

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

3 MR. TRIGGS: Object to the form.

4 THE WITNESS: Can I answer that?

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

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

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

14 A. Yes.

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

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

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

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

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

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

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

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

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

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

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

19                 MR. TRIGGS: Object to the form.

20          A.     It's --

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

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

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

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

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

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

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

19 A. Approximately --

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

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

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

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

6 MR. TRIGGS: Object to the form.

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

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

12 Q. That was in January of 1999.

13 A. Right.

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

17 A. Yes.

18 Q. Do you know when that took place?

19 A. It took place a few months later.

20 Perhaps - perhaps by midyear.

21 Q. By July or thereabouts as you --

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

23 Q. Right.

24 A. Right.

25 Q. Now, at the time this meeting took

1 place --

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

4 Q. Yes.

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

6 Q. Now, what's the --

7 A. We undertook services earlier.

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

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

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

15 A. They do now.

16 Q. Did they in 1999?

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

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

22 A. I don't know.

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

25 A. Right.

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

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

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

11 MR. TRIGGS: Object to form.

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

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

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