

**PROSKAUER ROSE LLP**

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

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

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

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

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

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

**WHEELER STATES IN DEPOSITION THAT HE DID NOT DISCLOSE TO IVIEWIT**