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April 11, 2003

Via Hand Delivery

Thomas J. Cahill, Esq.
Chief Counsel
Departmental Disciplinary Committee
First Judicial Department
61 Broadway
New York, New York 10006

Re.: Complaint of Eliot I. Bernstein against Kenneth Rubenstein, Esq.
Docket No. 2003.0531

Dear Mr. Cahill:

This letter is in response to your March 6, 2003 letter to Kenneth Rubenstein and the accompanying complaint filed by Eliot I. Bernstein. As you would expect, both Mr. Rubenstein and Proskauer take this matter very seriously. Obviously, if you need any further information or documentation, we welcome the opportunity to assist in that regard.

Summary

Before addressing the allegations in detail, we would like to provide you with a summary of certain key points to be made below in our response:

- The Disciplinary Complaint of Mr. Bernstein must be understood in the context of a fee litigation brought by Proskauer against Mr. Bernstein's company Iviewit to collect outstanding fees of \$370,000 and the fact that Iviewit is a failed "dot.com" company looking for someone to blame for its failure.
- For Mr. Bernstein's allegations to be true, Mr. Rubenstein and Proskauer would have had to act totally against their own economic interests. Proskauer owns 2.5% of Iviewit. Why would Proskauer engage in an alleged conspiracy to cause Iviewit \$10 billion in damages, and thereby cause Proskauer itself to lose \$250 million? This is an amount

more than twenty times larger than the cumulative amount paid to Proskauer by its largest client in the 2002 fiscal year.

- Iviewit's own conduct shows that it does not really believe the allegations in the complaint. While Iviewit's CEO, Mr. Bernstein, is alleging that in the years 2000 and 2001 Mr. Rubenstein participated in a conspiracy to steal Iviewit's technology, on November 20, 2002, Iviewit presented Mr. Rubenstein with a letter requesting that he perform legal work for Iviewit. The Committee should consider how a party could almost simultaneously make serious allegations with respect to the conduct of an attorney and also request (or more accurately, pressure) the very same attorney to represent it.
- Mr. Bernstein has presented no evidence whatsoever to support the allegations in the complaint. In contrast, the deposition and documentary evidence presented below, show that the accusations are without merit. The evidence shows Mr. Rubenstein performed no patent work for Iviewit and engaged in no activities whatsoever that were adverse to Iviewit.
- Excerpts of Mr. Bernstein's deposition taken in the aforementioned litigation show that he lacks credibility with respect to the allegations in the complaint.

Background

The complaint relates to an attorney-client relationship between Proskauer (primarily its Boca Raton, Florida office) and several corporations bearing the name "Iviewit," of which Mr. Bernstein was a principal. Christopher Wheeler, a partner resident in Proskauer's Boca Raton office, was primarily responsible for representing Iviewit as general corporate counsel from approximately December 1998 through May 2001, when Proskauer withdrew from its representation due to Iviewit's nonpayment of Proskauer's legal bills. During this two and a half year relationship, approximately twenty Proskauer attorneys in its Florida and New York offices performed a vast array of corporate, securities, restructuring, and refinancing work for the Iviewit entities. However, as will be shown below, neither Proskauer nor Mr. Rubenstein performed any patent work for Iviewit.

Iviewit fell victim to the same plague that affected many "dot.com" companies during this time period -- a lack of funding. As a result, Iviewit suffered financial problems, and amounts owed to Proskauer continued to grow. Ultimately, Iviewit owed Proskauer a total of almost \$370,000 for legal services by the time Proskauer ceased to represent it. When Iviewit was unable to arrive at a satisfactory payment arrangement, Proskauer filed a lawsuit in May 2001 in Palm Beach County, Florida Circuit Court (the "Litigation") seeking to collect its attorneys' fees. The action is entitled *Proskauer Rose LLP v. Iviewit.com, Inc. et al.*, Case No. CA 01-04671 AB (the

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“Litigation”), and is currently set for trial in West Palm Beach, Florida on May 28-29, 2003. A copy of the Amended Complaint filed in the Litigation is attached hereto as **Exhibit 1**.

On January 28, 2003, after the Litigation had been pending for over 21 months, Iviewit sought leave to assert what it contended was a **\$10 billion** counterclaim, raising allegations similar to those contained in Mr. Bernstein’s complaint against Mr. Rubenstein. A copy of the proposed counterclaim is attached hereto as **Exhibit 2**. The Court denied Iviewit’s motion for leave to amend by order dated February 4, 2003, a copy of which is attached as **Exhibit 3**. Mr. Bernstein’s complaint against Mr. Rubenstein followed on the heels of that denial.¹

On January 31, 2003, Mr. Bernstein’s deposition was taken in the Litigation. At that time, Mr. Bernstein offered sworn testimony of what he described as a conspiracy, occurring in 2000 and 2001, to steal his technology. According to Mr. Bernstein, the conspiracy was set in motion by Mr. Wheeler, along with such alleged co-conspirators as Mr. Rubenstein, Iviewit’s former President (Brian Utley), special counsel at the nationally known law firm of Foley & Lardner (William Dick), and another lawyer previously employed by the law firm Meltzer, Lippe, Goldstein & Schlissel, LLP (Raymond Joao).² According to Mr. Bernstein’s sworn testimony, this plot involves an alleged death threat made by Iviewit’s former President and Chief Operating Officer, which, as Mr. Bernstein testified, has caused him to fear for his life and, as we will show below, has caused Mr. Bernstein to believe that Proskauer is “evil.”

Obviously, there was no murder plot, no conspiracy, and no attempt on the part of anyone to injure Mr. Bernstein or his business. We point this out only to highlight the rather extreme and unfounded nature of the accusations leveled against a whole host of attorneys, at several law firms throughout the United States. We respectfully suggest that, viewed in context, Mr. Bernstein’s submission to the Committee is simply an ill-advised litigation tactic that is devoid of any factual or legal support. Unfortunately, Mr. Rubenstein is simply one of several attorneys caught in the crossfire of a fee dispute. Regardless of Mr. Bernstein’s motives, his accusations are squarely negated by the record.

Despite Mr. Bernstein’s allegations of malpractice and “malfeasance,” as recently as November of this past year (well after the alleged malfeasance and malpractice was alleged to occur), Iviewit sought to enlist Mr. Rubenstein’s assistance:

¹ Contemporaneously with the filing of the complaint against Mr. Rubenstein, Mr. Bernstein also filed a similar complaint against Mr. Wheeler with the Florida Bar. Mr. Wheeler’s response was filed on April 7, 2002 and the matter is currently pending.

² We understand that Mr. Bernstein also filed a similar complaint with the Departmental Disciplinary Committee against Mr. Joao.

“to review the conclusions of past and present patent counsel, and to further assist Iviewit in further defining the inventions in any intellectual property arena of [Iviewit’s] choosing”

A copy of Iviewit’s November 20, 2002 correspondence to Mr. Rubenstein is attached as **Exhibit 4**. For obvious reasons, most notably the pendency of the Litigation, Mr. Rubenstein declined this request. Prior to that, but subsequent to the termination of Proskauer’s representation of Iviewit and filing of the aforementioned lawsuit, Iviewit had sought to capitalize on the existence of an attorney-client relationship between Mr. Rubenstein and Warner Bros. by essentially asking Mr. Rubenstein to vouch for Iviewit’s technology to a client contact at Warner Bros. Mr. Rubenstein refused this request, citing conflict of interest issues. This conduct of Iviewit shows that Mr. Bernstein and Iviewit are not serious about their own allegations.

As an aside, Mr. Bernstein also notes in his complaint to this Committee the fact that he gave a gift to Proskauer of a small percentage of stock in Iviewit. Mr. Wheeler testified in his deposition in the Litigation that Mr. Bernstein wanted to grant shares of Iviewit stock to Proskauer because Mr. Bernstein felt that “all members of his team should be stakeholders in his company.” (Wheeler dep. At 62-24). Mr. Utley also testified that it was Mr. Bernstein’s “personal decision” (Utley dep. At 241-9) to grant a small interest in Iviewit, LLC (a corporation that is no longer in business) to Proskauer “because of the quality of work that [Proskauer] had performed for the company over the prior six months.” Id. at 238-19. Clearly, there is no ethical prohibition to Proskauer accepting this gift of stock from Mr. Bernstein. But even more to the point, the fact that this gift was made at all provides compelling evidence to refute Mr. Bernstein’s conspiracy theories. If Proskauer owned 2.5 percent of Iviewit, LLC, why would, as Mr. Bernstein alleges, Proskauer engage in a conspiracy to cause \$10 billion in damages to Iviewit? Such conduct would be directly adverse to Proskauer’s economic interest by causing Proskauer to lose \$250 million. Simply put, Mr. Bernstein’s allegations make no sense.

I. The Issues Raised in Mr. Bernstein’s Complaint

As far as we can discern from Mr. Bernstein’s submission to the Committee, he appears to raise two main issues. They are summarized below, and our response is noted.

A. **Patent Work**: Most of Mr. Bernstein’s allegations derive from his claim that Mr. Rubenstein mishandled certain patent work. To the contrary, as we show below (see Section II), there is overwhelming testimonial and documentary evidence showing that this allegation is false. Approximately twenty Proskauer attorneys performed legal services for and billed time to Iviewit matters. Mr. Rubenstein wasn’t one of them. Of the almost \$370,000 owed by Iviewit for legal services rendered by Proskauer, Mr. Rubenstein did not bill a minute of time to the engagement. Further, even ignoring Mr. Rubenstein’s lack of involvement, no one else at

Proskauer performed patent work for Iviewit. Iviewit's patent work was handled entirely by patent attorneys at other law firms. Whether there were any errors or omissions with the patent work is immaterial. Proskauer simply did not perform that work.

B. Conflicts of Interest: Mr. Bernstein alleges that Mr. Rubenstein, through "deceptions, improprieties . . . , and outright malfeasances" : (i) represented other clients with a conflict of interest to Iviewit; (ii) allowed the infringement by other clients of Iviewit's "intellectual property rights"; (iii) tortiously interfered in Iviewit's relationship with Warner Bros.; and (iv) personally benefited, along with Proskauer clients, to the detriment of Iviewit. The reality is that Mr. Rubenstein engaged in no activities whatsoever that were adverse to Iviewit, there was no tortious interference, no personal profiting at the expense of Iviewit and, to Proskauer's knowledge, no other parties have infringed upon Iviewit's "intellectual property rights." (see Section III, below)³.

II. Neither Mr. Rubenstein Nor Proskauer Performed Patent Work for Iviewit

Mr. Bernstein's complaint is replete with allegations concerning alleged improper or mishandled patent work somehow overseen or performed by Mr. Rubenstein. But Mr. Bernstein cannot point to a single document relating to patent work which is signed by Mr. Rubenstein or any other patent attorney at Proskauer. The work performed by Proskauer is reflected in billing statements submitted to Iviewit on a monthly basis. Copies of these billing statements are attached hereto as **Exhibit 5**. Proskauer attorneys who performed legal services for Iviewit would record their time, and the bills submitted by Proskauer represent a compilation of those time entries. Importantly, in all of the bills submitted to Iviewit, there is not a single time entry for Mr. Rubenstein. The reason for this is simple : he did not provide legal services on behalf of Iviewit. Apparently realizing the significance of this fact, Mr. Bernstein claims without any factual basis that Proskauer improperly altered its billing statements. There is simply no truth to this unsupported accusation, which we find very troubling. The billing statements are attached to this response. Should you have any question whatsoever as to whether the bills are genuine, our billing file is available for your review.

In addition to Proskauer's billing statements, which are devoid of any time entries by Mr. Rubenstein, both Proskauer attorneys and corporate representatives of Iviewit have confirmed under oath that neither Mr. Rubenstein nor Proskauer performed any patent work for Iviewit.

In short, the deposition testimony in the Litigation and the documentary evidence unequivocally establish that Mr. Rubenstein did not perform any patent work for Iviewit. To the contrary, all of Iviewit's patent work was performed by Raymond Joao, who at the time was employed by Meltzer Lippe, and thereafter by William Dick of Foley & Lardner. This is confirmed by the

³ We note that Iviewit has not been able to secure any patents on its technology, so we are not even aware of what "intellectual property rights" Mr. Bernstein is referring to.

depositions taken during the course of the Litigation, including that of Iviewit's former President and COO, Brian Utley, who testified that "Rubenstein and Mr. Wheeler, I'll repeat, had nothing to do with the patents" (Deposition of Brian Utley ("Utley dep.") at 150-9) and "I'm not aware - other than referring Iviewit to Meltzer, Rubenstein never did any work for Iviewit." (*Id.* at 121-3). Moreover, Mr. Utley testified numerous times that Mr. Rubenstein, who is a patent attorney, simply recommended Mr. Joao's firm to Iviewit when asked for a recommendation for outside patent counsel. *Id.* at 70-4; 121-3. Mr. Utley also testified that he has never met Mr. Rubenstein. *Id.* at 121-20. Mr. Wheeler also verified that that Mr. Joao was Iviewit's patent counsel (Deposition of Christopher Wheeler ("Wheeler dep.") at 23-20) and that Mr. Rubenstein did not do any patent work for Iviewit (*Id.* at 24-11).

When asked to opine as to the veracity of an interrogatory answer submitted by Mr. Bernstein during the course of the Litigation which suggested that Proskauer played a role with respect to Iviewit's patent work, Mr. Utley was unequivocal in his response:

Q. The answer to [Eliot Bernstein's] Interrogatory 20 in Subparagraph Roman Numeral XI, 11, it says: "Chris Wheeler agreed to investigate charges that Rubenstein and the name J-O-A-O, which I think is Joao. . . . [w]ere forging and changing patent documents and leaving inventors off patents. Wheeler and Utley suggest using their friend William D-I-C-K, and then it looks like it's cut off, Foley & Lardner to correct the gross negligence uncovered in Rubenstein/Joao work."

How do you respond to that statement?

A. Well, Rubenstein was never involved in any of that work.

Q. Is that a misrepresentation?

A. That's a misrepresentation.

Q. Were there any charges by you or anyone at Iviewit that Joao was forging and changing patent documents and leaving inventors off patents?

A. No.

Utley dep. at 83-15.

Gerald Lewin, a certified public accountant and principal of the CPA firm of Goldstein, Lewin & Company in Boca Raton testified similarly. He testified that he was initially approached by Eliot Bernstein's father, Simon Bernstein, who is also Mr. Lewin's neighbor, and asked to be a consultant for the Iviewit entities. (Deposition of Gerald Lewin ("Lewin dep.") at 7-14). Mr. Lewin agreed and ultimately became a member of Iviewit's board of directors. *Id.* at 9-1. Mr. Lewin introduced Eliot and Simon Bernstein to Mr. Wheeler at Proskauer's Boca Raton office, after the Bernstein's asked Mr. Lewin for a referral to a national law firm to represent the Iviewit entities. *Id.* at 8-3. Like Messrs. Utley and Wheeler, Mr. Lewin testified that Proskauer did not perform patent work for Iviewit and that the patent work was handled by other law firms. *Id.* at 10-25; 17-16; 50-8. Further, Mr. Lewin confirmed that Mr. Rubenstein's only involvement with

Iviewit was to provide a referral to an outside law firm to handle Iviewit's patent work. *Id.* at 17-16.

Mr. Rubenstein, who was also deposed in connection with the Litigation, could not have been clearer as to the scope of Proskauer's representation:

- Q. Did you ever opine with regard to the validity of any patent applied for or received by Iviewit.com?
- A. Like I say, I was not in any way involved with getting patents for Iviewit.
- Q. What were you involved with, if you were, with Iviewit?
- A. The only thing I did for Iviewit is I referred them to another patent lawyer.
- Q. And who is that?
- A. A guy named Ray Joao.
- Q. And where did Mr. Joao work?
- A. I believe he was working at the time at my former law firm, Meltzer Lippe.

(Deposition of Kenneth Rubenstein ("Rubenstein dep.") at 23-4).

Finally, Raymond T. Hersh, Iviewit's former Chief Financial Officer, also confirmed in his deposition that Proskauer did not perform any patent work for Iviewit, and stated that Iviewit "always had separate patent counsel." (Deposition of Raymond Hersh ("Hersh dep.") at 12-25).

Thus, regardless of whether Mr. Bernstein is pleased or displeased with the patent-related services provided to Iviewit, Proskauer simply did not provide those services. Moreover, Mr. Bernstein's accusations relating to Mr. Rubenstein's involvement in Proskauer's representation of Iviewit are demonstrably baseless. Every fact witness other than Mr. Bernstein has confirmed Mr. Rubenstein's testimony that he was not actively involved in Proskauer's representation of Iviewit.

III. Mr. Rubenstein Did Not Engage in Any Conduct Adverse to Iviewit

Mr. Bernstein's complaint makes accusations that Mr. Rubenstein represented clients in conflict with Iviewit and failed to disclose such representations and/or secure conflict waivers from Iviewit. These accusations are factually unsupportable.

Although Mr. Bernstein alludes to some alleged conflict involving Warner Bros., there is no merit to any such claim. While it is true that Proskauer provides legal services to Warner Bros. in various contexts, none of them involve taking a position adverse to Iviewit and, in fact, none of them even related to Iviewit at all. Aside from a brief review of a draft confidentiality

agreement with Warner Bros. by a lawyer in our Boca Raton, Florida office,⁴ Proskauer performed no work for Iviewit that is in any way related to its dealings with Warner Bros. More to the point, Mr. Rubenstein's only involvement with Iviewit concerning Warner Bros. was at the urging of Mr. Utley, who suggested that Mr. Rubenstein call his contact at Warner Bros., Gregory Thagard, to simply suggest that Warner Bros. talk to Iviewit. At a later date, subsequent to the termination of Proskauer's representation of Iviewit and after the filing of the lawsuit, Stephen Lamont, an Iviewit representative sought to enlist Mr. Rubenstein's assistance by having him tout Iviewit's product to Warner Bros. Mr. Rubenstein declined this request, specifically citing Proskauer's existing relationship with Warner Bros.

In short, when asked by Iviewit to do so, Mr. Rubenstein refused to place himself in a potential conflict of interest situation. And while Mr. Bernstein labels Mr. Rubenstein's refusal as tortious, the reality is that his decision was strictly guided by ethical considerations and entirely justified under the circumstances. Certainly it cannot be said that Mr. Rubenstein had any obligation to tout Iviewit's product months after Proskauer ceased representing Iviewit and after the filing of the Litigation.

As for Mr. Bernstein's claim that Iviewit has suffered damages as a result of Mr. Rubenstein's refusal, the record in this matter clearly establishes that Iviewit had an independent relationship with Warner Bros. that continued on even after Proskauer's involvement with Iviewit ended. In fact, Iviewit's "Business Plan," attached hereto as **Exhibit 6**, reveals that Iviewit maintained an independent relationship with Warner Bros. well after Proskauer's representation of Iviewit ended. The Business Plan lists, at pages 35-36, "Gregory B. Thagard – Former Vice President, Advanced Technology Technical Operations, Warner Bros." and "David J. Colter – Vice President of Technology and Standards, Warner Bros." as members of Iviewit's advisory board. The Business Plan further details, at page 20, a relationship with Warner Bros. beginning in 2000 and lasting through November 2001 – six months after Proskauer ceased representing Iviewit.

Iviewit's independent relationship with Warner Bros. is further demonstrated by an email shown to Mr. Rubenstein during his deposition in the Litigation. The email, dated August 1, 2001 -- three months after Proskauer ceased representing Iviewit -- was sent by David Colter of Warner Bros. to Crossbow Ventures, and explains that Iviewit is "currently finalizing a contract with WB Online. . . ." A copy of the email is attached as **Exhibit 7**. The email not only refutes Mr. Bernstein's claim that Mr. Rubenstein somehow interfered with Iviewit's relationship with Warner Bros., it negates Mr. Bernstein's claim that Mr. Rubenstein or Proskauer somehow caused Crossbow Ventures to cease funding Iviewit, as the email shows a relationship between Iviewit and Crossbow Ventures well after Proskauer stopped performing work for Iviewit.⁵

⁴ The attorney in Boca Raton was unaware that there were attorneys in the New York office who performed legal services for Warner Bros.

⁵ We note that the email provides a characterization of Iviewit's patents attributed to Mr. Rubenstein. We would like to note that this attribution is hearsay of hearsay, as Mr. Rubenstein has never spoken to the writer of the email.

Mr. Bernstein's complaint also alleges that Mr. Rubenstein served as a member of Iviewit's advisory board. Although the relevance of this claim is unclear, there is no truth to it. Iviewit apparently listed Mr. Rubenstein as an advisory board member on its website without Mr. Rubenstein's permission. Indeed, Mr. Utley confirmed at his deposition that Mr. Rubenstein was not on Iviewit's advisory board:

- Q. Okay. So Rubenstein's sole role, from what you understand, is he referred Iviewit to the Meltzer Lippe Law Firm in New York?
- A. Yes.
- Q. Was he ever part of an advisory board or was he an advisory board member to Iviewit? And we're talking about Mr. Rubenstein.
- A. I have never used him as an advisory board member.
- Q. Are you aware of whether or not he ever attended any board meetings with the directors of Iviewit?
- A. He never attended a board meeting. I've never met the man.

Utley dep. 121-6. In fact, Mr. Wheeler had discovered that both he and Mr. Rubenstein had been listed, without their permission, as advisory board members on Iviewit's website. Mr. Wheeler asked Iviewit to remove their names from the website in the Spring of 2001.

Finally, as for Mr. Bernstein's unspecific claim that Mr. Rubenstein somehow inserted his own interests or the interest of third parties ahead of Iviewit, such allegation is absurd. The overwhelming testimony of third parties and documentary evidence shows that, other than placing a gratuitous call to his contact at Warner Bros. and recommending Mr. Joao as outside patent counsel, Mr. Rubenstein had nothing to do with Iviewit. In the event the allegations are related to Iviewit's patent applications, we would like to point out to the committee that WIPO (World Intellectual Property Organization) has published Iviewit's PCT patent applications in its database. Please go to <http://ipdl.wipo.int/>. Copies of the cover pages of Iviewit's published applications as obtained from the aforementioned WIPO website are attached hereto as **Exhibit 8**. We note that these patent applications list Foley & Lardner as Iviewit's patent attorneys.

IV. Mr. Bernstein's Accusations Must Be Considered In Light Of His Recent Deposition Testimony

Mr. Bernstein's deposition testimony in the Litigation, taken just over a month ago, provides important context for consideration of his charges against Mr. Rubenstein. Almost irrespective

We would also like to note that the characterization is not one that Mr. Rubenstein could have provided. First of all, Iviewit has no patents (only patent applications). Second of all, Mr. Rubenstein never did any legal work which could form the basis of an opinion with respect to Iviewit's patent application.

of the topic of questioning being pursued, Mr. Bernstein's testimony drifted into tales of murder, conspiracy, and theft involving several lawyers of national law firms and well respected businessmen and philanthropists:

* * *

A. . . . Well, my attorney Caroline has been working with people to protect me. Utley came out after being terminated, and they found patents had been written into his own name going to his house without assignment to the company, et cetera.

And [Brian Utley] came out and basically told me that my life was in danger if I continued to pursue to be vocal about the fact that, you know, his background was clouded and that these patents were found -- well, that malfeasances were occurring is how I could basically couch that. And he said that him and Chris [Wheeler] would bring the company down brick by brick.

Q. Utley said this?

A. Yes.

Q. When was this?

A. This was around the end of 2000, in the January period.

Q. So you started learning about a conspiracy around that time?

A. Well, you know, the real -- you know, again, you ask about conspiracies. And you know, with hindsight, I could basically call it a conspiracy. But the real first conspiracies I learned of -- if you're asking for the whole conspiracy, is Ray Joao's work.

(Deposition of Eliot Bernstein ("Bernstein dep.") at 47-11).

As seen below, the alleged conspirators are numerous:

Q. You have no idea why Mr. [Hank] Powell was fired from Crossbow?

A. Perhaps for being involved in this conspiracy to steal my technologies.

Q. Mr. Powell was involved in the conspiracy?

A. I am not sure if Crossbow is involved, although they were referred to us by Chris Wheeler who spearheads the conspiracy. But, you know, you don't find these things out when there's a conspiracy until after the conspiracy is over.

Id. at 59-17.

Q. -- was [Maurice] Buchsbaum involved in the conspiracy?

A. Buchsbaum is related to Chris Wheeler, so we're not sure yet 100 percent.

Id. at 60-10.

Q. What did [Utley] tell you when he threatened your life?

A. He said: If you continue to expose these issues and pursue a course against me and Proskauer, we will kill you.

Q. Who is "we"?

A. Mean him, Chris Wheeler and Mike --

Q. Are you paraphrasing or are you quoting him?

A. I'm quoting him. And we will bring you down brick by brick by brick, your companies.

Q. He said: We will kill you --

A. Yes.

Q. -- and we will bring you down brick by brick?

A. Correct. So I called my wife and moved her into a hotel in California. She packed up overnight to move our children into a hotel. And we so lived in a hotel until we could get adequately --

Q. When was this?

A. We told everybody this.

Q. When was this?

A. This is right around January of 2001.

Id. at 93-14.

Q. Did Mr. Utley threaten you in person or over the phone?

A. In person.

Q. Do you feel that he had the means to kill you?

A. Well, he was touting Mr. Wheeler and Proskauer as being uncovered at this point for some of these malfeasances, like his background education. Yeah.

Q. Do you feel that he had the means to kill you, is the question.

A. Yes. With those he was saying he's conspiring with absolutely.

Q. Who was he conspiring with to kill you?

A. Mr. Wheeler, Mr. Bill Dick of Foley & Lardner. These are some major law firms.

Q. So you felt at the time that if Mr. Utley was going to kill you, he was going to do it in conspiracy with Foley & Lardner and Proskauer Rose?

A. With members of those firms that he's good friends with.

* * *

Q. What other law firms were conspiring with Wheeler, Utley, and Proskauer?

A. Meltzer, Schnitzel & Gold (ph)--

Q. Meltzer Lippe --

A. Meltzer Lippe Schnitzel & -- I think Goldstein or something.

Id. at 98-10.

Q. Have you feared for your life because of this lawsuit?

A. You bet, every single day. I've hidden my children off the streets. I'm scared to death to leave my house. My wife is scared to death to leave the house.

* * *

Q. Do you think Proskauer Rose wants you dead?

A. Yes.

Q. Why?

A. Well, the technologies are valued to be worth billions; that, in itself, is a motive.

* * *

Q. Why did you come here today if you are afraid for your life?

A. I fear no evil.

* * *

Q. --in your mind you agreed to come here for your deposition today if this firm wants you dead.

A. I fear no evil. I fear no evil.

Q. Is Proskauer evil?

A. Yes. Because of these actions, yes.

Id. at 107-24.

Q. Why do you come [to Proskauer's offices] and -- you have been here about three days now to review the files.

A. Yeah.

Q. Why do you come here and spend the day here when you fear for your life?

Why don't you just have Kinko's come and pick the files up and copy them for you?

A. I fear no evil, A, okay; I expressed that on the record before.

* * *

You know, if I died tomorrow from a hiccup, perhaps, everybody would look back here.

Q. At Proskauer?

A. Absolutely.

Q. And think that --

A. Chris Wheeler.

Q. -- that they orchestrated an accidental death?

A. Correct. Or something, or purposely done.

Id. at 125-14.

Q. Do you think your lawyer fears for his life?

A. I asked him that the other day.

Q. What did he say?

A. He said he fears nobody. He doesn't care that you are big. He doesn't care how big you are, he is not afraid of you.

Q. Do you think he is?

A. Yeah.

Q. You think he's in fear for his life because of this lawsuit?

A. Yes. I think it has run across his mind that he is sitting on a can of worms that could lead to the destruction of three large law firms.

Id. at 117-1.

Q. Why did you move back to close proximity of Proskauer Rose, if you are in fear for your life of Proskauer?

A. I study the art of war, so deception and distance are often key tactics to warfare.

Somebody made a threat on me in their home ground, so I left their home ground to a ground where I have many legal friends. People to help me protect myself.

Q. Here?

A. No, California. I don't know shit here.

So -- and that's why I'm scared here. And I was scared for collateral damage to people like my parents, and whatnot, so I broke ties with them,

hardly talked to them over the last year and a half, didn't let them see their grandchildren, never flew back here, okay.

Now I am prepared to wage war and have my evidence and guns in lie, I have no fear of --

Q. When you say "guns," are you speaking metaphorically?

A. Yes, of course.

Q. Okay.

A. And so, it's best to be here so that I can present my case, and I am not worried about you anymore killing me too much.

Q. Proskauer?

A. Proskauer, because now I think you've realized that there's a lot of people behind it that you didn't see coming, or you weren't paying attention and suddenly you've got a case.

Id. at 118-19.

As can be seen, the "truth" regarding the Litigation and the claims asserted by Mr. Bernstein's complaint against Mr. Rubenstein proved to be a fluid concept in his deposition. As the deposition demonstrates, a person is either supporting Mr. Bernstein fully and unconditionally or is part of a conspiracy to destroy him. Mr. Bernstein's response to questions concerning Mr. Lewin and his possible involvement in a conspiracy is telling in this regard:

Q. Was [Gerald] Lewin part of the conspiracy?

A. Gerri just referred me to Chris [Wheeler].

* * *

Q. [w]ere you on the telephone during Gerri Lewin's deposition?

A. No.

Q. He testified in his deposition that the only reason the bills weren't paid was because there wasn't any money?

A. **Well, then, we might have a problem with him being involved in the conspiracy.**

Id. at 186-25.

Mr. Bernstein's deposition testimony concerning his claim of "destruction" of documents is equally telling. Without a shred of evidence, Mr. Bernstein was willing to swear to the "destruction" of documents simply because he had not seen them:

Q. Did you ever see with your eyes anyone at Proskauer destroying any documents pertaining to Iviewit?

A. No.

Q. Did anyone ever tell you that they saw anyone at Proskauer destroying documents relating to Iviewit?

A. No.

Id. at 169-13.

Q. So you are still sticking to your story that Proskauer destroyed documents

--

A. In my interpretation --

Q. -- but you have no personal knowledge of whether they did?

A. -- of the word destruction, because they are not present in any records that the company can now get, yes, they have been, since Mr. Wheeler was keeping records of them.

Q. So destroyed means missing to you?

A. Yes.

Id. at 238-6.

VIII. Conclusion

In order to assist you in your review of this matter, we have endeavored to provide you with specific references to deposition testimony and documents which refute Mr. Bernstein's assertions. In the process, we hope we have answered any questions you may have concerning Proskauer's representation of Iviewit and Mr. Rubenstein's lack of involvement in that representation. Mr. Bernstein's accusations are simply unfounded and in many respects scandalous. As can be seen, Iviewit's own officers and directors have given sworn testimony refuting each and every assertion made by Mr. Bernstein. Our files are open and available for your review should you have any questions concerning this matter or need any additional information or documentation.

Thomas J. Cahill, Esq.
April 11, 2003
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We thank you for giving us the opportunity to be heard.

Very truly yours,

A handwritten signature in black ink, appearing to read "S. C. Krane", with a long horizontal flourish extending to the right.

Steven C. Krane

Encl.