

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

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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 --

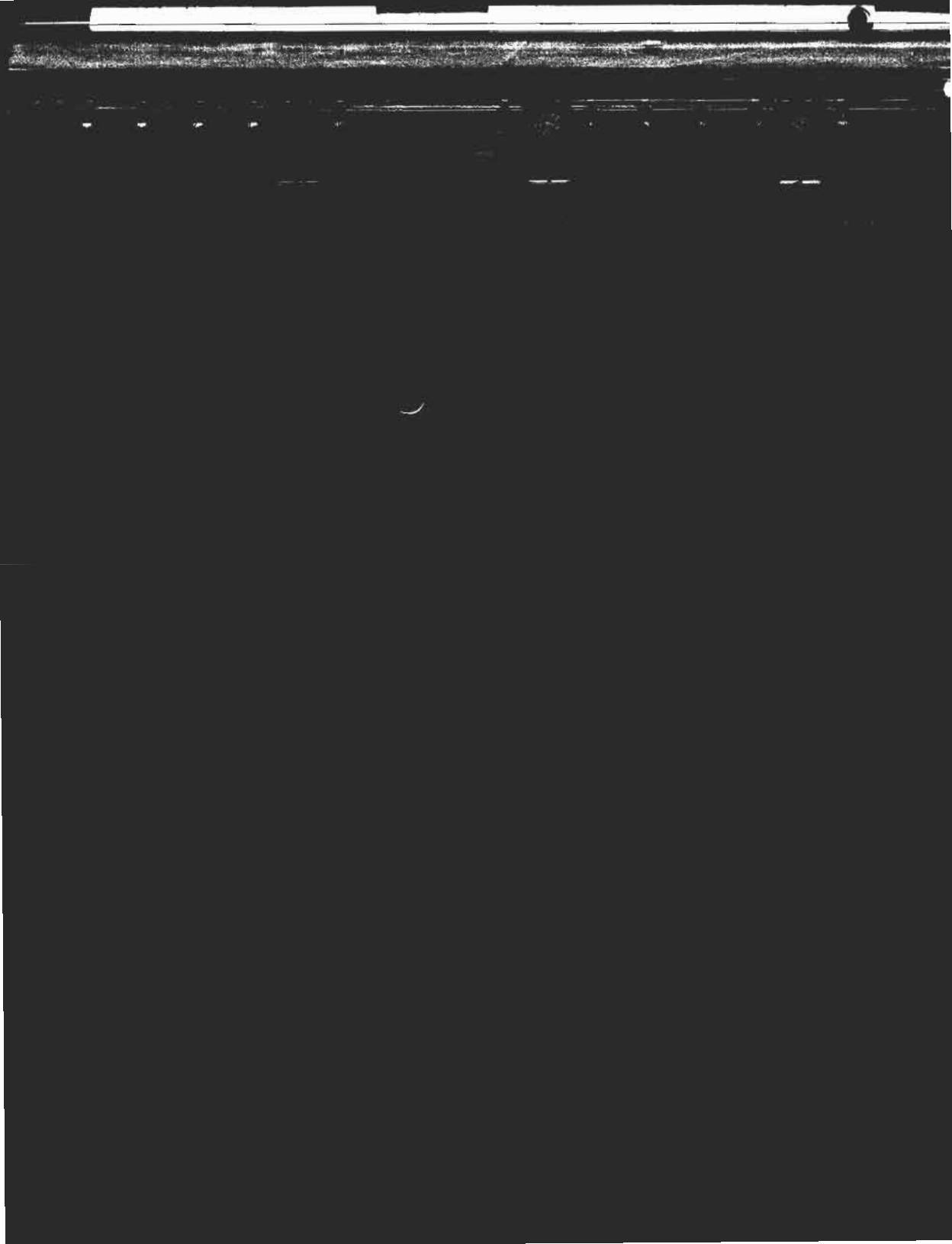
12 A. You've asked me for a 20-year period of my life,
13 what was I doing for my occupation; I've been doing several
14 things.

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 Beaman (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 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
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

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 17th
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 17th day of March, 2003.



ELIZABETH DAVILA SAINT-LOTH,
Shorthand Reporter
My Commission # DD 072032
Expires: November 15, 2005

<p>#</p> <p>[1] 208:1 18 [2] 215:20 220:15 19 [3] 26:7 217:11 217:19 1950s [1] 66:3 1998 [1] 81:8 1999 [4] 26:7 178:16 180:5 225:8 1:00 [1] 120:7 1:50 [2] 169:20 170:2</p>	<p>2</p> <p>[6] 15:25 16:2 16:6 16:9 31:10 19:2:1 2-D [1] 64:18 2/29/2000 [2] 219:18 219:18 20 [5] 67:23 139:17 217:18 219:8 219:16 20-year [1] 68:12 2000 [15] 13:15 13:16 13:24 26:5 26: 6 48:8 49:13 191:5 191:12 194: 1 194:3 194:23 196:10 200:1 231:5 2001 [19] 13:15 13:18 26:5 28:24 32: 7 48:12 48:14 56:17 94:8 97: 10 97:14 100:3 111:11 171:22 202:22 203:22 207:6 208:1 209:5 2002 [2] 32:10 34:11 2003 [5] 1:14 2:24 239:20 240:10 241:18 2005 [1] 241:23 2255 [1] 2:22 231 [1] 2:11 233 [1] 2:11 24 [2] 150:4 150:8 24th [2] 191:5 191:11 25th [1] 52:12 27th [3] 209:5 209:12 210:9 28 [1] 202:22 28th [1] 203:21 2:30 [1] 169:21 2:56 [2] 170:2 170:4 2nd [1] 171:22</p>	<p>4</p> <p>[7] 20:9 37:11 170:5 171:23 172:6 172:7 172:7 4/11 [1] 208:6 4/11/2000 [1] 201:12 4/27/01 [3] 210:16 211:3 211:19 4/27/2001 [1] 210:13 4/6 [1] 208:6 40 [1] 173:3 41 [1] 173:9 47 [2] 174:24 181:9 48 [2] 51:9 101:17 4:11 [1] 230:24 4:19 [1] 230:25 4:29 [1] 239:9</p>	<p>90</p> <p>[1] 229:25 92027 [1] 3:22</p> <p>A</p> <p>A.m. [2] 1:15 2:24 AB [2] 1:3 76:2 Abandoned [8] 38:12 38:12 38:20 38:23 39: 5 39:6 39:7 114:19 Abetting [1] 57:2 Ability [3] 31:5 64:4 64:17 Able [4] 101:18 106:10 123:4 149:23 Aboard [8] 162:20 162:24 165:22 166: 12 167:1 224:12 225:3 225:6 Above-entitled [1] 3:4 Absolutely [14] 18:5 29:18 76:7 98:20 101: 13 107:9 126:14 135:14 147:5 166:4 157:13 205:13 205:15 231:18 Absurd [1] 143:10 Accepted [1] 198:10 Accepting [1] 197:11 Access [1] 130:3 [1] 136:3 [4] 229:24 230:5 230:7 230:17 Accidental [1] 126:17 According [16] 78:13 148:2 153:1 157:6 168:4 182:25 188:4 196:4 197: 8 198:8 210:25 212:13 212:19 213:10 225:5 225:6 Accordingly [1] 173:12 Account [1] 185:8 Accountant [2] 5:21 74:15 Accounting [1] 204:8 Accounts [4] 184:23 185:2 186:16 197:2 Accurate [2] 13:16 34:15 Accusation [1] 89:3 Acknowledging [1] 4:8 Acquaintances [1] 116:25 Acquisition [2] 124:22 164:17 Act [1] 38:13 Acting [5] 25:13 33:10 37:7 44:8 44:9 Action [15] 40:5 47:22 103:6 117:24 120:1 121:5 124:6 125:22 158: 1 172:1 172:11 173:5 232:8 241:15 241:16 Actions [15] 7:4 46:11 46:12 58:2 58:2 97:22 109:22 109:25 110:22 123:3 123:21 163:12 183:21 189:18 213:7 Active [1] 226:7 Actively</p>	<p>[1] 146:7 Actual [4] 61:3 142:1 184:8 216:25 Actuarial [1] 72:21 Additional [2] 23:5 23:15 Additionally [1] 37:9 Address [5] 3:12 3:19 35:14 52:1 85:15 Addressed [11] 9:3 164:4 165:2 165:17 195:20 207:11 213:22 213:23 226:25 227:9 228:1 Addressing [1] 227:19 Adequate [1] 98:2 Adequately [1] 94:4 Adjudged [1] 229:16 Advance [1] 192:23 Advice [2] 175:22 176:7 Advise [2] 97:21 134:1 Advised [4] 78:5 103:22 134:1 192:2 Advisory [2] 168:19 225:19 Affairs [1] 44:3 Affiliates [1] 28:8 Affronting [1] 41:3 Afrald [7] 109:9 110:21 117:5 118:15 128:20 163:15 183:20 Afterwards [1] 120:16 Age [1] 108:24 Agencies [2] 95:21 95:22 Agent [1] 120:19 Agents [2] 73:5 121:1 Agitated [1] 100:18 Ago [19] 27:5 29:6 29:7 34:21 36:2 36:4 51:9 52:9 52:14 107:8 107:15 131:5 152:16 165:21 219:5 229:4 236:2 237:15 238: 4 Agree [5] 31:17 96:19 133:9 194:5 209:3 Agreed [3] 109:18 129:1 133:1 Agreeing [1] 12:15 Agreement [10] 80:7 81:1 81:8 172:3 172: 13 178:9 180:23 201:22 202:5 211:10 Agreements [2] 80:23 198:12 Ahead [6] 20:15 90:23 150:7 150:7 150:19 191:10 Aiding [1] 57:2 AI [20] 78:11 83:2 83:11 83:12 83: 16 84:16 85:9 85:19 86:4 86: 15 86:22 87:1 87:8 87:14 87: 19 110:7 166:19 200:12 203:7</p>
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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: