sufficient to be able to possibly protect that property interest or detail the property interest?

A. Well, it made it very important that

1 when we came, when it came time to make the 143  
2 formal filings, that we made those filings as  
3 robust as possible.

4 Q. Okay. Now, was Mr. Rubenstein ever  
5 a member of another firm other than Proskauer  
6 Rose?

7 A. I have no idea.

8 Q. Do you know whether or not he was  
9 ever involved with Melter Law Firm in New York?

10 A. Meltzer? I don't know.

11 Q. Okay. When Mr. Wheeler first  
12 discussed with you the possibility of being  
13 engaged to act as the president and COO of  
14 Iviewit, did he ever talk to you about the fact  
15 that Proskauer Rose was not able or was unwilling  
16 to handle the intellectual property side of the  
17 possible representation of the business?

18 A. Not that I recall. But in the back  
19 of my mind -- I don't remember who this was with.  
20 It could have been Eliot; it could have been  
21 Mr. Wheeler -- there was a discussion that the  
22 matter was referred outside in order to minimize  
23 the cost of processing the intellectual property.

24 Q. Okay. And so in minimizing the  
25 cost -- how much, just out of curiosity, Sir, are

1 you aware of what the total billing was by 144

2 Proskauer Rose to the Iviewit entities?

3 A. Well, I saw the wrap up that was  
4 discussed earlier, which was  
5 300-and-some-odd-thousand-dollars.

6 Q. Well, that's the balance.

7 A. Yeah.

8 Q. Was there -- were you aware of what  
9 the total was?

10 A. No, I'm not.

11 Q. Would it be surprising to you that  
12 it's over a half a million dollars?

13 A. Well, there was -- no --

14 MR. PRUSASKI: I object to the form.

15 THE WITNESS: -- because it was  
16 almost \$300,000 before the company even got  
17 going.

18 By MR. SELZ:

19 Q. Now, from your experience, did you  
20 ever -- strike that.

21 In your experience with companies  
22 that you've worked with previously, Diamond Turf  
23 and with IBM, did you ever work in engaging  
24 attorneys to represent either one of those two  
25 entities?

1 A. With IBM, of course, I used staff 145  
2 attorneys and so I didn't have any involvement  
3 in, you know, in the process of selection and  
4 retaining, but at Diamond Turf we had -- I  
5 retained an attorney for some intellectual  
6 property work.

7 Q. And what sort of intellectual  
8 property work was that?

9 A. Well, it's what we discussed earlier  
10 relating to hydro-mechanical equipment.

11 Q. Right. Okay. And what was the, if  
12 you recall, what were the charges that that  
13 attorney charged to Diamond Turf for the work  
14 that was done?

15 A. He didn't charge it to Diamond Turf.  
16 He charged it to me personally.

17 Q. And what did he charge to you  
18 personally?

19 A. He charged \$150 an hour.

20 Q. \$150 an hour. What was your total  
21 bill with them?

22 A. I don't recall. It was not great.

23 Q. Was it in excess of \$1,000?

24 A. It was around that point.

25 Q. Well, this is a bill of

1 approximately 500 times that amount, Sir, and you 146

2 still consider this billing to be reasonable?

3 MR. PRUSASKI: Object to the form.

4 THE WITNESS: Well, let me rephrase  
5 it. Almost \$300,000 of it was billed prior to my  
6 presence at Iviewit. So most of it was actually  
7 accrued prior to the company getting under way,  
8 prior to the first employee being employed by the  
9 company. And over the succeeding almost two  
10 years, it didn't match what was done in the,  
11 before it even got going.

12 By MR. SELZ:

13 Q. Okay. Well, let's go back to that  
14 then. That \$300,000 plus or minus that was  
15 accrued prior to you starting with Iviewit, are  
16 you familiar with the services that were provided  
17 for that \$300,000.

18 A. Well, I know that there were two  
19 levels of incorporation and there was a series of  
20 investor and technology related meetings that  
21 took place and some other ancillary services such  
22 as conference rooms and secretarial support and  
23 so on. That's the level of my understanding. I  
24 had no understanding below that level.

25 Q. Okay. So did you ever look at the

1 actual billing statements that had been provided 147

2 to Iviewit to ascertain what services were  
3 provided for that

4 300-and-something-thousand-dollars?

5 A. I'd only seen summary information.

6 Q. Only summary information, okay. So  
7 what you're telling me that is, Sir, really the  
8 patent work, the real intellectual property work  
9 was done by parties other than Proskauer Rose?

10 A. Yes.

11 Q. Is that correct?

12 A. Yes.

13 Q. And that the Proskauer Rose billings  
14 involved in this case were dated back to a time  
15 prior to your engagement for the most part, prior  
16 to your engagement with Iviewit; is that correct?

17 A. That's correct.

18 Q. So you have no way of telling  
19 whether or not these fees were reasonable, then,  
20 because you don't know what services were  
21 provided for the fees; is that a correct  
22 statement?

23 A. For those services that were  
24 provided before August of 1999, that would be  
25 correct.



1 Q. Which is the 148

2 \$300-and-something-thousand-dollar balance; is  
3 that correct, sir?

4 MR. PRUSASKI: Object to the form.

5 THE WITNESS: I believe, my  
6 recollection, again, it was under 300,000, around  
7 285 but --

8 By MR. SELZ:

9 Q. And the 285, just to pick the number  
10 that you recall, the \$285,000 that was a prior  
11 balance on the Proskauer Rose bill, you have no  
12 way of knowing, then, Sir, whether or not those  
13 were charged for any particular services or  
14 whether or not those fees were reasonable given  
15 the services provided; is that correct?

16 MR. PRUSASKI: Object to the form.

17 THE WITNESS: I have no knowledge of  
18 the basis of those charges.

19 By MR. SELZ:

20 Q. Right. So you can't determine,  
21 then, as you sit here today, Sir, whether or not  
22 those were reasonable charges for services; is  
23 that correct?

24 A. That is correct.

25 Q. Now, you'd earlier testified that

1 you didn't have any problems or there were no 149  
2 problems with regard to a patent pool. How about  
3 with regard to the patent, other than what you've  
4 already described, with regard to the patents of  
5 Iviewit vis-a-vis Mr. Rubenstein or Wheeler or  
6 Raymond, were there any other problems with  
7 regard to this collection of patents and patents  
8 held by Iviewit or to be held by Iviewit?

9 MR. BERNSTEIN: Foley & Lardner.

10 By MR. SELZ:

11 Q. Foley & Lardner, rather?

12 MR. BERNSTEIN: (Inaudible).

13 MR. PRUSASKI: That was  
14 Mr. Bernstein saying Foley & Lardner.

15 MR. SELZ: Yes, that's what it was.

16 MR. BERNSTEIN: No, I just wanted  
17 you to include them in the group of people with  
18 patent errors so that would include and  
19 encompass --

20 MR. SELZ: Well, no, I'm going to  
21 break it down. Don't worry, Eliot, I will take  
22 care of the questions and I'll follow up with  
23 you.

24 By MR. SELZ:

25 Q. Okay. So we're going to start first

1 with those issues. Are you aware of any other 150  
2 problem, other than what you've already  
3 described, with regard to the patents pending or  
4 granted to Iviewit as overseen by Rubenstein,  
5 Mr. Wheeler or Raymond, any other problems?

6 MR. PRUSASKI: Object to the form.  
7 It assumes facts not in evidence. Go ahead and  
8 answer.

9 THE WITNESS: Well, Rubenstein and  
10 Mr. Wheeler, I'll repeat, had nothing to do with  
11 the patents and therefore, I object to them being  
12 included in the question.

13 By MR. SELZ:

14 Q. Well --

15 A. They're not relevant to the  
16 question.

17 Q. There's no question -- then the way  
18 you answer it is by simply saying they weren't  
19 involved with any problems and that's how you can  
20 answer that. I'm not telling you how to answer;  
21 I'm trying to break the question down for you.  
22 If you want, I'll rephrase it.

23 Are you aware of any problems  
24 vis-a-vis the patents by Iviewit with regard to  
25 Mr. Rubenstein, other than what you've already

1 described in other context? 151

2 A. No.

3 Q. How about with regard to  
4 Mr. Wheeler?

5 A. None.

6 Q. How about with regard to Raymond?

7 A. There was some deficiencies in his  
8 provisional product descriptions.

9 Q. Okay. How about with regard to  
10 Foley & Lardner?

11 A. I'm not aware of any deficiencies of  
12 Foley & Lardner.

13 Q. Other than what you -- was that the  
14 deficiencies in the sense of the weakness of the  
15 descriptions that you described earlier?

16 A. No. No. In fact, Foley & Lardner  
17 worked very hard to overcome those and construct  
18 the best case possible.

19 Q. How about a situation where they  
20 provided patent or patent applications to your  
21 home address rather than the corporation's  
22 address?

23 A. As a matter convenience in order to  
24 obtain signatures.

25 Q. Okay. So you're saying that was

1 done as a matter of convenience; that wasn't an 152  
2 error?

3 A. No. If that happened. I don't  
4 recall it happening, but if it did, that would be  
5 the only circumstance under which that would  
6 happen.

7 Q. Well, but you're speculating because  
8 you don't recall the situation?

9 A. I do not recall ever receiving  
10 anything at home, but if it happened, it would be  
11 as a point of convenience and not as a point of  
12 procedure.

13 Q. How about if Foley & Lardner put  
14 your home address rather than the corporation's  
15 address on a patent application?

16 A. Well, it's normal in a patent  
17 application to put the inventor's personal  
18 address on the patent application. That's  
19 normal.

20 Q. That would be your explanation as to  
21 why that would appear on the patent application?

22 A. Absolutely. Every patent ever issue  
23 has that. Every patent I've ever had has had my  
24 personal address on it, even though it's an IBM  
25 patent.

Q. Now, are you aware of any corporation documents for Iviewit that were ever deposited of or destroyed in any manner?

A. Not on my watch.

Q. And I think you had earlier testified that to the best of your knowledge, all those documents from Iviewit were sent out to California?

A. Yes.

Q. At the time when you left your employment or were going to leave your employment with Iviewit, is it a true statement that you were commissioned to transfer all the equipment and documents to the new corporate headquarters in Los Angeles?

A. Yes. We were commissioned to package everything up so that it could be shipped out there.

Q. And you obviously accepted this responsibility as part of your job at that point?

A. Yes.

Q. Are you aware of any documents or equipment or any media or anything which was not transferred to the corporate headquarters in Los Angeles and the whereabouts of those documents or

equipment, if you know?

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A. There are no documents. I made an agreement to purchase some equipment, which I consummated and then subsequently returned because there was a dispute over the, some of the pieces of equipment.

Q. Okay. What equipment was that?

A. A couple of computers.

Q. A couple of computers. And were there any specific code names for those computers or --

A. I don't -- there were but I don't recall the names.

Q. Does the name Nitro or Bomber ring any bells?

A. Yes, it sounds familiar.

Q. Do you recall why these code names were given?

A. It's not unusual to give code names to computers in a business like that business, like the Iviewit business.

Q. And why is that?

A. It just is a very common practice.

Q. Is there any, again, I don't want to be repetitive, but was there any particular

reason that you can recall whatsoever why these  
two computers were given the names Nitro and  
Bomber?

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A. Well, at their inception, they were  
reasonably current in the state of the art.

Q. Okay. So they were basically quick  
and they were high-capacity machines and they  
were desirable; is that what they were?

A. Well, let me position that.

Q. Okay.

A. At the time of their inception, they  
would be considered to be reasonably current in  
the state of the art. But we all know at what  
rate the technology moves.

Q. Okay. So about three months after  
they were created, they were no longer state of  
the art?

A. That's very often the case.

Q. Okay. With regard to William Dick  
and Foley & Lardner, do you have any relationship  
or continue a relationship with either Foley &  
Lardner or Mr. Dick?

A. No.

Q. Have you known Mr. Dick in any other  
setting other than related to Iviewit?



A. He worked for me at IBM as manager of the intellectual property department.

Q. And is that why -- or strike that. Did you recommend that Mr. Dick be retained for the intellectual property work for Iviewit?

A. Actually, I used Mr. Dick as a reference or a consultant to determine who Iviewit should consider retaining for its intellectual property work.

Q. And Mr. Dick was subsequently, Foley & Lardner and Mr. Dick was subsequently employed for that purpose?

A. Mr. Dick was never employed by Iviewit, but Mr. Dick was retained by Foley & Lardner as a senior staff member because of his broad experience both before the bench and worldwide in intellectual property matters and, and he endorsed Foley & Lardner as a competent intellectual property company that would handle our affairs. I trusted his judgment.

Q. Now, are you aware of any relationship between Iviewit and Real 3D?

A. Real 3D were brought into the picture by Mr. Wheeler. They were a resource by

Mr. Wheeler to review the technology and to  
determine the efficacy of the intellectual  
property.

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Subsequently, a contract was let to  
Real 3D for the development and maintenance of  
the, of a web site for Iviewit and some  
additional work relating to the maintenance of  
the web site and material on the web site.

Q. Was there any kind of engineering  
study involved or was any other kind of  
feasibility study that was undertaken by Real 3D?

A. Nothing documented. There were --  
I -- that was, again, was before my time, but  
that was, there were one or two meetings that  
took place with presentations by Mr. Eliot,  
Mr. Bernstein.

Q. Now, was there ever any discussions  
about limiting your spending authority to \$5,000  
by the board of directors?

A. No.

Q. There was never minutes of any  
meeting or any other discussion that you're aware  
of to that fact?

A. No.

Q. How about something involving a

photocopier for Iviewit, did you sign for that or  
purchase that at any point in time that you can  
recall?

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A. I signed a lease agreement for it  
because it was the only way that we could get one  
installed since Iviewit didn't have credit  
worthiness to make that equipment.

Q. Okay. And this was at the time that  
you became president and CFO, or COO rather, of  
Iviewit?

A. Right.

Q. Do you have any idea what happened  
to that leased machine or any of its  
replacements?

A. I really don't.

Q. Well, when you shut down the office  
in Boca, was that piece of equipment still on  
site at that time?

A. Direct that -- that question should  
be directed at Ross Miller.

Q. Okay. You weren't responsible to  
take care of that; is that what you're saying?

A. I did not fold the operation up.

Q. Are you aware of any relationship  
between Real 3D, Nikkon, Kodak or any other

camera manufacturers concerning the technology

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we're talking about here?

A. Not of the Iviewit technology. I know that there was a relationship between Real 3D and Kodak, which never consummated in any release of product, but other than that, I'm not aware of any. Real 3D was acquired by Intel further down the road.

Q. Right. And so Nikon never utilized anything with Iviewit technology then?

A. Nikon utilizes a zoom and pan technology within its cameras.

Q. Okay. But it's not Iviewit's patented technology or anything that there's any patent pending on for Iviewit?

A. It's never been established whether that implementation might potentially infringe on any patent which may issue.

Q. Did you ever represent or discuss with anyone, including Crossbow Ventures, the fact that there might be some question as to Nikon's use of Iviewit technology?

A. I may -- I don't know. I don't recall. It's possible that I might have mentioned that the camera appeared to use a

1 technology which is very similar to Iviewit's  
2 technology.

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3 Q. Do you own a Nikon 990 camera at  
4 all, Sir?

5 A. I do. I also own a Soni digital and  
6 I own a Cannon digital, and they all have similar  
7 technologies.

8 MR. PRUSASKI: I object to this line  
9 of questioning as to relevance.

10 By MR. SELZ:

11 Q. How about when we were talking about  
12 your employment earlier, Sir, we were talking  
13 about the fact that you're now running your own  
14 consulting business. Have you ever heard of a  
15 gentleman Bruce Prolow or a company  
16 InternetTrain?

17 A. Bruce Prolow is an investor in  
18 Iviewit and a member of the board.

19 Q. Okay. How about InternetTrain?

20 A. Yes.

21 Q. And what was -- do you have any  
22 ongoing relationship with either Mr. Prolow or  
23 InternetTrain?

24 A. Not at this time.

25 Q. When did that relationship cease?

A. Within the last 60 days.

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Q. And what was the relationship with him prior to that?

A. I was providing management assistance to InternetTrain.

Q. And why did that relationship cease?

A. Because the company ceased operation.

Q. How about Zeosync?

A. I'm sorry.

Q. How about a company called Zeosync, Z-E-O-S-Y-N-C?

A. I'm not familiar with that company.

Q. Do you recall as part of your, the operations of Iviewit, providing a detailed audit to Crossbow, the investor?

A. I'm sorry.

Q. I'm sorry. Do you recall during your operations of Iviewit, providing a detailed audit to Crossbow, the investor?

MR. BERNSTEIN: Could you repeat the question.

MR. SELZ: Hold on a second.

MR. PRUSASKI: Objection as to relevance.

MR. SELZ: Could we take a break for

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a couple of minutes. My client needs to have his wife call the doctor about their baby so I won't be able to keep him on the line. So we'll take, like, a five minute break.

MR. PRUSASKI: Yeah. How you doing timing wise?

MR. BERNSTEIN: It might take about 15 minutes.

MR. SELZ: It's probably going to take 10 or 15 minutes for the call. I'm going to be a while still by the looks of it.

MR. PRUSASKI: Well, I mean --

MR. SELZ: What time is it over there; it's like 2:00 over there?

MR. BERNSTEIN: It's five to two.

THE WITNESS: I think we should reconvene tomorrow afternoon.

MR. PRUSASKI: What's the earliest you can be here tomorrow because he needs a couple more hours?

THE WITNESS: 2:30.

MR. PRUSASKI: How about 2:30 Central Time tomorrow, which is 3:30 in Palm Beach?

MR. SELZ: 3:30, okay, that will

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work out.

MR. PRUSASKI: All right. Call the same -- can we use this room?

(Court reporter responds.)

MR. SELZ: You don't usually use that room?

MR. PRUSASKI: Okay, so we'll agree on the -- get this down. We'll agree to reconvene to finish Mr. Utley's deposition tomorrow at 2:30 Central Time. We'll let Mr. Utley go now and then you and I and the court reporter, Steve, will work out the venue and try and get this conference room again and provide you with a call-in number.

MR. SELZ: Do you have a number for Mr. Utley so in case you need to contact him if there's a change in location, he'll know what's going on?

MR. PRUSASKI: Yes. And I'll give him my cell phone number and ask him to call me tomorrow afternoon to confirm everything.

MR. SELZ: Okay. I appreciate that, Chris.

MR. PRUSASKI: Okay. And I'll work



with you to get a call-in number set up for you.

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MR. SELZ: Okay. Mr. Utley, thank you for your patience. I appreciate it.

THE WITNESS: Oh, that's quite all right, Steve.

MR. SELZ: At least we can let you go for now.

MR. PRUSASKI: Thank you very much.

THE WITNESS: Thank you.

(Whereupon, the deposition of BRIAN UTLEY, VOL. I, was adjourned at 2:07 p.m.)

STATE OF MINNESOTA:

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:  
COUNTY OF DAKOTA :

CERTIFICATE

BE IT KNOWN, that I, Traci R. Sandstrom,  
Court Reporter, Notary Public, took the foregoing  
deposition of BRIAN UTLEY;

That the said witness, before testifying,  
was by me duly sworn to testify the truth, the  
whole truth and nothing but the truth relative to  
said cause;

That the testimony of said witness was  
recorded in shorthand by me and was reduced to  
typewriting under my direction;

That the foregoing transcript is a true  
record of the testimony given by said witness;

That I am not related to any of the parties  
hereto, nor an employee of them, nor interested  
in the outcome of the action;

That the cost of the original has been  
charged to the party who noticed the deposition,  
and that all parties who ordered copies have been  
charged at the same rate for such copies;

WITNESS MY HAND AND SEAL this 5th day of  
September, 2002.

TRACI SANDSTROM, NOTARY PUBLIC

CORRECTION PAGE

I, BRIAN UTLEY, VOL. I, do hereby certify that I have read the forgoing transcript and found the same to be true and correct except as follows, (noting the page and line number of the change or addition as desired and the reason why):

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IN THE CIRCUIT COURT OF THE  
FIFTEENTH JUDICIAL CIRCUIT IN AND  
FOR PALM BEACH COUNTY, FLORIDA

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CASE NO. CA 01-04671 AB

PROSKAUER ROSE, LLP, a New  
York limited liability partnership,

Plaintiff,

-vs-

IVIEWIT.COM, INC., a Delaware corporation  
IVIEWIT HOLDINGS, INC., a Delaware  
corporation, and IVIEWIT TECHNOLOGIES,  
INC., a Delaware corporation,

Defendants.

**COPY**

TELEPHONIC DEPOSITION

The following is the telephonic  
deposition of BRIAN UTLEY, VOL. II, taken before  
Traci R. Sandstrom, Court Reporter, Notary  
Public, pursuant to Notice of Taking Deposition,  
at 5841 Cedar Lake Road, St. Louis Park,  
Minnesota 55416, commencing at approximately 2:30  
p.m., August 23, 2002.

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Whereupon, the telephonic deposition of BRIAN UTLEY, VOL. II, was continued at 2:30 p.m. as follows:

EXAMINATION VIA TELEPHONE

By MR. SELZ:

Q. Mr. Utley, you understand you're still under oath, sir, is that correct?

A. That's correct.

Q. Okay. And you understand this is the continuation of the deposition which took place yesterday, August 22nd; is that correct?

A. I understand that.

Q. Okay. Mr. Utley, since yesterday's deposition, have you spoken to anyone with regard to anything concerning Iviewit.com or any other matters which we've addressed in your previous deposition or deposition questions in this matter?

A. No.

Q. Have you consulted anyone or sought preparation from any other source since our questions yesterday?

A. Not a thing.

Q. Okay. Okay. Now, with regard to



Mr. Rubenstein, we had a series of questions we talked about yesterday with regard to him. Do you recall that?

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A. I recall that we had some discussion.

Q. Okay. Are you aware of or did you arrange any meetings for any employees of Warner Brothers or any other company with Mr. Rubenstein?

A. No. But I believe that someone from one of the principals on the development side or the engineering side at Warner Brothers was associated with Rubenstein in the MPEG pool.

Q. Okay. And that MPEG pool you're talking about, was that something that Mr. Rubenstein was involved with?

A. Yes.

Q. Okay. And can you explain to me exactly what that MPEG pool was, to the best of your knowledge.

A. Are you going to explain it to me or do you want me to explain it to you?

Q. I want you to explain it to me, please, sir.

A. Well, the MPEG pool, just from

casual knowledge; I'm not involved with the MPEG pool, but the MPEG pool is a consortium of patent holders that have established a pooling of those patents for the purposes of licensing others to use that intellectual property. That's my understanding.

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Q. Specific inventions or patents which the MPEG pool holds or is currently trying to license to other parties?

A. Yes.

Q. And what would those be?

A. I'm sorry, I don't know those specific patents.

Q. Okay. So you don't know any specific technology which the MPEG pool is attempting to license?

A. Well, I know by name, MPEG 1, MPEG 2, MPEG 3, MPEG4.

Q. But you have no idea what those technologies are.

A. I didn't say that.

Q. Okay. Well --

A. I thought your question was relative to the MPEG pool and that organization.

Q. Okay.

A. You didn't ask me the question of  
did I know anything about the technology.

Q. Well, let me rephrase it then. Do  
you know anything about the technologies MPEG  
pool is licensing?

A. I don't know anything about the  
licenses or what is underneath those licenses. I  
do know something about the specific technology.

Q. What do you -- tell me about that  
then.

A. Well, I don't want to put questions  
in your mouth, but I think you need to be more  
explicit.

Q. I will try. Go ahead if you can and  
answer my question.

A. What do you want to know?

Q. What technologies are involved with  
the MPEG pool and describe those inventions to  
the best of your ability.

A. I can't describe the inventions but  
I can describe the names of the technology and  
the rough dimensions of those technologies.

Q. Okay. And would that include a  
description of the purpose of those technologies?

A. In a commercial sense, yes.

Q. Okay, very good. Why don't you do (inaudible) then.

A. The first one was MPEG 1, was developed by a committee in about 1991, or was issued in about 1991. The purpose of that was to formulate a means of compressing video such that it could be played back on a CD ROM.

Q. Okay. So it was a compression technology?

A. They're all compression technologies.

Q. Okay.

A. The next one was MPEG 2, which was formulated to provide a more, more efficient compression technology for the purpose of compressing high-quality video.

Q. Okay.

A. The next one was MPEG 3, commonly known as MP3, which is designed to provide audio compression.

Q. Okay.

A. The last one is MPEG 4, which was designed to further increase the amount of compression which could be achieved for the purpose of transmitting video over low band

widths, primarily the internet, but not necessarily restricted to the internet.

Q. Okay. And are any of these, are any of these MPEG products or inventions currently licensed?

A. I have no knowledge of any licensing practices or whatever the situation is.

Q. Do you have any involvement with the MPEG pool at all or any of these inventions at all?

A. None at all.

Q. Going back to Rubenstein and his involvement with the MPEG pool, was he ever approached with regard to any of the technology from Iviewit?

MR. PRUSASKI: Objection to form.

MR. SELZ: I'll try to rephrase it then.

By MR. SELZ:

Q. Did you ever have any discussions with Mr. Rubenstein with regard to the intellectual properties of Iviewit?

A. I can recall that I had discussion that briefed him on where we were in terms of filing patents covering the Iviewit IP, but it

was a general discussion.

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Q. And what was the purpose of that discussion with Mr. Rubenstein?

A. I believe that that was to inform him of where Iviewit was relative to its IP because there was a proposed contact between the Warner Brothers representative on the patent pool and Mr. Rubenstein for the purpose of suggesting that the Iviewit technology was, had some substance.

Q. Had some what?

A. Substance.

Q. Substance, okay. But it wasn't anything more in depth than just advising him that it was in the process of --

A. It was a single phone call which I made to him.

Q. And about what date was that, if you can recall?

A. Oh, it was in late 2000, fourth quarter 2000.

Q. Did you ever have any other conversations with Mr. Rubenstein, other than the one you've already described?

A. I don't recall any other

conversations, no.

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Q. Now, I just want to take a quick step back we had some discussion yesterday concerning the whereabouts of the documents of Iviewit, and if I recall correctly, you had indicated that you had undertaken an effort to pack those and ship them out to California; is that correct?

A. Everything I had was shipped to California, or at least it was put in boxes to be shipped.

Q. And who actually on the staff was going to be responsible for making sure those got shipped?

A. I think I indicated yesterday that those actions were under the control of Mr. Ross Miller.

Q. Okay. Mr. Miller was the one who actually was responsible for that. I think you're correct. I think you told me that yesterday, and I apologize for asking you that repetitive question.

Did you ever see anyone or witness anyone, and again, this might be repetitive, disposing of any documents, shredding any

documents over at the Iviewit offices?

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A. No. I don't think we even had a shredder. At least, if we did, I was not aware of it.

Q. Are you familiar with two employees at Iviewit named Mary and Martha?

A. Named who?

Q. Mary --

A. Mary and Martha.

Q. Yes.

A. Yes.

Q. What's Mary's last name, if you can recall?

A. I don't recall it.

Q. What about Martha?

A. Montecon.

Q. And how do you spell that?

A. I believe it's M-A-N-T-E-C-O-N.

Q. Martha Montecon, what was her position at the Iviewit offices?

A. She was my assistant.

Q. Assistant. And how long was she your assistant, for what period of time, sir?

A. From about October of 99 until December, about December of 2000.



Q. Did you have anyone else who acted as your assistant during your tenure at Iviewit?

A. Subsequent to Martha, I had a couple of short-term people who were there. I don't even remember their names.

Q. Did you ever instruct anyone at all to shred documents or destroy documents at Iviewit?

A. Never.

Q. Did any of your -- strike that.

Did any of the employees of Iviewit ever file any legal action against the company or against you personally during your tenure there?

A. Not to my knowledge.

Q. And obviously I'm not talking about the Chapter 7 proceeding, the involuntary bankruptcy. I'm just talking about anything else you were aware of.

A. No, I'm not aware of any.

Q. Who's Mr. Monte Freedkin?

A. He was the principal owner of Diamond Turf Equipment.

Q. Do you have any current relationship with Mr. Freedkin?

A. I know him. I put him on my board

at the Florida Atlantic University.

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Q. Do you have -- do you communicate with him on a regular basis or not?

A. No. We have a casual relationship.

Q. When was the last time you spoke with Mr. Freedkin?

A. Probably saw him two months ago.

Q. Down here in South Florida?

A. Yes.

Q. And was that during your visit in which you saw Mr. Wheeler?

A. I don't believe I saw Mr. Wheeler during that visit.

Q. Okay. And what was your purpose for coming down to Florida that time, to visit Mr. Freedkin or was it for some other purpose?

MR. PRUSASKI: Objection for relevance.

By MR. SELZ:

Q. You can go ahead and answer the question.

MR. PRUSASKI: Just to let you know, Mr. Utley, if I make objection, I'm putting it on the record for the purposes of preserving it because the court is not involved in this

deposition. You have to go ahead and answer the question.

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THE WITNESS: It was a personal visit. I have property in Boca.

By MR. SELZ:

Q. And did you call Mr. Freedkin or did he call you or how did you communicate?

A. We happened to attend the same event.

Q. What event was that?

A. That was the dedication of the president's house at Florida Atlantic University.

Q. Are you still involved with the board of directors at Florida Atlantic University or not?

A. I am.

Q. Who is Michael Real?

A. He is an ex-employee.

Q. An ex-employee of what company?

A. Iviewit.

Q. Which Iviewit company?

A. I'm sorry.

Q. Which of the Iviewit entities?

A. I don't recall which entity was specified on his employment agreement.

Q. Well, you had earlier testified that it was Iviewit.com, Inc. that I think you said was the operating entity. I'm just trying to jog your memory here.

A. I said that.

Q. Okay. Do you have any reason to believe that he would be an employee of any of the other Iviewit entities?

A. I don't recall what was, what he specifically was identified with in his employment agreement.

Q. Are you aware of any property that was missing from Iviewit that Mr. Real was alleged to have removed improperly from the corporate headquarters?

MR. PRUSASKI: Objection; relevance.

THE WITNESS: I'm not aware of any property that was improperly removed.

By MR. SELZ:

Q. Are you aware of any property that was removed by Mr. Real from the corporate headquarters, improperly or otherwise.

A. No.

Q. We talked yesterday about, briefly, and I hate to backtrack like this but

unfortunately I think I'm going to have to, with regard to your acting as president of Diamond Turf. You had spoken to me about a patent attorney or intellectual property attorney you had hired while you were there for the hydro-mechanical systems that you had developed; is that correct?

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A. For some portion of it, yes.

Q. Some portion of it, correct. Do you recall that attorney's name?

A. It was Bill Dick.

Q. Bill Dick, okay. And with regard to Mr. Dick, do you have any continuing relationship with him at all?

A. No. I haven't spoken with him for a long time.

Q. How long is a long time, sir?

A. I don't recall.

Q. Is it more than a year?

A. I don't recall.

Q. If you were to guess, would you say it would be more than a year or less than a year?

A. I don't recall.

Q. Now, was Mr. Dick ever at any meetings of Iviewit or was his name or any other

information used with regard to Iviewit or its technologies?

A. I think I mentioned yesterday that he is the person who introduced Iviewit to Foley & Lardner.

Q. Right. But my question was a little more specific. Was he ever present at any meetings at Iviewit?

A. I can't say with conviction, but I do, I do think he probably came to the offices once, perhaps twice.

Q. What was the purpose of his visits to Iviewit offices?

A. Well, in the first instance, he, he would have come at my invitation to review what our needs were and to determine if Foley & Lardner was the appropriate solution to our problem.

Q. And what was the problem that you were having? Was it Meltzer Lippy no longer providing IP support?

A. That's correct.

Q. Is that the problem you're discussing here, sir?

A. Yes.

Q. Now, Mr. Dick was attempting to ascertain whether or not Foley Lardner would be the appropriate substitute counsel for Meltzer Lippy; is that what he was attempting to do?

A. Yes.

Q. Now, with regard to employment of both Meltzer Lippy and Foley & Lardner, was there some reason why Proskauer Rose was not engaged for any intellectual properties work, to the best of your knowledge?

A. My understanding is that that question had already been raised with Proskauer Rose before I was involved with the company. It was referred to Rubenstein and Rubenstein referred the matter to Meltzer Lipper.

Q. Okay. So it was Ken Rubenstein had an involvement with IP, obviously, because he was involved with all the MPEG patent pools; is that correct?

A. I believe so.

Q. Okay. And Ken Rubenstein was working for what firm at that point in time?

A. Proskauer Rose.

Q. Okay. So Proskauer Rose had an intellectual division, or at least some

involvement with intellectual properties work?

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A. I'm not sure what they had in intellectual property.

MR. PRUSASKI: Objection to the form.

By MR. SELZ:

Q. Did you ever make any inquiry with regard to the ability of Proskauer Rose to provide services to Iviewit for intellectual properties work?

A. I was told that Proskauer Rose had referred that matter to Meltzer Lipper.

Q. Okay. To Meltzer Lippy, okay.

A. Lippy.

Q. And you didn't make any other inquiry into that particular matter then?

A. That is correct.

Q. We had some conversations yesterday about Raymond Joao; do you recall?

A. Yes.

Q. Okay. Now, with regard to Mr. Joao, what is his position or what is his role with regard to Iviewit?

A. I'm not aware of any role that he has with Iviewit.



Q. Are you aware of any patents that he holds for any of the Iviewit technologies?

A. I'm not aware of anything about Raymond Joao.

Q. So he's not an inventor of any of these technologies; he's not in any way a contributor to any of these technologies, to the best of your knowledge, then?

A. To the best of my knowledge, that's correct.

Q. Now, you had testified to Mr. Prusaski that there was a time when Wayne Huizenga and his companies were involved to some degree making an investment in Iviewit; is that correct?

A. I'm sorry, I didn't get the beginning of your sentence.

Q. All right. Yesterday when you were under direct examination by Mr. Prusaski over there, he had asked you a question concerning Wayne Huizenga or the Huizenga, one of the Huizenga companies with regard to an investment in Iviewit; is that correct?

A. Yes.

Q. Okay. Were you ever involved in

that particular investment, I believe it was a  
half million dollars, Huizenga placed to the  
company as an investment?

MR. PRUSASKI: Object to the form.

MR. SELZ: Let me restate the form  
of the question then.

By MR. SELZ:

Q. Okay. Did Mr. Huizenga or any of  
his companies invest half a million dollars in  
Iviewit?

A. Yes.

Q. Okay. And were you present at any  
meetings at which any presentation was made to  
Mr. Huizenga or any of his representatives  
concerning that investment?

A. Yes.

Q. And what date approximately did  
those meetings take place on?

A. Those meetings most likely would  
have taken place September and October of 99.

Q. Okay. And who was present at those  
meetings?

A. It depends on which meeting.

Q. Okay. Well, let's start with the  
first meeting. You said the meeting took place

in September or October. I was under the misapprehension that there was only one. Was there more than one meeting, sir?

A. I think when someone is going to invest in a company, there will be more than one meeting.

Q. Okay. How many meetings were there?

A. I don't recall.

Q. More than two?

A. Most likely.

Q. So you don't really have a clear recollection of how many meetings there were then?

A. I don't recall precisely how many meetings there were.

Q. Do you have any recollection of who was present at any of those meetings?

A. As matter of course in those meetings, typically there would be myself, Simon Bernstein mostly, Chris Wheeler mostly, Eliot Bernstein mostly, but not necessarily all of them all the time in all the meetings.

Q. Okay. And who else, who from Huizenga's side or who else at all?

A. The principals of Huizenga Holdings,

Inc.

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Q. Okay. And who are they?

A. I don't recall their names.

Q. Did you ever meet Mr. Huizenga?

A. Not in connection with this transaction.

Q. How about with regard to his son?

A. I never met with Mr. Huizenga with regard to his son.

Q. No, or his son, or his son, not with regard to his son.

A. I have met his son.

Q. When was that?

A. It was in this same time frame.

Q. Okay. So it was part of these meetings that you had or a portion of these meetings that you had?

A. He would be in some of the meetings.

Q. Are you aware of any of the representatives at Huizenga Holdings being sent to New York to meet with Joao or Mr. Rubenstein regarding the Iviewit patents?

A. They hired an attorney in New York to, as part of their due diligence, to review the intellectual property status. He met with Ray

Joao and myself in New York.

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Q. Do you remember his name?

A. I don't.

Q. And what was the outcome of those meetings?

A. I don't know. He submitted his report directly to the Huizenga organization. I did not see that report.

Q. Okay. Do you recall where the meetings took place?

A. I've been to so many meetings. I don't precisely know where the meeting took place.

Q. Okay. Are you aware of any infringements of the Iviewit technologies by any of the Huizenga companies or their affiliates?

MR. PRUSASKI: Objection to form.

THE WITNESS: I'm sorry, would you repeat the question.

By MR. SELZ:

Q. Sure. Are you aware of any infringement on Iviewit technologies by any of the Huizenga companies or their affiliates?

A. No.

MR. PRUSASKI: Same objection.

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By MR. SELZ:

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Q. Just out of curiosity, sir, when were these Iviewit technologies developed? I mean, I'm just looking for a time frame.

A. I think that question should probably be addressed to the principal inventor.

Q. Who's that?

A. Mr. Bernstein.

Q. Okay. So was this before your time, then, at the company?

A. That's affirmative.

Q. Okay. And you weren't really present when they were inventing it; you weren't yet with the company?

A. That is correct.

Q. Now, I'm going to backtrack just a little bit. I think you had indicated previously about meeting Mr. Wheeler, knowing him socially for a number of years, and then he introduced you to the Iviewit companies; is that correct?

A. He introduced me to Eliot Bernstein and then subsequently to Simon Bernstein.

Q. Okay. And I don't want to repetitive again, but do you recall approximately when that was?

1 A. I think you asked me that yesterday. 193

2 Q. I hate to be repetitive, but I'm  
3 working from what I got.

4 A. Okay. That was, that should have  
5 been July of 1999.

6 Q. How about Jude Zach, was he one of  
7 the people involved with the development of the  
8 Iviewit technologies?

9 MR. BERNSTEIN: That's two people,  
10 Jude and Zach.

11 By MR. SELZ:

12 Q. I'm sorry, Jude and Zach?

13 A. That's what I was told.

14 Q. So, again, that's before your time  
15 at Iviewit?

16 A. Yes.

17 Q. How about Todd Kloslosy, I think  
18 K-L-O-S-L-O-S-Y, at Web Cast?

19 A. I don't recall anyone by the name of  
20 Todd at Web Cast.

21 MR. BERNSTEIN: Scott.

22 By MR. SELZ:

23 Q. Scott. It's hard with the speaker  
24 phone.

25 A. I'm sorry.

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MR. BERNSTEIN: Scott Kloslosky.

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By MR. SELZ:

Q. Scott Kloslosky, I'm sorry. I'm  
butchering names again.

A. I recall Scott Kloslosky.

Q. Do you recall having any meetings  
with Mr. Kloslosky?

A. I did.

Q. And what were those meetings in  
reference to?

A. The possibility of licensing Iviewit  
technology.

Q. And do you recall when those  
meetings took place?

A. Most likely in late 99.

Q. And how many meetings were there, if  
you can recall?

A. I had one meeting.

Q. One meeting. Are you aware of Web  
Cast utilizing any of the Iviewit technology  
currently?

A. I am not.

MR. PRUSASKI: Objection as to  
relevance.

By MR. SELZ:



1 Q. And the other investor that you 195

2 talked about yesterday was a company called

3 Crossbow; is that correct?

4 A. Yes.

5 Q. Was there an audit by Crossbow that

6 was done of the Iviewit companies?

7 A. Would you elaborate on what you mean

8 by audit.

9 Q. Was there a request or actual review

10 of the corporate finances by any representative

11 or agent of Crossbow?

12 A. Well, that's different.

13 Q. Okay. If you could answer my

14 question, please.

15 A. The, as part of the due diligence,

16 the company submitted its books for review by

17 Crossbow or their representatives.

18 Q. Were you involved in any

19 presentation made to Crossbow as part of their

20 due diligences or meetings prior to their

21 investment?

22 A. I was.

23 Q.. And what was your presentation with

24 regard to?

25 A. It -- I'm trying to recall, but most

1       likely it would have been a presentation of the       196  
2       Iviewit business plan.

3               Q.       Did you ever make any presentation  
4       to Crossbow concerning current infringement on  
5       Iviewit technologies by other companies?

6               A.       No.

7               Q.       Did you ever make any representation  
8       that Iviewit technologies were already in use in  
9       some commercial application?

10              A.       I have not made that allegation or  
11       representation.

12              Q.       Not in the form of an allegation,  
13       I'm saying as a statement to any other party  
14       concerning Crossbow?

15              A.       I have not made that representation.

16              Q.       Do you recall who was present at  
17       these meetings with Crossbow during their due  
18       diligence?

19              A.       Most likely Eliot Bernstein and  
20       Simon Bernstein and Murice Buchsbaum.

21              Q.       And how about representatives of  
22       Crossbow's, whose representatives were there, if  
23       you can recall?

24              A.       I don't recall.

25              Q.       Did they have more than one person

1 present at the meeting? 197

2 A. Depending on the meeting.

3 Q. Well, how many meetings were there?

4 We're talking about the due diligence. How many  
5 meetings did the due diligence entail?

6 A. Well, you know, I think there were  
7 three separate investment into Iviewit by  
8 Crossbow so I don't, I'm not quite clear as to  
9 which one you want me to talk about.

10 Q. Well, let's talk about the first one  
11 then.

12 MR. PRUSASKI: Objection; relevance.

13 By MR. SELZ:

14 Q. The first one that was done, how  
15 much of an investment was being sought at that  
16 point from Crossbow?

17 A. A million dollars.

18 Q. And the same parties you described  
19 earlier were present at the meetings, Eliot  
20 Bernstein, Simon Bernstein, Murice Buchsbaum and  
21 yourself and some representative of Crossbow who  
22 you're unable to recall?

23 A. Yes.

24 Q. Okay. And how many meetings did  
25 that entail?

1 A. I don't recall. 198

2 Q. How about the second investment, how  
3 much was that second investment?

4 A. I don't recall exactly how much it  
5 was.

6 Q. And who was present at that meeting,  
7 if you could recall?

8 A. It would be the same people.

9 Q. About what date was that, if you  
10 could recall?

11 A. That'd be the summer of 2000.

12 Q. All right. And how about the third,  
13 the third investment, how much was that?

14 A. I believe it was under a million  
15 dollars.

16 Q. And if you can recall, about when  
17 did that meeting take place with regard to that  
18 third investment?

19 A. It would be probably in the  
20 December/January, December 2001, January 2002  
21 time frame.

22 Q. January 2002?

23 A. Approximately.

24 Q. Do you ever recall having a camera  
25 with you at any of those meetings, a digital

1 camera with you at any of those meetings? 199

2 A. I didn't take a camera with me.

3 Q. Now, going back to the Iviewit  
4 technologies, the heart of the company's  
5 property, intellectual property, was there ever  
6 any concern expressed to you, as COO and  
7 president of the company, concerning the math,  
8 the poor math that was submitted to the patent  
9 office with errors? Is there anyone who  
10 expressed any concern to you about that?

11 MR. PRUSASKI: Object to the form.

12 THE WITNESS: There was a dispute as  
13 to the consistency of the mathematical  
14 representation, not to accuracy.

15 By MR. SELZ:

16 Q. Okay. So it wasn't dealing with the  
17 accuracy of the math or computational errors; it  
18 was dealing with whether or not the math properly  
19 applied the processes involved?

20 A. No. It was, I said, consistency.

21 Q. Consistency, okay. Well, explain to  
22 me what you mean by consistency, then, sir, so I  
23 can understand.

24 A. Well, there may be several different  
25 ways of deriving the same number, and it could be

1 derived using one form in one place and another 200

2 form in another place. The result is always the  
3 same and both forms are accurate.

4 Q. But they're not consistent?

5 A. They are not -- they don't show the  
6 same format, but the values and the value derived  
7 is always the same. It is mathematically  
8 correct.

9 Q. Okay. So did anyone ever express to  
10 you a concern about those particular issues?

11 A. There was a concern expressed, yes.

12 Q. By who?

13 A. By Eliot Bernstein.

14 Q. How about Murice Buchsbaum, did he  
15 ever express any concern to you about the math  
16 submitted?

17 A. Murice Buchsbaum didn't understand  
18 the math.

19 Q. Okay. So he never, he never  
20 expressed any concern to you then?

21 A. Not on that score.

22 Q. Did the board of directors ever  
23 question you about the patent materials submitted  
24 or any problems with the patent submitted to  
25 these intellectual property rights?

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A. No.

MR. PRUSASKI: Object to the form.

By MR. SELZ:

Q. Did you ever discuss with the board of directors any of the problems with Foley & Lardner or Meltzer Lippy's work with regard to the patent?

A. I don't recall discussing any problem with respect to Foley & Lardner's work because I don't recall any problem with Foley & Lardner's work.

Q. Okay. How about Meltzer Lippy, I think you described yesterday, there were some concerns; were those discussed with the board of directors?

A. The work done with Meltzer Lipper, was done mostly before my time.

Q. What about the part that was done during your time, were you concerned about any of the quality of the work that was performed or any problems you felt might arise from that work?

A. I did not, during that time, discover any problems.

If I may ask the question, I'm puzzling here to understand why this form of

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questioning is relevant to the Proskauer  
litigation?

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Q. Well, actually, sir, and I don't mean to be impolite in any manner whatsoever, but the role here for you is not really to ask these questions, but rather to answer the questions that are posed. So, although I appreciate your concerns, that's not something really for you to determine, but rather for posing counsel to bring before the court, if these matters should ever be submitted.

So, again, I'm not attempting to be rude or impolite in any manner, but these are the questions we can pose to you and you are duty bound to answer them.

MR. PRUSASKI: I would just say to some extent, because he's not represented here, I think he's got the right to --

MR. SELZ: He doesn't have any right to object. And you know, Chris, you and I both know, that even if you object to the form of a question or relevancy, the witness still has to answer it.

MR. PRUSASKI: I agree, and I think Mr. Utley knows that he needs to answer the



1 questions, but I think because he's not  
2 represented, to some extent, he does have the  
3 right to question the relevancy.

4 MR. SELZ: Well, I mean, he can  
5 object based on the relevancy or you can object  
6 based on the relevancy, but he cannot question  
7 the validity of what I'm asking based on a  
8 relevancy objection.

9 MR. PRUSASKI: Okay. I just think  
10 that his last comment was basically just a lay  
11 person's objection to the relevance.

12 MR. SELZ: That's fine. I mean, you  
13 know --

14 MR. PRUSASKI: And I'd like to  
15 state --

16 MR. SELZ: I don't even know if he  
17 has standing to interpose an objection because  
18 he's not a party to the case. So, well, I guess  
19 whatever, but the bottom line is we'll proceed so  
20 we can hopefully get through this as quickly as  
21 possible and release Mr. Utley from his  
22 obligations here.

23 MR. PRUSASKI: Okay. And I'd like  
24 to join Mr. Utley with objecting to the relevance  
25 of the question too. Go ahead.

1 MR. SELZ: (No response.) 204  
2 MR. PRUSASKI: Steve?  
3 MR. SELZ: Yeah, I'm still here.  
4 MR. PRUSASKI: Okay. Go ahead when  
5 you're ready. I guess we're done.  
6 MR. SELZ: You're done with your  
7 objections. Okay, fine.  
8 MR. BERNSTEIN: Could somebody  
9 repeat the last question for me, please.  
10 MR. SELZ: The last question was are  
11 you, are, were you aware of any situations  
12 according to -- Madam Court Reporter, actually if  
13 you could do me a favor, if you read back that  
14 last question, I would appreciate it.  
15 (Whereupon, the requested portion  
16 was read back.)  
17 MR. SELZ: That's fine, thank you.  
18 By MR. SELZ:  
19 Q. Did Foley & Lardner ever discuss  
20 with you any potential errors in the patents and  
21 any potential liabilities that would arise from  
22 those errors?  
23 MR. PRUSASKI: Object to the form.  
24 Assumes facts not in evidence.  
25 MR. SELZ: Well, let me start off

1 with the basic question then.

205

2 By MR. SELZ:

3 Q. Did Foley & Lardner ever advise you  
4 that there were any errors in the patents?

5 A. No.

6 Q. So, then, they never advised you of  
7 any liabilities or any errors that might arise  
8 from any errors because there weren't any; is  
9 that your testimony is today?

10 A. They never advised me that there  
11 were any errors in the patents.

12 Q. Okay. Now, with regard to the  
13 Proskauer Rose billing, you had indicated that  
14 you had authorized certain payments to be made  
15 and Mr. Prusaski had showed you a series of  
16 letters sent to you by Chris Wheeler and your  
17 responses on a couple of those.

18 Were those payments ever authorized  
19 by the board of directors of Iviewit?

20 A. The board of directors normally does  
21 not become involved in the administration of  
22 accounts receivable and accounts payable.

23 Q. Okay. Well, you, in your own  
24 testimony, sir, indicated that the company was in  
25 a cash poor position; is that true?

1 MR. PRUSASKI: Object to the form. 206  
2 MR. SELZ: Okay. I'll restate the  
3 form.  
4 By MR. SELZ:  
5 Q. Your testimony yesterday was that  
6 Iviewit did not have sufficient funds to meet its  
7 ongoing obligations; is that correct?  
8 A. Yes.  
9 Q. And that meant that decisions as to  
10 prioritizing the obligations would have to be  
11 made; is that also a correct statement of fact?  
12 A. Yes.  
13 Q. And who would normally, who would  
14 normally undertake those decisions?  
15 A. Either the CFO or the CFO in  
16 consultation with me.  
17 Q. Okay. And who was the CFO at that  
18 point in time?  
19 A. Raymond Hersh.  
20 Q. Now, with regard to that, sir, you  
21 never felt it advisable to discuss these matters  
22 with the board of directors prior to authorizing  
23 these substantial payments?  
24 A. I discussed it with, any specific  
25 payment which I felt warranted, I would discuss

1 with Simon Bernstein. The board was always 207

2 updated as to the financial status of the company  
3 and we had regular board meetings by conference  
4 call where that was discussed.

5 Q. Okay. So you had regular board  
6 meetings in which you discussed accounts payable  
7 to Proskauer Rose; is that your testimony?

8 A. The Proskauer Rose accounts payable  
9 was discussed in some of those board meetings.

10 Q. Was there ever any authorization by  
11 the board to allow for some kind of payment  
12 agreement between Iviewit and Proskauer Rose?

13 A. No. The board was never involved in  
14 day-to-day operations.

15 Q. But you discussed the accounts  
16 payable at board meetings?

17 A. As part of an aggregate overall  
18 presentation on status.

19 Q. But you never discussed -- well,  
20 strike that.

21 Did you ever discuss your intentions  
22 of entering a payment agreement with Proskauer  
23 Rose at any board meeting?

24 A. I don't recall.

25 Q. Would that have been reflected in

1 any minutes of any board meetings that took 208  
2 place?

3 A. I'm not aware.

4 Q. Okay. Well, let me put it to you  
5 this way, sir. Did you ever have the opportunity  
6 to review board meetings, minutes -- I'm sorry.

7 Did you have an opportunity, sir, to  
review the minutes of any of the board of  
directors meetings that you attended?

A. Yes.

Q. Okay. And were those, to the best  
of your recollection, recorded accurately and  
fully?

MR. PRUSASKI: Object to the form.

By MR. SELZ:

Q. Go ahead and answer, sir.

A. As far as I know, the minutes  
reflected the discussions that took place in the  
board meeting.

Q. So in other words, sir, if I went  
back and reviewed the minutes of the meetings of  
the board of directors and there was no mention  
of you discussing payment agreement with  
Proskauer Rose, would it be fair to say, then,  
that you never mentioned it at a board of

directors meeting?

209

MR. PRUSASKI: Object to the form.

THE WITNESS: Not necessarily.

By MR. SELZ:

Q. Okay. Well, you just indicated to me that the minutes of the board of directors meetings were accurately and fairly transcribed from what was discussed; is that correct?

A. No.

Q. Okay. Then, go ahead, why don't --

A. If you listen to my words, I said they were representative.

Q. Representative. Okay. So in other words, not everything was transcribed; is that what you're telling me?

A. I think that it's not unusual in board meetings to have a number of discussions which may or may not get transcribed.

Q. Were those meetings of the board of directors ever taped?

A. I'm not aware of any taping.

Q. Would you be surprised to know that a tape of those meetings existed?

A. Some one may have surreptitiously taped some of the meetings.

Q. Okay. So your testimony, then, is that taping the meetings wasn't something that was done in the regular course?

A. That is correct.

Q. The word surreptitiously, it would have to be someone hiding something to tape it; is that what you're implying by your answer?

A. I am.

Q. Now, during your authorization of payments to Proskauer Rose, did you ever have any further discussions as to, with either Si Bernstein or any other member of the board of directors, of mention with regard to continuing those payments?

A. I don't recall the specific conversation.

Q. Now, with regard to the accounts payable situation at Iviewit, how did you -- strike that.

Please describe for me the accounts payable team that you selected, who were they and why were they hired in particular?

A. We had a young college graduate of the business school, of an accounting school for a while.



Q. What was that person's name?

211

A. Her last name was Lewin. And she left after several months and was replaced by Mary. And --

Q. And that's Mary; what was Mary's last name?

A. I don't recall.

Q. Was it Viadaro?

A. That does not sound familiar.

Q. Okay. And who else, who else was on the team?

A. And then later Mary left and Bill Kasser came into the picture.

Q. Now, had you ever worked with Mary before at all or any of these other people before?

A. Yes.

Q. And which one of them did you work with before?

A. Mary had worked at Diamond Turf Equipment.

Q. Okay. And did you bring her over directly from Diamond Turf?

A. Yes.

Q. Was there any particular reason why

you thought she was qualified for the position at Iviewit?

212

A. Based upon her work at Diamond Turf.

Q. And what finally happened with Mary? Was she -- because Bill Kasser obviously came in afterwards. Was Mary let go at one point in time or another?

A. She became ill.

Q. Okay. She became ill in a chronic sense or just --

A. She was -- no. She became ill and was not able to attend work for some substantial period of time.

Q. Okay.

A. And at that point in time, we were cutting staff so we cut her position out.

Q. Okay. You cut her out but then you replaced her with Bill Kasser?

A. Later. There was a period where we had, where Raymond Hersh filled in.

Q. Now, so she was basically terminated because she couldn't attend work; is that what you're, the reason for her no longer, for Mary no longer working for Iviewit would have been?

A. We found that we could get along

without her at that particular point in time.

213

Q. Now, we talked earlier about, or I believe it was on direct examination that you commented that Mr. Bernstein had, Si Bernstein had indicated his concern with regard to Proskauer Rose's bills. Did Mr. Donald Cain or Ken Anderson ever indicate any concerns or complaints about Proskauer's work or their billing?

A. They commented on the magnitude of the bills.

Q. And they commented to you in particular about that fact?

A. Yes.

Q. And what were the, the basis for their statements or what was the substance of their statements to you?

A. Well, the substance of their statements was, in their experience, the magnitude of the billings were significantly larger than in their experience a company of the Iviewit size would have experienced.

Q. Okay. So you're saying that their statements were basically they thought the bills were larger than they should have been for a

company of Iviewit's size and the work being  
generated; is that what they were saying?

214

A. They said that in their experience,  
the bills were larger than their experience would  
indicate for a company of that size.

Q. Okay. And what was their  
experience, Mr. Cain's experience and  
Mr. Anderson's experience that they drew from, if  
you know?

A. I know -- I don't know. Mr. Cain  
had a background in the private banking and  
investment industry. Mr. Anderson had experience  
with Anderson Accounting.

Q. Okay. So these were people of  
backgrounds in, for businesses then?

A. I don't know exactly what they were  
doing.

Q. Okay. Now, what was their role in  
Iviewit or at Iviewit, I should say?

A. They were on the board.

Q. Okay. And they communicated these  
facts to you; is that correct?

A. They communicated those impressions  
to me.

Q. And you took that to mean, then,

1 that the billing by Proskauer Rose should be paid 215  
2 in full?

3 A. I did not make that representation.

4 Q. Okay. Well, sir, we're talking  
5 about your role as president and chief operating  
6 officer of the Iviewit entities. You had already  
7 indicated in your testimony that you unilaterally  
8 determined to make payments to Proskauer Rose on  
9 a payment agreement; is that correct?

10 A. I made a payment agreement.

11 Q. All right. And you made it without  
12 consulting the board of directors, is what you  
13 had indicated in your earlier testimony; is that  
14 still correct?

15 A. I made it in the normal course of my  
16 position as president.

17 Q. But you had received prior to that  
18 payment agreement or after that payment  
19 agreement, comments from Mr. Cain and  
20 Mr. Anderson indicating concerns about the size  
21 of Proskauer Rose's bill.

22 A. We have not discussed the timing  
23 when those concerns were expressed.

24 Q. That's what I'm asking you. Was it  
25 before of after your entering into the agreement

to pay Proskauer Rose's bill?

216

A. It was after.

Q. So you had already entered an agreement. About when was this, sir?

A. I believe from the exhibits that we discussed yesterday, the agreement was dated December of the year 2000. And at that time, we had received a significant infusion of cash from Crossbow, and on the basis of that infusion of cash, I prepared a budget. The budget included a, an allocation of funds that I reviewed with the board and with Mr. Si Bernstein --

Q. Okay. That wasn't --

A. -- it included -- let me finish.

Q. Go ahead.

A. It included the amount that would go to Proskauer on a monthly basis and it was prior to the time that I entered into that agreement with Mr. Chris Wheeler.

Q. Okay. Now, with regard to the information that you had, because obviously there wasn't just one agreement you had with Proskauer Rose; according to your testimony yesterday, there were at least two separate agreements that you had with them at various times about how the

payments were to be made. Were these comments by Mr. Cain and Mr. Anderson prior to that second agreement you made with Proskauer Rose? 217

A. No.

MR. PRUSASKI: Object to the form.

By MR. SELZ:

Q. So these were still after that as well?

A. As I recall.

Q. So they were -- okay.

So about what date were those comments made by Mr. Cain and Mr. Anderson, if you can recall? Was it December of 2000?

A. No. It'd be later in the first quarter of 2001.

Q. First quarter of 2001. How about Gerald Lewin, did Mr. Lewin, ever complain about either the work or the billing that Proskauer Rose had performed for Iviewit?

A. Not to my recollection.

Q. Now, with regard to the hiring and retention of counsel, yesterday had you testified that in your role in IBM, there was staff attorneys and so you really never had to retain an attorney on behalf of the company; is that

correct?

A. That's correct.

Q. Okay. And that the first time you retained counsel was regard to, I believe Mr. Dick, with regard to Diamond Turf?

A. It was a, it was a -- he was retained by me personally.

Q. He was retained by you personally. How about with regard to Diamond Turf, did you ever retain counsel during the approximately three-year period you were president of Diamond Turf?

A. No.

Q. You never were involved with retaining anyone?

A. Right.

Q. Did Diamond Turf ever have any intellectual property issues or any patent work that it had done?

A. No.

Q. How about corporate work, did it have corporate work that needed to done?

A. That was taken care of by Mr. Freedkin.

Q. So, then, sir, it would be a fair



statement to say that you've never, prior to your  
work at Iviewit, you never hired or retained an  
attorney for purposes of corporation  
representation; would that be a true and correct  
statement of fact?

219

A. Yes.

Q. And so what was your experience and  
basis for concluding that the work provided by  
Proskauer Rose was being billed in a reasonable,  
prudent manner or the services provided were  
being charged for fairly?

A. My practice was to continue the  
relationship and the commitments that had already  
been made prior to my taking the position.

Q. Okay. But you've stated, sir, that  
you concluded that the billing provided by  
Proskauer Rose was proper, that there was nothing  
improper about it that you saw; is that correct?

A. What I saw was a detail under the  
billings which accounted for time and material  
expended in behalf of Iviewit on corporate  
matters.

Q. And so if I sent to you, then -- so  
under that, under that philosophy then, sir, if I  
sent a bill for corporate work to Diamond Turf

for \$100,000 and I had detailed the billing and I provided that to you, you would think that was a legitimate bill, regardless of the quantity of services provided; is that what you're telling me?

MR. PRUSASKI: Object to the form.

THE WITNESS: The billing includes the time spent and material used by each person assigned to Iviewit corporate matters.

By MR. SELZ:

Q. My question to you is, was distinctly different. That is, if I provided you with a billing statement showing a detailed breakdown -- what you've told me so far in your testimony is that you're presuming correct, without even examining whether or not it's a reasonable amount for the service provided; is that what you're telling me.

MR. PRUSASKI: Object to the form.

THE WITNESS: I'm saying that I accepted it on the same basis that was accepted prior to my taking the position.

By MR. SELZ:

Q. Okay. So you accepted it at face value that if it was on the billing statement, it

was due and it was reasonable; is that what  
you're telling me?

221

A. I said I accepted it on the same  
basis that it was accepted prior to my taking the  
position.

Q. Well, sir, you were acting as the  
president and COO of this company and you've  
already testified that you used your judgment  
entering a payment agreement with Proskauer Rose  
for the balances due and that you didn't question  
anything concerning the bills, that you thought  
they were all proper; was that a correct  
statement? All the things I just recited, are  
those correct statements of your prior testimony?

A. No.

Q. Okay. What's not correct in that  
statement?

A. The bills were reviewed for  
substance.

Q. By who?

A. By either myself or my accountant.

Q. And who was, which accountant was  
that?

A. It would be Raymond Hersh.

Q. Okay.

A. Or myself.

Q. Okay. And that's the only inaccuracy in the statement I just made?

A. And the billing rates had already been in practice before I assumed responsibility for the company. There was no change.

Q. So you didn't, you didn't undertake to determine whether or not the time spent reasonably correlated to the services provided?

A. I am not an expert in how much time an attorney spends on a particular matter.

Q. So, again, you accepted that as being a fair billing on its face; is that what you're telling me, for the amount of time that was spent?

MR. PRUSASKI: Object to the form.

THE WITNESS: I accepted Proskauer Rose as a responsible company with which to do business.

By MR. SELZ:

Q. And you correspondingly, then, determined that the entirety of the bill would be paid, or should be paid; is that correct?

A. That is correct.

Q. And you authorized the accounts

1 payable department for Iviewit to issue checks to 223

2 Proskauer Rose in partial payment of those

3 billing statements; is that also correct?

4 A. That is correct.

5 Q. I think you probably already

6 answered this in part of that answer you gave a

7 couple of questions ago, but did you believe that

8 Proskauer Rose ever inflated their billing

9 statements to Iviewit?

10 A. I think we touched on that

11 yesterday, but the answer is, no.

12 Q. Now, how about with regard to

13 Crossbow Ventures and their investment, did they

14 ever require any assignment by the inventors of

15 the intellectual properties and the inventions as

16 part of their negotiations?

17 MR. PRUSASKI: Objection, relevance.

18 THE WITNESS: There was no

19 assignment made during my tenure.

20 By MR. SELZ:

21 Q. Was there ever any requests or

22 requirement by Crossbow that they be assigned

23 rights in these intellectual properties?

24 A. I'm not aware of any.

25 Q. Are you familiar with a gentleman

1 named William or Bill Barber? 224

2 A. Yeah, I've met Bill Barber.

3 Q. Who's Mr. Barber?

4 A. Was that a question?

5 Q. Yes, it was. Who is Mr. Barber?

6 A. He is a businessman, as I understand

7 it, who has connections in finances and in other

8 properties.

9 Q. Okay. What was his interest in

10 Iviewit and the Iviewit technology?

11 A. He was potentially interested in

12 using the technology.

13 Q. For what purpose?

14 A. I believe that he is involved with

15 some adult web sites.

16 Q. Okay. And did you contact

17 Mr. Barber or did he contact you?

18 A. Well, I did not contact him.

19 Q. Okay.

20 A. I don't recall how he came on the

21 horizon.

22 Q. Okay. Was -- did the board ever

23 express to you any attitude towards the use of

24 the Iviewit technology by either Mr. Barber or on

25 adult web sites?

1 MR. PRUSASKI: Objection, relevance. 225

2 MR. SELZ: I think it is relevant.

3 We're talking about whether or not he followed  
4 board directions so I think it's highly relevant.

5 MR. PRUSASKI: And pursuant to the  
6 Rules of Civil Procedures, I'm not going to argue  
7 my objections.

8 MR. SELZ: Of course. I just want  
9 to make sure I got on the record why I thought it  
10 was relevant.

11 By MR. SELZ:

12 Q. Go ahead.

13 A. The board discussed it.

14 Q. Yes. And what was the outcome of  
15 their discussion?

16 A. The outcome of the discussion and my  
17 position was that we would not enter into any  
18 agreement that would compromise the credibility  
19 of the Iviewit name.

20 Q. Okay. Was there ever any encoding  
21 of any of this adult material at the Iviewit  
22 corporate offices or any other facility that  
23 Iviewit ran or operated?

24 A. There was a sample tape that was  
25 decoded. We had already done that once before.

1 Q. Okay. And who was involved in that, 226  
2 if you know?  
3 A. It was done in the laboratory. I'm  
4 not sure who touched it.  
5 Q. Okay. So you're not, you're not  
6 aware of which employees were actually involved  
7 in encoding this --  
8 A. No.  
9 Q. -- information?  
10 A. I'm not.  
11 Q. How about I-Gallery; are you  
12 familiar with that?  
13 A. I am.  
14 Q. And could you explain what that  
15 company does and who that company is operated by.  
16 A. I don't know who it's operated by  
17 but I believe that's another adult orientated  
18 company in California. We were referenced to it  
19 by a friend of Eliot Bernstein's. He made that  
20 introduction and Eliot decided that we should go  
21 and discuss the possibility of them using the  
22 Iviewit technology.  
23 Q. Okay. Were there anything that went  
24 further than that, according to what you knew  
25 about Iviewit's involvement?



1           A.       Eliot had a number of discussions  
2 with them and I believe he brought a tape back  
3 once to be encoded and sent it back to them.

4                   MR. SELZ: Let's say we take a break  
5 for about ten minutes.

6                   MR. PRUSASKI: How you doing on  
7 time? Let's go off.

8                           (Whereupon, a break was taken from  
9 3:51 to 4:07.)

10 By MR. SELZ:

11           Q.       We were talking about some  
12 technology used at Iviewit, Mr. Utley, and I just  
13 wanted to find out, did you ever have a meeting  
14 with Alan Epstein concerning the technology?

15           A.       I had several meetings with Alan  
16 Epstein.

17           Q.       Was at the Universal Studio premises  
18 or was that some place else?

19           A.       Several places.

20           Q.       Okay. Why don't you describe each  
21 one of those meetings for me, if you could  
22 please, and the date and who was present.

23                   MR. PRUSASKI: Objection, relevance.

24                   THE WITNESS: Well, I don't recall  
25 all the meetings. Some were investor related and

1 some were client related. Mr. Bernstein,  
2 Mr. Eliot Bernstein was involved in all of those  
3 meetings.

4 By MR. SELZ:

5 Q. Okay. Did any of those take place  
6 at, you said one of them or two of them or more  
7 of them took place at Universal Studios premises  
8 or not?

9 A. Yes, I think there were, there was  
10 at least one meeting at Universal Studios. I  
11 think maybe there were even two meetings.

12 Q. How would you characterize those  
13 meetings with Mr. Epstein?

14 A. Well, Mr. Epstein was the person who  
15 made the introduction to the studio.

16 Q. Okay. Was there any problem that  
17 you ran into with Mr. Epstein or any complaint  
18 that Mr. Epstein voiced to you about anything?

19 A. Well, in one meeting at Universal  
20 Studios, there was a confrontation between  
21 Mr. Eliot Bernstein and the principal  
22 representing Universal Studios.

23 Q. Okay. And who was that principal  
24 representing Universal Studios?

25 A. He was the head of their advanced

1 media program. I don't recall his name. 229

2 Q. Was there ever any complaint or  
3 problem with regard to yourself and Mr. Epstein?

4 A. Not that I'm aware of.

5 MR. BERNSTEIN: (Inaudible).

6 MR. SELZ: All right, Mr. Pierce.

7 By MR. SELZ:

8 Q. Mr. Pierce was the principal?

9 A. (No response.)

10 Q. Mr. Utley?

11 A. Yes.

12 Q. Was there ever complaints that  
13 Mr. Epstein had, particularly against you,  
14 yourself?

15 A. Not that I'm aware of.

16 Q. How about David Colter, are you  
17 familiar with Mr. Colter?

18 A. Mr. Colter was involved with the  
19 development side of Warner Brothers.

20 Q. Okay. Did Mr. Colter ever request  
21 that you never contact anyone else at Warner  
22 Brothers other than himself?

23 MR. PRUSASKI: Objection, relevance.

24 THE WITNESS: He made a request that  
25 it might be simpler for everyone involved if

1 Eliot Bernstein acted as the sole interface. 230

2 By MR. SELZ:

3 Q. Okay. Did he ever specifically  
4 request that you not contact any other Warner  
5 Brothers' employee other than himself? I believe  
6 that was my question to you.

7 A. No. He -- I'd have to rephrase the  
8 question to answer it accurately. He requested  
9 that he be the focal point for Warner Brothers.

10 Q. Okay. And did you comply with his  
11 request that he be the focal point for Warner  
12 Brothers with regard to any communications  
13 between Iviewit and Warner Brothers?

14 A. I did.

15 Q. Did you ever try to contact any  
16 other Warner Brothers employees?

17 A. No.

18 Q. Do you have any reason why  
19 Mr. Colter would want you to restrict your  
20 communications directly to himself?

21 A. My understanding was that he had  
22 been assigned the responsibility to evaluate the  
23 Iviewit technology.

24 Q. Okay. Do you know if Mr. Colter  
25 ever talked to you about your qualifications as

1 an engineer? 231

2 A. No.

3 Q. Or a mathematician?

4 A. No.

5 MR. PRUSASKI: Object to the form.

6 By MR. SELZ:

7 Q. Are you aware of -- this is a line

8 of questioning we were talking about yesterday.

9 Are you aware of any inventions with zoom and pan

10 as part of their title, something that's similar

11 to what the Iviewit technology is.

12 A. Would you clarify that question.

13 Q. Sure. Are you aware, you personally

14 aware of any inventions that used phrases zoom

15 and pan in their title similar, in a manner which

16 is similar to the Iviewit intellectual

17 properties?

18 A. Are you speaking at large?

19 Q. At large.

20 A. Zoom and pan have been around for

21 decades.

22 Q. Okay. But I'm saying with regard to

23 digital zoom and pan the way that Iviewit

24 technologies operate?

25 A. I have heard it alleged that digital

1 zoom and pan have been around longer than the 232  
2 Iviewit technologies.

3 Q. Can you elaborate on that, please.

4 A. Kodak has taken that position.

5 Q. Okay.

6 A. There was a principal at Vulture  
7 Ventures in California, an investment company  
8 that looked at Iviewit, that made the same claim.

9 Q. And were these facts ever discussed  
10 or were these situations ever discussed with  
11 Crossbow, Huizenga or any of the other investors?

12 MR. PRUSASKI: Objection, relevance.

13 THE WITNESS: They were discussed  
14 with specific members of the board.

15 By MR. SELZ:

16 Q. How about with the investors?

17 A. Crossbow had a board member  
18 representing Crossbow.

19 Q. Prior to their investment or after?

20 A. After their investment.

21 Q. Okay. How about prior to their  
22 investment, was there ever any discussion with  
23 Crossbow with regard to the possibility that  
24 digital zoom and pan was already existent in  
25 another technological form or another IP form?



1 elements of the inventions itself? 234

2 A. I didn't discuss any elements of the  
3 invention itself.

4 Q. How about commercial applications  
5 for those, for those inventions?

6 A. Well, that was discussed in my first  
7 meetings with Mr. Wheeler and Mr. Eliot Bernstein  
8 by them.

9 Q. Now, I going a little bit back to  
10 some of these funding meetings that we talked  
11 about earlier in your testimony. After the  
12 initial investment by Huizenga Holdings, did  
13 Huizenga Holdings make any other investments in  
14 Iviewit?

15 MR. PRUSASKI: Objection, relevance.

16 THE WITNESS: They did not.

17 By MR. SELZ:

18 Q. Do you know the reason why they did  
19 not make any further investment in Iviewit?

20 A. I'm not aware of any factual reason  
21 why they did not.

22 Q. Are you aware of any business reason  
23 why they did not?

24 A. There was an altercation between Si  
25 Bernstein and the president of Huizenga Holdings.



1 Q. Okay. An altercation, you mean a  
2 dispute of some kind?

3 A. Yes.

4 Q. And do you recall what that dispute  
5 involved?

6 A. Mr. Bernstein took the position that  
7 they didn't know what they were doing.

8 Q. And the representative from Huizenga  
9 Holdings, who was that?

10 A. It was the president at the time.

11 Q. Do you recall his name?

12 A. Not offhand.

13 Q. He took offense to that  
14 representation by Mr. Bernstein; is that correct?

15 A. You might say that."

16 Q. Now, with regard to your  
17 authorization of work or the work that was  
18 performed by Proskauer Rose during your tenure at  
19 Iviewit, what was the corporate structure when  
20 you first became affiliated with Iviewit?

21 MR. PRUSASKI: Object to the form.

22 THE WITNESS: Well, I'll repeat what  
23 we discussed yesterday.

24 By MR. SELZ:

25 Q. Okay.



1 Q. Okay. And that was the same entity 237

2 that the retainer agreement was signed with that  
3 you testified to yesterday?

4 A. I believe so.

5 MR. SELZ: Madam Court Reporter, do  
6 we still have Defendant's No. 1 available?

7 (Court Reporter responds  
8 affirmatively.)

9 MR. SELZ: Okay. Can you please  
10 provide it to the deponent, I'd appreciate it.

11 (Court reporter hands documents.)

12 MR. PRUSASKI: It's on the bottom.  
13 I think it's the last document. I should have  
14 written Defendant's Exhibit 1 on the sticker.

15 THE WITNESS: Oh. This is it. I  
16 have the document.

17 By MR. SELZ:

18 Q. Okay. So that Iviewit, LLC that  
19 Proskauer Rose held an interest in, was the same  
20 entity which it signed or had entered into the  
21 agreement with Proskauer Rose for representation;  
22 is that correct?

23 MR. PRUSASKI: Object to the form.

24 MR. SELZ: Well, let me break it  
25 down. Okay.

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By MR. SELZ:

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Q. Iviewit, LLC was the entity in which Proskauer Rose held an interest; is that correct or not, sir?

A. Yes.

Q. And how much percentage interest did they hold in Iviewit, LLC?

A. I don't recall percentages. Something over 1 percent.

Q. And that was the same entity which the September 8th letter is addressed to, Mr. Brian G. Utley, it's Exhibit No. 1 I'm referring to, Brian G. Utley Iviewit, LLC; is that correct?

A. Yes.

Q. What was your understanding as to why Proskauer Rose held an interest in Iviewit, LLC?

A. I was told by the Bernstein's that it was granted to Proskauer Rose because of the quality of the work that they had performed for the company over the prior six months.

Q. Okay. Now, when was that interest given to Proskauer Rose, do you know?

A. It was prior to my tenure.

1 Q. Okay. So you have no idea when that 239  
2 was, when that was given?

3 A. I do not.

4 Q. Would you consider that additional  
5 compensation to Proskauer Rose?

6 MR. PRUSASKI: Object to the form.

7 THE WITNESS: I have no judgment on  
8 why it was given.

9 By MR. SELZ:

10 Q. Was it ever raised as an issue with  
11 Proskauer Rose vis-a-vis their billing statements  
12 to Iviewit, that is, their interest in the  
13 company?

14 A. I believe, and I am trying to  
15 recollect here, I believe it was asserted that in  
16 consideration of the equity granted to Proskauer  
17 Rose --

18 Q. Right.

19 A. -- that Proskauer Rose should give  
20 some consideration back to Iviewit.

21 Q. Okay. And what consideration was  
22 that, if you recall, sir, or if there was any  
23 consideration given?

24 A. I'm not aware of any percise quid  
25 pro quo.

1 Q. Okay. So your understanding, then, 240  
2 is that there was a consideration given because  
3 of this interest but that it never was in fact  
4 given?

5 MR. PRUSASKI: Object to the form.

6 THE WITNESS: To my knowledge,  
7 Proskauer Rose never acknowledged that there was  
8 a connection between the granting of the equities  
9 and their services.

10 By MR. SELZ:

11 Q. Okay. But to the best of your  
12 knowledge, has Proskauer Rose either relinquished  
13 that interest or somehow indicated to Iviewit  
14 that it has no further interest in retaining that  
15 ownership in Iviewit, LLC?

16 A. That is not what I tried to say.

17 Q. Okay. What did you try to say then?

18 A. What I tried to say is, the fact of  
19 Iviewit granting to Proskauer Rose an equity  
20 interest, had no bearing on the billings.

21 Q. Okay. So then it was your  
22 understanding that this equity interest had no  
23 affect on the billing that was done by Proskauer  
24 Rose?

25 A. Yes.

Q. In other words, it was some kind of bonus given to them that didn't affect the subsequent billing?

A. That's my understanding.

Q. Was that understanding ever formalized to you in any kind of written communication or any communication by the board of directors?

A. I believe that the equity granted to Proskauer Rose, actually was a personal decision made by Eliot Bernstein and came from his own holdings.

Q. Okay. That's your understanding. Do you know that for a fact or --

A. That is -- no. That is my understanding but, again, that is a recollection.

Q. Who is Jim Armstrong? Do you know Jim Armstrong?

A. Jim Armstrong was a personal friend of Eliot Bernstein's who served as head of sales for a period of time.

Q. Okay. Was there anything that Mr. Armstrong brought to your attention concerning any of the IP's or any problems with any of those, the mathematics involved or any of

that thing, anything of that nature, rather?

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A. Mr. Armstrong took issue with the consistency which we discussed earlier.

Q. Okay. And you said that you corrected that or you took steps to correct that?

A. It was not necessary. As I mentioned earlier, there was, it was not inaccurate, there was no inaccuracy involved. The formulas were correct; they were just two expressions of the same phenomena.

Q. So they were two ways of expressing the same end result, if you will?

A. That is correct.

Q. Was there ever a business plan submitted to Iviewit to Wachovia Bank?

MR. PRUSASKI: Objection, relevance.

MR. SELZ: Wachovia.

MR. PRUSASKI: Wachovia,

W-A-C-H-O-V-I-A.

MR. SELZ: Thank you, Chris.

THE WITNESS: There was a business plan that was developed in conjunction with Wachovia.

By MR. SELZ:

Q. And did you submit documents as



A. We shared nondisclosure agreements and communicated as required in order to construct the business plan.

Q. And did they require or request that you provide them with a CV as part of the business plan to evidence your expertise.

A. I believe so.

MR. PRUSASKI: Objection to form.

MR. SELZ: I'll restate the question.

By MR. SELZ:

Q. Did Wachovia Bank request that you provide personal information to them as part of that business plan?

A. Yes.

Q. And did you provide that personal information in the form of a curriculum vitae or CV?

A. It was integrated in prior editions of the business plan and flowed into the one that was developed with Wachovia.

Q. Now, when Chris Wheeler first introduced you to Iviewit, was he aware of the situation at Diamond Turf and yourself and

Mr. Monte Freedkin or what was Mr. Wheeler's

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knowledge of your position at Diamond Turf, to the best of your knowledge?

MR. PRUSASKI: Objection to form.

MR. SELZ: Okay. I'll restate the question. I'm sorry. Getting a little tired.

MR. PRUSASKI: I'm just objecting to the extent that you're asking him what Chris Wheeler's personal knowledge was.

MR. SELZ: Okay.

By MR. SELZ:

Q. To the extent that you know, what was Chris Wheeler's personal knowledge of that situation?

MR. PRUSASKI: Objection to form.

THE WITNESS: I believe Chris, Mr. Wheeler was fully cognizant of my relationship to Diamond Turf Equipment and to Mr. Freedkin.

By MR. SELZ:

Q. And he was aware about your departure from that company and that situation?

A. Yes.

Q. Involving your employed and your change of employment when you left Diamond Turf?

A. Yes.

Q. Other than your retirement at IBM, was there any other reason why you left IBM's employ?

A. No.

Q. Do you have any ongoing dispute with either IBM or Diamond Turf?

A. No.

Q. Going back to the employment of an attorney when you were at Diamond Turf, was there a retainer agreement that you recall signing on behalf of Diamond Turf to employ an attorney there? Or I'll take that back. I think you said that you never employed an attorney there; is that correct?

A. That is correct.

Q. When you hired an attorney personally, did you have a retainer agreement that you signed?

A. No.

Q. Do you have any letter or any other document evidencing the rates to be charged and the services to provided by that attorney?

A. I would have to research that question.

Q. Okay. Well, when I talk about retainer, I mean a letter of an engagement, not just a payment up front of funds; do you understand that is part of the question or not?

A. I do now.

Q. Okay. So when I talk about a retainer agreement, I mean any contract to engage legal services, whether or not there's money paid initially or not. So with regard to that, have you ever signed any retainer agreement with any attorney that you can recall?

A. No.

Q. Have you had any letter of agreement presented to you by any attorney as to fees to be charged and services to be provided?

A. No. Not prior to that time. I have subsequently, but not prior to that time.

Q. And what's changed between the past and current? Why have you now -- have you requested that that be provided to you or is that something that's been provided to you at the, I guess, preemptorally(sic) by the attorney? Have they provided you with a retainer agreement up front or have you requested one?

MR. PRUSASKI: Objection, relevance.

By MR. SELZ:

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Q. You can go ahead and answer.

A. We negotiated a basis for services which was documented.

Q. Okay. And which attorney did you do that with, sir?

A. Attorney that represented me in the Chapter 7 proceeding.

Q. And that's a Chapter 7 proceeding against Iviewit?

A. Yes.

Q. And which Iviewit entity is that again?

A. I believe that was Iviewit.com, LLC.

Q. That was the entity that had signed your employment agreement I believe you testified; is that correct?

A. Yes.

Q. What's the current status of that bankruptcy proceeding?

A. A judgment, I believe, has been made.

Q. Okay. A judgment has been made by bankruptcy court?

A. I believe so.

Q. And do you know when that judgment was entered?

A. I don't know the precise date.

Q. Okay. Who prepared your employment agreement with Iviewit?

A. Mr. Wheeler.

Q. Did he ever disclose to Iviewit that he had known you personally for a number of years?

MR. PRUSASKI: Objection to form.

THE WITNESS: That was the basis on which he made the initial introduction.

By MR. SELZ:

Q. Did Mr. Wheeler ever obtain any waiver of conflict between Iviewit and yourself?

A. Mr. Wheeler never represented me.

Q. Oh. So he represented Iviewit but he never represented you?

A. That's correct.

Q. Was there any specific directions given to Proskauer Rose as to legal services to be provided by either yourself or the board of directors?

MR. PRUSASKI: Objection to form.

THE WITNESS: Would you repeat the

question.

By MR. SELZ:

Q. Sure. Were there ever any specific directions given by either yourself or the board of directors to Proskauer Rose for their legal services to be performed?

A. Yes.

Q. And why don't you tell me who gave those directions, to the best of your recollection, the date those directions were given and what the substance of those directions were.

MR. PRUSASKI: Object to form.

THE WITNESS: Well, the board gave directions to change the corporate status of Iviewit.

By MR. SELZ:

Q. And when was that, sir?

A. That was in November of 99.

Q. On whose advice?

A. The board.

Q. And the board determined by itself there was going to be a change in the corporate structure?

A. Yes. It was necessary in order to

present the company properly to the investment  
community.

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Q. Okay. This was a change in status  
from an S-corp to a C-corp that you're  
discussing?

A. Yes.

Q. Okay. Did any legal advisor advise  
the board of directors as to the necessity of  
that change?

A. That, I believe Mr. Wheeler made  
that recommendation.

Q. Okay. So the board was following  
Mr. Wheeler's advice on that particular  
recommendation then?

A. Yes.

Q. What other directions were given  
with regard to Proskauer Rose and its  
representation of Iviewit?

A. Proskauer Rose was requested to  
development an employee stock purchase plan or  
stock option plan.

Q. Okay.

A. They were requested to serve as  
counsel during the due diligence process of all  
of the investments made in Iviewit.



Q. Okay.

A. On the part of Huizenga and Crossbow.

Q. Now, you said that the Proskauer Rose wasn't involved with the intellectual property side of Iviewit; is that correct?

A. That's correct.

Q. Have you ever seen the billing statements that Proskauer Rose provided to Iviewit that you -- you've discussed detailed billing statements. You reviewed those detailed billing statements, sir?

A. Some of them.

Q. What was the first one that you can recall reviewing?

A. I don't recall.

Q. Would it have been on or about July of 1999?

A. I really don't -- no. That was prior to my engagement.

Q. Okay. Did you ever go back and try to ascertain the source of the prior bills that were the ongoing balance that Iviewit had with Proskauer Rose?

MR. PRUSASKI: Objection to form.

MR. SELZ: Well, let me restate the

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question.

By MR. SELZ:

Q. Did you ever go back, sir, and check billing statements prior to your employment, or dating prior to your employment with Iviewit?

A. I did see some of those records.

Q. How many of those records did you look at, if you can recall?

A. I can't recall precisely.

Q. And this was the 300-and-something-thousand-dollar previous balance that you had testified to yesterday?

A. I think I said it was less than 300,000.

Q. 289 or 298. I'm trying to recall exactly what it was. Around 300,000 or thereabouts? Is that approximately what you testified to?

A. Something under 300,000.

Q. Did you attempt, then, to reconcile or somehow substantiate those prior billings by reviewing the billing statements?

A. I did not.

Q. Why did you file a bankruptcy

proceeding against Iviewit.com, LLC?

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MR. PRUSASKI: Objection to form.

By MR. SELZ:

Q. Can you answer that question for me, sir.

A. Iviewit owed me a substantial amount of money.

Q. How much is a substantial amount of money?

A. Approximately \$300,000 plus or minus.

Q. And how did that \$300,000 accrue?

A. It was wages not paid.

Q. Okay. Wages not paid.

A. And termination.

Q. There was termination in what sense? Terminating your employment agreement early; is that what --

A. Yes. I had a three-year contract.

Q. Okay. Anything else?

A. That was it.

Q. Now, I just want to make sure it's clear from your earlier testimony, you indicated to me that you weren't challenged or you weren't instructed that the Proskauer Rose bills might be

exaggerated or overinflated until after you had agreed to make those payments; is that a correct statement?

A. I never said that I believed that they were exaggerated or overstated.

Q. No, I didn't say that you did. That other board members or board members advised you that they felt the bills were excessive; is that a correct statement?

A. But that is different from exaggerated or overstated.

Q. Okay. I will rephrase the question, then, sir.

There were boards members who advised you that they were concerned that the Proskauer Rose bills were excessive; is that correct?

A. Yes.

Q. Okay. And you made payments on the Proskauer Rose bill after you were advised by those board members that they felt they payments or the bills were excessive; is that also correct?

A. No.

Q. Okay. There were no payments made

after that date?

A. That's correct.

Q. And were you following the instructions of those board members in ceasing to make payments?

A. The board did not instruct me not pay my bills.

Q. Then why did you cease making the payments?

A. When there was no money.

Q. Was there anyone else other than the board members we've already discussed that expressed concern about Proskauer Rose's bills to you?

A. Well, I think that several people have commented on Proskauer Rose as a premium priced organization.

Q. That's not my question. My question was more specifically orientated, sir, towards anyone who expressed concerns about the amount of billing involved in Proskauer Rose's representation of Iviewit and if any other parties, other than who we've already discussed, have indicated to you that they had concerns or they were surprised or some way expressed any

opinion to you concerning the amount of Proskauer  
Rose's billing to Iviewit?

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A. Other than the board members?

Q. Other than the board members that  
we've already discussed.

A. Raymond Hersh has commented on the  
billing rates.

Q. Okay. Anyone else?

A. No.

Q. How about Mr. Rubenstein from  
Hollywood.com?

A. I never discussed those billing  
rates with him.

Q. Well, did he have any comment to you  
about it?

A. No.

Q. No, you never discussed anything  
with Proskauer Rose's bill with him?

A. No.

Q. You've repeatedly mentioned  
Mr. Bernstein, Simon Bernstein as being involved  
in a lot of these activities. Was he an active  
member of the company on a daily basis?

A. He maintained an office on the  
premises, which was paid for by Iviewit.

Q. Okay. But did he actively participate in the daily operations of the company?

A. Only to the extent of engaging in frequent discussions as to what the company was doing and where it stood.

Q. Was he part of the daily management team for the company?

A. I wouldn't say he was part of the daily management team, but I would say that I did consult with him, because of his availability, on a frequent basis, and we used him in meetings with outside clients or potential investors.

Q. Okay.

A. And I would take advantage of his availability to bounce ideas and thoughts on him and he would do the same with me.

Q. Okay. Are you aware of any agreement between Proskauer Rose and Iviewit concerning the fact that bills would be offset by royalties on any patent pool or royalties from any customers?

A. I am not aware of any discussions of that form of reimbursement.

Q. No one ever mentioned that to you?

A. No.

Q. Now, are you aware of any billings contained in the Proskauer Rose bill or any other billing statement for legal services in which Ken Rubenstein or Chris Wheeler are listed as providing services with regard to any of the patents or intellectual properties involved, other than trademark work?

A. No.

MR. SELZ: I think I'm almost done. Give me a couple of minutes, guys. I'll call you back in five. I'm just going to talk to Eliot, we got to finish up.

THE WITNESS: Okay.

MR. SELZ: Thanks.

(Whereupon, a break was taken from 4:59 to 5:21)

By MR. SELZ:

Q. Mr. Utley?

A. Yes.

Q. We were talking previously about, at one point in time, about Crossbow and an audit that was conducted, or that they were going to get conducted. Did that ever happen? Did Crossbow ever actually audit Iviewit's financial



books or records?

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A. There was an extensive discovery process, due diligence process that was associated with their initial investment and they reviewed all of our books. They reviewed all of our intellectual property. They, it was a, as far as I know, it was a complete review of Iviewit.

Q. Okay. And was that -- that was the only time they audited was in relation to the due diligence prior to the initial investment?

A. Yes.

Q. There were no other audits?

A. It was not an audit.

Q. Okay. There were no other reviews of the financial records of Iviewit by Crossbow, other than the initial one done as part of their due diligence; is that a correct statement of fact?

A. It is a correct statement, but let me temporize it a little bit in that, two points, first of all, of course, they had a member of their staff sitting on the board. Secondly, we did review the status of the company in some detail each time we approached them for an

expansion of their investment.

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Q. Okay. Did they ever express any concern about financial records not comporting with what had been represented to them or anything of that nature?

A. No.

Q. We had talked about, and I think you mentioned a company called Vulture Ventures at one point in time during your testimony?

A. Yes.

Q. What and who are Vulture Ventures?

A. It was a company or venture company that we were introduced to. I believe it was started by someone who had been involved in the original Lacomize(sic) start up and walked away with a bundle.

Q. Okay. Do you know who that particular person was?

A. No, I don't.

Q. And what happened with Vulture Ventures with regard to Iviewit; was there any involvement by that entity with Iviewit?

A. There were a couple of meetings.

Q. Do you recall who you met with from Vulture Ventures?

MR. SELZ: Objection, relevance to

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the previous question.

By MR. SELZ:

Q. Okay. Go ahead, I'm sorry.

A. I met with their staff members who were involved with technology reviews and reviewing potential investments.

Q. Do you recall any names?

A. No.

Q. Okay. What finally happened? Why did Crossbow's representative or directors leave that position; do you recall what the circumstances were surrounding that?

A. Well, it occurred just about the same time as I left the company, and I was told it was to avoid a conflict of interest.

Q. Were you told anything other than that?

A. No.

Q. Do you have any knowledge of any other reason other than that?

A. I don't.

Q. With regard to the billing by Proskauer Rose, we had talked about the fact that you had reviewed the billing sheet. Are you

aware of any retainer agreement or engagement agreement that was signed with Proskauer Rose prior to the one that is marked as Defendant's Exhibit No. 1 in this deposition?

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A. I'm not.

Q. Are you aware of the whereabouts of any of the billing predating your employment with Iviewit.com?

A. I'm not.

Q. Now, when you talked about the Iviewit inventions and the intellectual properties involved, did you ever research the prior art to try to determine whether or not these were truly unique and distinguishable inventions which were patentable?

MR. PRUSASKI: Objection, relevance.

THE WITNESS: We researched the patent office, issued patents and determined that there were no issued patents which appeared to lay over the claims of the provisional filings.  
By MR. SELZ:

Q. Okay. And so you -- what was the date of those inventions then?

A. I don't recall. They would precede the filing of the provisionals. The normal

process time for patent applications through the patent office varies between two and four years.

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Q. Okay. And that was obviously prior to your time at Iviewit?

A. Both before and after. I reviewed the prior art as reflected in patents issued.

Q. Okay. But with regard to these particular inventions at Iviewit, the provisional patents, was that prior to your time or was that after you had already started working with Iviewit?

A. I reviewed the prior art subsequent to my employment but I did review the provisionals prior to.

Q. Prior to your employment?

A. Yes.

Q. Now, we had spoken about Warner Brothers and Mr. Colter and his communications with you. Did you ever send any information to any Warner Brothers' employees regarding Iviewit's intellectual property or any of the products after your discussion with Mr. Colter wherein he requested you only communicate directly with him?

A. Only with him.

MR. PRUSASKI: Objection, relevance.

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By MR. SELZ:

Q. You only sent it to him; you never sent it to anyone else?

A. No.

Q. The work that was done by Proskauer Rose, who was that billed to, if you can recall?

A. Which work that was done by Proskauer Rose?

Q. The work that was done by Proskauer Rose, which companies was it billed to or which company was it billed to?

A. Well, if I go back and look at the exhibits, the exhibits indicate that the client's name was Iviewit.com, Inc.

Q. Okay. Is there any other entity that's named on any of those billing statements?

A. I did not see any other entity.

MR. PRUSASKI: Object -- hold on, Steve. Object to the form. You're talking about invoices that are attached Exhibit 1?

MR. SELZ: He used those, yeah, the witness used those to refresh his recollection I guess.

MR. PRUSASKI: Okay. As long as

we're talking about them because you said billing statements, which could be something totally different, I don't know.

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MR. SELZ: That's the attached exhibits to the Amended Complaint in this matter that we're referring to.

MR. PRUSASKI: Okay. Thanks.

By MR. SELZ:

Q. Now, you had referenced Mr. Dick doing some patent work for yourself; is that correct?

A. Yes.

Q. And was that any patents arising from your employment with Diamond Turf?

A. It was arising from the technology and engineering work that I did, yes.

Q. So the hydro-mechanical work that you had done at Diamond Turf?

A. Yes.

Q. And was there ever a dispute between yourself and the owner of Diamond Turf with regard to the patents involved for that hydro-mechanical work?

MR. PRUSASKI: Objection, relevance and to the form.

THE WITNESS: There was a

disagreement as to ownership of the intellectual  
property.

By MR. SELZ:

Q. There was a dispute?

A. Yes.

Q. Did you ever advise the owner of Diamond Turf that you were going to patent these intellectual properties under your own name?

A. I did.

Q. Did you do that prior to patenting those or after?

A. They were never, they were not patented.

Q. Okay. They were not patented. Was  
the application for patent made?

A. No.

Q. Since your employment with Iviewit.com or Iviewit, yeah, dotcom, LLC, what patents have you taken out in your name, sir?

A. I have not taken out any patents in  
my name, other than what has been appended to  
patents filed by Iviewit and assigned to Iviewit.

Q. Okay. So they're all patents held by Iviewit and you're named as a co-inventor; is

UTLEY SEARS  
UNDER OATH TO  
VIRGINIA BAR  
THAT HE DID FILE  
APPLICATION FOR  
PATENT IN A  
RESPONSE  
TENDERED FOR  
WILLIMA DICK

CLICK HERE TO  
SEE UTLEY  
PERJURED  
STATEMENT TO  
VIRGINIA BAR IN  
DEFENSE OF  
DICK,  
CONSTITUTING  
PERJURY

Utley states here that no patent application was made but in William Dick's sworn statement to the Virginia Bar he claims he filed the patent application. Utley perjury.

CLICK HERE TO SEE WILLIAM DICK CONTRADICTORY STATEMENT TO THE VIRGINIA BAR

Utley again commits perjury as evidence shows patents in Utley's name only and NOT assigned to Iviewit.

CLICK HERE TO PATENTS IN UTLEY'S NAME SOLELY OR SOULLESSLY



that what it is?

A. Yes.

Q. And Iviewit would be listed as a primary patent holder; is that how it would be?

A. They were assigned to Iviewit.

Q. They were assigned to Iviewit. Are you aware of any police report that was ever filed involving Mr. Mike Real and yourself?

MR. PRUSASKI: Objection, relevance.

By MR. SELZ:

Q. Go ahead and answer the question, if you can, sir.

A. There was a dispute over the nature of the equipment that I bought from Iviewit as --

Q. Well, that really wasn't my question. My question was are you aware of a police report? And it's really a yes or no type of answer.

MR. PRUSASKI: Objection, relevance.

THE WITNESS: I believe there was a report.

By MR. SELZ:

Q. Okay. Do you know who filed that report?

A. Iviewit filed that report as far as

PERJURY

I know.

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Q. And that report was filed with what police agency, if you know?

A. It was Boca Raton.

Q. And did you receive the notification from the Boca Raton Police Department as to the filing of that report?

A. I did.

Q. Were you interviewed with regard to that allegation in the police report?

A. I was.

Q. And what was the outcome of that situation?

A. We resolved the dispute by returning the equipment.

MR. SELZ: Okay. I have nothing further.

MR. PRUSASKI: I have a couple of redirect questions that I wrote down during Mr. Selz's cross, Mr. Utley, and that pertain to his cross examination.

EXAMINATION

By MR. PRUSASKI:

Q. Did Proskauer Rose do work for any Iviewit entities other than Iviewit, LLC?

A. Yes. Proskauer did work for all of the entities.

Q. Okay. Yesterday during Mr. Selz's cross examination, you indicated that there was an instance of a provisional patent filing being what you referred to as skimpy. Do you recall that?

A. Yes.

Q. Did Proskauer Rose perform that patent filing?

A. No.

Q. Was it another law firm?

A. It was.

Q. Was that issue resolved?

A. That was, it was resolved in the formal filing where the formal filing basically filled in the missing blanks, if you will, in the provisional.

Q. Did that provisional patent filing cause a prejudice to the Iviewit companies at all?

MR. SELZ: Objection, calls for a legal conclusion.

THE WITNESS: Yeah, I would be reluctant to try to take a position on that.

By MR. PRUSASKI:

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Q. All right, fair enough.

You indicated that prior to the beginning of your employment with Iviewit, Iviewit had already incurred what was estimated as just understand \$300,000 in fees; was that your testimony?

A. Yes.

Q. Now, the 300-and-some-odd-thousand-dollars that are alleged to be owing in the complaint, is that the same \$300,000 in fees that was accrued prior to your arrival?

A. I believe that that is what has accrued since my arrival.

Q. The amount alleged in the complaint?

A. Yes.

Q. There was some talk today during Mr. Selz's cross examination pertaining to the board's consent to certain accounts payable. What is your view, as the president, the former president and COO of the Iviewit companies, what is your view as to the role of the board of directors?

MR. SELZ: Objection, calls for a

legal conclusion on his part I believe.

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By MR. PRUSASKI:

Q. As the president and COO -- I'll ask the question again.

As the president and COO, what is your understanding as to the role of the board of directors with respect to the accounts payable?

A. The role of the board of directors is policy making, and the permanent organization is responsible for the day-to-day operations of the company. The role of the board is to protect the interest of the stock holders and set policy.

Q. There was some testimony pertaining to Donald Cain and Ken Anderson discussing the magnitude of Proskauer Rose's billings; do you recall that testimony?

A. Yes.

Q. At the time when Donald Cain and Ken Anderson were commenting about the Proskauer Rose bills, were Eliot and Si Bernstein still directing Proskauer to perform work?

A. It was primarily focused in the last couple of months of operation that I was involved with, and at that point in time, I believe there was only an insignificant amount of work being

performed.

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MR. SELZ: Can you please speak up.

I can't hear the questions or the answers.

THE WITNESS: I'm sorry.

MR. SELZ: Can you speak up a little bit.

THE WITNESS: Yes, I'll try to speak a little louder.

MR. SELZ: Thank you.

By MR. PRUSASKI:

Q. Did the board of directors delegate the authority to you to review and approve the accounts payables?

A. I believe that delegation to have been made by default.

Q. At any time did any board members opine that you should pay Proskauer's bills?

A. Yes.

Q. What board members were those?

A. Well, I received several phone calls from Eliot Bernstein to make payments to Proskauer because he wanted to get some work done with respect to the management of his own equity in Iviewit. He wanted to make some distribution.

Q. Would that be personal legal work?

A. Well, it would have been billed as part of Iviewit's bills, at least that's my understanding, but Eliot was very desirous of having this work done and was pressing on me to make payments in order to get that work done.

Q. Why did Iviewit need to make payments prior to Proskauer doing that work?

A. Because of the size of the receivable.

Q. Did some one at Proskauer inform you that it would not perform that work unless the receivable was paid down?

A. Yes.

Q. Generally what type of complaints did Donald Cain and Ken Anderson have pertaining to the Proskauer bills?

MR. SELZ: It's asked and answered already but --

MR. PRUSASKI: I didn't ask it.

MR. SELZ: No, but it's already answered. So go ahead, you can ask it anyway.

MR. PRUSASKI: Thank you.

MR. SELZ: I'm sorry. I'm getting kind of, a little tired over here.

MR. PRUSASKI: I'll ask the question

again because of --

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MR. SELZ: I'm sorry for the interruption, Chris.

By MR. PRUSASKI:

Q. Donald Cain and Ken Anderson, generally what type of comments did they have to make about Proskauer's bills?

A. It was comparative in the sense of what their experience had been with other companies for what appeared to them to be similar work.

Q. So they were stating opinion?

A. Yes.

Q. Did they ever sit down and go over each of the bills in detail?

A. No.

Q. Okay. So they had no factual basis on which to base their opinion, correct?

A. That is correct.

MR. SELZ: Object to the form of the question.

By MR. PRUSASKI:

Q. Did they have any factual basis upon which to base their opinion?

MR. SELZ: Objection, calls for



speculation.

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THE WITNESS: They had not reviewed and did not review in detail any of the billings received by Iviewit.

By MR. PRUSASKI:

Q. At any time during your employment with Iviewit, did Proskauer Rose's billing rates go up?

A. I'm not aware that they did.

Q. And the Bernstein's hired Proskauer Rose prior to your arrival?

A. Yes.

MR. PRUSASKI: I have no further questions. Thank you, sir. Mr. Selz?

MR. SELZ: I don't have anything on recross.

MR. PRUSASKI: Okay.

THE WITNESS: I'd just like to ask a question. I presume that the only tape recording of this examination was the one made by the court reporter?

MR. SELZ: That's correct from what I know. I mean, I don't have any tape recording device.

MR. BERNSTEIN: I do. I have a full

1 tape recording. I was not asked not to have a  
2 tape recording.

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3 MR. PRUSASKI: Well, you didn't ask  
4 my permission and you don't have it. And you're  
5 recording me across a telephone line, and I think  
6 that's a an illegal wire tape, sir. So you do  
7 not have anybody's permission to record this  
8 conversation.

9 MR. SELZ: So technically, Eliot,  
10 you don't have any right to do that. He's right  
11 about that.

12 MR. BERNSTEIN: Oh, that's okay if  
13 we can obtain such tapings from the court --

14 MR. SELZ: Exactly, from the court  
15 reporter. So what you need to do is you need to  
16 erase those tapes so that we don't have a  
17 problem.

18 MR. BERNSTEIN: Sure.

19 MR. PRUSASKI: All right, if nobody  
20 has any further questions, the deposition is  
21 adjourned. Thank you.

22 MR. SELZ: Thank you and thank you  
23 for your patience.

24 (Court reporter gets Mr. Selz's  
25 information.)

MR. PRUSASKI: I want to go back on

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the record for one second before we finish.

MR. SELZ: Sure.

MR. PRUSASKI: And say, I don't want anything that I said today to be deemed as a waiver of my right to complain that your client audiotaped this deposition without my permission. And I -- it's apparent he did it without your knowledge, Steve, and I'm sorry to have to put you in that position but I'm pretty upset hearing this at the end of the deposition that your client pretty cavalierly said, I have a full tape recording of this.

MR. SELZ: Well, I think that, you know, he understands now, obviously, that he didn't have permission. I think he misapprehended the fact that he was able to record it because the court reporter was doing so.

THE WITNESS: Well, but we discussed this very specifically at the beginning of the session.

MR. BERNSTEIN: (Inaudible) -- conversation -- (inaudible).

MR. SELZ: Let's make it clear on

the record that my client is going to -- if you want, Chris, would you rather have him send the copies to me and I can send them to you and you can destroy them; would you be more comfortable with that?

MR. PRUSASKI: I don't know what I want to do at this point, Steve, because personally I'm very upset right now and I don't even know what to do.

MR. SELZ: Okay, well --

MR. PRUSASKI: Because you and I had a conversation before the deposition started --

MR. SELZ: Right.

MR. PRUSASKI: -- were you asked permission to take a recording of the depo --

MR. SELZ: Right.

MR. PRUSASKI: -- and Mr. Utley and I both said no.

MR. SELZ: Right. And you and I were on the line but I don't think Mr. Bernstein was on the line at that point.

MR. BERNSTEIN: Nobody ever asked me those questions.

MR. SELZ: He wasn't on the line when we had that conversation, if you would

recall, but you know.

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MR. PRUSASKI: Well, you know, frankly, every time you pick up the phone, if you want to record a phone call, you have to get the permission of the people on the phone. It's not assumed if they don't say you have permission you can't record it; it's the other way around.

MR. SELZ: Well, I know that, look, and obviously you and I both know the law but that doesn't necessarily mean that everyone does.

MR. PRUSASKI: No.

MR. SELZ: So I'm going to make it clear that my client is going to comply with your request. And what I'm asking you is would you rather him send the tapes to me so that you could personally make sure that they're erased, or would you rather some other means be taking place to avoid a problem?

MR. PRUSASKI: I don't know. I guess you and I will discuss it later if this becomes an issue, but I don't know. Also, is Mr. Bernstein the new corporate rep of Iviewit?

MR. SELZ: I know he's attending this deposition for purposes of representing Iviewit. I don't know if he's going to be the

new corporate representative for all purposes.

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MR. PRUSASKI: Okay. Because I've told you several times we want to get the corporate representative's deposition.

MR. SELZ: I'm going to find out who we're going to supply you as the corporate rep with the most knowledge because obviously that's what you need.

MR. PRUSASKI: Right. But there's interrogatories from February on the record that say that Bill Kasser is the corporate representative and I think --

MR. SELZ: Mr. Bernstein was the one who answered the most recent set of interrogatories, obviously, because Mr. Kasser's no longer with the company.

MR. PRUSASKI: Okay. So Mr. Bernstein is the person with the most knowledge from the corporation?

MR. SELZ: At least with regard to that, those interrogatories that were provided, he was the person that was felt had the most knowledge to be able to answer them accurately.

MR. PRUSASKI: Okay. Is he going to present himself in Florida for the deposition

then?

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MR. SELZ: I don't know. We're going to find out. I'm going to have to find out who they're going to -- who the corporation is going to present as the corporate rep for the depo.

MR. PRUSASKI: Okay. Can we just agree to resolve that on Monday?

MR. SELZ: Monday, unfortunately, I'm going to be probably unavailable most of the day. Probably, we could probably hook up late in the afternoon.

MR. PRUSASKI: Sounds good. I work late everyday anyway. Okay. All right, gentlemen.

MR. SELZ: Thank you.

MR. PRUSASKI: Goodbye.

MR. SELZ: Goodbye.

(Whereupon, the deposition of BRIAN UTLEY, VOL. II, was concluded at 6:00 p.m.)

STATE OF MINNESOTA:

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CERTIFICATE

COUNTY OF DAKOTA :

BE IT KNOWN, that I, Traci R. Sandstrom,  
Court Reporter, Notary Public, took the foregoing  
deposition of BRIAN UTLEY, VOL. II;

That the said witness, before testifying,  
was by me duly sworn to testify the truth, the  
whole truth and nothing but the truth relative to  
said cause;

That the testimony of said witness was  
recorded in shorthand by me and was reduced to  
typewriting under my direction;

That the foregoing transcript is a true  
record of the testimony given by said witness;

That I am not related to any of the parties  
hereto, nor an employee of them, nor interested  
in the outcome of the action;

That the cost of the original has been  
charged to the party who noticed the deposition,  
and that all parties who ordered copies have been  
charged at the same rate for such copies;

WITNESS MY HAND AND SEAL this 6th day of  
September, 2002.

TRACI SANDSTROM, NOTARY PUBLIC



I, BRIAN UTLEY, do hereby certify that I have read the forgoing transcript and found the same to be true and correct except as follows, (noting the page and line number of the change or addition as desired and the reason why):

Page	Line	Correction
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BRIAN UTLEY

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IN THE CIRCUIT COURT OF THE  
15TH JUDICIAL CIRCUIT, IN AND  
FOR PALM BEACH COUNTY, FLORIDA

PROSKAUER ROSE LLP, a New  
York limited liability partnership,

Plaintiff,

vs.

No. CA 01-04671 AB

IVIEWIT.COM, INC., a Delaware corporation,  
IVIEWIT HOLDINGS, INC., a Delaware corporation,  
and IVEWIT TECHNOLOGIES, INC., a Delaware  
corporation,

Defendants.

---

Boca Raton, Florida  
September 11, 2002  
11:00 o'clock a.m.

DEPOSITION  
OF  
GERALD LEWIN

---

**Certified Copy**

1 APPEARANCES:

2 PROSKAUER ROSE  
by: CHRISTOPHER W. PRUSASKI, ESQ.  
3 Appearing on behalf of the Plaintiff.

4  
5 SELZ & MUVDI SELZ, P.A.  
by: STEVEN M. SELZ, ESQ.  
6 Appearing by telephone on behalf of the Defendants.

7  
8                   - - - - -  
9                   Deposition of GERALD LEWIN, a witness of  
10 lawful age, taken by the Plaintiff, for purposes of  
11 discovery and for use as evidence in the  
12 above-entitled cause, pursuant to notice heretofore  
13 filed, before TAMARA EMERICK-MASCI, Registered  
14 Professional Reporter and Notary Public, in and for  
15 the State of Florida at Large, at 2255 Glades Road,  
Boca Raton, Florida.

16                   - - -

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## I N D E X

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3 WITNESS:

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5 RC

6 GERALD LEWIN

7  
8 BY MR. PRUSASKI

9 BY MR. SELZ

D C RD

4 58

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## E X H I B I T S

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11  
12 PLAINTIFF'S

PAGE

13 1

43

14 2

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1 Thereupon:

2 GERALD LEWIN

3 a witness, being first duly sworn in the  
4 above-entitled cause, testified under oath as  
5 follows:

6 DIRECT EXAMINATION

7 Q. (By Mr. Prusaski) Sir, could you state  
8 your name for the record, please?

9 A. Gerald R. Lewin - L-e-w-i-n.

10 Q. Mr. Lewin, my name is Chris Prusaski.  
11 You're here being deposed in the case of Proskauer  
12 Rose versus IVIEWIT.COM, et al. It's a lawsuit  
13 that's pending in Circuit Court in Palm Beach County  
14 over the payment of attorney's fees.

15 I'll ask you if you've ever had your  
16 deposition taken before?

17 A. I've had. Not relating to this case, but  
18 I've had my deposition taken before.

19 Q. The only reason I ask that is just to  
20 make sure you know what the ground rules for a  
21 deposition are. I think you're familiar with those.

22 Everything we say in this room gets taken  
23 down by the reporter. You can't nod your head  
24 because the reporter can't take that down accurately.  
25 So you have to answer in the affirmative or negative

1 if it's a yes or no.

2 If I ask you a question you don't  
3 understand, please just simply ask me to repeat it or  
4 reword it and I will.

5 A. Okay.

6 Q. If you answer a question, it's assumed  
7 that you understood - understood the question.

8 A. Okay.

9 Q. If you need a break or anything, please  
10 ask me.

11 A. Okay.

12 MR. PRUSASKI: Go off the record for a  
13 second. Steve, hold on. We lost him.

14 (Discussion held off the record.)

15 MR. PRUSASKI: Go back on the record. We  
16 lost Mr. Selz from the call.

17 Is Mr. Bernstein on the phone?

18 MR. SELZ: No, he isn't.

19 MR. PRUSASKI: Okay.

20 Q. (By Mr. Prusaski) Mr. Lewin, what is  
21 your address?

22 A. 7050 Ayrshire Lane - A-y-r-s-h-i-r-e.

23 Q. Boca?

24 A. Yes. 33496.

25 Q. What's your occupation, sir?

- 1 A. I'm a CPA.
- 2 Q. How long have you been doing that?
- 3 A. Thirty-one years.
- 4 Q. Do you have your own business?
- 5 A. I am a principal in a CPA firm.
- 6 Q. What's the name of that company?
- 7 A. Goldstein, Lewin and Company.
- 8 Q. Other than CPA, do you hold any other  
9 professional licenses?
- 10 A. No.
- 11 Q. Did you do anything to prepare for this  
12 deposition today other than receive my subpoena?
- 13 A. No.
- 14 Q. The reason we asked you to come in for  
15 your deposition today is because it's our  
16 understanding that you were on the board of directors  
17 for the Iviewit companies; is that correct?
- 18 A. That's correct.
- 19 Q. Now, for the purposes of this deposition,  
20 when I use the term -- I know that there were  
21 numerous Iviewit companies. So when I use the term  
22 Iviewit, I'm referring collectively to all of them.  
23 And if I want to specify a particular corporation,  
24 like Iviewit.com, Inc., I'll say that.
- 25 A. Okay.

1 Q. Do you understand that?

2 A. Yes.

3 Q. When did you first become involved with  
4 the Iviewit companies?

5 A. I'll give an approximate date. I would  
6 say about four years ago. Could be a little longer.  
7 I'm not -- You know, I'm not certain. Could be five  
8 years. Somewhere around four, five years ago.

9 Q. Do you recall the year being 1998?

10 A. That would make it four years ago. That  
11 sounds right.

12 Q. Could you describe the circumstances and  
13 how you got involved with the Iviewit companies?

14 A. Yes. I knew Sy Bernstein who was a  
15 neighbor of mine. Sy approached me and he said his  
16 son has developed some process for the Internet that  
17 could possibly be patented. And he asked me whether  
18 I could help them - introduce him to some - to  
19 attorneys and could possibly get involved myself from  
20 an accounting and a business point of view.

21 Q. Is Mr. Bernstein still a neighbor of  
22 yours?

23 A. Yes, he is.

24 Q. Are you social friends with him?

25 A. Yes. Not on a regular basis, but we are

1 friendly when we see each other. And we have a good  
2 relationship.

3 Q. Did you introduce Mr. Bernstein to  
4 Proskauer Rose?

5 A. Yes, I did.

6 Q. And what is your history with Proskauer  
7 Rose?

8 A. I've known Al Gortz, who is one of the  
9 partners at Proskauer Rose, for probably 21 years.  
10 And I've had business relationship and also a  
11 friendly relationship, both, business and friendly.  
12 So it's personal and business relationship.

13 Q. At the time when you became involved with  
14 Iviewit, were you a board member?

15 A. No.

16 Q. What was your role?

17 A. I would say more of a consultant and -- I  
18 would say accounting - accountant and consultant.

19 Q. Did you -- Did your firm do the  
20 accounting work for Iviewit initially?

21 A. We did some accounting work.

22 Q. What was your role with the company when  
23 Proskauer was hired to represent Iviewit?

24 A. I was not a board member yet. I was the  
25 same, consultant.

1 Q. Did you become a board member sometime  
2 thereafter?.

3 A. Yes:

4 Q. Okay. Do you remember when that was?

5 A. No.

6 Q. Do you remember what year it was?

7 A. No.

8 Q. Who asked you to be a board member?

9 A. Sy Bernstein and Eliot Bernstein.

10 Q. Do you recall who the other board members  
11 were?

12 A. It was Brian Utley, once he got involved  
13 with the company; Sy Bernstein; obviously, Eliot  
14 Bernstein. And I don't remember the individual's  
15 name from Crossbow. There was somebody from Crossbow  
16 representing Crossbow, who became a board member. I  
17 don't recall who -- You know, I don't recall exactly  
18 who the other board members were at this time.

19 Q. Who was the president of the Iviewit  
20 companies?

21 A. To my knowledge, I think it was Eliot  
22 Bernstein.

23 Q. Is the president?

24 A. I think so.

25 Q. If I told you Brian Utley was, would you

1 change your answer?

2 A. Brian Utley became the president once he  
3 was engaged.

4 Q. Okay.

5 A. Originally, it was Eliot.

6 Q. What was Proskauer hired to do?

7 MR. SELZ: Objection. Form of the  
8 question.

9 MR. PRUSASKI: I'll - I'll reask it.

10 Q. (By Mr. Prusaski) What was Iviewit's  
11 intent in hiring Proskauer?

12 A. Prepare the legal work and introduce them  
13 to possible investors and perhaps clients of theirs  
14 who could use the technology that Eliot developed  
15 that Iviewit owned at that time.

Wheeler in deposition states Lewin intro'd him to set up corporations which is false

16 Q. Do you remember the attorneys from  
17 Proskauer who did work for Iviewit?

18 A. Yes. It was Chris Wheeler was the head.  
19 And I'm trying to remember. There was a --

20 Q. Does Rocky Thompson sound familiar?

21 A. Rocky Thompson. That's the one. Yes,  
22 those were the two.

23 Q. Do you know if any other law firms were  
24 used by Iviewit besides Proskauer Rose?

25 A. Yes, there was a law firm used in New.



Lewin confuses the attorneys grossly here and the reason is they are trying to hide Proskauer attorneys doing patent work or else major conflicts arise. Yet Rubenstein and Joao were represented at first as Proskauer attorneys and this is why Proskauer was hired. After we found that this was false Rubenstein did join Proskauer.

1 York to - I think to patent all of the technology  
2 that Eliot supposedly developed:

Incorrect - Foley & Lardner is in Wisconsin. He refers to Ray Joao & Meltzer Lippe Goldstein & Schlissel who worked for Kenneth Rubenstein of PR to file patents. Joao was misrepresented, along with Rubenstein by Wheeler as Proskauer attorneys, yet they were both at Meltzer at the time.

3 Q. Was that Foley & Lardner?

4 A. Yes.

5 Q. Did Proskauer do patent work for Iviewit?

6 A. I'm trying to remember. They did consult  
7 an attorney in New York, one of Proskauer's attorneys  
8 in New York. I don't recall his name. And I do have  
9 to tell you I'm not very good with names.

He is referring to Kenneth Rubenstein and this contradicts Wheeler & Rubenstein testimony that they did no patent work at all.

10 Q. Okay.

11 A. Okay.

12 Q. That's fine. And I appreciate your  
13 honesty. We don't want you to guess.

14 A. No.

15 Q. If you don't remember, simply say you  
16 don't remember.

Correct almost. Rubenstein was Advisor to Board and was overseer to patents and was consulted and consulted for investors. Major role.

17 A. No, that is not my strength.

18 There was an attorney in New York who -  
19 who was consulted. I don't recall him doing any  
20 actual work on the patent, but I know he was  
21 consulted about the patents.

22 Q. Is he the one who referred Foley &  
23 Lardner?

Rubenstein referred Raymond Joao not Foley & Lardner, Lewin knows this. He was a Board member and the accountant who paid them.

24 A. I think so, yes.

25 Q. When did you stop becoming a board member

1 for the Iviewit companies?

2 A. I resigned I think approximately a year  
3 ago. Could be a little longer. I'm not sure.

4 Q. Would you explain the circumstances  
5 behind your resignation?

6 A. The company was running out of funds and  
7 - and at that point it wasn't certain whether the  
8 patents were going to be approved. And therefore --  
9 And Eliot moved to California. And I felt at that  
10 point I really could, you know, could not contribute  
11 anything further, so I resigned.

12 Q. Do you remember what month and year that  
13 was?

14 A. No.

15 Q. Was it in 2001?

16 A. I think so.

17 Q. Was it before or after Brian Utley and  
18 Ray Hersh left the company?

19 A. I think it was right around the same  
20 time. Could have been a little before or a little  
21 bit after. I'm not sure. But it was around - around  
22 the same time.

23 Q. Did Brian Utley and Ray Hersh leaving the  
24 companies have anything to do with your decision to  
25 leave?

1 A. No.

2 Q. Were you aware of the fact that Proskauer  
3 Rose filed a lawsuit against the Iviewit companies in  
4 May of 2001?

5 A. Yes, I was.

6 Q. Do you recall how you heard about that?

7 A. Not really. I recall it -- By talking to  
8 somebody. Either it could have been - could have  
9 been Eliot or could have been Sy, it could have been  
10 Al. It wasn't a big discussion. It was just somehow  
11 I remember hearing that there was a lawsuit filed  
12 against Iviewit.

13 Q. Did you know it was for unpaid attorney's  
14 fees?

15 A. I - I think so.

16 Q. Did it surprise you?

17 A. No.

18 MR. SELZ: Object to the form of the  
19 question.

20 Q. (By Mr. Prusaski) Do you have any idea  
21 why Proskauer's attorney's fees haven't been paid by  
22 Iviewit?

23 A. From what I understand, there is a lack  
24 of funds. There's no funds available.

25 Q. What do you base that understanding on?

1 A. The fact that I'm told that there is no  
2 funds available to pay any bills.

3 Q. Who told you that?

4 A. Who told me that? I can't say anybody.  
5 You know - you know, it was just general discussions  
6 that were going on on the availability of funds in  
7 the company. Could have been with Brian. Could have  
8 been with Sy or Eliot. It was just general  
9 discussions and my knowledge that there was no funds  
10 available.

11 Q. Were these discussions to which you were  
12 privy as a board member?

13 A. I think it could have been after. It  
14 could have been after. It could have been before,  
15 but I was aware that the company just was running out  
16 of money.

17 Q. ~~Other than the fact that you say the~~  
18 ~~company ran out of money, is there any other reason~~  
19 ~~that you know of why Proskauer's bills weren't paid~~  
20 ~~by Iviewit?~~

21 A. No.

22 Q. Did you ever hear anyone from the company  
23 at any time object or state that Proskauer did work  
24 that it wasn't authorized to do for Iviewit?

25 MR. SELZ: Objection to form.

1 Q. (By Mr. Prusaski) You can answer.

2 A. No.

3 Q. Are you aware of or did you ever hear  
4 anyone in the company state that Proskauer did work  
5 improperly for Iviewit?

6 A. No. Let's put it that way. ~~Not to my~~  
7 recollection.

8 Q. Are you aware or did you ever hear anyone  
9 from the company state that Proskauer did work that  
10 the Iviewit companies didn't ask them to do?

11 A. No.

12 Q. Were you present at all the board  
13 meetings while you were a board member?

14 A. No.

15 Q. How often did you attend board meetings?

16 A. I would say I attended them regularly. I  
17 can't say I attended them all. I would say I  
18 attended a majority of them. At the end, there were  
19 board meetings via telephone. And I skipped a lot of  
20 those meetings.

21 Q. Was Chris Wheeler typically present at  
22 those meetings?

23 A. Yes.

24 Q. Do you recall any complaints about  
25 Proskauer's bills being discussed at board meetings

1 at which you were present?

2 A. You know, comments were made. They  
3 weren't -- You know, I don't know if you want to  
4 characterize them as complaints, but, you know,  
5 comments were made like the fees were -- You know,  
6 there's always comments made regarding attorney's  
7 fees. Not in a serious manner. I don't - I don't  
8 recall any fees being referred to in a serious  
9 manner.

10 Q. People just historically complain about  
11 attorney's bills?

12 A. It was like funny remarks, you know, like  
13 you could have been a few minutes late, it would have  
14 cost us a little less, you know, remarks like that  
15 generally. But not serious remarks and discussions  
16 that I recall.

17 Q. Do you recall ever having discussions or  
18 hearing discussions among principals of Iviewit that  
19 they weren't happy with Proskauer's services?

20 A. The only discussions related was -- Was  
21 it Ken Attelman, the one that -- Who was --

22 Q. I can't - I can't answer that.

23 A. You can't answer. There was an attorney  
24 in New York that was supposed to oversee the - or  
25 involved somehow with the patent. And the

1 discussions were related to was he doing a good  
2 enough job overseeing Foley's firm, you know,  
3 handling the patent or he supposed --

4 Q. Is this Ken Rubenstein?

5 A. Ken Rubenstein. That's the guy, yes.  
6 There were discussions related to Ken Rubenstein and  
7 the patents. That was it.

8 Q. Who had those discussions? Who were the  
9 people involved?

10 A. Sy and Eliot generally.

11 Q. Was Ken Rubenstein supposed to oversee  
12 Foley & Lardner?

13 A. I don't know.

14 Q. Or was Foley & Lardner doing the patent  
15 work?

Incorrect - At this time, Foley & Lardner was not in the picture he refers to Raymond Joao of Meltzer Lippe

16 A. Foley & Lardner was doing the patent  
17 work, but I think because they were referred by Ken  
18 Rubenstein, you know, generally that's what happens,  
19 when you refer somebody, you sort of take on an  
20 obligation, if these people fail you, then you look  
21 to the person who referred them.

22 And I think that's basically -- At the  
23 end when they were not happy with the results of the  
24 patent, I think they started questioning whether Ken  
25 Rubenstein should have maybe done the work himself,

1 not referred them.

2 To my recollection, he was not engaged to  
3 oversee them, to my recollection, but there were  
4 comments made that he referred them and there was a  
5 certain unhappiness.

This is entirely wrong and misleading. Lewin, who worked on all business plans himself knows that Rubenstein was listed as PATENT COUNSEL for Ivewit and as an Advisory Board member.

6 Q. Who wasn't happy?

7 A. Sy and -- I think mainly Eliot. I think  
8 it was mainly Eliot.

9 Q. Why wasn't Eliot happy with the Foley &  
10 Lardner work?

11 MR. SELZ: Objection. Calls for  
12 speculation.

13 A. I think --

14 Q. Well, were you -- were you present when  
15 Eliot was complaining about the patents?

16 A. Eliot was complaining about everybody.

17 Q. What specifically was he saying?

18 A. ~~Well, at one time, Eliot was saying~~  
19 ~~that...that somebody there might have been trying to~~  
20 ~~steal his patents and wasn't filing them properly.~~  
21 ~~Just general complaining.~~

22 Q. Is Eliot a complainer?

Patent theft is just general complaining especially when it could constitute fraud.

23 MR. SELZ: Objection to the form of the  
24 question.

25 Q. (By Mr. Prusaski) You can answer. You

Lewin above is stating that as a Board member he heard that patents might have been filed wrong and perhaps stolen. He is correct, this was brought to his attention because investors were concerned that not proper assignments and inventors had been listed and that their investments might be not fully backed by the whole patents. Investors were worried this could constitute fraud and this is what is currently being investigated by the United States Patent & trademark Office. The question for Lewin is what did you do when you found out to protect the shareholders and investors? How did you handle your fiduciary responsibilities once you became aware. Did you audit the patent portfolio or what????



1 said -- Well, you said generally --

2 A. Eliot felt that nobody did a - did a good  
3 job, but I'm -- You know, Eliot just felt that nobody  
4 was doing a good enough job.

Lewin had full knowledge of the technologies, he was present at all technology disclosures, designed business plans and introduced investors.

5 Q. Did you agree with him?

6 A. I did not have enough knowledge, inside  
7 knowledge of the patents and the technology to either  
8 agree or disagree with him.

9 And you know, his complaining, I can't  
10 even say whether it was rightfully complaining or  
11 wrongfully. I can't say that either because I didn't  
12 have enough knowledge to really listen to him and  
13 agree or disagree with him.

This seems to be an excuse for blowing off looking into allegations of patent theft, improper assignments and fraud upon the investors.

14 Q. Did Eliot Bernstein complain about  
15 Proskauer's bills?

16 A. Comments were made between Eliot and Sy,  
17 you know, as normal comments, as I hear every one of  
18 my clients make, complaining about attorney's fees.

19 Q. ~~But you were never personally aware of~~  
20 ~~any bona-fide problems with Proskauer's bills?~~

21 A. No.

22 Q. At the time Eliot and Sy were complaining  
23 about the bills, were they still directing Proskauer  
24 to perform work for the Iviewit companies?

25 A. Yes.

1 Q. Would you characterize their complaining  
2 as being that they were unhappy with Proskauer?

3 A. No. No. There was just basically the  
4 normal, you know, general statements, such as I can't  
5 believe how much attorneys - attorneys charge us and  
6 things like that.

A minute ago he stated that Si & Eliot were unhappy with the results of the patents that Rubenstein oversaw and that they may have been improper but that does not count for unhappy with the work??

7 Q. Did they -- You introduced Proskauer to  
8 Iviewit, correct?

9 A. Yes.

10 Q. Did the Bernsteins know going in how much  
11 Proskauer's per hour charges were?

12 A. Yes. And as a matter of fact, before I  
13 introduced them, they asked me to introduce a really  
14 quality firm. And I told them upfront, I said, if  
15 you want to deal with a really quality firm, you will  
16 have first rate attorneys and you will pay the fees  
17 accordingly. I said, if you want to go to a smaller  
18 firm, I can introduce you to some other attorneys and  
19 their fees will be less.

20 But they said, no, we insist on somebody  
21 that has a national name and who are willing -- You  
22 know, we're willing to bear the fees that this will  
23 carry. So there was a discussion about it upfront.

24 Q. They wanted Proskauer?

25 A. They want -- Absolutely.

1 Q. And they knew going in how much our fees  
2 were?

3 A. They knew the fees and they -- There was  
4 a discussion. They said, we know we're going to pay  
5 a lot of fees. We know that the hourly rate is going  
6 to be higher than - than we can get at a smaller  
7 local firm, but this is exactly what we want.

8 Q. Did you direct Proskauer to do any work  
9 for Iviewit?

10 A. I don't think so. Not that - not that I  
11 can recall.

12 Q. Who from Iviewit for the most part  
13 directed Proskauer to perform work for the companies?

14 A. I think it was Sy and Eliot to start  
15 with. And then when Brian Utley got involved,  
16 obviously he was the president, so he was dealing  
17 with them on a regular basis. But I think it was Sy  
18 and Eliot who were the - the ones that were directing  
19 the law firm mostly.

20 Q. As a director -- Have you been a director  
21 of a corporation before?

22 A. Yes.

23 Q. How many times?

24 A. Three times.

25 Q. Over the course of how many years have

1 you been a director in companies?

2 A. Ask that question again more  
3 specifically.

4 Q. How many years of experience do you have  
5 being a director of companies?

6 A. Altogether? Well, are you counting  
7 Goldstein Lewin and Company also?

8 Q. Are you a director of that company?

9 A. Yes.

10 Q. Do you have regular directors' meetings?

11 A. Yes.

12 Q. Then sure.

13 A. Okay. So you want me to add up all the  
14 years?

15 Q. Yeah, because I'm going to ask you  
16 questions pertaining to what you knew as a director  
17 of Iviewit and I want to establish that you have  
18 experience as a company director.

19 A. Okay.

20 Q. That's where I'm coming from.

21 A. Okay. Now, Goldstein, Lewin is a little  
22 different because it's a closely-held company. It  
23 does have seven partners, but it's still a closely-  
24 held company. If you count that, I have 20 years'  
25 experience with that company. If you add the other

1 companies, I have about 15 years of experience.

2 Q. As an accountant, are you familiar with  
3 Florida corporate statutes?

4 A. Familiar with them as far as?

5 Q. Have you read them?

6 A. No.

7 Q. Do you know what the corporations law in  
8 Florida is?

9 A. I know the general. I do not know the  
10 specifics.

11 Q. Do you know what Florida requires you as  
12 a director of a company to do?

13 A. Paraphrase it. I'm not certain I  
14 understand your question. To do as far as what is  
15 concerned?

16 Q. What your role is as a director of a  
17 company.

18 A. I would say I have a general knowledge of  
19 it.

20 Q. Okay. What is your understanding as a  
21 director of Iviewit as to Brian Utley's role in the  
22 company?

23 A. Brian Utley was basically in charge of -  
24 was supposed to be in charge of operations. Got  
25 involved in the technology, helping to develop the

1 companies, I have about 15 years of experience.

2 Q. As an accountant, are you familiar with  
3 Florida corporate statutes?

4 A. Familiar with them as far as?

5 Q. Have you read them?

6 A. No.

7 Q. Do you know what the corporations law in  
8 Florida is?

9 A. I know the general. I do not know the  
10 specifics.

11 Q. Do you know what Florida requires you as  
12 a director of a company to do?

13 A. Paraphrase it. I'm not certain I  
14 understand your question. To do as far as what is  
15 concerned?

16 Q. What your role is as a director of a  
17 company.

18 A. I would say I have a general knowledge of  
19 it.

20 Q. Okay. What is your understanding as a  
21 director of Iviewit as to Brian Utley's role in the  
22 company?

23 A. Brian Utley was basically in charge of -  
24 was supposed to be in charge of operations. Got  
25 involved in the technology, helping to develop the

1 technology, was involved in the patent issues, dealt  
2 with investors and also dealt with potential  
3 customers.

4 Q. What was his role with respect to  
5 accounts payable?

6 Let me ask you another way. If one of  
7 Proskauer's bills came into Iviewit, what was Brian's  
8 role with respect to paying that bill?

9 A. I would say he probably generally did not  
10 have the final say.

11 Q. Who did?

12 A. Eliot -- Probably Eliot and maybe in  
13 addition to Sy. You know, there were different  
14 periods of time where, you know, when - when --

15 I know Proskauer did get some payments.  
16 So what would happen, there was a time where there  
17 was a lot of money available because Crosbo would put  
18 in the funds. And then, probably Brian was able to  
19 make payments. But when money got tight, I would say  
20 Eliot and Sy would then - and including Brian, would  
21 all sit down and figure out who should get paid, how  
22 and when. So --

Lewin was also making these decisions as the accountant and  
as a Board member.

23 Q. Were there times that Proskauer wasn't  
24 among those entities that were paid?

25 A. Probably.

1 Q. Was it because of lack of funds?

2 A. I would say in my opinion it was because  
3 of lack of funds, yes.

4 Q. Are you aware of any instances where  
5 Eliot or Sy told Brian not to pay Proskauer because  
6 he had a actual problem with the bills?

Best deposition Freudian slip!!!

7 A. You know, I'm trying to recall events of  
8 my memory that I'm trying to erase. You know, it's  
9 hard sometimes to distinguish general complaining  
10 from specific - from specific telling somebody not to  
11 pay.

12 Was I ever present when they told him  
13 don't pay this bill? I don't recall. Was there  
14 general complaining? Yes. As I stated before, there  
15 was always general complaining. And that wasn't  
16 just -- You know, it was about everybody's bills.

17 Q. By the Bernsteins?

18 A. Yes. Yes. Not - not by - not by Brian.

19 Q. Do you know if Brian reviewed Proskauer's  
20 bills?

21 A. I think he did, yes.

22 Q. Did you ever review them?

23 A. No. Not that I recall. Let's put it

24 that way.

It sounds like he was aware of complaints with the work and the bill of his referral Proskauer and again he did nothing. Earlier he stated you are responsible for your referrals.

25 Q. What was Ray Hersh's role in the company?



1           A.       Ray Hersh was originally hired sort of a  
2 CFO, but as things developed, I think he became more  
3 of a consultant from the financial side. He wasn't  
4 -serving exactly as CFO. And then he really became --  
5 I would say -- It was - it was difficult to describe  
6 his role. He did a little bit of everything.  
7 Basically helping out Brian from - from the financial  
8 side.

9           Q.       Do you know if Iviewit ever entered into  
10 a payment arrangement with Proskauer?

11          A.       I'm aware they did enter into payment  
12 arrangements.

13          Q.       Do you recall why?

14          A.       Yeah, there was no money available.

15          Q.       There was no money available?

16          A.       That's - that's what my recollection is.  
17 They were trying to, you know, to delegate the money.  
18 Even when there was money available, they would try  
19 to save it for future - for future expenses. So if  
20 they had three, four hundred thousand dollars, they  
21 knew they would need it for the next four or five  
22 months; and therefore, to try to conserve cash, so  
23 the discussion was, can we just pay a certain amount  
24 to everybody to keep them going and to continue  
25 services?

1 Q. Did there come a time when Proskauer  
2 stopped providing legal services to the Iviewit  
3 compan

Levin is aware Proskauer sued Iviewit but not aware they stopped services. He was on the Board when they stopped services and sued us when asked about improper loan transactions they had done.

4 A. I do not recall. I don't think so.  
5 Not - not that I'm aware of. Let's put it that way.  
6 Maybe there was, but --

7 Q. Do you know if the Bernsteins fired  
8 Proskauer or did Proskauer stop representing Iviewit?

9 A. I'm not aware of either one of them.

10 Q. What is Iviewit.com, Inc.?

11 A. If you want -- It's one of the  
12 corporations. If you ask me, do I recall all the  
13 structures of all the companies right now, I do not.

14 Q. Okay. Do you know who set Iviewit --  
15 Strike that.

16 Do you know how Iviewit.com, Inc. was  
17 incorporated?

18 A. What do you mean how?

19 Q. Did Proskauer Rose incorporate that  
20 company?

21 A. I think so. I think so. I think so.

22 Q. Do you know if Proskauer Rose did work  
23 for Iviewit.com, Inc.?

24 A. Yes.

25 Q. Did Proskauer Rose do work for Iviewit

1 Holdings, Inc.?

2 A. Yes.

3 Q. Did they incorporate that company?

4 A. I think so.

5 Q. Same question for Iviewit Technologies,  
6 Inc.

7 A. Yes.

8 Q. And Proskauer did work for that company  
9 and incorporated it?

10 A. As far as I'm aware, yes.

11 Q. What was Iviewit, LLC?

12 A. It was just a different structure, you  
13 know. At that time, we were trying to figure out  
14 what - what structure to form, you know, to best  
15 serve the stockholders and share - and the owners. So  
16 we kept jumping around sort of.

17 You know, first we thought we should do  
18 an LLC so we could pass on the losses to the  
19 shareholders. Then we decided to do a C corp.  
20 Because we were getting outside investors that  
21 couldn't be members of an LLC.

This is all incorrect  
information.

22 So it was basically structure of entities  
23 that was being jumped around.

24 Q. And these decisions on restructuring were  
25 made by the Bernsteins?

1 A. With advice from myself and advice from  
2 attorneys from Proskauer Rose.

3 Q. Proskauer ultimately did perform the  
4 structuring work?

5 A. Yes, yes.

6 Q. At the board's request?

7 A. Yes.

8 Q. Do you have any current affiliation with  
9 the Iviewit entities?

NOT TRUE - HE AND HIS FAMILY HAVE 5% FOUNDERS SHARES  
IN THE COMPANIES

10 A. No, I do not.

11 Q. Do you have anything to do with the  
12 bankruptcy of Iviewit.com, LLC?

13 A. I do not.

14 Q. The three corporations I mentioned  
15 Iviewit.com, Inc., Iviewit Holdings, Inc. and Iviewit  
16 Technologies, Inc., were you a member of the board of  
17 directors for those entities?

18 A. I -- I'm not sure which one now. There  
19 were so many companies at that time floating around.  
20 I'm not sure anymore which one I was a member of.

21 Q. Well, was there a clear distinction  
22 between the companies?

There were major distinctions between the companies to protect the patents  
and clearly separate the operating companies from the patent companies.

23 A. No, no. They were just set up generally  
24 to, you know, hold the patent or bring in, or give a  
25 percentage of the - of the company to entities that

1 couldn't be part of the LLC, such as I think  
2 Proskauer Rose got a small percentage of the  
3 companies. And the only way they could come in was  
4 through a C corp. And then - and then there was  
5 another law firm in New York that was --

6 So it was all structured, but as far as  
7 I'm concerned, they were all basically one entity.

8 Q. ~~Why did Proskauer Rose get a percentage~~  
9 ~~of the companies?~~

10 A. Because Eliot -- That was Elliot's way of  
11 incentivizing the people he dealt with to pay more  
12 attention to the - to the - to his company and to  
13 possibly introduce him to sources of funding and to,  
14 you know, to generate - to introduce him to some  
15 businesses that could use his product. That was  
16 Elliot's way of incentivizing people.

17 Q. So it was a gift?

18 A. It was a gift, yes. He felt that he  
19 would -- He felt that there would be extra attention  
20 paid to his business.

21 Q. Did Proskauer solicit that gift from  
22 Eliot?

23 A. No.

24 Q. And it wasn't -- I just want to make  
25 clear. It wasn't given in consideration for a legal

1 bill?

2 A. No.

3 Q. Did you at any time ever find Proskauer's  
4 bills to be excessive?

5 A. I can't comment on that.

6 Q. Why?

This is wholly untrue. He reviewed their bills and his daughter reviewed them while working with Iviewit and while working for Goldstein Lewin.

7 A. Because I don't know. I haven't reviewed  
8 them. I can't really tell you whether they're  
9 excessive or not. I never really -- I don't recall  
10 reviewing any of them, so I can't say whether they  
11 were excessive or not. You know, if I reviewed the  
12 bills and I knew what the work was done exactly bill  
13 by bill, I could tell you. But it would only be an  
14 opinion also.

15 Q. Did you ever talk to Brian Utley about  
16 Proskauer's bills?

17 A. Yes.

18 Q. What did you talk about?

19 A. Well, sometimes Chris would call me up  
20 and say, Jerry, you know we need to get paid, you  
21 know, because we were so much behind.

22 Q. Chris Wheeler?

23 A. Yes. And we are - we are behind. Could  
24 you please talk to somebody so we can get paid?

25 I would sit down and I'd talk to Brian.

1 And Brian would say, look, this is our cash flow. We  
2 can only pay him so much or we can't pay him. I'll  
3 talk to Sy about it. We'll see how much we can pay  
4 him and see if we can come to an understanding to pay  
5 part of their bill. That's how it was discussed in  
6 that manner.

7 Q. Have you ever seen any documents --  
8 Strike that.

9 Let me - let me go back to something you  
10 just said. Did you ever hear Brian Utley complain  
11 about Proskauer's bills?

12 A. Not Brian Utley.

13 Q. Who? You qualified your answer.

14 A. No, Brian Utley did not complain, no.

15 Q. What about Ray Hersh?

16 A. You know, I don't recall Ray Hersh  
17 either. I know that Ray - Ray Hersh was involved in  
18 trying to structure, you know, a payment plan, but I  
19 do not recall him specifically saying certain bills  
20 were improper or - or -- No, I don't - I don't recall  
21 that.

22 Q. Do you recall which Iviewit entity  
23 normally paid the bills of the Iviewit entities?

24 MR. SELZ: Objection. Form of the  
25 question.

1 A. No.

2 Q. Do you know if Proskauer ever sent  
3 Iviewit letters demanding payment on its bills?

4 A. Yes.

5 Q. Have you seen them?

6 A. No.

7 Q. How do you know that they were sent?

8 A. There were discussions made. There were  
9 discussions that Pros - you know, that Proskauer --  
10 You know, Brian would come or Eliot and Sy and say,  
11 look, Proskauer's making demands. We've got to  
12 figure out how, you know, to pay them something or  
13 make an accommodation so they can continue the work.

14 Q. ~~Was it your understanding that the bills~~  
15 ~~were due and owing?~~

16 A. Yes.

17 Q. ~~Did Iviewit ever object to the payment of~~  
18 ~~any of these bills?~~

19 MR. SELZ: Objection to the form of the  
20 question.

21 A. ~~Not that I'm aware of.~~

22 Q. What was your understanding with respect  
23 to Brian Utley's experience when the company hired  
24 him?

25 A. Brian Utley worked for IBM, had good

Lewin fails to state that the Company became aware after finding Utley stealing patents, that at his last employer he was caught misappropriating inventions and was fired causing a S. Florida businessman to lose his entire Company. Lewin was made aware of this as a Board member and failed to do anything once he found out. Utley was referred by Lewin's referral Wheeler and a bogus resume with false and misleading information was then circulated regarding Utley.



1 knowledge of computers, supposedly of the Internet,  
2 had some understanding of technology and was involved  
3 in some other patent processes.

4 Q. Did you feel that he knew what he was  
5 doing when it came to Iviewit's patents?

6 A. I can't comment on that.

7 Q. You don't know?

8 A. I don't know. I have no idea because I  
9 was not involved with the patents at all. I have no  
10 understanding of the technology, so -

Totally false, he had intimate knowledge and was at all disclosure meetings!!

11 Q. Do you know what an ultravirus act is?

12 A. No.

13 Q. Are you aware of any things that Brian  
14 Utley did that he specifically did not have board  
15 approval to do?

16 A. Not that I'm aware of.

17 Q. Did you ever hear anyone from the company  
18 complain that Brian Utley paid Proskauer's bills  
19 without the board's approval?

20 A. I don't recall. No.

21 Q. Do you recall ever hearing anyone  
22 complain that Brian Utley entered into payment  
23 arrangements on behalf of the company without the  
24 board's approval with respect to Proskauer's bills?

25 A. I don't recall that.

1 Q. Have you spoken to Eliot Bernstein  
2 lately?

3 A. Yes.

4 Q. When?

5 A. Eliot called me about a week ago.

6 Q. Mm-hmm. What did you talk about?

7 A. Eliot asked me to send him -- We had a  
8 substantial amount of bills also, accounting  
9 services. And he called me from California and he  
10 asked me to send him -- We never got paid. And I  
11 never --

12 Q. Who? Wait. Who never got paid?

Not true - He had agreed to  
convert his past bill to equity.

13 A. Goldstein, Lewin and Company.

14 Q. For accounting services for Iviewit?

15 A. Yes. There was some payments made, but  
16 the majority was not paid. And I really dropped it  
17 because I felt it was -- I did not want to pursue it.  
18 I felt there was nothing to collect.

19 Q. What do they owe Goldstein and Lewin?

20 A. Fifty some thousand dollars.

21 Q. Mm-hmm. How long have they owed this  
22 money?

23 A. About three years.

24 Q. Are you surprised?

25 A. Surprised at what?

1 Q. They haven't paid you?

2 A. Well, there's no money available.

3 Q. Okay.

4 A. So I don't want to spend the legal  
5 resources trying to collect it. I don't want to  
6 throw any good money after bad. So --

7 Q. How many other accounts payable are still  
8 out there among Goldstein and Lewin and Proskauer  
9 Rose?

10 A. Oh, I don't know. I don't know. If you  
11 want to, I'll just finish what Elliot's call was  
12 about.

13 Q. Please. I'm sorry for interrupting you.

14 A. That's okay.

15 He asked me to send him a copy of all our  
16 invoices, which I didn't understand why. I said,  
17 Eliot, are you getting ready to pay? I was basically  
18 kidding him. He said, no, we don't have money  
19 available right now, but I would like to have a copy  
20 of all those invoices. I said, okay. It's in the  
21 storage. We'll have to get it. I chatted with him  
22 how his family was, how he's doing. And that was it.

23 Q. What did he say how his family is doing?

24 A. He said the family is well, everything is  
25 okay. And that was basically it.

If there is no money, why is Proskauer suing Iviewit, and suing companies they do not have bills with but that have patents??

1 Q. Yeah.

2 A. And then we ordered the information to  
3 get from storage, which as soon as we get it, I will  
4 send it to him. That was it.

5 Q. Did he discuss the fact that he knew you  
6 were going to testify in this matter?

7 A. No.

8 Q. Have you discussed that testimony with  
9 anyone?

10 A. No.

11 Q. Do you know if Eliot is missing any  
12 documents that he needs for this lawsuit?

13 A. I have no idea.

This is untrue as the Company had asked for his records and the accounting records because they were missing.

14 Q. Brings up an interesting point. What  
15 happened when -- Why did Iviewit vacate their office  
16 at 2255 Glades Road?

17 A. For two reasons. Number one, they wanted  
18 to shift operations to California; and number two,  
19 they were running out of funds to pay the rent from  
20 what I understand.

This is untrue. The Company closed the Boca office because we found Utley stealing patents and Proskauer doing illegal loans with friends of theirs. Lewin was present at the Board meetings when this was done.

21 Q. As a - as a former board member, what -  
22 to what do you attribute Iviewit's running out of  
23 money?

24 A. To the lack of investors' interest in  
25 putting in additional money.

1 Q. Do you know Steven Lamont is?

2 A. The name does not sound familiar.

3 Q. Steven Lamont - L-a-m-o-n-t.

4 A. No. Who is he?

5 Q. He's someone that Iviewit brought in in  
6 the last year to handle things.

7 A. No.

8 Q. Have you spoken to Brian Utley or Raymond  
9 Hersh recently?

10 A. Yes. I spoke to Raymond Hersh about -- I  
11 saw him about three weeks ago. Raymond now works for  
12 a financial institution that looks to place loans.  
13 He stopped at my office and tried to have - see if I  
14 can recommend him any clients that are looking to  
15 finance businesses or inventory, receivables and  
16 such.

17 So that was my meeting with Raymond  
18 Hersh. Iviewit was really not discussed much  
19 anymore.

Did he ask Brian about stolen patents or stolen money or anything else he had become aware of as a Board member, prior to his jumping ship,

20 Brian Utley, I spoke to maybe three  
21 months ago. Brian I think moved to Minnesota,  
22 something like that. He told me about the illness of  
23 his daughter. Again, Iviewit wasn't really discussed  
24 much. That was it. I'm still friendly with all of  
25 them. Including Sy and Eliot.

1 Q. Let me go through my notes. I might be  
2 done.

3 A. Okay.

4 Q. A few points: Do you recall a patent  
5 attorney who did work for Iviewit named Joao -  
6 J-o-a-o - which I believe is a Brazilian or a  
7 Portuguese name?

8 A. No.

This is false. Lewin interfaced directly with Joao and paid him directly. There are multitudes of correspondences between Joao and Lewin. Lewin throughout deposition has tried to avoid knowing Joao and mixing him up with Foley & Lardner. Joao is a Wheeler referral and Lewin was on Board from his start with Company, until he was fired

9 Q. Do you remember why Foley & Lardner no  
10 longer did work for Iviewit - patent work after a  
11 certain time?

12 A. Eliot and Sy, and I'm not sure whether  
13 Brian was involved in that decision, might have been  
14 they decided they wanted to switch it over to another  
15 firm. And there were some people that Brian Utley  
16 knew. There was a law firm that Brian Utley knew. I  
17 don't recall their name. But it was switched over to  
18 them.

19 Now, Foley & Lardner, were they  
20 originally the patent attorneys?

21 Q. I believe so. Totally false they come in after 1 year of Joao.

22 A. Okay. Who were -- I forgot the name of  
23 the people that it was switched over to. There was a  
24 law firm that Brian was familiar with that  
25 specialized in patent work.

This law firm he refers to is Foley & Lardner that Brian brought in. What Brian forgot to tell Company is that the patent lawyer William Dick was responsible with him for misappropriating patents from his last employer and we found this out after we caught them doing same. Lewin was made aware of this as Board member and although Brian Utley came from his referral Wheeler (Utley best friend of Wheeler) he did nothing to fulfill his fiduciary

1 Q. Are you aware of any law firms besides  
2 Proskauer that stopped doing work for Iviewit because  
3 of bill issues?

4 A. Yes.

5 Q. Who are they?

6 A. I would say probably all the law firms  
7 they did that with.

8 Q. Eventually stopped --

9 A. Yes.

10 Q. -- working for Iviewit --

11 A. Yes.

12 Q. -- because of non-payment?

13 A. Yes.

14 Q. Do you know if there are any reasonable  
15 defenses that Iviewit had to actually paying those  
16 bills?

17 MR. SELZ: Objection to the form of the  
18 question.

19 A. I --

20 Q. Other than not having money, did Iviewit  
21 have any reason not to pay those bills?

22 MR. SELZ: Same objection. And also to  
23 relevancy.

24 Q. (By Mr. Prusaski) You can answer the  
25 question.

1           A.       They at the end were not happy with the  
2 patent work that was done at the law firm.  If that's  
3 the name, Foley & Lardner.  I'm not sure.  You know,  
4 I don't recall names.  But the original patent law  
5 firm that did the patent work, they were not happy  
6 with.  And whether they stopped payments or didn't  
7 pay them or finish paying them, I'm not aware.

8           Q.       When you say, you're referring to Eliot  
9 and Sy?

10          A.       Yes.

11          Q.       Anyone else?

12          A.       I would say mainly Eliot and Sy.

13          Q.       Was Brian Utley not happy with Foley &  
14 Lardner's work?

15          A.       I'm not sure.  It was mostly Eliot, not  
16 Sy.

17          Q.       Did you ever hear them complain?

18          A.       Brian, no.  I did not hear Brian  
19 complain.

20          Q.       I'm sorry.  What were you saying, this  
21 was mostly Eliot, not Sy?

22          A.       Mostly Eliot, not Sy, yes.  Because I  
23 don't know -- You know, Sy didn't understand the  
24 technology and patent either.  It was really Eliot,  
25 you know, that understood that.

Huge admission to why the bills were not paid was the patent work was in major question and we found people actually stealing patents and other malfeasances.  The patents are all going into a six month suspension at the USPTO while all of these matters including allegations of Fraud Upon the United States Patent & Trademark Office are being investigated.

This denial is absurd again.  Lewin knew and understood and used the technologies and was at meetings with many engineers who acclaimed it.  He invested in the Company, took founders shares for his family, had his daughter Erika work at the Company, was accountant for the Company and secured investment and clients for the Company.  He was intimately involved from day one, and almost every single person I view it is complaining against for malfeasances has a tentacle back to Lewin or one of his referrals.



1 Q. Are you Sy's next door neighbor?

2 A. No. I'm -- I live a couple blocks away  
3 from him.

4 Q. Do you know where he is this week?

5 A. No.

6 Q. So Foley & Lardner still hasn't fully  
7 been paid; is that what you're saying?

This statement makes  
no sense here, is it a  
transcript error??

8 A. I don't know. I don't know. I really  
9 don't know.

10 Q. Do you still refer work to Proskauer  
11 Rose?

12 A. Yes, I do. When the opportunity arises,  
13 I do.

14 Q. Who are Donald Kane and Ken Anderson?

15 A. There were people that got involved as  
16 far as trying to promote the company. I think one or  
17 both of them were on the board, if I recall now  
18 correctly. I'm not sure. But I know they got  
19 involved in trying to promote the technology,  
20 introduce them to venture capitalists. That was it.

21 Q. I'm going to show you a document that we  
22 will mark Plaintiff's Exhibit 1.

23 MR. PRUSASKI: Mr. Seiz, I'm showing the  
24 witness a copy of the Amended Second  
25 Affirmative Defenses that were filed by your

1 predecessor.

2 MR. SELZ: Okay.

3 MR. PRUSASKI: Let me mark this with a  
4 sticker as Exhibit 1.

5 (Thereupon, the above-referred to  
6 document was marked as Exhibit 1 for identification.)

7 Q. (By Mr. Prusaski) This is a document  
8 that was filed by Iviewit's attorneys. I'm going to  
9 ask you to look at paragraph number one with me.

10 It says, plaintiff, meaning Proskauer,  
11 has failed to perform work under the terms of any  
12 oral agreement between the parties for which it seeks  
13 remuneration.

14 And I'm going to ask you, sir, if you are  
15 aware of any facts or circumstances which tend to  
16 support that assertion made by Iviewit?

17 A. Not that I'm aware of.

18 Q. I'm going to ask you to look at paragraph  
19 two, which says, some work which may have been  
20 performed on behalf of the defendants was not - which  
21 is Iviewit, was not performed at the defendant's  
22 request nor pursuant to any agreement.

23 And I'll ask you the same question, are  
24 you aware of any facts or circumstances that tend to  
25 support that statement?

1 A. No, I'm not aware of it.

2 Q. Mr. Lewin, I'm going to show you a  
3 document which we will mark as Plaintiff's Exhibit  
4 Number 2.

5 MR. PRUSASKI: Mr. Selz, for your  
6 benefit, it's the March 28th, 2001 letter to  
7 Brian Utley from Chris Wheeler. Where are the exhibits??

8 MR. SELZ: Okay.

9 (Thereupon, the above-referred to  
10 document was marked as Exhibit 2 for identification.)

11 Q. (By Mr. Prusaski) And Mr. Lewin, I'll  
12 ask you to look at that document and tell me if you  
13 have ever seen it before.

14 A. I do not recall seeing this.

15 Q. Because you don't recall seeing it, I'm  
16 not going to ask you any questions about it.

17 A. Okay.

18 Q. I'm going to show you a document marked  
19 Plaintiff's Exhibit 3.

20 (Thereupon, the above-referred to  
21 document was marked as Exhibit 3 for identification.)

22 MR. PRUSASKI: Mr. Selz, it's a letter  
23 dated April 16th, 2001, from Proskauer Rose to  
24 Brian Utley. This letter attaches as an  
25 exhibit or is an enclosure of three pages of

1 what appears to be a statement.

2 Q. (By Mr. Prusaski) And I'll ask you, sir,  
3 to look at that document and tell me if you've ever  
4 seen it before?

5 A. No, I have not seen it.

6 Q. Do you recall if you worked for or you  
7 were a board member at the time that that letter  
8 appears to have been written, which is April 16th,  
9 2001?

This is the week or so before Utley is terminated and Proskauer are terminated from the Company.

10 A. I don't recall.

11 MR. PRUSASKI: I have no further  
12 questions. Thank you.

13 THE WITNESS: You're welcome.

14 MR. SELZ: I've got a little bit of stuff  
15 on cross.

16 THE WITNESS: Okay.

17 CROSS EXAMINATION

18 Q. (By Mr. Selz) Are you with me?

19 A. Yes.

20 Q. Okay. Mr. Lewin, my name is attorney  
21 Steve Selz. I'm representing the Iviewit companies  
22 in this case.

23 A. Okay.

24 Q. I'm just going to follow up on a couple  
25 of the issues that Mr. Prusaski had asked you

1 questions on.

2           You had indicated that at one point in  
3 time, your CPA firm - and when I mean yours, I mean  
4 Goldstein, et al. - had provided CPA services to the  
5 Iviewit companies; is that correct?

6           A.     That's correct.

7           Q.     Okay. Did Mr. Bernstein ever complain to  
8 you about the services your CPA company provided to  
9 Iviewit?

10          A.     No.

11          Q.     How about with regard to the - what you  
12 testified to earlier, that is, that Iviewit and  
13 specifically Eliot Bernstein and Sy Bernstein, were  
14 concerned about about having a nationally prominent  
15 law firm handling the matters for the Iviewit  
16 companies?

17          A.     Yes.

18          Q.     Were you privy to any of the discussions  
19 between Proskauer Rose's representatives and Messers.  
20 Bernstein and the board members on exactly what the  
21 scope of representation was going to be for Proskauer  
22 Rose?

23                   MR. PRUSASKI: Object to the form.

24          A.     When they were originally engaged, I was  
25 not a board member yet.

1 Q. Okay. So you weren't privy to those  
2 discussions when they were actually retained then?

3 A. I was in many of the meetings when they  
4 were discussing - you know, when they were originally  
5 retained. Not as a board member, but basically as an  
6 accountant and a consultant.

7 Q. Okay. To the best of your recollection,  
8 was there any specific delineation of the types of  
9 services that Proskauer Rose was going to provide?

10 A. I'm not sure I understand the question.  
11 Basically, they were looking for legal services and  
12 they were looking for introductions.

13 Q. Okay. So there was no discussion they  
14 were going to do specifically one type of  
15 representation? In other words, they didn't say,  
16 we'll only handle corporate formations and  
17 solicitation of investors, but we won't do anything  
18 else? Nothing like that happened?

A. Nothing like that that I'm aware of, no.

Q. There was never any discussion about  
limiting their role with regard to the patenting of  
the intellectual properties involved?

A. Well, from what I understand, that was  
handed to another law firm.

Q. Okay. And you had indicated that Ken

False testimony. Lewin was charged with getting Iviewit patent counsel as he states in the beginning for a patentable technology. Not to find corporate counsel. Fully aware of Rubenstein and his role to MPEG.

1 Rubenstein for Proskauer Rose had been involved with  
2 that portion of the representation for Iviewic, that  
3 is, to get someone else to handle the patent work?

4 A. Yes.

5 Q. Okay. And was Mr. Rubenstein ever at any  
6 board meetings that you can recall?

7 A. I never met him.

8 Q. Okay. You never had any discussions with  
9 him?

10 A. No.

11 Q. And you had stated previously that you  
12 hadn't been to all the board meetings though; is that  
13 correct?

14 A. That's correct.

15 Q. Okay. Now, you've got over 20 years of  
16 experience as a board of director on various  
17 corporate boards; is that a correct statement of  
18 fact?

19 A. That's correct.

20 Q. And in that time frame, have you ever  
21 been involved with the hiring of a law firm to  
22 represent any corporation or their interests?

23 A. Was I directly involved?

24 Q. Were you involved as a member of the  
25 board of directors in doing that in any other

1 situation, other than Iviewit?

2 A. Generally not.

3 Q. Okay. When you mean generally not, was  
4 there ever a time when you did?

5 A. Well, I don't mean exactly, you know, was  
6 there board approval to hire a law firm and I voted  
7 affirmative? I would say yes. Did I sit down and  
8 negotiate it with any law firm specifically to  
9 perform services? I have negotiated, but not  
10 necessarily as a board of director.

11 Q. Okay. Now, with regard to that, you do  
12 have some experience in reviewing legal bills that  
13 are provided to corporations for services rendered;  
14 is that correct?

15 A. I've seen them before, yes.

16 Q. Okay. And have you ever undertaken to,  
17 either in your role as an accountant or as a member  
18 of a board of directors, review legal billings for  
19 their reasonableness or their accurate reflection of  
20 services provided?

21 A. No.

22 Q. Okay. In your - in your -- In your  
23 opinion, as a member of the board of directors, sir,  
24 what would you think would be a reasonable value for  
25 the services provided by Proskauer Rose to the



1 Iviewit companies?

2 A. I - I can't even start telling you. I  
3 can't even answer that because --

4 Q. Do you know what Proskauer Rose did for  
5 the Iviewit companies?

6 A. They did all the legal -- They did all  
7 the legal work. They introduced them to --

8 Q. ~~They didn't do the patent work is what I~~  
9 ~~think --~~

10 A. ~~They did not do the patent work.~~

11 Q. Okay. So they did the corporate  
12 formation?

13 A. They did the corporate formations. They  
14 did contracts.

15 Q. Okay. How many contracts were there; do  
16 you recall?

17 A. No.

18 Q. Was there more than - more than a dozen  
19 contracts?

20 A. I have no idea.

21 Q. Okay. Let's go back to the corporations.

22 Have you ever had the opportunity in the past to  
23 review billing statements or gain information on the  
24 cost of forming a corporation in the state of  
25 Delaware?

1 A. No.

2 Q. Do you know how much the ordinary and  
3 customary charge would be for those services?

4 A. I would say not really.

5 Q. Okay. You think more than ten thousand  
6 dollars to form a corporation would be reasonable?

7 A. I - I would -- I have no idea what --

8 Q. Okay.

9 A. More than ten thousand -- I would say  
10 probably less. I don't know. I would say probably  
11 less than ten thousand for forming a corporation.

12 Q. Do you have any idea what the total  
13 billing statements provided to the Iviewit companies  
14 by Proskauer Rose were in this matter?

15 A. Total altogether?

16 Q. Total altogether?

17 A. Not really.

18 Q. Would half a million dollars sound like  
19 too big a number to you?

20 A. I can't say whether it's too big or too  
21 small. I really don't know.

22 Q. Okay. Now, were you involved directly  
23 with regard to the approval of payment of legal bills  
24 provided by Proskauer Rose to the Iviewit companies?

25 A. I was not.

1 Q. Okay. Were you at any board of  
2 directors' meeting in which a vote was taken to  
3 approve the payment of any of those bills?

4 A. I don't recall.

5 MR. PRUSASKI: Objection. Assumes facts  
6 not in evidence.

7 Q. (By Mr. Selz) Let me rephrase it then.  
8 Sir, you stated that you attended some but not all of  
9 the board of directors' meetings; is that correct?

10 A. That's correct.

11 Q. Okay. Do you have a - a recollection of  
12 the goings on at those board of directors' meetings,  
13 things that were discussed?

14 A. Yes, some of them.

15 Q. Some of them. Okay.

16 To the best of your recollection, was  
17 there ever any suggestion as to the payment of any  
18 specific bill to Proskauer Rose?

19 A. Not specific. There were just general  
20 discussion on how to conserve cash.

21 Q. Okay. What you testified to earlier,  
22 basically, figuring out where they were going to  
23 allocate the cash resources?

24 A. That was it.

25 Q. Okay. But there was no - there was no

1 specific vote, to the best of your recollection, by  
2 the board of directors or discussion saying, pay this  
3 invoice to Proskauer; we authorize whoever, Brian  
4 Utley or Raymond Hersh or whoever else it might be,  
5 to cut a check?

6 A. Not that I recall. Because generally,  
7 those decisions were made at the board level. They  
8 were generally made by Sy and Eliot. And I don't  
9 recall. Maybe they were made. Not to my  
10 recollection. There were maybe general discussions,  
11 but not specific.

12 Q. Okay. Now, with regard to the stock that  
13 was given by Eliot Bernstein to Proskauer Rose --

14 A. Yes.

15 Q. -- were you privy to the discussions  
16 concerning that actual providing of the stock?

17 A. Yes, I was.

18 Q. Okay. And that was -- When did that take  
19 place?

20 A. I don't recall the year, but it was  
21 pretty much at the early - at the early stages of the  
22 relationship.

23 Q. Okay. Now, was that -- Did that occur at  
24 a board meeting?

25 A. I don't even know if there was a board at

1 that time. I don't even know if -- I'm not sure if I  
2 was on the board at that time.

3 Q. Okay. You might have just been simply  
4 acting as a CPA/consultant?

5 A. That's exactly right.

6 Q. And do you remember what year that was?

7 A. I would say somewhere around '98, '99,  
8 somewhere in there.

9 Q. Okay. And do you have any idea what the  
10 source of that stock was that was provided to  
11 Proskauer Rose?

12 A. What do you mean the source?

13 Q. Well, if it was from a corporation, the  
14 corporation had to be formed; is that correct?

15 A. Yes.

16 Q. Okay. And so, this was after Proskauer  
17 Rose was retained because they formed the corporate  
18 entities; is that correct?

19 A. Yes.

20 Q. Okay. So this wasn't part of the  
21 original agreement with Proskauer Rose then?

22 A. It was not. Not that - not that I  
23 recall. I think it was done a little bit later.

24 Q. Okay. And do you remember which entity  
25 the stock came from?

1           A.       I think it was Iviewit.com, Inc. There  
2 were so many of them floating around. It was  
3 difficult. It's difficult to recall.

4           Q.       Okay.

5           A.       Or maybe the LLC. I'm not sure at that  
6 time.

7           Q.       Do you recall the purpose for having -- I  
8 know you previously indicated that there was concerns  
9 about using an LLC because of limitations on the  
10 types of shareholders that you could have and other -  
11 and other limitations from that standpoint.

12                   Do you recall why there were upwards of  
13 eight entities formed?

14                   MR. PRUSASKI: Objection. Assumes facts  
15 not in evidence. Go ahead.

16           A.       Yes. Yes. Some of the entities were  
17 formed to protect - so we could put the patents in  
18 them. Some of the entities were formed to be a  
19 management company. Some of the entities were  
20 formed --

21                   What happened is there was a change of  
22 strategy. I think originally, we were going to use  
23 an LLC. And then we switched over to a C - to a C  
24 Corp. There were some S Corps. involved. It might  
25 have been an S corporation. I'm not sure.

1                   It was just basically -- All that was  
2 done -- There were two purposes; number one, set up a  
3 separate company to protect the patent.

4           Q.     Right.

5           A.     That, I recall. And - and number two,  
6 the rest were just basically tax strategies.

7           Q.     Okay. Now, was there -- Do you recall  
8 any disputes between Brian Utley and Eliot and Sy  
9 Bernstein about any issues other than the payment of  
10 Proskauer's bills?

11          A.     Other than? I mean, there were many  
12 dispute -- You know, when you have a board of  
13 directors and you have management, there's many  
14 disagreements on how to conduct company policy.

15          Q.     Okay.

16          A.     I mean, there were hundreds of them.

17          Q.     Were there any disagreements concerning  
18 the manner in which the patents had been filed or the  
19 names under which the patents had been filed?

20          A.     I don't recall on the names. I recall  
21 there were maybe disagreements of - you know, which I  
22 don't understand - I do not understand patents - of  
23 whether papers were prepared this way or that way or  
24 properly or improperly or -- You know, maybe those  
25 were discussions.

What did he do once he became aware patents were not properly assigned and correct inventors had not been listed? He had fiduciary responsibility to shareholders???

1           Q.     Okay.  This goes back to the previous  
2           testimony that you had about Foley & Lardner --

3           A.     Yes.

4           Q.     -- and some concerns about how the  
5           patents had been prepared and filed?

6           A.     Yes.

7           Q.     Okay.  Do you recall any other issues  
8           specifically concerning Mr. Utley and the - the  
9           patents?

10          A.     Well, Mr. Utley then brought in people  
11          that he knew who were supposedly - whose background  
12          was patent - patenting technology products.  And he's  
13          dealt with them previously.

14                 And I think at one point, they stopped  
15          servicing us because of - I think we stopped making  
16          -- We did not make payments like we were supposed to.  
17          And they withdrew.

18                 Again, Eliot was not happy also with the  
19          job they were doing at the very end.  Because at the  
20          end, Eliot basically was not happy with the job  
21          anybody was doing because they weren't getting him  
22          the results that he was looking for.

23          Q.     They weren't getting him the -- The  
24          patents weren't getting processed the way they were  
25          supposed to; is that what --



1           A.       I can't say whether they were done the  
2 way they were supposed to. They were not done based  
3 on -- You know, he was not happy with the -- He  
4 expressed his unhappiness.

5           Q.       Okay.

6           A.       Whether they were done the way they were  
7 supposed to, I have no idea.

8           Q.       Now, with regard to the payment of any of  
9 these bills to Proskauer Rose or to any of these  
10 other parties, were you directly involved with the  
11 preparation of payments or with regard to the  
12 authorization for payments?

13          A.       No, I was not.

14                   MR. SELZ: Okay. I have nothing further.

15                   REDIRECT EXAMINATION

16          Q.       (By Mr. Prusaski) The board -- Did the  
17 board vote on paying Proskauer's bills?

18          A.       I don't recall. I don't recall to that.

19          Q.       Did you say that was done more informally  
20 between the Bernsteins and Utley?

21          A.       Yes.

22          Q.       Now, you said you never saw Ken  
23 Rubenstein in a board meeting, right?

24          A.       I don't think so.

25          Q.       And Mr. Selz asked you, well, you haven't

1 been to all the board meetings, have you?

2 A. No, I have not.

3 Q. Were you personally aware of any board  
4 meetings that Rubenstein attended that you didn't  
5 attend?

6 A. No. No, I was not.

7 MR. PRUSASKI: I have no further  
8 questions.

9 MR. SELZ: Okay. I've got nothing  
10 further.

11 MR. PRUSASKI: You have the opportunity  
12 to waive your reading of the deposition or read  
13 the deposition to check it for errors. I  
14 believe you've probably been asked that before  
15 because you've done this before. What is your  
16 M.O.?

17 THE WITNESS: I waive it.

18 MR. SELZ: I'll order a copy. Chris, are  
19 you ordering it or no?

20 MR. PRUSASKI: Yes, yes.

21 MR. SELZ: Chris, you're ordering?

22 MR. PRUSASKI: Yes.

23 MR. SELZ: Then I'll get a copy.

24 MR. PRUSASKI: All right, Steve.

25 MR. SELZ: Okay. Thanks.

1 (Thereupon, at 12:05 p.m., the deposition  
2 was concluded.)  
3

4 CERTIFICATE OF OATH

5 STATE OF FLORIDA )  
6 )  
7 COUNTY OF BROWARD )

8 I, TAMARA EMERICK-MASCI, RPR, the undersigned  
9 authority, certify that GERALD LEWIN personally  
10 appeared before me and was duly sworn.

11 WITNESS my hand and official seal this  
12 16th day of September, 2002.

13 *Tamara Emerick-Masci*  
14 TAMARA EMERICK-MASCI, RPR



15 Tamara Emerick-Masci  
16 Commissioner of the State of Florida  
17 RPR  
18 Expires March 7, 2005  
19 Bonded Through  
20 Atlantic Bonding Co., Inc.

## 1 REPORTER'S DEPOSITION CERTIFICATE

2 STATE OF FLORIDA )

3 COUNTY OF BROWARD )

4  
5 I, TAMARA EMERICK-MASCI, Registered  
6 Professional Reporter, certify that I was authorized  
7 to and did stenographically report the deposition of  
8 GERALD LEWIN; that a review of the transcript was not  
9 requested; and that the transcript is a true and  
10 complete record of my stenographic notes.

11  
12 I FURTHER CERTIFY that I am not a relative,  
13 employee, attorney or counsel of any of the parties,  
14 nor am I a relative or employee of any of the  
15 parties' attorney or counsel connected with the  
16 action, nor am I financially interested in the  
17 action.

18  
19 DATED this 16th day of September, 2002.

20  
21  
22  
23  
24  
25  
  
TAMARA EMERICK-MASCI, RFR

IN THE CIRCUIT COURT OF THE 15TH JUDICIAL CIRCUIT  
IN AND FOR PALM BEACH COUNTY, FLORIDA

CASE NO. CA 01-04671 AB

PROSKAUER ROSE, LLP, a New  
York limited liability partnership,

Plaintiff,

vs.

IVIEWIT.COM, INC., a Delaware corporation  
IVIEWIT HOLDINGS, INC., a Delaware  
corporation, and IVIEWIT  
TECHNOLOGIES, INC., a Delaware  
corporation,

Defendants.

COPY

Proskauer Rose, L.L.P.  
2255 Glades Road, Suite 340 West  
Boca Raton, Florida 33341  
August 20, 2002  
11:15 a.m.

DEPOSITION OF WILLIAM KASSER, taken  
pursuant to the Rules and Notice hereinbefore  
filed, before MARY C. BETTIS, Court Reporter  
and Notary Public in and for the State of  
Florida at Large, at Proskauer Rose, L.L.P.,  
2255 Glades Road, Suite 340 West, Boca Raton,  
Florida 33341 on Tuesday, August 20, 2002,  
commencing at or about 11:15 a.m.

1	I N D E X	
2	WITNESS:	PAGE:
3		
4	WILLIAM KASSER	
5	(Direct Examination by MR. PRUSASKI) . . . .	4
6		
7	E-X-H-I-B-I-T-S	
8	PLAINTIFF'S	
9	NUMBER	DESCRIPTION PAGE
10	1	Composite 42
11	2	Composite 71
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APPEARANCES:

PROSKAUER ROSE, L.L.P.  
by CHRISTOPHER W. PRUSASKI, ESQUIRE  
by MATTHEW TRIGGS, ESQUIRE  
appearing on behalf of the Plaintiff.

SELZ & MUVDI SELZ, P.A.  
by STEVEN M. SELZ, ESQUIRE  
appearing on behalf of the Defendants.

REPORTED BY:

MARY C. BETTIS, COURT REPORTER  
and Notary Public  
114 Southwest 10th Street  
Suite C  
Fort Lauderdale, Florida 33315

STIPULATION

It is hereby stipulated by and between  
counsel for the respective parties and the  
witness that reading and signing of the foregoing  
deposition and the same are, hereby waived.

AND FURTHER DEPONENT SAITH NOT.

1 Thereupon:  
2 WILLIAM KASSER,  
3 was called as a witness on behalf of the Plaintiff,  
4 and, being first duly sworn, was examined on his  
5 oath and testified as follows:  
6 DIRECT EXAMINATION  
7 BY MR. PRUSASKI  
8 Q. Good morning, Mr. Kasser. I'm Chris  
9 Prusaski, and we're here to take your deposition in  
10 the subpoena that we had served on you in the case  
11 of Proskauer Rose, L.L.P. versus Iviewit.com, Inc.,  
12 et al.  
13 Have you ever had your deposition taken  
14 before?  
15 A. Yes.  
16 Q. How many times?  
17 A. I'm uncertain. Probably seven or eight  
18 times.  
19 Q. I'm asking you because I just want to make  
20 sure you know how the deposition is going to  
21 proceed.  
22 A. Yes.  
23 Q. Obviously you do, but just to tell you if  
24 I ask you any questions that you don't understand or  
25 you would like me to rephrase, please don't hesitate

1 to say so and I will.  
 2 A. Yes.  
 3 Q. Sometimes we ask questions that can be  
 4 construed to be vague --  
 5 A. Yes.  
 6 Q. -- and if you answer a question, it's  
 7 assumed that you understood. If you need a break,  
 8 ask and we will be happy to accommodate you in any  
 9 way we can.  
 10 Would you please state your full name,  
 11 please.  
 12 A. William Richard Kasser.  
 13 Q. What is your address, sir?  
 14 A. 991 Northwest Ninth Street, Boca Raton,  
 15 Florida 33486.  
 16 Q. Your home telephone number?  
 17 A. Is (561) 347-8390.  
 18 Q. Is there any other number that you can be  
 19 reached at?  
 20 A. My office number is (561) 750-8796.  
 21 Q. What is your current occupation?  
 22 A. I sell insurance.  
 23 Q. For what company?  
 24 A. AFLAC.  
 25 Q. What's your office's address?

1 A. 1355 West Palmetto Park Road, Number 309,  
 2 Boca Raton, 33486.  
 3 Q. How long have you been working with AFLAC?  
 4 A. Six weeks.  
 5 Q. Can you tell me what you did for work  
 6 prior to that?  
 7 A. Prior to that, I was -- Prior that, I was  
 8 associated with Arbitrage International Marketing,  
 9 Incorporated. A-R-B-I-T-R-A-G-E, International  
 10 Marketing, Incorporated.  
 11 Q. Where are they located?  
 12 A. They are located at 7020 Lion's Head Lane,  
 13 Boca Raton.  
 14 Q. What did you do for them?  
 15 A. I was their Chief Financial Officer.  
 16 Q. For how long were you affiliated with  
 17 Arbitrage?  
 18 A. Approximately six months.  
 19 Q. And what did you do for employment before  
 20 that time?  
 21 A. I was involved with Iviewit Holdings,  
 22 Incorporated and its subsidiaries.  
 23 (Thereupon, Mr. Triggs entered the room.)  
 24 BY MR. PRUSASKI  
 25 Q. This is my colleague, Matt Triggs.

1 A. Hello, Bill Kasser.  
 2 (Thereupon, a discussion was held off the  
 3 record.)  
 4 BY MR. PRUSASKI  
 5 Q. We'll return to Iviewit in a few minutes.  
 6 A. Yes.  
 7 Q. Can you give me the benefit of your  
 8 education?  
 9 A. I have a Bachelors in Business  
 10 Administration from Point Park College in Pittsburg,  
 11 Pennsylvania.  
 12 Q. What year did you receive your B.S.?  
 13 A. '70.  
 14 Q. Any other degrees?  
 15 A. No.  
 16 Q. Do you have any professional licenses?  
 17 A. Only as an insurance agent.  
 18 Q. What years were you involved with Iviewit?  
 19 A. From 2001 into 2002.  
 20 Q. What month in 2001?  
 21 A. February 2001.  
 22 Q. And what was the month in 2002?  
 23 A. I don't know.  
 24 Q. Why?  
 25 A. Because I'm uncertain of my status with

1 the company. I haven't resigned and I haven't been  
 2 terminated.  
 3 Q. When was the last time you spoke with  
 4 anyone affiliated with Iviewit?  
 5 And before we get into that, I want to  
 6 just clarify that Iviewit -- When I use the term  
 7 generally, Iviewit means Iviewit.com, Inc., Iviewit  
 8 Holdings, Iviewit Technologies. Do you understand?  
 9 A. Yes.  
 10 Q. Okay. If I want to specify one particular  
 11 entity, I will. If I use the term Iviewit, like I  
 12 said generally, that's what I'm referring to.  
 13 A. Yes.  
 14 Q. So the question was, when was the last  
 15 time you spoke with anyone involved with the  
 16 company?  
 17 A. Spoke directly, it's difficult to say.  
 18 Probably over a month ago, but I'm not certain. I  
 19 don't have the date.  
 20 Q. To whom did you speak?  
 21 A. I would have spoken last -- I believe I  
 22 spoke with Elliott Bernstein. But again, I'm  
 23 uncertain as to the date.  
 24 Q. You believe it was sometime in July?  
 25 A. I suspect so.

1 Q. Did you do anything to prepare for your  
2 deposition today?  
3 A. No.  
4 Q. Since you received the subpoena, you  
5 didn't speak with anyone involved with the company  
6 or review any documents?  
7 A. I have not spoken with anyone involved  
8 with the company.  
9 Q. No document review?  
10 A. I have done no document review.  
11 Q. And today is the first time you met  
12 Mr. Selz?  
13 A. Yes, it is.  
14 Q. What is Elliott Bernstein's role with  
15 Iviewit?  
16 A. He is the founder of the company.  
17 Q. What did you speak to Mr. Bernstein about  
18 last month?  
19 A. I believe he called me and we spoke just  
20 generally as to how we were each doing.  
21 Q. Business wasn't discussed?  
22 A. Very little.  
23 Q. What about Si Bernstein?  
24 A. Si I have had -- of course Si was -- I  
25 have had conversations with Si probably -- Again,

1 about a month ago would have been the last one.  
2 Q. What is his relationship with Elliott?  
3 A. Si is Elliott's father.  
4 Q. What is Si's role with the Iviewit  
5 companies?  
6 A. Si was Chairman of the Board of Iviewit  
7 Holdings, Incorporated.  
8 Q. Do you know where Si lives?  
9 A. Si lives at 7020 Lion's Head Lane.  
10 Q. Where is that?  
11 A. That's in St. Andrews, here in Boca.  
12 Q. That is the address you gave me for  
13 Arbitrage?  
14 A. Correct.  
15 Q. And Si obviously has something to do with  
16 your last employer, prior to AFLAC?  
17 A. Yes.  
18 Q. Where does Elliott Bernstein live?  
19 A. I don't know.  
20 Q. Is he local?  
21 A. No.  
22 Q. Do you know what state?  
23 A. California.  
24 Q. Okay. City?  
25 A. I'm not certain. It may be Escondido or

1 San Diego, in that area.  
2 Q. If you heard the street name, would you  
3 know it?  
4 A. Not currently. I know an address where he  
5 used to live, but my understanding is he's left  
6 there and I don't know the current address.  
7 Q. When was your last contact with Steven  
8 Lamont?  
9 A. Steven Lamont sent me an E-mail probably a  
10 week and a half ago.  
11 Q. Could you tell me what that was about?  
12 A. The E-mail requested that I return all  
13 Iviewit property that is in my possession.  
14 Q. Did you have anything with you?  
15 A. Did I have anything?  
16 Q. Iviewit property that was returned.  
17 A. I have Iviewit property. I didn't return  
18 anything.  
19 Q. Why not?  
20 A. Because Iviewit owes me a substantial  
21 amount of money.  
22 Q. How much money?  
23 A. I'm uncertain of the amount.  
24 Q. Over \$100,000?  
25 A. Yes.

1 Q. Over 200?  
2 A. Yes.  
3 Q. Can you give me a ballpark?  
4 A. I asked for 250 in my response to Steven  
5 Lamont.  
6 Q. What is Steven Lamont's current role with  
7 the companies?  
8 A. I believe he is Chief Executive Officer.  
9 Q. Any specific company, business -- company  
10 that he's the CEO of?  
11 A. I believe it's Iviewit Holdings. Maybe  
12 all of them, I don't know.  
13 Q. Where does Mr. Lamont live, do you know?  
14 A. In New York, New York state.  
15 Q. Does he live in California at all?  
16 A. I don't know if he does or does not.  
17 Q. What particular property of Iviewit do you  
18 still have?  
19 A. I have some old files. I have two  
20 computers and a chair.  
21 Q. As far as the files are concerned, are  
22 they computer files or paper?  
23 A. Both.  
24 Q. How many boxes would you say the papers  
25 would fit in?

1 A. Papers would fit in eight boxes.  
 2 Q. Do you have any papers that would be  
 3 responsive to Proskauer Rose's lawsuit at all,  
 4 involving the issues of the unpaid bills?  
 5 A. I don't believe so.  
 6 Q. What was the last time you spoke with  
 7 Brian Utley? U-T-L-E-Y. Hold on. Before we get to  
 8 that, when did Mr. Lamont become involved in the  
 9 Iviewit Enterprises?  
 10 A. Sometime, I believe, in the Fall of 2001.  
 11 Q. That was after or before the Proskauer  
 12 Rose lawsuit was filed?  
 13 A. I'm not certain.  
 14 Q. May of 2001 was the lawsuit.  
 15 A. Then it's after.  
 16 Q. Okay. He was brought in as the CEO of  
 17 Iviewit Holdings, is that correct?  
 18 A. I believe so.  
 19 Q. Okay. We'll get back to Brian Utley. And  
 20 I'm sorry --  
 21 A. Okay.  
 22 Q. -- when was the last time you spoke with  
 23 Mr. Utley?  
 24 A. I believe it was in March of 2002.  
 25 Q. What about Raymond Hersh?

1 A. Raymond Hersh, probably also March.  
 2 Q. What did you talk about?  
 3 A. We discussed the potential for a  
 4 settlement of the involuntary bankruptcy action that  
 5 Mr. Utley and Mr. Hersh and another individual  
 6 brought against Iviewit.  
 7 Q. Are you a party to that?  
 8 A. No, I am not.  
 9 Q. And March was the last time you spoke to  
 10 either Mr. Utley or Mr. Hersh?  
 11 A. Yes.  
 12 Q. What was Mr. Utley's role with the Iviewit  
 13 companies?  
 14 A. He was president.  
 15 Q. When did you first become involved with  
 16 Iviewit?  
 17 A. February of 2001.  
 18 Q. What were you doing at that time, as far  
 19 as career?  
 20 A. Career, I had just finished a year of  
 21 trying to establish a consulting firm for myself.  
 22 Q. Do you recall who approached you about  
 23 Iviewit?  
 24 A. A friend of mine named Jeff Hahn, H-A-H-N.  
 25 Q. What was his role in the companies?

1 A. He is Raymond Hersh's neighbor.  
 2 Q. What was the purpose of the Iviewit  
 3 companies when you approached?  
 4 A. The purpose of the companies or the  
 5 purpose of the approach?  
 6 Q. The purpose of the approach.  
 7 A. The approach. Jeff contacted me. He knew  
 8 that I was looking for a full-time -- full-time,  
 9 permanent employment. And he indicated that his  
 10 neighbor was involved as Chief Financial Officer of  
 11 what he called at that time a well-funded start up,  
 12 and he needed an individual in the capacity of  
 13 controller to work with him, and he put me in touch  
 14 with Mr. Hersh.  
 15 Q. What was your role in the Iviewit  
 16 companies to be when you were approached?  
 17 A. I was to be Controller.  
 18 Q. What were your duties as Controller?  
 19 A. I would be responsible for the accounting  
 20 of the company.  
 21 Q. If you could, just describe your  
 22 day-to-day duties, that would be helpful.  
 23 A. Okay. I was to do all the accounting  
 24 functions, since it was a small staff, and  
 25 additionally I would assist Mr. Hersh in his role as

1 Chief Financial Officer.  
 2 Q. What type of accounting background did you  
 3 have?  
 4 A. Do I have?  
 5 Q. Yes.  
 6 A. I have a substantial amount of accounting  
 7 education in college, and in addition I have worked  
 8 as a Controller or Chief Financial Officer in a  
 9 number of smaller businesses.  
 10 Q. Now, at the time you were approached, were  
 11 any of the Iviewit entities formed yet, legally?  
 12 A. They were all formed at that point in  
 13 time.  
 14 Q. That was February of 2001?  
 15 A. Yes.  
 16 Q. Do you know what the first company to be  
 17 formed was?  
 18 A. I'm not certain.  
 19 Q. Okay. How many companies were there total  
 20 at the time you came in, in 2001?  
 21 A. I believe there were five that were active  
 22 at this point in time. Again, I'm operating from  
 23 memory.  
 24 Q. That's fine. I appreciate that.  
 25 A. Could be four.



1 Q. Could you tell me what they were?  
 2 A. Iviewit Holdings, Incorporated; Iviewit  
 3 Technologies, Incorporated; Iviewit.com,  
 4 Incorporated; Iviewit.com, L.L.C.; and there was  
 5 another one, I believe just Iviewit, Incorporated.  
 6 Again, I'm uncertain, once we get down past the top  
 7 three, as to dates and other things.  
 8 Q. So listing those companies doesn't jog  
 9 your memory as to which was the first one that was  
 10 formed or not?  
 11 A. I was not there when they were formed.  
 12 They were all formed when I came on board, so I  
 13 don't know which was formed first.  
 14 Q. Where were these companies located, as far  
 15 the business office?  
 16 A. The business office was in this building,  
 17 2255 West Glades Road. They were in Suite 337W.  
 18 Q. Were there any other addresses that any of  
 19 these entities operated out of?  
 20 A. There was an office in California.  
 21 Q. Is that California office still there?  
 22 A. No, it is not.  
 23 Q. What were the dates when the California  
 24 office was in operation?  
 25 A. The California office, again, operated

1 from memory and approximating, things it was in --  
 2 The office was operating when I came on board in  
 3 February, so I believe it had started either in late  
 4 2000 or early 2001, but I can't say for certain when  
 5 it started. It was there when I got there.  
 6 Q. Which particular entity operated out of  
 7 the California office?  
 8 A. There was no real distinction, entity to  
 9 entity, as to which operated out of where.  
 10 Q. Can you explain what you mean by that?  
 11 A. Well, the California office was  
 12 established to -- Mainly, as my -- as I understood  
 13 it, to do encoding work for Warner Brothers. And in  
 14 addition to that, to serve as a sales base for the  
 15 west coast, particularly the Los Angeles area where  
 16 most of the motion picture industry is located. As  
 17 far as one entity being housed there and the other  
 18 entities being housed here, there was no such  
 19 distinction.  
 20 Q. Is there any distinction with respect to  
 21 paying bills between the companies?  
 22 A. All bills were paid by Iviewit.com,  
 23 Incorporated.  
 24 Q. Why is that?  
 25 A. That was the operating entity, and that

1 was where the expenses in income were all recorded.  
 2 Q. Who signed the checks off the Iviewit.com  
 3 Inc. accounts?  
 4 A. When I came on board, Raymond Hersh did.  
 5 Q. Was there ever a time when you signed the  
 6 checks?  
 7 A. Yes, there was.  
 8 Q. Was it your responsibility to review the  
 9 bills that came in before you were paying them?  
 10 A. When I was signing the checks, yes.  
 11 Q. Do you remember what the dates were when  
 12 you were signing the checks?  
 13 A. I believe it started in August of 2001.  
 14 Q. Until what time?  
 15 A. I still am a signatory on the account.  
 16 Q. You don't recall signing any checks prior  
 17 to August 2001?  
 18 A. No, I was not on the account prior to  
 19 that.  
 20 Q. How many employees did the companies have  
 21 when you came on board?  
 22 A. When I came on board -- It would have been  
 23 approximately 20, when I came on board.  
 24 Q. Were they all located here at 2255 Glades  
 25 Road?

1 A. No.  
 2 Q. How many were here?  
 3 A. Probably 15 here. Again, I'm estimating.  
 4 One in New York; one in Chicago; and two in  
 5 California, so it would be 15 or 16 here.  
 6 Q. Do you know to this date how many  
 7 employees the corporations have?  
 8 A. I don't know today how many they have.  
 9 Q. Who were the people responsible for making  
 10 financial decisions for the companies?  
 11 A. When I came on board?  
 12 Q. Yes.  
 13 A. Brian Utley and Raymond Hersh made  
 14 financial decisions, as well as, of course, the  
 15 board of directors.  
 16 Q. The board of directors was comprised of  
 17 who?  
 18 A. The board of directors was chaired by Si  
 19 Bernstein, Simon L. Bernstein.  
 20 Q. Any other members?  
 21 A. Elliott was on -- Elliott Bernstein was on  
 22 the board. A number of individuals, who I am  
 23 unfamiliar with other than by name, were on the  
 24 board, and I can't remember with certainty those  
 25 names now.

1 Q. Do you know who is on the board now?  
 2 A. No, I don't.  
 3 Q. When we say, on the board, what company  
 4 are we talking about?  
 5 A. We are talking about Iviewit Holdings,  
 6 Incorporated. There were boards of directors for  
 7 the other corporations also, but generally Iviewit  
 8 Holdings, Incorporated being the top dog company.  
 9 That was the board that controlled what the other  
 10 companies did.  
 11 Q. Holdings, Inc. was the company, just to  
 12 clarify, that controlled the other companies, and  
 13 .com, Inc. was the operating entity?  
 14 A. Yes.  
 15 Q. Now, Mr. Utley and Mr. Hersh had financial  
 16 decision-making control of all of these companies,  
 17 is that correct?  
 18 A. They did make financial decisions for all  
 19 the companies, the board of directors also exercised  
 20 oversight.  
 21 Q. And that was from the time you started in  
 22 February 2001?  
 23 A. Yes.  
 24 Q. And to your knowledge, when did Mr. Utley  
 25 and Mr. Hersh not make decisions for the companies?

1 A. Mr. Utley and Mr. Hersh were terminated, I  
 2 believe, the end of March.  
 3 Q. 2001?  
 4 A. Correct.  
 5 Q. Why?  
 6 A. The Board of Directors terminated them.  
 7 I'm uncertain of all the details.  
 8 Q. Do you know when Proskauer Rose first  
 9 became involved with representing Iviewit?  
 10 A. I don't know an exact date. It would be  
 11 very early on in the life of the company.  
 12 Q. Do you know if it was '99 or 2000?  
 13 A. I don't know for a fact when it was.  
 14 Q. Do you know who made the decision to hire  
 15 Proskauer Rose?  
 16 A. No, I don't.  
 17 Q. Do you have any knowledge if any other law  
 18 firms were used by the Iviewit companies, besides  
 19 Proskauer?  
 20 A. Other law firms were used, yes.  
 21 Q. Do you recall who they were, what they  
 22 were?  
 23 A. What they were? Foley & Lardner, their  
 24 Milwaukee office was used, did a substantial amount  
 25 of patent work.

1 Q. Do they still represent the Iviewit  
 2 entities?  
 3 A. No, they don't.  
 4 Q. When did they stop representing the  
 5 Iviewit entities?  
 6 A. It would have been in the Summer of 2001,  
 7 I believe.  
 8 Q. Do you know why that was that they stopped  
 9 representing the Iviewit companies?  
 10 A. I'm not certain of all the details of  
 11 that.  
 12 Q. Did it have to do with the bills?  
 13 MR. SELZ: Objection, calls for  
 14 speculation.  
 15 BY MR. PRUSASKI  
 16 Q. You can answer.  
 17 A. There was -- There were substantial  
 18 amounts of money outstanding. There was also an  
 19 amount of inaction on the part of the firm that was  
 20 unsatisfactory, and the patent work was given to  
 21 another firm.  
 22 Q. Did Foley & Lardner terminate the  
 23 representation of the Iviewit companies or did  
 24 someone in Iviewit terminate the representation of  
 25 the Foley & Lardner?

1 A. I don't know who did the termination.  
 2 Q. Do you know how much was owed at the time  
 3 the termination stopped?  
 4 A. I believe it was in the neighborhood of  
 5 \$170,000.  
 6 Q. Do you know if that money has been paid?  
 7 A. I don't know if it has or has not.  
 8 Q. Do you know if Foley & Lardner sued for  
 9 that money?  
 10 A. To the best of my knowledge -- or to my  
 11 knowledge, they had not sued. I'm not aware of a  
 12 lawsuit.  
 13 Q. Are there any other law firms besides  
 14 Foley & Lardner?  
 15 A. That Iviewit has used?  
 16 Q. Yes.  
 17 A. Yes. There was a firm -- I'm not certain  
 18 of the full name of it -- Meltzer, Lippe, L-I-P-P-E,  
 19 I believe, and a number of other names in New York,  
 20 which I believe also served as patent counsel for a  
 21 while prior to Foley & Lardner.  
 22 Q. Prior to Foley & Lardner, do you remember  
 23 what the dates were?  
 24 A. No, I don't.  
 25 Q. Do you know why Foley & Lardner was used

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1 instead of Meltzer & Lippe?  
 2 A. I don't know why.  
 3 Q. Do you know if it was over the bills?  
 4 A. I don't know why the decision was made to  
 5 move it to Foley & Lardner.  
 6 Q. Do you know what the name of the Iviewit  
 7 company that retained Proskauer was?  
 8 A. No, I don't.  
 9 Q. Do you know what -- for what purpose  
 10 Proskauer was hired to represent Iviewit?  
 11 (Thereupon, a fire alarm sounded.)  
 12 MR. SELZ: Fire alarm.  
 13 MR. PRUSASKI: Let's just go off the  
 14 record for a second.  
 15 (Thereupon, a short recess was taken.)  
 16 BY MR. PRUSASKI  
 17 Q. Before the break we were discussing former  
 18 law firms that were used by Iviewit.  
 19 A. Yes.  
 20 Q. We left off with Meltzer & Lippe --  
 21 A. Yes.  
 22 Q. -- who was brought in, I believe you  
 23 indicated, before Foley & Lardner?  
 24 A. They -- Yeah. I believe they were before  
 25 Foley & Lardner.

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1 Q. Do you recall any other firms after Foley  
 2 & Lardner?  
 3 A. Yes. There is a firm on the west coast  
 4 that took over the patent work from Foley & Lardner.  
 5 Q. What was the name of that firm?  
 6 A. I'm drawing a blank on it right now.  
 7 Q. Do you know what city it's located in?  
 8 A. It's located in Los Angeles.  
 9 Q. If the name of the firm pops in your head  
 10 during this deposition, would you please let me  
 11 know?  
 12 A. Yes.  
 13 Q. Okay. Thank you. And they handled patent  
 14 work?  
 15 A. They handled patent work.  
 16 Q. Were there any firms after the Los Angeles  
 17 firm?  
 18 A. Handling patent work?  
 19 Q. Yeah.  
 20 A. No. Not -- Let's put it this way, not to  
 21 the best of my knowledge.  
 22 Q. Do you know what the dates when the Los  
 23 Angeles firm represented Iviewit were?  
 24 A. I believe they would have taken over in  
 25 the Summer of 2001, when Foley & Lardner -- when the

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1 engagement with Foley & Lardner was terminated.  
 2 Q. And you don't recall who terminated that  
 3 engagement?  
 4 A. No, I don't.  
 5 Q. Do you know who terminated the engagement  
 6 of the Los Angeles firm?  
 7 A. I don't know that the engagement of the  
 8 Los Angeles firm has been terminated.  
 9 Q. Do you know of any other firms after the  
 10 Los Angeles firm that represented Iviewit in any  
 11 way?  
 12 A. In any way? After the -- Well, not after  
 13 the Los Angeles firm. The Los Angeles firm was  
 14 engaged to handle patent work. There were other  
 15 firms that were engaged for other matters.  
 16 Q. What were they?  
 17 A. There was a firm that is here in Boca,  
 18 Sachs, Sax & Klein, that was brought in initially to  
 19 respond to a letter from an attorney representing  
 20 Brian Utley, Raymond Hersh, and Mike Reale.  
 21 Q. What else did Spencer Sach's office do for  
 22 Iviewit?  
 23 A. They also represented Iviewit in the  
 24 lawsuit brought by Proskauer.  
 25 Q. Do they still represent Iviewit in any

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1 way?  
 2 A. No, they do not.  
 3 Q. Do you know why that representation was  
 4 terminated?  
 5 A. Nonpayment of fees.  
 6 Q. Have they sued?  
 7 A. No.  
 8 Q. What other law firms represented Iviewit?  
 9 A. Furr & Cohen.  
 10 Q. Is that here in Boca?  
 11 A. Yes, they were here in Boca.  
 12 Q. What type of work did they do?  
 13 A. They are a -- They do bankruptcy work.  
 14 Sachs, Sax & Klein referred --  
 15 Q. Excuse me. Come in.  
 16 (Thereupon, a discussion was held off the  
 17 record.)  
 18 BY MR. PRUSASKI  
 19 Q. You were saying that Furr & Cohen did some  
 20 bankruptcy work for Iviewit?  
 21 A. Yes. Yeah, Sachs, Sax & Klein referred  
 22 Iviewit to Furr & Cohen when the matter involving  
 23 Utley and others became a bankruptcy matter.  
 24 Q. Do you know who represents Iviewit in the  
 25 bankruptcy court?

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1 A. Today?  
 2 Q. Yes, sir.  
 3 A. No, I don't.  
 4 Q. What about when Hersh filed the  
 5 involuntary bankruptcy petition?  
 6 A. At that time it was Brad Slayberg from  
 7 Furr & Cohen.  
 8 Q. Do you know if they represent Iviewit now  
 9 or is that representation with Furr & Cohen  
 10 terminated?  
 11 A. I believe that representation is  
 12 terminated, yes.  
 13 Q. And why do you believe that?  
 14 A. The last discussions we had relative to  
 15 bankruptcy they were concerned because they had  
 16 not -- The bills had not been paid and they were  
 17 petitioning to get out of the case.  
 18 Q. Do you know if Sachs' office and Furr &  
 19 Cohen are considered creditors in the bankruptcy  
 20 petition?  
 21 A. They were not at the time I was involved.  
 22 I don't know today.  
 23 Q. Getting back to Proskauer's representation  
 24 of Iviewit, do you know why Proskauer was hired by  
 25 Iviewit?

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1 A. No. I don't know specifically why, no.  
 2 Q. Did you form an opinion or understanding  
 3 as to why they were hired after you started working  
 4 for the companies?  
 5 A. The relationship was one of general  
 6 legal - corporate legal work, as far as I saw it. I  
 7 don't know what influenced the decision to retain  
 8 Proskauer versus another firm.  
 9 Q. Besides general legal corporate work, what  
 10 other types of work did Proskauer do for the Iviewit  
 11 companies?  
 12 A. I am -- I believe there was some patent  
 13 work early on, but I'm not certain of the nature of  
 14 it. Knowing again, it was long before my time and  
 15 it would have been early on in the relationship, so  
 16 I'm not sure what went on at that point.  
 17 Q. It was -- Whatever patent work was done by  
 18 Proskauer you are saying was done before  
 19 February 2001?  
 20 A. Yes.  
 21 Q. Do you have any recollection of what that  
 22 was?  
 23 A. No, I don't, other than -- Well, no, I  
 24 really don't. It was all -- It all happened long  
 25 before my time.

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1 Q. So to your knowledge, Foley & Lardner, and  
 2 Meltzer & Lippe, and the Los Angeles firms did the  
 3 patent work for the Iviewit companies?  
 4 A. That's correct.  
 5 Q. Who at Iviewit was responsible for  
 6 directing Proskauer do the work?  
 7 A. I believe Brian Utley was.  
 8 Q. Would you describe Brian as the main  
 9 contact between Iviewit and Proskauer?  
 10 A. It appeared that way when I came on board,  
 11 although again various -- various people at Iviewit  
 12 would have contact with Proskauer regarding  
 13 particular items.  
 14 Q. Do you recall who the attorneys at  
 15 Proskauer were that did the work for Iviewit  
 16 companies?  
 17 A. Chris Wheeler was involved, Rocky  
 18 Thompson -- Was his first name Donald?  
 19 Q. Yes.  
 20 A. Rocky did some corporate work while I was  
 21 there. I'm trying to think. And then anyone else  
 22 would have just been -- Those were the two that I  
 23 had spoken to, two attorneys. The rest would have  
 24 just been names on bills, old bills that I had  
 25 looked at. So there were a number of -- number of

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1 attorneys whose names appeared on bills that we had  
 2 in the file.  
 3 Q. Did you look at the bills while you were  
 4 with Iviewit?  
 5 A. Yes, I did.  
 6 Q. Did you review the bills before they came  
 7 in?  
 8 A. The ones that came in while I was there, I  
 9 reviewed.  
 10 Q. And at the time you were there was  
 11 February 2001 --  
 12 A. Yes.  
 13 Q. -- to the time Proskauer stopped  
 14 representing Iviewit?  
 15 A. Correct, yes.  
 16 Q. During that time you reviewed all the  
 17 Proskauer bills?  
 18 A. Yes.  
 19 Q. Did anyone else review the bills?  
 20 A. Yes, Raymond Hersh also looked at them and  
 21 I believe Brian Utley looked at them too.  
 22 Q. Who made the decision to pay the bills?  
 23 A. It would have been Raymond or Brian, based  
 24 on what they looked at on the bills.  
 25 Q. Did you have any say as to whether the

1 bills were paid or not?  
 2 A. At the time I came on board, I wasn't  
 3 familiar enough with the work that Proskauer was  
 4 doing to really enter into that decision.  
 5 Q. Do you have any idea how much the Iviewit  
 6 entities did pay Proskauer?  
 7 A. Paid to Proskauer?  
 8 Q. Yeah, being the accountant.  
 9 A. Difficulty recalling the exact number. I  
 10 did know at one time what was paid versus what  
 11 was --  
 12 Q. Can you recall a ballpark figure?  
 13 A. I would say it would be between 500,000  
 14 and 1 million.  
 15 Q. Who made the decision to pay those bills  
 16 that were paid?  
 17 A. Most of them were paid prior to my coming  
 18 on board, so I don't know who made the decision.  
 19 Q. Who had the financial authority to pay  
 20 those bills before you came on board?  
 21 A. I believe Brian Utley and Raymond Hersh.  
 22 Q. Did there ever come a time where  
 23 Iviewit -- Strike that.  
 24 The current bills that are the subject of  
 25 the lawsuit we are here on today, do you have any

1 idea why those bills weren't paid?  
 2 A. I believe they were unpaid primarily  
 3 because the company didn't have money to pay them.  
 4 Q. Are there any other reasons that you are  
 5 aware of that the bills were not paid?  
 6 A. Not that I'm aware of, no.  
 7 Q. Have you ever heard anybody -- Strike  
 8 that.  
 9 What entity paid the checks for the  
 10 Proskauer -- wrote the checks for the Proskauer  
 11 bills?  
 12 A. In the period of time that I was there, it  
 13 would have been Iviewit.com, Incorporated.  
 14 Q. Were the bills sent to Iviewit.com,  
 15 Incorporated?  
 16 A. Were the bills billed?  
 17 Q. Yes.  
 18 A. Was the name on --  
 19 Q. That's a good point you are making. Thank  
 20 you.  
 21 A. Yeah. I don't know. I'm trying to  
 22 remember now exactly which entity they were billed  
 23 to. I don't know for certain. Again, I would have  
 24 to -- would have to go look at them to tell you  
 25 which one of the entities they were billed to or if

1 they were billed to various of the entities. I  
 2 really don't know.  
 3 Q. Do you remember how often the bills were  
 4 received from Proskauer?  
 5 A. I believe they came in on a monthly basis.  
 6 Q. When they came in you would review them?  
 7 A. In the time that I was there, yes.  
 8 Q. Which is February 2001 to --  
 9 A. Correct.  
 10 Q. -- the time of the lawsuit?  
 11 A. Yes. There wasn't a whole lot of  
 12 activity, you know -- Let's -- There wasn't a whole  
 13 lot of activity with Proskauer Rose after I came on  
 14 board, after February of 2001.  
 15 Q. Okay. Do you recall that when you came to  
 16 Iviewit in February 2001 were they behind on  
 17 Proskauer's bills?  
 18 A. I believe they were, yes.  
 19 Q. Do you know how much?  
 20 A. I don't know the exact number at that  
 21 point in time.  
 22 Q. Do you have any idea why they were behind  
 23 on the bills?  
 24 A. The company was generally behind. Again,  
 25 it was an investor-funded company, and the money was

1 -- money was always tight, money coming from the  
 2 investors.  
 3 Q. Do you recall there ever being problems  
 4 with the bills when you would receive them?  
 5 A. Problems?  
 6 Q. Yes.  
 7 A. The bills that I received?  
 8 Q. Yes.  
 9 A. No.  
 10 Q. If there were a problem with the bills,  
 11 who would handle the problem from Iviewit?  
 12 MR. SELZ: Object to the form of the  
 13 question.  
 14 THE WITNESS: I'm uncertain. I believe --  
 15 I'm uncertain as to who would have handled them  
 16 prior to my getting involved. And I really  
 17 didn't see any problems, because it was very  
 18 little activity after I got involved.  
 19 BY MR. PRUSASKI  
 20 Q. Have you ever seen any documents  
 21 indicating that there were past problems with  
 22 Proskauer's bills that Iviewit had?  
 23 A. Have I seen documents indicating that?  
 24 Q. Yes.  
 25 A. Yes.

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1 Q. What did you see?  
 2 A. The only one that I saw was a letter in  
 3 the Proskauer file from Brian to Chris Wheeler,  
 4 Brian Utley to Chris Wheeler, objecting to a number  
 5 of items on a bill.  
 6 Q. On one bill?  
 7 A. On one bill, yes.  
 8 Q. Do you remember anything about that  
 9 particular bill?  
 10 A. No, I don't.  
 11 Q. Now, this file that you reviewed that had  
 12 this letter in it --  
 13 A. Yes.  
 14 Q. -- how many different objections to bills  
 15 did you see in it? Was it just the one letter?  
 16 A. That really was the only one I saw in that  
 17 file.  
 18 Q. Do you have that letter?  
 19 A. No, I don't.  
 20 Q. Where is it?  
 21 A. I don't know.  
 22 Q. Where did you see it?  
 23 A. I saw it in the Iviewit offices when I had  
 24 these files.  
 25 Q. Do you recall the month and the year when

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1 you saw the letter?  
 2 A. It would have been in -- Sometime in the  
 3 Summer of 2001. I can't give you an exact month,  
 4 but it would have been somewhere around then. It  
 5 was when -- I came across it while I was doing a  
 6 reconciliation of the bills in reference to the  
 7 Proskauer lawsuit.  
 8 Q. What were the results of that  
 9 reconciliation?  
 10 A. The results of the reconciliation was I  
 11 was able to find support for the amounts that  
 12 Proskauer was claiming.  
 13 Q. What do you mean by that?  
 14 A. In the billing file I was able to find  
 15 bills that corresponded to those that Proskauer  
 16 indicated were outstanding.  
 17 Q. So did that indicate to you that Iviewit  
 18 had received the bills?  
 19 A. Yes.  
 20 Q. How many objections were there, total,  
 21 written to those bills?  
 22 A. I believe there was just that one letter.  
 23 That was the only one I saw. Now, bear in mind that  
 24 this was a billing file and simply a file of  
 25 invoices, and it's entirely possible we don't know

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1 what else might have been out there. So this was  
 2 not a file -- You know, I cannot say that there  
 3 weren't other objections.  
 4 Q. So just to clarify that, the invoices that  
 5 were attached to the Proskauer lawsuit during the  
 6 reconciliation, you determined they were received?  
 7 A. Yes.  
 8 Q. Let's spend a few minutes talking about  
 9 the different entities.  
 10 A. Yes.  
 11 Q. Iviewit.com, Incorporated, we are going to  
 12 talk about that entity. I believe you indicated  
 13 that was the operations company?  
 14 A. Correct.  
 15 Q. Do you recall when it was formed?  
 16 A. The middle of 1999, I believe.  
 17 Q. Did Proskauer have anything to do with  
 18 forming that entity?  
 19 A. I believe they were involved in the  
 20 formation of it, yes. Though I can't say with  
 21 absolute certainty, but I believe they did.  
 22 Q. Do you know if this entity was formed  
 23 after Proskauer was hired to represent Iviewit?  
 24 A. I don't know the timing of what went on  
 25 when things were -- Again, it was all put together

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1 in the middle of -- in the Summer of 1999. At that  
 2 time, I was not involved with the company, so I  
 3 can't give you details of the -- of what preceded  
 4 what.  
 5 Q. Do you recall who the principals of  
 6 Iviewit.com, Inc. were?  
 7 A. At the time it was formed, I believe --  
 8 Again, I know that, of course, Brian Utley and  
 9 Elliott Bernstein would have been involved. I'm  
 10 uncertain as to what their capacities were. And in  
 11 fact, I'm not even absolutely certain that Brian was  
 12 around when it was formed. He may have come in  
 13 afterwards.  
 14 Q. What is the status of Iviewit.com, Inc.  
 15 now?  
 16 A. The status of Iviewit.com, Inc. as to it  
 17 exists. It probably -- I don't know, specifically,  
 18 anything about it.  
 19 Q. Does Mr. Lamont have anything to do with  
 20 it currently?  
 21 A. I don't know. Technically, if he does,  
 22 other than through his relationship with the holding  
 23 company -- I don't know how all of this is  
 24 structured today, and what may have taken place,  
 25 that I'm not aware of.

1 Q. Did Proskauer Rose perform any work for  
 2 Iviewit.com, Inc.?  
 3 A. I suspect they did. Although, without  
 4 looking at the bills, I can't say for sure which  
 5 entity. You know, I can't say with absolute  
 6 certainty that they performed work. You know,  
 7 again, I don't really know. I know they performed  
 8 work generally for the interests that were  
 9 represented there. Whether they actually performed  
 10 work in that company or not I'm unclear as to.  
 11 Q. Do you know who formed Iviewit Holdings,  
 12 Inc.?  
 13 A. I believe it would have been -- Well, it  
 14 would have been Elliott and Simon Bernstein and some  
 15 other individuals.  
 16 Q. Did Proskauer Rose have anything to do  
 17 with forming that entity?  
 18 A. I'm not certain whether they did or didn't  
 19 at that time.  
 20 Q. Do you know if Proskauer performed any  
 21 work for that entity?  
 22 A. For Iviewit Holdings?  
 23 Q. Yes.  
 24 A. Yes, I believe they did.  
 25 Q. Do you know what they did?

1 A. I know they did general corporate work.  
 2 Q. Now, the work that was performed for  
 3 Iviewit Holdings, Inc., was that billed to  
 4 Iviewit.com, Inc.? How did the bills work?  
 5 A. My recollection of it is the bills came to  
 6 the different entities, but again it's only a  
 7 recollection. You know, I'm hesitant to say with  
 8 absolute certainty that, you know, all bills. Let  
 9 me get a glass of water while he's getting that out.  
 10 Q. Sure.  
 11 (Thereupon, a discussion was held off the  
 12 record.)  
 13 (Whereupon, Plaintiff's Exhibit No. 1 was  
 14 marked for identification by the reporter.)  
 15 BY MR. PRUSASKI  
 16 Q. I'm going to show you a document,  
 17 Mr. Kasser, that's marked Plaintiff's Exhibit No. 1,  
 18 and I will ask you to take an opportunity to look at  
 19 that.  
 20 A. Okay.  
 21 MR. PRUSASKI: I brought copies of  
 22 everything for you.  
 23 MR. SELZ: Okay. Great.  
 24 BY MR. PRUSASKI  
 25 Q. I will ask you to look at that and tell me

1 if you have ever seen it before.  
 2 A. Yes, I have.  
 3 Q. When did you first see it?  
 4 A. Probably shortly after it was served on  
 5 us, late Summer of 2001.  
 6 Q. Did you utilize the invoices attached to  
 7 this document to perform your reconciliation that  
 8 you mentioned a little while ago?  
 9 A. I had already -- Prior to this document  
 10 coming in, I had already reconciled the account to  
 11 what Proskauer had claimed, so I just went through  
 12 my copy of this to see that the invoices, which are  
 13 only the first pages of invoices, corresponded to  
 14 what I had.  
 15 Q. When you did your reconciliation -- When  
 16 you performed your reconciliation --  
 17 A. Yeah.  
 18 Q. -- shortly after the lawsuit was filed --  
 19 A. Yeah.  
 20 Q. -- who asked you to perform the  
 21 reconciliation?  
 22 A. Ross Miller.  
 23 Q. What was his role in the company?  
 24 A. Ross Miller was functioning as a  
 25 consultant to the company at the time, I believe.

1 Q. When did he come aboard?  
 2 A. Ross Miller came aboard when the  
 3 management - Brian Utley, Raymond Hersh, Mike Reale,  
 4 R-E-A-L-E, and others - were terminated.  
 5 Q. Where does Mr. Reale live? I forgot to  
 6 ask you.  
 7 A. He lives in Delray Beach.  
 8 Q. Do you know his address, off the top of  
 9 your head?  
 10 A. Not off the top of my head.  
 11 Q. Phone number?  
 12 A. No, I don't know that either.  
 13 Q. Wife's name?  
 14 A. No.  
 15 Q. Street name?  
 16 A. No.  
 17 Q. Okay.  
 18 A. Michael Reale is all I can tell you.  
 19 Q. Okay. That's fine. Thank you.  
 20 Did you -- Who did you tell the results of  
 21 the reconciliation to?  
 22 A. To Mr. Miller.  
 23 Q. Anyone else?  
 24 A. I don't recall telling anyone else.  
 25 Q. Do you recall what you told Mr. Miller

1 about your investigation?  
 2 A. I told Mr. Miller that I had gone through  
 3 the file of invoices and I had determined and also I  
 4 had gone through the accounts payable records and  
 5 determined that the amounts shown, the invoices  
 6 shown were -- had been recorded into accounts  
 7 payable, and that we had those invoices in our file,  
 8 and that they represented invoices that we had  
 9 received from Proskauer.  
 10 Q. Was it your understanding, during the  
 11 reconciliation process, that you had the complete  
 12 file at your disposal to use?  
 13 A. It was my understanding, yes, that that  
 14 was the -- Well, it was the invoice file. It was  
 15 the accounts payable file, the file into which  
 16 invoices received would be placed.  
 17 Q. And you only found that one letter from  
 18 Utley of objection?  
 19 A. That was stuck in the file.  
 20 Q. Okay. Was that where the letter would  
 21 usually be kept?  
 22 A. No.  
 23 Q. Where would they usually be kept?  
 24 A. My -- Again, my understanding of things,  
 25 and having come in late in the relationship with

1 Utley and the others, I suspect Utley -- And again,  
 2 his secretary being the primary administrative  
 3 person -- may have had files that would have been  
 4 shipped to California when they terminated or at  
 5 least we believed they were shipped to California  
 6 when Utley was terminated.  
 7 Q. Have you ever heard of other letters  
 8 expressing an objection to the Proskauer bills?  
 9 A. I don't recall hearing of other letters.  
 10 Q. If you look at Exhibit 1 in the invoices  
 11 attached to it -- And you indicated you have seen  
 12 this document before. If you look at the invoices,  
 13 does that assist your recollection as to how  
 14 Proskauer sent the bills?  
 15 A. Most of them appear to be addressed to  
 16 Iviewit.com.  
 17 Q. Inc.?  
 18 A. Uh-huh.  
 19 Q. I believe you indicated that both of the  
 20 bills that were sent to Iviewit were sent to that  
 21 entity?  
 22 A. Yeah. That was the operating entity  
 23 again.  
 24 Q. Did anyone from Iviewit ever object to  
 25 Proskauer sending the bills to Iviewit.com, Inc.?

1 MR. SELZ: Object to the form of the  
 2 question.  
 3 THE WITNESS: I don't know.  
 4 BY MR. PRUSASKI  
 5 Q. I'm sorry. What was your answer?  
 6 A. I don't know.  
 7 Q. Moving back to what we were talking about  
 8 before, I showed the exhibit to Iviewit Holdings,  
 9 Inc. --  
 10 A. Uh-huh.  
 11 Q. -- you indicated that Proskauer performed  
 12 some general corporate work for that entity.  
 13 A. Uh-huh.  
 14 Q. Do you recall specifically what type of  
 15 work was performed?  
 16 A. Specifically, I don't. Almost all the  
 17 work had been done before I got there.  
 18 Q. Who was making the decisions that  
 19 Iviewit -- for Proskauer to perform work for Iviewit  
 20 Holdings, Inc.?  
 21 A. I believe it would have been Brian Utley.  
 22 Q. Do you know what the current status of  
 23 Holdings, Inc. is?  
 24 A. No, I don't.  
 25 Q. You mentioned a little while ago that

1 Steven Lamont had something to do with that company?  
 2 A. Yes.  
 3 Q. Do you have any idea, as you sit here  
 4 today, what they are doing, what their future  
 5 business plans are?  
 6 A. No, I don't.  
 7 Q. Iviewit Technologies, Inc. --  
 8 A. Yes.  
 9 Q. -- a few questions about that entity.  
 10 A. Okay.  
 11 Q. When was it formed, do you know?  
 12 A. I believe it was formed in the Summer of  
 13 1999. I can't be more specific than that.  
 14 Q. Did Proskauer have anything to do with its  
 15 formation?  
 16 A. Again, I don't know.  
 17 Q. Do you know if Proskauer performed any  
 18 work for Iviewit Technologies, Inc.?  
 19 A. I don't know for sure if they did or not.  
 20 Q. What is the current status of Iviewit  
 21 Technologies, Inc.?  
 22 A. I don't know.  
 23 Q. Were you satisfied with Proskauer's  
 24 representation with the Iviewit companies?  
 25 A. Again, having come in late in the process,



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1 I can't say one way or another. I can't evaluate  
 2 the work that they did.  
 3 Q. Do you know if others in the company were  
 4 satisfied with the services?  
 5 A. I didn't hear of any objections from the  
 6 management. Again, I -- The management that was in  
 7 place at the time, Utley, Hersh, and others. I know  
 8 that Elliott Bernstein has voiced some objections.  
 9 Q. What have you heard from Elliott  
 10 Bernstein?  
 11 A. Really nothing, other than knowing that he  
 12 had concerns about the work. At times it came  
 13 rather late in the relationship with the company.  
 14 Really, I don't have any specifics that I can tell  
 15 you, other than he had some displeasure with the  
 16 work.  
 17 Q. What specifically about the work was he  
 18 not happy with?  
 19 A. I can't say. I really can't say. Again,  
 20 my relationship with Elliott has been limited,  
 21 particularly of late, and there isn't much I can  
 22 tell you.  
 23 Q. Did you hear him make these comments  
 24 before or after the lawsuit was filed?  
 25 A. It would have been after the lawsuit,

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1 quite a while after really.  
 2 Q. Did you -- That was the first time you had  
 3 ever heard anyone involved with the companies in any  
 4 way object to the work Proskauer did?  
 5 A. I think there were some concerns that Si  
 6 Bernstein may have voiced earlier on as to the  
 7 volume of work, amounts of the bills, but that also  
 8 would have been around the time of the lawsuit.  
 9 Again, bear in mind that I came on board right  
 10 around this time. I don't have -- Again, I don't  
 11 have a lot of history of the company. If I had been  
 12 around since 1999, I might have known other things,  
 13 so a lot of -- I really just don't have a lot of  
 14 information as to how people felt in terms of the  
 15 lawsuit.  
 16 Q. But all these comments, you heard them  
 17 after the lawsuit was filed?  
 18 A. Correct.  
 19 Q. Is it in Si Bernstein's nature to complain  
 20 about bills?  
 21 A. Maybe. Nobody likes bills.  
 22 Q. Did Si Bernstein complain a lot about  
 23 bills?  
 24 A. No, not particularly. Again, most of my  
 25 relationship with Si Bernstein dealt with other

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1 things other than Proskauer.  
 2 Q. Uh-huh. I'm concerned as to whether Si  
 3 Bernstein was complaining, if he was complaining,  
 4 about the amount of bills or the work as reflected  
 5 in the bills?  
 6 A. He may have been complaining about both.  
 7 Again, I know that he did have some discussions with  
 8 Ross Miller, that I was not party to, but the  
 9 complaints that I heard were more general and  
 10 nothing specific.  
 11 Q. General as in --  
 12 A. No.  
 13 Q. -- these bills are too expensive?  
 14 A. Yeah. And it may have been that the work  
 15 wasn't what they wanted.  
 16 Q. Well, when you say it may have been --  
 17 A. I don't know.  
 18 Q. -- are you speculating?  
 19 A. Yeah. We did not sit down and go over  
 20 bill by bill, look at it item by item, and say this  
 21 item is, you know, something that we object to. We  
 22 don't think this was any good. This one is too  
 23 high. It couldn't have taken eight hours to do this  
 24 type of work. We didn't do any of that. We --  
 25 Q. Do you know if Si or Elliott has ever sat

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1 down and scrutinized these bills after the lawsuit  
 2 was filed?  
 3 A. I don't know if they have.  
 4 Q. Do you know why Proskauer stopped  
 5 representing Iviewit?  
 6 A. I believe it was over the payment of  
 7 bills.  
 8 Q. Is there a time when Iviewit stopped  
 9 paying Proskauer that you are aware of?  
 10 A. It would have been in the -- Sometime in  
 11 the Spring or early Summer of 2001.  
 12 Q. Why did they stop paying Proskauer's  
 13 bills?  
 14 MR. SELZ: Asked and answered.  
 15 BY MR. PRUSASKI  
 16 Q. You can answer the question.  
 17 A. I believe it was because we had no money.  
 18 Q. Was there a meeting held to where it was  
 19 decided that the bills wouldn't be paid?  
 20 A. In the Summer of 2001 we were receiving  
 21 funding in small amounts from our principal  
 22 investor, and at that time we were making on-account  
 23 payments to creditors who we were concerned about in  
 24 hopes of avoiding the problems that would in effect  
 25 lawsuits and so on, that would make it difficult to

1 find new investment or bring new investment into the  
2 company.

3 Q. Was Proskauer considered one of those  
4 creditors that you were concerned about?

5 A. Yes.

6 Q. So who was involved with the decision to  
7 stop paying?

8 A. The decision? Ross Miller would have  
9 been, but it was more a decision simply came by  
10 default. We had no more money coming in from the  
11 investors, so there was nothing we could do.

12 Q. Was Proskauer sending letters demanding  
13 payment at that point in time?

14 A. Yes.

15 Q. And they were received by the company?

16 A. Yeah.

17 Q. Do you know if anyone in the company ever  
18 sent letters back to Proskauer saying we are not  
19 paying these bills because of this bona fide reason?

20 MR. SELZ: Objection to the form of the  
21 question.

22 THE WITNESS: I'm not aware of any  
23 objection. I know that Ross Miller had  
24 discussion with Chris Wheeler, but I'm not -- I  
25 was not a party to those discussions.

1 BY MR. PRUSASKI

2 Q. Do you know what was discussed, even  
3 though you weren't a party?

4 A. I believe Ross was trying to negotiate a  
5 settlement, and in affect a reduction, try to get a  
6 concession from Chris in exchange for payment now,  
7 which he would then -- The idea was to have some  
8 concessions from the firm here, so that he could go  
9 back to the investors and say they had bills  
10 outstanding for \$369,000.

11 Ross was hopeful of being able to  
12 negotiate some reduced amount that he could go back  
13 to the investor and say they are willing to settle  
14 for whatever this reduced amount is. The investor  
15 would then look at it and pay that amount to make  
16 that liability go away, and save the company from  
17 the obvious problems the lawsuit would create.

18 Q. Do you know if Iviewit ever entered into  
19 any payment arrangements with Proskauer while  
20 Proskauer was representing the company?

21 A. I don't know if there were any formal  
22 payment arrangements made. I do know that there  
23 were on-account payments made.

24 Q. What do you mean by on-account payments?

25 A. In other words, a payment not of specific

1 invoices, but simply a payment made to be applied  
2 generally to the account. Because again, typically  
3 a company would do that if they can't afford to pay  
4 all the amounts due, make a good faith payment of a  
5 certain amount. And there were times when Iviewit  
6 would send say \$20,000 to Proskauer, simply a round  
7 amount of \$20,000.

8 Q. And that was an on-account payment?

9 A. Yes.

10 MR. PRUSASKI: Off the record, please.

11 (Thereupon, a lunch recess was taken.)

12 BY MR. PRUSASKI

13 Q. Mr. Kasser, during the break I made some  
14 notes, so I want to touch on a couple of issues --

15 A. Sure thing.

16 Q. -- in areas that we have already covered,  
17 but questions that I didn't ask.

18 A. Okay. Very good.

19 Q. You talked about Ross Miller a little  
20 while ago.

21 A. Yes.

22 Q. Do you know if he's still affiliated with  
23 Iviewit?

24 A. I believe he is not.

25 Q. What specifically was his role with the

1 company?

2 A. Ross Miller came in at the request of our  
3 lead investor, Cross Bow Ventures, L.L.P., to in  
4 effect run the company after the management had been  
5 terminated.

6 Q. You are referring to Mr. Utley and  
7 Mr. Hersh and --

8 A. And Mr. Reale and the rest of the  
9 employees had also been terminated --

10 Q. I'm sorry to interrupt you.

11 A. No, go ahead.

12 Q. Do you know where Mr. Miller lives now?

13 A. I believe Mr. Miller is still in Atlanta,  
14 Georgia, although I can't give you an address off  
15 the top of my head.

16 Q. You don't recall a phone number for him?

17 A. No, I would have to look it up.

18 Q. Do you know what his wife's name is?

19 A. No, I don't.

20 Q. What company does he work for?

21 A. I don't believe he works for a company. I  
22 think he's self-employed. He was at the time he was  
23 involved with Iviewit.

24 Q. We talked about Foley & Lardner at the  
25 beginning of this deposition --

1 A. Yes.  
 2 Q. -- and their work for Iviewit. You  
 3 indicated, I believe, that they are no longer  
 4 working for Iviewit --  
 5 A. Yes.  
 6 Q. -- is that correct?  
 7 A. That's correct.  
 8 Q. Do you know if the issue of paying of  
 9 their bills was ever resolved?  
 10 A. I don't know if it was ever resolved.  
 11 Q. Was it ever compromised or attempted to --  
 12 Did the company ever attempt to compromise the  
 13 bills?  
 14 A. Not to my knowledge.  
 15 Q. You also mentioned another law firm,  
 16 Meltzer Lippe?  
 17 A. Yes.  
 18 Q. You indicated that they specifically did  
 19 patent work for the companies?  
 20 A. I believe they did. It was already in the  
 21 life of the company.  
 22 Q. Do you know if the company was happy with  
 23 the services provided by that firm?  
 24 A. I don't know.  
 25 Q. Were they satisfied with Foley & Lardner's

1 representation?  
 2 A. I don't know for a fact that they were or  
 3 weren't.  
 4 Q. You indicated that at the time that  
 5 Iviewit stopped paying Proskauer, the primary  
 6 principal was the only one funding, is that Cross  
 7 Bow Ventures?  
 8 A. Yes.  
 9 Q. Where are they located?  
 10 A. They are in West Palm Beach.  
 11 Q. Who are the principals of that company?  
 12 A. I don't know the names of all the  
 13 individuals. Bruce Shoemaker is one name that comes  
 14 to mind. Hank Powell, A. Chickman Powell, III, was  
 15 involved with Cross Bow and was the one who we dealt  
 16 with at Cross Bow. Hank is no longer with Cross  
 17 Bow. You also see Cross Bow referred to as Alpine  
 18 Venture Capital Partners, which I believe is the  
 19 funding entity that we dealt with.  
 20 Q. Where did the principals of Iviewit or the  
 21 officers or directors affiliated with Alpine or  
 22 Cross Bow?  
 23 A. Excuse me?  
 24 Q. Were any of the officers or directors or  
 25 principals of Iviewit companies --

1 A. Yes.  
 2 Q. -- affiliated as officers, directors,  
 3 stockholders of Alpine or Cross Bow?  
 4 A. No. None of the Iviewit people were held  
 5 in positions with Cross Bow.  
 6 Q. Is Cross Bow still funding any of these  
 7 companies, the Iviewit companies?  
 8 A. I don't believe so.  
 9 Q. Why don't you believe so?  
 10 A. They had stopped funding while I was still  
 11 involved. They may have come back in for a while,  
 12 but I doubt it.  
 13 Q. Okay.  
 14 A. I'm not aware of anything.  
 15 Q. We talked about the four different  
 16 companies and what roles they were --  
 17 A. Yes.  
 18 Q. -- affiliated with one another. Can you  
 19 tell me specifically what Iviewit Technologies, Inc.  
 20 does?  
 21 A. Iviewit Technologies -- It gets -- It can  
 22 get a little confusing here, but let me try to  
 23 explain. Approximately -- Iviewit Technologies,  
 24 Incorporated was formed in the early days of the  
 25 life of the company, because Iviewit Holdings,

1 Incorporated originally was to be a subchapter  
 2 s-corporation. And in a subchapter s-corporation,  
 3 only natural persons can be shareholders, and there  
 4 are some other limitations too as to who can be a  
 5 shareholder. Iviewit Technologies was formed as a  
 6 wholly owned -- Well, not wholly owned, I'm sorry.  
 7 It was formed as a subsidiary of Iviewit Holdings,  
 8 Incorporated to allow for the inclusion of investors  
 9 or other entities in ownership who would not qualify  
 10 as shareholders in subchapter s-corporations.  
 11 For currently approximately 92 percent of  
 12 the stock in Iviewit Technologies is held by Iviewit  
 13 Holdings. The other eight percent is held by  
 14 Proskauer Rose and a firm in California, Armstrong,  
 15 Hersh, Jackway, Higherman, and Worthiler, I believe.  
 16 Although, once I get past Armstrong, Hersh, I'm not  
 17 real sure of the rest of the names. And two  
 18 individuals who were not U.S. citizens or who were  
 19 involved in the initial invention, Zack Sirahjee and  
 20 Jude Rosario.  
 21 Q. How do you spell Sirahjee?  
 22 A. S-I-R-A-H-J-E-E. Don't hold me to that,  
 23 it could be wrong. If Zack shows up here some day  
 24 and complains because his name is spelled wrong,  
 25 don't come looking for me. That's as close as I can

1 get. But Zack is one of the people who was involved  
2 in technologies. At the time, I believe, of the  
3 first infusion of cash from an outside investor it  
4 was determined that it would be advisable to bring  
5 the outside investor into holdings, rather than into  
6 technologies, and therefore the s-corp. was  
7 terminated. The outside investor became a  
8 shareholder in holdings and the need for  
9 technologies disappeared.

10 There was an abortive effort begun at some  
11 point to convert the shares of the shareholders in  
12 technologies to holding shares, so that then -- In  
13 other words, so it was begun as a share exchange  
14 agreement, because it was never completed. But the  
15 idea would have been to take the shareholders in  
16 technologies and exchange shares of the holdings for  
17 the technologies shares and then collapse  
18 technologies and just have a straight line from  
19 Iviewit Holdings to Iviewit.com, rather than the  
20 current line that runs through technologies.

21 Now, at some point, if it was ever decided  
22 that it might be advisable to clean things up,  
23 that's something somebody needs to address is to get  
24 those shares converted.

25 Q. Do you know if Proskauer did any work for

1 technologies ever?

2 A. I don't know if Proskauer did any work for  
3 technologies specifically. I suspect they did.  
4 Whether they billed it to .com or not -- Again,  
5 there weren't a lot of -- The distinctions were not  
6 real well defined.

7 Q. Did Holdings or Technologies have bank  
8 accounts?

9 A. They had bank accounts. There was little  
10 activity in them.

11 Q. What is little activity?

12 A. Basically, when I came on board there was  
13 \$100 in each of their bank accounts.

14 Q. Which goes to your previous statement  
15 about little distinction between the companies?

16 A. Yeah. The main action was in the  
17 Iviewit.com, Inc. account. That's where -- That's  
18 where the money came in. That's where it went out.  
19 We made an effort when I came on board, although it  
20 was pretty late in the game at that point, to try to  
21 run the money that -- the investment that came in  
22 for Iviewit Holdings, run it through the Iviewit  
23 Holdings bank accounts. But that simply was an  
24 in-and-out transaction where Iviewit Holdings would  
25 receive say \$100,000 from the investor as a loan.

1 Iviewit Holdings would have of course signed the  
2 note for the loan and the other documentation and  
3 then Iviewit Holdings would turn around and lend the  
4 money to Iviewit.com, Inc. So again, that really  
5 was all Iviewit Holdings was doing there, so the  
6 bank account really wasn't, you know, necessary,  
7 other than for the facts that we pass money across  
8 it to get it down to .com, Inc.

9 Q. So would it be fair to say that Proskauer  
10 Rose was doing most of its work for Iviewit.com,  
11 Inc.?

12 MR. SELZ: Object to the form of the  
13 question.

14 MR. PRUSASKI: Can you specify as to what  
15 the objection is?

16 MR. SELZ: Most of it is work, and as to  
17 what time period -- I think the form of the  
18 question is vague.

19 BY MR. PRUSASKI

20 Q. During the time that Proskauer represented  
21 the Iviewit entities, would it be a fair statement  
22 to say that Proskauer did the majority of its work  
23 for Iviewit.com, Inc.?

24 A. I really can't say, because I wasn't  
25 around for most of the work, so I really don't know

1 which it related to. Again, you know, work that --  
2 You know, I really don't know what distinctions were  
3 made where and how it was handled previously. So  
4 it's hard -- It's difficult really and impossible  
5 for me to say which one of the entities the work was  
6 done for specifically back in the days prior to my  
7 coming on board, which is when the vast bulk of the  
8 work was done. Things had pretty much slowed down  
9 once I came on board in terms of Proskauer work.

10 Q. What is the entity that's now in  
11 bankruptcy?

12 A. I'm not aware of the status of the  
13 bankruptcy case.

14 Q. Which entity was in the bankruptcy case?

15 A. The bankruptcy case that was brought by  
16 Utley, et al?

17 Q. Yeah.

18 A. Okay. They brought their bankruptcy case  
19 against Iviewit.com, L.L.C.

20 Q. Are you aware of any other bankruptcy  
21 cases involving the Iviewit entities?

22 A. I'm not aware of any.

23 Q. Just the one that was brought by Hersh,  
24 Utley?

25 A. Yes.

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1 Q. Is Iviewit.com, L.L.C., to your knowledge,  
 2 still conducting business?  
 3 A. No, it is not.  
 4 Q. When did it stop -- I'm sorry.  
 5 A. To the best of my knowledge and belief,  
 6 it's not conducting any business.  
 7 Q. What type of business did it conduct?  
 8 A. I'm not aware it ever conducted any  
 9 business to speak of in the -- Going back to the  
 10 early days of the company, there were -- As I eluded  
 11 to earlier in the instance of the s-corp. which was  
 12 later determined and the formation of the  
 13 technologies, there were things that were done, sort  
 14 of bits and starts if you will, where I think they  
 15 didn't know quite what form they wanted things to  
 16 take, and so L.L.C. came into being early on in the  
 17 process, but really was not used for very much,  
 18 other than Brian Utley's employment agreement was  
 19 with L.L.C. And the lease the sublease in this  
 20 building, which was with Bank of America, was  
 21 negotiated and signed on behalf of L.L.C.  
 22 Q. Thank you for bringing that up. It's an  
 23 interesting point.  
 24 Why did Iviewit move out of this building  
 25 of 2255 Glades Road?

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1 A. We moved out of the building because our  
 2 lease expired October the 25th. We had moved out  
 3 prior to that actually, because we had no use for  
 4 the space anymore.  
 5 Q. Are we in 2001?  
 6 A. October 25th of 2001, yes, was the  
 7 expiration of the lease -- or the sublease, if you  
 8 will.  
 9 Q. Did they ever attempt to renew the lease  
 10 with the management?  
 11 A. No.  
 12 Q. Was the decision to move out ever have  
 13 anything to do with the rent not being paid on time?  
 14 A. We made the decision to move out because  
 15 we no longer needed the space.  
 16 Q. Where did Iviewit go after 2255 Glades  
 17 Road?  
 18 A. A lot of what was here was shipped to --  
 19 had already been shipped to California, and so I  
 20 took some files that were still in the office here  
 21 and some other items and took them home with me.  
 22 And there are some boxes of files, as I had said  
 23 earlier, in my garage. And I also -- We had a  
 24 refrigerator, a filing cabinet, a couple other  
 25 pieces of furniture that I rented a storage unit for

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1 at a self-storage place called Boca Storage. And I  
 2 have since turned the storage unit over to Ted  
 3 Bernstein, since he can use it personally. And Ted  
 4 has now those items that were in the storage unit.  
 5 They are still in the storage unit. He has it now.  
 6 Q. During the time that Iviewit occupied the  
 7 space at 2255 Glades Road, were all the files kept  
 8 here, at that office?  
 9 A. I cannot say with absolute certainty they  
 10 were.  
 11 Q. You indicated you performed that  
 12 reconciliation in or around May or June of 2001?  
 13 A. Yes.  
 14 Q. Did you perform them here at 2255 Glades  
 15 Road?  
 16 A. Yes.  
 17 Q. Okay. All the files that you needed to  
 18 conduct that reconciliation were located in that  
 19 office?  
 20 A. The accounts payable files were located  
 21 here, and that was, again, what I needed to perform  
 22 the reconciliation. Again, I was able to find  
 23 invoices for each of the items, detailed invoices  
 24 for each of the items that were on the account.  
 25 Q. Listed in the complaint?

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1 A. Yeah. If you look at -- I also was able  
 2 to, of course, track payments that were shown.  
 3 You'll see, if you read through, there are some  
 4 statements in there that show payments coming in.  
 5 Q. If you look at the last page of Exhibit 1,  
 6 which is Exhibit B to the amended complaint --  
 7 A. Yeah.  
 8 Q. -- does that final account total of  
 9 \$369,000 to your recollection -- Was that the amount  
 10 that Iviewit --  
 11 A. Yes.  
 12 Q. -- indicated that it owed when you did the  
 13 reconciliation?  
 14 A. Yes. 369 is the amount.  
 15 Q. So Iviewit -- When you did your  
 16 reconciliation, Iviewit's statements showed there  
 17 were open invoices for that amount?  
 18 A. Right. Yes. Those were the open invoices  
 19 I was able to find. Yes, sir. In fact -- Well,  
 20 let's -- I was able to find the open invoices that  
 21 Proskauer shows here.  
 22 Q. Are you aware of any instances that  
 23 Proskauer ever billed for work that wasn't actually  
 24 performed?  
 25 A. I'm not aware of any.

1 Q. You never saw correspondence or documents  
2 in Iviewit's files indicating otherwise?

3 A. Other than that one letter that I spoke of  
4 earlier, which disputed some items, I had not seen  
5 any other files.

6 Q. I think you indicated that Brian Utley was  
7 the president of Iviewit.

8 A. Yes.

9 Q. Which particular companies was he the  
10 president of?

11 A. I believe all of them; Iviewit Holdings,  
12 Iviewit Technologies, and Iviewit.com, Inc.

13 Q. Okay. Other than the Proskauer Rose  
14 lawsuit that we are here on today and the  
15 involuntary bankruptcy petition that Brian Utley is  
16 involved in --

17 A. Yes.

18 Q. -- sir, are you aware of any other court  
19 proceedings involving Iviewit or other lawsuits?

20 A. I'm not aware of any.

21 Q. Do you have any idea what witnesses  
22 Iviewit plans on having testify at the trial in this  
23 case, who they are?

24 A. No, I'm not.

25 Q. Do you know if there's any other people

1 that we didn't talk about today or specifically  
2 mention that have any knowledge about this lawsuit  
3 or the claims in the lawsuit?

4 A. I suspect Elliott Bernstein would have  
5 some knowledge of the claims. I don't think we have  
6 talked about him.

7 Q. Do you know what he's planning on  
8 testifying about?

9 A. No, I don't. I don't know that he's  
10 planning on testifying.

11 Q. I mean, based on your relationship with  
12 him, can you tell me what you think that he's  
13 planning on testifying about in this case?

14 A. Anything that I would say would be  
15 speculation, because my relationship with Elliott is  
16 not that close and has not been very close of late  
17 at all. I haven't spoken to him in a while.

18 Q. Can I ask you the same question for Si  
19 Bernstein?

20 A. Yes. Again, with Si, I don't know of any  
21 specific complaints that he may have. We really  
22 haven't talked about them, other than just some  
23 generalities. Most of my relationship with Si  
24 focussed on other things in the insurance business  
25 specifically. It had nothing to do with Iviewit.

1 Q. I'm going to show you a document that I  
2 want to mark as Plaintiff's Exhibit Number 2.

3 (Whereupon, Plaintiff's Exhibit No. 2 was  
4 marked for identification by the reporter.)

5 BY MR. PRUSASKI

6 Q. I'm going to ask you to take your time and  
7 look at that document and tell me if you have ever  
8 seen it before?

9 While you are looking at that, I will step  
10 outside for about 30 seconds. We can go off the  
11 record.

12 A. Okay.

13 (Thereupon, a discussion was held off the  
14 record.)

15 BY MR. PRUSASKI

16 Q. Before we talk about Exhibit 2 -- We're  
17 back on the -- I just want to ask you a couple of  
18 follow-up questions.

19 A. Sure.

20 Q. You indicated that there was an abortive  
21 effort to convert shares in Iviewit Technologies to  
22 Iviewit Holdings that was never completed?

23 A. That's correct.

24 Q. Who did the legal work for that?

25 A. I'm not certain.

1 Q. Do you have any reason to believe it was  
2 Proskauer?

3 A. It may have been. It may not have been.  
4 I don't know for a fact that it was or wasn't.

5 Q. You indicate that the main activity  
6 between the companies was at Iviewit.com, Inc. and  
7 that the money went in and out of that company?

8 A. Yes.

9 Q. Did that ever change?

10 A. Technically the investment came through  
11 Iviewit Holdings. Now, we weren't always real  
12 strict about depositing it into the Iviewit Holdings  
13 account and then writing a check or doing a transfer  
14 out of the Iviewit Holdings account to the  
15 Iviewit.com, Inc. account. We did however, and I  
16 got it corrected when I came in, so I made certain  
17 we had done this end of it properly that at least we  
18 accounted for the transfer in terms of loans passing  
19 from Iviewit Holdings to Iviewit .com., Inc.

20 In other words, technically the way it  
21 would work was investment would come into Iviewit  
22 Holdings, that money would then be loaned to  
23 Iviewit.com, Inc. Now, often times what really  
24 happened was the money was simply received in the  
25 Iviewit.com, Inc. bank account, but the loan was

1 always documented on the books of both, so that all  
 2 the -- from an accounting standpoint, all the  
 3 investment was received in Iviewit Holdings.  
 4 Q. Thank you. What is Iviewit.com, Inc.  
 5 doing today?  
 6 A. I don't know.  
 7 Q. What were they doing the last time you  
 8 knew?  
 9 A. Not much really. I know that there wasn't  
 10 much money around. There wasn't much money in the  
 11 company, so Steven Lamont was looking for investment  
 12 trying to find a new investor or investors. So to  
 13 the extent that there was anything for Iviewit.com,  
 14 Inc. to do there really -- absent investment --  
 15 wasn't a whole lot for it to do.  
 16 Q. Okay.  
 17 A. It's not as though there is a company that  
 18 makes widgets and the widget plant is opening and  
 19 widgets are going out the door. So until there is  
 20 investment there isn't much to do.  
 21 Q. Okay. Thank you. Let's turn our  
 22 attention to Exhibit No. 2 --  
 23 A. Yes, sir.  
 24 Q. -- which I believe you have had an  
 25 opportunity to look at?

1 you list yourself as an employee of Iviewit.com,  
 2 Inc.  
 3 A. Yes.  
 4 Q. Were you ever a principal of that company?  
 5 A. No, I was not.  
 6 Q. Did you ever consider yourself an employee  
 7 of Iviewit.com, L.L.C.  
 8 A. No.  
 9 Q. Why not?  
 10 A. Because all payments, all activities were  
 11 done with Iviewit.com, Inc. that was the operating  
 12 entity, and my belief and the way I wanted it to  
 13 operate, had things gone on and I could have  
 14 operated it the way I wanted it, it would have been  
 15 to have all the operations occurring in Iviewit.com,  
 16 Inc. That's where all the employees would have  
 17 been. You don't want employees all over the lot in  
 18 the different corporations.  
 19 Q. Okay. Your response to interrogatory  
 20 number two you list two people --  
 21 A. Yes.  
 22 Q. -- who are believed or known by the  
 23 defendants to have knowledge concerning the issues  
 24 in the lawsuit, Mr. Utley and Mr. Hersh.  
 25 A. Yes.

1 A. Yes, I have.  
 2 Q. Would you look at the last page for me,  
 3 please?  
 4 A. Yes, sir.  
 5 Q. Tell me whose signature that is?  
 6 A. That's mine.  
 7 Q. Do you recall signing this document?  
 8 A. Yes, I do.  
 9 Q. When is the first time that you saw it?  
 10 A. When is the first time that I saw it?  
 11 Sometime before the date that we returned it to you.  
 12 I don't know the exact date that I first saw it.  
 13 Q. January 21, 2002 is indicated on the first  
 14 page. Does that refresh your recollection as to an  
 15 accurate date?  
 16 A. When I first saw it or when I -- That is  
 17 the date that I believe it was delivered to you. I  
 18 don't know the date I first saw it, but it would  
 19 have been prior to that.  
 20 Q. If you look at your answer to  
 21 interrogatory number one --  
 22 A. Yes.  
 23 Q. -- which indicates: Identify each and  
 24 every person that participated or assisted in  
 25 preparing the answers to these interrogatories. And

1 Q. I'm going to depose Mr. Utley on Thursday  
 2 in Minnesota.  
 3 A. Okay.  
 4 Q. Do you still believe that he is the best  
 5 person to talk to pertaining to the invoices?  
 6 A. He would have been the one who would have  
 7 seen them and would have approved payment on them.  
 8 He would be a good person to talk to.  
 9 Q. What about Mr. Hersh?  
 10 A. Mr. Hersh might also be worth talking to.  
 11 Q. If you look at your response to  
 12 interrogatory number three, identify the  
 13 representative of the defendants with the most  
 14 knowledge as to the allegations contained in the  
 15 amended complaint and the answer to affirmative  
 16 defenses, and you list yourself.  
 17 A. Yes.  
 18 Q. Was that your decision or the attorney's  
 19 decision to name yourself there?  
 20 A. We didn't have anybody else at the time  
 21 who was available, so that was Eileen Schnell,  
 22 S-C-H-N-A-L-L, from -- She was at --  
 23 Q. Sachs, Sax & Klein.  
 24 A. -- Sachs, Sax & Klein at the time.  
 25 Q. Do you know today if there is anyone else

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1 that is considered to be the person with the most  
 2 knowledge to represent the defendants?  
 3 A. There may be other people. Again, that  
 4 also is a decision that could be made by the  
 5 management of the company, now that Steven is on  
 6 board or Elliott. There may be other people who are  
 7 more knowledgable who are around.  
 8 Q. What knowledge does Steven have pertaining  
 9 to the invoices?  
 10 A. I don't know what he may have gained from  
 11 review of the files, if he may have. I don't know  
 12 if it's reviewed, the files, or not.  
 13 Q. But he never was involved with the Iviewit  
 14 companies when Proskauer was performing legal work?  
 15 A. That's correct.  
 16 Q. On interrogatory number four and five, we  
 17 ask if there are any invoices attached to the  
 18 amended complaint, which is Exhibit 1 that you  
 19 looked at, which the defendants claim were paid, and  
 20 you answer yes. And on number five you listed  
 21 343838?  
 22 A. Right.  
 23 Q. Do you remember how you came up with that  
 24 answer?  
 25 A. I believe we went back and went through

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1 the reconciliation and showed that it had been paid.  
 2 I think it may have been that an audit in the  
 3 application of on-account payment. I would have to  
 4 go back and look at it to make sure that's the case.  
 5 But it may have been an application in an on-account  
 6 payment, because it doesn't effect the balance  
 7 that's due. We still agree with the balance or we  
 8 were still able to reconcile the balance due, the  
 9 369,000. It's just that this invoice had been paid.  
 10 Q. Do you know if that's the letter that you  
 11 saw in the file during the reconciliation. Does  
 12 this help your memory as to that?  
 13 A. No.  
 14 Q. It doesn't help. You don't know that?  
 15 A. No, I don't know.  
 16 Q. If you look at interrogatory number six,  
 17 we ask: Do the defendants claim that there are any  
 18 invoices attached to the amended complaint,  
 19 Exhibit A, that were not received by the defendants?  
 20 And the answer was there are invoices that the  
 21 defendants have no record of receiving. And if you  
 22 turn to seven, interrogatory seven --  
 23 A. Yeah.  
 24 Q. -- we ask that you list them. And listed  
 25 are a number of invoice numbers.

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1 A. Right.  
 2 Q. And could you explain that response?  
 3 A. I would have to. I'm not certain as to  
 4 what we did at the time. At the time it would have  
 5 been I worked with Eileen Schnull and we went  
 6 through the items that we had. And at the time we  
 7 felt that was correct. I would have to go back and  
 8 do some research. In other words, to say why I  
 9 agree that we were able to come up with these  
 10 answers that we have here.  
 11 Q. Your reconciliation, do you still recall  
 12 the results of the reconciliation showing that all  
 13 the invoices were received by the company?  
 14 A. I recall -- Yeah, that I was able to show  
 15 that invoices that made up the claim were received  
 16 by the company were in the company file, so they  
 17 were received.  
 18 Q. You think that interrogatory seven could  
 19 be best explained by saying that it was something  
 20 that was come up with by the attorney?  
 21 A. I'm not sure. Again, as I said, I would  
 22 have to go back and probably sit down and look at  
 23 all the details that we had that I no longer have  
 24 available to me, think about what we were doing, and  
 25 determine why we answered the question this way.

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1 I'm certain if we answered the question this way,  
 2 there was a good reason why we did it at the time,  
 3 but I don't know right now, without going back and  
 4 thinking about things, why we did it.  
 5 Q. Looking at your response to interrogatory  
 6 number ten --  
 7 A. Uh-huh.  
 8 Q. -- question -- The question was based on  
 9 the defendant's third affirmative defense that the  
 10 monies that the plaintiff claims are owed are  
 11 unreasonable and don't bear relation to the value of  
 12 the services provided. We ask that you identify  
 13 each invoice attached to the amended complaint as  
 14 Exhibit A.  
 15 A. Yes.  
 16 Q. And the response was the invoices attached  
 17 to the exhibit don't reflect what services were  
 18 performed --  
 19 A. Yeah.  
 20 Q. -- so it's not possible for the defense to  
 21 identify each invoice. Having said that, I believe  
 22 I have asked you if you recall there being any bills  
 23 that you ever saw that didn't bear a relation to the  
 24 services performed. Do you recall ever seeing any  
 25 bills?



1 A. That somebody had identified that did not  
 2 bear relation to services performed?  
 3 Q. Yeah. Did you ever see any bills that  
 4 Proskauer sent Iviewit that didn't bear relation to  
 5 the value of the services performed by Proskauer?  
 6 A. Again, since most or almost all of the  
 7 bills in question were prior to my coming on board  
 8 with Iviewit, I really am not in a position to make  
 9 that statement about the bulk of what's there.  
 10 Again, that would have had to have been evaluated by  
 11 other people and they would have to make that  
 12 determination.  
 13 Q. Did you run across anything while doing  
 14 your reconciliation?  
 15 A. I mentioned that letter. Again, I had  
 16 only the accounts payable file to work with, and  
 17 that contained invoices that had been passed through  
 18 to the accounts payable clerk for payment, so if  
 19 there were objections, they were made elsewhere.  
 20 Q. Okay. One final question pertaining to --  
 21 MR. TRIGGS: Let's take a minute before  
 22 you are done, but go ahead and ask your  
 23 question.  
 24 BY MR. PRUSASKI  
 25 Q. One final question pertaining to

1 interrogatory number seven.  
 2 A. Yes.  
 3 Q. I just want to clarify that you can't  
 4 recall how you and the attorney came up with this  
 5 answer, but it's your recollection today that the  
 6 reconciliation showed that all the invoices were  
 7 received?  
 8 A. I was the -- Well, the -- I was able to  
 9 find invoices, yes, that were consistent with the  
 10 statements that we received from Proskauer Rose that  
 11 added up to the \$369,000 figure. Now, that said,  
 12 it's possible that, again, because of on-account  
 13 payments and other things that there are invoices  
 14 that may be considered paid by Proskauer Rose that  
 15 were not intended for payment or by Iviewit or  
 16 vise-versa. There may be invoices that Iviewit  
 17 intended to pay, because of the way the money was  
 18 applied when it came into your firm here, may have  
 19 been applied to other invoices. So it's -- I can't  
 20 give you a whole lot of help there.  
 21 Q. Okay. But you told Ross Miller, after you  
 22 performed the reconciliation, that the invoices  
 23 attached to the lawsuit we do have record of  
 24 receiving?  
 25 A. Yes.

1 MR. PRUSASKI: Okay. You want to step out  
 2 for a moment?  
 3 MR. TRIGGS: Back in just a second.  
 4 (Thereupon, a short break was taken.)  
 5 BY MR. PRUSASKI  
 6 Q. After the management changed hands in  
 7 March of 2001, when I believe you testified that  
 8 Utley and Hersh were fired --  
 9 A. Yes.  
 10 Q. -- who was responsible after that point  
 11 for looking into whether bills were owed or not?  
 12 A. Ross Miller.  
 13 Q. Before that, it was Utley and Hersh?  
 14 A. Yes.  
 15 Q. You testified today that you became  
 16 involved with the companies in February of 2001?  
 17 A. Yes.  
 18 Q. You were unable to testify as to  
 19 information pertaining to a lot of things before  
 20 that time.  
 21 A. Right.  
 22 Q. Would you defer that to Utley?  
 23 A. Yes.  
 24 Q. Would you defer to Utley on that?  
 25 A. He certainly would know more about it than

1 I do.  
 2 Q. What document gathering efforts were you  
 3 involved in in this lawsuit?  
 4 A. I'm trying to remember now what I did.  
 5 Really, we didn't have a whole lot of documents to  
 6 look at when I came in, other than the accounts  
 7 payable files and some files that I created after  
 8 that based on what I was able to scrape together or  
 9 of things that occurred after I was there. And of  
 10 course some basic corporate records like the  
 11 corporate minute books. There really weren't that  
 12 many files that I came across. Most of the files  
 13 that were - other than accounts and accounts payable  
 14 files that the company had - were, I believe,  
 15 shipped to California by Utley when he left. At  
 16 least that was what was supposed to have happened to  
 17 them.  
 18 Q. Did Sax's office have the opportunity to  
 19 go through the California documents?  
 20 A. No.  
 21 Q. Why?  
 22 A. We didn't -- One thing, we couldn't find  
 23 any documents in California that were shipped there.  
 24 Q. Didn't Bernstein have them?  
 25 A. There was a lot of stuff that he did have,

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1 a lot of stuff that he didn't have, and it may not  
 2 have been shipped anyway. Again, I don't -- I did  
 3 not -- I did not examine what was shipped to  
 4 California --  
 5 Q. So how much --  
 6 A. -- so I don't know what went to California  
 7 and I don't know what was there. All I can speak  
 8 for is what I have or what I was able to retain,  
 9 which was stuff that mainly is stuff that related to  
 10 accounting.  
 11 Q. These files were shipped to California in  
 12 October 2001. I believe you said was the time that  
 13 2255 Glades was vacated?  
 14 A. Well, it was shipped long before that.  
 15 Most everything was shipped out, taken out of the  
 16 office here, 2255 Glades, and shipped to California  
 17 at the end of March when Utley and the rest of  
 18 management were terminated, March 2001.  
 19 Q. And where in California were they taken,  
 20 to a warehouse?  
 21 A. No, they were shipped to the office that  
 22 we had out in California.  
 23 Q. How big a volume of files were shipped  
 24 out?  
 25 A. There were -- Again, since I didn't

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1 examine everything that went into the boxes, I can't  
 2 say how much were files and how much were other  
 3 things, because we also shipped almost all of the  
 4 computer equipment and a lot of other stuff that was  
 5 in the office. So there were 70-plus boxes of  
 6 various sizes that were packed up and shipped out.  
 7 Q. Can you say that more or less than half of  
 8 those 70 were files?  
 9 A. I would say less than half were files.  
 10 Most of it or a lot of it was computer equipment.  
 11 Q. So between 20 and 30 would be a good  
 12 estimate?  
 13 A. Hard to say how many boxes of files.  
 14 Again, you know, anything I would say would be  
 15 speculation.  
 16 Q. Well, a lot of times when we don't know  
 17 the -- When we can't give a final number, we can  
 18 give ballpark figures, so I will ask you if you want  
 19 to give me a ballpark figure, knowing that it's a  
 20 ballpark figure.  
 21 A. No, I didn't inspect the packing of the  
 22 boxes. I do know that the files were supposed to be  
 23 packed and shipped. Now, how much of them -- Which  
 24 boxes had files in them and which had computers and  
 25 other things is difficult for me to say. I know

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1 that there were more boxes of computers than there  
 2 were files, but I don't know the exact numbers.  
 3 Q. But Spencer Sax's office never had the  
 4 benefit of looking at these documents?  
 5 A. No.  
 6 Q. Who is in control of the offices in  
 7 California now?  
 8 A. The office -- We moved out of the office  
 9 in California in -- I can't really say what month we  
 10 moved out, but we did move out of the office in  
 11 California at some point there. Probably in the  
 12 Fall of 2001.  
 13 Q. What happened to the boxes at that point?  
 14 A. I don't know for sure what happened to  
 15 anything that was in there, other than the intent  
 16 was that it would all be moved to the garage of the  
 17 house, which Elliott Bernstein was living in at the  
 18 time.  
 19 Q. But you don't know if that in fact  
 20 happened?  
 21 A. I wasn't there to see it happen.  
 22 MR. PRUSASKI: Nothing further.  
 23 MR. TRIGGS: Just I think we don't have  
 24 the interrogatory response yet, so I think I  
 25 would just reserve on that, but other than that

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1 I think I'm done.  
 2 MR. PRUSASKI: I don't have any other  
 3 questions for you.  
 4 THE WITNESS: Okay.  
 5 MR. PRUSASKI: I do have the right to ask  
 6 you some questions to follow up the questions  
 7 Mr. Selz asks you.  
 8 THE WITNESS: Yes.  
 9 MR. PRUSASKI: Also, we haven't received a  
 10 set of interrogatory answers, and if any new  
 11 material comes up in the interrogatory answers,  
 12 Mr. Selz's office will have to resubpoena you.  
 13 But of course, I will give you the benefit of a  
 14 telephone call first.  
 15 THE WITNESS: That's what I was going to  
 16 say, just call me and I will come over here.  
 17 MR. SELZ: I have nothing on cross.  
 18 MR. PRUSASKI: Okay.  
 19 THE WITNESS: We're done?  
 20 (Thereupon, discussions were held off the  
 21 record.)  
 22 THE WITNESS: I'll waive.  
 23 THE REPORTER: Does anyone need to order,  
 24 Gentlemen?  
 25 MR. TRIGGS: I think probably, but let me

1 at least ponder it for a little bit.  
 2 MR. SELZ: If he gets it, we'll get a  
 3 copy.  
 4 (Thereupon, the deposition was concluded  
 5 at 2:18 p.m.)  
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CERTIFICATE

STATE OF FLORIDA )  
 ) SS.  
 COUNTY OF BROWARD )

I, MARY C. BETTIS, Court Reporter and Notary Public, certify that I was authorized to and did stenographically report the deposition of WILLIAM KASSER; that a review of the transcript IS requested; and that the transcript is a true and complete record of my stenographic notes.

I further certify that I am not a relative, employee, attorney, or counsel of any of the parties, nor am I a relative or employee of any of the parties' attorney or counsel connected with the action, nor am I financially interested in the action.

Dated this 29th day of April, 2003.

*Mary C. Bettis*

MARY C. BETTIS  
Notary Public

CERTIFICATE OF OATH

STATE OF FLORIDA )  
 ) SS.  
 COUNTY OF BROWARD )

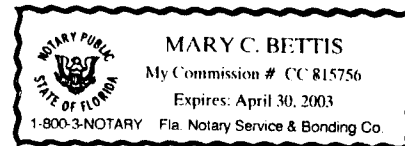
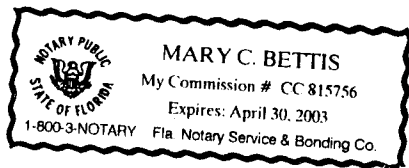
I, the undersigned authority,  
 certify that WILLIAM KASSER personally appeared  
 before me and was duly sworn.

WITNESS my hand and official seal

this 29th day of April, 2003.

*Mary C. Bettis*

MARY C. BETTIS  
Notary Public



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IN THE CIRCUIT COURT OF THE  
15TH JUDICIAL CIRCUIT, IN AND  
FOR PALM BEACH COUNTY, FLORIDA

PROSKAUER ROSE LLP, a New York  
limited liability partnership,

Plaintiff,

vs.

No. CA 01-04671 AB

IVIEWIT.COM, INC., a Delaware  
corporation, IVIEWIT HOLDINGS, INC.,  
a Delaware corporation, and IVIEWIT  
TECHNOLOGIES, INC., a Delaware  
corporation,

Defendants.

-----/

Boca Raton, Florida  
November 14, 2002  
2:00 o'clock p.m.

DEPOSITION  
OF  
SIMON L. BERNSTEIN

-----

**Certified Copy**

1 APPEARANCES:

2 PROSKAUER ROSE LLP  
by: CHRISTOPHER W. PRUSASKI, ESQ.  
3 Appearing on behalf of the Plaintiff.

4 SELZ & MUVDI SELZ, P.A.  
by: STEVEN M. SELZ, ESQ.  
5 Appearing on behalf of the Defendant.

6 LAW OFFICES OF STEVEN I. GREENWALD, P.A.  
by: STEVEN I. GREENWALD, ESQ.  
7 Appearing on behalf of the Simon Bernstein.

8 - - - - -

9 Deposition of SIMON L. BERNSTEIN, a witness  
10 of lawful age, taken by the Plaintiff, for purposes  
11 of discovery and for use as evidence in the  
12 above-entitled cause, pursuant to notice heretofore  
13 filed, before TAMARA EMERICK-MASCI, Registered  
14 Professional Reporter and Notary Public, in and for  
15 the State of Florida at Large, at 2255 Glades Road,  
16 Boca Raton, Florida.

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WITNESS:

D C RD RC

SIMON L. BERNSTEIN

BY MR. PRUSASKI

4

E X H I B I T S

PLAINTIFF'S

PAGE

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1 Thereupon:

2 SIMON L. BERNSTEIN

3 a witness, being first duly sworn in the  
4 above-entitled cause, testified under oath as follows:

5 DIRECT EXAMINATION

6 Q. (By Mr. Prusaski) Good afternoon. Would  
7 you state your name, please?

8 A. Simon L. Bernstein.

9 Q. Mr. Bernstein, what is your address?

10 A. 7020 Lions - L-i-o-n-s - Head - H-e-a-d,  
11 Lane, Boca 33496.

12 Q. Do you have any other homes?

13 A. No.

14 Q. Are you planning on going on any vacation  
15 in the next four months?

16 A. Not that I know of.

17 Q. You're here pursuant to a subpoena that  
18 we served on you a couple months ago, right?

19 A. Correct.

20 Q. Thank you.

21 Have you ever had your deposition taken  
22 before?

23 A. I have.

24 Q. Okay. The reason I ask is because I want  
25 to make it clear of how the deposition proceeds. If

1 you answer one of my questions, it's assumed that you  
2 understood it. If at any time I ask a question  
3 that's not clear to you, please let me know. That's  
4 basically your only obligation during this  
5 deposition, other than to tell the truth, to ask me  
6 to rephrase any questions that aren't clear to you.

7 If you need to take a break, if you need  
8 to call your wife, as you mentioned, we will  
9 accommodate you.

10 Those are the only ground rules for the  
11 deposition. If you have any further questions, just  
12 please ask us.

13 What is your occupation?

14 A. I'm retired.

15 Q. What is the benefit of your educational  
16 background, briefly?

17 A. Two years of college.

18 Q. When did you graduate college?

19 A. I didn't.

20 Q. Back in the 1960s?

21 A. Before that. '54? '56? Something like  
22 that.

23 MR. GREENWALD: 1954 or 1854?

24 Q. (By Mr. Prusaski) What did you spend  
25 your career doing for work?

1           A.       Well, I owned a few furniture stores when  
2 I was younger. But the most -- But the majority of  
3 my adult occupational career was in the life  
4 insurance business.

5           Q.       How many years did you spend in that  
6 business, sir?

7           A.       Thirty-seven.

8           Q.       Do you hold any professional licenses?

9           A.       Just an insurance license.

10          Q.       Did you do anything to prepare for your  
11 deposition today?

12          A.       I showered.

13          Q.       Did you look at any documents to prepare  
14 for the deposition?

15          A.       No.

16          Q.       We're going to talk about the Iviewit  
17 companies. And for purposes of clarity, if I use the  
18 term Iviewit, I mean all of the Iviewit entities  
19 collectively. If I want to discuss a particular  
20 Iviewit entity, I'll make it clear of which one I'm  
21 going to talk about. Do you follow me on that?

22          A.       I do. I don't know the companies any  
23 better than --

24          Q.       Okay. What was your role with the  
25 Iviewit companies?



1 A. I was the chairman of the board.

2 Q. What year did you get involved in the  
3 Iviewit companies?

4 A. I actually got involved with them prior  
5 to their being Iviewit companies. Probably, I  
6 believe, 1997. Somewhere in that period of time.

7 Q. Who are the officers and directors?

8 A. At what period of time?

9 Q. Beginning. How about the time Proskauer  
10 was hired?

11 A. When they were brought in, there was no  
12 board of directors. And there were no officers  
13 either that I can think of.

14 Q. Who was --

15 A. Maybe Eliot was the only officer.

16 Q. Who comprised the initial board of  
17 directors?

18 A. The initial board, I believe, was myself,  
19 Eliot, Brian Utley. I assumed Chris Wheeler. I  
20 later found out that he wasn't, but in the beginning,  
21 it was represented that he was. Jerry Lewin. And  
22 that might be the original group. I - I don't know.  
23 I think that was the early on group.

24 Q. How long have you known Jerry Lewin?

25 A. Five, six years.

1 Q. Was your first experience with Jerry  
2 Lewin through Iviewit or did you know him prior to  
3 that?

4 A. I think I had met him prior to that  
5 through an insurance friend of mine. At that time, I  
6 don't believe he lived in the same community I do  
7 now.

8 Q. He's your neighbor?

9 A. He lives across the street, around the  
10 corner, yeah.

11 Q. When's the last time you saw him?

12 A. Within the month.

13 Q. Just passing in the street?

14 A. At the club.

15 Q. Oh. You're members of the same country  
16 club?

17 A. Yes.

18 Q. Do you consider yourself social friends  
19 with Mr. Lewin?

20 A. Social friends, no.

21 Q. No. Do you talk to him when you see him  
22 at the club?

23 A. Yes.

24 Q. Okay. When's the last time you or saw or  
25 spoke to Brian Utley?

1           A.     I would assume it was -- No, I don't  
2 remember. I can't give you an exact date.

3           Q.     Have you seen him subsequent to the time  
4 when he left Iviewit, which was, I believe, March of  
5 2001 or April - I'm sorry - April 2001?

6           A.     I don't think so.

7           Q.     What about Hersh, Raymond Hersh?

8           A.     Have I seen him since?

9           Q.     Subsequent to the time you left the  
10 company.

11          A.     I don't believe so.

12          Q.     Haven't spoken to him?

13          A.     I might have. He has some insurance with  
14 me.

15          Q.     Mm-hmm. Still does?

16          A.     Yes.

17          Q.     So you don't specifically recall speaking  
18 to him after March of 2001?

19          A.     No, I don't.

20          Q.     What about Steven Lamont?

21          A.     I never met Steven Lamont.

22          Q.     Have you spoken to him on the phone?

23          A.     On occasion, maybe once or twice.

24          Q.     Do you know what Lamont's role with the  
25 Iviewit companies is now?

1           A.       I believe he was brought in to act as  
2 current president. No, I don't know. The answer is  
3 no, I don't know.

4           Q.       Do you have any contact or involvement  
5 with Iviewit right now?

6           A.       No.

7           Q.       You don't sit as a board member or a  
8 principal of those companies?

9           A.       No.

10          Q.       Does your son, Eliot?

11          A.       I don't know. I believe so, but I don't  
12 know.

13          Q.       Where does Eliot live?

14          A.       In California.

15          Q.       Do you know what city?

16          A.       Escondido.

17          Q.       Mm-hmm. You -- Does he - does he work  
18 other than his involvement with Iviewit?

19          A.       I don't know.

20          Q.       How do you not know what your son does?

21          A.       Does your father know what you do?

22          Q.       Yep.

23          A.       You have a better relationship than I do.

24          Q.       Okay. Well, I don't mean to patronize  
25 you by asking you these questions if your

1 relationship with your --

2 A. I don't know. I'm answering your  
3 question.

4 Q. Let me continue. If your relationship  
5 with your son is estranged and you don't know what he  
6 does for a living, then I accept that and respect  
7 that answer.

8 A. It's not estranged. I talk to Eliot on  
9 occasion. I don't know what else he's doing other  
10 than still acting as the main person in Iviewit.

11 Q. Does he run that company out of his  
12 house?

13 A. I don't know.

14 Q. Is your daughter-in-law pregnant?

15 A. Yes.

16 Q. Do you know how - when she's due?

17 A. Anytime that phone rings.

18 Q. You're waiting for a baby any day now?

19 A. I am. Any day.

20 Q. Is it a boy or girl?

21 A. They won't tell me that either.

22 Q. They don't know?

23 A. I don't think -- They say they don't  
24 know. I don't know.

25 Q. Have you spoken to her recently?

1 A. Yes.

2 Q. Candace?

3 A. Yes.

4 Q. When's the last time you talked to her?

5 A. I think I spoke to her yesterday.

6 Q. How's she doing physically?

7 A. She's complaining. She's not -- She's  
8 big and waddling around.

9 Q. Mm-hmm. Does she have any problems? Is  
10 everything coming smoothly?

11 A. I don't know.

12 Q. You didn't discuss her health at all?

13 A. No, I don't. She's having a baby.

14 Q. What time yesterday did you speak to her?

15 A. If it was yesterday, it was - I think she  
16 called the house to see how my wife was - maybe three  
17 o'clock, four o'clock.

18 Q. In the afternoon?

19 A. I believe so.

20 Q. Was Eliot home?

21 A. I don't know.

22 Q. How many kids do they have?

23 A. Two.

24 Q. Other than the pregnancy?

25 A. Yes.

1 Q. Okay.

2 A. Is this all relevant to this or --

3 Q. Yeah.

4 A. Okay. I just thought maybe you were  
5 interested in -- I have five - four other children,  
6 If you want to know about them too, but --

7 Q. No, only tell me about what I ask about.

8 A. Okay. I was just wondering if you were  
9 headed in that direction.

10 Q. Nope.

11 Let's talk about the bills that Iviewit  
12 hasn't paid. I'm going to show you a document which  
13 is being marked as Plaintiff's Exhibit 1. It's a  
14 copy of the Amended Complaint. Take your time. Take  
15 a look at the document. Tell me if you've ever seen  
16 it before.

17 (Thereupon, the above-referred to  
18 document was marked as Plaintiff's Exhibit 1 for  
19 identification.)

20 MR. PRUSASKI: I'm going to give you two  
21 attorneys an extra copy to look at of  
22 everything.

23 MR. GREENWALD: Thank you. I assume,  
24 counsel, for the record, these alleged bills  
25 are attached to - in the Complaint as exhibits,

1 are they not?

2 MR. PRUSASKI: This is the Amended  
3 Complaint in its entirety that was filed in the  
4 lawsuit.

5 MR. GREENWALD: Okay. But -- I  
6 appreciate that.

7 MR. PRUSASKI: And the bills.

8 MR. GREENWALD: Okay. They were attached  
9 as exhibits?

10 MR. PRUSASKI: Yes.

11 MR. GREENWALD: Okay.

12 Q. (By Mr. Prusaski) After page 7, you  
13 have a series of bills, and then you have Exhibit B,  
14 which is --

15 A. Would you --

16 Q. -- a running statement of account.

17 A. Would you restate the question to me,  
18 please?

19 Q. I'm going to ask you to look at that  
20 document and tell me if you've ever seen it before?

21 A. This document.

22 Q. Yes.

23 A. No, I have not.

24 Q. Attached to that document starting as  
25 Exhibit A, starting after page 7 of the Amended



1 Complaint are Proskauer invoices, which appear to be  
2 addressed to Iviewit.

3 A. Mm-hmm.

4 Q. Do those documents look familiar to you?

5 A. No.

6 Q. Have you ever been told that Proskauer  
7 Rose filed a lawsuit against Iviewit to collect  
8 unpaid bills?

9 A. I have.

10 Q. And when did you first learn that?

11 MR. GREENWALD: Don't guess. Only if you  
12 know.

13 A. I don't know. I don't remember the date.

14 Q. Was it shortly after the time the lawsuit  
15 was filed?

16 A. When was the lawsuit filed?

17 Q. May of - May of 2001.

18 A. I assume it would be right around that  
19 time.

20 Q. Okay. The Amended Complaint alleges that  
21 \$369,460 are due and owing in unpaid attorney's fees  
22 bills. Have you ever had occasion to go through the  
23 bills that comprise that amount?

24 A. I might have.

25 Q. You don't recall?

1           A.       I don't know the number to be exact, to  
2 be 369. I've gone through the - the bills when -  
3 when they were brought to me by - by Brian Utley.

4           Q.       When were they brought to you?

5           A.       As the bills were coming in.

6           Q.       Okay.

7           A.       So I, you know, haven't seen them as a -  
8 as a group. I've seen them individually. And I  
9 don't know if they're all here or, you know, if these  
10 are correct. I'm just looking at numbers here.

11          Q.       Right. Do you have any knowledge if - if  
12 the allegation that Proskauer made in the lawsuit  
13 that Iviewit owes that amount, do you have any  
14 knowledge if that amount is actually due or not?

15          A.       No.

16          Q.       No knowledge?

17          A.       If that amount is due?

18          Q.       Yes.

19          A.       No, I have no knowledge.

20          Q.       Okay. Have you ever sat down with anyone  
21 to determine whether the bills attached to this  
22 lawsuit are due and owing?

23          A.       With -- That's attached to this lawsuit?

24          Q.       Yes.

25          A.       As they stand in here?

1 Q. Yes.

2 A. No, I have not.

3 Q. Okay. Has Eliot Bernstein ever told you  
4 that the bills attached to the Proskauer/Iviewit  
5 lawsuit are not due and owing by Iviewit?

6 A. Has he told me they weren't due?

7 Q. They were not.

8 A. No.

9 Q. Have you ever discussed this lawsuit with  
10 Eliot Bernstein?

11 A. Yes.

12 Q. What have you talked about?

13 A. The overcharge of the bills, the - you  
14 know, the things that happened in the past. That's  
15 about it.

16 Q. Were there overcharges?

17 A. In my opinion?

18 Q. Yeah.

19 A. Mm-hmm.

20 Q. Well, explain what you mean by there were  
21 overcharges.

22 A. Well, they were -- There were many, many  
23 opportunities that Mr. Utley and Mr. Wheeler  
24 developed bills for conferences for hours on end for  
25 simple matter, such as leases, drafting of corporate

1 minutes, just things that in my history as - as a  
2 businessman, paying lawyers, were abusive.

3 Q. When did the abusive charges start?

4 A. Almost from the first day.

5 Q. Do you recall how long Proskauer  
6 represented Iviewit?

7 A. Almost from the first day.

8 Q. No. I mean -- You didn't listen to my  
9 question. Do you recall how long a period of time  
10 Proskauer represented Iviewit?

11 A. Oh, I - I - I believe it was probably  
12 somewhere in the 2001.

13 Q. So it was over two years, right?

14 A. I imagine.

15 Q. Okay. And these charges started almost  
16 immediately?

17 A. They started immediately.

18 Q. Well, then why did Proskauer continue to  
19 represent Iviewit if, in your opinion, Proskauer was  
20 overcharging the company?

21 A. I didn't make those decisions.

22 Q. Who did?

23 A. Mr. Utley did.

24 Q. Was Mr. Utley given -- He was the  
25 president, right?

1 A. Correct.

2 Q. And COO?

3 A. COO.

4 Q. That was his job to make those decisions,  
5 correct?

6 A. To - to the understanding that he  
7 reported to the board of directors.

8 Q. Did he report to the board of directors?

9 A. Correct.

10 Q. So the board of directors gave Utley  
11 authority the make decisions with respect to the  
12 continuation of Proskauer's services?

13 A. With certain limitations.

14 Q. What were those limitations?

15 A. After we felt that the company was being  
16 overcharged, he was limited to a five thousand dollar  
17 a month expenditure. And he far exceeded that.

18 Q. When --

19 A. I mean, obviously, he far exceeded it  
20 because the bills are much more than five thousand  
21 dollars a month.

22 Q. Around what date was the five thousand  
23 dollar expenditure?

24 A. I don't know. It was a board meeting.  
25 We had one a month at least.

1 MR. GREENWALD: Let him finish asking the  
2 question.

3 THE WITNESS: Okay.

4 Q. (By Mr. Prusaski) Was it in '99?

5 A. It could have been.

6 Q. Okay. So after -- Did you see the bills  
7 when they came in?

8 A. I saw some bills that came in. Those  
9 bills that pertained to things that I would be  
10 involved in, such as the lease and stuff like that.

11 Q. So you're saying that sometime after  
12 Proskauer started representing Iviewit, the board  
13 limited Utley to five thousand dollars a month in  
14 attorney's fees?

15 A. Yes, that's correct.

16 Q. And you're saying that Utley exceeded  
17 that limitation by allowing Proskauer to bill more  
18 than five thousand a month?

19 A. That's correct.

20 Q. Did Iviewit continue to allow Proskauer  
21 to do work for it for at least a year, year-  
22 and-a-half after that?

23 A. That may be true, I don't know.

24 Q. Okay.

25 A. You know, I wouldn't know what they did.

1 Q. Did you ever send any letters to --

2 Well, to whom did you speak at Proskauer  
3 about the bills? Christopher Wheeler?

4 A. Chris Wheeler.

5 Q. Was there anyone else?

6 A. I think Myra.

7 Q. Myra. Myra Robbins?

8 A. Myra Robbins, correct.

9 Q. Okay.

10 A. Who was constantly working on the account  
11 and who also was of the opinion that the billing  
12 process was exceedingly costly for Iviewit.

13 Q. Miss Robbins was of the opinion?

14 A. That's correct.

15 Q. What did she tell you?

16 A. She said that, you know, I'm doing the  
17 work. It then goes to somebody else. And then it  
18 goes to Chris. And so, we're getting three hourly  
19 charges for the same bill.

20 Q. How soon after Proskauer started doing  
21 work for Iviewit did she tell you that?

22 A. Maybe six months. Maybe a year. I don't  
23 know exact dates.

24 Q. This is '99 then we're talking?

25 A. Probably.

1 Q. Did you lodge any complaints to  
2 Mr. Wheeler about the bills?

3 A. I certainly did.

4 Q. How often?

5 A. Frequently.

6 Q. How frequently? You've got to be -  
7 you've got to be more exact than frequently.

8 A. Okay. Well, first of all, I lodged the -  
9 most of my complaints with Mr. Utley, who was  
10 supposedly meeting with Mr. Wheeler at all these  
11 different times. And then I have - I went across the  
12 hall and spoke to Chris Wheeler two or three times,  
13 suggesting that these bills have to stop. They are  
14 just out of line because they were not consistent  
15 with the - what my understanding of the original  
16 arrangement was when Iviewit was formed and stock was  
17 given to Proskauer Rose. And it was my understanding  
18 that that stock was given in lieu of a postponement  
19 of the bills until such time as we got funded. And  
20 that's -- That was what -- You know, those are the  
21 complaints I lodged.

22 Q. Did you ever send any complaints to  
23 anyone in writing about Proskauer's bills?

24 A. I might have. I don't think I put them  
25 in writing. I might have - I might have had



1 Mr. Utley -- I know that they went in the form of a  
2 written memo to the board so that the other members  
3 of the board were aware of the fact.

4 For example, I think the first one was I  
5 - it came to my attention that Chris Wheeler, who I  
6 thought was a director of the company, after six or  
7 seven meetings, that we were being billed for his  
8 appearances at our board meetings. And I said, well,  
9 why would a member of the board be billing us? And I  
10 later was told that, oh, no, he wasn't a member of  
11 the board. He was there as a consultant. And I  
12 said, well, you know, it seems strange to me that we  
13 have anybody there as a consultant when nobody asked  
14 for a consultant.

15 Q. Who designated Mr. Wheeler as a  
16 consultant?

17 A. That -- I was told he was a consultant by  
18 Mr. Utley, who was told by Mr. Wheeler.

19 Q. Other than what you said, Proskauer's  
20 excessive billing, were there any other problems with  
21 the bills?

22 A. You mean, as far as the workmanship?

23 Q. Yes.

24 A. I couldn't answer that because I  
25 wasn't -- I don't know how it related to the

1 companies, what workmanship they did, whether it was  
2 good work or bad work. I really don't know.

3 Q. Well, do you know if Proskauer ever  
4 billed for work it really didn't do?

5 A. I don't know that either.

6 Q. Have you ever heard anybody say that  
7 Proskauer billed for work that wasn't done?

8 A. Not to -- Nobody's ever said that to me,  
9 no.

10 Q. You've never heard it?

11 A. I never heard it personally, no.

12 Q. Did there come a time when Iviewit  
13 stopped paying Proskauer Rose?

14 A. Not to my knowledge.

15 Q. Why did Proskauer sue Iviewit?

16 A. Maybe they stopped paying them. As I  
17 said, I don't know.

18 Q. When did you stop being a board of  
19 directors member of the company?

20 A. When we dissolved the board of directors.

21 Q. When was that?

22 A. I don't know for sure, but I think it was  
23 late 2001. Is this 2002, right?

24 Q. The lawsuit was filed in May of 2001.  
25 Was the board of directors still intact at that time?

1 A. I don't know. I don't remember.

2 Q. Well, it's November 2002.

3 A. Correct.

4 Q. Was the board of directors in existence a  
5 year ago?

6 A. I have to find some reference because at  
7 that point, all the meetings were held by the phone.  
8 And I --

9 THE WITNESS: Do you know when?

10 MR. GREENWALD: Don't -- This is not  
11 audience participation. If you don't know,  
12 it's okay.

13 A. I don't know.

14 Q. Do you know - do you know when -- Do you  
15 recall somebody telling you that Proskauer sued  
16 Iviewit?

17 A. Yes.

18 Q. When?

19 A. A year ago maybe. I --

20 Q. Who told you Proskauer sued Iviewit?

21 A. Probably Eliot.

22 Q. What was your initial reaction when you  
23 found out a lawsuit was filed? Were you surprised?

24 A. No.

25 Q. Why weren't you surprised?

1 A. Because they hadn't been paid.

2 Q. Okay.

3 A. And they had been threatening lawsuit for  
4 a long time.

5 Q. Why hadn't they been paid?

6 A. Well, first of all, do you want my  
7 opinion or you want --

8 Q. Yeah.

9 A. This is only an opinion because I don't  
10 know.

11 Q. You were a member of the board. You  
12 speak with experience. Why weren't they paid?

13 A. Again, they were not paid because they  
14 were felt to be unjustifiable. They were not paid  
15 because the arrangement was supposed to be that when  
16 we received the funding, they would - they would be  
17 paid. And we had not received the \$20 million  
18 funding that it was predicated on. And to the best  
19 of my knowledge, that's why they weren't paid. And  
20 they didn't have the money. That would also be a  
21 reason they wouldn't be paid.

22 Q. Iviewit didn't have the money?

23 A. Not at that time.

24 Q. So there were three reasons you just  
25 stated. Iviewit didn't have the money, Iviewit did

1 not receive funding. I guess that's the same as the  
2 first, isn't it?

3 A. Well, there is a lot of reasons. I mean,  
4 there could have been money, but it didn't develop.

5 Q. Proskauer was felt to be unjustifiable?

6 A. Absolutely.

7 Q. What do you mean by that?

8 A. Well, they had been told that their  
9 billings were obsessive [sic.] from the beginning.

10 Q. Excessive or obsessive?

11 A. Excessive. And they have been told. You  
12 know, we have tried to have multiple times of  
13 meetings that - that to arrange some form of a - an  
14 understanding that - on these bills. And they never  
15 happened. At least that's what Mr. Utley kept  
16 saying.

17 Q. What was -- Mr. Lewin was a board member?

18 A. Yes, he was.

19 Q. And he attended the board meetings with  
20 you?

21 A. Yes, he did.

22 Q. Were these bills ever discussed at the  
23 board meetings?

24 A. Absolutely.

25 Q. How often?

1 A. Quite often in the -- You know.

2 Q. Did Mr. Lewin ever say that the bills  
3 were excessive?

4 A. Well, I believe that - that, you know, we  
5 got consent of the board members that they were  
6 excessive, so I suspect that he participated in that  
7 vote, yes.

8 Q. Did you ever hear him complain that they  
9 were excessive?

10 A. Yes, to me personally.

11 Q. I'm going to show you Mr. Lewin's  
12 deposition that I took in this matter. I'm going to  
13 ask you to turn to page 14. I'm using this document  
14 to refresh your recollection.

15 At line 17, my question was, other than  
16 the fact that you say the company ran out of money,  
17 is there any other reason that you know of why  
18 Proskauer's bills weren't paid by Iviewit? His  
19 answer was, no. Let's start with that.

20 A. That's his --

21 MR. GREENWALD: There is no question.

22 A. Yeah. What is the question?

23 Q. That's contrary to what you're telling  
24 me. Isn't it?

25 MR. GREENWALD: I m going to object

1 because you're asking the witness to comment  
2 upon the testimony of another witness.

3 MR. PRUSASKI: I'm telling the witness in  
4 a deposition that another board member has said  
5 the only reason the bills weren't paid was  
6 because there was no money. And I want to know  
7 how he feels in response to that.

8 A. That may be his opinion. It's not mine.

9 Q. Do you agree with it?

10 A. Absolutely not.

11 Q. Well, he was a board member, wasn't he?

12 A. Yeah.

13 Q. And you said he often complained?

14 A. I said he was aware of the complaints  
15 about the bills being excessive.

16 Q. So was he lying in his deposition?

17 A. You'll have to ask him.

18 Q. Okay. Look at the next - the question.

19 A. Okay.

20 Q. Did you ever hear anyone from the company  
21 at any time object or state that Proskauer did work  
22 that it wasn't authorized to do for Iviewit?  
23 Mr. Selz objected to the form. I said, you can  
24 answer. Mr. Lewin said, no.

25 A. That's pretty consistent with what I

1 said.

2 Q. Well --

3 MR. GREENWALD: There is no question.

4 Q. (By Mr. Prusaski) Well, you were a  
5 member of the company. Didn't you?

6 A. What?

7 Q. You were a member of the company?

8 A. Only as a director.

9 Q. And you testified that nobody ever  
10 complained that Proskauer billed for work that wasn't  
11 done, right?

12 A. I said that they did not.

13 Q. So that's with consistent with what you  
14 said?

15 A. Exactly.

16 Q. Page 19, line 19.

17 MR. GREENWALD: Let me get there. Hang  
18 on. Line 19, you said.

19 Q. (By Mr. Prusaski) My question was, but  
20 you were never personally aware of any bona fide  
21 problems with Proskauer's bills? The answer was, no.

22 That's inconsistent with your testimony,  
23 correct?

24 A. It is.

25 Q. You don't agree with Mr. Lewin on that?



1 A. I do not.

2 Q. You've heard him complain about bona --

3 A. No.

4 Q. Let me -- You've heard Mr. Lewin complain  
5 about bona fide problems with Proskauer's bills?

6 A. I have not heard Mr. Lewin complain. I  
7 heard Mr. Lewin agree that the bills were excessive.

8 Q. Well, isn't that complaining about the  
9 bills?

10 A. That's your - that's your terms. Not  
11 mine.

12 Q. Okay. You're splitting hairs on that  
13 one, aren't you?

14 Look at page 33, line 14.

15 MR. GREENWALD: Line 14, counsel?

16 MR. PRUSASKI: Yes.

17 Q. (By Mr. Prusaski) Question, was it your  
18 understanding that the bills were due and owing?  
19 Mr. Lewin's answer: Yes. Did I view it ever object to  
20 the payment of any of these bills? Mr. Selz  
21 objected. Mr. Lewin said, not that I'm aware of.

22 A. That's his opinion.

23 Q. You don't agree with that?

24 A. Oh, absolutely not.

25 Q. Is he lying?

1           A.     No, I don't know if he's lying.  Maybe  
2 that's what --

3           Q.     It's not - It's not --

4           A.     Don't argue with me.

5           Q.     It's his opinion based on his position as  
6 a director of the company?

7           A.     It may be.  I don't know what he was  
8 thinking.

9           Q.     Would he have first-hand knowledge to be  
10 able to answer the question of whether or not the  
11 bills were due and owing?

12          A.     I don't know.  He may.

13          Q.     Did Brian Utley ever enter into payment  
14 arrangements with Proskauer?

15          A.     I think I stated that he was authorized  
16 to pay them five thousand dollars a month.

17          Q.     And did he?

18          A.     I don't know.

19          Q.     Did Brian Utley act outside the  
20 permission of the board of directors?

21          A.     Many times.

22          Q.     What did he do?

23          A.     Specifically, what do you want to know?

24          Q.     What did he do?  Give me some examples

25 of --

1           A.     He acted outside of the board of  
2 directors' approval.

3           Q.     Specifically, how?

4           A.     He went -- He made more arrangements with  
5 Mr. Wheeler that we were unaware of. He entered into  
6 more legal costs that we were not aware of.

7           Q.     Did he do this along with Mr. Hersh?

8           A.     I have no idea.

9           Q.     What was Mr. Hersh's role in the company?

10          A.     Chief financial officer.

11          Q.     I don't know if I asked you this, so  
12 forgive me if I'm asking twice. Other than you say  
13 Proskauer billed excessively, were there any other  
14 problems with Proskauer's bills?

15          A.     I told you, as far as the quality of the  
16 work, I can't comment on that.

17          Q.     Okay. There was no other problems that  
18 you're aware of other than the excessive billing?

19          A.     What problems are you asking me about?

20          Q.     Well, do you recall ever having any  
21 discussions or problems with the billings other than  
22 they were too high?

23          A.     My personal involvement?

24          Q.     Yeah.

25          A.     No.

1 Q. When you spoke to Mr. Wheeler -- You said  
2 about three or four times. Did you say about three  
3 or four times?

4 A. Yes, I did.

5 Q. You came to Mr. Wheeler's office to  
6 discuss the bills?

7 A. Correct.

8 Q. And what did Mr. Wheeler say in response  
9 to your complaints?

10 A. At different times, he had different  
11 answers. He said he would review them. He said that  
12 he would work it out with Mr. Utley. He was aware of  
13 my displeasure. And that was about it.

14 Q. Did you ever attempt to fire Proskauer  
15 Rose?

16 A. I personally recommended that they be  
17 fired, yes.

18 Q. When?

19 A. In one of the board meetings. I don't  
20 know.

21 Q. '99 or 2000?

22 A. '99 probably.

23 Q. Obviously, that wasn't done because  
24 Proskauer represented Iviewit for a couple years  
25 after that?

1 A. I'm only one member of the board.

2 Q. Did Mr. Lewin recommend that they be  
3 fired too?

4 A. I don't know.

5 Q. Well, you were at the board meetings with  
6 Mr. Lewin, right?

7 A. Ask Mr. Lewin. I don't know.

8 Q. Well, you were at the board meetings with  
9 Mr. Lewin?

10 A. I was at the board meetings with nine  
11 other board members as well.

12 Q. Do you just not recall Mr. Lewin saying  
13 that?

14 A. I do not recall that he said that.

15 Q. Okay. Okay. Did any other board members  
16 recommend the firing of Proskauer Rose?

17 A. I believe that Don Cane suggested that we  
18 find new counsel.

19 Q. Because they were too expensive?

20 A. Because they were too expensive. And  
21 basically, I guess that's why. I can't answer a  
22 question why a man makes a statement. But yes, I  
23 would suspect. Because we were a start-up company  
24 and we just couldn't afford those kind of bills.

25 Q. Who made the decision to hire Proskauer?

1 A. Probably me.

2 Q. Based on? What did you know about the  
3 firm that you hired them?

4 A. Very little. Mr. Lewin recommended them.  
5 And he recommended them under the - under the concept  
6 that they would be - that we would give to them  
7 stock. And for that stock, they would delay the  
8 payment of the bills until such time as we reached  
9 our funding.

10 Q. Was that done?

11 A. No.

12 Q. Why not?

13 A. I don't know.

14 Q. What - what part of that did - did not  
15 occur is basically what I wanted to ask you?

16 A. The bills started coming right away. And  
17 demands for money were constantly coming in.

18 Q. Do you recall any particular bills or any  
19 particular charges on any bills that you recall as  
20 being excessive?

21 A. I think I answered that. I think I told  
22 you the lease was one that I reviewed. And there  
23 might have been others. And I think the corporate  
24 setups.

25 Q. Let me stop you because I don't - I don't

1 want to have to keep going back. What lease in  
2 particular are you referring to?

3 A. The lease on the space across from  
4 Proskauer.

5 Q. Do you - do you recall anything specific  
6 about --

7 A. Just the amount of hours it took to - to  
8 draft the lease.

9 Q. How many hours; do you remember?

10 A. Oh, I don't know offhand.

11 Q. Do you know if that bill was paid?

12 A. I assume it was.

13 Q. Mm-hmm. And other than the lease, what  
14 charges do you recall being excessive?

15 A. Well, all the numerous amount of  
16 corporate resolutions and corporate this and  
17 corporate that that were coming in for a company that  
18 was just a little short of being IBM.

19 Q. Well, you had one of the former IBM guys,  
20 right?

21 A. Obviously, you're right. Who knew Mr. --  
22 Who was brought in and recommended by Chris Wheeler,  
23 coincidentally, by the way.

24 Q. The -- So we have the lease on space, the  
25 numerous resolutions. Anything else that you recall

1 that was excessive?

2 A. Yes, there was so much that -- There was  
3 so much legal work for this small company that it's  
4 difficult now to recall what happened three, four  
5 years ago specifically.

6 Q. Did you - did you ever direct any of the  
7 Proskauer attorneys to do any work for the companies?

8 A. Me personally?

9 Q. Mm-hmm. Yes.

10 A. Might have in the very beginning when we  
11 were just forming the companies and there was no  
12 president or no board or anything else.

13 Q. Did Proskauer Rose ever perform any work  
14 for you personally?

15 A. Yes, sir.

16 Q. What did they do?

17 A. Estate planning.

18 Q. What attorney from Proskauer handled  
19 that?

20 A. Al Gortz.

21 Q. Do you remember when that was?

22 A. 2000 maybe.

23 Q. Well, if in '99, you thought Proskauer  
24 was billing excessively, why did you allow Mr. Gortz  
25 to do your personal estate planning?



1 A. He's got a good reputation.

2 Q. Did you pay those bills?

3 A. I did. They were also excessive. And I  
4 called that to his attention as well.

5 Q. Was that resolved?

6 A. I just paid the bill.

7 Q. Wasn't worth getting that far into --

8 A. I just paid the bill.

9 Q. All right. Did - did the firm - did the  
10 firm ever do any other personal work for you besides  
11 estate planning?

12 A. Not after that, no.

13 Q. Did they do any personal work for you or  
14 your immediate family?

15 A. They did work for Eliot, I know.

16 Q. What did they do for him?

17 A. Estate planning.

18 Q. That was in 2000?

19 A. Oh, I don't know. No, that was quite  
20 early on.

21 Q. For any of your other siblings?

22 A. No.

23 Q. Brothers? Sisters? No other immediate  
24 family members?

25 A. I don't know. I don't know. I have a

1 couple of my other children who were investors in  
2 Iviewit and I don't know whether they ever had them  
3 do any work.

4 Q. Have you ever recommended Proskauer Rose  
5 to anyone?

6 A. In the beginning, I might have. I don't  
7 remember.

8 Q. Who from Iviewit directed Proskauer to do  
9 the legal work?

10 A. Who from Iviewit? Brian Utley.

11 Q. Did anyone else? Mr. Hersh?

12 A. Oh, I don't know. I wouldn't think so.

13 Q. So the president and the COO was in  
14 charge of directing the legal work for Proskauer?

15 A. You know, yeah, I would think so.

16 Q. Okay.

17 A. I mean, I think everything would have  
18 gone through them. So when you say directed somebody  
19 to do it, I would imagine he directed it.

20 Q. Before I forget, I'm going to jump back,  
21 so forgive me. Were there any formal resolutions of  
22 the board of directors that Brian Utley was only  
23 permitted to have Proskauer bill up to five thousand  
24 dollars a month?

25 A. I believe it was in the minutes.

1 Q. Were there any signed documents about  
2 that?

3 A. I don't know.

4 Q. Was it a unanimous resolution of the  
5 board of directors?

6 A. Yes. Well, unanimous. I mean, the vote  
7 was -- The vote carried. I don't know whether it was  
8 unanimous. I mean, I don't know whether Mr. Utley  
9 abstained from voting or not on that particular  
10 issue. And I don't know that everybody was in the  
11 board meeting at that particular meeting.

12 Q. I'm going to show you a document that we  
13 will mark as Plaintiff's Exhibit Number 2.

14 A. Do you want these back?

15 Q. Just put them in middle of the table.  
16 I'm going to take them at the end.

17 (Thereupon, the above-referred to  
18 document was marked as Plaintiff's Exhibit 2 for  
19 identification.)

20 Q. (By Mr. Prusaski) I'm going to ask --  
21 It's a letter dated March 28th, 2001. I'm going to  
22 ask you to take your time and look at that document  
23 and tell me if you've ever seen it before.

24 A. I don't think I've ever seen this, no.

25 Q. This is a letter from Christopher Wheeler

1 to Brian Utley --

2 A. Mm-hmm.

3 Q. -- regarding \$344.5 thousand dollars in  
4 invoices. Do you know whether a reconciliation was  
5 ever performed to determine whether these bills are  
6 due or not?

7 A. I do not.

8 Q. Okay. I'm going to show you a document  
9 that's marked Plaintiff's Exhibit Number 3. It's a  
10 letter dated April 16th, 2001. I'm going to ask you  
11 to look at that and tell me if you've ever seen it  
12 before?

13 A. No, I have not.

14 (Thereupon, the above-referred to  
15 document was marked as Plaintiff's Exhibit 3 for  
16 identification.)

17 Q. (By Mr. Prusaski) Do you know if a  
18 reconciliation was ever performed to determine  
19 whether the three pages of invoices attached are due  
20 and owing?

21 A. I do not.

22 Q. Okay. Have you ever seen this open  
23 invoices account listing before?

24 A. These?

25 Q. Yes.

1 MR. GREENWALD: For the record, are you  
2 referring to the attachment which you marked as  
3 3?

4 MR. PRUSASKI: Exhibit 3.

5 A. I have not.

6 Q. So you've never been through the actual  
7 bills that Proskauer's attached to its lawsuit to  
8 determine whether they're due or not?

9 A. I don't know what bills are attached to  
10 the lawsuit.

11 Q. Okay. That answers my question.

12 Let me show you a letter dated March  
13 24th, 2000, which we will mark as Plaintiff's Exhibit  
14 Number 4.

15 (Thereupon, the above-referred to  
16 document was marked as Plaintiff's Exhibit 4 for  
17 identification.)

18 Q. (By Mr. Prusaski) I'll ask you to look  
19 at this and tell me if you've ever seen it before.

20 A. I'm sure I have.

21 Q. The second sentence of the first  
22 paragraph says, Brian and I have an arrangement  
23 whereby Iviewit would pay \$25,000 this past Monday,  
24 25,000 on April 3rd, and 50,000 on April 17th.

25 Do you recall that being an arrangement?

1           A.       You know, I - I recall having seen the  
2 letter. I don't have - recall ever agreeing to this  
3 being an arrangement, no.

4           Q.       Okay. Did Mr. Utley have the authority  
5 of the company to make that payment arrangement?

6           A.       No.

7           Q.       But he worked for the company for over a  
8 year after this letter was delivered, right?

9           A.       Mm-hmm.

10           THE REPORTER: Yes?

11           Q.       (By Mr. Prusaski) Why is that?

12                    Yeah. You have to answer yes or no.

13           A.       I didn't fire him. I should have, but I  
14 didn't.

15           Q.       Okay. Who fired him?

16           A.       The board.

17           Q.       You were -- Did you attempt to have him  
18 fired before that?

19           A.       No.

20           Q.       Why not?

21           A.       I just didn't.

22           Q.       Okay.

23           A.       I wasn't, you know, in charge of that,  
24 so --

25           Q.       Do you know if he responded to this

1 letter in writing?

2 A. I do not.

3 Q. You don't remember or you didn't respond?

4 A. I don't remember.

5 Q. Do you know if anybody did?

6 A. I do not know.

7 Q. Plaintiff's Exhibit Number 5 is a letter  
8 dated March 31st, 2000.

9 (Thereupon, the above-referred to  
10 document was marked as Plaintiff's Exhibit 5 for  
11 identification.)

12 Q. (By Mr. Prusaski) I'll ask you to look  
13 at this document and tell me if you've ever seen it  
14 before.

15 A. Yes.

16 Q. Do you recall what your proposals were  
17 that are being referenced in the first two sentences?

18 A. I think the -- I believe that I suggested  
19 that - that one, we go back to the original  
20 agreement, and that we pay them the bills when we get  
21 them - when we get our proper funding. And -- Oh.  
22 And the other was that in order to avoid any  
23 conflicts, we would give them additional stock equal  
24 to the bill.

25 Q. And that was rejected by Mr. Wheeler?

1           A.       I -- You read the letter. That's what  
2 the letter says.

3           Q.       Do you know if it was ever in writing  
4 that Proskauer wouldn't bill until Iviewit received  
5 certain funding?

6           A.       I don't know.

7           Q.       You don't recall ever seeing written  
8 documents --

9           A.       No.

10          Q.       -- pertaining to that?

11          A.       No.

12          Q.       Would that have been a verbal agreement?

13          A.       It was a verbal agreement.

14          Q.       Between whom?

15          A.       It was between -- When I asked Mr. Lewin  
16 to find a law firm under those arrangements and he  
17 came back with Proskauer, he suggested that that they  
18 would postpone the billings, that they would not bill  
19 for the stock, but that they would postpone the  
20 billing until such time as we got our funding.

21                   And I agreed at that time that we would  
22 proceed on that basis. But it never from the  
23 beginning went that way. We started getting bills  
24 immediately.

25          Q.       Before I forget, how much did you pay



1 Proskauer for your personal estate planning?

2 A. I don't remember. Twelve, fifteen  
3 thousand.

4 Q. Okay. Over the course of how long did  
5 Mr. Gortz do work for you?

6 A. How long did it take to get the job done?

7 Q. Yeah.

8 A. Three, four months.

9 Q. Okay.

10 A. You know, it wasn't constant work. And  
11 then I had the bill -- Then I had those bills  
12 reviewed by other attorneys, who have indicated that  
13 it was an excessive amount of money. But that was  
14 just my personal --

15 Q. What were the names of those attorneys?

16 MR. GREENWALD: I'm going to object to  
17 the extent it calls for him to violate the  
18 attorney-client privilege and any  
19 communications he may have had.

20 MR. PRUSASKI: He already told me what  
21 they are. What they said may violate a  
22 privilege. Who they are certainly doesn't.

23 MR. GREENWALD: That's my objection.

24 MR. PRUSASKI: Are you instructing the  
25 witness not to answer the question?

1 MR. GREENWALD: No.

2 Q. (By Mr. Prusaski) Who are the attorneys?

3 A. My son-in-law was one, David Simon.

4 Q. Where does he work?

5 A. In Chicago.

6 Q. Big firm?

7 A. No, small firm.

8 Q. Hmm.

9 A. Does that make it bad? Hmm?

10 Q. No.

11 A. Just wondered what the hmm was.

12 Q. I didn't always work at a big firm.

13 A. The other attorney, I don't know. I  
14 don't remember. Somebody from the club, but I don't  
15 remember. You know how you sit around and you talk  
16 about these things.

17 Q. And Mr. Simon and this other attorney  
18 objected to the amount of Mr. Gortz's billing on your  
19 personal estate planning?

20 A. Just said to me that it seemed high.

21 Q. I'm going to show you a document marked  
22 Plaintiff's Exhibit Number 6. It's a copy of the  
23 Answer and Affirmative Defenses filed by Iviewit.  
24 Have you ever seen this document before?

25 A. No.

1 (Thereupon, the above-referred to  
2 document was marked as Plaintiff's Exhibit 6 for  
3 identification.)

4 Q. (By Mr. Prusaski) This is the Answer and  
5 Affirmative Defenses that have been filed in this  
6 lawsuit by Iviewit by their prior law firm, Sachs,  
7 Sax & Klein on their behalf.

8 A. Mm-hmm.

9 Q. And if you flip through to page four to  
10 the affirmative defenses. I realize that you didn't  
11 write these, Mr. Bernstein, but I want to ask you if  
12 you know anything about them.

13 MR. GREENWALD: I'll object to form.

14 I'm - I'm not sure I understand. Would you  
15 mind rephrasing that? When you say does he  
16 know anything about them?

17 MR. PRUSASKI: I'm going to point out  
18 specific defenses and I'm going to ask your  
19 client to read them. And I'm going to ask him  
20 if he knows anything about them.

21 MR. GREENWALD: Okay.

22 Q. (By Mr. Prusaski) If you look at  
23 paragraph 42, it says that, the plaintiff did not  
24 provide any services to defendants, and thus,  
25 plaintiff would be unjustly enriched if permitted to

1 make any recovery.

2 Where it says, plaintiff did not provide  
3 any services to defendants, do you know what that  
4 means?

5 A. Not a thing.

6 Q. Well, the plaintiff did provide services  
7 to the defendants, right? They acted as their  
8 lawyers --

9 A. Mm-hmm.

10 Q. -- for several years.

11 Do you have any other knowledge to  
12 support that statement that was filed in the  
13 affirmative defenses?

14 A. No.

15 Q. Okay. Paragraph 43, the second clause  
16 after the comma says that, plaintiff's claims are  
17 barred.

18 A. Where is this?

19 Q. Paragraph 43 after the comma, the second  
20 clause of the sentence says that, plaintiff's claims  
21 are barred because plaintiff has already been  
22 adequately compensated for its services.

23 Is that true?

24 A. In my opinion, it is.

25 Q. Okay. What do you mean by that?

1           A.       Whatever we paid them was more than a  
2 enough.   That's just my opinion.

3           Q.       But as far as this lawsuit is concerned,  
4 you said you've never been through the bills --

5           A.       No.

6           Q.       -- that we claim are due?

7           A.       You asked me whether it was my opinion,  
8 and I'm just telling you that in my opinion, it seems  
9 to make sense, whatever we paid them was enough.

10          Q.       Okay.   The next document I'm going to  
11 show you is an Amended Affirmative Defense.   And I'll  
12 mark this Plaintiff's 7.

13                   (Thereupon, the above-referred to  
14 document was marked as Plaintiff's Exhibit 7 for  
15 identification.)

16          Q.       (By Mr. Prusaski)   If you look at  
17 paragraphs 1 and 2 on the bottom of the first page --  
18                   First of all, have you ever seen this  
19 before?

20          A.       No.

21          Q.       Same as the last one.   This is an Amended  
22 Affirmative Defense that your - I'm sorry - that  
23 Iviewit's attorneys filed in this lawsuit.   And I'm  
24 going read to defense to you and ask you if you have  
25 any first-hand knowledge to support the claim.

1 Paragraph 1 says, plaintiff has failed to  
2 perform work under the terms of any oral agreement  
3 between the parties for which it seeks remuneration,  
4 for which it seeks payment.

5 A. I know what it means.

6 Q. Do you have any knowledge that tends to  
7 support that statement?

8 A. No.

9 Q. Paragraph 2 says, some work which may  
10 have been performed on behalf of the defendants was  
11 not performed at the defendant's request nor pursuant  
12 to any agreement.

13 Do you have any knowledge of any  
14 information that supports that statement?

15 A. No.

16 Q. Do you recall any other law firms that  
17 worked for Iviewit?

18 A. Yes.

19 Q. Do you remember what those names were?

20 A. Foley and Lardner.

21 Q. It's a patent firm, right?

22 A. Well, it's a law firm that does patent,  
23 yes.

24 Q. They did the intellectual property work?

25 A. Some.

1 Q. Okay.

2 A. There was a firm before them, Melzer  
3 something. Goldstein something. I think there was  
4 one other firm after that - I don't recall who it  
5 was - that did patent work in California. But I'm  
6 not sure of the name.

7 Q. Do you know if any of those firms remain  
8 unpaid by Iviewit?

9 A. Do you want my -- To the best of my  
10 knowledge, Foley and Lardner may still remain unpaid.  
11 I don't know.

12 Q. Do you know why they may not have been  
13 paid?

14 A. No.

15 Q. Were their bills excessive?

16 A. I don't believe so, no.

17 Q. Was Iviewit having any money problems  
18 that rendered it unable to pay Foley and Lardner's  
19 bills?

20 A. I don't know.

21 Q. Did Iviewit ever have any trouble paying  
22 its bills, not just to Proskauer, its bills in  
23 general?

24 A. I don't know. I didn't get involved in  
25 the day-to-day -- There was always a shortage of

1 money, but we always paid bills.

2 Q. When you said you didn't get involved in  
3 the day-to-day, what do you mean?

4 A. I wasn't a director or -- I mean, I  
5 wasn't an officer or employee of the company.

6 Q. What was Bill Kasser's role in the  
7 company?

8 A. I believe he was hired by Mr. Hersh to do  
9 bookkeeping, pay bills and so on and so forth.

10 Q. Do you know if he did an adequate job?

11 A. From what I know of him, yes.

12 Q. Do you know if he ever did -- Do you know  
13 if he ever performed a reconciliation of the bills  
14 that Proskauer attached to the lawsuit to determine  
15 whether they were due?

16 A. No, I don't.

17 Q. Do you know if anybody did?

18 A. I thought Utley did, but I don't know.

19 Q. Do you know what the outcome of  
20 Mr. Utley's reconciliation was?

21 A. No.

22 Q. Have you spoken to Mr. Kasser lately?

23 A. Not for a few months.

24 Q. Yeah?

25 What -- Well, I guess you've talked to



1 him this year, right?

2 A. Yes.

3 Q. You've talked to him after the  
4 dissolution of the board of directors?

5 A. Yes.

6 Q. Do you have a -- Are you friends with him  
7 or something?

8 A. No, he worked for me in another capacity  
9 for an insurance agency that we started up.

10 Q. If I tell that you Mr. Kasser testified  
11 in his deposition that did he a reconciliation of the  
12 bills in the lawsuit and he said that they were due,  
13 would you agree with that?

14 A. No, I wouldn't agree with it. But I  
15 wouldn't disagree with it either.

16 Q. Why wouldn't you disagree with it?

17 A. Because I don't know that he has.

18 Q. Have you ever been on the board of  
19 directors of another company besides the Iviewit  
20 entities?

21 A. Been on the board of directors of my own  
22 companies.

23 Q. Yeah.

24 A. Mm-hmm.

25 Q. What - what type of companies are those?

1 Furniture stores?

2 A. No. Insurance agencies.

3 Q. Insurance agencies?

4 A. Mm-hmm.

5 Q. Are you familiar with Florida corporate  
6 law?

7 A. No.

8 Q. Okay. What were your day-to-day  
9 responsibilities as a board member?

10 A. Day-to-day?

11 Q. Mm-hmm.

12 MR. GREENWALD: Object to the form.

13 MR. PRUSASKI: What's wrong with the  
14 question?

15 MR. GREENWALD: It assumes that he had  
16 day-to-day duties as a board member.

17 Q. (By Mr. Prusaski) Explain how your job  
18 worked as a board member of Iviewit.

19 A. I would attend board meetings.

20 Q. How often did that happen?

21 A. At least once a month.

22 Q. Did you do anything between those board  
23 meetings that had to do with Iviewit?

24 A. Not directly, no.

25 Q. Indirectly?

1 A. My son was involved in the company, so I  
2 would have conversations with him.

3 Q. When?

4 A. Take --

5 Q. When would you review Proskauer's bills?  
6 During the meetings?

7 A. During the meetings, prior to the  
8 meeting, you know, an hour before, whatever.

9 Q. Would Mr. Utley attend the board  
10 meetings?

11 A. Oh, yes. That's who I would review them  
12 with.

13 Q. Did you tell Mr. Utley to tell Proskauer  
14 that their billings are excessive?

15 A. Yes.

16 Q. What did he say to that?

17 A. He said he was going to do it.

18 Q. Did he?

19 A. Did he? I don't know.

20 Q. Did he complain to Proskauer?

21 A. Did he?

22 Q. I'm asking you if you know?

23 A. You work for Proskauer. Did he?

24 Q. I'm asking you if you know. It's your  
25 depo.

1           A.       I have no idea. I assume he did, but I  
2 have no idea.

3           Q.       Why do you assume he did?

4           A.       Because he was told to do it.

5           Q.       Did you ever see any documents that were  
6 cc'd to you or copied to you from Utley complaining  
7 about the bills?

8           A.       No.

9           Q.       Was anything ever done by Proskauer in  
10 response to Mr. Utley's complaints?

11          A.       Well, it's obvious there was because you  
12 a saw a letter from Chris Wheeler to me saying that  
13 he wanted to - to do something to - with regard to  
14 the bills. And obviously, we made offers to try and  
15 make, you know, try to make the bills come in line  
16 with what we could pay. And the letters speak for  
17 themselves.

18          Q.       Did the board ever direct Utley to write  
19 any letters to Proskauer complaining about the amount  
20 of the bills?

21          A.       The board made many strong suggestions to  
22 Mr. Utley that, to get the bills in order and that he  
23 was limited to five thousand dollars a month.

24          Q.       When did you first learn that he wasn't  
25 abiding by the five thousand dollar a month?

1 A. Well, the five thousand dollars a month?

2 Q. Mm-hmm.

3 A. Probably the month after that that  
4 happened. It's just -- It was just like nothing  
5 happened, you know. He would do what he wanted.

6 Q. I'm - I'm -- Mr. Bernstein, I'm just  
7 trying to figure out why then Iviewit allowed  
8 Proskauer to do its general corporate work for at  
9 least another year after that.

10 A. You'd have to speak to Mr. Utley.

11 Q. Okay. You don't have an answer for that?

12 A. I don't.

13 Q. Okay.

14 A. I wish I did, but I don't.

15 Q. Who was responsible for receiving the  
16 bills when they came in from Proskauer?

17 A. I don't -- Who is responsible?

18 Q. Yeah. Who was the person in Iviewit  
19 whose responsibility was to receive the bills when  
20 they came in?

21 A. I'm sure Chris handed them to Brian.  
22 They were only across the hall.

23 Q. Oh, they were - they were walked over?

24 A. As far as I know. Maybe he mailed them.  
25 I have no idea.

1 Q. Who was in charge of determining who  
2 would pay or whether the bills would be paid?

3 A. Mr. Utley. Excuse me. Phone call.

4 MR. GREENWALD: Go off the record for  
5 just a second while he answers the phone.

6 (Thereupon, a recess was taken.)

7 Q. (By Mr. Prusaski) Who was the person at  
8 Iviewit who determined whether the bills would be  
9 paid?

10 A. Brian Utley.

11 Q. That was his job?

12 A. He -- You asked me if that's who  
13 determined it. And I answered yes. He was  
14 president, COO.

15 Q. Did the rates of the Proskauer attorneys  
16 at the time you hired - the companies hired Proskauer  
17 -- Let me start that over.

18 At the time the companies hired  
19 Proskauer, did you know what the rates of the  
20 attorneys were?

21 A. No.

22 Q. Why not?

23 A. I didn't ask, I guess.

24 Q. Didn't you think that was important?

25 A. Not really, because they were, in my

1 opinion, my understanding, was they were doing it for  
2 the stock. And so, you know, one way or another, if  
3 the rates were, whatever they were, I thought they  
4 would be charged fairly, be compensated by the stock.

5 Q. So your understanding then, so I'm clear,  
6 is that Proskauer was going to perform legal work in  
7 exchange for stock?

8 A. Proskauer was going to perform legal work  
9 and - and was given stock so that their bills would  
10 be paid at a point when the funding became available.  
11 That was my understanding.

12 Q. Did you ever see a Retainer Agreement  
13 that was signed with Proskauer?

14 A. No. I didn't even know there was one.

15 Q. Have you seen or spoken to Chris Wheeler  
16 since Proskauer stopped doing work for Iviewit?

17 A. I might have seen him on a social  
18 evening, you know, someplace socially.

19 Q. Do you know if Iviewit owes any money to  
20 Mr. Lewin's firm?

21 A. I believe it does.

22 Q. Do you know how much?

23 A. No.

24 Q. Fifty thousand?

25 A. Do you want to pick any other number? I

1 don't know what it is.

2 Q. Do you know that -- Do you know why  
3 Mr. Lewin's firm hasn't been paid by Iviewit?

4 A. No. I suspect that Mr. Lewin hasn't been  
5 bothering him.

6 Q. Been bothering?

7 A. The firm, Iviewit.

8 Q. Do you know how long the money's been  
9 due?

10 A. I don't.

11 Q. You never asked?

12 A. I don't - didn't ask. And I don't care.

13 Q. Why don't you care? It's an outstanding  
14 debt of a --

15 A. Of what?

16 Q. -- of a corporation with which you were  
17 involved.

18 A. I also am involved with stock from IBM.  
19 I don't give a damn if they ever pay their bills.

20 Q. I appreciate your candidness. Are you  
21 planning to testify at the trial of this matter?

22 A. Are you asking me if --

23 Q. Are you planning to testify at the trial  
24 of this matter when this case goes to trial I guess  
25 in a couple months?



1 A. If I'm requested, I'll testify.

2 Q. Do you know what you're going to testify  
3 to?

4 A. That I'm Simon L. Bernstein and I live at  
5 7020 Lions Head Lane.

6 Q. That's it?

7 A. That's it. And the truth.

8 Q. Do you know if Proskauer was paid a  
9 retainer?

10 A. I don't.

11 Q. You testified that you directed Proskauer  
12 to do work at the very beginning of the relationship  
13 with Iviewit?

14 A. Well, I and the rest of the folks  
15 involved, Mr. Wheeler, Mr. Lewin and so on and so  
16 forth.

17 Q. Did you --

18 A. We agreed that Proskauer would be our  
19 firm.

20 Q. Did you ever call any of the Proskauer  
21 attorneys and tell them to do specific work?

22 A. I don't recall. No, I don't think so.

23 Q. Okay. That was Mr. Utley?

24 A. Well, that was prior to Mr. Utley.

25 Q. Yeah. Who did -- Who directed Proskauer

1 to do work prior to Mr. Utley coming aboard?

2 A. There was very little work. We really  
3 didn't have anything to do. We were using - we were  
4 using the - Mr. Wheeler's facility on occasion for a  
5 meeting. And that was about it.

6 Q. Weren't the --

7 A. The company wasn't really set up yet.

8 Q. So the - the Iviewit.com, Inc., Iviewit  
9 Holdings and Technologies?

10 A. I think Iviewit.com was the only one set  
11 up.

12 Q. Before Mr. Utley came aboard?

13 A. Yes.

14 Q. Who directed Proskauer to set that  
15 company up?

16 A. I probably did. Or Mr. Lewin did. One  
17 of the two of us.

18 Q. Or Eliot Bernstein?

19 A. No, he wouldn't do that.

20 Q. Why not?

21 A. Wasn't in the business end of the  
22 business.

23 Q. He was more into the technological  
24 aspects?

25 A. He was the inventor.

1 Q. Right. And you handled the -- You and  
2 Mr. Lewin took care of the business side?

3 A. For the short interim until Mr. Utley was  
4 hired.

5 Q. Okay. Who brought Mr. Utley in? Was it  
6 Mr. Wheeler?

7 A. Yes.

8 Q. Did you find him to be experienced at the  
9 time that he came aboard?

10 A. Well, I found his resume to look quite  
11 enchanting, although it didn't - it turned out that  
12 his resume was neither complete nor quite factual.

13 Q. What, what do you mean by that?

14 A. Well, Mr. Wheeler - I mean, Mr. Utley  
15 worked for another company, which I understand  
16 terminated him for practices involved in - in  
17 something illegal with patents. I don't know what it  
18 was.

19 Q. He committed a crime?

20 A. I don't know if it was a crime, but I  
21 know he was fired from this company for --

22 Q. Was --

23 A. -- work.

24 Q. Was it recently?

25 A. Prior to Iviewit.

1 Q. Immediately prior? Within the couple  
2 years?

3 A. Yes.

4 Q. So we're talking the late '90s?

5 A. Talking immediately prior to us reviewing  
6 him as a candidate.

7 Q. Do you remember any other particulars  
8 about that?

9 A. I know that he represented - that he was  
10 represented as the person who ran the IBM office in  
11 Boca and something like 17,000 employees that worked  
12 for him, which I found out later was not true.

13 Q. What is not true about that?

14 A. He didn't run it. There were other  
15 people who ran it. He worked for them.

16 Q. So his resume represented him as the  
17 person who ran the office when in fact you found out  
18 that wasn't true?

19 A. Either his resume or his description by  
20 Chris Wheeler that --

21 Q. Did you ever confront Mr. Utley with  
22 that?

23 A. Not until I found out much later on.

24 Q. When did you find out?

25 A. Towards the end --

1 Q. Towards?

2 A. -- of Mr. Utley's tenure with Iviewit.

3 Q. Did you ever confront Mr. Wheeler about  
4 that?

5 A. I did.

6 Q. Do you recall when?

7 A. About the same time.

8 Q. What did Mr. Wheeler say?

9 A. I don't recall.

10 Q. Do you remember what you said to  
11 Mr. Wheeler?

12 A. Just to the extent that he wasn't who we  
13 thought he was. That's all.

14 Q. Before I forget, you said that  
15 Mr. Wheeler attended board meetings quite often?

16 A. In the beginning, every one.

17 Q. Yeah? Do you remember was that the  
18 entire year of '99?

19 A. I don't remember.

20 Q. Maybe more? Maybe less?

21 A. Maybe less.

22 Q. Can you estimate how many meetings he  
23 attended?

24 A. I think I said six, but --

25 Q. Six?

1           A.     It might have been one, seven or eight or  
2 maybe five.

3           Q.     Were what you say the excessiveness of  
4 Proskauer's bills, were they ever mentioned at those  
5 meetings when Mr. Wheeler was in attendance?

6           A.     No. That was early on. That was early  
7 on.

8           Q.     It was after Mr. Wheeler was no longer  
9 attending board meetings that the excessiveness of  
10 Proskauer's bills, you say, was discussed?

11          A.     No, I would assume they started from the  
12 beginning. They just weren't as visible.

13          Q.     What did Mr. Wheeler say when you sat  
14 down and talked to him in person about the  
15 excessiveness of Proskauer's bills? Did he say that  
16 he would take care of it?

17          A.     He said he would look into it.

18          Q.     Did you point out the specifics of what  
19 you had problems with to him when you met with him?

20          A.     I don't recall.

21          Q.     Okay. Do you know if anybody else from  
22 the company did?

23          A.     Meet with him?

24          Q.     Yeah.

25          A.     I was told Brian Utley did, but --

1 Q. Eliot Bernstein didn't?

2 A. Not that I know of.

3 Q. Would he review the bills? You said it  
4 was more the inventor.

5 A. He might have. He might have reviewed  
6 them, but he was more the inventor.

7 Q. Yeah.

8 A. He relied on Brian Utley.

9 MR. PRUSASKI: That's a good place to  
10 end. I have no further questions.

11 THE WITNESS: Thank you.

12 MR. GREENWALD: Do you have questions?

13 MR. SELZ: No.

14 MR. GREENWALD: Okay. We will read it.

15 MR. PRUSASKI: I'll take a copy of it.

16 THE REPORTER: Steve, do you want a copy?

17 MR. SELZ: Yes.

18 MR. GREENWALD: It's exactly 3:15. How  
19 about that?

20 (Thereupon, at 3:15 p.m., the deposition  
21 was concluded.)

22

23

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WITNESS CERTIFICATE

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I, SIMON L. BERNSTEIN, do hereby certify that I have read the foregoing transcript of my deposition given on November 14, 2002; that, together with any additions or corrections attached hereto, it is true and correct.

-----  
WITNESS

SUBSCRIBED AND SWORN TO before me this \_\_\_\_ day of \_\_\_\_\_, 2002, by the witness who has produced a \_\_\_\_\_ as identification and who did not take an additional oath.

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NOTARY PUBLIC

My Commission expires:




CERTIFICATE OF OATH

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STATE OF FLORIDA )  
                          )  
COUNTY OF BROWARD )

I, TAMARA EMERICK-MASCI, RPR, the undersigned authority, certify that SIMON L. BERNSTEIN personally appeared before me and was duly sworn.

WITNESS my hand and official seal this 20th day of November, 2002.

  
\_\_\_\_\_  
TAMARA EMERICK-MASCI, RPR

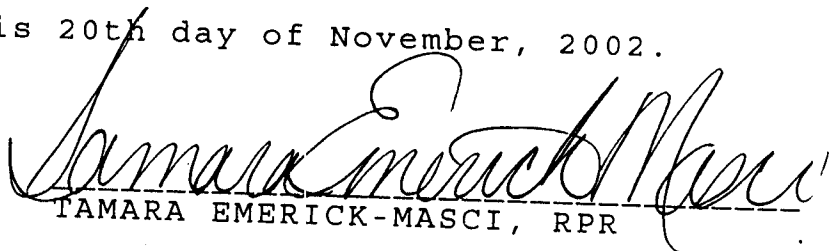
REPORTER'S DEPOSITION CERTIFICATE

STATE OF FLORIDA )  
COUNTY OF BROWARD )

I, TAMARA EMERICK-MASCI, Registered Professional Reporter, certify that I was authorized to and did stenographically report the deposition of SIMON L. BERNSTEIN; that a review of the transcript was requested; and that the transcript is a true and complete record of my stenographic notes.

I FURTHER CERTIFY that I am not a relative, employee, attorney or counsel of any of the parties, nor am I a relative or employee of any of the parties' attorney or counsel connected with the action, nor am I financially interested in the action.

DATED this 20th day of November, 2002.

  
TAMARA EMERICK-MASCI, RPR

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KEN SCHANZER & ASSOCIATES, INC.  
209 N. 20th Avenue  
Hollywood, Florida 33020  
(954) 922-2660

November 20, 2002

To: Simon L. Bernstein  
c/o Steven I. Greenwald, Esq.  
6971 N. Federal Highway  
Suite 105  
Boca Raton, Florida 33487

Re: Proskauer vs. Iviewit  
Deposition of Simon L. Bernstein

The above-referenced deposition taken in the above-entitled cause on November 14, 2002, is now ready for signature. Please come to this office and sign same; or if you wish to waive the signing of the deposition, please so advise.

If this deposition has not been signed by December 4, 2002, or prior to the trial of said cause, or the signature thereto waived, we shall consider such delay a waiver of signature and proceed according to the Florida Rules of Civil Procedure.

If you have any reason which you would like for me to place on the deposition as to your failure or inability to sign, please advise.

Very truly yours,

  
Tamara Emerick-Masci, RRR

CC: All counsel of record.

KEN SCHANZER & ASSOCIATES, INC. (954) 922-2660

IN THE CIRCUIT COURT OF THE  
FIFTEENTH JUDICIAL CIRCUIT IN  
AND FOR PALM BEACH COUNTY, FLORIDA

CASE NO.: CA 01-04671 AB

---

PROSKAUER ROSE, LLP, a New York limited  
liability partnership,

Plaintiff,

vs.

IVIEWIT.COM, INC., a Delaware corporation,  
IVIEWIT HOLDINGS, INC., a Delaware  
corporation, and IVIEWIT TECHNOLOGIES,  
INC., a Delaware corporation,

Defendants.

---

Boca Raton, Florida  
January 31, 2003  
10:25 a.m.

DEPOSITION  
OF  
ELIOT I. BERNSTEIN

-----

APPEARANCES:

PROSKAUER ROSE LLP  
BY: CHRISTOPHER W. PRUSASKI, ESQ.  
Appearing on behalf of the Plaintiff

SELZ & MUVDI SELZ, P.A.  
BY: STEVEN M. SELZ, ESQ.  
Appearing on behalf of the Defendant

- - - - -

I N D E X

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Direct Examination by Mr. Prusaski	3
Cross Examination by Mr. Selz	231
Redirect Examination by Mr. Prusaski	233

DEPOSITION OF ELIOT IVAN BERNSTEIN, a witness herein, taken pursuant to the Rules and Notice hereinbefore filed, before ELIZABETH DAVILA SAINT-LOTH, Shorthand Reporter and Notary Public in and for the State of Florida at Large, at Proskauer Rose, LLP, 2255 Glades Road, Suite 340W, Boca Raton, Florida 33433 on the 31st day of January, 2003, commencing at 10:25 a.m.

1 Thereupon:

2

ELIOT I. BERNSTEIN,

3

a witness, having been first duly sworn in the  
4 above-entitled cause, testified under oath as follows:

5

DIRECT EXAMINATION

6

BY MR. PRUSASKI:

7

Q. Good morning, Mr. Bernstein. I'm Chris Prusaski  
8 from Proskauer Rose. We've met before.

9

Can you, for the record, state your full name  
10 please.

11

A. Eliot Ivan Bernstein.

12

Q. What is your address?

13

A. 10158 Stonehedge Drive or Stonehedge Circle,  
14 Boynton Beach 33437.

15

Q. Are you a resident of Florida now?

16

A. I reside in Florida, now.

17

Q. You recently moved from California?

18

A. I did.

19

Q. Okay. What was your address in Escondido before  
20 that?

21

A. 16975 Guejito Road, G-U-E-J-I-T-O Road, Escondido  
22 92027.

23

Q. Okay. To get a couple of things out of the way  
24 before we start, just the rules of the depo -- and I'm sure  
25 you're aware of them because I know you've sat through a

1 couple of them so far in this case.

2 If, for some reason, I ask a question and you  
3 don't understand it, before you answer, please, tell me and  
4 I'll try and rephrase it the best I can.

5 If you answer a question, it's assumed that you  
6 understood the question. And because the stenographer  
7 needs to record everything that's said in this room, nods  
8 of heads, acknowledging a yes or a no, can't go down on  
9 paper.

10 If you need to take a break for some reason, just  
11 tell me; and you and Mr. Selz can take a break, as long as  
12 there's no question pending at the time.

13 What is your current occupation?

14 A. Inventor.

15 Q. Do you have an employer?

16 A. I am not sure.

17 Q. Do you receive a W-2 or a paycheck?

18 A. I receive unemployment compensation.

19 Q. Based on your employment with what entity?

20 A. It would have been with Iviewit.com, which is  
21 bankrupt -- or partially going through something. I am not  
22 sure what that is.

23 Q. Iviewit.com, Inc.?

24 A. Yes.

25 Q. Okay. The Delaware corporation that's a defendant

1 in this lawsuit?

2 A. I'd have to see the documents.

3 Q. I'm not going to mark this as an exhibit.

4 This is the answer that Mr. Sachs's client  
5 filed -- Mr. Sachs's firm filed. Those are the defendants  
6 in this lawsuit.

7 A. So correct, it was one of the defendants in this  
8 lawsuit.

9 Q. The Iviewit.com, Inc. was your former employer?

10 A. Correct.

11 Q. What's your educational background?

12 A. A B.S. psychology, University of Wisconsin,  
13 Madison.

14 Q. What year?

15 A. I don't know.

16 Q. Was it during the '80s that you graduated?

17 A. Yeah. Yes.

18 Q. Do you have any postgraduate education?

19 A. No.

20 Q. Do you hold any licenses, like a lawyer,  
21 accountant?

22 A. No.

23 MR. PRUSASKI: I'm going to show you some  
24 documents that we'll mark as Plaintiff's  
25 Exhibit 1, composite.



1                   (Whereupon, Plaintiff's Composite  
2                   Exhibit 1 was marked for identification.)

3                   Q.    I'm going to ask you to look at these documents in  
4                   general, and tell me if you've seen them before.

5                   MR. SELZ:  Thank you.

6                   A.    Yeah.

7                   Q.    The document on top is a printout of a statement  
8                   that's attached to the amended complaint as an exhibit.

9                   MR. PRUSASKI:  For your benefit, Mr. Selz, each of  
10                  the attorneys' bills underneath the statement  
11                  on top are chronologically the statements that  
12                  are referenced in the amended complaint that  
13                  total the amount of money that's claimed by  
14                  Proskauer.

15                  Q.    Were these sent to Iviewit by Proskauer when you  
16                  worked for Iviewit?

17                  A.    I am not sure if this set of documents you've  
18                  provided for the court was sent to Iviewit at all.  It  
19                  conflicts with some of the bills I have.

20                  I don't think it's a complete set of all of the  
21                  bills, you can tell me better on that.  So I am not sure  
22                  why we're having a billing dispute which all of the  
23                  documents aren't presented to me with all the detail.  I  
24                  think we've asked for that.

25                  So these documents, I would have to say, were

1 given to, I believe, Brian Utley for, you know, reasons at  
2 a time where such documents became public to the company.  
3 The board of directors was irate. And it led to the term  
4 of -- one of the causes of actions against Mr. Utley's  
5 termination was these excessive and insane billings that  
6 weren't authorized by the board for things like  
7 transferring the company into a Distance Learning company,  
8 et cetera, without board approval.

9           Some of the billings for the stock transfers of  
10 Tiedemann/Prolow, which I think might be included in here,  
11 might not, which were done without proper consultation to  
12 the board.

13           You know -- so, you know, I might have seen part  
14 of these documents or there might be a lot more of the  
15 documents that are not here. And so yeah, I have seen part  
16 of these documents is my answer.

17           MR. SELZ: Can I make just an observation, Chris,  
18 real quick. I've noticed there's a lot of  
19 pages in these documents that have -- are  
20 either blank or like have one line or something  
21 at the top.

22           Are these -- is there some reason why  
23 there are blank pages in here that you know of?

24           MR. PRUSASKI: No, I don't --

25           MR. SELZ: I'm just curious as to whether

1 or not these are -- I've never seen -- in the  
2 copies of the billing statements that I have  
3 and have previously been attached to motions to  
4 the court, none of them I have ever seen have  
5 had this one line on the next page kind of  
6 view, and it seems pretty consistent  
7 throughout. This is what I'm talking about.

8 MR. PRUSASKI: My understanding is those  
9 are the documents that Proskauer sent to  
10 Iviewit, the bills.

11 MR. SELZ: Okay. Okay.

12 THE WITNESS: Is my office --

13 MR. PRUSASKI: Thank you for your answer.  
14 You said -- that's the exhibit that we're going  
15 to attach to the deposition.

16 THE WITNESS: Is that an exhibit that was -- did  
17 you not just ask me if I've seen these  
18 documents in relation to this, or Iviewit.com?  
19 Because I've seen them in relation to the  
20 lawsuit, but not --

21 MR. PRUSASKI: To the lawsuit. Good  
22 point, and I appreciate you asking me that.

23 THE WITNESS: Right.

24 BY MR. PRUSASKI:

25 Q. When you were working for Iviewit, at the time

1 Proskauer was representing Iviewit, did you see the billing  
2 statements when they came in?

3 A. I saw different billing statements that addressed  
4 patent patterns, et cetera, that we were paying Proskauer  
5 to do, which I don't find a lot of it in here. I find  
6 missing and incomplete billing statements. These were  
7 given to Brian Utley.

8 Q. Well, those are the bills -- those are the bills  
9 that we allege in the complaint haven't been paid, and so  
10 that's why you're not looking at every bill that Proskauer  
11 ever sent to Iviewit.

12 A. Which ones did you pay? Do you have those?

13 Q. Well, I'm going to show you those, and we'll get  
14 into that later.

15 A. Okay.

16 Q. You said some things in your answer that interest  
17 me.

18 Brian Utley, you indicated, received the bills  
19 when they came in from Proskauer?

20 A. Yes. Okay, these bills.

21 Q. Was it his job to receive and review the bills  
22 when they came in from creditors?

23 A. Yes, it was part of his job.

24 Q. What was his role with the company?

25 A. His role was misrepresented to us by Proskauer as

1 an engineer capable of completing an engineering review;  
2 that's what he was first brought on for by Chris, who said  
3 that he had the engineering degrees and background to do an  
4 analysis for Real 3-D, another person Chris brought into  
5 the company. And --

6 Q. What I asked was what his role is. Was he the  
7 president?

8 A. Well, you're asking what the role was, I'm  
9 defining his role.

10 Q. Well, I'm narrowing it down. Was he the  
11 president?

12 A. Well, at first, he wasn't. At first, he was not.  
13 He was hired on to review the technology for an  
14 engineering opinion for Real 3-D, so that was his first  
15 assignment.

16 After the completion of that review, Chris asked  
17 that we make him CEO; it was not approved by the board. He  
18 was approved for president and COO -- well, actually, he  
19 was approved for chief operating officer.

20 And Chris asked me to resign from president and  
21 turn my title over to Brian, which I did; and I took kind  
22 of a more passive role in the organization at that point.  
23 I became secretary, I believe.

24 And that was based on Chris's recommendation that  
25 he had all of the strengths and qualities of an excellent

1 CEO/president-type position and had the capabilities as an  
2 engineer to work for our company.

3 Q. Was Brian ultimately the president?

4 A. Brian was ultimately the president and COO.

5 Q. Did the board of directors know he was the  
6 president and COO?

7 A. Yes.

8 Q. What other -- who was the CFO of the company?

9 A. I don't believe anybody at the time.

10 Q. Was it Hersh?

11 Was Mr. Hersh ultimately the CFO?

12 A. Mr. Hersh was ultimately the CFO, I believe.

13 Q. Did he review the bills when they came in from  
14 Proskauer, Mr. Hersh?

15 A. Mr. Hersh did review the bills, I believe. I  
16 don't know what bills he reviewed.

17 Q. Did you review them?

18 A. Are we referring to this set of bills?

19 Q. No, in general.

20 A. Did I review bills?

21 Q. Yes.

22 A. I thought I was reviewing bills, but I guess Brian  
23 had a whole set of bills that nobody had ever seen that him  
24 and Chris had designed by themselves that, when it got to  
25 the board, obviously it became a huge issue where credible

1 members of Goldman Sachs and Arthur Andersen's personal  
2 financial planning division looked in and said what the  
3 hell is going on; why do we have all of these bills and no  
4 patents, when we're paying for patents; what are these  
5 bills about Distance Learning?

6           Then, they found out a bunch of other things about  
7 Distance Learning that had been going on between  
8 Mr. Wheeler and Mr. Utley that have driven these bills to  
9 large proportions. Then, they were incensed, if not  
10 infuriated. And I believe they put some kind of \$5,000  
11 spending limit on these two; but they had still gone way  
12 above that \$5,000 limit and transacted wild amounts of  
13 bills.

14           Q.    So it's Iviewit's position that Mr. Utley was  
15 agreeing to pay bills to Proskauer which you claim  
16 shouldn't have been paid?

17           A.    They shouldn't have even been billed.

18           Q.    When did you first learn about this?

19           A.    Oh, God. Well, my dad really first started to ask  
20 some questions about what the bills were for. And then,  
21 there were several board meetings in which the bills became  
22 a very large focus of the meeting.

23           And everybody was concerned that we were being,  
24 you know, way overbilled, in light of the fact that we  
25 hadn't gotten the royalties promised by Proskauer for their

1 patent pools, which was kind of the deal we had worked was.  
2 You know, there would be a larger bill to us because you  
3 were delaying payment until you got money out of the patent  
4 pools after Ken Rubenstein deemed them novel.

5 Q. Right, and we'll get into that.

6 But my question was: When did you first become  
7 aware of this?

8 A. I'd have to -- I'd have to -- I probably would be  
9 answering something you are not -- I'm not exactly sure of.

10 MR. SELZ: If you can't answer --

11 Q. You can't --

12 A. I am not exactly sure of the exact date.

13 Q. I'll help you narrow when. Was it last year?

14 A. No.

15 Q. Was it the year before that, 2000, 2001?

16 A. Yeah. No, 2000 is accurate. End of the year.

17 Q. Well, Proskauer stopped representing Iviewit in  
18 about April of 2001, does that date ring a bell?

19 A. Yes.

20 Q. That's my understanding of when that happened.

21 A. Correct, yeah.

22 Q. Was it before or after that?

23 A. Before. Just like I said, it was the end -- it  
24 was mid-, end of 2000 that I became aware of some of the  
25 miss -- malfeasances that were happening on not only the



1 bill, but multiple other issues.

2 Q. Did you tell your lawyers about that after the  
3 lawsuit was filed?

4 A. Did I -- well, actually, the lawyers I thought  
5 were hired for the lawsuit against Proskauer, it wasn't  
6 even disclosed to me.

7 Actually, Wayne Smith of Warner Brothers notified  
8 me that I was being sued by both the involuntarily  
9 bankruptcy by Mr. Wheeler's friend, Mr. Utley; and  
10 Mr. Wheeler's lawsuit against the company were not  
11 disclosed --

12 Q. Proskauer Rose?

13 A. -- correct -- were not disclosed to all of  
14 the shareholders by the CEO who was put in, which was also  
15 a Chris Wheeler referral --

16 Q. Well, my question was: Did somebody mention it to  
17 Spencer Sachs's firm, who was defending Iviewit in the  
18 Proskauer lawsuit, about this alleged malfeasance that you  
19 were aware about -- aware of?

20 A. Yes.

21 Q. Who?

22 A. A representative brought in -- which we later,  
23 through your billings, noticed was a Chris Wheeler referral  
24 of Ross Miller. Ross was brought in by the investment firm  
25 that Chris Wheeler had also identified, so they put Ross

1 in.

2 Ross didn't notify any of the shareholders or  
3 board members that we can any evidence of that we were even  
4 in these suits. So we found out through -- you know, at  
5 the last minute, when Spencer Sachs was declining counsel  
6 for us -- and which is kind of why we're late to the game  
7 is, we didn't really get notification from our management  
8 that was, I guess, friends with Chris, that we were even in  
9 these.

10 Q. Well, who got -- I'm confused. Who got a copy of  
11 the lawsuit that Proskauer filed?

12 A. Ross Miller. Ross Miller.

13 Q. And is he the one that hired Sachs Sachs & Klein  
14 to defend Iviewit?

15 A. I would believe so.

16 Q. Did you know anything about it at the time?

17 A. Not at that time.

18 Q. When did you get updated about this?

19 A. Several months after it was filed, I believe.

20 Q. Did Ross Miller know about what you are telling me  
21 is the alleged malfeasance of Utley?

22 A. Ross Miller did know about the malfeasances of  
23 Utley, correct. He was investigating those.

24 MR. PRUSASKI: Well, I'll show you a  
25 document that's marked as Plaintiff's Exhibit 2

1 and Plaintiff's Exhibit 3, two documents.

2 (Whereupon, Plaintiff's Exhibits 2 and 3  
3 were marked for identification.)

4 Q. I'll ask you to look at those, and tell me if  
5 you've seen them before.

6 MR. SELZ: Which one are you marking as 2 and  
7 which one are you marking as 3?

8 MR. PRUSASKI: The second affirmative  
9 defense is 2; the answer to the affirmative  
10 defense is 3.

11 A. Yes, I have seen them.

12 Q. When did you see these documents?

13 A. After I was notified that I had counsel  
14 representing me in a case I hadn't known about before, so  
15 whenever Spencer Sachs and I had first talked -- whenever  
16 Spencer Sachs and I first spoke.

17 Q. Have you noticed that the allegations of Utley's  
18 alleged malfeasance with the bills aren't anywhere in these  
19 documents?

20 A. Yes, that's because this set of documents was  
21 prepared by Bill Kasser on affirmative defenses against --  
22 I believe they were prepared by people like Ross and stuff.  
23 I don't --

24 Q. Well, these were prepared by Sachs's office and  
25 signed by Sachs's office. Those aren't the interrogatory

1 answers.

2 A. Right. And I don't think I did -- oh, what are  
3 these?

4 Q. Those are the answers and affirmative defenses  
5 filed by Iviewit's lawyers after the lawsuit was filed by  
6 Proskauer. Those aren't the interrogatory answers, which I  
7 think you're talking about, which we'll get to in a moment.

8 A. Okay.

9 Q. That's why it's important that, if I show you a  
10 document, you've got to flip through it, and I don't mind  
11 if you do.

12 A. Yeah, I will. I will. I will.  
13 What's the date on this document?

14 Q. They're on the end, on the signature.  
15 Have you seen those before?

16 A. I am going to take a look at them.

17 I believe I have seen them through this case. I'm  
18 not sure, but I might have seen these in the course of the  
19 case.

20 Q. Are you aware that your comments about Mr. Utley's  
21 malfeasance or the officers' malfeasance regarding  
22 Proskauer's bills aren't asserted as affirmative defenses  
23 in this matter?

24 A. I don't think anything that I would have to say  
25 was asserted in this because I don't think I'm part of that

1 assertion.

2 Q. Did you ever tell Mr. Selz, after you hired him,  
3 about the alleged malfeasance of Mr. Utley pertaining to  
4 the bills?

5 A. Absolutely.

6 Q. Okay.

7 A. Of course he was late to -- showing up, so he was  
8 retained --

9 Q. Right. He arrived in the case in July?

10 A. Right.

11 Q. Who else has information about -- or who you are  
12 planning on having testify at trial as to Mr. Utley's  
13 malfeasance pertaining to the bills, besides yourself?

14 A. I have an objection to that because it could  
15 possibly endanger the lives of people who I would list  
16 as --

17 Q. You have to answer the question.

18 A. There's no protection of people? I can't plead  
19 for people --

20 Q. No.

21 A. -- who could be in danger?

22 MR. SELZ: If you know of someone, you should say  
23 it. If you don't know who they are --

24 Q. Well, let me ask you -- let me ask you this, and  
25 maybe it will make you feel better about your answer: Who

1 is going to be testifying for Iviewit at trial?

2 When Mr. Selz is told that he's allowed to put his  
3 case on after Proskauer rests at trial, what witnesses are  
4 going to be called besides you?

5 A. I don't know all of them at the moment but, you  
6 know, I would expect everybody that would be involved with  
7 knowledge of the malfeasances names would be David Culter  
8 (ph). Alan Epstein, Michele Mulrooney, James Jackoway, Alan  
9 Epstein -- I don't know if you've got that. There would be  
10 Maurice Buchsbaum, perhaps; Anthony Frenden, James  
11 Armstrong, Jeff Friedstein, Donald Kane, Ken Anderson, Jim  
12 Osterling (ph), Mitchell Welsh.

13 Q. Mitchell what?

14 A. Mitchell Welsh.

15 Q. Okay. So all of the people you've mentioned so  
16 far are going to testify on Iviewit's behalf at the trial  
17 in April?

18 A. Would you like me to finish?

19 Q. No. All of the people you've listed so far are  
20 going to --

21 A. Yes.

22 Q. -- testify on behalf of Iviewit at the trial in  
23 April?

24 A. Yes.

25 MR. PRUSASKI: I'll be right back. We are taking

1 a minute break. I'm going to get the witness  
2 and exhibit list that these people aren't on.

3 (Whereupon, Mr. Prusaski briefly steps out  
4 of the room.)

5 MR. PRUSASKI: Okay. We're on the record.

6 This is the defendants' exhibit list,  
7 which -- when we go on a break next time I'll  
8 copy and we'll appropriately mark it, but we'll  
9 leave this as Exhibit Number 4.

10 BY MR. PRUSASKI:

11 Q. I'll ask you to take a look at that, and tell me  
12 if you have ever seen it before.

13 THE WITNESS: This yours?

14 MR. SELZ: I can't answer any questions you have.  
15 Just go ahead and look at it.

16 A. It's not the whole --

17 Q. No. This document that's tabbed.

18 A. 85?

19 MR. SELZ: Right. Just that one.

20 A. Have I seen this?

21 Q. Yes.

22 A. No. This is the first time I've ever seen this.

23 Q. Okay. This is the exhibit list that your  
24 attorney -- and witness list that your attorney filed on  
25 Iviewit's behalf, and it lists the people who you plan on

1 calling at trial. And the only people who are going to be  
2 allowed to be called at trial for the defendant.

3 And I'm noticing that none of these people that  
4 you just listed are listed here. I know who Raymond Joao  
5 is, he's the attorney in New York, and we'll get into him  
6 later.

7 Of the people who are going to testify that you  
8 say as to Brian Utley's malfeasance with the bills, which  
9 one of those people listed are going to testify to that?

10 A. None.

11 Q. What about yourself and your father?

12 A. You know, I can only speak for myself.

13 Q. Okay. Do you know if your dad is going to -- your  
14 father, is going to testify at trial?

15 A. I don't know. I haven't asked him.

16 Q. You are going to testify, I assume?

17 A. Correct.

18 Q. Any of the other people going to testify that you  
19 know of as to Brian Utley's malfeasance?

20 A. On this list?

21 Q. Yes.

22 A. No.

23 Q. Have you spoken to any of the people on that list  
24 recently?

25 A. I spoke to Gerri Lewin maybe two months -- no,



1 he's not on there. Nobody, he's not on here. Gerri Lewin  
2 was the name.

3 No. I haven't talked to any of these witnesses.

4 Q. So if you are limited to those witnesses on that  
5 list, how are you going to prove this Brian Utley  
6 malfeasance at trial?

7 MR. SELZ: Objection; calls for a legal  
8 conclusion.

9 A. You'll need my lawyer. Talk to my lawyer.

10 Q. Okay. So you are the only one that's planning on  
11 testifying as to the Brian Utley malfeasance?

12 A. I didn't say that. I did not say that.

13 I gave you a list of people that I think will  
14 testify against Mr. Utley.

15 Q. They can't testify at trial because they're not on  
16 that list.

17 A. We'll see. Things change.

18 Q. So you are going to try and get those people to  
19 testify at trial, even though they're not listed?

20 A. Many more.

21 Q. Okay. Good luck, you are going to need it.

22 A. Okay. Well, we didn't learn about all of the  
23 malfeasances until we discovered all of your documents.

24 Q. Well, you told me -- well, you told me you knew  
25 about the malfeasance before the lawsuit was filed.

1           A.    I knew -- you asked me if I had seen the bills,  
2 and I said that some of the bills started us to investigate  
3 some of the malfeasances against Mr. Utley.

4           The list of malfeasances against Mr. Utley, many  
5 of them were discovered, and we'll need additional  
6 witnesses after all of this.

7           Q.    What do you mean "all of this"?

8           A.    Well, we were in discovery. We had to rebuild the  
9 documents that Mr. Utley and Mr. Wheeler destroyed and  
10 never sent to California like they were supposed to.

11           We had to rebuild through talking to people about  
12 what had happened so that we can understand some of the  
13 Distance Learning billings and all of these kind of things  
14 that we had never seen before, so it took time. And there  
15 will be additional witnesses who --

16           Q.    Were you telling your lawyer this when you were  
17 learning about it?

18           A.    Well, my lawyer came on and probably filed that  
19 with -- one day after Spencer Sachs which -- like I said,  
20 was hired counseled by Mr. Wheeler's friends, and I think  
21 he's got a personal relationship with Mr. Sachs, which  
22 might cause some conflict, or I'm not sure. You can ask  
23 him.

24           Q.    Do you think Spencer Sachs' firm representing  
25 Iviewit was a conflict because Spencer Sachs and Chris

1 Wheeler were friends?

2 A. No, because Chris Wheeler recommended Ross Miller  
3 to the company.

4 Q. And Ross Miller hired Sachs' firm?

5 A. And that wasn't disclosed until we got these  
6 documents from you.

7 Q. So do you -- are you intimating that Spencer Sachs  
8 didn't represent Iviewit well?

9 A. I would say that Spencer Sachs didn't represent  
10 Iviewit and its shareholders or its board or anything at  
11 all. He represented Ross Miller, and that was it.

12 We did -- we found out that --

13 Q. How do you know that?

14 A. Well, I know that because, as Spencer Sachs began  
15 to represent Iviewit, he told us that we had a large unpaid  
16 bill, I believe. That he had rung up with Mr. Miller, I  
17 guess, relating to this suit, I guess. And if we didn't  
18 pay, he wasn't going to represent us, which seemed kind of  
19 unfair with trial coming up.

20 So I had no time, I had to get an attorney. I  
21 thank the judge gracefully for allowing me the time to do  
22 that and prepare a case, which took a lot of time for  
23 Mr. Selz, who was fresh on the docket that day because of  
24 our counsel, which was hired for the trial --

25 Q. Hold on. You're getting beyond the scope of my

1 question.

2 A. Was I?

3 Q. Yes.

4 A. Okay.

5 Q. Listen to the question.

6 Well, first of all, who is Ross Miller?

7 A. Ross Miller was referred to the company by Chris;  
8 it's reflected as such in your billing statements.

9 Ross Miller was also friends with another friend  
10 of Chris that controlled the loans in the company, Mr. Hank  
11 Powell and Steve Warner of Crossbow Ventures.

12 Q. What was Mr. Miller's role with Iviewit?

13 A. He was acting CEO, as they put him in Crossbow;  
14 and they were -- you know, the secured creditors picking  
15 the management with Chris, I guess. But I didn't know that  
16 Chris was involved in that decision until I reflected on  
17 these bills you sent me.

18 Q. When did Crossbow -- when did Crossbow become  
19 involved with Iviewit?

20 A. When -- well, that's a great question. Ross  
21 Miller represented -- I don't know, but he has this  
22 representation to Crossbow that was never represented to us  
23 by Chris. He was introduced to the company very early on  
24 to be a CEO for the company by Chris. And then, more  
25 recently --

1 Q. Do you remember when?

2 A. I don't. It's in your billing statement.

3 Q. Well, I'm sure it is, but do you remember.

4 A. No.

5 Q. 2000, 2001?

6 A. No. I would say -- I would say 2000, actually.

7 19 -- it could be -- no. Actually, Ross came in 1999, I  
8 believe.

9 Q. Was Crossbow funding Iviewit?

10 A. Not at that time.

11 Q. When did they start funding Iviewit?

12 A. I don't know the exact date.

13 Q. Do they own Iviewit now?

14 A. No.

15 Q. What's Crossbow's involvement, if at all, with any  
16 of the Iviewit entities now?

17 A. Talk to my counsel, I don't have -- my counsel has  
18 answers for that.

19 Q. Do you?

20 A. No.

21 Q. "Talk to my counsel" isn't an appropriate answer  
22 if you know the answer.

23 A. Oh. Then, no, I don't know the exact state of  
24 where the Crossbow situation is.

25 Q. Did Crossbow at one point own any of the Iviewit

1 entities?

2 A. Yes.

3 Q. Did they recently sell some of the Iviewit  
4 entities? Because I read a Palm Beach Post article a  
5 couple weeks ago, something about that, I don't recall  
6 exactly what.

7 A. I don't know. I didn't read the article.

8 Q. Nobody showed it to you or told you about it?

9 A. No.

10 Q. Did Crossbow at one point own Iviewit?

11 A. No.

12 Q. Did they have a controlling or ownership interest  
13 in it?

14 A. They have an ownership in it, just not a  
15 controlling interest --

16 Q. Were any -- any people from Crossbow at all  
17 participating in the mediation on Wednesday?

18 A. No.

19 Q. Were you consulting with any people from Crossbow  
20 on the telephone at the mediation on Wednesday?

21 A. No.

22 Q. Who were you consulting with on the telephone at  
23 mediation?

24 A. My wife.

25 Q. Were you talking to Mr. Lamont at all?

1 A. During mediation, no.

2 Q. During any of the breaks at mediation?

3 A. Stephen Lamont, no.

4 Q. The night before?

5 A. Oh, yes. Every night, before --

6 Q. But not at all during the mediation?

7 A. Correct.

8 Q. Were there any principals or affiliates of  
9 Crossbow who you were consulting with at all during  
10 mediation?

11 A. No.

12 Q. Okay. So Crossbow had nothing to do whatsoever  
13 with the mediation in this case?

14 A. That I know of at this point, yes.

15 Q. When did Crossbow part company, as far as a  
16 business relationship with Iviewit?

17 A. Well, when they found, let's see, Brian Utley  
18 stealing patents; when they hired Blakely Sokoloff to find  
19 that out.

20 Q. When? When, is the question.

21 A. Their exact termination --

22 Q. That's an event; I want you to narrow it down to a  
23 date.

24 A. Somewhere in the -- I believe the end of 2001.

25 Q. And that was the last time that any of the Iviewit

1 entities had any relationship whatsoever with Crossbow?

2 A. I didn't say that.

3 Q. When did Crossbow cease from entirely having any  
4 type of relationship with Iviewit, which is what I think I  
5 asked?

6 A. A few weeks ago.

7 Q. Okay. What happened a few weeks ago?

8 A. Crossbow had proposed a new company. I brought in  
9 counsel to set up a new company; we had worked several  
10 months to produce a new company. We were said to be 50/50  
11 owners on the new company.

12 And then, unilaterally, they withdrew their offer  
13 and told us they had an assigned interest in the patents  
14 and that they were planning to do a deal with some company  
15 in Jacksonville, Distream or something.

16 Q. Does Crossbow have an interest in the pending  
17 Iviewit technology patents?

18 A. Oh, absolutely.

19 Q. Does Iviewit itself or you have an interest in the  
20 pending patents?

21 A. They have a secured loan on the pending patents,  
22 for which they've claimed assignment for, of which Iviewit  
23 finds part of this conspiracy.

24 Q. Involving Proskauer?

25 A. Correct.



1 Q. When did you find out about this?

2 A. About?

3 Q. The alleged conspiracy.

4 A. I'm still finding out about it.

5 Q. When did you first find out about it?

6 If you are still finding out about it, fine.

7 A. Well, a lot of it started with, you know, Brian  
8 Utley's resume becoming -- based upon false information.  
9 So we learned that we had been hoodwinked into a candidate  
10 who didn't qualify for what he was sold to the board by  
11 Mr. Wheeler to be.

12 That, in fact, the credentials Mr. Wheeler  
13 provided to such board and board members was misrepresented  
14 entirely, as to his past employer, where Mr. Wheeler now is  
15 believed to have had full information of Mr. Monte  
16 Friedkin's firing Brian.

17 Q. Okay. Let's talk about --

18 A. Excuse me. Did I -- was I finished?

19 Q. Yes. Let's talk about --

20 A. Can I finish my answer?

21 Q. Because you weren't answering my question.

22 MR. SELZ: He's entitled to give an answer.

23 A. You asked me -- you asked me a very complicated  
24 question --

25 Q. How long is the answer going to be?

1 A. Can you read me back the question, please?

2 MR. PRUSASKI: No. Do not read back the  
3 question.

4 MR. SELZ: Chris, he's clearly entitled to  
5 give an answer to the best of his ability.

6 Q. The question was: When did you first find out  
7 that Mr. Utley and Proskauer were conspiring with Crossbow?

8 A. Okay. So I was explaining --

9 Q. A date.

10 A. Oh. Somewhere around 2 of '01 or something.

11 Q. February?

12 A. Maybe. Around there, possibly --

13 Q. That's what I wanted, and I'll try and be more --

14 A. -- it could be a little earlier.

15 Q. -- and I'll try and be more clear, if I'm asking  
16 for a date or a specific explanation of a time, okay? So  
17 we can agree on that.

18 A. Great.

19 Q. So it was about February of '01 when you first  
20 started learning about this alleged conspiracy between  
21 Proskauer, Utley and Crossbow?

22 A. Correct.

23 Q. And why didn't your attorneys ever plead that as a  
24 defense to this bill collection lawsuit?

25 A. Because they were attorneys not hired by me.

1 Q. Did you hire Mr. Selz?

2 A. Yeah.

3 Q. He never pled that as an affirmative defense.

4 A. He wasn't up to speed at that point, and he pled  
5 to his events --

6 Q. So you knew about this in 02 of '01, February of  
7 2001?

8 A. Correct.

9 Q. And you hired this attorney sitting next to you in  
10 July of 2002, a year and a half later?

11 A. Yes.

12 Q. And he didn't know about that at the time when he  
13 filed these -- when he filed papers in this case?

14 A. You would have to ask him, but I wouldn't think he  
15 could because he had to start reviewing all of the  
16 documents before he could confirm that there was actually a  
17 conspiracy going on.

18 He was brought in very late, so it took him a lot  
19 of time to review documents that were sent to him  
20 overnight, because the counsel representing us prior was  
21 Mr. Wheeler's friend. So it's hard to not see the conflict  
22 coming there. But Ross Miller --

23 Q. Is this conspiracy the basis for the counterclaim  
24 documents that you and your attorney filed -- I guess sent  
25 me on Tuesday night?

1 A. Yeah.

2 Q. When did you first tell your lawyer about this?

3 A. Which lawyer?

4 Q. Mr. Selz.

5 A. Mr. Selz was brought in by another lawyer,  
6 Caroline Rogers.

7 Q. Right. When did you first tell him about the  
8 conspiracy? A date.

9 A. You would have to defer that to Caroline Rogers  
10 who was my acting counsel at the time. And she --

11 Q. With what firm is Miss Rogers?

12 A. She's private.

13 Q. Where is she located?

14 A. Chicago. She contacted Mr. Selz, so that -- I  
15 wouldn't know what the first date was.

16 Q. And she explained everything to Mr. Selz?

17 A. I am not sure. You would have to talk to him  
18 about it.

19 Q. Did you and Mr. Selz ever have a conversation  
20 about this alleged conspiracy?

21 A. Yes.

22 Q. After he -- how long after he started representing  
23 Iviewit did you have this conversation?

24 A. I don't recall. I don't recall.

25 Q. Was it shortly thereafter?

1           A.    I would say it was -- I started to explain what  
2 was happening piece by piece through sending him multiple  
3 documents over time so that he could understand the  
4 complexity.

5           By the way, I had to rebuild all the documents  
6 because none of the corporate record was sent to me and all  
7 of the computers were locked out. And Mr. Utley stole a  
8 bunch of our computers, which he later had to return via  
9 police court order or whatever, police order. So it took  
10 us a lot of time.

11          Q.    Does -- does July of 2002 ring a bell --

12          A.    It doesn't ring a bell.

13          Q.    -- to you as to when you hired this attorney?

14          A.    I don't recall.

15          Q.    Does it sound accurate?

16          A.    I don't recall.

17          Q.    Okay. Was it last year that you hired this  
18 attorney?

19          A.    I don't know.

20          Q.    You don't remember if it was last year, which was  
21 less than 30 days ago?

22          A.    I didn't hire this attorney. I didn't hire this  
23 attorney, so I don't know.

24          Q.    This attorney, Mr. Selz.

25          A.    I did not hire him.

1 Q. Who hired him?

2 A. Caroline Rogers.

3 Q. With your consent?

4 A. Yes.

5 Q. You consented to the hiring?

6 A. She has a power of attorney for me.

7 Q. Okay. How do you spell Caroline Rogers' last  
8 name?

9 A. Caroline Prochotska, P-R-O-C-H-O-T-S-K-A, Rogers.

10 Q. Rogers with a D?

11 A. No.

12 Q. R-O-G-E-R-S?

13 A. Correct.

14 Q. Do you know her address?

15 A. I don't.

16 Q. She's located in the City of Chicago?

17 A. She is.

18 Q. She's a solo practitioner?

19 A. I believe so.

20 MR. PRUSASKI: I'm taking a one-minute break.

21 I'll be right back.

22 (Whereupon, a recess was taken from 11:12  
23 to 11:20 a.m.)

24 BY MR. PRUSASKI:

25 Q. Mr. Bernstein, when we left we were talking about

1 Crossbow. You indicated that Crossbow had pulled out of  
2 some sort of venture with Iviewit about two weeks ago; is  
3 that correct?

4 A. Several weeks ago.

5 Q. Okay. Sometime in January, though?

6 A. I don't know the exact time. I wasn't --

7 Q. Okay. You can't remember if it was before or  
8 after New Year's?

9 A. I wasn't involved in the discussions, so I don't  
10 know --

11 Q. Who was involved?

12 A. Several of my attorneys.

13 Q. Mr. Selz?

14 A. No.

15 Q. What other law firms are representing you?

16 A. I don't know.

17 Q. I don't want you to tell me -- I don't want you to  
18 tell me what you told your attorneys.

19 A. I don't know. I don't know.

20 Q. Well, I don't want you to tell me what you told  
21 your attorneys because that's confidential.

22 A. I don't know.

23 Q. You don't know what law firms are representing  
24 Iviewit?

25 A. That is correct.

1 Q. Okay. Who would know?

2 A. Caroline.

3 Q. This attorney in Chicago?

4 A. Yeah.

5 Q. Okay. Who authorized her to hire these attorneys  
6 on your behalf?

7 A. Me and Stephen Lamont, the acting CEO.

8 Q. Is he testifying at trial, Mr. Lamont?

9 A. I would presume he would be additionally required  
10 at this point, with the allegations stated set forth.

11 MR. PRUSASKI: Exhibit 4, okay? Your  
12 copy.

13 Can I see Exhibit 1, please,  
14 Mr. Bernstein?

15 The whole thing is Exhibit 1. Thanks.  
16 I'm going to keep them in the middle of the  
17 table because as the deposition progresses,  
18 there are going to be a lot of documents flying  
19 around, and I don't want to lose anything.

20 Q. So as of this date Crossbow doesn't have  
21 anything to do with Iviewit, except it owns some of the  
22 pending patent applications?

23 A. I didn't say that. They have assignment to the  
24 pending applications.

25 Q. Okay.



1 A. And I don't know what their transaction with their  
2 third party is.

3 Q. Is Iviewit still doing business today?

4 A. Yeah, I would assume it is.

5 Q. Okay. Did they lay you off; is that why you are  
6 receiving unemployment compensation?

7 A. The company had no money, and I explained the  
8 situation to the unemployment office. And they had counted  
9 it as employment; that the company was in involuntarily  
10 bankruptcy and had no funds, and that I was the only person  
11 there left, because my prior management hired by  
12 Mr. Wheeler had abandoned us -- and abandoned us with no  
13 documents or anything. So I was the only person to act on  
14 behalf at the time with the shareholders.

15 Q. Who are you referring to as the "prior  
16 management," Miller or Utley?

17 A. Prior management would have been -- well, Utley;  
18 then Miller; then, Maurice Buchsbaum, Ray Hersh. All your  
19 defendants were Chris Wheeler's friends.

20 Q. I thought -- well, you said Utley abandoned the  
21 company?

22 A. No. I'm just saying that management had all been  
23 abandoned.

24 So Utley's replacement Ross Miller, who was  
25 brought in to cover for Utley's malfeasance, as he was

1 terminated by the board. All of that combined was that --  
2 Maurice Buchsbaum, who was also referred by Mr. Wheeler and  
3 was a director of the company as well as management of the  
4 company. Mr. Hersh was also brought in by Mr. Wheeler,  
5 abandoned the company. Mr. Kasser, I believe is related to  
6 Mr. Wheeler; he abandoned the company.

7 And so all of the management basically abandoned  
8 at different stages of this. So I was left holding a  
9 company with no management, basically. So at that point, I  
10 did do things to protect my shareholders, as I uncovered  
11 the evidence leading to the conspiracy charges herein.

12 Q. Don't all of these people you just mentioned claim  
13 that Iviewit owed them money -- still owes them money?

14 A. Yes. Yeah, they're Chris Wheeler's friends.

15 Q. Okay. But they all claim that Iviewit still owes  
16 them money? That's why they left.

17 A. I don't know what -- no. As a matter of fact, I  
18 don't know if they still claim.

19 Mr. Utley filed an involuntarily bankruptcy on the  
20 company. I don't think he pursued it; that was as the  
21 allegations against him were unveiled.

22 Mr. Hersh was a part of that involuntarily  
23 bankruptcy; he's also another friend of Mr. Wheeler's. And  
24 Rigel is a subcontractor of Real 3-D, which was  
25 Mr. Wheeler's referral for an engineering study. And Rigel

1 is a subcontractor of Real 3-D who tried to steal the image  
2 output technology once with Mr. Wheeler writing a document  
3 that got rejected by Foley & Lardner.

4 So the three of them pursued an involuntary  
5 against the company. Maurice Buchsbaum took no action  
6 against the company --

7 MR. PRUSASKI: I don't even remember what  
8 my question is, do you?

9 MR. SELZ: Wasn't it: These people were  
10 owed money by the company; is that correct?

11 MR. PRUSASKI: Didn't they claim that they  
12 were owed money by --

13 THE WITNESS: No. You said do they still  
14 claim -- do they still have claims against the  
15 company, so I'm answering your question.

16 MR. PRUSASKI: Okay.

17 THE WITNESS: Sorry that you can't listen  
18 long enough to retain it. But if you have  
19 trouble, can't she read it back for us?

20 MR. PRUSASKI: Are you going to take  
21 personal shots at me through this deposition?

22 THE WITNESS: I haven't taken any personal  
23 shot.

24 MR. PRUSASKI: You're sorry that I can't  
25 listen long enough? That sounds like a

1 personal shot --

2 THE WITNESS: You just said I can't --  
3 well, you were actually affronting my answer in  
4 the midstream of it --

5 MR. PRUSASKI: This lawsuit has nothing to  
6 do with me personally.

7 THE WITNESS: -- by saying that you could  
8 not remember your own question, that's all.

9 MR. PRUSASKI: This lawsuit has nothing to  
10 do with me personally.

11 THE WITNESS: I didn't take any shot.

12 MR. PRUSASKI: Okay. I feel like you did.

13 THE WITNESS: I explained -- okay. Well,  
14 I'm sorry for that.

15 MR. PRUSASKI: Okay. Thank you.

16 BY MR. PRUSASKI:

17 Q. Okay. The next question I'll ask --

18 A. Did you want me to finish that?

19 Q. No.

20 A. No?

21 Q. I don't think you are -- well, if you asked me if  
22 I want you to finish, no. I don't think you're answering  
23 the question. If you insist on continuing, please  
24 continue.

25 A. Would you like me to answer the question?

1 Q. Yeah. Don't all of those people still to date  
2 claim that Iviewit owes them money?

3 A. No, they do not.

4 Q. Okay. Thank you. You answered the question.

5 So who is currently running Iviewit; who are the  
6 principals of the company?

7 A. Stephen Lamont and myself.

8 Q. Okay. But you have no idea who the attorneys  
9 representing Iviewit -- and you are a principal-- you have  
10 no idea who the attorneys representing Iviewit with the  
11 Crossbow deal are?

12 A. Caroline Prochotska is making the main  
13 representation, and she's chosen a team of lawyers from  
14 varied firms. And you can find that information out by  
15 calling her.

16 Q. Why did Crossbow pull out of a venture with  
17 Iviewit recently?

18 A. Call Crossbow. I can't make an answer based on --

19 Q. You do not know the answer to the question?

20 A. No. They just pulled out and basically violated  
21 good faith negotiations midstream and said they were  
22 assigning our patent assignments to some other company.

23 Q. Do you know what company has the assignments right  
24 now?

25 A. Yeah. Distream, I believe. I don't know these

1 things to be fact.

2 Q. Distream?

3 A. Yeah. D-I-S-T-R-E-A-M.

4 Q. Where are they located?

5 A. Jacksonville.

6 Q. What kind of work is that company involved in?

7 A. I don't know.

8 Q. Who told you this, your attorney, that Crossbow  
9 had assigned its interests in the intellectual property to  
10 Distream?

11 A. Caroline Rogers.

12 Q. Caroline. The attorney in Chicago?

13 A. Right.

14 Q. But you say there are other attorneys representing  
15 Iviewit in the negotiations with Crossbow besides Caroline  
16 Rogers?

17 A. Correct.

18 Q. Other law firms?

19 A. Law firms.

20 Q. Are they Florida or Illinois law firms?

21 A. I don't know all the details about them.

22 Q. You have never seen any of the bills from them?

23 A. I've never met them, seen bills, paid bills, or  
24 anything.

25 Q. Who is handling all of that?

1 A. I don't know.

2 Q. Miss Rogers?

3 A. I don't know how she's handling her affairs.

4 Q. What are your current positions -- what is your  
5 current role at the company? Do you have a title?

6 A. No, not that I know of.

7 Q. Are you a president?

8 A. I would be acting president right now. Stephen  
9 Lamont would be acting CEO, but we're not sure because of  
10 the damage done by Proskauer to our companies, if they are  
11 even our companies.

12 Q. Where does Mr. Lamont live?

13 A. New York, I believe.

14 Q. He's a lawyer by trade, isn't he?

15 A. I don't know.

16 Q. You don't know what Mr. Lamont's background is?

17 A. I believe he graduated Columbia Law School.

18 Q. What did he do between graduating Columbia Law  
19 School and going to work with Iviewit?

20 A. Worked for a variety of technology companies.

21 Q. Did you hire him?

22 A. Yeah.

23 Q. Okay. So what was the deal with Crossbow before  
24 they pulled out?

25 A. I don't know the parameters.

1 Q. Well, you say they stepped out of a deal in good  
2 faith recently; is that correct?

3 A. Correct.

4 Q. You seem to have formed an opinion about that. So  
5 what were the facts that led rise for you to have an  
6 opinion?

7 A. I wasn't on most of the calls, so you would have  
8 to refer to Miss Rogers.

9 Q. If the deal had happened, what would have  
10 happened?

11 A. You would have to refer to Miss Rogers.

12 Q. You have no idea, sitting here, looking at me in  
13 the eye? You are telling me you have no idea what the deal  
14 would have been?

15 A. I knew parameters of different stages of the deal  
16 after they had been contemplated and completed, but I  
17 wasn't in the daily negotiations of these meetings, so I  
18 don't know what the parameters were all throughout or what  
19 they would have been at the end and why they did all that.  
20 I wasn't in on those calls.

21 Q. Was Lamont?

22 A. No.

23 Q. Just Rogers?

24 A. Correct.

25 Q. So you have this lawyer in Chicago running all of



1 the shots for Iviewit right now, without any input from you  
2 or Lamont?

3 MR. SELZ: Objection to form.

4 Q. You can answer the question.

5 A. Yes. I put input to her. I don't know what  
6 happens to that input as she negotiates.

7 Mr. Lamont has asked her to negotiate the legal  
8 strategies for the company; she is a lawyer, he is not.  
9 And obviously, we needed a lawyer to deal with some of  
10 these friends of Mr. Wheeler's who are pursuing all of  
11 these legal actions against the company.

12 Q. Is Crossbow pursuing legal actions against  
13 Iviewit?

14 A. Yes. Obviously they're pursuing assignments  
15 against the company's patent portfolio, so I don't know how  
16 you would classify that legally.

17 Q. Have they sued Iviewit?

18 A. I don't know the technical terms, Miss Rogers  
19 would.

20 Q. You don't know about any lawsuits that Crossbow  
21 filed?

22 A. I don't.

23 Q. So when Miss Rogers notified you that Crossbow had  
24 pulled out of the deal, did she explain why it happened?

25 A. You know, I don't think I asked for an explanation

1 because I just said once a snake, twice a snake, three  
2 times always a snake.

3 Q. Well, the first time they were a snake what  
4 happened?

5 A. The first time they were a snake, they pulled  
6 funding when they had promised funding. They interfered  
7 with my clients. They interfered with my management.

8 Then, they conspired to steal technology, I guess,  
9 through some people that they flew out here to a company,  
10 Zio Sync, I believe, or something.

11 Q. Was Crossbow involved in your alleged conspiracy  
12 by Proskauer?

13 A. Yes.

14 Q. When did you first learn about that?

15 A. I'm still learning about it.

16 Q. When did you first learn about it?

17 A. Well, I first learned about Crossbow, I believe,  
18 conspiracy as they're making assignments.

19 See, what happened was -- in a board meeting they  
20 told the board that they were securing their notes to  
21 protect Iviewit's shareholders from Chris Wheeler's lawsuit  
22 and Brian Utley's involuntary lawsuit, and that the action  
23 was a mechanism using the security to protect the assets of  
24 Iviewit from Proskauer and Utley.

25 So we assigned -- we took a secured interest with

1 Crossbow based on that claim. They have now called their  
2 secured interest as part of an attempt to claim the asset.

3 Q. When did you first find out --

4 A. That happened all over through a long period of  
5 time, so...

6 Q. When did you first find out?

7 A. First I would have found out, perhaps the end of  
8 2000 and -- no, I don't know the exact answer. I can't  
9 recall.

10 Q. What year?

11 A. I can't recall.

12 Q. 2001?

13 A. I can't recall.

14 Q. Before 2001?

15 A. I can't recall.

16 Q. Was it before the Proskauer lawsuit --

17 A. No.

18 Q. -- was filed? It was after?

19 A. Yeah.

20 Q. Did you tell your attorneys at the time?

21 A. Yes.

22 Q. What did they do about it?

23 A. Well, my attorney Caroline has been working with  
24 people to protect me. Mr. Utley came out after being  
25 terminated, and they found patents had been written into

1 his own name going to his house without assignment to the  
2 company, et cetera.

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

10 Q. Utley said this?

11 A. Yes.

12 Q. When was this?

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

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

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

22 Actually, let's go back. It starts really when we  
23 found that Ken Rubenstein wasn't a partner with Proskauer  
24 at the time he was represented. That was found out by, I  
25 believe, Don Kane of Goldman Sachs and Jeff Friedstein of

1 Goldman Sachs.

2 Q. Okay. Well, this is getting into an area --

3 A. You were asking me --

4 Q. Right.

5 A. Okay.

6 Q. This is getting into all of the allegations of the  
7 counterclaim specifically which, as of right now, isn't a  
8 part of this lawsuit, so I'm not going to depose him on the  
9 allegations in the counterclaim, which I don't think you  
10 are going to get filed anyway.

11 If something strange happens and you get it filed,  
12 we'll come back and we'll have a very, very long deposition  
13 on the allegations of the counterclaim.

14 Right now, this deposition deals with those bills  
15 that we claim aren't paid and your defenses to our claim  
16 that they are not paid, okay --

17 MR. SELZ: Let me just go on to say: The scope of  
18 the deposition obviously is within your  
19 control. You can ask him anything under the  
20 sun you want to ask him about.

21 You've got the counterclaim in front of  
22 you. If you want to ask him questions or the  
23 questions relate to whatever he's talking  
24 about, where you go with it is up to you.

25 MR. PRUSASKI: I'm going to ask him dates

1 of some of these events because they pertain to  
2 some of the defenses in the complaint and in  
3 the answer to the affirmative defenses.

4 The allegations of conspiracy, the  
5 specifics of those allegations in the papers  
6 that you've filed --

7 THE WITNESS: Who filed?

8 MR. PRUSASKI: -- less than -- you know,  
9 48 hours ago, the proposed counterclaim, I am  
10 not asking those questions because I don't  
11 think I'm ever going to have to ask those  
12 questions. And if I do, we'll come back and  
13 we'll ask those questions, okay.

14 So this deposition deals with the bills  
15 that we claim aren't paid in Iviewit's defenses  
16 to those bills.

17 BY MR. PRUSASKI:

18 Q. Okay. So let's backtrack a little bit. And let's  
19 talk about -- you and Mr. Lamont are currently running  
20 Iviewit?

21 A. Correct.

22 Q. Nobody else?

23 A. Correct.

24 Q. Does it have any employees?

25 A. No.

1 Q. Where is it located? Do you have an address?

2 A. In my house.

3 Q. In your house in Boynton Beach?

4 A. Correct.

5 Q. And you moved from Escondido to Boynton, when,  
6 December?

7 A. Yeah. Approximately.

8 Q. Like before Christmas?

9 A. Two weeks. A few weeks ago.

10 Q. January?

11 A. I'm Jewish, so I go by the Jewish holidays.

12 Q. Okay. Christmas is December 25th.

13 A. Great.

14 Q. So a couple of weeks ago you moved from Escondido  
15 to Boynton Beach? You permanently reside in Boynton Beach  
16 now --

17 A. Uh-huh.

18 Q. -- and Iviewit's office is in your house?

19 A. Correct.

20 Q. Okay. Where is Mr. Lamont located?

21 A. In his home in New York.

22 Q. No employees? Iviewit doesn't have employees?

23 A. You said other than you and Mr. Lamont --

24 Q. Yeah. Yeah.

25 A. -- does Iviewit have any employees?

1 Q. Correct.

2 A. No.

3 Q. Does it have income?

4 A. No.

5 Q. Now, after Crossbow pulled out of this venture,  
6 which you say isn't in good faith, did that seem to end the  
7 income stream for the companies?

8 A. Yes.

9 Q. Are there any other deals pending with any other  
10 entities out there to fund Iviewit to take the company off?

11 MR. SELZ: Objection to form.

12 A. Ask me that question again.

13 Q. Are there any deals pending right now between  
14 Iviewit and any other companies or entities besides  
15 Crossbow that could result in Iviewit going back into  
16 business and making money?

17 A. Yes. The answer is there are patents pending that  
18 if those deals, if you would like to call them deals, close  
19 with the patent offices after all of the malfeasances just  
20 caused by my legal staff -- if they survive that, those  
21 deals are yes, obviously, shy of income revenues. As Chris  
22 Wheeler knows, since he sold this to most of his customers.

23 Q. Now, these patents that are pending, these are  
24 different than the patents that are assigned to Crossbow,  
25 or does Crossbow have an interest in every single one of



1 the pending patent applications?

2 A. You would have to defer that to Caroline Rogers.

3 Q. You have no idea?

4 A. It's so screwed up, the patent work that's been  
5 performed by Proskauer, Foley and Meltzer Lippe, that it's  
6 hard for me to know or follow any of what's going on.

7 Q. So what is the company doing now?

8 A. Well, we're positioning ourselves to deal with the  
9 malfeasances, get our patents back together and file  
10 properly. And if they are not, we're preparing the  
11 liability suits against those who have perpetrated such  
12 crimes against us.

13 Q. But if Crossbow has an interest in the patents and  
14 you claim that the patents were -- what did you say,  
15 screwed up --

16 A. Yes.

17 Q. -- by the lawyers?

18 A. Yes.

19 Q. Has Crossbow indicated that that's the case?

20 A. Crossbow's been made aware of that. They hired  
21 counsel Blakely Sokoloff Zafman & Taylor to uncover the  
22 patents going into Utley's name, that we were unaware of as  
23 a company. So they made decisions based on that to get  
24 Utley's patents back into the company name.

25 They made changes in the patents, based on

1 Blakely's analysis which things were screwed up; and that's  
2 what they did. So I would assume they were aware that  
3 there are problems, and they are aware further that there  
4 are problems based on the analysis by Greenberg Traurig, I  
5 believe. I'm not sure who it is actually, but I believe  
6 it's a partner or something of them. I'm --

7 Q. Is Crossbow aware of your allegations of  
8 malfeasance by Utley pertaining to Utley approving  
9 Proskauer's bills?

10 A. I don't know.

11 Q. You haven't talked to anybody from the company  
12 about that?

13 A. They are aware of the entire belief that the  
14 company was in danger of Brian Utley. They are aware of  
15 all allegations the company had up until the point they  
16 stopped funding. At that point they issued --

17 Q. Is there any correspondence from Crossbow anywhere  
18 where Crossbow talks about the alleged malfeasance of the  
19 former principals of Iviewit?

20 A. No. They fired them. They actually closed down  
21 the office here in Boca Raton, fired all of the employees  
22 overnight. Hank Powell was disturbed in a board meeting,  
23 which I believe we have notes on or some kind of --

24 Q. When you say "they," you mean Crossbow?

25 A. Yeah. Crossbow came to the board meeting. Hank

1 Powell asked Brian why he hadn't let everybody go and let  
2 himself go, like he was supposed to, and send the corporate  
3 records to the California offices.

4 Brian said that -- let me just think what his  
5 words were at that time -- that the employees were going to  
6 be given furlough; even though it was a board decision that  
7 they be let go of immediately as we were finding that money  
8 might be -- being stolen from the company.

9 Property was being requested of our employees to  
10 steal for Mr. Utley on his behalf, property that eventually  
11 was stolen and transferred to one of the investors that  
12 Mr. Wheeler represented.

13 In your documents -- I think I finished it. Does  
14 that answer it basically?

15 Q. Yeah. But how did Crossbow have the authority to  
16 fire all of the employees at the time back in March of  
17 2001?

18 A. It was a board decision.

19 And what they were saying was, based on Utley's  
20 being caught lying at Paramount Pictures about his  
21 background, and that his resume was a lie, and that there  
22 were all of these other background allegations going on,  
23 that Mr. Utley needed to be terminated.

24 Part of the problem was that we had a business  
25 plan for Wachovia Bank which Mr. Utley unilaterally,

1 without board approval, turned into a Distance Learning  
2 company with the aiding and abetting of Proskauer --

3 Q. Wait. Wasn't my question --

4 A. Yes.

5 Q. Wasn't my question, simply: How did Crossbow have  
6 the authority to fire all of the employees?

7 A. Well, I'm getting to that.

8 Q. You are talking about like some movie studio.

9 A. Well, no, I'm getting to it. I'm saying Wachovia  
10 Bank -- Wachovia -- you asked --

11 Q. Please get to it.

12 Well, the question was: How did Crossbow have the  
13 authority to fire the employees?

14 And the answer was: Well, Crossbow ran the  
15 company, they were on the board; or, Crossbow owned the  
16 company.

17 A. It was --

18 Q. I mean, how did they have the authority to say: I  
19 want to fire the employees?

20 A. Here is what they did. They said that they would  
21 not fund the company without Brian Utley and his service  
22 group and all of the management that was related to Chris  
23 Wheeler being fired and terminated on that date to protect  
24 the company and their assets from any further damages  
25 against the company. And they also asked the board to take

1 secure positions on the loans to protect against Proskauer  
2 Rose's actions and Brian Utley's actions.

3 Q. Does Iviewit have any documents from Crossbow that  
4 explain their displeasure with the principals of the  
5 company?

6 A. I don't know.

7 Q. You have never seen any?

8 A. All of the documents have been destroyed pretty  
9 much. We've been left with some documents that are  
10 frauded, as well as an incomplete set of records  
11 transferred by Mr. Utley who, in a board meeting, was  
12 assigned to do such.

13 Q. Do you recall ever seeing any documents at any  
14 time from Crossbow that expressed displeasure with the  
15 former principals of Iviewit?

16 A. Yes. I know that they are aware of and expressed  
17 displeasures to third parties that could be called as  
18 witnesses for us, and told that they heard that Crossbow  
19 was very displeased with what was going on.

20 Q. Who at Crossbow specifically was very displeased  
21 with Utley in particular?

22 A. Hank Powell. Maurice Buchsbaum.

23 Q. When is the last time you spoke to Hank Powell?

24 A. Before he was fired from Crossbow. Maybe -- I  
25 don't know. I can't recall.

1 Q. Last year?

2 A. I can't recall.

3 Q. Has it been over a year since he was fired?

4 A. I do not recall.

5 Q. Okay. I'm going to help you recall.

6 A. Okay.

7 Q. Was it last year?

8 A. I don't know.

9 Q. Was it before the Proskauer lawsuit?

10 A. I am not sure.

11 Q. Was it within the last five years?

12 A. Yes.

13 Q. Okay. Was it within the last two years?

14 A. I don't know.

15 Q. What circumstances was he fired from Crossbow?

16 A. Call Crossbow.

17 Q. You have no idea why Mr. Powell was fired from  
18 Crossbow?

19 A. Perhaps for being involved in this conspiracy to  
20 steal my technologies.

21 Q. Mr. Powell was involved in the conspiracy?

22 A. I am not sure if Crossbow is involved, although  
23 they were referred to us by Chris Wheeler who spearheads  
24 the conspiracy. But, you know, you don't find these things  
25 out when there's a conspiracy until after the conspiracy is

1 over.

2 Q. So Mr. Powell was somehow involved in a  
3 conspiracy?

4 A. Well, Mr. Powell secured the loans of Iviewit.  
5 And what happened was, to be quite honest, a member of  
6 Warner Brothers was flown out to meet with Crossbow --

7 Q. Wait a second. Was Buchsbaum -- just so I don't  
8 get confused --

9 A. Yeah. You're going to get real confused.

10 Q. -- was Buchsbaum involved in the conspiracy?

11 A. Buchsbaum is related to Chris Wheeler, so we're  
12 not sure yet 100 percent.

13 But, you know, under further investigation and  
14 more documents being provided to us from you and other  
15 people who can rebuild the corporate record, he very well  
16 might be part of the conspiracy.

17 Q. So you think he might be --

18 A. I did not say that.

19 Q. Do you think he might be?

20 A. I don't know --

21 Q. You don't know what you think?

22 A. -- and until I get all of the records and  
23 documents, I don't know.

24 Q. You don't know what you think?

25 A. I know exactly what I think.

1 Q. Do you have a hunch?

2 A. I don't make things -- statements like that about  
3 people until I have actual facts to do that.

4 Q. So these people, Powell and Buchsbaum, might be  
5 involved in the --

6 A. Powell might be.

7 Q. -- let me finish -- in the grand conspiracy with  
8 Proskauer, yet you threw both of their names out earlier in  
9 this deposition as people who are going to testify for you  
10 at trial?

11 A. Perhaps.

12 Q. Okay. When is the last time you spoke to  
13 Buchsbaum?

14 A. I can't recall.

15 Q. Was it within five years?

16 A. Yes.

17 Q. Are you friends?

18 A. Yes.

19 Q. Are you friends with Powell?

20 A. I don't know the answer to that yet, until the  
21 truth comes out in this matter.

22 Q. If you called them right now and asked them to  
23 lunch, would they go with you or would they hang up on you?

24 A. I wouldn't call them until I need them as  
25 witnesses in this case.



1 Q. Okay. Where do they live?

2 A. I don't know.

3 Q. Florida?

4 A. I have no idea.

5 Q. Well, if you might need them as witnesses, you  
6 have no idea where they live?

7 A. Not today.

8 Q. Okay. What are you planning on doing in a month  
9 when you have to go to trial to find them?

10 A. I wouldn't, my attorney would.

11 Q. Okay. So these people have knowledge -- these  
12 people are former Crossbow principals who may have  
13 knowledge --

14 A. Maurice was a former employee and Hank Powell was  
15 a board director of Iviewit as well, so we get that all  
16 down.

17 Q. Okay. But they were on the board of Iviewit?

18 A. Correct.

19 Q. But you have no idea where these guys live?

20 A. Correct, not today. I know where they were  
21 whenever I last saw them.

22 Q. Who hired them to the board of Iviewit?

23 A. Chris suggested that we put them on the board.  
24 And Chris was attending all of the board meetings and  
25 controlling the company so, you know --

1 Q. How was Chris Wheeler controlling the company?

2 A. By putting in all of his friends, which would be  
3 basically his friends; Brian Utley, Ray Hersh, Maurice  
4 Buchsbaum, Hank Powell, Steve Warner, and pretty much  
5 anybody who is on your side of the witness list.

6 Q. Mr. Lewin?

7 A. Lewin and Wheeler are good friends.

8 Q. Didn't you originally go to Lewin to find lawyers,  
9 and you eventually found Proskauer through Lewin?

10 A. I didn't, my father did.

11 Q. How did you know Lewin?

12 A. I didn't, my father knew him.

13 Q. Simon Bernstein knew Lewin?

14 A. Correct.

15 Q. And when was this, when you were looking for  
16 lawyers? Let's go back to the beginning.

17 A. I can't recall.

18 Q. Was it --

19 A. It was when I discovered the technology.

20 Q. Late '99 ring a bell?

21 A. Early '98, mid-'98.

22 Q. You discovered the technology in early to mid-'98?

23 A. Correct.

24 Q. And for my benefit, if you had to explain what the  
25 technology is to a person who doesn't have any computer

1 savvy whatsoever --

2 A. Yeah.

3 Q. -- how would you do it? Help me out here.

4 A. Okay. The ability to zoom on images, single image  
5 files, without pixilation, without using software programs.  
6 So just on a simple -- the problem first confronted by us  
7 was pixilation.

8 So for the simple person to understand what the  
9 problem was, was we had carried through a bad habit. Since  
10 early times you've seen the painting on the wall, the  
11 canvas matches the frame.

12 When you started in computers and you built a  
13 picture on the computer, you matched the size of the image  
14 to the frame. Therefore, when you went to zoom on such  
15 image, you have what was commonly referred to in prior art  
16 as pixilation.

17 Therefore, there wasn't this ability to drive in  
18 through a virtual world on a 2-D image any further than a  
19 little bit without -- because you had no further reference  
20 data.

21 So I simply came up with an idea that you should  
22 be well aware of -- you're my patent counsel, and having  
23 your patent counsel review but, for your explanation, blow  
24 the picture up, as Chris Wheeler has told many people, to  
25 the size of the Empire State Building and, then, put it

1 back in that frame digitally so that you really have a  
2 picture that's monstrous behind that frame. And as you go  
3 to zoom, you have this unbelievable experience of trues  
4 (sic) being in an environment, which Chris boasted about.

5 Q. How long did it take you to develop that?

6 A. Oh, my God. How long did it take?

7 Q. You came up with it around mid-'98, you said?

8 A. Yes. Yes. And it took me oh, God, over four,  
9 five years.

10 Q. So there came a day when you and your father --

11 A. Did you want me to finish?

12 Q. Oh. I thought you were. I'm sorry.

13 A. No. I also was working on a technology that the  
14 holy grail of the Internet was termed by pretty much  
15 everybody in the engineering world to be full screen, full  
16 frame rate video at low band width -- full frame rate video  
17 at 30 frames per second through low band width.

18 I'm a psychology major, as I told you. So it was  
19 very simple to me, once I had a vision of it, why it wasn't  
20 working. And the mathematics will never work, but I can  
21 see or that most engineers could see; that's why it was the  
22 holy grail. But what happened was, I saw it differently.

23 If you understand interlacing, it's the splitting  
24 of a single frame of video, I've worked -- for 50 years,  
25 since the television was introduced, they had a band width

1 problem -- well, I'm going to explain it for a simple guy.

2           So what you do, so that you don't have jitter --  
3 which, if you remember, in the 1950s type projection what  
4 you saw was this jittering going on. It drove your mind  
5 and optic center crazy to see this jitter; plus, you  
6 started to have audio sync difficulties. So a psychologist  
7 recommended interlacing, which is the splitting of the  
8 frames sending those two frames down the pipe and, then,  
9 rebuilding with a photon gun on the other end -- which is  
10 what your TV has been doing since TV.

11           What I came up with was this slightly different  
12 idea, build the image in a quarter screen, send it in a  
13 corner screen, blow it up on the user end, optically fool  
14 the mind, a 75 percent savings in band width, which was  
15 heralded by Mr. Wheeler in fact, who everybody -- as having  
16 been the holy grail discovery of the decade, worth  
17 billions, as he claimed to everybody who he had invest in  
18 the company, as well as many other people which we will be  
19 calling in to witness now that we know of the conspiracy,  
20 who will testify on direct testimony.

21           Q. All right. I just wanted to know about the  
22 technology, and you're flying off on a tangent.

23           A. The third is -- okay. The third is remote control  
24 applications of video, and that would be the bulk of the  
25 discoveries that we brought to you.

1 Q. Okay. So in about March of '98 you had developed  
2 this technology?

3 A. I did, somewhere in '98.

4 Q. Okay. And you had come to a point where you  
5 decided you needed lawyers to facilitate the development of  
6 this technology?

7 A. We've -- we felt that we needed to design a  
8 company that would protect the technologies or find the  
9 best mechanism. My dad asked Gerri Lewin, Gerri brought in  
10 Chris.

11 Q. What were you doing for work between college and  
12 the time that you built this technology; what was your  
13 profession?

14 A. I had invented two -- I had invented two -- well,  
15 you asked it. Do you want my entire employment history  
16 through that period?

17 Q. Well, generally, what were you doing?

18 If I came up to you and said: What have you been  
19 doing the last ten years, what would you say?

20 A. Which ten years?

21 Q. Between the time you graduated college and the  
22 time you hired Proskauer, what were you doing --

23 A. That was 20 something years. Do you want to know  
24 each of my employments throughout the ten years, or would  
25 you like --

1 Q. Was it in the same profession?

2 A. No.

3 Q. What were you doing?

4 A. Okay.

5 Q. I don't need to know what employer you were with  
6 and how much money you made, what was your job?

7 A. Okay. I was creating multimedia --

8 Q. It's not a trick question.

9 A. It's fine.

10 Q. It seems like you think it's a trick question,  
11 it's not --

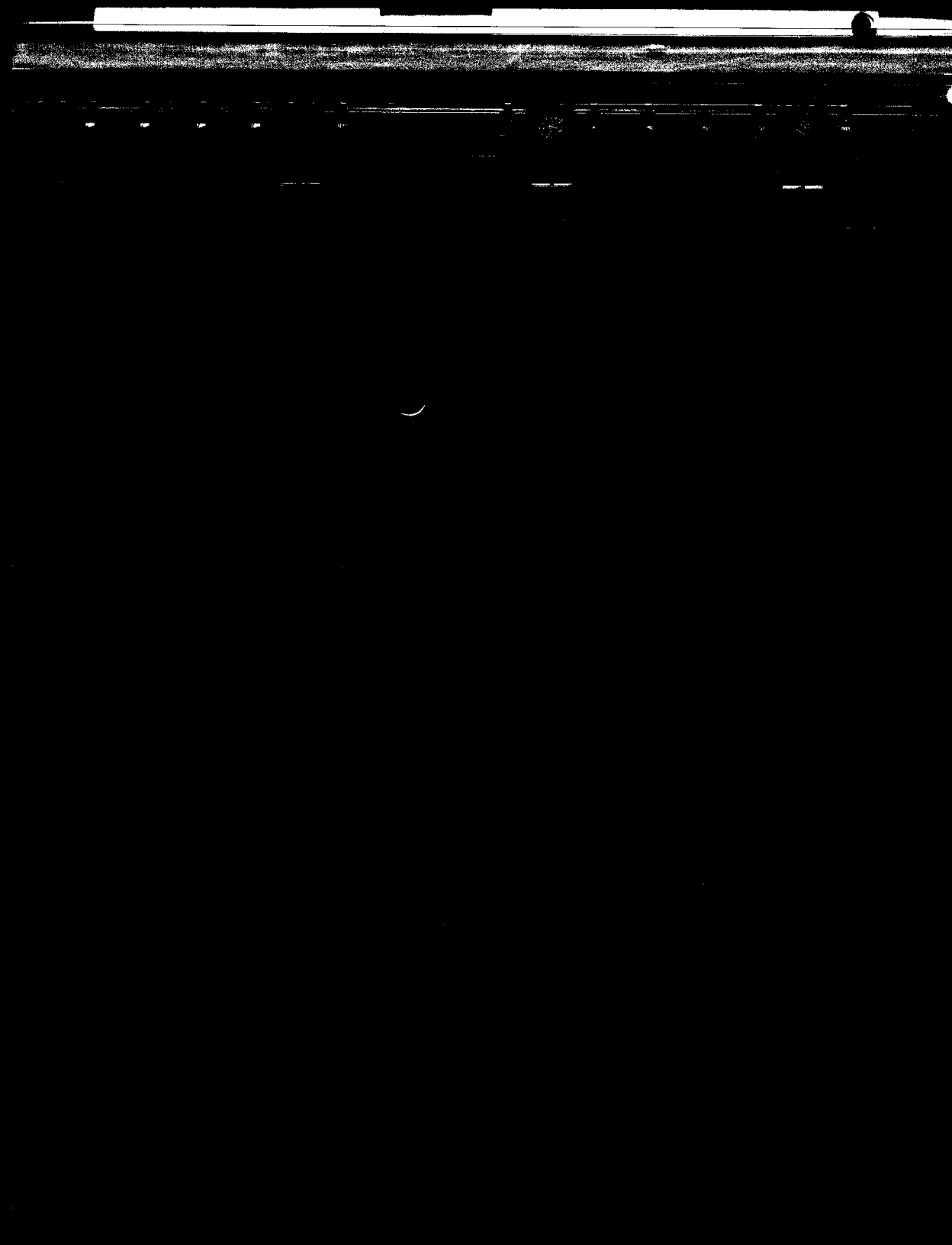
12 A. You've asked me for a 20-year period of my life,  
13 what was I doing for my occupation; I've been doing several  
14 things.

15 Q. Okay.

16 A. This is the first part of the answer.

17 A. I had developed some insurance products. I  
18 sold and marketed those insurance products; I built the  
19 multimedia tools around those products. And I built a  
20 paperless environment for the insurance industry using  
21 scanning technologies for underwriting, et cetera, which I  
22 was in the process, by the way, of working on very heavily  
23 at the time of these discoveries, because insurance was  
24 categorically one of the things that I always did.

25 On the other hand, I moved rock and roll bands





1 around the world. And then, there might have been various  
2 other jobs throughout that that I did to earn a living.

3 Q. Was your work in insurance all throughout the '90s  
4 from, let's say, '90 to '98 when you developed this  
5 technology?

6 A. No.

7 Q. What else were you doing during the '90s?

8 A. Rock and roll, freight forwarding and --

9 Q. What years was that?

10 A. That was -- I don't recall. Somewhere --

11 Q. In the early '90s?

12 A. I can't recall.

13 Q. Were you doing it at the time when you developed  
14 the technology, moving the rock and roll bands?

15 A. I have been creating the technologies for a long  
16 time, but no; not at that particular time, to be specific.

17 Q. When you worked in insurance products, who were  
18 your employers?

19 A. STP Enterprises and Allianz, SP Lexington  
20 Southwest, and I believe that's about it.

21 Q. What years did you work for STP Enterprises?

22 A. I'm not sure of the exact years. About 15 years.

23 Q. You worked for them for 15 years?

24 A. Yes.

25 Q. What year did you leave that company?

1 A. I don't recall.

2 Q. Was it during the '90s?

3 A. Yeah.

4 Q. You don't remember what year you started?

5 A. I started in -- when I was a kid, so it's hard  
6 to --

7 Q. Shortly after you graduated from college?

8 A. No --

9 Q. What was your first --

10 A. -- I worked through college, right. I had my -- I  
11 was working through my own company, SP Lexington Southwest  
12 through --

13 Q. SP Lexington Southwest was your company?

14 A. Yes.

15 Q. What type of business was it in?

16 A. Insurance.

17 Q. What was your role with the company; were you the  
18 president?

19 A. I was.

20 Q. Is that a Florida company?

21 A. No. It was Wisconsin and California.

22 Q. Did that company have employees?

23 A. Not that I can -- not that I can recall.

24 Q. Were you the only employee?

25 A. Yeah. Maybe.

1 Q. It was a closely held corporation; you were the  
2 president and basically ran the company?

3 A. Correct.

4 Q. Okay. Did you pay the bills for that company?

5 A. Yes.

6 Q. Did that company ever have lawyers that were hired  
7 to represent it?

8 A. Just in the formation.

9 Q. Allianz, how do you spell that?

10 A. Yes. A-L-L-I-A-N-Z.

11 Q. Was that your company?

12 A. No.

13 Q. Why are you laughing at me?

14 A. I don't know. It's just it's a major public  
15 global company, I just thought --

16 Q. Okay. I've never heard of it.

17 A. I was laughing in the sense that I would like to  
18 own it.

19 Q. I guess me too, if it's a major public company,  
20 right.

21 When did you work for them?

22 A. I don't recall the years.

23 Q. What was your title and role with them?

24 A. It was just sales.

25 Q. What did you sell, insurance?

1 A. Uh-huh.

2 Q. Your dad is in insurance, isn't he?

3 A. Correct.

4 Q. That rings a bell from his deposition.

5 Did you ever enter into any ventures  
6 insurance-wise with your father?

7 A. Yeah. Joint invent products.

8 Q. Which ultimately led to the technology that we're  
9 talking about today?

10 A. No. Yeah, kind of. But yeah, the two -- not  
11 inventions for technology, but inventions for insurance  
12 products. So we invented no-load life insurance, which is  
13 noncommissioned life insurance, which me and my brother  
14 invented. And then, me and my sister and her husband, with  
15 my father, invented arbitrage leverage life insurance.

16 Q. Is that like a type of insurance policy or is that  
17 computer technology related to insurance products?

18 A. Boy you ask a funny question.

19 Computers are the backbone to the insurance  
20 industry, so almost all products are computer centered;  
21 meaning, from the actuarial calculations to the  
22 underwriting material. The product formulation, it's all  
23 very computer intensive.

24 And I was very concerned about the paper that we  
25 were using because our product is a very legal beast. It

1 involves a lot more legal documentation than just buying a  
2 life insurance policy, and it was very costly in paper. So  
3 I was in the process of designing for my father and  
4 Allstate a paperless environment, where buying insurance  
5 could be transacted between the underwriters and the agents  
6 and the carrier without paper.

7           And it was not a concept at the time that you  
8 would consider today to be novel, but at that time it was  
9 pretty much blowing away even the biggest carriers. Now  
10 everybody is doing it, so. But it was in the -- working on  
11 the invention of trying to make the transactions less  
12 computer savvy. I have been involved with computers for  
13 many years.

14       Q.    How long did you run SP Lexington Southwest?

15       A.    I can't recall.

16       Q.    Was it more than five years?

17       A.    Yeah.

18       Q.    Was it around ten years?

19       A.    Could be.

20       Q.    So you were the principal and you ran this  
21 closely-held company for --

22       A.    Years.

23       Q.    -- a ballpark figure of ten years?

24       A.    Yes.

25       Q.    Okay. It could be a little less, it could be a

1 little more?

2 A. Correct.

3 Q. Okay. Have you run any other companies besides SP  
4 Lexington Southwest and Iviewit?

5 Were there any other companies before Iviewit that  
6 you were the principal of?

7 A. Not that I can recall.

8 Q. Since Iviewit was formed, have there been any  
9 other non-Iviewit entities that you have been the principal  
10 of?

11 A. No.

12 Q. So in mid-'98 you have invented a technology that  
13 could be revolutionary. And you and Mr. Simon Bernstein  
14 decide that you need lawyers, and your father decides to  
15 approach Gerald Lewin, the accountant, correct?

16 A. Correct.

17 Q. Did you know Mr. Lewin at the time?

18 A. Yes. I had met him at my dad's club.

19 Q. They lived in the same neighborhood or still do,  
20 right?

21 A. Yeah, a block or two apart.

22 Q. Right. So they're social friends from the club,  
23 as well as neighbors?

24 A. Correct.

25 Q. Okay. And it was your dad's idea to approach

1 Mr. Lewin?

2 A. Correct.

3 Q. You were okay with that?

4 A. Correct.

5 Q. Did you participate in the initial meeting with  
6 Mr. Lewin regarding finding attorneys?

7 A. I don't recall.

8 Q. Who came up with the name Proskauer Rose, was it  
9 Mr. Lewin or your father?

10 A. Yes, Mr. Lewin.

11 Q. Had you ever heard of Proskauer?

12 A. Never.

13 Q. Okay. Did you do any research about the firm at  
14 that time?

15 A. I did.

16 Q. What did you find out?

17 A. That they were A rated. That I could trust my  
18 inventions with them, if I were to choose them as my patent  
19 counsel --

20 Q. Okay.

21 A. -- because Mr. Lewin wanted us to get patent  
22 counsel, so he was -- see, I don't -- you asked about that  
23 first meeting, no.

24 So Mr. Lewin was looking for patent counsel and  
25 recommended Proskauer, and I did do research at that point

1 is the answer.

2 Q. And you learned that they were A rated -- AB  
3 rated --

4 A. Yes.

5 Q. -- and you felt from your research that you could  
6 trust Proskauer?

7 A. Absolutely.

8 Q. What did Mr. Lewin say about Proskauer?

9 A. He said Chris Wheeler was a very dear friend, and  
10 I could trust him with all of the inventions and processes  
11 of which we had discovered. And that -- you know, that it  
12 would be wise for me to secure his services.

13 Q. Were there any other lawyers -- I'm sorry.  
14 Were there any other law firms that were  
15 recommended as well as Proskauer at that time?

16 A. Yeah. There were other law firms in consideration  
17 at the time.

18 Q. Do you remember which ones they were?

19 A. Some like Irell and Manella I was considering.  
20 Richard Rossman (ph) had referred a few. So yeah,  
21 there were other people that were starting to approach us  
22 with law firms.

23 Q. And Proskauer ultimately won out?

24 A. Correct.

25 Q. Why?



1           A.    Ken Rubenstein.  Chris came and told us that Ken  
2 was with Proskauer.  I looked up Ken.  He was significantly  
3 one of the best, brightest minds in technology that were  
4 dealing with what I had discovered.

5           So at Mr. Wheeler's behest we brought -- you know,  
6 I believe that Mr. Wheeler made the representation not only  
7 that Ken was qualified, but that Ken deemed them novel and  
8 unique; that he controlled the patent pools that would  
9 eventually use such scaled video and image applications for  
10 DVDs, et cetera.  I don't know if he was doing DVDs at the  
11 point, but that he controlled these patent pools.

12           So to us it was a very good decision, and we did  
13 trust him most definitely.

14           Q.    So we're still in mid -'98, right, you're doing  
15 your research on Proskauer?

16           A.    No.  Proskauer would be later '98.

17           Q.    Last quarter of '98 we're talking about?

18           A.    Yeah, somewhere around there.

19           Q.    And Rubenstein was with Proskauer then?

20           A.    That's the representation that was made to us.

21           Q.    Did you do any research on that, to see if  
22 Rubenstein was with Proskauer?

23           A.    No.  Not until later and when somebody notified  
24 us --

25           Q.    I was confused by your last answer.

1 I was under the assumption that during your  
2 research of Proskauer you had learned that Rubenstein was  
3 with the company.

4 A. No. I actually ended up, after Rubenstein had had  
5 several conversations with me, being advised by Don Kane of  
6 Goldman Sachs and Jeff Friedstein that they had done some  
7 research and that Ken Rubenstein was with either one of two  
8 firms, a Mineola firm of Meltzer Lippe or some other firm I  
9 can't recall the name of; but that -- after their review,  
10 that he was not at Proskauer Rose at such time.

11 So I respectfully requested Al Gortz to confirm  
12 that he was with the company. And quite to our surprise,  
13 he really wasn't with the company. According to  
14 Mr. Wheeler, he was in the process of transferring from  
15 this Mineola firm. And --

16 Q. So at the time you were initially looking into  
17 Proskauer because Mr. Lewin recommended the firm, you  
18 didn't know about Ken Rubenstein?

19 A. Based on Chris Wheeler's representations.

20 You asked me if I researched the firm, not the  
21 partners. I researched the firm because --

22 Q. Okay. During your research of the firm you didn't  
23 know anything about Ken Rubenstein?

24 A. Only what Chris Wheeler was telling us.

25 Q. And Chris Wheeler represented to you that

1 Rubenstein was with the firm?

2 A. He represented that he was a partner of this firm,  
3 Proskauer Rose.

4 Q. Verbally or in writing, did he make that  
5 representation?

6 A. Verbally. And then, in writing, I believe we  
7 would have to look at some of the verbiage of what he used  
8 to make representations to other people even at the time.

9 Q. No, to you. To you.

10 A. To me it was, you know, it was verbally --

11 Q. Okay.

12 A. -- that we had Ken Rubenstein who opined and was  
13 the end pegged centered guy.

14 Q. Okay. And --

15 A. We just trusted him, that he was partner. I  
16 didn't go check -- I didn't check if you were a partner  
17 today.

18 Q. Fine. So you made the decision to hire Proskauer.  
19 And when was your first meeting with Proskauer?

20 A. I would say with Chris or -- Chris as a member of  
21 Proskauer --

22 Q. Yeah.

23 A. -- somewhere around 11 of '98.

24 Q. That meeting was with Mr. Wheeler?

25 A. I believe my dad met with him once prior and,

1 then, yeah with Mr. -- my father.

2 Q. When did you ultimately make the decision to hire  
3 Proskauer?

4 A. Right about there.

5 Q. Yeah?

6 A. Yeah.

7 Q. There was an agreement at that meeting with you  
8 and your father that Proskauer would represent Iviewit --

9 A. No. Chris was --

10 Q. -- at the time, you and your father?

11 A. No. No.

12 We had to go through a machination first before he  
13 would represent us. Chris Wheeler said that he would have  
14 to have Ken review the technology to see if there was a  
15 reason to represent us at all.

16 Ken was going to review and also opine for the two  
17 and a half percent stock. And I guess there's a committee  
18 here that -- you know, taking stock in my company had to go  
19 through, et cetera.

20 Ken was going to be the opiner (sic) on if they  
21 were, quote, novel; and he had to do the research and blah.  
22 blah, blah (sic). And then, we would sign formal  
23 agreements, which never occurred -- that's why obviously  
24 you don't have a retainer either; but there might be one  
25 out there from that period, I don't know. I am not sure.

1 Q. So it was a verbal agreement that Proskauer would  
2 represent Iviewit, is that what you are saying?

3 A. I'm not sure. The corporate record, as I  
4 mentioned, has been destroyed by Mr. Utley, so it's hard to  
5 know.

6 Q. So you are not sure. But whether it was verbal or  
7 in writing, your recollection of the events is that it was  
8 about November of 1998 when this agreement was made, that  
9 Proskauer would handle the representation?

10 A. No. Like I said, it was at that time that I met  
11 Mr. Wheeler.

12 And after that time, we went through a small  
13 machination of -- it might have been a few weeks -- where  
14 Ken Rubenstein was interfacing with me, having talks,  
15 learning how to download the video from me, checking into  
16 the Web site, all of these kind of things, to learn about  
17 the technologies on a private and confidential basis of  
18 course.

19 So it might have been -- you know, somewhere  
20 around one or two Chris Wheeler wrote a letter saying there  
21 are the three steps.

22 Q. January or February of '99?

23 A. I'm not -- I can't --

24 Q. What do you mean by one or two?

25 A. Somewhere around there.

1 Q. Oh. So you are referring to the number of the  
2 month. I got confused on what you meant.

3 A. Okay.

4 Q. January, February of '99?

5 A. Correct. And after Mr. Rubenstein had so opined  
6 that we had novel and unique processes --

7 Q. You're going way off the topic again.

8 A. Okay. I'm sorry.

9 Q. When is when. And you've said January, February  
10 of '99. I'm satisfied with that, that's it.

11 A. Okay. Okay.

12 Well, I wasn't sure if you were talking about when  
13 a formal arrangement was entered into after you had started  
14 providing services for us, which would have been nine  
15 months later than that. So I wasn't sure if that's what  
16 you wanted. And your answer was --

17 Q. No.

18 A. -- the time that we engaged you formally.

19 Q. No.

20 A. Okay.

21 Q. When did Proskauer start first doing work for you  
22 and your father?

23 A. Right about that time, when Ken started reviewing  
24 the patents. I mean -- not the patents, the technologies,  
25 excuse me.

1 Q. When did Proskauer do personal work for you?

2 A. You know, the -- I don't remember when Al Gortz's  
3 bill was. But somehow he billed me a year later for it in  
4 '98, but I am not sure that correlates correctly with the  
5 personal work of the estate.

6 Q. In '98?

7 A. That's --

8 Q. We're in January, February of '99 now, when  
9 Proskauer first started doing work for Iviewit.

10 A. Yeah, right.

11 Q. Was this work personal work by Al Gortz in '98?

12 A. Well, Al Gortz billed for it in '99 but put a '98  
13 date on it. So I'm not sure why he did that, and it's been  
14 confusing to me ever since I've looked at these doctored  
15 bills.

16 Q. So the bill for the personal work that Al Gortz  
17 did for you came in '99, but showed that he did the work in  
18 '98?

19 A. Yes. Take a look at your billing records.

20 Q. That's not very nice.

21 A. No. I'm just saying it's in here, if you want to  
22 look. I don't know the exact --

23 Q. All right. The comments -- that's kind of like  
24 personal towards me, and I don't even want to do that.

25 A. Okay.

1 Q. If I ask you a question: "Why don't you look at  
2 your billing records" isn't a very nice thing to say.

3 A. Sorry. I'm sorry. You're taking things that  
4 aren't personal personal.

5 Q. All right.

6 A. I just meant that they are contained within the  
7 document.

8 Q. Okay. What type of personal work was it, was it  
9 estate planning?

10 A. Yeah.

11 Q. You said estate planning for your father as well?

12 A. I don't know.

13 Q. Did Proskauer Rose do any personal legal work for  
14 anybody else in your family?

15 A. Not that I'm aware of.

16 Q. Were you satisfied with Al Gortz's work?

17 A. I had it reviewed by another estate planner who  
18 thought it was terrible, but --

19 Q. Who?

20 A. Michele Mulrooney of Armstrong, Hirsch, Jackoway,  
21 Tyerman & Wertheimer.

22 Q. Where is that located?

23 A. In Los Angeles.

24 Q. Mulrooney, M-U-L-R-O-O-N-E-Y?

25 A. Correct.



- 1 Q. Armstrong?
- 2 A. A-R-M-S-T-R-O-N-G.
- 3 Q. Yeah, I know. What's the second word?
- 4 A. Hirsch, H-I-R-S-C-H.
- 5 Q. Third word?
- 6 A. Jackoway.
- 7 Q. J A C --
- 8 A. K O W A Y.
- 9 Q. And when did she review this work for you that Al
- 10 Gortz did?
- 11 A. While he was doing it.
- 12 Q. While he was doing it?
- 13 A. Yes.
- 14 Q. In '99?
- 15 A. When he was drafting it, whenever.
- 16 Q. What did she say about it?
- 17 A. That there were problems that she felt that we
- 18 needed to address.
- 19 Q. Did you pay Proskauer's bill for the work that Al
- 20 Gortz did for your estate planning?
- 21 A. I believe so.
- 22 Q. Do you remember how much it was?
- 23 A. I don't. I don't think I paid it personally.
- 24 I think -- I don't know how it was paid.
- 25 Q. But it was -- you claim it was a doctored bill or

1 the dates were wrong on it?

2 A. I am claiming that in the doctored bills here  
3 that --

4 Q. I'm just talking about the bill for the work Al  
5 Gortz did.

6 A. It's part of this bill here, this whole set, so --

7 Q. Okay.

8 A. -- so when and where he did it is a question of  
9 his time line, not mine. Meaning, it wasn't in the '98  
10 billings, but it shows up very strangely in some of the  
11 records we have that he starts billing for something in '98  
12 when it's already late '99. And I think that the comment  
13 is that it was an error or something. But we'll -- I don't  
14 have it all here. But --

15 Q. But you never called or wrote a letter to Al Gortz  
16 about that, the problems you had with the bill for the  
17 personal services, did you?

18 A. No. That's after we were ceased doing business  
19 with you guys, I spotted some inconsistencies with the  
20 billing statements, the --

21 Q. So the first time you saw the bill -- are you  
22 saying that the first time you saw the bill that Al Gortz  
23 did personal work on was after the lawsuit was filed?

24 A. Yeah.

25 Q. Who received the bill for the personal work that

1 Al Gortz did at the time the bill was sent?

2 A. I think he gave it to Brian Utley or my father  
3 perhaps. I don't know.

4 Q. Because of the great conspiracy Utley never showed  
5 you the bill and you didn't find out until after the  
6 lawsuit was filed?

7 A. No. Like I said, they had come to me and asked me  
8 to pay a personal bill for Al Gortz's services, and I paid  
9 it late, you know, at whatever time period. But it wasn't  
10 reflected in the bill --

11 Q. But you paid it --

12 A. Somebody did. I don't know who did.

13 Q. -- so it's not a part of this lawsuit, the work  
14 that Al Gortz did?

15 A. It's in this bill.

16 Q. Where?

17 A. In '98. 11 of '98 I believe, if my memory serves  
18 me.

19 Q. So the work that Al Gortz did on the bill says  
20 that he did it in 11 of '98?

21 A. I believe so.

22 Q. Wasn't that around the time that you were looking  
23 into Proskauer to do work for Iviewit?

24 A. If you go by your time line.

25 Q. Okay. So you're saying --

1 A. Remember, I have problems with these documents.

2 Q. You're saying that Mr. Gortz -- your testimony is  
3 that Mr. Gortz didn't do the work in '98, he did it in '99,  
4 and that he misrepresented the time on the bill?

5 A. Correct.

6 Q. Was there anything else that was wrong with the  
7 bill for personal work which you know of?

8 A. Personal work?

9 Q. Yes. We're talking about the estate planning  
10 work --

11 A. No.

12 Q. -- where Mr. Gortz allegedly misrepresented the  
13 date.

14 A. No. Other than that -- that it's missing some of,  
15 I would assume, are the debt -- I would have to review the  
16 entire bill, since I don't have the entire bill from --  
17 since the corporate record's been destroyed by  
18 Mr. Wheeler's referral Mr. Utley. And you will not  
19 provide --

20 Q. Who -- who destroyed the corporate records for  
21 Mr. Gortz's personal work?

22 A. I would assume Mr. Utley and Mr. Wheeler.

23 Q. Well, you just said that the documents were  
24 destroyed by Mr. Utley and Mr. Wheeler.

25 A. Correct.

1 Q. You know for a fact that they were or are you  
2 making an assumption, because that's a pretty strong  
3 accusation?

4 A. It could be strong or not.

5 I'm -- I feel pretty confident that the  
6 document -- corporate record has been, after reviewing your  
7 documents especially that were provided by court order -- I  
8 feel there's large gaps in the corporate record that have  
9 been destroyed both by this firm and Mr. Utley.

10 Q. Well, they weren't provided by court order. We  
11 allowed you to come in and look at them.

12 A. Well, however you want to view it.

13 Q. So the personal work that Mr. Gortz did for you,  
14 the personal estate planning work that he did in '99 and  
15 you claim he wrote '98 on the bill, that's been destroyed?

16 A. The original bills.

17 Q. I don't want to talk about Iviewit's work from  
18 Proskauer.

19 A. The original bills have been destroyed.

20 Q. Let me finish.

21 A. Oh, okay.

22 Q. I don't want to talk about Iviewit's work from  
23 Proskauer.

24 I want to talk right now, this question, about the  
25 work that Mr. Gortz did for you for estate planning.

1 A. Yes.

2 Q. Where are those files?

3 A. Destroyed.

4 Q. How do you know that? How do you know they're not  
5 on our shelves?

6 A. Well, I thought they were supposed to be a part of  
7 what was here. So if all is here was everything that you  
8 have worked on on my behalf --

9 Q. No, this. The documents that are --

10 A. Oh, okay. So I just said, I'm going off the bill  
11 here to make my estimate on when Mr. Gortz did his work;  
12 although, I don't believe that that's the original bill.

13 Q. Have you ever heard anyone tell you that Proskauer  
14 destroyed any records?

15 A. Yes.

16 Q. Who?

17 A. Several people.

18 Q. Identify them.

19 A. Anthony Frenden. Anthony Frenden. And not only  
20 records --

21 Q. How do you spell Frenden?

22 A. F-R-E-N -- F-R-E-N-D-E-N.

23 Q. Don't get ahead of yourself.

24 And who is this guy?

25 A. He was working for Iviewit at the time at --

1 Q. He was an employee?

2 A. Yes.

3 Q. Where does he live?

4 A. I believe somewhere in California.

5 Q. How old is Mr. Frenden; approximately?

6 A. I don't know. I don't know, 30 maybe.

7 Q. 30-ish?

8 A. Yeah.

9 Q. What did he tell you?

10 A. He told me that they were locking us out of the  
11 computer files, that there was some shredding going on of  
12 documents.

13 Q. By Proskauer?

14 A. By Utley. By Utley.

15 Q. I want to talk about who told you Proskauer  
16 destroyed files. We'll get to Utley.

17 A. I said by looking at the documents I thought were  
18 supposed to be provided here in completeness and the  
19 billing statements you have submitted, I would assume that  
20 Proskauer has made destruction of documents that alter the  
21 state -- you might be right, they might be sitting on your  
22 shelves.

23 Q. So it's an assumption?

24 A. Yes, correct.

25 Q. You do not have any factual basis that Proskauer

1 in fact destroyed bills; it's an assumption, correct?

2 A. Correct, yes.

3 Q. Now, Frenden is the person who told you that Utley  
4 was destroying records?

5 A. Right. And also pointed out that Brian had stole  
6 several of our highly proprietary computers with documents,  
7 et cetera, inside them. And it was brought in to do an  
8 analysis after receiving such computers to determine the  
9 files that have been destroyed --

10 Q. You are going off on this wicked tangent again.

11 A. Okay.

12 Q. Just focus, Eliot. Stick with the question.

13 A. Okay.

14 Q. Mr. Frenden told you that Utley was destroying --

15 A. Are you attacking me?

16 Q. Not at all. You are frustrating me.

17 A. Okay.

18 Q. If I sound frustrated, forgive me.

19 A. Okay.

20 Q. But to take a deposition, you have to listen to  
21 the questions and answer the question.

22 A. Okay. I'm trying.

23 Q. I'm not attacking you, you know that.

24 A. I'll try.

25 Q. Okay. Please.



1           Now, Frenden told you that Utley was destroying  
2 documents. Did Proskauer have anything to do with that?

3           A. I am not sure.

4           Q. You don't know?

5           A. I don't know.

6           Q. Who else told you that Utley was destroying  
7 documents?

8           A. Maurice Buchsbaum.

9           Q. What did he tell you?

10          A. He told me right as Utley was being terminated.

11                 See, I hadn't come back to get the corporate  
12 records because Utley had come out and threatened my life,  
13 so I had my wife and children move --

14          Q. What did he tell you when he threatened your life?

15          A. He said: If you continue to expose these issues  
16 and pursue a course against me and Proskauer, we will kill  
17 you.

18          Q. Who is "we"?

19          A. Meaning him, Chris Wheeler and Mike --

20          Q. Are you paraphrasing or are you quoting him?

21          A. I'm quoting him. And we will bring you down brick  
22 by brick, your companies.

23          Q. He said: We will kill you --

24          A. Yes.

25          Q. -- and we will bring you down brick by brick?

1 A. Correct. So I called my wife and moved her into a  
2 hotel in California. She packed up overnight to move our  
3 children into a hotel. And we so lived in a hotel until we  
4 could get adequately --

5 Q. When was this?

6 A. We told everybody this.

7 Q. When was this?

8 A. This is right around January of 2001.

9 Q. This is the: We will kill you statement by --

10 A. Correct. Utley.

11 Q. -- Mr. Utley?

12 A. Correct.

13 Q. And Mr. Utley stayed on with the company for four  
14 more months after that?

15 A. Well, I don't know. Roughly. Three or four, as  
16 it was unwinding.

17 Q. Did you call the police?

18 Did you call the police --

19 A. I did.

20 Q. -- and tell them your life was threatened?

21 A. I did.

22 Q. Who did you call?

23 A. The Rancho Palos Verdes Police -- Rancho Palos  
24 Verdes Police Department.

25 Q. That's a small town on the peninsula, isn't it?

1 A. It is.

2 Q. That's very nice. You lived there?

3 A. I did.

4 Q. That's where Mela -- 10 Mela?

5 A. Correct.

6 Q. Okay. I'm refreshing my recollection.

7 A. Good job.

8 Q. Okay. So when I call the Rancho Palos Verdes  
9 Police Department later today, after this deposition is  
10 over, why don't you tell me what date you called them, so I  
11 can --

12 A. I also called the FBI.

13 Q. Okay. Who did you speak to at the FBI?

14 A. I don't remember. I have --

15 Q. What office did you call?

16 A. Long Beach.

17 Q. Long Beach.

18 A. I also notified Caroline Prochotska Rogers,  
19 Michele Mulrooney, David Culter, and a bunch of the other  
20 witnesses we're going to try to bring in to corroborate --

21 Q. Law enforcement agencies. I wanted law  
22 enforcement agencies that I can get documentary proof from  
23 them that you called.

24 A. Okay, great. The FBI in Long Beach and the Rancho  
25 Palos Verdes --

1 Q. And what did they do about it, the FBI in Long  
2 Beach --

3 A. Caroline got involved, and she started a series of  
4 protection measures to protect my life.

5 Q. Did she go to court and get a restraining order  
6 against Utley?

7 A. No.

8 Q. What did Caroline do? What do you mean protection  
9 measures?

10 A. She took a series of things to find out --

11 Q. This is the attorney in Chicago?

12 A. Yes.

13 Q. Do you have her phone number?

14 A. I don't recall.

15 Q. Do you have it in a book?

16 A. Yeah.

17 Q. Can you give it to your lawyer?

18 THE WITNESS: Do you have that?

19 Q. Would you agree, after the deposition, to give it  
20 to your lawyer so I can call her?

21 A. Sure. You can look it up. Sure.

22 Q. Thanks. Well, I did. I did on a break. I looked  
23 in Martindale.com, and I couldn't find it.

24 A. Oh, really?

25 Q. So I'll check something else.

1 A. Okay.

2 Q. She doesn't have a listing in Martindale.

3 A. Is Martindale the only source --

4 Q. No. No, but I'm not done, Mr. Bernstein. I'll  
5 find her phone number.

6 A. Okay. Well, I didn't think you were still --

7 Q. The Rancho Palos Verdes Police Department, when  
8 did you call them, the day that Mr. Utley threatened you?

9 A. I don't recall.

10 Q. Was it sometime in January 2001?

11 A. I don't recall.

12 Q. Well, you just said --

13 A. It was after. It was after.

14 Q. You said the threat was January 2001.

15 A. Yes. I didn't call them right away, I called  
16 friends of mine first.

17 Q. How long -- how long after did you call the  
18 police?

19 A. A few months.

20 Q. Why did you wait so long?

21 A. Because I wanted my friends to advise me on what  
22 measures to take against such actions of a firm like  
23 yourself, through it's referral Brian Utley, making threats  
24 against someone's life. And it's a very scary situation.

25 So you take some time to prepare yourself so that,

1 in the event that anything happens to you or your children,  
2 you will have adequate evidence against those perpetrating  
3 such crimes.

4 So you need to get a lawyer on your side, you need  
5 to take mostly secretive measures to transfer the data and  
6 documents to such people, without knowledge that it's  
7 happening to such people that want to kill you or destroy  
8 your companies brick by brick, which I think is what I  
9 said.

10 Q. Did Mr. Utley threaten you in person or over the  
11 phone?

12 A. In person.

13 Q. Do you feel that he had the means to kill you?

14 A. Well, he was touting Mr. Wheeler and Proskauer as  
15 being uncovered at this point for some of these  
16 malfeasances, like his background, education. Yeah.

17 Q. Do you feel that he had the means to kill you, is  
18 the question.

19 A. Yes. With those he was saying he's conspiring  
20 with, absolutely.

21 Q. Who was he conspiring with to kill you?

22 A. Mr. Wheeler, Mr. Bill Dick of Foley & Lardner.  
23 These are some major law firms.

24 Q. So you felt at the time that if Mr. Utley was  
25 going to kill you, he was going to do it in conspiracy with

1 Foley & Lardner and Proskauer Rose?

2 A. With members of those firms that he's good friends  
3 with.

4 Q. Foley & Lardner is a large New York law firm?

5 A. I believe Wisconsin. But you know from  
6 Martindale, so I'm not sure. I don't want to -- if you can  
7 check in that source.

8 Q. You are being condescending and sarcastic.

9 A. No. I don't know. I mean, you might be right  
10 from your research.

11 Q. I think -- okay. Be careful.

12 A. Okay.

13 Q. I think you and I know that you don't want to go  
14 there.

15 A. Okay.

16 Q. What other law firms were conspiring with Wheeler,  
17 Utley and Proskauer?

18 A. Meltzer, Schnitzel & Gold (ph) --

19 Q. Meltzer Lippe --

20 A. Meltzer Lippe Schnitzel & -- I think Goldstein or  
21 something.

22 MR. SELZ: I have to take a rest room break. It's  
23 just going to need -- I just need a minute.

24 (Whereupon, a recess was taken from 12:27  
25 to 12:36 p.m.)

1 BY MR. PRUSASKI:

2 Q. When we went on break, we were talking generally  
3 about in January 2001 Brian Utley had threatened your life.

4 We were also talking about people who told you  
5 that Brian Utley was destroying documents and we were  
6 talking about Maurice Buchsbaum. I believe you indicated  
7 he was formerly with Crossbow.

8 A. Correct, and Iviewit.

9 Q. And an Iviewit board member.

10 A. And unemployed.

11 Q. Okay. What did Mr. Buchsbaum tell you about  
12 Mr. Utley destroying documents?

13 A. He told me that we should have a board resolution,  
14 which I believe we did; that Utley had, through the  
15 supervision of him and Raymond Hersh, while closing down  
16 the Boca office, should send the documents in its entirety  
17 to the Los Angeles office, at which point Mr. Hersh became  
18 very agitated with the board's decision and said that they  
19 needed to keep the records here for some reason, even  
20 though the corporate decision was to close down Mr. Utley's  
21 organization and move the company to California with all  
22 the records and computers.

23 Q. Did Buchsbaum ever see Utley destroying documents?

24 A. I'm not sure. You have to ask him.

25 Q. Did he tell you that he saw him destroying



1 documents?

2 A. He told me that he was aware, I believe, that  
3 documents were being destroyed of the corporate record and  
4 that I should move them immediately.

5 Q. Did you verify that the documents were being  
6 destroyed?

7 A. I had conversations that there were several people  
8 involved, and that pertained to the corporate record on  
9 computer files being locked out, as well as shredded.

10 Q. Were there any other occasions where Buchsbaum  
11 told you that Utley was destroying documents or maybe was  
12 destroying documents?

13 A. Yes. Absolutely he was --

14 Q. What else happened?

15 A. -- and I can't recall the date.

16 Foley & Lardner's filings of the provisional  
17 applications to full formal filings was 48 hours away, so  
18 we'll be able to date it that way.

19 Mr. Utley came to me and asked me to sign blank  
20 pages of paper for patents that he had prepared with us for  
21 Foley & Lardner and told me I had to execute them  
22 immediately because we only had until midnight to file such  
23 documents, and they were too lengthy for me to review.

24 I demanded a review and said I wouldn't sign any  
25 document without reviewing it first. He refused to turn

1 over the patents to us. So Jim Armstrong, one of the  
2 executives of the company at the time, Jennifer Kluge, a  
3 secretary who copied them -- and I grabbed the files from  
4 Mr. Utley physically and copied them.

5           And quite to our surprise, we had found that Foley  
6 & Lardner is -- and this is part of why Mr. Utley maintains  
7 a threat against us -- that they had changed the patent  
8 titles, written in wrong math, had missed the inventions  
9 that we had given them, that there were all kinds of  
10 problems in the patents they were about to file that we had  
11 never seen, including missing the inventors and Mr. Utley  
12 turning up as the inventor on inventions when he wasn't  
13 even there. Thereby, I think, constituting all kinds of  
14 frauds and improprieties against the United States Patent  
15 Office, filing willful and wrongful patents on behalf of a  
16 company.

17           Q. Did you report that to the U.S. Patent Office?

18           A. Yes.

19           Q. When?

20           A. Stephen Lamont has -- we talked to Harry Motes  
21 (ph) in, I believe, one or two conversations.

22           I believe I called Mr. Motes initially upon  
23 discovering and told him, you know, that perhaps my life  
24 was in danger, and I would appreciate it if he held off  
25 until I could get some people to find out if these

1 allegations were all that they appeared to be.

2           And then, after Mr. Lamont had reviewed a lot of  
3 the documentation surrounding the allegations, he felt  
4 comfortable writing a draft letter to Mr. Motes, which he  
5 did. And we called Mr. Motes to discuss what the  
6 allegations would imply and what our course of action  
7 should be.

8           Q. Mr. Motes is with the United States Patent Office?

9           A. He is the head of the investigatory body for them,  
10 I believe.

11          Q. Do you remember when you contacted him about the  
12 alleged fraud?

13          A. No, I don't.

14          Q. Was it after the Proskauer lawsuit?

15          A. Yes.

16          Q. So it's between the Proskauer lawsuit filing and  
17 now?

18          A. Yes.

19          Q. Do you know what happened with the investigation;  
20 what the disposition was?

21          A. Well, he -- no. We called him and counseled him,  
22 and he's advised us to write a letter, which we did. And  
23 then, we brought in Caroline to further the work.

24                 She has felt that she wanted a full legal audit of  
25 the patents of which she's undertaken to get from Greenberg

1 Traurig.

2 Q. Traurig.

3 A. Traurig. And you know, that's -- we now stand --  
4 if there were errors caused by Proskauer, Foley or Meltzer  
5 due to negligence that we perhaps under, you know,  
6 Section 8 of the Constitution, will have to appeal to  
7 authorities like Mr. Motes.

8 But that, if there are ways to correct or fix the  
9 mistakes and the errors and omissions and, you know, all of  
10 the things we've uncovered through our investigation that  
11 point to conspiracy, such as missing patents, patents in  
12 our attorneys' own names, all kinds of misrepresentations,  
13 et cetera, that -- you know, that we all --

14 Q. What attorneys' names are on the patents?

15 A. What law firm?

16 Q. What attorneys. You said you were complaining to  
17 the patent office --

18 A. Ray Joao has written 70 patents into his own name.

19 Raymond Joao, who was a misrepresented Proskauer  
20 underling of Ken Rubenstein's at the time that Ken was  
21 misrepresented as a Proskauer partner. When, in fact, they  
22 both worked at one -- Meltzer Lippe Goldstein Schnitzel,  
23 out of -- all of New York.

24 Q. Ray Joao's name -- wrote his name on 70 patents  
25 belonging to you?

1 A. We believe -- after reviewing several of them, we  
2 haven't seen them all, although he claims on his own  
3 biography right now that he has 70 patents, which prior  
4 to --

5 Q. Where is that biography, on his law firm's Web  
6 site?

7 A. Yes.

8 Q. So if I went and found it, it would say that?

9 A. Yes. And several of them have to deal with things  
10 like remote control videoing and --

11 Q. Are these patents that Crossbow has an interest  
12 in?

13 A. Nobody in our company has even -- has an interest  
14 in these because we didn't know Ray Joao was filing all of  
15 these patents in his own name.

16 And as we found out Ray Joao's patents were  
17 missing pertinent information, we suddenly started seeing a  
18 series of public correspondences where Mr. Joao claims he  
19 has the technology from remote control wireless video  
20 applications for security, which is a major thing we  
21 disclosed to Ken Rubenstein in your group --

22 Q. Has Greenberg Traurig reviewed these patent  
23 applications that Joao filed?

24 A. I'm not sure, I didn't hire them. I don't know  
25 what's part or part not of their review.

1 Q. Has any independent law firm ever opined that  
2 these patents were done incorrectly?

3 A. Which patents?

4 Q. The patents that Joao filed.

5 A. Yes. They have actually commented, several  
6 people, on the fact that because they appear to look like  
7 ideas similar to ours that, in fact, if it pans out under  
8 full investigation by federal authorities that Mr. Joao has  
9 transacted such malfeasance that, you know, perhaps they'd  
10 be -- we'd be able to walk into his shoes or whatever, as  
11 well as --

12 Q. Hold on. Yeah. I'm just trying to focus on this.

13 A. Okay.

14 Q. What law firms have --

15 A. Blakely Sokoloff --

16 Q. Let me finish the question. The question and the  
17 answer have to correspond in the record.

18 A. Okay.

19 Q. What law firms have come under -- have made the  
20 opinion that Mr. Joao improperly or fraudulently, as you  
21 say, filed these patents in his own name?

22 A. May have fraudulently filed these patents in his  
23 own name is Foley & Lardner originally --

24 Q. What lawyers at Foley & Lardner?

25 A. Doug Bauman (ph), Steve Becker.

1 Q. Okay. Who else?

2 What cities are they in, Beauman and Becker?

3 A. Milwaukee.

4 Q. Milwaukee, Wisconsin. Okay.

5 A. Blakely Sokoloff has reviewed the allegations  
6 against Mr. Joao's filing patents in his own name.

7 Q. Is Mr. Joao involved in the conspiracy that you  
8 told me about a little while ago where --

9 A. Absolutely.

10 Q. No, let me finish.

11 A. Yeah.

12 Q. Was Mr. -- I appreciate that. Let me finish.

13 A. Okay.

14 Q. Was Mr. Joao involved in the conspiracy that you  
15 told me about a little while ago where Brian Utley  
16 threatened to kill you?

17 A. No. Not that I am aware of.

18 Q. That was Proskauer, Brian Utley, Meltzer Lippe?

19 A. No. Proskauer, Brian Utley and Foley & Lardner,  
20 perhaps.

21 He didn't mention them at the time; but they were  
22 all being uncovered for these malfeasances like, you know,  
23 filing wrong patents, filing wrong inventors.

24 Q. Have you feared for your life because of this  
25 lawsuit?

1 A. You bet, every single day.

2 I've hidden my children off the streets. I'm  
3 scared to death to leave my house. My wife is scared to  
4 death to leave the house.

5 Q. Do you think that Proskauer is going to --

6 A. Well, they've already completed --

7 Q. Let me finish.

8 A. Okay.

9 Q. You'll get your turn, and I'm not going to stop  
10 you.

11 A. That's fine.

12 Q. Do you think that Proskauer Rose wants you dead?

13 A. Yes.

14 Q. Why?

15 A. Well, the technologies are valued to be worth  
16 billions; that, in itself, is a motive.

17 But more the motive that Proskauer had to be  
18 aligned with Utley and Foley was because, when we grabbed  
19 those patents from Mr. Utley and they were the wrong things  
20 and everything was screwed up and he was on as inventors,  
21 and later finding patents in his name -- and his character  
22 being questioned because of the bogus resume submitted by  
23 Chris Wheeler to the board. With all of these  
24 inconsistencies coming of age, meaning -- somebody started  
25 to tell me, hey, you better check. I know a guy named



1 Brian Utley, he ripped off his last employer of patents and  
2 he had to close down a \$3 million operation.

3 So, you know, you're hearing all of these things.  
4 You don't want to jump out and say it all because you want  
5 to protect yourself, as I was saying earlier. So yes, I  
6 think that Proskauer Rose has a big interest to seeing me  
7 destroyed. And so, therefore, they filed a lawsuit when  
8 they know the company has nothing --

9 Q. Why did you come here today if you are afraid for  
10 your life?

11 A. I fear no evil.

12 Q. That's nice.

13 A. See, you laugh about that.

14 Q. I'm not laughing.

15 A. Yes, you laughed.

16 Q. That doesn't tell me why --

17 A. I fear no evil.

18 Q. -- in your mind you agreed to come here for your  
19 deposition today if this firm wants you dead.

20 A. I fear no evil. I fear no evil.

21 Q. Is Proskauer evil?

22 A. Yes. Because of these actions, yes.

23 Q. Do I work for an evil company?

24 A. Yes, if you are all knowledgeable.

25 If everybody is unknowledgeable about the actions

1 of a few individuals, I would hate to see an Arthur  
2 Andersen occur.

3 Q. Who are the few individuals?

4 A. Well, Chris Wheeler is the main protagonist. I  
5 guess Ken Rubenstein, after seeing his deposition, would be  
6 another main protagonist.

7 Q. Al Gortz, is he involved?

8 A. I don't think so. I don't know.

9 You know, from that point, I don't know any more  
10 of the partners who would be involved.

11 Q. Has anything happened in your life since this  
12 lawsuit was filed that you felt was suspicious that you  
13 felt --

14 A. Yeah, they filed.

15 Q. -- hold on -- that you felt that any of the  
16 litigants in this lawsuit was following you or harassing  
17 you or doing anything to you and your family that caused  
18 you to be in fear for your safety?

19 A. I think you'd have to talk to my attorneys about  
20 that.

21 I have felt, like I told you, very afraid of these  
22 things. And yes, they have filed actions against the  
23 company to hurt the company, and voluntary bankruptcies  
24 that they basically walked away from, not getting their  
25 allegations of all of this money we owed them.

1           Which, by the way, the bankruptcy was hidden from  
2 the board and the shareholders for quite some time, while  
3 counsel was hired for us by, I believe, either you or  
4 Crossbow or the Ross Miller guy. In which, when we called  
5 our bankruptcy counsel, he said: Boy, it's good to hear  
6 from an Iviewit person. We've been doing all of this work  
7 for Crossbow and blah, blah, blah to prepare a bankruptcy  
8 for you. We aren't even sure what the hell is going on,  
9 but it's good that somebody from Iviewit called us.

10         Q.    Have you had to call the police or law enforcement  
11 since this Proskauer lawsuit was filed in May of 2001?

12         A.    No.

13         Q.    When you called the police in Rancho --

14         A.    Palos Verdes.

15         Q.    -- thank you -- did they send a patrol car out to  
16 your house?

17         A.    They did.

18         Q.    An officer met with you?

19         A.    Correct.

20         Q.    Did he do a report?

21         A.    He did.

22         Q.    Did anything come of that?

23         A.    No.

24         Q.    Why? He didn't believe you?

25         A.    No. Not at all. He believed every word of it. I

1 even showed him evidence of it.

2 Q. What evidence?

3 A. Evidence that's being presented in this case.

4 Q. No, no. You called the police because Brian Utley  
5 threatened to kill you?

6 A. Yes.

7 Q. In Ranchos Palos Verdes --

8 A. Yes. He asked why --

9 Q. A policeman came to your house --

10 A. He asked me why.

11 Q. -- and you showed him evidence of the death  
12 threat?

13 A. No. I showed him evidence of why Mr. Utley had  
14 threatened me. He believed based on the evidence that I  
15 was in deep shit.

16 Q. Okay. But there was no evidence like a tape or a  
17 witness who said Brian Utley threatened to kill this man?

18 A. Don't worry. I believe those are there. Those  
19 witnesses will be there.

20 Q. There were witnesses present when Utley said: I am  
21 going to kill you?

22 A. I am not sure at this time.

23 Q. Well, you said there are witnesses who are going  
24 to be present.

25 A. There are going to be witnesses present to the

1 fact that Mr. Utley made threats on my life.

2 Q. Who are they?

3 A. People from Crossbow ventures, David Culter.

4 Q. Were they there when Utley threatened you?

5 A. No.

6 Q. Well, then, how can they be witnesses when he  
7 threatened you --

8 A. Well, but there might be people from a restaurant  
9 that happened to be sitting at tables across -- I don't  
10 know. We'll have to do some discovery.

11 Q. This happened at a restaurant?

12 A. It did.

13 Q. What restaurant?

14 A. I don't recall the name. China Palace, or  
15 something on -- across the street from the Warner Brothers'  
16 office we had.

17 Q. That's where Utley threatened to kill you?

18 A. Correct.

19 Q. It was just the two of you at the table?

20 A. Correct.

21 Q. Have you looked for these people at the restaurant  
22 who might have seen this?

23 A. I don't have the resource right now because, you  
24 know, they pretty much destroyed the company.

25 Q. China Palace?

1 A. Yes.

2 Q. When you lived in California did you -- did you  
3 ever live in -- you lived in LA County for a while?

4 A. No.

5 Q. Rancho Palos Verdes is not LA County?

6 A. Yes.

7 Q. All right. Did you go looking for this restaurant  
8 to verify the name of it after the death threat was made?

9 A. Yeah, I believe so.

10 Q. It was a Chinese restaurant?

11 A. Correct. It was the last time me and Utley saw  
12 each other.

13 It was the last time I saw my parents until I  
14 recently moved back. It's the last time I talked to most  
15 of my friends. I went into basic seclusion and hiding my  
16 family.

17 I moved my wife and children out of town  
18 overnight, put them into a hotel with no house. We left my  
19 condominium here abandoned. And we did that because we  
20 were scared for our children, and we are still scared today  
21 for our children. And based on the evidence --

22 Q. Why?

23 A. -- I think people like Mr. Selz are scared and  
24 Miss Prochotska Rogers are scared. And they have valid  
25 reason to be because this is uncovering a can of worms that

1 is huge; meaning, you know, there are all kinds of problems  
2 here.

3 So obviously, you worry for your life, especially  
4 when somebody comes and makes threats on it; and then,  
5 carries through on half of the threats. I mean, they have  
6 destroyed the company brick by brick --

7 Q. Proskauer?

8 A. -- helping with their friends.

9 Q. "They." "They" who?

10 A. The conspiracy group of Mr. Wheeler's friends.

11 Q. Mr. Wheeler, Mr. Utley?

12 A. Mr. Dick, Maurice Buchsbaum, perhaps; members of  
13 Crossbow, perhaps.

14 Q. Foley & Lardner?

15 A. Foley & Lardner through Bill Dick.

16 Q. These are the people who conspired to destroy  
17 you --

18 A. Destroy the company.

19 Q. -- and kill you?

20 A. Well, I -- Mr. Utley only made claim to  
21 Mr. Wheeler and himself.

22 Q. During the death threat?

23 A. Yes.

24 Q. Utley said Wheeler and I will kill you?

25 A. Yeah, basically. We will kill you.

1 Q. Oh. I was under the assumption that you said it  
2 was just Utley.

3 A. No.

4 Q. So he included others in the death threat?

5 A. Yeah, I believe.

6 Can we read it back from the record?

7 MR. PRUSASKI: No, it's a hassle.

8 THE WITNESS: Is it a hassle to read it  
9 back?

10 MR. SELZ: You can go back and look for it.

11 THE WITNESS: Yeah. Can we?

12 MR. PRUSASKI: At a break, later, we can  
13 do that, if you want.

14 THE WITNESS: Okay.

15 MR. PRUSASKI: It takes a long time when  
16 the court reporter is taking it down. When  
17 it's typed out, it's easier. Because right now  
18 it's in code form -- you know about that.

19 THE WITNESS: Right.

20 A. Mr. Utley and Mr. Wheeler are best friends; a  
21 relationship that wasn't first actually represented. I  
22 think, poses a huge conflict of interest.

23 But nonetheless, what was represented to us, we  
24 later found to be, you know, that they have seen much more  
25 than just casual acquaintances, but best friends.



1 Q. Do you think your lawyer fears for his life?

2 A. I asked him that the other day.

3 Q. What did he say?

4 A. He said he fears nobody. He doesn't care that you  
5 are big. He doesn't care how big you are, he is not afraid  
6 of you.

7 Q. Do you think he is?

8 A. Yeah.

9 Q. You think he's in fear for his life because of  
10 this lawsuit?

11 A. Yes. I think it has run across his mind that he  
12 is sitting on a can of worms that could lead to the  
13 destruction of three large law firms.

14 I would be a little concerned. You'd have to ask  
15 Mr. Selz his opinion.

16 Q. That's fair. You think your lawyer in Chicago  
17 fears for her life because of this?

18 MR. SELZ: Objection; calls for speculation.

19 A. Yeah. Okay.

20 Q. Do you think your lawyer fears for her life in  
21 Chicago because of this?

22 A. Yes. No. Let me qualify that.

23 Q. All right.

24 A. Yes, she feels that action could be taken against  
25 her, and that's why she remains secretive for a long time.

1 But I asked her that the other day, should she  
2 remain and go away and not be involved in my life, as I  
3 came to confront you folks; and that I didn't want to get  
4 anybody ancillary to get hurt, including Mr. Selz and Miss  
5 Rogers.

6 And she said: I am not worried; I would do it for  
7 the truth. I would do it for all of the right reasons and  
8 nobody is going to scare me from getting up there and, you  
9 know, presenting our case. So I think she's scared, but  
10 she's going to do it.

11 Q. Has anyone else told you that they are in fear for  
12 their life because of the Proskauer, Foley, Brian Utley  
13 conspiracy group?

14 A. No.

15 Q. Your wife is afraid for her life?

16 A. Yes.

17 Q. And for the lives of your children?

18 A. Correct.

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

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

24 Somebody made a threat on me in their home ground,  
25 so I left their home ground to a ground where I have many

1 legal friends. People to help me protect myself.

2 Q. Here?

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

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

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

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

13 A. Yes, of course.

14 Q. Okay.

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

18 Q. Proskauer?

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

23 Q. This conspiracy that we're talking about, that you  
24 are in fear of and you're fighting --

25 A. Yes.

1 Q. -- this forms the basis of your malpractice action  
2 against Proskauer?

3 A. Part of it.

4 MR. PRUSASKI: Are you doing okay  
5 timewise?

6 THE WITNESS: What time is it?

7 MR. SELZ: It's 1:00.

8 THE WITNESS: I told you, I will go --

9 MR. PRUSASKI: Let's go off the record.

10 (Whereupon, a discussion was held off the  
11 record.)

12 BY MR. PRUSASKI:

13 Q. When you called the FBI, when Brian Utley  
14 threatened your life, did they make a report?

15 A. I don't know.

16 Q. Did you get anything in the mail afterwards or the  
17 case number or anything?

18 A. No. No.

19 Q. Do you remember the name of the agent?

20 A. I don't.

21 Q. Did they send somebody to your house, or did you  
22 go there?

23 A. No, they didn't.

24 Q. It was all over the telephone?

25 A. Yes. And then, I contacted Caroline who knew FBI

1 agents in Chicago. She said she would handle future  
2 correspondence, if necessary, with the FBI, and that she  
3 had somebody in Chicago that could help us.

4 Q. Has the U.S. Attorney's office, to your knowledge,  
5 pursued any sort of action --

6 A. Caroline would be handling all of those -- I don't  
7 know.

8 Q. Wait. I've got to finish the question, I'm not --  
9 I know you're eager to answer the question, and I  
10 appreciate that.

11 A. Okay.

12 Q. But because she's taking it down, it's not a  
13 normal conversation between two people where a little  
14 interruption is okay.

15 A. I know. She asked me. Okay. Sorry.

16 Q. That's all right.

17 A. Sorry, Miss Court Reporter.

18 MR. SELZ: And the best thing to do is to let him  
19 totally finish the question and he'll let you  
20 totally finish the answer and, that way, the  
21 record is clear. And not only that but, also,  
22 sometimes he might ask you something in a way  
23 that you don't anticipate, so interrupting the  
24 question won't necessarily get the answer --

25 THE WITNESS: It's just something that the

1 average human being doesn't communicate like  
2 that for their whole life.

3 MR. PRUSASKI: Right.

4 THE WITNESS: So we are not as in  
5 awareness of the rules of this form of  
6 proceeding where we can't cross-box, so it's a  
7 little difficult since we're used to regular  
8 communication.

9 MR. PRUSASKI: Right. You've got to --

10 THE WITNESS: So you can keep asking me.  
11 And I'll ask that the court reporter, if she  
12 has any problems, to ask me. I'm sorry for --

13 MR. PRUSASKI: Okay. But you are okay  
14 with not taking a lunch break.

15 THE WITNESS: I'm okay. Like I said --

16 MR. PRUSASKI: You don't need to eat?

17 THE WITNESS: I don't need anything. I  
18 need to protect my children. So whatever time  
19 that takes, I am here.

20 BY MR. PRUSASKI:

21 Q. What steps have you taken to protect your  
22 children?

23 A. I moved them out of town overnight. They  
24 disappeared from my family, haven't been back here until  
25 recently to go through these trials against you.

1           And we have been in hiding on a ranch and running  
2 around towns and trying to fend for our lives as, you know,  
3 all of these actions were unfolding which were so  
4 complicated that nobody would have been able to deal with.

5           At the same time, we were fearing for our lives  
6 and trying to keep our kids going to school and trying to  
7 live normal lives, when we felt pressures and noticed that  
8 the documents were destroyed and they noticed all the --  
9 see, what happened was, after Utley's threat, we looked at  
10 the records. And all of a sudden, Blakely Sokoloff found  
11 patents going out with his own name -- in his own name for  
12 inventions he couldn't have invented because he wasn't  
13 there.

14           And we found all kinds of things that were scary;  
15 loans transacted without proper documentation. All kinds  
16 of things that will be presented under the conspiracy case  
17 to whichever court this lands up in.

18           And the bottom line is, you know, that is --  
19 further and further, as evidence was uncovered, my wife  
20 said wow, this isn't just a threat, this is now real; they  
21 are filing actions against us overnight.

22           Mr. Wheeler is filing for a bill when he knows the  
23 company doesn't have any money. What does he want, my  
24 blood? What are you after?

25           You know, normally, a law firm that takes two and

1 a half percent stock interest in patents that are told to  
2 them to be worth billions would wait until the patents --  
3 to expire and, then, decide that they're going to sue. But  
4 what are you suing a company that you know has nothing,  
5 know has no assets?

6 You are just doing it as an action to harm me.  
7 And you know -- you know I don't have -- Mr. Wheeler knows  
8 darn well that the funding was pulled on the company --

9 Q. We don't know that the company doesn't have  
10 assets, though.

11 A. Yes, he does.

12 Q. What does he know?

13 A. He knows all the assets in the company. He was  
14 doing the books with Mr. Utley.

15 Q. And they're all gone.

16 A. And they're all gone, right. That's right.

17 They sent me a bunch of fragmented computers that  
18 we're all locked out of on passwords. And then they --  
19 Mr. Utley stole computers to Mr. Bruce Prolow, Chris  
20 Wheeler's friend out in New Jersey, a company they had  
21 referred him to that they had secretly been planning a  
22 merger and acquisition.

23 But when Brian brought this Distance Learning  
24 company in to the board, the board threw him out, said get  
25 out of this company. Brian, you are in deep trouble



1 because you transacted money with Mr. Wheeler on behalf of  
2 Iviewit without board approval; you are being terminated;  
3 we want you to let go of all of the employees and transfer  
4 the corporate records. That was the board's decision at  
5 that point.

6 And believe me, as that's all happening, and all  
7 of these things are being uncovered, you really do fear for  
8 your life and your wife, as she learns those things, which  
9 you try to protect her from learning, fears for her life  
10 and fears for her kids' life.

11 Q. Why do you come here and -- you have been here  
12 about three days now to review the files?

13 A. Yeah.

14 Q. Why do you come here and spend the day here when  
15 you fear for your life?

16 Why don't you have Kinko's just come and pick the  
17 files up and copy them for you?

18 A. I fear no evil, A, okay; I expressed that on the  
19 record before.

20 Q. Yes.

21 A. And I feel that that would be your debt to the  
22 firm, to make any action now that you are aware that there  
23 are many people involved who have reviewed the case,  
24 reviewed the evidences against you; that that would be  
25 foolish, right? I fear nothing walking in here today.

1           Yesterday, when I didn't have enough people having  
2 reviewed the evidence against the people who have  
3 perpetrated such frauds, I was real scared.

4           I only had a few people who believed what had  
5 occurred occurred, and they told me specific legal steps to  
6 take to protect myself, which we did. And now, they all  
7 feel comfortable, I believe, after the review of such  
8 documents and evidence to, A, file lawsuits on the  
9 company's behalf against the perpetrators and, B, whatever;  
10 but now it's public, there's no stopping it.

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

13       Q.    At Proskauer?

14       A.    Absolutely.

15       Q.    And think that --

16       A.    Chris Wheeler.

17       Q.    -- that they orchestrated an accidental death?

18       A.    Correct. Or something, or purposely done.

19       Q.    Over the last year or two, when you have been  
20 afraid of these law firms conspiring to kill you, how in  
21 your mind did you think it would happen if they tried to  
22 kill you?

23           MR. SELZ:  Objection to form, calls for  
24 speculation.

25       Q.    In your mind, how did you think it would happen?

1 A. I anticipate all options.

2 Should I be drinking the coffee? Just kidding.

3 That was a joke; I'm just trying to lighten it up here.

4 Believe me, I have been living in a lot more  
5 stress --

6 Q. It's hard for me to joke about this, for reasons  
7 I'm sure you understand.

8 A. It's hard for me to joke about this, as you can  
9 understand; but I was trying to make light because I saw  
10 stress in you.

11 Q. In me?

12 A. Yes. Sorry.

13 And maybe -- you know, I don't know this  
14 Mr. Prusaski, maybe you are not aware of all of this. I  
15 don't know. Okay. If you are not, this is probably the  
16 first time you are hearing this, and I hope that you fear  
17 for me, too.

18 You want to know some of the other reasons why  
19 Mr. Utley was into this position?

20 Q. Sure.

21 A. Okay. You know, at a meeting at Paramount  
22 Pictures, it was found that he was lying. He was incapable  
23 of producing math answers. He exposed that he did not have  
24 an engineering degree to a top engineer.

25 By the time I had left the lot of

1 Paramount/Viacom, I got a phone call from the top of Warner  
2 Brothers technology team asking me what had happened in  
3 this meeting with Mr. Pierce.

4 I said that Brian Utley was exposed as a fraud;  
5 that he didn't have an engineering degree as he had been  
6 selling to everybody. That he had fumbled on math  
7 equations that the gentleman asked him, it was the biggest  
8 joke -- meeting of my life.

9 He asked me to never have Brian Utley contact any  
10 other employee other than him at Warner Brothers; of which  
11 much shortly, further after, he was trying to smear the  
12 company at this point throughout a bunch of correspondence  
13 to the Warner Brother Group to try to hurt the company.  
14 Kind of like Ken Rubenstein retracting his statements that  
15 he had made prior to them about Iviewit's technology. At  
16 this point, he stops making representations for Iviewit;  
17 kind of weird.

18 Nonetheless, Mr. Utley was being exposed on the  
19 patent side through Foley & Lardner. There were some  
20 meetings with -- we had conversations with Mr. Wheeler  
21 involved in, that were exposing that there were frauds  
22 perhaps.

23 Remember, at this time I just grabbed some  
24 documents and found, wow, there's lots of math errors in  
25 these patents. Brian Utley is misnamed, invention titles

1 have changed from what we agreed on, blah, blah, blah.

2 We have meetings to correct such things and still,  
3 in the end, Foley filed the wrong patent, and all of these  
4 things were exposed. And there were a lot of reasons for  
5 people to want to protect their interests through the death  
6 of the guy who was going to tell the story, and that's me.

7 So you know what, I ran and hid while I could tell  
8 the story to some qualified lawyers, showed them the  
9 evidence that we were uncovering, built back the corporate  
10 record, get new witnesses based on what we were uncovering  
11 over this time period; meaning, now, the witness list  
12 should grow tremendously because we've had time to break  
13 into the files we were locked out of.

14 We have had time to re-assemble corporate record  
15 by going to board members and whatnot, and asking them to  
16 reconstruct their records, send us their records, et  
17 cetera. So as the evidence is coming to us -- still is  
18 coming to us, in fact, from your evidence, I am even  
19 more -- if I had seen this, I'd be more scared at the time.

20 Meaning, from what I see here, you have -- a lot  
21 of the documents weren't -- well, I was under the  
22 impression the judge ordered all documents to be here that  
23 I had requested in my request. If you are telling me  
24 that's wrong --

25 THE WITNESS: That is wrong, Steve?

1 MR. SELZ: Yes.

2 THE WITNESS: What did he order?

3 MR. SELZ: Well, basically we have access  
4 to the files from the corporate representation,  
5 Iviewit representation --

6 THE WITNESS: Were they all here in this  
7 conference room? Okay. Then, from what I've  
8 seen --

9 MR. PRUSASKI: From the corporate  
10 representation, not from the personal  
11 representation, because that's between you and  
12 this firm personally.

13 THE WITNESS: No, I don't care about  
14 personal. Right. That's right. I am not  
15 asking for those either.

16 So you are saying to me that all of the  
17 documents were here --

18 MR. PRUSASKI: From the entire file, as  
19 Proskauer keeps it, from the Iviewit  
20 representation.

21 THE WITNESS: Then I'm really scared -- I  
22 would have been really scared, because I would  
23 say destruction of documents has occurred and  
24 there were a lot of things missing.

25 BY MR. PRUSASKI:

1 Q. Why?

2 A. Information on the patents that Ray Joao --

3 Q. We haven't gone through the whole file.

4 A. I have, pretty much.

5 Q. I thought you told my paralegal two days ago that  
6 you were going to need several more days to look at the  
7 whole file.

8 A. No, I didn't say that. I said I would need  
9 several more days to photocopy the whole file.

10 Q. But you've looked at the whole file?

11 A. I've looked at the whole file, and I looked for  
12 certain pieces of information.

13 Q. What do you think happened to the patent documents  
14 that you can't find in the file?

15 A. I'm going to leave that so I can ask Mr. Wheeler  
16 those questions. I mean, if you're saying everything is  
17 here, I don't know what happened to them, they're missing.

18 Q. You are not going to ask Mr. Wheeler those  
19 questions; you asked. You took his deposition.

20 A. No. I don't think we finished, but...

21 Q. All right. Well, that's a bone of contention that  
22 you can take up with the judge.

23 A. Right. We will.

24 Q. We think you did.

25 A. Okay.

1 Q. But you are planning on asking Mr. Wheeler where  
2 certain missing documents were?

3 A. Yeah.

4 Q. Okay. What else was missing? The patent  
5 documents --

6 A. Tapes.

7 Q. What type of tapes?

8 A. Tapes of patent conversations.

9 Q. Speaking of tapes, what did you do with the tape  
10 of the Brian Utley deposition that you made from your house  
11 in California?

12 A. I don't recall.

13 Q. Did you make that tape?

14 A. Yes, I did.

15 Q. All right. Why did you tape the deposition?

16 A. Because I was very busy at the time. I was kind  
17 of on the phone; kind of, I believe, helping my wife  
18 through something, and so I kept the tape so I could play  
19 it back. And I figured the court reporter had a tape, so  
20 it was fine.

21 Q. Do you know differently now?

22 A. No. I didn't understand why it wasn't fine with  
23 you then.

24 Q. Well, it's against the law to tape somebody over  
25 the telephone across state lines without their permission.



1 A. I thought we had all agreed that it was being  
2 taped.

3 Q. No.

4 A. Okay. Was the court reporter taping it?

5 Q. Yes, but she's allowed to because she's an officer  
6 of the court as a court reporter.

7 A. Okay. Well, you know, I'm not a lawyer so I don't  
8 know that much law --

9 Q. Can you and I agree that you will safeguard that  
10 tape?

11 A. Yes.

12 Q. And not let anyone hear it?

13 A. Correct.

14 Q. And ultimately, if we decide that we would like  
15 you to destroy it, you would do that for us?

16 A. Correct.

17 Q. Thank you. All right. So info on patents --

18 A. I may have destroyed it, actually, so is that  
19 okay?

20 Q. You don't remember if you did or not?

21 A. I don't.

22 THE WITNESS: Did you tell me? I can't ask Steve  
23 any questions, but --

24 A. I don't recall. I might have.

25 MR. SELZ: And obviously, I couldn't

1           advise you as to what I had advised you with  
2           regard to the legality or illegality of taping  
3           those things, issues --

4           Q.     So information on patents was missing from the  
5           file, that you've noticed over the last week; tapes of  
6           patent conversations were missing from the Proskauer file.  
7           What else?

8           A.     Billing records, the full billing statements from,  
9           you know, all the partners with notes. I didn't see a lot  
10          of the billing statements.

11          Q.     What else?

12          A.     I am not sure. I haven't finished reviewing all  
13          of my images of the documents.

14          Q.     I thought you said you went through the whole  
15          file.

16          A.     I did. I glanced at it; but I will have more time  
17          to go through it. I photographed a lot of it.

18                   And as soon as I'm done reviewing my photographs  
19          and copies of such records, I will make my full analysis,  
20          after my attorneys have reviewed such, of what's missing  
21          and what's not.

22          Q.     So as you sit here right now, you can tell me that  
23          there are three categories of items missing; and those are  
24          the information on certain patents, the tapes of patent  
25          conversations and the full billing statements with notes --

1 A. And the information that's given --

2 Q. -- and that's subject to being enlarged by you, as  
3 you continue to --

4 A. Unless you've said there was stuff missing from  
5 the conference room, here; like you said earlier that you  
6 had stuff on your shelves.

7 Nobody told me to go look at shelves. I was here  
8 to look at the documents pertaining to my company --

9 Q. We've provided the entire file to you for the  
10 representation of the Iviewit companies.

11 A. So there is nothing on the shelves out there --

12 Q. Not that I'm aware of.

13 A. -- so I can go back on the record and make my  
14 statements that things are absolutely missing.

15 Q. Yeah.

16 A. Oh, yeah. Okay. Yes.

17 Q. I am just asking you what -- I am not expecting  
18 you to know what's on our shelves. I'm expecting you --

19 A. Is there more on the shelves?

20 Q. I don't know. I'm expecting you to tell me if you  
21 noticed anything missing from the table.

22 A. Yes.

23 Q. All right. And what types of patent conversation  
24 tapes were there?

25 A. Well, we came to your offices with -- let's see.

1 Who was here?

2 What happened was, Chris Wheeler took us to Real  
3 3-D telling us we had video patents. I did not believe him  
4 on the way up there.

5 Ken Rubenstein and Ray Joao were supposed to be --  
6 since this was the defining meeting of our lives with  
7 Intel, Solkin Graphics (ph) and Lockheed -- one of my  
8 patent counsels was supposed to be representing us, either  
9 Ken or Ray, and neither of them are unavailable.

10 They were both unreachable by any form of  
11 communication, I think is what they were -- told to us. We  
12 tried, for the entire trip up to Orlando, to get a pinion  
13 because Chris wanted me to expose --

14 Q. No. But the tapes, though.

15 A. This is the tape. Hold on. I'm getting to the  
16 tapes.

17 Q. You are getting to the tapes?

18 A. Yeah.

19 Q. Are you sure?

20 A. So there was -- it turns out that, as we go into  
21 the meeting, Chris still can't ascertain from his counsel  
22 if there are patents on a video that he wants me to  
23 disclose.

24 Although he says under NDA I am protected, I would  
25 not disclose to the Real 3-D people the video process

1 because Chris could not with certainty determine -- like he  
2 had told everybody that was on that meeting that -- from  
3 our side, that there were such patents.

4 I wanted to see such patents because we had  
5 already found some malfeasances with Ray Joao's work  
6 through Wayne Huizenga's attorney, Steven Filopak (ph). So  
7 I needed to know --

8 Q. Stop there.

9 A. Yes.

10 Q. Steven Filopak --

11 A. Yes.

12 Q. -- is Huizenga's attorney?

13 A. Correct.

14 Q. How do you spell Filopak?

15 A. I don't know, look it up.

16 Q. P H or F?

17 A. I don't know.

18 Q. I've got to know what letter to look under.

19 MR. SELZ: Either F or P.

20 A. F.

21 MR. SELZ: Do the F or P, probably.

22 Q. All right. All right. All right.

23 A. Chris should know.

24 Q. You guys are a rough crowd. Filopak --

25 A. We're a rough crowd?

1 MR. SELZ: I think -- my guess would probably be  
2 the P.

3 THE WITNESS: We're a gentle crowd, just  
4 unprovoked.

5 Q. And Steven Filopak, Huizenga's attorney, you are  
6 saying knew about malfeasances committed by whom?

7 A. Well, he went to the Proskauer Rose New York  
8 office and met with, I believe, Ray Joao and Ken Rubenstein  
9 on our behalf. Although, it's not present in Ken  
10 Rubenstein's records, which might be part of the reason why  
11 I feel the bills are bogus.

12 Q. How do you know what Ken Rubenstein's records say?

13 A. Well, under deposition I believe he explained --  
14 and I've got your part of the billing record and part of  
15 what I've recovered from our files, records to show that  
16 Ken is not a billing partner anywhere in fact, on any of  
17 the bills provided, although his name is mentioned all over  
18 the bills. He doesn't -- he's the only free lawyer I have  
19 ever hired.

20 He attends a lot of conferences with interoffice.  
21 He's the only partner that's ever consulted that doesn't  
22 list his name as a partner billing for my company.

23 Q. Well, I asked you: How do you know that  
24 Rubenstein didn't take these notes?

25 A. He said he didn't in his deposition.

1 Q. Did you see him taking notes?

2 A. No. I was here, and he was in New York.

3 Q. No, not during the depo.

4 I mean, if you're saying that he doesn't have  
5 notes --

6 A. They aren't part --

7 Q. -- do you know somebody who originally saw him  
8 take notes?

9 A. They aren't part of your -- yeah. He was telling  
10 me in court he was taking notes; he was learning my  
11 processes always. So, you know, I would assume he has a  
12 lot of records, and that's part of what's missing in the  
13 corporate record as well as in your billing.

14 He's never bills as a partner, although he's  
15 consulted constantly. He's the only Proskauer partner not  
16 listed as a partner billing inside the records, although  
17 he's mentioned 20, 30 times.

18 Q. Why do you think he never bills --

19 A. Well, I think he had problems right from the  
20 start. The fact that he wasn't with Proskauer would have  
21 made it a big problem to put him in as a Proskauer partner  
22 in the original bills, where he shows up a lot.

23 Q. Did you find out when he joined Proskauer?

24 A. We had asked him; he couldn't recall.

25 Q. Who did?

1 A. We did, in the deposition. He gave a six-month  
2 window of opportunity. So, no, we don't know the exact  
3 time.

4 Do you happen to know? I'm just wondering.

5 Q. No.

6 A. Okay. Just wondering. Phenomenal.

7 Q. Did you find out when he joined?

8 A. We do not know exactly.

9 We know that, at the time he was represented as a  
10 Proskauer partner, he was listed at other law firms. And  
11 he was not at any of the Proskauer Rose New York offices  
12 where he later turned up.

13 Q. And this is when you first met --

14 A. And Mr. Wheeler told us that he wasn't.

15 Q. When you first met Chris Wheeler?

16 A. Correct.

17 Q. In late '98?

18 A. Correct.

19 Q. And you actually said you had conversations with  
20 Rubenstein in late '98, when you represented --

21 A. '98, '99, correct.

22 Q. Early '99?

23 A. Correct.

24 Q. When you represented he was a Proskauer partner --

25 A. Correct.



1 Q. -- when in fact he was an attorney with a  
2 completely other law firm?

3 A. And by the way, his underling, Ray Joao, was also  
4 represented as his underling for Proskauer, and he turned  
5 out to also be at Meltzer Lippe. At which point, when it  
6 was discovered, Chris Wheeler had to sign a retainer with a  
7 new law firm, which we were all confused about.

8 The board asked about liability issues to  
9 Mr. Wheeler. And I believe he said jokingly stated that we  
10 would now have two law firms with deep pockets to sue if  
11 anything got screwed up, because everybody was worried  
12 about what was going on. Why are you representing lawyers  
13 that aren't lawyers at your firm?

14 So he said they were in the transitional phase or  
15 something, but it was different from what we were  
16 originally told.

17 Q. So Filopak will testify that there was wrongdoing  
18 by whom?

19 A. I don't know.

20 He went to a meeting at the offices of Proskauer  
21 Rose with Ray Joao and Ken Rubenstein to review the patents  
22 on behalf of Wayne Huizenga.

23 We got a call from Chris Brandon (ph) that Wayne  
24 Huizenga's patent review panned out to be that there was --  
25 I think he said tuna fish in the patents, and not the

1 actual subject of my inventions, which started an  
2 investigation headed by Chris Wheeler into the work  
3 performed by Meltzer Lippe, who it had now turned into --  
4 we had to take a retainer.

5 By the way, Chris is referring legal counsel for  
6 me to protect my patent. Why would he refer a law firm in  
7 New York City, far away from the client, if it he wasn't --  
8 he represented that these were your New York partners  
9 handling the patents for us.

10 Q. Did he ever represent the bill of patent lawyers  
11 in his office in Boca?

12 A. No.

13 Q. What other attorneys -- before I forget, what  
14 other attorneys in Boca Raton represented Iviewit, besides  
15 Mr. Wheeler, at Proskauer? Was Rocky Thomson involved?

16 A. Yeah.

17 Q. What can you tell me --

18 A. Mara Lerner mountain top (sic).

19 Rocky was at the taped meeting.

20 Q. Mara Lerner Robbins?

21 A. Yeah. Actually -- so if you wanted to ask me any  
22 other questions, we came back from Real 3-D without  
23 patents, as Mr. Wheeler and Mr. Rubenstein and Mr. Joao had  
24 represented.

25 And in fact, when we asked Ray Joao to send us

1 such video patent, he said he hadn't filed it yet. And  
2 Mr. Wheeler had been asking me to disclose under NDA my  
3 processes to his friend at Real 3-D, Jerry Stanley (ph); so  
4 I didn't.

5 We wasted a lot of everybody's time schlepping  
6 around all of these people to Orlando where we couldn't  
7 disclose the video process. So what had to happen is we  
8 brought in the original inventors again, Zaccarul Sarozi  
9 (ph) -- which we later found out aren't even on these  
10 inventions, which is quite absurd.

11 Jude Rosario and myself are to come to Chris's  
12 office because he's going to appear for Ray and he's going  
13 to make sure everything is -- Ken is opining on everything;  
14 we're going to be okay, don't worry. He assures the board  
15 that we are at no risk; that the video is in protection  
16 state because -- as a matter of fact, Ken Rubenstein  
17 represents that the patents are safe because in --  
18 they're -- it's first to invent.

19 So even if Ray had failed to file timely, and  
20 we're months later, they should have been filed -- even if  
21 he had done that, that it would be based on the first two  
22 in fact.

23 Well, what Mr. Rubenstein failed to represent to  
24 us was that that's only true in the United States. That in  
25 foreign lands they must have -- they might have just

1 subjected the company to tremendous liabilities, amongst  
2 the other liabilities that we're finding out.

3           So Mr. Huizenga refused further investment based  
4 on that, not based on whatever -- whatever nonsense was  
5 claimed to have been the basis of it. I think it was  
6 something about my father being -- I can't remember, but it  
7 was something you guys said about my father being in a  
8 fight with Mr. Huizenga, but Mr. Utley made that  
9 representation in his deposition.

10       Q.   Mara Lerner Robbins and Rocky Thomson and Chris  
11 Wheeler --

12       A.   Wait. Wait. So we come here to do a taping --  
13 because you want to know where that tape is, and so do I --

14       Q.   Is it a quick answer?

15       A.   Nothing is quick here. I mean these are  
16 complicated --

17       Q.   All right. If you can try -- if you can try and  
18 condense it --

19       A.   Okay. You asked me what tape; so the tape is a  
20 tape --

21       Q.   Audio or video?

22       A.   Audio, and the audiotape was given to Gloria  
23 Burfeld (ph). But what it was for was the inventors  
24 disclosing the patents via teleconference to Ray Joao and  
25 Ken Rubenstein so that they can, thus, secure as

1 provisional or pending or whatever apps they were supposed  
2 to do for the video disclosure that they should have done  
3 prior to us ever going even into Real 3-D, where Chris  
4 wanted us to present to his friend under NDA versus under  
5 patent. That was interesting.

6 Rocky Thomson put us into a room and, at one  
7 point, we found Gerri Lewin's cell phone actively  
8 connected -- I mean, people going: Gerri, we can't hear  
9 anything.

10 Q. Wait. I'm confused. Somebody was eavesdropping  
11 on you?

12 A. Yes --

13 Q. Who?

14 A. -- on Mr. Lewin's cell phone. So we ran out of  
15 the office, and we told Rocky Thomson --

16 Q. Who is "we"?

17 A. Me and Zaccarul Sarozi, who -- Jude wasn't there  
18 yet, he came later. But we told him hey, we're out of  
19 here, man, these guys are --

20 Q. When was this? Give me an approximate date so I  
21 can --

22 A. June of '99, roughly.

23 It's in your notes. If you look carefully, you'll  
24 find that Gloria did receive a tape at such --

25 Q. Okay.

1 A. -- and when we asked your staff about my state at  
2 that point, they'll say: He was real worried that things  
3 were going on. And I think it's in the tape, actually.

4 Q. Well, why did you continue to let Proskauer  
5 represent you for over a year after that?

6 A. Well, you see the real question --

7 Q. June of '99?

8 A. June of '99. But the real question --

9 Q. Two years?

10 A. Yes.

11 The real question was Chris blamed it on Ray Joao,  
12 who he had now signed a Meltzer Lippe thing with. He,  
13 then, had Utley review Ray Joao's work. And Brian Utley  
14 said it was inferior; Foley & Lardner said it was inferior,  
15 and so we got rid of Ray.

16 And we were thinking that it was going to be Ken  
17 and his group. But Ken made representations several times  
18 that he didn't have a group that does patent prosecution,  
19 whatever.

20 And Brian and Chris brought in Mr. Bill Dick. And  
21 they forgot to tell us that Mr. Dick and Mr. Utley had been  
22 involved in patent malfeasance at his prior employer.

23 Q. Did Rocky Thomson have anything to do with the  
24 conspiracy that you have been telling me about?

25 A. Like I said, there are so many -- certain people

1 that I've mentioned already. Other people I won't make  
2 representations until I have full statements --

3 Q. Wheeler and Rubenstein you can confirm are part of  
4 the --

5 A. Absolutely.

6 Q. -- as a part of the --

7 A. Conspiracy.

8 MR. SELZ: Let him finish his question.

9 THE WITNESS: Oh, sorry.

10 Q. -- conspiracy to run you out of business and/or  
11 potentially kill you; but you don't know if Rocky Thomson  
12 is involved with that?

13 A. No.

14 Q. What about Mara Robbins?

15 A. No.

16 Q. Any other -- what other associates here at the  
17 Boca Raton office?

18 A. Not a single one can I -- until I have all of the  
19 evidence in my hand on the other people and hear their  
20 statements, can I make decisions based on if they are part  
21 of it or not.

22 Meaning, I won't know Mara Robbins' position until  
23 I ask her certain questions through this trial.

24 Q. What other associates in the Boca office between  
25 Rocky Thomson and Mara Robbins worked on Iviewit's file?

1           A.    God, I don't know.  But I think every one of them  
2 according to the billings.  I mean, there wasn't anybody  
3 who wasn't working --

4           Q.    Were you objecting to the number of --

5           A.    I didn't even know there were meetings.  They were  
6 mostly in our office.

7           MR. SELZ:  Wait.  Let him finish his question.

8           THE WITNESS:  Okay.  Sorry.

9           Q.    Were you objecting, when you got these bills, and  
10 you noticed that there were attorneys that you didn't  
11 recognize; was that ever the case?

12          A.    No.  There were billings we didn't recognize.

13                I mean, it's mostly this interoffice calling each  
14 other about issues, so it's hard to track that that  
15 occurred.  I never -- like I said, if this set of billing  
16 documents is -- got rich as far as I'm concerned -- is a  
17 bunch of interoffice billings between your own group of  
18 people.

19                It doesn't represent what truthfully happened,  
20 patent meetings, et cetera; Ken Rubenstein's time,  
21 et cetera.  And it's a bunch of garbage.

22                So what I see there is a billing record that I  
23 would like to verify with your employees under, you know,  
24 sworn statements and see if they're willing to back all of  
25 that.  And then, I'll make my decision if they're involved



1 in part of the conspiracy; if I have evidence to show --  
2 show them as part of the conspiracy. The ones that I have  
3 mentioned I have evidence to support conspiracy.

4 Q. Wheeler and Rubenstein?

5 A. Correct.

6 Q. What evidence is that? What you've told me  
7 already?

8 A. Other than -- there is evidence. I think I've  
9 submitted it to the court.

10 Q. Okay. You've submitted all of the evidence you  
11 have --

12 A. I didn't say "all."

13 Q. Are you holding back anything?

14 A. No. Yes.

15 Q. What?

16 A. I would assume to say to you I'm holding back a  
17 lot of evidence, as we try to repair the drives that were  
18 damaged on the transfer; as we are trying to build back the  
19 corporate record that was destroyed and not sent to  
20 California properly, the corporate books, et cetera.

21 This is a very monumental task, to shift through  
22 38 computers, try to break back into your server. I  
23 haven't been able to log into my domain since Mr. Utley  
24 transferred the computers, of which he gave specific orders  
25 for people to lock us out of those files. So --

1 Q. Are you good -- are you talented as far as  
2 re-creating computer files that have been erased? I mean,  
3 you seem to be pretty computer --

4 A. You know, I've been spending 24 hours a day for --

5 MR. SELZ: Let him finish his question.

6 THE WITNESS: Sorry. Sorry.

7 Q. Go ahead. It's all right, Eliot. Go ahead.

8 A. I have been spending 24 hours a day trying to get  
9 it back together so the truth can be told.

10 And I have been building it day by day. And  
11 people are submitting documents to me at different times.  
12 When they recover their files, when they get  
13 correspondences, they send them off to me. We're trying to  
14 locate some of the other witnesses of this to get more  
15 documents from them.

16 But basically, the entire corporate record, as  
17 directed by the board, was not transferred by Mr. Utley,  
18 who said -- made representation that he would get the  
19 entire Wheeler file, et cetera, because we knew -- I think,  
20 you know, once Brian was gone it only took you guys two or  
21 three days to quit and send out -- send somebody a  
22 letter -- it wasn't me, but sent a letter that said you  
23 quit the services.

24 Q. When Iviewit was being represented by Proskauer --

25 A. Yeah.

1 Q. -- were there times when you were calling anyone  
2 at Proskauer or sending letters to anyone at Proskauer  
3 complaining about the bills?

4 A. I wasn't dealing with the bills.

5 Q. Okay.

6 A. I mean, you think I'm like the bill guy.

7 Q. Okay. No, I don't think anything. I just want to  
8 know --

9 A. What? I heard my board members complaining --

10 Q. Let me finish.

11 A. Okay.

12 Q. I want you to give me some insight into who was  
13 getting the bills, who was making the decisions to pay them  
14 and who was complaining about them, if at all; can you tell  
15 me that?

16 A. Yeah. At first there was nobody complaining  
17 because nobody was seeing them, except Brian Utley and  
18 Chris Wheeler, best friends.

19 Then, as soon as we started to see them, Si  
20 started complaining. Buchsbaum had complaints --

21 Q. Are there written complaints or calls?

22 A. Yeah. People were asking all about the claims,  
23 and it's written on the bills that there's problems.

24 Q. Where are those notes written on the bills, those  
25 complaints?

1 A. They are part of evidence somewhere.

2 Q. Have you seen them in our files?

3 A. I have seen them in our files.

4 Q. Because we've asked for them, and I never saw them  
5 before.

6 A. What?

7 Q. The written complaints that you are talking about  
8 to --

9 A. Buried in there somewhere.

10 THE WITNESS: Did you bring him a CD?

11 MR. SELZ: Yes.

12 THE WITNESS: So you got it.

13 MR. SELZ: The compact disk that he sent me, that  
14 was the one that we sent out --

15 MR. PRUSASKI: The one you sent to me  
16 about four months ago?

17 THE WITNESS: Yes.

18 MR. PRUSASKI: That just had a couple of  
19 icons on it.

20 MR. SELZ: It didn't have any contents on  
21 it?

22 MR. PRUSASKI: No. Our IT people looked  
23 at it and said there's a couple of icons.

24 THE WITNESS: Well, you know, your IT  
25 problems are apparent all over the place.

1           Because you can't open most files according to  
2           Chris Wheeler's notes. He can't read half the  
3           things in the world. "Scrambled Word  
4           documents" he writes back on his notes. So,  
5           you know, I don't know. I submit to you.

6   BY MR. PRUSASKI:

7           Q.    So you were writing -- you were hand writing  
8           objections on bills?

9           A.    No. My father was.

10          Q.    He was. And you saw them?

11          A.    I saw them, yeah. I saw them.

12          Q.    I think Brian Utley testified that there were  
13          never any written objections to the bills.

14          A.    No. Brian Utley in fact testified that there were  
15          objections to the bill, and he was aware that board members  
16          and my father had complaints about billing, overbilling,  
17          et cetera.

18          Q.    When did this overbilling complaint start?

19          A.    Oh, my God. Don Kane went berserk --

20          Q.    No. When did it start? We'll get into Don Kane.  
21                When did it start?

22          A.    I don't know exactly when it started, but my dad  
23          formed a committee to start reviewing.

24                And we put a limiting motion on Brian at the board  
25          that he couldn't bill more than 5,000 a month or something

1 with Proskauer because word was catching on that Brian  
2 said: Can I have a check for all of these moneys, and I've  
3 made deals with Proskauer to pay them hundreds of thousands  
4 of dollars of our cash when, in fact, we've given you stock  
5 graciously, because of your statements that we would be  
6 receiving patent royalties from Ken's pools, and that would  
7 be the way to offset these bills, et cetera. And we had no  
8 idea.

9 Then, Mr. Utley came in and said he wanted to  
10 start paying all this money weekly to Proskauer; people  
11 said no, letters were written and, then, the board got very  
12 upset.

13 Q. Why did you -- I'm confused as to why Iviewit just  
14 continued to let Proskauer do work for months and months,  
15 if not years, after they thought that Proskauer was  
16 overbilling?

17 A. Well, my dad was trying to set up meetings with  
18 Chris to negotiate and settle and find out what was the  
19 matter --

20 Q. Why didn't -- why didn't you fire the lawyers that  
21 were allegedly overbilling you?

22 A. Well, you know, because we felt very insecure  
23 about that. Because you had so much knowledge of our  
24 patents and we were seeing so many of your clients in Ken's  
25 patents pools utilizing our products, that we felt that

1 that would be a severe thing versus getting some of these  
2 issues corrected.

3 It wasn't until we saw some of the more apparent,  
4 large scope scams, like that Mr. Wheeler had submitted a  
5 bogus resume on Mr. Utley.

6 Q. Who do you think made that resume?

7 A. Chris Wheeler.

8 Q. You think Chris sat there at his computer and just  
9 drafted a bogus resume to dupe you into believing that  
10 Utley had these qualifications?

11 A. Yes. And then, in fact, he created another one  
12 with Mr. Utley for a Wachovia business plan which claims  
13 completely the opposite of what they claimed in the first  
14 resume. You should take a look at those, too.

15 And that was approved and authored by Mr. Wheeler,  
16 and billed for it as such for business plan reviews.

17 Q. Where are the hard copies of these written  
18 objections that are on Proskauer's bills that Simon  
19 Bernstein sent?

20 THE WITNESS: Do you have them?

21 Q. Because I never got them. And this is -- this  
22 could be significant. We've asked for them, and we've  
23 never got them. And they are not listed as exhibits by the  
24 defendant; so do you know where they are?

25 A. You know, I can look for them. But as I've said,

1 a lot of our documents have been destroyed. So I passed  
2 most of the corporate record --

3 Q. Do you think Utley destroyed these documents?

4 A. Oh, absolutely. He's destroyed his own -- so many  
5 documents that it's not funny.

6 Q. But I thought your attorney just said I got them  
7 on a disk.

8 A. He does because part of what I did was, as I was  
9 hearing from people like Maurice Buchsbaum that documents  
10 were being destroyed, I started to have people grab as much  
11 as they could, so some of the documents we have.

12 And I would assume they are on the disk. Have you  
13 reviewed the disk? You're saying that the disk has no  
14 weight other than icon?

15 Q. There was a CDR that was given to us --

16 A. Yeah, right.

17 Q. -- and our IT department told us there was just a  
18 few icons on it. And they gave me a printout of what was  
19 on it, it was nothing.

20 A. How much data was on it?

21 Q. I sent a letter back to your attorney saying that  
22 this was all we found on the disk, and here is a printout,  
23 and I didn't get a response. So I assume that was the  
24 case.

25 A. Well, I had assumed I had submitted them with the



1 CD, so that's the case.

2 Q. What do you think happened?

3 A. I have no idea. Maybe the mail.

4 Maybe you don't have a good IT department, which  
5 you've had several problems opening files such as simple  
6 Word documents, according to Mr. Wheeler's notes.

7 Q. Okay. So there were written complaints by Simon  
8 Bernstein to the bills?

9 A. Correct. There were board meetings with  
10 complaints as well.

11 Q. And what -- were there Proskauer attorneys present  
12 at the board meetings?

13 A. Absolutely. And Chris --

14 Q. Who?

15 A. Chris Wheeler.

16 Q. And what would he say in response to the  
17 complaints about the bill?

18 A. He was going to negotiate and review and, you  
19 know, check on the items; and that was just at the end,  
20 when he was first questioned about it. And then, the board  
21 asked him to step out during those conversations; that he  
22 was the subject of investigating why these bills were even  
23 occurring.

24 Q. Were the bills ever -- I'm sorry. Strike that.

25 A. Nobody saw the bills. They were --

1 Q. Did Proskauer Rose ever take any action to correct  
2 the bills based on the alleged complaints by Simon  
3 Bernstein?

4 A. According to letters I've seen by Mr. Utley in the  
5 documents I've submitted, yes.

6 Q. Okay. So let's recap for a second. Just to make  
7 sure we're clear.

8 You never submitted written objections to the  
9 bills, but your father did, correct?

10 A. I wasn't reviewing them; he was, correct.

11 Q. Correct?

12 A. Correct.

13 Q. You don't know, as we sit here right now, where  
14 the written objections to the bills are, correct?

15 A. They're in a box probably somewhere in the  
16 transfer of my stuff from LA to California.

17 Q. Right. But you have to -- when I ask you a  
18 question, you can't answer with assumptions. That's always  
19 dangerous. You have to answer with facts.

20 Do you, as you sit here right now, know where  
21 these written objections to Proskauer's bills are that your  
22 father submitted to Proskauer?

23 A. Yes.

24 Q. Where are they?

25 A. Caroline Rogers would have a copy.

1 Q. The lawyer in Chicago?

2 A. Correct.

3 Q. Have you ever given these documents to Mr. Selz?

4 A. Yeah.

5 Q. So he has a copy, too?

6 A. Yeah.

7 Q. Okay. So Caroline Rogers and your attorney  
8 sitting next to you has a copy of all of these documents  
9 that Si Bernstein sent to Proskauer complaining about the  
10 bills?

11 A. Correct.

12 Q. When did you give them to Mr. --

13 A. As a matter of fact --

14 Q. When did you give the documents to Mr. Selz?

15 A. I don't recall.

16 Q. Who else from Iviewit sent written objections to  
17 Proskauer about Proskauer's bills, besides Simon Bernstein?

18 A. I believe Bill Kasser.

19 Q. K-A-S-S-E-R.

20 A. Right. And I believe Ross Miller would have  
21 documents. I may even have copies of those I thought I  
22 submitted to this court, but I'm not sure. They might have  
23 come after, as I was building this.

24 Q. Where -- as you sit here right now, do you know  
25 where the written objections by Bill Kasser and Ross Miller

1 are located? Where are those documents located?

2 A. No.

3 Q. You do not know?

4 A. I do not know.

5 Q. Did you give them to your attorney sitting next to  
6 you?

7 A. I do not know, but Bill Kasser was asked to give  
8 back all of the corporate --

9 MR. SELZ: He asked you -- he asked you a specific  
10 question.

11 A. Did I what?

12 Q. Did you give them to Mr. Selz?

13 A. Yes.

14 Q. But you just answered that, as you sit here, you  
15 don't know where they are --

16 A. Wait. Which documents? Sorry, I wasn't  
17 listening.

18 Mr. Kasser's documents -- I'm sorry.

19 Q. Don't get ahead of yourself.

20 A. I'm sorry. I was a little bit confused on that  
21 question --

22 Q. Listen to the question.

23 A. Yes.

24 Q. You know that Simon Bernstein's written objections  
25 are at Mr. Selz's office --

1 A. Correct.

2 Q. -- and Miss Rogers' office?

3 A. Correct.

4 Q. Now, do you know where Bill Kasser and Ross  
5 Miller's written objections to Proskauer's bills are  
6 located?

7 MR. SELZ: Asked and answered. I think he said he  
8 doesn't know where they're located.

9 A. No.

10 Q. You do not know where they're located?

11 A. I have belief where they may be located. I don't  
12 know.

13 Q. Where do you think they're located?

14 A. At Bill Kasser's house. He's now high-jacked the  
15 rest of our corporate records.

16 Q. Did you ever give those documents by Bill Kasser  
17 and Ross Miller, those written objections, to Mr. Selz?

18 A. I don't know.

19 Q. Besides Bill Kasser, Ross Miller and Simon  
20 Bernstein, who else submitted written objections to  
21 Proskauer?

22 A. Written?

23 Q. To the bills --

24 A. To Proskauer.

25 Q. Written objections to the bills.

1 A. To Proskauer, nobody else that I know of.

2 Q. That's it? Those three individuals that we've  
3 discussed --

4 A. That I currently know of.

5 Q. -- are the only people who you've seen documents  
6 from objecting to Proskauer's bills, correct?

7 A. Correct.

8 Q. Okay. Now, you were the technology part of the  
9 company. You didn't really handle the finances of the  
10 company, is that what you were saying earlier?

11 A. Correct.

12 Q. So the bills that would come in from the creditor,  
13 it wasn't your job to review the bills. It was your job to  
14 handle the technology, correct?

15 A. Part -- yeah. You know, yes. Well, initially I  
16 was looking at the bills, until Mr. Utley was brought in by  
17 Mr. Wheeler.

18 Q. Now, when you were first looking at the bills  
19 before Mr. Utley came in, was there a problem with  
20 Proskauer's bills, before Mr. Utley came aboard?

21 A. No. No. We were paying them. We had paid some  
22 of them. Everything was kind of being worked on until  
23 Mr. Utley came and, then, it was in his charge.

24 Q. And after Mr. Utley came aboard, that's when, in  
25 your testimony today, Proskauer's billing problems started?

1 A. Yeah. Oh, yeah.

2 Q. And you didn't find this out until after the fact  
3 because of the conspiracy between Utley and Proskauer?

4 A. And the conflicts, obviously.

5 Q. And the conflicts of interest that you --

6 A. Correct. Between Chris and Brian and the company,  
7 that I don't think we have a waiver of conflict on.

8 So Chris basically worked with Brian to do the  
9 bills. We were unaware mainly of what was going on. And  
10 when we became aware of it, all of the board members had a  
11 cow about it.

12 And there were actions taken to reduce any further  
13 possibility of them racking up these insane legal bills.  
14 And spending limits were put on Mr. Utley. And we were all  
15 very afraid that -- you know, in fact, they were meeting  
16 every day. They lived in each other's offices.

17 I mean, Mr. Wheeler lived in our offices with  
18 Mr. Utley. There's a hundred people that will tell you  
19 that, and Mr. Utley lived in your office across the hall.  
20 So they basically spent most of their days together, as far  
21 as I could see.

22 You know, I'm sure there's billing records to the  
23 contrary of what I'm saying, but they spent a whole lot of  
24 time together every day. They traveled together,  
25 everything else.

1           So the bill is flowing between those two. As  
2 you'll note on your billings and your records and the  
3 statements that you provided in your complaint, most of  
4 those letters are addressed to Brian Utley with very few  
5 other people being sent any of the correspondence.

6           Q.    Well, he was the president, wasn't he?

7           A.    Yeah.  But if he had a conflict, he certainly  
8 should have been showing it to the other -- and the board  
9 had already told him not to spend over \$5,000; so he  
10 shouldn't have been approving these things, like shifting  
11 the company from a technology to a Distance Learning  
12 company and billing up lots of legal bills doing such.  I  
13 mean, a clear violation of protecting the client.

14                I mean, these things -- you know, shifting the  
15 company focus would have had to take up board approval.  
16 Billing bills to do a shift and create merger and  
17 acquisition documents to transfer stock of the company you  
18 would figure it would have to go through a board kind of  
19 procedure.  And none of that was happening, as well as none  
20 of the bills were being shared.  So we didn't know, you  
21 know, what they were up to, Mr. Wheeler and Mr. Utley.

22                And now, looking at some of the documents we're  
23 quite blown away.

24           Q.    When the bills started coming to you before Utley  
25 was a part of the company, were you the president?



1 A. Was I -- yeah.

2 Q. Were they addressed to Mr. Eliot Bernstein,  
3 president?

4 A. I don't know. Are they there?

5 Q. I don't think so.

6 A. Do you have any records of any bills being sent to  
7 anybody prior to Mr. Utley?

8 Q. Well, if you don't know, just say "I don't know."

9 A. Well, I would say that based on my observations of  
10 all of the documents that I can see today, there are really  
11 no letters --

12 MR. SELZ: Eliot, it's what you know.

13 THE WITNESS: Yeah, what I know.

14 MR. SELZ: Answer the question from what  
15 you know.

16 A. No.

17 Q. You don't remember how they were addressed? If  
18 you don't remember, say so.

19 A. I don't remember receiving any other than Al  
20 Gortz's personal bill.

21 Q. Well, you said just ten minutes ago that you,  
22 before Utley came aboard, were the person who received the  
23 Proskauer bills and there was no problem with them.

24 A. I saw bills. I'm just clarifying your question  
25 for a second --

1 Q. Please.

2 A. I did see bills, I believe.

3 What I'm trying to say is I don't see those  
4 letters and correspondences any more in the corporate  
5 record. You are providing letters that I had at one point,  
6 that I thought I would find in your files that aren't there  
7 any more; that's why I'm concerned about the records.

8 And what you've provided to the court isn't any  
9 letters to me prior to Mr. Utley, those are all destroyed  
10 it appears; so that's where I was heading.

11 Q. There were letters to you from Proskauer before  
12 Mr. Utley came aboard?

13 A. I believe so. They might have been to my father,  
14 too.

15 Q. And you can't find them anywhere in the file that  
16 we provided?

17 A. No.

18 Q. You've looked in the whole file and you can't find  
19 them?

20 A. Yeah. I've looked in a lot of files --

21 Q. There's about five or six feet of correspondence  
22 in that file and you can't find those letters in there?

23 You're shaking your head no.

24 A. No is the answer.

25 Q. What happened to those letters that Proskauer sent

1 you before Mr. Utley came aboard; you think they were  
2 destroyed by Proskauer?

3 MR. SELZ: Objection, calls for speculation.

4 Q. You can speculate all you want. We're doing a lot  
5 of speculating today.

6 A. Yeah, I would --

7 Q. Tell me what you think happened, please.

8 A. I would think that part of those records have been  
9 destroyed.

10 Q. By Proskauer?

11 A. By Proskauer and Mr. Utley.

12 Q. Why?

13 A. To cover up the tracks of what really happened  
14 with this company and its technologies, to try to hide that  
15 you were our technology attorneys.

16 Q. Just another part of the grand conspiracy --

17 A. Correct.

18 Q. -- that forms the basis of your lawsuit?

19 A. Correct.

20 Q. Counterclaim.

21 A. It doesn't form the basis. There's many pieces of  
22 evidence which will show the conspiracy and how it  
23 unfolded. This is just part of covering up your tracks.

24 Q. But you don't have any first --

25 A. Oh, I --

1 Q. Well, let me finish. You don't have any  
2 first-hand knowledge, as you sit here today, that Proskauer  
3 ever destroyed one document pertaining to Iviewit, do you?  
4 These are assumptions.

5 A. Did I actually --

6 MR. SELZ: No. What he's asking you is: Did you  
7 see anyone destroy any documents?

8 Q. Did you see anyone destroy --

9 MR. PRUSASKI: I liked my question.

10 Q. You don't know -- do you have any first-hand  
11 knowledge, as you sit here today, that Proskauer ever  
12 destroyed a single document relating to Iviewit?

13 And "first-hand knowledge" is: Do you have any  
14 first-hand knowledge? Did you see it or hear it yourself?

15 A. Unless there's information on the table --

16 Q. It's a yes or no answer.

17 A. Unless there's information that was on this table,  
18 that's in shelves that you've claimed is not on shelves but  
19 might be on shelves -- based on what I've seen here through  
20 your documents --

21 Q. Your answer is no because you don't want to answer  
22 it --

23 A. No. My answer is yes.

24 Q. You do have first-hand knowledge?

25 A. Based on if I've looked at all of the documents

1 that you say you provided here, that there are no missing  
2 documents on shelves that I should be -- have been looking  
3 at, yes, documents are missing.

4 Q. I asked you if you have first-hand knowledge of  
5 whether Proskauer destroyed --

6 A. Well, that would be destroyed. If they're not  
7 here --

8 Q. No. Don't split my question --

9 A. Well, you told me there was nothing that was on  
10 shelves are missing; the documents are here.

11 Q. All right. Let's take it one step at a time.

12 A. Right.

13 Q. Did you ever see with your eyes anyone at  
14 Proskauer destroying any documents pertaining to Iviewit?

15 A. No.

16 Q. Did anyone ever tell you that they saw anyone at  
17 Proskauer destroying documents relating to Iviewit?

18 A. No.

19 MR. PRUSASKI: Okay. I need to eat lunch.

20 It is now 1:50, and we're going to break  
21 until 2:30 p.m.

22 The court reporter needs to eat, and so do  
23 I.

24 (Whereupon, a discussion was held off the  
25 record.)

1 (Whereupon, a luncheon recess was taken  
2 from 1:50 p.m. to 2:56.)

3 (Whereupon, the deposition of Eliot I.  
4 Bernstein resumed at 2:56 p.m.)

5 (Whereupon, Plaintiff's Exhibits 4 through  
6 9 were marked for identification.)

7 DIRECT EXAMINATION (Continued)

8 BY MR. PRUSASKI:

9 Q. Okay. We're back on the record.

10 We took a lunch break. And to let you know,  
11 you're still under oath, Mr. Bernstein.

12 Before we broke for lunch, we were talking about  
13 documents that you indicated you had given to your lawyer,  
14 Mr. Selz, that contained written objections by Simon  
15 Bernstein to Proskauer's bills.

16 MR. PRUSASKI: Mr. Selz, have we received all of  
17 the documents in your possession in response to  
18 the request for production?

19 MR. SELZ: I believe so. I believe so.

20 If there are any others, obviously we have  
21 to do a supplementary for any documents that  
22 we've received.

23 I'm going to have to review my file,  
24 because I know that we did receive some  
25 supplemental documents from Caroline Prochotska

1 Rogers --

2 MR. PRUSASKI: The Chicago attorney.

3 MR. SELZ: -- recently.

4 MR. PRUSASKI: Okay. Well, can we have an  
5 answer to that next week, because we are  
6 approaching calendar.

7 MR. SELZ: Most certainly. Most  
8 certainly.

9 Yeah. Obviously, if there are any  
10 documents that we have in our possession that  
11 we've received recently that are responsive to  
12 any request for production, we will respond --

13 MR. PRUSASKI: Right. Because we had  
14 certainly asked, right after this lawsuit was  
15 filed, for any documents containing any  
16 objections, and I'm concerned that we don't  
17 have them, if they exist.

18 BY MR. PRUSASKI:

19 Q. Mr. Bernstein, if you would, look at the document  
20 that I previously gave you that's marked as Plaintiff's  
21 Exhibit 3, which is Iviewit's answer and affirmative  
22 defenses that is dated November 2nd, 2001.

23 If you would, go to page 4, where the affirmative  
24 defenses start, if you look at the first affirmative  
25 defense it says: Plaintiff's amended complaint fails to

1 state a cause of action upon which relief can be granted in  
2 that defendants herein were not parties to any contract or  
3 agreement with plaintiff --

4 A. Where's that? Just so we're on the same page? I  
5 missed something.

6 MR. SELZ: Page 4.

7 THE WITNESS: Page 4, not paragraph 4.

8 Q. Paragraph 39.

9 A. Okay.

10 Q. -- Plaintiff's amended complaint fails to state a  
11 cause of action upon which relief can be granted in that  
12 defendants herein were not parties to any contract or  
13 agreement with plaintiff and plaintiff's allegations are in  
14 direct conflict with the relevant written documents.

15 Do you have any factual knowledge to support that  
16 statement?

17 A. I am not sure. I didn't -- I don't think I did  
18 these defenses.

19 Q. Okay.

20 A. I think they were done by Mr. Kent or Kasser.  
21 Can I ask for an explanation of what it means?

22 Q. No. If you don't know, that's okay.

23 A. Let me just try to read it for a second.

24 MR. SELZ: Do you know?

25 THE WITNESS: No, I don't know.



1 MR. SELZ: If you don't know, you don't know.

2 THE WITNESS: I don't know.

3 Q. Okay. Paragraph 40 says: Plaintiff has failed to  
4 meet all conditions precedent to the bringing of this  
5 action against defendants.

6 Do you have any factual basis as the corporate  
7 representative to explain what that means?

8 A. No.

9 Q. Paragraph 41 states: The moneys that plaintiff  
10 claims are owed are unreasonable and do not bear a relation  
11 to the value of the services provided. Thus, plaintiff's  
12 recovery herein, if any, should be reduced accordingly.

13 Do you have any factual knowledge to support that  
14 defense by Iviewit?

15 A. Yes.

16 Q. What is that?

17 A. Lots of evidence about the patents and the  
18 copyright work which was failed to be performed, which  
19 might have jeopardized our copyright position with the U.S.  
20 Copyright Office.

21 The Distance Learning stuff that was billed  
22 without board approval, the transaction of Bruce Prolow's  
23 stock without -- or securities without board approval. If  
24 that's what this is saying. I mean, I --

25 Q. It sounds like that would be a malpractice

1 defense, what you're saying, wouldn't it?

2 A. I don't know.

3 MR. SELZ: Objection, legal conclusion.

4 Q. You can answer the question.

5 A. I don't know, I'm not a lawyer.

6 Q. Well, it says there -- it basically says the bills  
7 are unreasonable and the amounts don't bear a relation to  
8 the value of the services which, to me, tends to indicate  
9 that you are complaining that the bills were overstated.

10 A. I did not do these. These were done by a referral  
11 of Mr. Wheeler's, who brought in counsel that is friendly  
12 with Mr. Wheeler, that were done by Mr. Kasser, who later  
13 turned out to be a witness for you.

14 MR. SELZ: Wait a minute. Just answer the  
15 question.

16 THE WITNESS: Okay.

17 A. Then, I don't know. You know, I'm basing my  
18 answer based on the knowledge I have after getting involved  
19 and reviewing all of the documents.

20 This was put together by somebody that now appears  
21 on -- for you --

22 MR. SELZ: No.

23 THE WITNESS: Okay.

24 Q. If you look at paragraph 47 on page 5 which  
25 states: The plaintiff's claims should be dismissed because

1 plaintiff has failed to join an indispensable party,  
2 namely, Iviewit LLP.

3 Are you very fluent in the different corporate  
4 entities of Iviewit, is that something that you dealt with?

5 A. No. I've been trying to figure it out for now --  
6 as long as I got involved in trying to figure out what was  
7 going on and what was misrepresented to us.

8 Q. So do you -- can you talk about the difference  
9 between Iviewit, LLP and Iviewit.com, Inc. as opposed to  
10 Iviewit Technologies?

11 A. No.

12 Q. Why; because you handled the technology and that  
13 was more of the business side?

14 A. No. What happened was Chris Wheeler represented  
15 to the board that I and the other inventors should assign  
16 our interests and our patents to an entity that he was  
17 going to create.

18 Now, there were a lot of people, including your  
19 own attorneys, patent attorneys, that were counseled on us  
20 that said that inventors should license to a company.

21 Mr. Wheeler wanted the company to own the patents  
22 against the advice of people, such as Don Kane from Goldman  
23 Sachs, Arthur Andersen representatives, Armstrong Hirsch  
24 representatives. And the only person who thought that this  
25 corporate scheme, as he called it -- that would protect the

1 patents as much as they were going to be protected if we  
2 had kept them in our names, was this corporate scheme  
3 Mr. Wheeler devised that would be two or three companies.

4 He wasn't really going to bill us for it because  
5 it was for Mr. Huizenga, he thought, would want this this  
6 way and might not make the investment based on that. So he  
7 decided to create a scheme against everybody's advice. And  
8 he was asked about issues such as bankruptcies and lawsuits  
9 against company Holtzman's (ph) patents.

10 So Mr. Wheeler created a complex scheme of  
11 companies that nobody who is involved with the company that  
12 I know of understands, has knowledge to all of what was  
13 happening to the different entities that were being set up  
14 by Mr. Utley and Mr. Wheeler without, in several instances,  
15 board approval; so no.

16 I mean, it's so complicated that, you know, it's  
17 hard for a regular inventor-kind of guy to figure out.

18 Q. Well, if you take Iviewit.com, Inc., did Proskauer  
19 establish that company?

20 A. Yeah. Chris had mentioned that it was a company  
21 to be formed that any and all lawsuits would be brought  
22 against; that the patent company, companies, whatever he  
23 was designing, were protected and shielded from lawsuits of  
24 which, I think, you guys are suing some of the patent  
25 companies, which would make him the first guy to sue his

1 own scheme to protect the patents; but hey, you know,  
2 whatever.

3 He assured everybody that the companies with the  
4 patents wouldn't be involved in any lawsuits at Iviewit.com  
5 where all the bills were, like yours, was the only entity  
6 that had any exposure; and that, through his scheme, we  
7 were so-called protected from anybody doing what you are  
8 doing actually.

9 Q. When was Iviewit.com, Inc. formed?

10 A. You have to ask Chris Wheeler that.

11 Q. You don't know?

12 A. No.

13 Q. Do you know who the principals of Iviewit.com,  
14 Inc. were, was that you?

15 A. No. I don't know.

16 Q. Were you one of the principals, do you remember?

17 A. I don't know.

18 Q. Do you know if Proskauer performed any work for  
19 Iviewit.com, Inc.?

20 A. If that's the company -- you know, I mean, it's so  
21 confusing. There's Iviewit.com, Iviewit.com, Inc.,  
22 Iviewit.com, LLC, so I don't know.

23 Q. Okay. There were so many companies that you can't  
24 really speak intelligently about the differences between  
25 the companies?

1 A. No. I can speak about the differences that were  
2 told to us that were supposed to be represented.

3 Iviewit.com was supposed to be an operating  
4 company; but now, there appears to be several Iviewit.coms.  
5 We didn't know about that, but I guess that's part of this  
6 overbilling.

7 Q. What was Iviewit, LLC?

8 A. I don't know. Ask -- I don't know.

9 Q. Well, have you seen our retainer agreement in this  
10 matter?

11 A. No. I've seen the one you've provided to the  
12 Court. That didn't occur until nine months after the  
13 companies were formed.

14 Q. Right. Do you know why?

15 A. No.

16 Q. I'm going to show you a document being marked as  
17 Plaintiff's Exhibit 5, a copy of a letter dated  
18 September 8, 1999. I'll ask you to look at it and tell me  
19 if you have ever seen it before.

20 A. Yes. I have seen it in this matter.

21 Q. Is that the document that you were just talking  
22 about that was signed nine months after --

23 A. Correct.

24 Q. Now, do you notice that it's signed by Brian  
25 Utley, president, Iviewit, LLC?

1 A. Yeah.

2 Q. Was that the operating entity at the time?

3 A. No.

4 Q. What was?

5 A. Like I said, I don't know for sure. But I was  
6 represented that Iviewit.com, Inc. was the only one that  
7 would be entering into engagements or anything else for  
8 services with any professional fees.

9 This would have never passed for ratification, if  
10 it was presented to the board; but it seems to appear to  
11 have only been presented to Mr. Utley.

12 Q. You never saw this before the lawsuit was filed?

13 A. No.

14 Q. When did you first see it?

15 A. When the lawsuit was filed.

16 Q. So this document was signed without board  
17 approval?

18 A. I don't even think that's a real document that was  
19 part of anything at this company that was told -- that was  
20 sent to us --

21 MR. SELZ: Answer the question.

22 A. No.

23 Q. Well, you think this was fabricated?

24 A. Yes.

25 Q. After the lawsuit was filed?

1 A. Yes.

2 Q. By whom?

3 A. Perhaps before. By Mr. Wheeler and Mr. Utley.

4 Q. So you're saying, although this letter is dated  
5 September 8th, 1999, it bears actually a stamp that was  
6 fabricated?

7 A. Sure.

8 Q. Do you have any knowledge --

9 A. I believe.

10 Q. It's a hunch?

11 A. It's a hunch.

12 Q. Okay. You are skeptical that it was actually  
13 signed on or around this date that's listed on there?

14 A. Right. Exactly.

15 Q. Why?

16 A. Well, because it's with the wrong company, I would  
17 assume, from what we were represented by Mr. Wheeler.

18 And it's so far after services began being  
19 performed by 50 partners of Proskauer, that it seems  
20 almost -- almost ludicrous that this document is signed  
21 months after you engaged to do work with us, instead of  
22 like proper lawyers who engage with me that we sign a  
23 retainer agreement.

24 Q. Have you seen any other documents in this case  
25 that you think were fabricated by Proskauer?



1 A. Yes.

2 Q. Do you remember what they were?

3 A. Yeah, documents back and forth between Ray Joao;  
4 faxes, particularly.

5 Q. Anything in particular that you remember about  
6 them that I can identify them by?

7 A. Yeah. Ray Joao's faxes, take a look at them.

8 Q. All of them?

9 A. Well, he only billed for one; but there's about 47  
10 that go between and, yeah, most of them look like frauded  
11 documents.

12 Q. Okay. Can you tell with your eyes that they're  
13 fraudulent, or is there something --

14 A. I've gone over them --

15 Q. -- physically wrong with them, or are you  
16 concerned that the contents seem to be fraudulent?

17 A. Physically what's wrong with them is that most of  
18 them are missing headers and proper footers and proper date  
19 and time stamps between the correspondences between  
20 Mr. Joao and Mr. Wheeler; that Mr. Joao's documents  
21 provided are not provided for in his billings, he never  
22 billed for such faxes. And that they bare false signatures  
23 in some cases, I mean, so...

24 Q. Do you know what Iviewit Technologies is?

25 A. One of Chris Wheeler's companies.

1 Q. Do you remember what the purpose of the company  
2 was?

3 A. No, I don't.

4 Q. When it was formed?

5 A. Nobody knows.

6 Q. No?

7 A. Not that we know of, but most corporate people are  
8 confused about all of these companies.

9 Q. Would it be a fair statement that Proskauer did  
10 form all of the Iviewit companies?

11 A. I don't know.

12 Q. Okay. Do you know if Proskauer --

13 A. Well, if they formed them -- I'm not sure if I  
14 know of all the Iviewit companies yet.

15 Q. You are still finding some?

16 A. Yeah. I guess there was some formed with  
17 Proskauer on this Distance Learning stuff that I was  
18 unaware of as well, and I think the board was unaware of;  
19 so I did see some in your documents that we don't have  
20 record of.

21 Q. Iviewit Holdings, Inc., do you remember that  
22 company?

23 A. You know, it was told to me that -- that I believe  
24 was the company that -- and I have to check my notes --  
25 that held the patents. But according to current patent

1 counsel, who's reviewed it, I think they're confused as to  
2 who holds the patents.

3 Q. Who is current patent counsel?

4 A. I don't know. You would have to defer that to  
5 Caroline Rogers.

6 Q. Greenberg Traurig? It's not Greenberg Traurig?

7 A. They've reviewed it --

8 Q. Yeah.

9 A. -- but there was some other firm, too, that I  
10 can't remember the name.

11 Q. Caroline Rogers has power of attorney?

12 A. Yes.

13 Q. Over the companies or over you?

14 A. Me.

15 Q. Personally?

16 A. Yeah.

17 Q. Did you grant it to her?

18 A. I did.

19 Q. Okay.

20 A. I was afraid, in the event that I got killed, that  
21 somebody would have proper authority to take actions to  
22 defend me.

23 Q. Killed as a result of the --

24 A. Of this.

25 Q. -- conspiracy --

1 A. Correct.

2 Q. -- between Proskauer --

3 A. Correct.

4 Q. -- Utley --

5 A. Correct.

6 Q. -- Foley & Lardner?

7 A. Correct.

8 Q. Who else?

9 A. Ray Joao.

10 Q. Ray Joao.

11 A. We're not sure if he's in the conspiracy to kill.

12 Foley & Lardner were -- I'm sure, that they are in  
13 the conspiracy to kill. The only two who have conspired --  
14 and one is hearsay, Mr. Wheeler -- is Mr. Utley, using  
15 Mr. Wheeler as his threat. As best friends, I just took it  
16 as to be a reasonable assumption that it could be the  
17 truth. Mr. Wheeler has not done such himself -- has not  
18 done such himself.

19 Q. Physically threatened to kill you?

20 A. He has never threatened to kill me. Mr. Utley  
21 made the threat on behalf of both of them.

22 Q. Do you remember anything about the Iviewit bank  
23 accounts during the time Proskauer was representing  
24 Iviewit?

25 A. Yeah. I remember that it appeared that some of

1 the checks were being signed by people not authorized on  
2 the accounts --

3 Q. Like who?

4 A. -- one of Mr. Wheeler's reports, I believe Ray  
5 Hersh.

6 Q. Wasn't he the CFO?

7 A. Yeah, but I don't think he was an authorized  
8 signator on the account. I am not sure. We'll check,  
9 but --

10 Q. You are not sure?

11 A. No. But it had to do with checks going to  
12 Proskauer over the amount that Brian was billing --  
13 supposed to be billing.

14 I think, in this document that was labeled  
15 Exhibit 5, there was a \$5,000 or something -- or is it this  
16 letter?

17 Q. No.

18 A. Some letter we have he was supposed to have owed  
19 \$5,000 --

20 Q. Okay.

21 A. And so it became questionable why checks were  
22 being written to Proskauer that -- instead of my signature  
23 or Si's signature, which were required over 5,000, why  
24 Brian and Hersh were on those checks.

25 Q. What did you do about it, when you found out there

1 were checks being signed by someone who you felt wasn't a  
2 signator?

3 A. It was already too late, the companies were  
4 disbanded. You know, all of this was -- it was already  
5 over, they were gone. So I didn't find out until after  
6 that this was happening, as with most of the claims.

7 You know, I was a trusting guy. I trusted my  
8 attorneys. I trusted the management referrals they had  
9 brought in to us.

10 And it wasn't until all kinds of documents started  
11 to come up, like Blakely Sokoloff uncovering documents and  
12 all of this weird stuff; then, we got the corporate record  
13 that we were locked out of our files. I mean, it all  
14 became suspicious then, but we didn't have all the answers.

15 Q. Do you know if checks were ever written off of one  
16 entity's accounts to pay another entity's bills?

17 A. No.

18 Q. You don't know?

19 A. No. I didn't handle the checks.

20 Q. Who did?

21 A. Brian Utley, Gerri Lewin, Ray Hersh.

22 Q. As a board member, did Gerri Lewin have hands-on  
23 day-to-day operation with the company?

24 A. In the beginning, him and Chris, yeah, every day.

25 Q. Was Gerri Lewin part of the conspiracy?

1 A. Gerri just referred me to Chris.

2 I have told you who I have documented evidence  
3 against. I am not going to bring people in until I have  
4 all of their statements, have a chance to talk to them  
5 about certain documents that have been found. So I can't  
6 answer that question today based on the current set -- I've  
7 asked Gerri to give me his complete set of records so that  
8 I can make that assertion.

9 Anything that has been referred or came from Chris  
10 Wheeler may be perhaps involved. And other than Chris and  
11 Brian and that -- I won't say that there aren't other  
12 people involved in the conspiracy that I can find but,  
13 certainly, those are two that I have evidence on them.

14 At your firm, I don't know if the rest of your  
15 partners are involved or even know about any of this -- and  
16 Rubenstein, by the way.

17 Q. Did Iviewit having trouble paying its bills when  
18 Proskauer was its lawyers?

19 A. Well, that's a weird question.

20 I mean, you know, we weren't -- Utley started to  
21 say we needed to pay all of these bills and, you know,  
22 that's part of why Si freaked out, was because he was upset  
23 that Proskauer had take two and a half percent stock, that  
24 they were going to delay billing.

25 There wasn't -- that when fundings would be due,

1 or we'd get fundings, we would pay some of the bills; and  
2 that he was delaying and, you know, blah until we got these  
3 royalties from Ken Rubenstein. And then, it was his big  
4 payout, according to what he had heard from his sources,  
5 Real 3-D, et cetera, was the billions of dollars of value  
6 to the technologies and his two and a half percent stock.

7 And he kept telling everybody that there was  
8 billing and don't worry about the excess billing, and the  
9 triple billing, and the triple billing between my office,  
10 people calling, don't worry about any of that because it's  
11 going to come out of our patent royalties from  
12 Mr. Rubenstein.

13 Q. Wheeler said that?

14 A. Many times.

15 Q. Who else was present when he said that?

16 A. Oh, many -- all of the board members. So he sold  
17 all of their stocks.

18 And Kenny Rubenstein, he got -- would put him on  
19 the board -- advisory board based on Chris Wheeler's  
20 recommendation.

21 Q. Was Gerri Lewin present at the board meetings when  
22 Chris Wheeler made those comments?

23 A. Yes.

24 Q. Gerri -- were you on the telephone during Gerri  
25 Lewin's deposition?



1 A. No.

2 Q. He testified in his deposition that the only  
3 reason the bills weren't paid was because there wasn't any  
4 money?

5 A. Well, then, we might have a problem with him being  
6 involved with the conspiracy.

7 Q. Were you on the telephone when Mr. Hersh's  
8 deposition was being taken?

9 A. No.

10 Q. He said the same thing.

11 A. Another Mr. Wheeler referral, management referral.

12 I would assume that all of these people that are  
13 friends of Chris Wheeler aren't going to testify against  
14 him as being part of the conspiracy, but we'll see.

15 That's why I said, we'll have to get a chance to  
16 talk to them and look in their eyes. I mean, you know and  
17 that -- you know, as this unfolds. And then, I'll make,  
18 you know, the determination if we should take actions  
19 against Mr. Lewin and if he was so involved.

20 Q. Have you reviewed any bills from Proskauer that  
21 have entries for attorney time for services that were never  
22 actually performed?

23 A. Yeah.

24 Q. Can you give me an example?

25 A. Distance Learning.

1 Q. Okay. Tell me about that.

2 A. They were never -- oh -- that were never  
3 performed? Sorry, I missed that. I'm sorry.

4 Let me re-answer.

5 MR. SELZ: Objection to form.

6 A. Right. Yes.

7 And the question is answered unequivocally yes.  
8 Copyrights are not on file with the U.S. Copyright Office,  
9 and they were billed for it in these bills that you  
10 provided, which exposes the company to such tremendous  
11 liability that I -- you know.

12 Q. Proskauer Rose?

13 A. Of course.

14 You failed to file my copyrights. I hope you've  
15 got those on the shelf somewhere, by the way, because that  
16 would be good to know. I didn't see any in the documents  
17 you provided me to come in here and copy. If not, maybe  
18 they were destroyed, I don't know.

19 Do you have such documents, Mr. Prusaski --

20 MR. SELZ: No.

21 THE WITNESS: I can't ask him that?

22 MR. SELZ: No.

23 MR. PRUSASKI: Just bear with me for a  
24 moment.

25 MR. SELZ: No problem.

1 (Pause.)

2 BY MR. PRUSASKI:

3 Q. I'm going to show you a document marked as  
4 Plaintiff's Exhibit Number 6. It's a letter dated  
5 March 24th, 2000.

6 I'll ask you to look at it, take a moment to read  
7 it; and tell me if you have ever seen it before.

8 A. Yeah. I have seen it in this case, and I am not  
9 sure if I've seen it prior to or a similar document, but go  
10 ahead. Yeah.

11 Q. Do you recall seeing it on or around March 24th of  
12 2000?

13 A. I don't recall. I'd have to check in my notes.

14 Q. Is this document something you think may have been  
15 fabricated after the fact?

16 A. Anything might have been but, you know, let's just  
17 assume it's good for now.

18 Q. Do you recall what the first paragraph is  
19 discussing in payment -- repayment arrangement of \$25,000  
20 and 50,000?

21 A. No. Those were arrangements made by Brian without  
22 board approval. Part of what became the subject of the  
23 board's discussions; that Brian not be making deals with  
24 Chris Wheeler, his good friend, on bills that most of us  
25 had never seen the details or backups or anything else on.

1 Q. It indicates -- in paragraph 2, it says: "I am  
2 advised that you have put a hold on this arrangement  
3 pending a meeting which you wish to have with us."

4 Were you present at that meeting?

5 A. No.

6 Q. Was your father there?

7 A. I can't answer for him.

8 Q. Okay. You don't recall if Simon went to that  
9 meeting or not?

10 A. I don't recall.

11 Q. Do you recall what the outcome of the meeting was,  
12 with respect to the payment arrangement?

13 A. Yeah. That there was to be no payment  
14 arrangements, it wasn't satisfactory; that Brian should be  
15 limited on the spending, and that there might be problems  
16 with what's going on with the billing between Brian and  
17 Chris running up bills that were, you know, massive.

18 Q. Okay. But Proskauer continued to represent  
19 Iviewit for 14 months after the date of this letter, so I'm  
20 just curious as to what arrangement was made.

21 A. Well, Brian kept saying that things were being  
22 arranged and done, and not to worry; that, you know, the  
23 patent for royalties were going to be pre-paid in advance  
24 by Mr. Rubenstein and his -- and Peg and DVD (ph) pools and  
25 whatever else he's involved in. And all of the clients of

1 yours that were using our technologies under  
2 non-disclosures, and we were finding them everywhere,  
3 seeing the hurt. Our technology pop up at everybody we  
4 signed an NDA with you about, like Visual Data, et cetera,  
5 et cetera, whole host of names.

6 So Chris kept making a representation that don't  
7 worry, the bill -- you know, in light of if the company  
8 makes billions from my royalties from my clients, Intel,  
9 Solkin Graphics, Lockheed, to Real 3-D and, you know, then,  
10 what is a bill of a few million dollars.

11 And you know what, to be quite honest, if those  
12 were the things that came back to this company, like we  
13 should be entitled to on our own inventions, and we even  
14 had proper patents, like they were supposed to cure, and  
15 copyrights, then we don't have any problem.

16 Q. The question -- the question pertained to: Why  
17 did Proskauer continue to represent Iviewit for 14 months  
18 after the date of this letter and --

19 A. Continues --

20 Q. -- if Brian Utley -- if Brian Utley was making  
21 deals that you were aware of that were against board  
22 approval -- without board approval? Sorry.

23 A. Okay, because the deals were redacted. We didn't  
24 follow approval on the deals because --

25 Q. Why didn't you get rid of Utley right then and

1 there, I mean, in March of 2000?

2 A. Because Chris came in --

3 Q. You are telling -- hold on. In March of 2000 you  
4 are telling me that the board of directors was aware that  
5 Utley was making deals that you didn't agree with and  
6 without your approval, why wasn't it until 13 months later  
7 that he was canned?

8 A. I am not sure this document is an actual  
9 representation or that the dates are right, or any of that.

10 Q. Assume it is.

11 A. Okay. I'll assume it is. That's what I was  
12 assuming from the start, that your story is being sold by  
13 these documents.

14 So, if that's the case, when we were presented  
15 with documented things or undocumented that Mr. Utley and  
16 Mr. Wheeler were working a bill and made arrangements,  
17 people on the board became very concerned. People hadn't  
18 seen the bills. They requested the bills, they were  
19 analyzing bills.

20 As a matter of fact, we brought in so many people  
21 in to analyze your bill and negotiate settlements with you  
22 because of its outrageousness. But at the time that this  
23 was happening, in March of 2000, Chris kept saying,  
24 don't -- you know, it's not a worry, okay, so we were just  
25 making a payment arrangement in the event that I got

1 funding from this guy or that guy and blah, and don't  
2 worry, Si and I will talk and everything will be fine, but  
3 who cares if it's building up, we're going to make a bundle  
4 on this patent stuff from Ken Rubenstein, so don't you  
5 worry, this is nothing compared to what's coming.

6 That was a constant representation to the board  
7 and everybody involved in the company and all of the  
8 shareholders and everybody who ever invested in the  
9 company, were all based on Mr. Wheeler's statements like  
10 that. He was the one out selling it to everybody.

11 Q. That's not consistent with what the letter says,  
12 is it?

13 A. This letter is between Brian and Chris. And  
14 again, you have --

15 Q. It's between your father and Chris.

16 A. Well, I don't know if my father received it, so I  
17 don't know.

18 Q. Assuming he did --

19 A. Yeah.

20 Q. -- it's a letter that's addressed to Si --

21 A. And then, Si started problems up that the bills  
22 were too high. He might have started reviewing at this  
23 point, I don't know; but that's when those documents with  
24 his comments on them will come into -- I think you should  
25 review them, but --

1 Q. All right.

2 A. He started to say this isn't right.

3 And by the way, as you know, he wants a meeting,  
4 Si, with Chris, according to this letter, in which they're  
5 going to discuss some of these billing issues. It wasn't  
6 like, oh, okay, Brian made a deal, take it; it's like  
7 there's problems, we need to meet. In fact --

8 MR. PRUSASKI: Look at this one,  
9 Plaintiff's Number 7.

10 Q. It's a letter dated March 31st of 2000. Take a  
11 look at it, read it, and tell me if you have ever seen it  
12 before, while I get a cup of coffee.

13 (Pause.)

14 A. I think I've seen it in the case. I am not sure.  
15 It looks similar maybe to a document I have seen.

16 Q. This letter marked Exhibit 7 is dated a week after  
17 the previous letter, correct?

18 A. Yes.

19 Q. And in it it references a meeting that was had  
20 between Simon and Chris Wheeler, correct?

21 A. Correct.

22 Q. Which, I guess, is the meeting you were talking  
23 about your father was requesting?

24 A. Yeah.

25 Q. In the letter it indicates that Chris Wheeler has



1 rejected Simon Bernstein's proposed resolutions to settle  
2 the past due accounts. It seems to be inconsistent with  
3 what you are telling me about Chris Wheeler saying don't  
4 worry about the bills, pay them when you get funding.

5 Chris Wheeler is still sending letters to your  
6 father indicating to just pay the bills.

7 A. Chris Wheeler is meeting with my father in this  
8 letter, according to what I can see, I don't know how you  
9 take your read on it, saying -- Si was arguing that the  
10 bills were -- something was wrong with them, and Chris  
11 isn't accepting his proposal and wants -- demands payments.

12 Si was very upset that based on Chris's prior  
13 statements to the board of directors about how the bills  
14 would be paid and when they would be paid out of Ken's  
15 royalty streams, et cetera, and your client uses up my  
16 technology; that he was obviously upset that Chris was  
17 starting to demand now that his best friend was controlling  
18 the checkbook money.

19 Q. Probably.

20 A. Yeah.

21 Q. This is 14 months before Proskauer terminated the  
22 representation.

23 A. Because they obviously stopped demanding the money  
24 and getting money. Why didn't you stop billing that day?  
25 They didn't.

1 MR. SELZ: You can't --

2 Q. I am not a material witness.

3 A. I'm sorry. Proskauer didn't stop billing that  
4 day.

5 I mean, why did Chris Wheeler continue to provide  
6 services for 14 months if he wasn't getting paid?

7 Q. Apparently, the answer to your question, because  
8 there were periodic payments being made, according to the  
9 payment plan.

10 A. There was no payment plan that ever was accepted  
11 by our company. Mr. Utley made several attempts to make  
12 agreements with Mr. Wheeler, which we all felt was a  
13 conflict of interest, and that's what happened.

14 Q. Well, there are documents signed by Mr. Utley, as  
15 president of Iviewit, entering into payment plans with  
16 Proskauer, are you aware of that?

17 A. Yes. And I am aware that we made a representation  
18 for Mr. Utley to be our president based on inconsistent  
19 things in his resume provided to the board by Mr. Wheeler.

20 Q. So for that reason, those documents signed by --

21 A. All could be frauds.

22 Q. -- Utley --

23 A. All could be.

24 Q. -- are not binding by Iviewit?

25 A. Including the documents Mr. Utley signed where he

1 signed patents into his own name, didn't assign a charter  
2 company, et cetera, yes. I would say that Mr. Utley has a  
3 habit of signing documents that are frauds.

4 Q. Do you realize that you are the only person that's  
5 going to testify at trial on behalf of the defendants who  
6 is going to state that?

7 A. Really? Monte Friedkin of Diamond Teflon Marble  
8 will (ph), and saw Utley, and will come in and testify.

9 Q. He is not a witness at this trial.

10 A. He will be.

11 Q. Well, how are you going to convince the judge to  
12 let witnesses not --

13 A. I'll let my counsel -- I'll let my counsel answer  
14 how we approach that --

15 Q. Okay. It's a stretch. You're limited to the  
16 witnesses you listed on your witness list.

17 A. In this matter, in this court.

18 MR. SELZ: Is that a question or is that a  
19 statement?

20 MR. PRUSASKI: Yeah, actually, he's asking  
21 me questions.

22 A. In this matter, in this court.

23 Q. There's going to be other matters.

24 A. I don't know. You would have to talk to counsel.

25 Q. Okay. Let me show you a letter dated April 10,

1 2000. I'm marking it as Plaintiff's Exhibit 8.

2 I'll ask you to look at it and read it, and tell  
3 me if you have ever seen it before.

4 A. No. Other than in this case.

5 Q. You have seen it in this case?

6 A. I have, as part of the court record.

7 Q. Did you receive a copy of this at or about the  
8 time --

9 A. Never.

10 Q. Do you see yourself cc'd on the bottom of it?

11 A. Yeah. I see two different type fonts for me and  
12 Al Gortz on the cc line. I am not sure if that's a typical  
13 typewriting mistake or -- but to me it appears that it  
14 could have been. It says cc --

15 Q. Do you see your name on the bottom of it?

16 A. I do, but I never saw the document.

17 Q. So it wasn't delivered to you?

18 A. No.

19 Q. So what is the cc, a fabrication?

20 A. Yes.

21 Q. Okay. Do you think this letter was fabricated  
22 after the fact by Proskauer?

23 A. I don't know.

24 Q. It indicates receipt of a \$25,000 payment from  
25 Iviewit. Do you recall that payment being made?

1 A. I didn't handle the checkbook. I don't recall it.  
2 No, I don't recall.

3 Q. You didn't handle the checkbook?

4 A. And I don't recall. I don't know.

5 Q. Now that you are looking at this letter -- I  
6 withdraw the question.

7 A. I'm looking at this letter, by the way --

8 Q. I withdrew the question.

9 A. Sorry.

10 Q. I get to decide the questions.

11 Plaintiff's Exhibit Number 9 is a memo dated  
12 4/11/2000. Please look at it and tell me if you have ever  
13 seen it before.

14 MR. PRUSASKI: This is your copy, Steve.

15 MR. SELZ: Sure.

16 A. Yeah.

17 Q. You're listed on the cc's. This was never cc'd to  
18 you?

19 A. No.

20 Q. This references a proposed payment plan wherein  
21 Mr. Utley is saying that it is our intent to fulfill the  
22 agreement. Do you know what he's talking about?

23 A. I have no idea.

24 Q. Okay.

25 A. I don't know why he cc'd me either.

1 Q. Assuming there was -- assuming this letter did  
2 reach Chris Wheeler from Brian Utley --

3 A. Yeah.

4 Q. -- did Mr. Utley have permission of the company to  
5 enter into a repayment agreement?

6 A. No.

7 Q. Did he have to receive permission from the board  
8 before he could do such things?

9 A. I would believe so.

10 Q. Do you know? "I would believe so" is a guess. Do  
11 you know specifically --

12 A. Yes, because if it was based on -- yes. If it's  
13 based on the last document, a \$25,000 check needed to be  
14 approved, you know, yeah. He wasn't authorized to approve  
15 those kind of amounts, and make deals on behalf of the  
16 company on those amounts.

17 I'll look at whatever you want.

18 (Whereupon, witness speaks with his counsel.)

19 (Whereupon, Plaintiff's Exhibit 10 was marked for  
20 identification.)

21 Q. I'll hand you a document marked Plaintiff's  
22 Exhibit Number 10, a letter dated March 28, 2001 consisting  
23 of four pages.

24 I'll ask you to look at the document and tell me  
25 if you have ever seen it before.

1 A. Possibly in this matter.

2 Q. Do you recall -- have you had enough time to look  
3 at it?

4 A. I will in just a second.

5 Q. Let me know when you are ready.

6 A. This is a document between Mr. Wheeler and  
7 Mr. Utley, with Al Gortz being the only person cc'd.

8 Q. I'm aware of that.

9 A. Okay.

10 Q. I'm asking if you have ever seen it before.

11 A. Before this matter?

12 Q. Yeah.

13 A. No.

14 Q. You have never seen it before right now?

15 A. Before this matter? This --

16 Q. Right now.

17 A. I've said, I think I've seen it in the records of  
18 this proceeding. Prior to that, I never saw this.

19 Q. The records -- after the lawsuit was filed?

20 A. Yeah.

21 Q. Do you recall seeing it at or around March 28th of  
22 2001?

23 A. No.

24 Q. Do you know if you've ever heard your father talk  
25 about the receipt of this letter?

1 A. No.

2 Q. Based on seeing this letter prior to today, do you  
3 know whether or not the statements in this letter that  
4 \$344,519 were due at the time this letter was written?

5 A. No idea.

6 Q. You have no idea?

7 A. No.

8 Q. Do you know if Mr. Kasser did an accounting or a  
9 reconciliation of these bills?

10 A. Yes. I mean, for -- Ross Miller told us that  
11 there were -- gross negligence and inconsistencies that  
12 were in the bills, but that's after this, buddy.

13 Q. You were on --

14 A. No. This is as bills -- started to review what we  
15 were starting to get a hold of, the documents. And yeah,  
16 he had problems, he reported such. And now I'm confused as  
17 to why that never got part of this record, but --

18 Q. Were you on the phone during Mr. Kasser's  
19 deposition?

20 A. No.

21 Q. Okay. I thought you were.

22 A. No.

23 Q. I specifically recall him telling me that you did  
24 a reconciliation of these bills and you found them all to  
25 be due and owing.



1 A. Well, that's interesting. I have e-mails and  
2 correspondences from him that will possibly say different,  
3 as soon as I can get his records.

4 Q. Do you have any idea why he would have testified  
5 inconsistent with those --

6 A. Yeah. He's Chris Wheeler's referral'd friend.

7 Q. Bill Kasser?

8 A. Yeah, I think. I'm pretty sure he was hired in by  
9 one of the group of people that are Mr. Wheeler's  
10 referrals.

11 Q. So he has motive? You're saying he has  
12 motivation --

13 A. Absolutely.

14 Q. -- because he's Mr. Wheeler's friend?

15 A. Absolutely. And he's locked us out of corporate  
16 records, more destruction of our documents. So I'm sure  
17 you deposed him in your favor; that's how we'll know.

18 Q. But you have documents from Kasser saying that he  
19 did a reconciliation of the bills and that the bills  
20 weren't due and owing?

21 A. I may. I have to check the records.

22 Q. Would you check and give them to your lawyer,  
23 because we're entitled to copies of bills because we've  
24 asked for them and I don't have them.

25 A. You know, you're going to have to do something

1 probably because we can't get them from Mr. Kasser who has  
2 hijacked them now.

3 Q. Well, you need to check and see if you have them.

4 A. Well, he's holding as ransom part of my corporate  
5 records.

6 Q. Well, you just said you don't know if you have  
7 them or not --

8 A. I don't, but the company might have those records,  
9 but Mr. Kasser refuses to give us the records.

10 Q. I just asked you: Do you have those records, and  
11 you said I don't know.

12 A. I was answering on behalf -- well, that's true. I  
13 don't know.

14 Mr. Kasser should have records of his files and  
15 the corporate files, but he's refusing to give them -- give  
16 the files to us.

17 Q. But you, Eliot Bernstein, don't have them,  
18 possession of the documents from Kasser that are  
19 inconsistent with his deposition testimony?

20 A. I am not sure. I'll have to check my notes.

21 Q. Would you?

22 A. Yeah.

23 Q. And if you do, you'll turn them over to your  
24 lawyer?

25 A. If I haven't already. Which lawyer?

1 Q. The one sitting next to you.

2 A. Okay.

3 Q. The only lawyer I care about, the one defending  
4 you in this lawsuit.

5 This document is marked Plaintiff's Exhibit 11.  
6 It's a letter dated April 16, 2001 containing a three-page  
7 attachment. Please look at it and tell me if you have ever  
8 seen it before.

9 (Whereupon, Plaintiff's Exhibit 11 was marked for  
10 identification.)

11 A. It's not addressed to me. It's between Brian and  
12 Chris again.

13 Q. We are all aware of what it says --

14 A. No.

15 Q. -- but just tell me if you have ever seen it  
16 before. You are a principal of --

17 A. Part of this --

18 Q. The reason I ask is because you're a principal of  
19 the company, and it's not unusual for principals to get  
20 copies of letters.

21 A. Right. But if you are not cc'd, then it's hard to  
22 get a copy; but that's okay. No, I haven't seen this,  
23 other than in this case.

24 Q. Do you have any idea whether the bills that are  
25 attached to this letter totaling 369,460.97 were actually

1 due on April 16th, 2001?

2 A. No. No.

3 Q. You have no idea?

4 A. No. And actually, on some of these invoices we  
5 started to look them up at the end, here, and I believe --  
6 let's see, that for example, 4/6 through 4/11, it looks  
7 like, we had bills for over \$5,000 roughly.

8 Again, that would -- you know, I don't know. I  
9 think the letter we've tried to lock up into is over \$4,000  
10 a month without board approval or some kind of approval.

11 Q. But you just put the statement "I don't know" at  
12 the end of it. So I mean --

13 A. I'm just saying based on looking at these --

14 Q. Are you filibustering, or are you telling me you  
15 don't know?

16 A. No. No, I looked at these as part of the case.

17 So then, when I looked at them, I found all of  
18 these inconsistencies, like billings for Distance Learning,  
19 things that the company had no records of, and so on.

20 Q. So you can specifically look at this list of bills  
21 on Exhibit 11 and point out specific bills for me right now  
22 that you have a problem with?

23 A. No.

24 Q. Okay. Well, that answers my question.

25 A. Okay.

1 Q. I think -- you know, you can't make assumptions  
2 and guesses in depositions, it's going to get you into  
3 trouble; and I think your attorney would agree.

4 A. Okay.

5 Q. Exhibit 12 is a letter dated April 27th, 2001,  
6 it's three pages long.

7 (Whereupon, Plaintiff's Exhibit 12 was marked for  
8 identification.)

9 A. Yes.

10 Q. Have you seen this document before?

11 A. As part of this case.

12 Q. You did not receive it on or around April 27th --

13 A. Never.

14 Q. No one within the company gave you a copy?

15 A. No.

16 Q. Is it a fair statement to make that the letter is  
17 basically Proskauer informing Iviewit that they're  
18 terminating representation?

19 A. It appears --

20 MR. SELZ: Objection. The letter speaks for  
21 itself.

22 Q. You can answer the question. Is that a fair  
23 statement?

24 A. No. It's a statement that Chris Wheeler is  
25 informing Brian Utley.

1 Q. I said: Is it a fair statement that Proskauer is  
2 informing Iviewit that they're terminating its  
3 representation?

4 A. I'm saying that Iviewit never saw this, and that  
5 Brian Utley saw it.

6 Q. Well, who was Iviewit? Brian Utley is the  
7 president?

8 A. At this time, I think Brian Utley was being fired.

9 Q. Was he fired as of April 27th?

10 A. I don't know, I'd have to check my notes.

11 Q. So you just made a statement that you have no idea  
12 if it's true or not?

13 A. He was on his way out the door on 4/27/2001 with  
14 allegations against him --

15 Q. Was he still the president of the company, on  
16 4/27/01?

17 A. I don't think so. I'd have to check my notes.

18 Q. You don't think so?

19 A. No.

20 Q. Why not?

21 A. But I'll check my notes. What?

22 Q. Why not? Why don't you think so?

23 A. Well, because he was being relieved of his duties  
24 and he was terminating the company. This might have  
25 happened according to your time line at some point there.

1 but I have to check my notes.

2 Q. Did Wheeler -- did Christopher Wheeler know on  
3 4/27/01, when this letter was written, that Utley was being  
4 fired?

5 A. It would certainly justify his reason for writing  
6 it, but I don't know.

7 Q. Thank you.

8 A. But yes, I would assume. Yeah.

9 Q. You would assume? Didn't we just have an  
10 agreement --

11 A. I wasn't going --

12 Q. -- that you would stop assuming?

13 A. No, but you said I should. I know my lawyer --

14 MR. PRUSASKI: Would you like to tell him that he  
15 shouldn't assume?

16 A. You didn't let me finish the statement of what my  
17 assumption was, but that's okay.

18 Q. Thank you for correcting me again.

19 Did Mr. Wheeler know on 4/27/01 that Mr. Utley was  
20 being fired?

21 A. I don't know. I'll check my records.

22 Q. Do you know why Proskauer terminated its  
23 representation of Iviewit?

24 A. I believe because Mr. Utley was under, now,  
25 investigation for a lot of allegations.

1 Mr. Wheeler was now coming into a problem of --  
2 one of the board members had questioned why stock was  
3 transacted on behalf of the company without any board  
4 member seeing the documents or anything. And, you know, it  
5 was Chris Wheeler's friend, Mr. Prolow, was involved in  
6 that transfer.

7 Q. But if it's your theory that Iviewit -- if it's  
8 your theory that Proskauer was involved in a conspiracy to  
9 take over Iviewit or take its technology and make money --

10 A. Proskauer, I didn't say -- if I can -- I believe  
11 that Proskauer Partners, right, okay.

12 Q. Proskauer Partners. Proskauer partners were in a  
13 conspiracy to, according to you, steal Iviewit's technology  
14 and make a fortune from that technology, wouldn't it be  
15 inconsistent with that conspiracy to terminate its  
16 representation?

17 Why not resume control of the company by  
18 representing it? I'm asking you how you feel about that;  
19 because it seems to me that, according to your conspiracy  
20 theory, that this is inconsistent.

21 A. Okay. Well, you know -- and it's a little tough  
22 to follow until you really get your hands around it all,  
23 but you will.

24 What happened, if you're at this point, was that  
25 the board got rid of Utley. There were allegations that



1 nobody wanted to fully put their finger on, although there  
2 was need and time to start investigating the allegations,  
3 like: Were patents missing from the corporate record; why  
4 were patent documents changed; what was going on needed to  
5 be ascertained?

6           Once Mr. Utley was fired by the board, you can see  
7 that the actions of Mr. Wheeler are to follow and leave the  
8 company immediately after that; which, you have to ask  
9 yourself, why a guy who took two and a half percent stock,  
10 knew the company didn't have money, according to your own  
11 statements, was pressuring the company for money here, when  
12 he knew the balance sheet because he was controlling it  
13 with Brian, demanding payment when he knew there was no  
14 money, and that it was supposed to come out of his royalty  
15 streams and his clients.

16           So at this point, Chris Wheeler ran from the  
17 company. I don't think I got that letter or any board  
18 member that I know of has this letter, or any other member  
19 of management that wasn't referred by Brian Utley and Chris  
20 Wheeler has that letter.

21           As you can see, none of these letters are  
22 addressed to anybody except Brian and Chris basically.

23           Q.   Who should they have been addressed to?

24           A.   Sure. You know, Si is questioning the bills with  
25 his name on it. This is a termination letter; so it should

1 have gone to the board, shouldn't have it? And instead,  
2 oh, it goes to Ross Miller, Chris Wheeler's friend, one of  
3 the first guys he introduced the company to, as  
4 conservatory.

5 So, once again, he's replaced Utley with another  
6 friend, Mr. Miller, and he's got that same conflict going.  
7 I guess; I would call it conflict of interest, I guess.

8 But -- and then, the only other people he cc'd  
9 aren't any of the board members of Iviewit, where he's  
10 quitting and resigning services and everything else, but Al  
11 Gortz; Kenneth Hilton, I've never heard of, and Matt  
12 Triggs. It seems kind of funny to me, but you make the  
13 call.

14 Wouldn't you normally think you would notify the  
15 company?

16 Q. Let me show you a document marked Plaintiff's  
17 Exhibit Number 13. I'll ask you to look at this document  
18 and tell me if you have ever seen it before.

19 (Whereupon, Plaintiff's Exhibit 13 was marked for  
20 identification.)

21 A. Yes.

22 Q. Is that your signature on the last page? That's a  
23 bad copy, but I am sure you can identify it.

24 A. I can't, but it appears to be.

25 Q. State of California, County of San Diego and a

1 notary seal, does that jog your recollection as to your  
2 signature page?

3 A. Correct.

4 Q. Okay. So you signed this, the originals?

5 A. I can't see that very well, but yeah.

6 Q. Do you remember signing the originals?

7 A. I remember signing the interrogatories.

8 Q. If you look at the second to the last page, that's  
9 Mr. Selz's handwriting, isn't it? "Iviewit LLC was the  
10 party that retained the plaintiff, not any of the other  
11 parties."

12 A. I don't know Mr. Selz's handwriting.

13 Q. Did he write that?

14 A. Who?

15 Q. Did you write that?

16 A. No.

17 Q. Okay. Was that written on there when you signed  
18 these or after?

19 A. I don't recall.

20 Q. Look at page 7 of 18. Did you prepare these on  
21 your computer, by the way, these answers?

22 A. I prepared them, I believe, on a computer.

23 Q. Okay. So you typed these answers out on a  
24 keyboard and printed them and signed them?

25 A. Yes, I believe so -- or someone. Yeah. I don't

1 know. I'd have to -- I don't know.

2 Q. These were served back in September. You don't  
3 remember if you prepared these? It's pretty substantial.

4 A. Well, you asked if I typed them out, printed them  
5 out, et cetera. I don't know that, it could have been  
6 somebody else.

7 Q. Do you know where you were when these answers were  
8 written?

9 A. I believe at Mela in Rancho Palos Verdes.

10 Q. Were you sitting at your computer composing these  
11 responses -- or a computer composing these responses?

12 A. At times.

13 Q. Okay. Did other people help you?

14 A. Yes.

15 Q. Who?

16 A. I can't recall. I'll check my notes.

17 Q. Well, page 1 says: Identify each and every person  
18 who participated or assisted in the preparation of these  
19 interrogatories, and the answer is Eliot Bernstein. Now  
20 you are telling me there is somebody else?

21 A. Yeah, there might have been. Yeah, my wife  
22 definitely.

23 Q. So why didn't you list her?

24 A. I thought it meant who prepared the content, not  
25 the actual print document type thing. You asked me who --

1 Q. No. Who prepared the content?

2 A. That's not what you asked me. You said --

3 Q. All right, fine. Who prepared the content?

4 Let's start over then.

5 A. Okay. Let's -- so we're talking just strictly the  
6 contents?

7 Q. Content.

8 A. Yes. I did.

9 Q. Nobody else?

10 A. I don't believe so.

11 Q. Look at question 19 on page 7. It says -- the  
12 second clause says: Did the defendants ever complain to or  
13 otherwise notify Proskauer Rose that the plaintiff  
14 allegedly performed work which was not performed at  
15 defendants' request; answer yes.

16 Do you see that?

17 A. Yes.

18 Q. Okay. And if -- 20 says: If you answered  
19 interrogatory 19 in the affirmative, please explain as to  
20 each instance where defendants complained to or notified  
21 Proskauer Rose, the date when the communication occurred,  
22 and you list some letters.

23 I've been trying to find the communications from  
24 Iviewit to Proskauer that you told me about complaining  
25 about the bills. Do you see them in here?

1           A.    Well, I see one.  It fully emphasizes that at this  
2 time that I was doing the interrogatories, I was trying to  
3 rebuild corporate records from -- locked out of computers,  
4 missing computers that were stolen by Mr. Utley.  I had to  
5 get all of these things together.  I had to go through all  
6 of the documents.

7                        So, as you will see, it also says that I would  
8 need to ascertain these statements that -- especially the  
9 one you just asked me, after I see your documents.

10          Q.    What about the letters you told me about earlier?  
11 Your father had written some complaints about the bills --

12          A.    Yes.

13          Q.    -- and Mr. Buchsbaum had written some complaints  
14 about the bills.  Did you indicate that in your answers  
15 here?

16          A.    No, but it's indicated in your letters you  
17 submitted earlier, that there were issues regarding the  
18 bill.  But I -- have I submitted these?

19          Q.    I don't understand what you mean.

20          A.    Have I submitted these?

21          Q.    The question was -- you told me --

22          A.    Yeah, I did submit them.

23          Q.    Let me finish.  You're interrupting, and it's  
24 driving me crazy.

25          A.    I'm okay.

1 Q. You told me earlier in the deposition that  
2 Buchsbaum and your father had sent to Proskauer written  
3 objections to the bills and that you think you gave them to  
4 your attorney and he's going to check to see if they exist,  
5 because they were due to me a long time ago and I don't  
6 have them.

7 Did you identify those written objections here in  
8 your answer to number 20?

9 A. I believe so.

10 Q. Where?

11 A. I believe I -- did I reference them?

12 Wait. Restate that question, please.

13 Q. You were asked to identify if there were any  
14 written objections to Proskauer's bills. Did you identify  
15 in here what you told me earlier in the deposition?

16 A. In question 20, yeah. 2/29/2000 letter from  
17 Wheeler to Utley regarding disputed billings --

18 Q. 2/29/2000?

19 A. Yeah, regarding disputed billings.

20 In fact, Utley's testimony in his deposition says  
21 there he was brought in and made aware that there were  
22 problems with the overbilling --

23 Q. But I asked you if you identified in here the  
24 written objections from Iviewit to Proskauer, not letters  
25 written from Proskauer --

1 A. Let's start all over again because I'm confused.  
2 Where do I -- where do you want me to identify  
3 that statement, that you're trying --

4 Q. I'm trying to get to the bottom of where all of  
5 the documents are of where Iviewit complained to Proskauer  
6 about the bills.

7 A. They should be submitted.

8 Q. Are there any of those listed here?

9 A. Okay. Now, ask me the question again, please.

10 Q. Are there any letters from Iviewit to Proskauer  
11 objecting to the bills that you identified here in these  
12 interrogatory answers?

13 A. Yes, I make mention of them here.

14 Q. What page are you looking at?

15 A. 9 of 18. Several correspondences between Simon  
16 Bernstein and Chris Wheeler regarding erroneous billings  
17 were in writing and oral --

18 Q. What paragraph?

19 MR. SELZ: C1.

20 A. C1.

21 Q. Several correspondences between Simon Bernstein  
22 and Chris Wheeler regarding erroneous billings were in  
23 writing and oral. Those were the ones you identified as to  
24 having turned over to your attorney Mr. Selz?

25 A. Correct.



1 Q. Okay. Were there correspondences between  
2 Buchsbaum, is that what you mean by paragraph 5?

3 A. I don't think I ever said that they were in  
4 writing, but they had conversation.

5 Q. Yes, you did. I specifically asked you to  
6 identify in writing the documents.

7 A. Okay. I don't know, but I know that he had  
8 correspondence.

9 Q. Okay. Were there any other besides Simon  
10 Bernstein and Mr. Buchsbaum in writing, any other  
11 complaints or objections --

12 A. About the bills?

13 Q. Yes.

14 A. Sure. Stephen Lamont made objections.

15 Q. But I thought Lamont wasn't on until -- on board  
16 with Iviewit until well after the lawsuit was filed.

17 A. When this was made --

18 Q. I only care about the lawsuit.

19 A. Well, this is after the lawsuit, right?

20 Q. That's correct. Well, no.

21 A. This is much after. This is --

22 MR. SELZ: He's asking if there are any complaints  
23 before the lawsuit was filed, is what he's  
24 asking, not after the lawsuit was filed.

25 THE WITNESS: Yeah. There were other

1 written complaints, or oral?

2 MR. SELZ: Yes, other written complaints.

3 THE WITNESS: Okay. I don't know. I  
4 can't find it.

5 Q. You just remember Buchsbaum and Simon Bernstein,  
6 correct?

7 A. I don't -- I don't recall Buchsbaum in writing.  
8 Although, I thought I saw documents relating to his work on  
9 the bill with Proskauer. I'll check the record. My record  
10 that I have had to reconstruct.

11 Q. Well, let's clarify --

12 A. Okay.

13 Q. -- because now you're testifying inconsistently  
14 with earlier --

15 A. Okay.

16 Q. -- so I am going to give you an opportunity to  
17 clarify and to finalize your answer.

18 A. Okay.

19 Q. The only documents that you saw that object to  
20 Proskauer's bills that are in writing are written by Simon  
21 Bernstein, correct?

22 A. No. I forgot. Brian Utley also wrote  
23 correspondences --

24 MR. SELZ: Objecting to the billing?

25 THE WITNESS: To the billing.

1 Q. You have seen those?

2 A. Yeah.

3 Q. Where are those?

4 A. I believe in the corporate record that I still  
5 have part of, and that should be submitted in this.

6 Q. So your attorney has them?

7 A. Yeah.

8 Q. Do you remember the substance of any of those  
9 letters or how many letters there were from Utley?

10 A. I don't. But the substance with Utley was  
11 corresponding with Wheeler that he was negotiating some of  
12 these bill issues, blah, and, you know, that they were  
13 over -- that we had been double-billed or something,  
14 whatever. And he was talking to Wheeler about reducing  
15 hours, et cetera.

16 Q. If Utley was in a conspiracy with Wheeler, so you  
17 say, why would he write letters objecting about Proskauer's  
18 bills? It doesn't seem very consistent with your theory.

19 A. You know, I can't speculate on that. I don't know  
20 what their story is or not.

21 Q. Very inconsistent with a conspiracy theory, isn't  
22 it?

23 A. I don't know. Slip-ups occur.

24 Sometimes you have to look like a good guy when  
25 you are a bad guy just so -- you know, how that plays out

1 in a conspiracy. So while Mr. Utley was trying to sell us  
2 that he was working for the company, in fact, he was  
3 working to the detriment of the company.

4 He wasn't going to come out and say hi, I'm  
5 ripping you guys off with Chris Wheeler; do you mind?  
6 That's how conspiracies work, Mr. Prusaski, I think.

7 Q. Did you sign checks on behalf of Iviewit when  
8 Proskauer represented Iviewit?

9 A. Yeah, I think so.

10 Q. You think so?

11 A. Prior to Mr. Utley, yes.

12 Q. After Mr. Utley came aboard, did you sign checks?

13 A. I might have cosigned checks. I might have been  
14 asked to sign a few checks by other employees.

15 Q. When Mr. Utley was the president of Iviewit, what  
16 were your day-to-day responsibilities?

17 A. Inventing, selling the technology to various  
18 investors and whatnot.

19 Q. Did you direct Proskauer to do any work?

20 A. Sure.

21 Q. On a day-to-day basis?

22 A. No. Not even close.

23 Q. Who did?

24 A. Brian Utley.

25 Q. Brian Utley.

1 A. All work was requested by Mr. Utley almost after  
2 his joining the company.

3 Q. When did he come aboard, how many months after  
4 Proskauer started representing the Bernsteins?

5 A. Well, if you go according to the statements and  
6 the depositions, Mr. Utley came aboard according to his own  
7 words in 9 of '99; but he was actually active in  
8 transcribing documents in July of 1999 from my record and,  
9 you know, it might just be another mistake.

10 Q. So it was from January, to give you the benefit of  
11 the doubt, July of '99 who was directing Proskauer to do  
12 work; was that Simon Eliot Bernstein?

13 A. I'd have to see the billing statements from that  
14 period to make those statements.

15 Q. Who were the principals at that point?

16 A. Oh, there were a lot of principals; there was  
17 Gerri Lewin, Si, me. Chris was, you know, representing all  
18 of the board meetings and the company in that regard.

19 There was Ken on the advisory board, I think,  
20 coming on at that period. You had Don Kane.

21 Q. Have you ever sued Brian Utley? Have you ever  
22 sued Brian Utley?

23 A. Not yet.

24 Q. Why? He's been gone for years.

25 A. Not yet.

1 Q. You're planning on it?

2 A. I don't know. I would have to check with counsel.

3 Q. Does Iviewit owe Foley & Lardner money right now?

4 A. I don't know. We go from lawsuit...

5 Q. Do you personally or Iviewit owe Gerri Lewin  
6 money?

7 A. I don't know.

8 Q. How do you not know if you owe Gerri Lewin money  
9 or not?

10 A. I don't know.

11 Q. I know that I don't own Gerri Lewin money, because  
12 I know who I owe money to and who I don't.

13 A. Have you had a long protracted relationship with  
14 Mr. Lewin?

15 Q. No.

16 A. Okay. Well, I have.

17 Q. But I've had long protracted --

18 A. But I know --

19 Q. Okay.

20 A. -- I've asked for credit billing records, he's  
21 provided inconsistent, not full billing records. He, I  
22 believe, is trying to get those records for me to ascertain  
23 such issues.

24 Q. Do you know which entity Proskauer's invoices were  
25 addressed to?

1 A. I assume Iviewit.com.

2 Q. You are assuming. You are assuming.

3 Do you remember? Do you remember?

4 A. I would have to check all of the documents. I  
5 don't think I can provide it as requested by the Court, all  
6 of the invoices of the relationship. I think there are  
7 some missing of your invoices provided for this case, so  
8 it's very hard to tell now.

9 Q. Do you remember right now who they were addressed  
10 to, the invoices that Proskauer sent?

11 A. From the ones that I've looked at that you have  
12 presented the Court in regards to this case, Iviewit.com, I  
13 believe, the operating company.

14 Q. It was the operating company?

15 A. I believe.

16 Q. Iviewit.com, Inc.

17 A. As represented by Mr. Wheeler.

18 Q. Did you ever complain to anybody at Proskauer  
19 during the representation that Proskauer was addressing the  
20 bills to the wrong entity?

21 A. I don't think I saw that from most of these bills.

22 Q. Did you -- listen to my question.

23 A. Yeah.

24 Q. It's simple. Did you ever complain to anyone at  
25 Proskauer during Proskauer's representation that the bills

- 1 were addressed to the wrong entity, yes or no?
- 2 A. I may have.
- 3 Q. Yes or no?
- 4 A. I may have.
- 5 Q. You may have?
- 6 A. I'd have to check my notes.
- 7 Q. You don't remember is the answer, correct?
- 8 A. I may have.
- 9 Q. Do you remember?
- 10 A. I don't recall now --
- 11 Q. Okay.
- 12 A. -- if I recollect.
- 13 Q. If you don't recall, you don't recall, that's not
- 14 a dangerous answer.
- 15 A. Okay. I'm fine with that.
- 16 Q. It's safe in the respect that it's honest.
- 17 A. Okay. I don't recall.
- 18 Q. So your answer is I don't recall?
- 19 A. Right.
- 20 Q. Thank you.
- 21 Do you know if anybody did?
- 22 A. I don't recall.
- 23 Q. Are you on any medication?
- 24 A. No.
- 25 Q. Are you under the care of any physicians?



1 A. No.

2 Q. When is the last time you took a prescription  
3 medication?

4 A. Several years ago almost.

5 Q. Do you see any physicians or psychiatrists or  
6 psychologists?

7 A. No.

8 Q. Have you ever?

9 A. Yes.

10 Q. When was the last time you saw a therapist or a  
11 psychiatrist or a psychologist?

12 A. I saw one the other day.

13 Q. For a professional appointment, or did you run  
14 into them at the mall?

15 A. For a consultation.

16 Q. Okay. Have you ever been adjudged incompetent?

17 A. Never.

18 Q. Have you ever been arrested?

19 A. No. Not that I can recall.

20 Q. Institutionalized?

21 A. Not -- not that I can recall.

22 Q. You hesitated for a second.

23 A. I did. I just was recollecting -- you know, I had  
24 a car accident, so I -- part of my memory has been joggled  
25 from hitting a car carrier at 90 miles an hour, so it takes

1 me a little bit to go historically beyond that point.

2 Q. I'm sorry to hear about that.

3 A. Thank you.

4 Q. Do you have memory problems because of the car  
5 accident?

6 A. I had memory problems.

7 Q. When was the accident?

8 A. God, I have problems with things like that. It's  
9 in the '80s.

10 Q. Mid-, early, late?

11 A. Early.

12 Q. What type of memory problems did you have? Do  
13 they continue to this day?

14 A. No. In fact, I improved my memory greatly through  
15 exercise.

16 Q. Okay. So you are not dealing with any negative  
17 results memory-wise as a result of the accident today,  
18 right? If anything, you have improved it?

19 A. Correct.

20 MR. PRUSASKI: Okay. No further questions.

21 Would you like to cross?

22 MR. SELZ: I think I have a couple of  
23 cross. Let's take a quick break then.

24 (Whereupon, a recess was taken from 4:11  
25 to 4:19 p.m.)

## 1 CROSS EXAMINATION

2 BY MR. SELZ:

3 Q. Okay. Mr. Bernstein, plaintiff has presented us  
4 with what's been marked as plaintiff's number 7. It's a  
5 letter dated March 31st, 2000. With regard to that letter,  
6 I reference you to the last sentence of that letter.

7 A. Yes.

8 Q. Do you see that?

9 A. I do.

10 Q. What does that sentence read exactly?

11 A. I would appreciate your reviewing this with your  
12 board of directors for their approval and beginning payment  
13 forthwith.

14 Q. Okay. To the best of your knowledge, was there  
15 ever any board approval for any payment plan between  
16 Iviewit.com, Inc. or any of the other Iviewit entities and  
17 Proskauer Rose --

18 A. Absolutely not.

19 Q. Okay. Let me finish my sentence.

20 -- that was approved by the board of directors?  
21 Was there any plan approved by the board of  
22 directors for any re-payment or payment plan?

23 A. I don't believe so. I'll check my notes.

24 Q. Were there ever minutes of the meetings of the  
25 board of directors kept?

1 A. They said that they were kept and destroyed.

2 Q. Okay. Are you aware of any document which would  
3 evidence an approval by the board of directors and any  
4 payment plan from any of the Iviewit entities to Proskauer  
5 Rose?

6 A. No.

7 Q. With regard to the proposed counterclaim that's  
8 been filed in this action --

9 MR. PRUSASKI: Where are my documents --

10 MR. SELZ: They are there, right there,  
11 back in that pile. Let's get this marked as  
12 Defendant's Number 1.

13 (Whereupon, Defendants' Exhibit 1 was  
14 marked for identification.)

15 Q. Have you seen that document before, sir?

16 A. Yes.

17 Q. Okay. Are you familiar with the allegations  
18 contained in that counterclaim for damages?

19 A. Yes.

20 Q. To the best of your knowledge, are those  
21 allegations true and correct?

22 A. Yes.

23 MR. SELZ: Okay. I've got nothing further.

24 MR. PRUSASKI: Once again, I'm reserving  
25 my right to ask questions about this

1 counterclaim because it's not a counterclaim  
2 yet. It's a pending motion to amend.

3 If the judge allows you to assert a  
4 counterclaim, we'll be back here to talk about  
5 this document.

6 One redirect question.

7 REDIRECT

8 BY MR. PRUSASKI:

9 Q. You said that, sir, the documents -- the records  
10 of the board of directors meetings were destroyed; is that  
11 correct?

12 A. Most of them.

13 Q. By whom were they destroyed?

14 A. I believe Mr. Utley and Mr. Wheeler -- Mr. Utley  
15 and Wheeler who both kept the board notes. Mr. Wheeler  
16 keeping them with Mr. Utley, but we can't find any of them.

17 Q. You said, in response to your attorney's  
18 questions, that the notes were destroyed, the records of  
19 the board of directors meetings were destroyed. And now  
20 you are telling me you think they were --

21 A. Some notes were recovered from the computers that  
22 we were locked out of, and the data was restored through  
23 Data Recovery. But out of the corporate records, yes,  
24 they're gone.

25 Q. They were destroyed, then?

1 A. They weren't transferred with the corporate record  
2 by Mr. Utley.

3 Q. But you said they were destroyed. Were they or  
4 weren't they?

5 A. Yeah, I believe they were.

6 Q. You believe they were. You don't know if they  
7 were, you think they were.

8 A. To the best of my knowledge, they were destroyed,  
9 of certain board meetings.

10 Q. What evidence do you have to say they were  
11 destroyed?

12 A. They're missing.

13 Q. That's evidence that they were destroyed?

14 How do you know they're not in somebody's drawer;  
15 does that make them destroyed?

16 A. Yeah. They're not part of the corporate record  
17 anymore that the corporation has. And I have asked, you  
18 know, to have them provided here, which I didn't see. And  
19 so yeah, you know, as far as I know, destruction would mean  
20 missing from the company's records.

21 Q. Oh. So missing equals destroyed?

22 A. Yes, in this instance it does.

23 Q. Okay. So whenever you said "destroyed" in this  
24 deposition, you meant missing?

25 A. Probably. If you're saying do you have -- yeah.

1 Q. That was --

2 A. I want to think through that answer.

3 Q. You were on the right track. What you just  
4 started to say was on the right track.

5 A. I want to answer that, because the documents --  
6 the corporate record was supposed to be transferred in its  
7 entirety to the corporation in California by Mr. Utley, and  
8 such documents in their entirety and computers containing  
9 such documents in their entirety were not transferred to  
10 the corporation timely or at all.

11 Then, it is the company's position, I guess that  
12 we have to take, is that we are not in possession of our  
13 own records because the people who were supposed to  
14 transfer them did not transfer the documents to the company  
15 as directed by the board of directors.

16 Q. So that's your evidence that Mr. Wheeler destroyed  
17 the minutes of the board of directors meetings, the fact  
18 that they never showed up when they were supposed to show  
19 up to -- by Utley?

20 A. And they're not here --

21 Q. So Wheeler destroyed them?

22 A. -- for many of the meetings -- for many of the  
23 meetings that Chris was keeping notes for, yes, I did not  
24 find them here. So no, they might not be destroyed, they  
25 might be on the other shelves.

1 Q. Well, you are singing a completely different tune  
2 than you were two minutes ago.

3 A. No. I'm just saying that if they were part of the  
4 work that was on this table, and that they were part of the  
5 corporate record that was transferred, many of the minutes  
6 of the board meeting are destroyed at this point. We do  
7 not have them, possession of them --

8 Q. That means they're destroyed?

9 A. -- and the people in charge of them are not  
10 presenting them to us, so they might be in hiding from us.  
11 Okay. But I -- to me, they company, they're destroyed,  
12 gone, not existent. They're not part of our corporate  
13 record.

14 Q. So when you said "destroyed" about documents in  
15 this deposition, you meant that you didn't have them; you  
16 don't know for a fact that they were actually destroyed?  
17 Do you know what destroyed means?

18 A. Well, to us it means --

19 Q. What does destroy mean to you?

20 A. Okay. To the company, we asked for --

21 Q. I don't care about the company. I want to know  
22 what Simon Bernstein thinks -- Eliot Bernstein thinks  
23 destroyed means.

24 A. Missing from your records, not provided when  
25 requested. Missing documents would, to me, represent a



1 destruction of documents.

2 Also, on the destruction side of documents, is the  
3 locking out of computer domains and files with the intent  
4 so that documents --

5 Q. All I asked you is what destroyed means to you.

6 A. Well, I'm explaining. You know, are the board  
7 notes and damaged hard drives or stolen computers that were  
8 taken to New Jersey by Mr. Utley; could be, but I'm not --

9 Q. See, when you say Mr. Wheeler destroyed documents,  
10 most people would frame an image of a man going over to a  
11 shredding machine and putting documents in a shredding  
12 machine. But you're saying it means something completely  
13 different --

14 A. No. I'm saying that unless they ended up -- we  
15 just went through this a little while ago in the  
16 deposition, but you said all of the documents were here at  
17 this table.

18 Q. Did you say in that counterclaim that Proskauer  
19 destroyed documents?

20 A. I am not sure. I believe so. Do we --

21 MR. SELZ: I don't think so.

22 MR. PRUSASKI: Let me see it.

23 A. No.

24 Q. Why didn't you say it in there if it happened?

25 A. I was busy listing the key things.

1 Q. Destroying documents by a law firm isn't very key  
2 to you?

3 A. I've notified my counsel that that occurred long  
4 ago, so he might have overlooked it in filing the claim to  
5 get it on based on the evidence --

6 Q. Okay. So you're still sticking to your story that  
7 Proskauer destroyed documents?

8 A. I'm -- because they're missing, in my  
9 interpretation --

10 Q. Because he's missing them -- you let your attorney  
11 know, but you didn't put it in the counterclaim?

12 A. Well, he has a lot of it, you know. Yes, I would  
13 say --

14 Q. So you are still sticking to your story that  
15 Proskauer destroyed documents --

16 A. In my interpretation --

17 Q. -- but you have no personal knowledge of whether  
18 they did?

19 A. -- of the word destruction, because they are not  
20 present in any records that the company can now get, yes,  
21 they have been, since Mr. Wheeler was keeping records of  
22 them.

23 Q. So destroyed means missing to you?

24 A. Yes.

25 MR. PRUSASKI: Right. Why don't you go buy a

1 dictionary? There's a Barnes & Noble down the  
2 street.

3 I have no further questions. Thank you.

4 THE WITNESS: Okay.

5 Does he want to read or waive?

6 MR. SELZ: He'll read. Hold the  
7 transcript.

8 (Thereupon, the deposition was concluded  
9 at 4:29 p.m.)

10

- - - - -

11

AND FURTHER THE DEPONENT SAITH NOT

12

13

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14

DEPONENT

15

16

STATE OF FLORIDA

17

COUNTY OF BROWARD

18

19

SUBSCRIBED AND SWORN to before

20

me this \_\_\_\_\_ day of \_\_\_\_\_, 2003, at Broward

21

County, Florida.

22

23

\_\_\_\_\_

24

Notary Public, State of Florida

25

CERTIFICATE OF OATH

STATE OF FLORIDA  
COUNTY OF BROWARD

I, the undersigned authority, certify that  
ELIOT I. BERNSTEIN personally appeared before me and was  
duly sworn.

WITNESS my hand and official seal this 17<sup>th</sup>  
day of *March*, 2003.



ELIZABETH DAVILA SAINT-LOTH

Notary Public, State of Florida

CERTIFICATE

STATE OF FLORIDA  
COUNTY OF BROWARD

I, ELIZABETH DAVILA SAINT-LOTH, Shorthand Reporter, certify that I was authorized to and did stenographically report the deposition of ELIOT I. BERNSTEIN; that a review of the transcript was requested; and that the transcript is a true and complete record of my stenographic notes.

I FURTHER CERTIFY that I am not a relative, employee, attorney, or counsel of any of the parties, nor am I a relative or employee of any of the parties' attorneys or counsel connected with the action, nor am I financially interested in the action.

Dated this 17<sup>th</sup> day of March, 2003.



ELIZABETH DAVILA SAINT-LOTH,  
Shorthand Reporter  
My Commission # DD 072032  
Expires: November 15, 2005

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TO: SELZ & MUVDI SELZ, P.A.  
214 Brazilian Avenue, Suite 210  
Palm Beach, Florida 33480

IN RE: Proskauer Rose v. Iviewit.com  
CASE NO.: CA 01-04671 AB

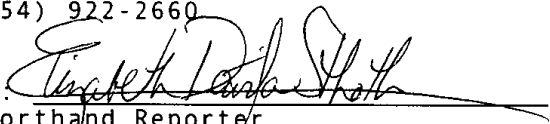
Dear Mr. Selz,

The deposition of ELIOT I. BERNSTEIN in the above-styled cause on January 31, 2003, is now ready for signature of the witness. Please have the witness come to this office and sign the same; or, if you wish to waive the signature of the deposition, please so advise.

If the deposition has not been signed by April 21, 2003, or the signature thereto waived, we shall consider such a delay a refusal to sign under Rule 1. 310(e) of the Florida Rules of Civil Procedure.

If you have any reason which you would like for me to place on the deposition as to the witness' failure to sign the same, please advise.

Very truly yours,  
KEN SCHANZER & ASSOCIATES  
209 North 20th Avenue  
Hollywood, FL 33020  
(954) 922-2660

By:   
Shorthand Reporter  
Elizabeth Davila Saint-Loth

Dated: March 17, 2003  
cc: Counsel of Record



1 MR. SELZ: Yes.

2 THE WITNESS: What did he order?

3 MR. SELZ: Well, basically we have access  
4 to the files from the corporate representation,  
5 Iviewit representation --

6 THE WITNESS: Were they all here in this  
7 conference room? Okay. Then, from what I've  
8 seen --

9 MR. PRUSASKI: From the corporate  
10 representation, not from the personal  
11 representation, because that's between you and  
12 this firm personally.

13 THE WITNESS: No, I don't care about  
14 personal. Right. That's right. I am not  
15 asking for those either.

16 So you are saying to me that all of the  
17 documents were here --

18 MR. PRUSASKI: From the entire file, as  
19 Proskauer keeps it, from the Iviewit  
20 representation.

21 THE WITNESS: Then I'm really scared -- I  
22 would have been really scared, because I would  
23 say destruction of documents has occurred and  
24 there were a lot of things missing.

25 BY MR. PRUSASKI: