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May 23, 2003

Via Hand Delivery

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

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

Dear Ms. Hoffman:

I am writing in response to the voluminous submissions of P. Stephen Lamont and Eliot Bernstein regarding the above-referenced bar complaint filed against Christopher Wheeler. Having had a chance to digest their submissions, a number of very significant points emerge. Among them:

- The documents attached to (or interwoven in) the submissions actually serve to prove the points made by Proskauer in its submission. The correspondence, the taped statements, the depositions, and the patent applications all lead to the inescapable conclusion that Iviewit's patent work (whether done with extreme care and attention to detail or otherwise) was performed by other law firms.
- The crux of Iviewit's complaint concerning Warner Bros., as it relates to Proskauer, is that Proskauer damaged Iviewit because it refused to place itself in a conflict of interest position by declining multiple requests on the part of Mr. Lamont to use the name and reputation of Kenneth Rubenstein to vouch for Iviewit's technology to Warner Bros. The numerous e-mails from Warner Bros. show that Iviewit had a relationship with Warner Bros. long after Proskauer terminated its representation of Iviewit.
- Although chocked full of rhetoric, the responses do not contain evidence supporting any violation of the Rules Regulating the Florida Bar. Instead, large portions of the responses simply raise allegations of malpractice directed at Proskauer concerning patent work

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performed by others. We stand by the work we performed and the legal services we rendered.

- The unfortunate reality is that no one is free from attack and criticism leveled by Messrs. Lamont and Bernstein if it suits their purposes. In the eyes of Mr. Bernstein, someone has to be at fault for Iviewit's lack of success. It couldn't have been due to Iviewit's business model, the economy, or a whole host of other factors that impact business ventures on a daily basis. Just focusing on the papers they have submitted, and excluding Mr. Wheeler for purposes of this response, Messrs. Lamont and Bernstein have attacked:
 - A. Brian Utley, former President and CEO of Iviewit
 - B. Raymond Hersh, Iviewit's former CFO
 - C. Gerald Lewin, a member of Iviewit's Board of Directors and a partner in the accounting firm of Goldstein Lewin & Associates, P.A.
 - D. Raymond Joao, formerly of Meltzer, Lippe, Goldstein & Schlissel, LLP, Iviewit's former patent counsel
 - E. Douglas Boehm, of Foley & Lardner, Iviewit's successor patent counsel
 - F. Steve Becker, Mr. Boehm's associate at Foley & Lardner
 - G. William Dick, Special Counsel at Foley & Lardner
 - H. Aiden Foley, a former member of Iviewit management
 - I. Crossbow Ventures, Iviewit's largest investor
 - J. H. Hickman "Hank" Powell, Board Member of Iviewit and Managing Director of Crossbow Ventures
 - K. Maurice Buchsbaum, a former Iviewit Board Member and representative of Crossbow Ventures
 - L. Bruce Prolow, another significant Iviewit investor and a member of Iviewit's Board of Directors
 - M. Ryan Huiseman, RYJO representative

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N. Kenneth Rubenstein, a partner in Proskauer's New York office

The response demonstrates that no amount of proof will satisfy Messrs. Lamont and Bernstein. By way of example, both Messrs. Lamont and Bernstein stand fast on their claim that Mr. Wheeler misrepresented that Mr. Rubenstein was a partner of Proskauer before he joined the firm. They do so in the face of Mr. Rubenstein's own deposition testimony that he joined the firm almost 6 months prior to Iviewit first stepping in Proskauer's door. How could Mr. Wheeler have misrepresented that Mr. Rubenstein was a partner at Proskauer when at the time he first met Mr. Bernstein, Mr. Rubenstein was a Proskauer partner (and had been for months)? Ignoring that, Messr. Lamont and Bernstein contend that, because they were told to find information about Mr. Rubenstein from his former firm's website, there must have been a fraud perpetrated upon them. We have since confirmed with Proskauer's human resources department that Mr. Rubenstein was correct when he testified that he joined Proskauer in June 1998 -- his actual start date was June 22, 1998.

What we said in our initial response remains true today. The bar complaint is an ill-advised litigation tactic by the desperate officers of a failing dot.com.¹ It is telling that the latest Iviewit submissions make numerous references to the litigation, all the while contending that the litigation is "wholly irrelevant" to their bar complaint.²

For purposes of brevity, we are not going to respond to each and every one of the alleged conspiratorial plots and unsupported accusations described in Iviewit's thousand-plus page submission. While we deny each and every allegation, we will discuss a few of the points brought up by Messrs. Lamont and Bernstein to highlight the fact that none of the claims made in the bar complaint have any factual support. Should you desire a further response regarding any topic or issue referenced in those thousand-plus pages, please let me know and I will be happy to respond.

¹ Iviewit even challenges our description of it as a failed "dot.com," yet its primary operating company is Iviewit.com, Inc.

² We do note that Iviewit has pointed out a misstatement in our April 7, 2003 submission to you, based on the deposition testimony of Mr. Wheeler taken in the litigation between Proskauer and Iviewit. In his deposition, Mr. Wheeler stated that he did not advise Iviewit of the fact that he assisted Mr. Utley, years prior, in forming a corporation for him prior to Mr. Utley's employment with Iviewit. In my letter to you dated April 7, 2003, I erroneously advised you that Mr. Wheeler discussed this representation with Iviewit. Having had a chance to discuss the issue with Mr. Wheeler, I can confirm that his deposition testimony as to that issue is correct. He did not discuss the issue with Iviewit. I apologize for this oversight. Importantly, however, we are unaware of any ethical obligation that would have required Mr. Wheeler to volunteer such information.

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I. Iviewit's Own Documents Confirm that Proskauer Did Not Perform Iviewit's Patent Work

Messrs. Lamont and Bernstein's claims that Proskauer performed patent work and/or oversaw patent work by outside law firms is squarely contradicted by the documents provided by them. A few examples of the documents provided in Mr. Bernstein's reply follow:

- Letter dated April 26, 1999 from Christopher Wheeler to Richard Rossman (Bernstein Reply at page 126) stating that Proskauer "**procured patent counsel**" for Iviewit;
- Letter dated June 6, 2000 from Douglas Boehm of Foley & Lardner to Lewis Meltzer of Meltzer Lippe et al. (Bernstein Reply at 429) identifying Foley & Lardner as Iviewit's patent counsel and Meltzer Lippe as Iviewit's prior patent counsel;
- Numerous patent applications and draft applications prepared by Foley & Lardner (see, e.g., Bernstein Reply at page 433) and Meltzer Lippe (see, e.g., Bernstein Reply at page 350), none of which identify Proskauer;
- What purports to be a July 31, 2000 taped telephone conference transcript attached to the submissions of both Messrs. Lamont and Bernstein discusses at length the patent work performed by Raymond Joao of Meltzer Lippe, not Proskauer;
- The response of Raymond Joao to the bar complaint filed by Mr. Bernstein in New York also confirms, in no uncertain terms, that it was Mr. Joao, not Proskauer, who performed patent work for Iviewit. (See Bernstein Reply at page 713). In addition to denying that he ever represented himself as a Proskauer attorney (Joao Response at pages 6, 12), Mr. Joao acknowledged that Iviewit had a separate retainer agreement with Meltzer Lippe to perform patent work (see Joao Response at page 7), and Mr. Joao explains in detail all of the patent work performed by him for Iviewit (see Joao Response at pages 7-11). Nowhere in Mr. Joao's response does he indicate that Proskauer either performed any patent work or otherwise supervised this work.³

Ignoring the thousands of billing entries submitted by Proskauer, Mr. Bernstein focuses on a select few of the entries where the word "patent" is referenced or in which Mr. Rubenstein's name is found. We respectfully suggest that, viewed in context, those references are entirely consistent with Proskauer's position that Mr. Wheeler acted in a general corporate capacity in his representation of

³ We also note that Mr. Joao states in his response to Mr. Bernstein's complaint against him that "I believe that [Mr. Bernstein's] Complaint was filed in retaliation to an action that Proskauer Rose LLP has brought against Iviewit to recover substantial unpaid legal fees." (Joao Response at page 2).

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Iviewit. In that capacity, Mr. Wheeler periodically conferred with patent counsel, Iviewit representatives, and even Mr. Rubenstein in limited instances. Faced with this reality, Mr. Bernstein alleges – again without any support – that Proskauer must have tampered with or altered its billing statements. There is no truth to this assertion. We provided you with a complete set of our billing records in our April 7, 2003 submission. Should you have any questions whatsoever regarding our statements, please feel free to ask.

As for Mr. Lamont's allegation that Proskauer prepared the December 2000 private placement memorandum for Wachovia Securities which indicated that Mr. Rubenstein was Iviewit's patent counsel, that allegation is wrong. Wachovia's representatives actually prepared the private placement memorandum.⁴

In sum, Proskauer simply did not perform patent work for Iviewit. Mr. Bernstein's claims that Iviewit's patent work was performed improperly should not be brought in this forum in a complaint against Proskauer.⁵

II. Iviewit's Complaint Regarding Proskauer's Handling of Iviewit's Relationship with Warner Bros. Stems from Proskauer's Refusal to Place Itself in a Conflict of Interest Position

As is clearly demonstrated by Iviewit's latest submission, its real complaint regarding Warner Bros. is its contention that it has somehow been damaged because Mr. Rubenstein refused Iviewit's requests to vouch for Iviewit's technology to Warner Bros. (a Proskauer client) after Proskauer filed a lawsuit against Iviewit to collect unpaid attorneys' fees. Iviewit's own internal emails, dated approximately eight months *after* Proskauer filed the litigation against Iviewit, unequivocally confirm this:

- E-mail from Stephen Lamont to Eliot Bernstein (Bernstein Reply at page 257):

Is he willing to speak to Time Warner? No, he is unwilling to speak to Time Warner. He states that it would be a conflict of interest for him,

⁴ Iviewit also ignores the fact that even Wachovia prominently lists Foley & Lardner in its private placement memorandum and touts that firm, and both William Dick and Douglas Boehm, as experienced patent counsel. (Bernstein Reply at page 270).

⁵ As discussed in more detail below, Mr. Bernstein's Reply at pages 512-16 contains an e-mail from Douglas Boehm, Esq., a partner at Foley & Lardner. The e-mail, sent by Mr. Boehm to Mr. Bernstein, admonishes Mr. Bernstein for making "wild accusations and inflammatory statements" about Foley & Lardner's patent work. The e-mail also outlines Mr. Bernstein's constant complaints about Iviewit's patent lawyers and further identifies Mr. Bernstein's intent to sue his former patent counsel. Note that Proskauer is not mentioned anywhere in this lengthy, four-page e-mail.

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as they are a major client in his New York office. Perhaps when he spoke with them before, they were not a major client.

- E-mail from Stephen Lamont to Eliot Bernstein (Bernstein Reply at page 158):

You know, he [Kenneth Rubenstein] told me no twice already . . .

- E-mail from Stephen Lamont to Eliot Bernstein (Bernstein Reply at page 159):

I just spoke with Ken Rubenstein, and he reiterated that he does a lot of work for Warner Brothers and is unable to pick the phone up and discuss the matter on our behalf. Moreover, he is not too pleased that I have asked him to do same in what amounts to the third time. Lastly, he would welcome a call from Wayne Smith [of Warner Bros] directly and would discuss with him the fact that 'he is not to [sic] familiar with what [I View It] has,' but would not be 'negative or positive' in any potential discussion.

Despite Iviewit's urgings, Proskauer simply refused to place itself in a conflict of interest situation.

Iviewit also suggests that Mr. Wheeler somehow "fail[ed] to enforce" a confidentiality agreement entered into between Iviewit and Warner Bros. (Lamont Reply at page 9). As support for this, Mr. Lamont refers to an internal Warner Bros. e-mail dated almost a year and a half after Proskauer withdrew from its representation of Iviewit. By that time, Proskauer's collection action for unpaid fees had long been on file, and Iviewit had already been represented by Spencer Sax, Esq. of Sachs, Sax & Klein, P.A., Iviewit's counsel in that litigation. Whether Iviewit chose to consult with that firm regarding this issue is unknown.

It is also important to note that Iviewit's own documentary evidence proves that it had an independent business relationship with Warner Bros. that continued for months after Proskauer withdrew from the representation of Iviewit. As an example, the replies of Messrs. Lamont and Bernstein attached several e-mails from David Colter of Warner Bros. (Lamont Reply at Exhibits I, K; Bernstein Reply at page 147) which clearly show the existence of communications between Iviewit and Warner Bros. over eight months after Proskauer terminated its representation of Iviewit.⁶ Thus, notwithstanding Proskauer's refusal to place itself in a conflict position, the Iviewit-Warner Bros. relationship continued on independently for months after Proskauer's representation ended.

⁶ As to the Warner Bros. issue, while Mr. Colter states in his e-mails that Mr. Rubenstein "provided some solid support for iviewit" (see Bernstein Reply at page 147) and later states that Mr. Rubenstein's firm filed the original patents (see Bernstein Reply at page 583), we find it worth noting that Mr. Rubenstein never met or spoke with David Colter about Iviewit's patents. We believe that Mr. Colter is making these misinformed statements based upon what Mr. Bernstein or another representative of Iviewit told him.

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III. Proskauer Has Neither Withheld Nor Tampered With Any Documents

There is no truth to Messrs. Lamont and Bernstein's claims, peppered throughout their replies, that Proskauer has either withheld or tampered with documents. Mr. Bernstein has been given access to Proskauer's Iviewit file and has had the file copied.

We believe it is important to understand the backdrop which gave rise to Proskauer's production of documents to Iviewit. Rather than drafting discovery that was arguably related to the claims in the litigation, counsel for Iviewit simply allowed Mr. Bernstein to craft a whole host of harassing and largely irrelevant discovery requests, which counsel then "cut and pasted" into a document request served by Iviewit's counsel. A copy of Iviewit's document request is attached hereto as **Exhibit 1**. Upon receipt of the request, Proskauer moved for a protective order, with Proskauer volunteering instead to simply produce its file should counsel for Iviewit care to review it. The Court granted Proskauer's protective order and ordered just what Proskauer had requested – that Iviewit be limited to a review of Proskauer's file. A copy of the order granting Proskauer's motion for protective order is attached hereto as **Exhibit 2**. The transcript of the hearing also confirms the rather outrageous nature of the discovery requests served, with Judge Labarga specifically commenting that:

THE COURT: I think in all my time in practicing law and on the bench, I have never seen a Request for Production so broad as this thing is.

* * *

I'm going to grant the protective order. This request for documents is just way too overbroad.

The Honorable Jorge Labarga, hearing transcript on Proskauer's motion for protective order, November 5, 2002, at pages 15-17. A copy of the transcript is attached hereto as **Exhibit 3**.

Although Mr. Lamont states at page 13 of his reply that Attorney Steve Selz, Iviewit's litigation counsel, "noticed a mass of folders missing all documents, allegedly pointing to the destruction of documents supposed to be in those folders," it is telling that Mr. Selz has never complained to the court that Proskauer withheld documents or tampered with any documents. Proskauer is proud of the work that it did for Iviewit and has nothing to hide. There has been a full and complete disclosure.⁷

⁷ By way of example, Proskauer recently learned of the existence of additional documents located within the offices of Messrs. Wheeler and Thompson which, in some cases, were not duplicative of those documents found in Proskauer's file. Those documents were produced to counsel for Iviewit under cover letter dated May 9, 2003.

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IV. Iviewit Has Provided No Evidence Of A Violation Of The Rules Of Professional Conduct Or Of Their Alleged Conspiracy Plot

Despite over a thousand pages of submissions by Messrs. Lamont and Bernstein, they have failed to present any proof of a violation of the Rules Regulating the Florida Bar or Mr. Bernstein's murder/theft conspiracy (a theory that Mr. Lamont tellingly seems to distance himself from in his separate reply). Mr. Bernstein's conspiracy, involving Messrs. Wheeler (as alleged ringleader), Rubenstein, Utley, Hersh, Lewin, and the members of the Foley & Lardner and Meltzer Lippe law firms, is further explained in his recent submission. Some examples will provide further insight into Mr. Bernstein's thought processes:

- "We will now present the evidence as to these allegations and are sure the Florida Bar will find that Mr. Wheeler has conspired in several instances to steal the Companies [sic] technologies and continues to cause harm to the Companies and its shareholders." (Bernstein Reply at page 19).
- "Mr. Wheeler tries to couch his work as a 'website agreement', when in fact it is an attempt to abscond with the core algorithms and mathematics of the iviewit Zoom process. . . ." (Bernstein Reply at page 529).
- Mr. Wheeler "and his friends" attempted "to walk the image applet out of the Company. . . ." (Bernstein Reply at page 573).
- "The rationale for Crossbow Ventures being included in the rebuttal is because this would appear to be Mr. Wheeler's final attempt as the house of cards was crumbling around him to inflict damage to the Company." (Bernstein Reply at page 619).
- Mr. Bernstein's Reply at page 105 contains a chart entitled "Flow Chart of Conspirators, Potential Conspirators, and Infringers," identifying all persons and entities on the chart as having "tentacles to Wheeler and Gerald Lewin."

Most importantly, among the thousands of pages of scattered argument submitted by Mr. Bernstein, he has not been able to produce one document tending to support his complaints about Proskauer's representation that predated the filing of the litigation by Proskauer. Again, we reiterate that the members of Iviewit's former management team have testified that there were no complaints about Proskauer's representation of Iviewit:

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- Brian Utley:

Q. Did anyone ever complain or state at any board meetings of Iviewit that Proskauer performed poorly with respect to legal work?

A. No.

(Utley dep. at 66-6).

- Raymond Hersh:

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

A. Yes, I was.

Q. Do you know if Brian Utley was?

A. I know that he was.

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

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

(Hersh dep. at 33-22).

- Gerald Lewin, CPA:

Q. Are you aware of or did you ever hear anyone in the company state that Proskauer did work improperly for Iviewit?

A. No.

(Lewin dep. at 15-3).

All of Mr. Bernstein's claims against Proskauer have surfaced during the time period when the litigation was approaching trial, long after Proskauer withdrew from its representation of Iviewit due to Iviewit's inability to keep current in the payment of legal fees. Faced with the fact that Iviewit's former management team has testified that it was satisfied with Proskauer's representation of Iviewit, Mr. Bernstein simply dismisses this team as being comprised of co-conspirators.

V. Conclusion

We respectfully suggest that Iviewit's patent counsel at Foley & Lardner, Douglas Boehm, was correct when he wrote to Mr. Bernstein almost three years ago and noted Mr. Bernstein's penchant for "exaggerations, accusations, and criticisms" of the work of his lawyers. Mr. Boehm aptly points out that "[n]o lawyer should have to put up with that kind of abuse from a client." (Bernstein Reply at pages 512-515).

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In the end, Messrs. Lamont and Bernstein have shown no violation of the Rules Regulating the Florida Bar by any Proskauer attorney. Should you have any questions or need any additional information, please let me know.

Sincerely,



Matthew Triggs

MT/cwp

cc: (Via Federal Express)
Eliot Bernstein
P. Stephen Lamont

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

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

CA 01-04671 AB

Plaintiff,

v.

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

Defendants.

DEFENDANTS' REQUEST FOR PRODUCTION OF DOCUMENTS

Defendants, IVIEWIT.COM, INC., IVIEWIT HOLDINGS, INC. and
IVIEWIT TECHNOLOGIES, INC., requests that the Plaintiff, PROSKAUER ROSE,
L.L.P., pursuant to Rule 1.350 of the Florida Rules of Civil Procedure and within the
time required by said Rule, to produce all documents as set forth below.

This request for production is intended to cover all documents within the
possession, custody or control of Plaintiff, or any of its agents, servants, employees,
accountants, attorneys and any other person or entities subject to Plaintiff's actual or
constructive custody or control, wherever so located.

I. DEFINITIONS AND INSTRUCTIONS

1. "Documents" shall mean, without limitation, any kind of written or graphic matter however produced or reproduced, of any kind or description, whether sent or received, or neither, including originals, copies and drafts thereof and including but not limited to papers, books, letters, correspondence, telegrams, cables, telex corporate communications, calender or diary entries, airplane tickets, travel itineraries, appointment books, minutes, transcripts, telephone company bills and/or statements reflecting telephone calls placed, received or charged, reports and recordings of telephone or other conversations or of interviews, or of conferences and/or other meetings, statements, summaries, opinions, reports, studies, analyses, evacuations, contracts, agreements, journals, checks, check stubs, purchase orders change orders, invoices, bills, receipts, cash receipts, cash receipt journals, balance sheets, income statements, auditor's notes, deposit receipts, cash disbursement journals, general ledgers, records of disbursement, computer printouts, bank statements, credit reports, books of account, financial statements to banks of or any other persons or entities, statements, to banks, duplicate deposit receipts, canceled checks, statistical record, lists, tabulations,

instructions, specifications, manuals, pamphlets, publications, raw and refined data, graphs, drawings, advertisements, lists meeting minutes, magnetic tapes, or discs, punch cards, computer printouts, proposals, recommendations and any other data or records kept by electronic, photographic or mechanical means and things similar to the foregoing however denominated.

2. Whenever appropriate throughout this subpoena, the singular form of a word shall be interpreted to include the plural and vice versa, so as to require the broadest possible production.
3. "And" and "or" shall be construed conjunctively or disjunctively, so as to require the broadest possible production.
4. In the event any document has been lost or removed from the purpose of this action or for any other purpose, please state the name and address of the person who removed the document, the date of the document, the title of the document (if any), the subject matter of the document with reasonable specificity, the name of the person authoring such document, the name of the person to whom such document was given or transmitted, the present location and custodian of such document or any copies thereof.
5. If Production of a document is withheld on the grounds of privilege

or otherwise, state the following for each document withheld:

- a. The type of document (i.e., correspondence, memorandum, telex, etc.);
 - b. The date of the document;
 - c. The person who signed the document
 - d. The person who received the document; and
 - e. The reason for withholding production.
6. The document to be produced in response to this request for production shall be segregated according to the specific requests to which such documents are responsive. If a document(s) is/are responsive to more than one paragraph of this subpoena, the document(s) need only be produced once.

All work product, files and all billings for I View It and any/ and all affiliated companies including but not limited to: Iviewit Technologies, Inc., Iviewit.com LLC, Iviewit LLC, Iviewit.com, Uview, Uview.com, Ilearnit, Imedia, Iviewit Holdings, LLC, I.C., Cyberfyds, RealView and any and all affiliated companies. Including work generated by all Proskauer partners, employees and affiliates, relating to any and all I View It companies in any format including: All files of any form including but not limited to: Tapes, Emails, Board meeting notes, Draft documents, Mailed items, Receipts for mailed items,, Hand delivered items, Computer files of any type in any form including backups, Inter-office correspondence regarding I View It or any of it's companies, Letters, All Expense Records and supporting backup including Cell phone, corporate phones, personal home phone records for all attorney's on any/all matters relating to I View It and its billings, Palm Pilot or other PDA files, Microfiche, Stored Documents, Transcriptions, Video Conference Records, Meeting Room Schedules and any other form of communication, including but not limited to the following documents:

1. All/ANY Patent, Trademark, Copyright and Trade Secret
Provisional Documents and notes for any/all of the above
Pending Applications and notes for any/all of the above
Assignment Documents
Communications both Inter-office and between other law firms or lawyers relating in any way to I View It and the above
Binders
2. Investigations results and notes or files or evidence of any sort held on behalf of I view it by Proskauer relating to:
Infringement matters
Meltzer Lippe investigation
Raymond Joao investigation
Patent Fraud Investigations
Brian Utley Investigations
Foley and Lardner Investigations
3. Sealed documents and/or any other documents delivered by your client to your office for safe keeping.
4. All transactions for:
Crossbow Ventures
Huiznega Holdings
Jason Gregg
Alpine Ventures
All Loan documents for any individual or company
Tiedemann Prolow
Donald Kane
Alan Shapiro
Alan Young
Ellen DeGeneres
Alan's Morrisette
Atlas Entertainment
Simon Bernstein
Mitchel Welsch
Kenneth Anderson

Brian Utley
Michael Reale
Subscription Agreements
Notes
William Barber
Andrew Chessler
Hollywood.com
Webcasts
Wachovia
Salman
Deutsche Telecom
Michael Fox
Reale 3D
Disney

5. All employment, non-compete, COI's, papers and drafts for all employees, including but not limited to:

Brian Utley
Michael Reale
James Armstrong
Guy Iantoni
Jill Iantoni
Ellot Bernstein

6. All lease documents including but not limited to:
Rental agreements
Furniture agreements
Equipment leases, etc.

7. All audit information and correspondences regarding each and every audit of Viewit or any of its affiliates

8. All correspondences of any type between Proskauer and Goldstein Lewin and Gerald Lewin including but not limited to:

Foley and Lardner
Mr. Akselrod
Holland & Knight
Tom Wippman
George Villasana
Matt Rosen
Armstrong Hirsh Jackoway & Tyerman
Richard Rosman
Saybrook Capital
David Kalserman
Alan Epstein
Stuart Rosow
Mr. Kohner
Arthur Anderson
Hassan Miah
Kevin O'Donnell
Dollinger
FAU or any member
Mitchell Rubenstein

9. Taped conversation of patent call between Zakirul Snirajee, Eliot Bernstein, Raymond Joao and Gerald Lewin. The original tape is requested, please retain a copy only.
10. All taped or video conference conversations of any sort relating to I View It and any matters on the billings.
11. All correspondences and documents of any sort relating to I View It for each of the following Proskauer partners or other firm lawyers including but not limited to:
Chris Wheeler
Al Gortz
Greg Reed
Ken Rubenstein
Mara Lerner Robbins
Jill Zamas
Gayle Coleman
Gloria Burfield
Rocky Thompson
A Levy
Kevin Healey
Stuart Kapp
D. Paris Jr.
Rod Bell
Marcy Hahn Saperstein
B. Schiff
S. Romoff
H. Coates Jr
R. Rowe
Ed Restaino
Susan Weiner
R. Storette
A. Gutwein
Gregg Goldman
J. Silver
L. Gardner
R. Foster
12. Any and all documents relating to I Viewit matters with any of the following attorneys, firms or others:
William Dick
Raymond Joao
Steven Becker
Douglas Boehm
Stephen Filipek
Meltzer Lippe Goldstein & Schnissel
13. All documents of any sort relating to Gruntal including but not limited to
14. All documents and files of any sort relating to RYJO or Ryan Huisman including but not limited to
15. All documents, files, notes, etc of any sort relating to patent application 5865-2

16. All consulting agreements documents, drafts and files
17. All term sheet documents, drafts and files
18. All patent documents that were in any way replaced including the replaced documents
19. All documents relating to Real3D, Intel, SGI, & Lockheed and I View It.
20. All documents relating to any transactions with Iviewit and Distance Learning Companies and or objectives including but not limited to:
Trademarks
Patents
Trade Secrets
Corporate Filings

Incorporation documents for any company opened or intended to be opened
All documents relating to any transaction of any sort with Internet Train, Ilearnit, Imedia, etc.
21. All documents relating to Proskauer Rose marketing letter for I View It products to its clients
22. All documents relating to the acceptance of I View It stock by Proskauer or any affiliate, including interoffice correspondences and partner letters and communications.
23. All documents detailing the hiring of Kenneth Rubenstein.
24. All records pertaining to I View It and AOLTW or any affiliate
25. All correspondences of any sort relating to Ron Assaf and Sensormatic
26. Description and notes for meeting on 6/2/99 with Gerald Lewin, Chris Wheeler and Mr. Bernstein billed as "lengthy conversation."
27. All documents of any sort relating to investigation of COI with Goldstein Lewin, Visula Data and I View It.
28. All filings of name changes for any I View It entity
29. All copies of all NDA's for all clients of Proskauer Rose and all copies of retained NDA's for all I View It companies for any potential client or investor.
30. All analyses of corporate structure and any form of document or file relating to such.
31. Phone records for Al Gortz , Chris Wheeler and Kenneth Rubenstein relating to initial conversations with anyone relating to I View It or it's subs
32. All records and copies of business plans and distribution lists of such plans.

33. All copies of checks relating to any viewit or sub transactions
34. All notes and correspondences of meetings held with Foley and Lardner
35. All correspondence, meeting notes, relating Brian Utley billings.

At the offices of Selz & Muvdi Selz, P.A., at the address set forth below and that if any of the information normally contained in the documents, or in some other for, electronic or otherwise, has been photographed, recorded or is retained on a computer or other electronic device, defendant is hereby requested to obtain such information, translated, if necessary, into a reasonably usable form.

I HEREBY CERTIFY that a true and correct copy of the foregoing has been provided by U.S. Mail this 19th day of September, 2002 to: Christopher W. Prusaski, Esq., Proskauer Rose, LLP, 2255 Glades Road, Suite 340 W, Boca Raton, FL 33431.

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

By: _____

STEVEN M. SELZ

FBN: 777420

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

CASE NO. CA 01-04671 AB

PROSKAUER ROSE LLP, a New
York limited liability partnership,

Plaintiff,

v.

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

Defendants.

**ORDER GRANTING PLAINTIFF'S MOTION FOR PROTECTIVE
ORDER AS TO DEFENDANTS' REQUEST FOR PRODUCTION**

THIS CAUSE came before the Court on November 5, 2002 on Plaintiff's Motion for Protective Order as to the Defendants' Request for Production and the Court, after reviewing the motion, hearing argument of counsel, and being fully advised in the premises, it is hereby

ORDERED AND ADJUDGED as follows:

1. The Plaintiff's Motion for Protective Order relating to the Defendants' Request for Production is **GRANTED**.
2. Counsel for the Defendants shall view the Iviewit file in Plaintiff's possession on Thursday, November 14, 2002 at the Plaintiff's offices in Boca Raton.

DONE AND ORDERED at West Palm Beach, Palm Beach County, Florida this ___ day

SIGNED AND DATED

of November, 2002.

NOV 12 2002

Judge Jorge Labarga

Honorable Jorge Labarga
Circuit Court Judge

Copies furnished to:

For Plaintiff:

Matthew Triggs, Esquire
Christopher W. Prusaski, Esquire
Proskauer Rose LLP
2255 Glades Road, Suite 340W
Boca Raton, Florida 33431;

For Defendants:

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

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

PROSKAUER ROSE LLP, a New York
limited liability partnership,

Plaintiff,

vs.

No. CA 01-04671 AB

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

Defendants.

-----/

The above-entitled cause came on for Hearing
before The Honorable Jorge Labarga, Circuit Judge,
at the Palm Beach County Courthouse, West Palm Beach,
Palm Beach County, Florida, on the 5th day of
November, 2002, commencing at 8:15 o'clock A.M.

APPEARANCES:

Certified Copy

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.

1 THE COURT: Okay.

2 MR. PRUSASKI: Good morning, Your Honor.

3 THE COURT: How are you doing?

4 MR. SELZ: Good morning, Your Honor.

5 THE COURT: Motion in limine?

6 MR. SELZ: Motion in limine, and also,
7 Your Honor, we had an objection to Requests for
8 Production from opposing counsel. We've been
9 here before Your Honor earlier last week. And
10 we had agreed that we would hear that again
11 while we had the 15 minutes set this morning.

12 THE COURT: Okay. Fifteen minutes is not
13 a long time.

14 MR. PRUSASKI: It's not. I don't believe
15 we have enough time, judge.

16 I represent Proskauer Rose, the
17 plaintiff. It's our motion in limine. This is
18 an attorneys' fees collection case. The
19 defendants are former clients of Proskauer's.
20 We're suing for about \$367,000. And this
21 matter is set for trial the week of December
22 16th.

23 Spencer Sax, Sachs, Sax & Klein, used to
24 represent the defendants. This case was filed
25 a year-and-a-half ago in May of 2001. And an

1 Answer was filed by Mr. Sax's firm over a year
2 ago. The Answer didn't assert as any
3 affirmative defenses that Proskauer had done
4 any incorrect work or had otherwise breached
5 the Retainer Agreement.

6 The defenses were that we actually billed
7 for work not performed and that the value of
8 the - the bills didn't match the - the
9 reasonableness of the services performed. So
10 there was no allegation of any improper work
11 performed by Proskauer.

12 It wasn't until August of this year,
13 after Your Honor entered a couple of orders
14 requiring the defendants to serve Answers to
15 Interrogatories, that the defendants asserted
16 for the first time that Proskauer had
17 incorrectly done work; and therefore, they
18 should be able to avoid paying our bills.

19 It wasn't pled anywhere in any of the
20 pleadings. And it wasn't until a year and a
21 three months after the lawsuit was filed that
22 we first learned that they were going to
23 attempt to put this theory on at trial.

24 At the time I received the interrogatory
25 answers, the matter was already set on Your

1 Honor's trial docket.

2 It came as a surprise to us because we
3 didn't know for a year-and-a-half that they
4 were going to try and put this type of case on
5 at trial. It further completely complicates
6 the case and turns an otherwise simple bill
7 collection matter over on its head.

8 And there's cases that we cited in the
9 motion. Nash versus Wells Fargo case. It's a
10 Florida Supreme Court, 1996, it says, if you
11 don't assert an affirmative defense, you can't
12 prove it at trial. It's a waiver.

13 The Con-Dev of Vero Beach versus Casano
14 case, Fourth District, also says, which we cite
15 in the motion, that a defendant has an
16 obligation to plead any other matter
17 constituting an avoidance or affirmative
18 defense.

19 And the First District in Joseph Bucheck
20 Construction that we also cited says that Rule
21 1.10 (d) requires a defendant to plead any
22 manner which avoids the action which the
23 plaintiff is not bound to prove in the first
24 instance in support of it, but which under the
25 Rules of Evidence, the defendant must firmly

1 establish.

2 The Nash case says that negligence is a
3 defense and you have to plead it. The Con-Dev
4 case says that plaintiff's breach of a contract
5 under which it sues is an affirmative defense
6 and you have to plead it.

7 A year-and-a-half after the lawsuit's
8 filed when the case is already set for trial, a
9 set of interrogatory answers telling us that we
10 did work incorrectly is not fair.

11 THE COURT: When are we set for trial in
12 this case?

13 MR. PRUSASKI: December 16th.

14 THE COURT: It's set for docket call on
15 December 16th, correct?

16 MR. PRUSASKI: We've already --

17 MR. SELZ: We're set. We're set.

18 THE COURT: You're specially set.

19 MR. SELZ: For December 16th, Your Honor.

20 THE COURT: How long do you think it's
21 going to take to try the case?

22 MR. SELZ: I think we estimated it would
23 be three days.

24 MR. PRUSASKI: We thought it would be a
25 day-and-a-half, two days before we got these

1 interrogatory answers.

2 THE COURT: You're going to get what you
3 reserved at the docket call, and that's all.

4 MR. SELZ: Your Honor, if I may, very
5 briefly, what we've got here right now is a
6 situation where discovery is still pending. We
7 have not gotten production from --

8 THE COURT: Wait a minute. Look, you
9 went to docket call. You've answered ready. I
10 specially set you for trial. You're specially
11 set to go for December 16th. I don't
12 understand. Why is discovery still pending? I
13 don't care about that. That's your problem.

14 MR. SELZ: Well, Your Honor, it is,
15 except what we have is we've had a very
16 difficult time getting any documents from
17 opposing counsel and from - and Proskauer Rose.
18 As a matter of fact, my client has had no
19 access to any of the documents which would
20 support his impression that Proskauer Rose did
21 or did not do what they were supposed to do.

22 THE COURT: The problem I have with that
23 is in these civil cases, you notice them for
24 trial whenever you want to notice it for trial.
25 And once you notice it for trial, you get a

1 trial date nine months later. What happens is
2 you guys do things at the end and then you want
3 to squeeze it all in at the end. It's not my
4 problem that we are here at the eve of trial
5 and you're telling me you can't get these
6 documents. I've been here every morning. I
7 haven't missed one day, except for the two
8 weeks vacation I took this summer. Where have
9 you been?

10 MR. SELZ: Your Honor, with regard to
11 discovery, this is what we've got.

12 Mr. Prusaski, I've been asking him for dates
13 since September on two deponents for Proskauer
14 Rose that we wanted to depose. He objected to
15 one. Your Honor the other day ruled that, yes,
16 we could take the deposition of Ken Rubenstein.
17 I asked him both for dates for Ken Rubenstein
18 and Chris Wheeler, the two people we want to
19 depose. He's now telling me their only
20 available dates, which I've been requesting
21 since September, are after the discovery cutoff
22 date, November 15th.

23 THE COURT: Like I said, if you're having
24 problems with discovery, then come and see me
25 and I'll make a ruling. But now you're telling

1 me that you're going to do discovery up until
2 the date of trial. Now you want to amend
3 pleadings. You want to allege things that were
4 not in the pleadings. And all of a sudden, you
5 want to put the case into a tailspin. Why
6 should I do that? You've got a trial date.
7 You're specially set. You told me you were
8 ready. You're ready means I can call you
9 tomorrow and you can try the case.

10 Yes?

11 MR. PRUSASKI: All I can say is that we
12 have depositions set in the next week when we -
13 two depositions, their corporate rep. Your
14 Honor, we were here last week. I have to fly
15 to California for that. When I take those
16 depositions, we're ready for trial. This case
17 has been pending for a year-and-a-half.

18 And with all due respect, judge, it's a
19 red herring. The law says they can't put in
20 some sort of complicated quasi malpractice case
21 in a bill paying case when they didn't plead it
22 over a year ago. They can't spring this on us
23 at the last minute. The law protects us in
24 that regard.

25 THE COURT: Anything else?

1 MR. SELZ: Your Honor, their request --

2 THE COURT: On this motion, you got
3 anything else you wish to argue?

4 MR. SELZ: On this motion -- The only
5 other thing that I've got on this motion, Your
6 Honor, right now, is the fact that clearly, my
7 clients didn't have access to these documents.
8 We've been making requests for production. We
9 don't have a good faith basis right now to be
10 able to plead an affirmative defense we don't
11 have any proof of. My client has a feeling
12 there was a problem, but if he doesn't have the
13 evidence to back it up, then it would be a
14 frivolous attempt on his part to plead it.

15 So to that extent Your Honor, I believe
16 that we have acted diligently. We're trying to
17 get these documents from the plaintiff to be
18 able to show up this possible -- If it exists.
19 If it doesn't exist and there's no basis in the
20 documents that we get or in the testimony of
21 the deponents, then we won't be able to assert
22 it, anyway, Your Honor. And that's the point.

23 If it does exist in those documents and
24 there's something that shows there's a conflict
25 of interest or some other problem that

1 Proskauer Rose was involved in, then certainly,
2 the first opportunity we have that evidence is
3 when we're going to present it.

4 THE COURT: In the case of Noble -
5 N-o-b-l-e - versus Martin Memorial Hospital,
6 710 So. 2d. 567, Fourth DCA 1997, the Fourth
7 District held that, there comes a point in
8 litigation where each party is entitled to some
9 finality. The rules of liberality gradually
10 diminishes as the case progresses to trial."

11 The case -- We had docket call.
12 Everybody answered ready. And the case is set
13 for trial in a month or so, a bit over a month.
14 And here we are at this juncture, you're
15 telling the other side that now we're going to
16 rely on pretty much malpractice as a defense,
17 and for that reason, we shouldn't have to pay
18 you.

19 This case has been around for a
20 year-and-a-half. And there has to come a point
21 in time where the trial judges should draw the
22 line. So I'm going to grant the motion in
23 limine. Okay. And that's granted. And you
24 can go to trial on what you've got.

25 MR. SELZ: Okay.

1 THE COURT: Okay. Now what's the next
2 thing?

3 MR. SELZ: The next thing, Your Honor, is
4 an objection to Requests for Production. May I
5 approach?

6 THE COURT: Sure can.

7 MR. SELZ: Your Honor, basically, we had
8 a list of documents. And they relate to
9 Proskauer Rose's representation of Iviewit and
10 the Iviewit companies. And basically, it goes
11 to requesting their files, any patent
12 trademark, copyright, trade secret --

13 But let's get the broader picture. The
14 broader picture here is when I transmitted
15 these to Mr. Prusaski on September 19th, his -
16 his response was that they had documents - his
17 recent response, as well as he's got documents.
18 He's got about 80 red rope binders with all
19 kinds of documents in them that he hasn't
20 reviewed or considered with regard to a
21 privilege log or preparing a privilege log, and
22 that he would give me access to those 80 red
23 ropes if I dropped anything concerning anything
24 else other than what's in their specific file
25 concerning the Iviewit companies.

1 Again, Your Honor, their position all
2 along has been that their representation was
3 limited to Iviewit. And there is actually only
4 one company here that signed the Retainer
5 Agreement with Proskauer Rose.

6 So what we want to do is take a look at
7 all the documents concerning any of these other
8 entities, if they exist, if they represented
9 the former president of Iviewit who signed the
10 Retainer Agreement, if they represented him
11 individually, any of those people concerning
12 clients of Proskauer there might have been
13 conflicts with which they should have presented
14 and didn't present to Iviewit as part of their
15 representation.

16 And again, Your Honor, the key here is
17 this - this request has been outstanding since
18 approximately mid September and we haven't
19 received any documents, other than a blanket
20 objection saying, effectively, that they think
21 it's overbroad, that it's designed to harass,
22 that we're asking for scheduling of meeting
23 rooms and things like that at Proskauer's
24 offices.

25 Again, Your Honor, part of our position

1 is that they were involved and people in the
2 firm were involved. And they're not reflected
3 on their billing records. And that we were
4 billed for things not directly involving
5 Proskauer.

6 I think that was one of the defenses that
7 was raised was that -- It goes ahead and says,
8 that plaintiff's claims do not state cause of
9 against the defendants to whom the invoices
10 attached to the Amended Complaint were
11 directed.

12 One of our affirmative defenses, they
13 billed us for work that was done for other
14 parties which are not parties to this action,
15 and rightfully, should not be part of the
16 claims against Iviewit, the defendants here.

17 So what we're asking for, Your Honor, is
18 - is this plethora of documents, but the
19 plethora of documents, Your Honor, is designed
20 to show up these defenses, Your Honor, and to
21 provide us with the documents relating to these
22 defenses.

23 THE COURT: What do you say?

24 MR. PRUSASKI: The Request for Production
25 was served one day before the discovery cutoff.

1 their case, home telephone records of Proskauer
2 attorneys, Palm Pilot records of Proskauer
3 attorneys, Proskauer's meeting room schedules
4 from its New York and Florida offices. And
5 most importantly and most offensively, they
6 have asked for all of the Non-Compete
7 Agreements that Proskauer's ever prepared for
8 any client.

9 So how am I supposed to respond to this
10 in good faith?

11 I have told counsel that if the court
12 resolves this today or if they withdraw this
13 Request for Production, he can come and look at
14 the file next week. I'll go through it. I'll
15 check to make sure that there's no documents
16 that have been incorrectly kept in the file for
17 other clients. And he can come and spend as
18 much time with it as he wants. But they're
19 insisted on pursuing this document request.

20 THE COURT: I think in all my time in
21 practicing law and on the bench, I have never
22 seen a Request for Production so broad as this
23 thing is.

24 I mean, let's look at one. Number four,
25 you want all transactions for Ellen Degeneris,

1 Alanis Morrisette, Simon Bernstein, Huizenga
2 Holdings. I mean, it goes on and on.
3 Wachovia, Webcasts, Hollywood.Com, Notes,
4 Subscription Agreements, Brian Utley, Michael
5 Reale, Disney.

6 MR. SELZ: If I may, Your Honor, the
7 reason is because --

8 MR. PRUSASKI: They want personal
9 employment files of lawyers.

10 MR. SELZ: -- Proskauer Rose was
11 representing Iviewit in negotiations with those
12 various parties.

13 And the idea here, Your Honor, again is
14 basically that those parties, to the extent
15 that Proskauer Rose may have been representing
16 them, constituted some kind of conflict or --
17 We got billed or Iviewit is being billed for
18 work that is done concerning those matters.

19 Again, Your Honor, we don't have access
20 to any of the documents so far.

21 THE COURT: He says you can go look at
22 them.

23 MR. PRUSASKI: They would have had access
24 a year-and-a-half ago if they asked for --

25 THE COURT: What I'm going to do, I'm

1 going to grant the protective order. This
2 request for documents is just way too
3 overbroad.

4 And if you wish, I'm going to order him
5 to make whatever they have available at his
6 office and you go look at it. Spend a day or
7 two over there looking at it. And you clip
8 whatever you need to clip. And he'll make
9 copies for you. If you object to that, then
10 come back and see me.

11 MR. PRUSASKI: I've told counsel that he
12 can come next week, when I come back from
13 California to take his client's depo since he
14 wouldn't appear here. Anytime next week, he
15 can come look through it. And that's been the
16 offer all along.

17 MR. SELZ: Your Honor, so on the record
18 then, Mr. Prusaski will make those available to
19 me next week --

20 MR. PRUSASKI: Yeah.

21 MR. SELZ: So that I go ahead and examine
22 them next week.

23 MR. PRUSASKI: Yeah.

24 THE COURT: Sure. He'll put them there
25 on the conference table for you. You give him

1 whatever leeway he needs. And you take whoever
2 you need to with you, sit down and take a look.
3 What you do is take a bunch of these things and
4 -- Post 'ems.

5 MR. SELZ: And post it, yes.

6 THE COURT: Post whatever you need. If
7 there's anything that you feel is privileged,
8 just make a note of and come back and see me
9 and I'll cross that bridge when I get there.

10 MR. PRUSASKI: Your Honor, I'm prepared
11 to go through and make a log if there's any
12 documents that are subject to privilege.

13 THE COURT: According to the Tigg case,
14 you have to or you waive it.

15 MR. PRUSASKI: Your Honor pointed it out
16 to us, and we told everybody in our office
17 about the case. We have it up on the bulletin
18 board.

19 THE COURT: All right, guys.

20 (Thereupon, at 8:32 a.m., the hearing was
21 concluded.)

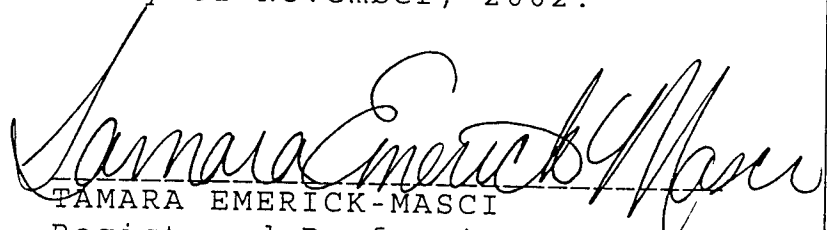
1 COURT CERTIFICATE

2 STATE OF FLORIDA)

3 COUNTY OF BROWARD)

4 I, TAMARA EMERICK-MASCI, Registered
5 Professional Reporter, certify that I was authorized
6 to and did stenographically report the foregoing
7 proceedings and that the transcript is a true and
8 complete record of my stenographic notes.

9 DATED THIS 5th day of November, 2002.

10
11 
12 TAMARA EMERICK-MASCI
13 Registered Professional Reporter
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1 It was the first time the defendants had ever
2 attempted to get documents in a year-
3 and-a-half. So we filed a motion for
4 protective order because it wasn't timely. And
5 Your Honor subsequently extended the discovery
6 cutoff.

7 We have never had a problem showing
8 Proskauer's file to the former clients because
9 under the law, they have a right to look at it.
10 The file takes up an entire conference room
11 table. It was corporate work that was
12 performed over a course of several years.

13 However, if they had just asked to come
14 and look at the file, I would have said, yeah;
15 come look at it next week.

16 But what they did was the corporate
17 representative of the defendants on his home
18 computer typed up this Request for Production.
19 It's 35 document requests of what he thinks
20 should be in our file.

21 If he had said, we'd like to come look at
22 the file, it would not have been an issue. But
23 what they did was this lay person has asked for
24 copies of the personal employment file of
25 several of Proskauer's attorneys who worked on