

*INDUSTRIAL QUICK SEARCH, INC. VS.
MILLER, ROSADO & ALGOIS, LLP*

*NEIL A. MILLER
December 29, 2010*

Ellen Grauer
COURT REPORTING
Co. LLC



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Min-U-Script® with Word Index

Page 1

1 UNITED STATES DISTRICT COURT
 2 FOR THE EASTERN DISTRICT OF NEW YORK
 3 -----x
 4 INDUSTRIAL QUICK SEARCH, INC., MICHAEL
 5 MEIRESONNE & ASSOCIATES, INC.,
 6 Plaintiffs,
 7 -against-
 8 MILLER, ROSADO & ALGOIS, LLP, CHRIS ROSADO and
 9 NEIL A. MILLER, ESQ.,
 10 Defendants.
 11 CIVIL ACTION NO.: 09 1340
 12 -----x
 13
 14 77 Water Street
 15 New York, New York
 16 December 29, 2010
 17 10:05 a.m.
 18
 19 DEPOSITION of NEIL A. MILLER, one of
 20 the Defendants herein, pursuant to Order, before
 21 Ronald A. Marx, a Notary Public of the State of
 22 New York.
 23
 24 ELLEN GRAUER COURT REPORTING CO. LLC
 25 126 East 56th Street, Fifth Floor
 New York, New York 10022
 212-750-6434
 REF: 95718

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 17 PHONE 212.232.1411
 18 E-MAIL anesh@lbbslaw.com
 19
 20
 21
 22
 23
 24
 25

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1 ----- I N D E X -----
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 4
 5
 6 ----- INFORMATION/DOCUMENTS REQUESTED -----
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 8 to make sure no documents were
 9 inadvertently not transferred in
 10 good faith
 11
 12
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 25

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1 STIPULATIONS
2
3 IT IS HEREBY STIPULATED AND AGREED
4 by and between the attorneys for the
5 respective parties herein, that the
6 sealing, filing, and certification of the
7 within deposition be waived; that such
8 deposition may be signed and sworn to
9 before any officer authorized to administer
10 an oath, with the same force and effect as
11 if signed and sworn to before the officer
12 before whom said deposition is taken.
13 IT IS FURTHER STIPULATED AND AGREED
14 that all objections, except as to form, are
15 reserved to the time of trial.
16
17
18
19
20
21
22
23
24
25

Page 6

1 (Exhibit A, second amended
2 complaint dated 1/8/03, was marked
3 for identification, as of this date.)
4 (Exhibit B, answers to second
5 amended complaint dated 1/29/03, was
6 marked for identification, as of this
7 date.)
8 NEIL A. MILLER, one of the Defendants
9 herein, 200 Old Country Road, Suite
10 590, Mineola, New York 11501, having
11 been duly sworn by a Notary Public of
12 the State of New York, upon being
13 examined, testified as follows:
14
15 DIRECT EXAMINATION BY MR. BLUESTONE:
16 Q Good morning. My name is Andrew
17 Bluestone. I'm going to be asking some
18 questions on behalf of Industrial Quick Search.
19 Have you been deposed before?
20 A No.
21 Q Have you taken depositions before?
22 A Yes.
23 Q We'll be operating according to the
24 usual stips for New York State court
25 depositions. Are you familiar with those?

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1 MILLER
2 A When you say usual, I know what usual
3 stips I've operated under. I don't know what
4 your usual stips are.
5 Q Are you represented by an attorney
6 here?
7 A Yes.
8 Q And if he objects, of course don't
9 answer the question.
10 If you don't understand my question,
11 let me know and I'll rephrase it for you. If
12 you don't hear it, let me know and I'll re-speak
13 it for you.
14 If I ask you a question, please
15 answer from your knowledge and not from guesses.
16 Don't speak at the same time I'm speaking.
17 And we're going to be reserving the
18 objections for trial, except those as to form,
19 the usual stips.
20 Now, could you tell me about your
21 post high school educational background, with
22 the years of graduation and the places you
23 attended?
24 A Yes. Okay I went to Franklin &
25 Marshall College. I got a BA in 1978, I believe

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1 MILLER
2 the year is. Then I went to the University of
3 Chicago Law School and got a JD in 1981.
4 Q Would you tell me -- sorry. Are
5 there any further educational degrees?
6 A No.
7 Q Did you take any further educational
8 courses other than CLE courses?
9 A No.
10 Q Are you a member of any societies
11 that deal with the practice of law?
12 MR. ANESH: Note my objection
13 to form. You can answer.
14 A Yes. I'm a member of the Inns of
15 Court, the Nassau County chapter.
16 Q When did you become a member of Inns
17 of Court?
18 A About three or four years ago.
19 Q What was the procedure about which
20 you became a member of the Inns of Court?
21 A I remember being sponsored by an
22 attorney friend of mine, filling out an
23 application of some sort and being accepted.
24 Q Was there an examination of any sort?
25 A No.

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1 MILLER
2 Q Were recommendations other than the
3 nomination required?
4 A I don't recall.
5 Q As a result of the Inns of Court,
6 have you received any courses, instructions or
7 materials that deal with the practice of law?
8 MR. ANESH: Note my objection
9 to form. You can answer.
10 A Yes.
11 Q Tell me about that, please.
12 A Well, the Inns of Court runs
13 programs, I would say about eight times a year
14 or so.
15 Each member of the Inns of Court is
16 expected every so often to be on the panel,
17 giving that roughly two-hour course or whatever
18 particular topics --
19 Q Presentation of some kind?
20 A Yes. It would be a presentation of
21 some kind, and plus you attend them. Now,
22 certainly when you attend you also receive
23 materials in connection with that topic for that
24 evening.
25 And it -- when I'm on a panel, and

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1 MILLER
2 I've done one so far, I helped develop those
3 materials.
4 Q And so you've attended and you've
5 given -- you attended a number of these and
6 you've given one; is that correct?
7 A Correct.
8 Q Aside from that society membership,
9 are there any other society memberships that
10 deal with the practice of law?
11 MR. ANESH: Objection to form.
12 A No.
13 Q Now, would you tell me about your
14 employment or partnership or association with
15 law firms from the time that you passed the bar
16 onwards?
17 MR. ANESH: Objection to form.
18 You can answer.
19 A I started out after graduating law
20 school with -- I believe it was called Rosenman,
21 Colin, Freund, Lewis & Cohen at that time. I
22 was there maybe about six years.
23 Then I left that firm and went to a
24 firm in Garden City known as Reisman,
25 R-E-I-S-M-A-N, Peirez, P-E-I-R-E-Z, Reisman &

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1 MILLER
2 Gallagher. I was there for approximately a
3 little over five years. Then I opened my own
4 practice.
5 And a few years later together with
6 Christopher Rosado and Louis Algios we formed
7 Miller, Rosado & Algios.
8 Q When was that, sir?
9 A I believe it was the very beginning
10 of 2001.
11 Q And have you remained in the same
12 Miller, Rosado & Algios LLP format since?
13 A Yes.
14 Q Does that continue until today?
15 A Yes.
16 Q Are the three of you each partners?
17 A Yes.
18 Q Now, would you tell me about your bar
19 admittance, please?
20 A I was admitted to the New York State
21 Bar in 1982. I believe I was admitted to the
22 practice in the Southern District of New York
23 and Eastern District of New York in 1983.
24 And at some point, and I don't
25 remember the year, I was admitted to the second

Page 12

1 MILLER
2 circuit.
3 Q Have you argued cases in the
4 appellate divisions of the State of New York?
5 A Yes.
6 Q Which appellate divisions?
7 A I certainly argued many cases in the
8 second department. I'm trying to think if I
9 ever argued in the first department, and I don't
10 recall.
11 Q Third or fourth department?
12 A No.
13 Q And have you argued any cases in the
14 New York State Court of Appeals?
15 A No.
16 Q Have you argued any cases in the
17 Second Circuit Court of Appeals?
18 A Yes.
19 Q Approximately how many?
20 A I can remember one.
21 Q Have you argued appeals in any of the
22 circuits -- any of the other circuits in the
23 United States?
24 A No.
25 Q Have you argued any cases in the

Page 13

1 MILLER
2 Supreme Court of the United States?
3 A No.
4 Q Have you appeared in any other
5 judicial tribunals or venues other than the ones
6 we just discussed, for example administrative
7 hearings or before agencies?
8 A Yes.
9 Q Would you tell me about that, please?
10 A Well --
11 MR. ANESH: Note my objection
12 to form, tell me about that.
13 Q Tell me each and every appearance
14 that you've made, the date, the time or place
15 or, in other words, would you tell me about your
16 appearances?
17 MR. ANESH: Objection to the
18 form. You can answer.
19 A I have appeared pro hoc vice in the
20 district -- Federal District Court in the
21 District of New Jersey.
22 I have appeared at the department of
23 labor hearing last year. And I'm -- there may
24 have been others, but I don't recall.
25 Q Now, did you -- withdrawn.

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1 MILLER
2 Did your law firm come to represent
3 Industrial Quick Search, Inc., Michael
4 Meiresonne and Meiresonne & Associates at some
5 time?
6 A Yes.
7 Q Do you remember the date that your
8 law firm came to represent them?
9 A It was in late January or early
10 February of 2003.
11 Q Was that representation pursuant to a
12 written retainer agreement?
13 A Yes.
14 Q Was that written retainer agreement
15 prepared and signed at the beginning of the
16 representation or at some other time?
17 MR. ANESH: Note my objection
18 to the form of the question.
19 A I'm not sure what you mean by the
20 beginning of the representation.
21 Q Was there a lawsuit already in
22 progress over which your law firm took --
23 withdrawn.
24 Was there a lawsuit already in
25 progress into which your law firm substituted?

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1 MILLER
2 MR. ANESH: Note my objection
3 to the form of the question. You can
4 answer.
5 A Yes.
6 Q Do you know what the date of
7 substitution was?
8 A I do not recall.
9 Q Do you understand that to be the
10 beginning of representation of the clients IQS,
11 Meiresonne and M&A, as I will call them in this
12 deposition?
13 MR. ANESH: Objection to the
14 form of the question.
15 A I think it would be fairly close, but
16 I don't think it was an exact match.
17 Q Could you explain what was inexact
18 about the match?
19 MR. ANESH: Objection. You can
20 answer.
21 A I recall we met with Mr. Meiresonne's
22 daughter in late January of '03. A retainer
23 agreement was prepared. I don't remember when
24 we got it back.
25 I do know we started work, even

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1 MILLER
2 though there was a pending lawsuit. I believe
3 we did start work.
4 And exactly when in that course the
5 substitution was prepared and sent I don't
6 recall.
7 MR. ANESH: Are you done with
8 your answer?
9 (Discussion off the record)
10 MR. ANESH: I'm sorry.
11 Q I'm going to show you Exhibit A.
12 Some of these exhibits I didn't make most of the
13 copies of.
14 Would you take a look at that and
15 tell me if you've seen that document before?
16 MR. ANESH: Can you identify
17 for the record what he's looking at?
18 MR. BLUESTONE: Once he looks
19 at it. I asked him has he seen it
20 before, and then I'm going to ask him
21 to identify it.
22 A Without reviewing all 44 or so pages
23 of the document, I believe I have seen it
24 before.
25 Q And what do you recognize it to be?

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1 MILLER
2 A The second amended complaint by
3 Thomas Publishing against Industrial Quick
4 Search, Meiresonne Associates, Michael
5 Meiresonne.
6 MR. ANESH: It's agreed
7 everything you mark you'll provide me
8 with copies of?
9 MR. BLUESTONE: Of course. By
10 the way, have you provided me with
11 copies of the --
12 MR. ANESH: If we haven't we
13 will --
14 MR. BLUESTONE: -- documents
15 from the last deposition?
16 MR. ANESH: Off the record.
17 (Discussion off the record)
18 Q Was Exhibit A, the second amended
19 complaint -- and we'll assume for the purposes
20 of these questions that that's a full and
21 accurate copy. Assume it.
22 Was that the complaint that was then
23 active at the time your law firm came into the
24 case?
25 MR. ANESH: Note my objection

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1 MILLER
2 to form.
3 A I do not recall.
4 Q Do you know of any further amended
5 complaint after the second amended complaint
6 during the time you represented the clients in
7 the lawsuit?
8 MR. ANESH: Same objection.
9 A I can't quite answer that the way it
10 was posed.
11 Q Is there a way that you can answer
12 the question?
13 MR. ANESH: No. Wait.
14 Objection.
15 MR. BLUESTONE: What's the
16 objection?
17 MR. ANESH: You want him to
18 ask -- you want him to pose the
19 question so he can answer it?
20 MR. BLUESTONE: Well --
21 MR. ANESH: That's not
22 appropriate.
23 Q Was there a third amended complaint
24 in the case?
25 A No.

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1 MILLER
2 Q Did your law firm represent --
3 withdrawn.
4 For the purposes of this deposition,
5 if I didn't say this before, your law firm is
6 the Defendant law firm, Miller, Rosado & Algios.
7 The clients are the Plaintiffs, IQS, Meiresonne,
8 Meiresonne & Associates.
9 And the lawsuit is the underlying
10 lawsuit Thomas Publishing Company versus
11 Industrial Quick Search. Is that understood for
12 the purposes of this deposition?
13 A I -- if you're referring to this
14 particular lawsuit, I understand that.
15 Q Yes, I am.
16 A That particular lawsuit in Exhibit A.
17 Q Yes. The one in Southern District of
18 New York.
19 Was there a sole lawsuit in Southern
20 District of New York involving Thomas and
21 Industrial Quick Search that you -- your law
22 firm represented?
23 A No.
24 Q Was there more than one lawsuit?
25 A Yes.

Page 20

1 MILLER
2 Q Tell me the name of the other lawsuit
3 in the southern district.
4 MR. ANESH: If you know.
5 A I don't recall the exact parties,
6 other than Thomas Publishing or whatever name it
7 may have been going by when they started the
8 next lawsuit, was suing Industrial Quick Search.
9 Q Did you represent them in that
10 lawsuit?
11 A Yes.
12 Q Until what time?
13 A Until that lawsuit concluded.
14 Q Did that lawsuit take place after the
15 arbitration in this lawsuit?
16 A No.
17 Q It took place during the period of
18 time while the Thomas versus Industrial Quick
19 Search 02CV3307 was taking place?
20 A Yes.
21 MR. ANESH: Objection to form.
22 Q And did it conclude before the
23 arbitration took place?
24 MR. ANESH: Objection to form.
25 A Yes.

Page 21

1 MILLER
2 Q Did your law firm represent the
3 clients in any other lawsuits, other than the
4 one that's before you right now?
5 A Yes.
6 Q Tell me the names of those and the
7 venue for those.
8 A There was one other lawsuit. It was
9 brought in Nassau County State Court. I can't
10 remember if it was Supreme Court or District
11 Court.
12 It was basically to collect some fees
13 owed to IQS by an advertiser who was located in
14 Nassau County.
15 Q Was it ever consolidated with, joined
16 with or connected up to this particular case?
17 A No.
18 Q Are there any other lawsuits that
19 your firm represented the clients in at all?
20 A No.
21 Q I'm going to show you Exhibit B.
22 MR. ANESH: Before you do that,
23 I still don't think this was
24 identified, so if you can indulge me
25 for two seconds.

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1 MILLER
2 Exhibit A is a document
3 entitled second amended complaint.
4 The case is called Thomas Publishing
5 versus Industrial Quick Search,
6 02CIV3307, and it's dated January 8,
7 2003.
8 Q I'm going to show you Exhibit B.
9 Have you seen this document before?
10 A Again, without reviewing every page,
11 I believe I've seen this document before.
12 Q Is this the answer to the second
13 amended complaint, as far as you know?
14 A As far as I know.
15 Q Now, did the second amended complaint
16 and the answer to the second amended complaint,
17 along with the reply to the counterclaims raised
18 in the second amended answer, did that comprise
19 the pleadings of the action when you handled it
20 for the client?
21 MR. ANESH: Objection. Note my
22 objection to the question.
23 THE WITNESS: Can I just have
24 it read back? I'm not sure I
25 understood that question.

Page 23

1 MILLER
2 MR. ANESH: It didn't make any
3 sense.
4 MR. BLUESTONE: Yes, it did.
5 (The requested portion was read
6 back)
7 MR. ANESH: Objection to the
8 form, when you handled it. These
9 were obviously served before, so
10 that's why I object to the form.
11 MR. BLUESTONE: Thank you.
12 Q You can answer the question. I'll
13 risk the form.
14 MR. ANESH: You can risk it.
15 Do you understand the question?
16 THE WITNESS: I'm not sure I
17 do, to be honest. I'm not sure I
18 understand the question.
19 MR. ANESH: Don't guess.
20 Q I think I asked you before whether
21 the second amended complaint was the complaint
22 that was utilized and in use at the time while
23 you were representing the client.
24 I think your answer was yes; is that
25 correct?

Page 24

1 MILLER
2 A Correct.
3 Q Was this second -- was this second
4 amended -- I'm sorry. The answer to the second
5 amended complaint the answer --
6 MR. ANESH: Exhibit B?
7 MR. BLUESTONE: Exhibit B.
8 Yes.
9 MR. ANESH: Okay. I just want
10 it to be clear for the record.
11 Q Was this answer to the second amended
12 complaint the answer that was in place and
13 utilized during the period of time you
14 represented the client?
15 MR. ANESH: Objection to form.
16 A I believe so.
17 Q Thank you. I'm going to show you
18 Exhibit C.
19 (Exhibit C, retainer agreement,
20 was marked for identification, as of
21 this date.)
22 Q And ask you whether you recognize the
23 document.
24 A I'm assuming what you've handed me is
25 a copy of what's been marked as Exhibit C.

Page 25

1 MILLER
2 Q It is. There you go.
3 MR. ANESH: Don't assume. Make
4 sure you have the exhibit numbers.
5 Q I'm going to take that back, because
6 that one is marked up.
7 This is a four-page document. Have
8 you seen it before?
9 A I can certainly say I've seen the
10 last three pages, but I don't think it goes with
11 the first page.
12 Q Okay. You'll note that the first
13 page says four pages are being transmitted; is
14 that correct?
15 A No.
16 MR. ANESH: Note my objection.
17 The content of the document speaks
18 for itself, and we'll stipulate that
19 it says four pages, but the witness
20 says he never saw Page 1 with the
21 other pages.
22 MR. BLUESTONE: Okay. I don't
23 need you to repeat what he said. He
24 said it for the record.
25 MR. ANESH: There's no reason

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1 MILLER
2 why you need to --
3 MR. BLUESTONE: Yes, there is,
4 Mark. There is.
5 Q Is it possible, sir, that in the
6 damages phase of the lawsuit you transmitted a
7 copy of the retainer agreement to opposing
8 counsel?
9 A Well --
10 MR. ANESH: Note my objection
11 to possible.
12 A I mean, anything is possible, but the
13 date on the first page of Exhibit C does not
14 jive with the -- when you say damages here, I
15 assume you're referring to the arbitration that
16 was years later. So I don't -- I don't see how
17 this would relate to the damages hearing.
18 Q Did you ever transmit a copy of the
19 retainer agreement between you -- your firm and
20 the client to opposing counsel?
21 A Not that I recall.
22 Q Whether or not the top page relates
23 to the following three pages, do you recognize
24 the following three pages, and if you do, what
25 it is?

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1 MILLER
2 A I do recognize it. It appears to be
3 the retainer agreement that was sent to Mr.
4 Meiresonne.
5 Q Okay. And do you recognize the
6 signature on Page 3 of the document?
7 A Yes.
8 Q Whose signature is that?
9 A My partner, Christopher Rosado.
10 Q Did you participate in the
11 discussions or negotiations which preceded the
12 retainer agreement between your firm and the
13 clients?
14 MR. ANESH: Objection to the
15 form.
16 A I participated in discussions
17 regarding the matter. I don't recall whether
18 I -- whether I participated in discussions about
19 the terms of the representation in terms of --
20 that's set forth in the retainer agreement.
21 Q Now, is -- does your firm --
22 withdrawn.
23 Back in 2003, did your firm have a
24 form or a regular or a usual retainer agreement
25 between the firm and new clients?

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1 MILLER
2 MR. ANESH: Objection to form.
3 A I don't believe so.
4 Q Did your firm at that time, in 2003,
5 represent clients on contingent-fee bases?
6 A I don't recall.
7 Q Did your firm back in 2003 represent
8 clients on hourly-rate bases?
9 A Yes.
10 Q Now, if you would take a look at the
11 first page of Exhibit C. That is the first page
12 of the letter.
13 MR. ANESH: Which is Page 2 of
14 the exhibit.
15 MR. BLUESTONE: Which is Page 2
16 of the exhibit, yes.
17 Q Do you see on the seventh line the
18 words "I will have primary responsibility for
19 your representation"?
20 A I see the words.
21 Q Now, is that a term that is used on
22 any sort of -- was used on any sort of regular
23 basis in retainer agreements between your firm
24 and clients?
25 MR. ANESH: Note my objection

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1 MILLER
2 to the form. You can answer.
3 A I do not know.
4 Q As a partner in the firm, what do you
5 understand that line to mean, when the document
6 is signed by the partner, Mr. Rosado?
7 A I don't understand the question.
8 MR. ANESH: Note my objection
9 to the form of the question.
10 Q The "I" in this sentence refers to
11 Mr. Rosado, does it not?
12 MR. ANESH: Look. The
13 documents --
14 A You're asking me to interpret the
15 document?
16 Q Interpret the form written of your
17 partnership's letterhead. Yes.
18 MR. ANESH: You're asking him
19 to interpret what was in someone
20 else's mind when he wrote it.
21 MR. BLUESTONE: No. I'm asking
22 him to interpret a document on his
23 partnership's letterhead, in which
24 his partnership became contractually
25 obliged to do something, and I'm

Page 30

1 MILLER
2 asking him what that term means.
3 MR. ANESH: Again, note my
4 objection to this entire line of
5 questioning.
6 In my opinion you're asking him
7 to understand what was in the
8 author's mind, and he wasn't the
9 author.
10 MR. BLUESTONE: I understand.
11 And thank you for the objection.
12 Q You can answer.
13 A We do not have this -- any standard
14 firm agreement in language. Each partner, when
15 he -- if it's his matter will have his language,
16 whatever it shall be.
17 And I did not draft this. I do not
18 know what Mr. Rosado meant by the term primary
19 responsibility. It's not a firm term.
20 Q You just used the word his matter.
21 What did you mean by that in that sentence?
22 MR. ANESH: Note my objection
23 to the form of the question.
24 A In the sense that this case came to
25 the office through Chris. So he prepared the

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1 MILLER
2 retainer agreement and would be responsible for
3 billing on it.
4 Q Was there any agreement in your firm
5 at the time with regard to the division of fees
6 or the division of profits from a particular
7 case when it was brought in by one of the
8 partners, rather than all three of the partners
9 or some other combination?
10 MR. ANESH: Note my objection
11 to the form of the question.
12 A Yes.
13 Q Could you explain that to me, please?
14 A I believe --
15 MR. ANESH: Talking about in
16 '03?
17 MR. BLUESTONE: '03. Of
18 course.
19 A Yes. In '03 the partner who brought
20 the matter in would receive or be credited with
21 25 percent of the legal fees in the matter, net
22 of disbursements on the matter, and the rest
23 went to firm income.
24 Q Then there was some arrangement
25 between the partners with regard to the division

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1 MILLER
2 of the firm income?
3 A Yes.
4 Q And did the division of monies that
5 came in on fees with regard to this case follow
6 that procedure?
7 A Yes.
8 Q Now, do you know who the law firm of
9 Price, Heneveld, Cooper, DeWitt & Linton are?
10 A Only through this matter. I don't
11 know them outside of this matter.
12 Q By this matter you mean the lawsuit.
13 You don't mean this letterhead, this letter
14 right here?
15 A Correct. The Thomas Publishing
16 lawsuit.
17 Q Did you have any correspondence or
18 communications with that law firm concerning the
19 intellectual property questions in the Thomas
20 lawsuit?
21 MR. ANESH: Did he personally?
22 MR. BLUESTONE: Personally.
23 A I believe I did.
24 Q And can you tell me in general what
25 work or what area the Price Heneveld law firm

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1 MILLER
2 was responsible for or performed in the Thomas
3 lawsuit?
4 A I believe they did some of the
5 initial research on the copyright issues, and we
6 took off from that -- from their starting point.
7 Q And did they ever perform any
8 analysis of damages on behalf of either you or
9 the client?
10 A I don't know.
11 Q Did the client pay a retainer fee to
12 your firm pursuant to the terms of this retainer
13 agreement?
14 A Yes.
15 Q And did you and your law firm bill
16 the clients for work as it proceeded?
17 A I believe so.
18 Q Did the clients pay the bills as they
19 were presented to them?
20 A I don't know.
21 Q Does your law firm have any claims
22 for fees unpaid?
23 A No.
24 (Exhibit D, document, was
25 marked for identification, as of this

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1 MILLER
2 date.)
3 Q Let's keep these in one place. I'm
4 going to show you Exhibit D.
5 This is a series of papers that may
6 or may not be related, so I'm going to go
7 through each page and ask you questions.
8 Have you seen the top page, which is
9 marked Miller 00868?
10 MR. ANESH: If I could just --
11 so the record is clear, the total
12 exhibit the witness is being handed
13 has approximately -I don't know- 10,
14 12 pages on it, the first page of
15 which is identified as a letter from
16 Neil Miller to Mark Fowler, and there
17 are a number of pages following that.
18 I don't know if they're related to
19 the first page or not.
20 MR. BLUESTONE: I think I said
21 that. I'm not sure if they're
22 related or not.
23 Q Have you seen the first page?
24 MR. ANESH: For the record,
25 Miller 00868.

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1 MILLER
2 MR. BLUESTONE: Mark -- off the
3 record.
4 (Discussion off the record)
5 A I believe I've seen this though with
6 our letterhead on it.
7 Q Okay. So are there -- was there a
8 procedure back in 2003 whereby copies of letters
9 were kept in your firm's files?
10 A Yes.
11 Q And can you explain to me how a
12 letter would go from a thought process to a
13 finished product at your office back in 2003?
14 A I can't answer it that broadly.
15 Q Did you dictate letters?
16 A No.
17 Q Tell me how the -- the material got
18 put down on a piece of paper.
19 Was it dictated to a secretary, was
20 it typed on a computer or something else?
21 MR. ANESH: Objection to form.
22 A I can only answer as to what I do.
23 MR. ANESH: As to what you did
24 in '03.
25 THE WITNESS: What I did in

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1 MILLER
2 '03. Correct.
3 Q And 868 is a letter that you wrote;
4 is that correct?
5 A Correct.
6 Q So tell me how you think or remember
7 that this particular document was created.
8 A I generally type my own letters on to
9 a computer.
10 Q And then did you -- was it your
11 practice to print a page?
12 A Yes.
13 Q And was that printed page with a
14 letterhead or not?
15 A With a letterhead.
16 Q Now, this particular document does
17 not have a letterhead.
18 A Correct.
19 Q Do you know how this particular
20 document was created?
21 A No. I don't know how this particular
22 document was created.
23 Q Were -- was there -- withdrawn.
24 Letterheads can be printed these days
25 from computers, but in the past they were not.

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1 MILLER
2 There were documents made and then put on to a
3 pre-printed letterhead.
4 MR. ANESH: Is that a question?
5 MR. BLUESTONE: Yes.
6 Q Was that the way it was done in your
7 office back in 2003?
8 MR. ANESH: Objection to form.
9 THE WITNESS: Can I just hear
10 the question back?
11 (The requested portion was read
12 back)
13 A Yes. They were generally printed out
14 on pre-printed letterhead.
15 Q And so there was a template of some
16 sort that was used in the computer to allow
17 something like 00868 to be placed on to a
18 letterhead that was already pre-printed?
19 MR. ANESH: Note my objection.
20 A I don't know if I understand you
21 correctly.
22 Q I'd like you to look at the first
23 four pages of the document in front of you.
24 The second page is a letter -- is a
25 letter on the IQS letterhead dated April 28,

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1 MILLER
2 2003. It's a four-page long document presented
3 to you. Have you seen this before?
4 A Yes.
5 Q Now, between January 28, 2003 and
6 April 28, 2003, what actions if any did your law
7 firm take on behalf of the client with regard to
8 this case?
9 MR. ANESH: Can I have the
10 question again? I missed the date.
11 MR. BLUESTONE: The dates
12 were -- off the record.
13 (Discussion off the record)
14 A At the very least we would have been
15 familiarizing ourselves with the files that Mr.
16 Meiresonne turned over to us.
17 I believe we prepared a pleading. I
18 maybe have seen it here. There was a reply to
19 the third-party defense counterclaim, and I'm
20 pretty sure we prepared that pleading.
21 We were certainly involved heavily at
22 that point in document production, reviewing
23 document requests made by Thomas, and working
24 with Mr. Meiresonne, I think fairly closely with
25 him, to try to decide what we were responding to

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1 MILLER
2 and what we would be objecting to.
3 And I believe we were also starting
4 to formulate our own document requests and
5 interrogatories.
6 Q Were any depositions held during that
7 period of time?
8 A No.
9 Q Were any court hearings held during
10 that period of time?
11 MR. ANESH: Note my objection
12 to the form. I don't know if you
13 mean a conference.
14 Q Of any kind at all. Did any court
15 appearances take place during that period of
16 time?
17 A Certainly not in person at the court.
18 We were probably working on -- I know we were
19 working on discovery schedules. Whether that
20 constituted an appearance I can't tell you.
21 Q Actually by that I meant a personal
22 appearance in court.
23 A No.
24 Q Now, Pages 2, 3, 4 and 5 of this
25 document is a letter from Mr. Meiresonne to you?

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1 MILLER
2 MR. ANESH: Note my objection
3 to the form. The first page says
4 fax, but I don't know what you mean
5 by letter.
6 MR. BLUESTONE: Okay.
7 Q Was this a communication to you?
8 A Yes.
9 Q And at the point between January 28th
10 and April 28th, were you the person at your firm
11 who was handling the case primarily?
12 A I can't answer in the context of that
13 entire time period.
14 Q As of April 28, 2003, were you the
15 person primarily handling the case for your law
16 firm?
17 A The work that was done in April on
18 document production I was handling primarily.
19 Q Now, tell me the practice that you
20 had, if any, with regard to making notes about
21 communications with clients back in 2003.
22 A I had no general practice as to
23 making notes.
24 Q Did you make any notes at all about
25 any conversations or communications you had with

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1 MILLER
2 the client between January 28th and April 28,
3 2003 in this case?
4 MR. ANESH: Objection. You
5 mean other than the letters and
6 communications?
7 MR. BLUESTONE: No. Not
8 letters. Notes.
9 MR. ANESH: You mean
10 handwritten notes for the file?
11 MR. BLUESTONE: Yes. Not to
12 the file, but handwritten notes.
13 They could be of any variety.
14 MR. ANESH: Handwritten notes.
15 Can you do me -- I'm sorry. Can you
16 rephrase the question saying --
17 MR. BLUESTONE: I'll be happy
18 to.
19 Q Did you make any handwritten notes
20 about anything concerning this particular case
21 between January 28, 2003 and April 28, 2003?
22 A I don't recall.
23 Q What was your practice with regard to
24 retention or filing of such notes when you did
25 make them back in 2003?

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1 MILLER
2 MR. ANESH: Note my objection
3 to the form of the question.
4 A I had no general practice.
5 Q Did you sometimes put them in the
6 file?
7 MR. ANESH: Objection to the
8 form of the question. He said he had
9 no practice of doing them.
10 MR. BLUESTONE: Right. General
11 practice.
12 MR. ANESH: These questions all
13 assume what did you do with them when
14 you did them.
15 MR. BLUESTONE: Mark, the --
16 when he says he didn't have a
17 practice, that's perfectly fine.
18 Now I asked did he sometimes,
19 which is less than a practice, put
20 them in the file. That's a perfectly
21 proper question. You have your
22 objection.
23 MR. ANESH: I have to object to
24 the form of the question.
25 MR. BLUESTONE: Perfectly

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1 MILLER
2 proper question.
3 Q You go ahead. Answer it over his
4 objection.
5 MR. ANESH: I don't agree.
6 Over my objection, you can answer.
7 A Unfortunately I've now lost what the
8 question was.
9 MR. BLUESTONE: Could you read
10 it back, please?
11 (The requested portion was read
12 back)
13 A I had no practice one way or the
14 other about retaining notes in the file at the
15 times when I made them.
16 Q Did you sometimes put them in the
17 file?
18 MR. ANESH: Again, same
19 objection.
20 MR. BLUESTONE: This is less
21 than a practice.
22 MR. ANESH: Again, if he
23 doesn't know they exist, how can he
24 sometimes put them in the file?
25 Q Did you ever make notes?

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1 MILLER
2 A Are you talking about this case?
3 Q In any case at all in 2003.
4 A Yes.
5 Q Did you sometimes put those notes in
6 a file for that case?
7 MR. ANESH: Same objection.
8 A Yes.
9 Q Okay. Do you know whether you made
10 any notes with regard to this case?
11 A I don't recall.
12 Q Okay. Now, would you tell me about
13 the law firm filing system that Miller, Rosado &
14 Algois kept back in 2003?
15 MR. ANESH: Again, filing
16 system for what?
17 MR. BLUESTONE: For all legal
18 files in his office.
19 A Basically the billing partner for the
20 most part would maintain the file, the physical
21 file. Where it was maintained depended.
22 Q Assume that it -- that the file is
23 substantial, say more than five boxes of paper.
24 Is there a place where it would
25 normally be kept if it was large or substantial?

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1 MILLER
2 A There was no one particular spot for
3 large files.
4 Q Did you keep all the files in your
5 office space at 200 Old Country Road at that
6 time?
7 A Yes.
8 Q Was there any off-site storage
9 facilities at the time?
10 A I don't believe so.
11 Q Now, tell me about what computer or
12 digital storage your law firm maintained back in
13 2003 for client files, client communications or
14 digital files.
15 A I can't answer generally for the
16 firm. Certainly in terms of my own, on my
17 computer would be e-mails in my Internet
18 Explorer. E-mails s would be there for a case.
19 And I certainly had on my own in my
20 Word Perfect documents I would maintain on my
21 computer the documents I generated.
22 There was no digital storage per se.
23 There was some kind of back-up system that was
24 put in place, but I don't remember the timing.
25 Q In 2003, did your law firm maintain a

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1 MILLER
2 server for its computer system?
3 A Yes.
4 Q Did that server connect your computer
5 to other computers in the law firm?
6 A Yes.
7 Q Explain to me the computer system in
8 your law firm in 2003 with regard to client
9 work.
10 And I make that a generalized
11 question, because I don't know whether or not
12 that encompasses billing for clients, files for
13 clients, created documents for clients, scanned
14 documents if they existed or other things.
15 So please tell me about the computer
16 system in your office in 2003.
17 MR. ANESH: Note my objection
18 to the form of the question.
19 A I don't know if I can answer for the
20 entire office, but I can only tell you on my
21 computer I would have in my Word Perfect -- I
22 open up Word Perfect, and I would create a
23 folder for a particular matter or for a
24 particular client.
25 And I would -- when I prepared a

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1 MILLER
2 document on the computer, typically I would save
3 it within that folder with some title, some
4 particular document.
5 Q Is it also saved on a server or
6 simply on your work station?
7 A I -- as I said, I -- there may have
8 been a back-up system in 2003. I'm not sure how
9 long it would have been maintained though on
10 that back-up system.
11 Q Back-up system is different from a
12 server. Are you familiar with the difference?
13 A Probably not totally.
14 Q Were the files on your computer
15 available for use by other attorneys in the law
16 firm, utilizing other work stations or PCs or
17 laptops?
18 MR. ANESH: Objection to the
19 form.
20 A If it was saved on the server,
21 meaning there were certain files you could just
22 put on local, which would not be connected into
23 other stations, but for client matters they were
24 put on servers.
25 Q So for the term -- for the purposes

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1 MILLER
2 of our deposition today, we're going to call the
3 computer in your particular office a work
4 station.
5 And the server, which you've already
6 described as a server, would be a centralized
7 computer unit that was connected to different
8 work stations.
9 Was that the situation in your law
10 firm at the time, in 2003?
11 MR. ANESH: Objection to the
12 form.
13 A Yes.
14 Q Now, when you created a document on
15 Word Perfect, would you save that document to
16 the server?
17 A If it was a client matter, as opposed
18 to a personal thing, yes.
19 Q I'm not interested in personal things
20 that you might have had.
21 I'm interested in client matters, and
22 specifically client matters referring to this
23 particular client.
24 Was -- for example, looking at Page 1
25 of Exhibit C, was that a document that was

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1 MILLER
2 created at your law firm?
3 A At my law firm, yes.
4 Q Was that a document that was created
5 by you?
6 A I don't know.
7 Q If you had created this document --
8 withdrawn. Okay.
9 Turning to Exhibit D. Miller 68 is a
10 document that you created?
11 A Yes.
12 Q Was this document saved to the
13 server?
14 A It should be.
15 Q Was it served in Word Perfect format?
16 A It should be.
17 Q Is it still residing on your server
18 today?
19 A I don't know.
20 Q What was the document retention
21 policy that you had in 2003 for digital
22 documents placed upon your server?
23 A On the whole they stayed there,
24 unless I wrote over it. If I wrote another
25 letter to Mr. Fowler, instead of saving it as a

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1 MILLER
2 new document, sort of wrote over it, then it
3 might not be there.
4 Otherwise the general policy was
5 to -- that I -- at least for me, I would not
6 delete documents.
7 Q Did your law firm have a policy of
8 deleting documents on the server at the end of
9 cases?
10 A I can only tell you -- I can't tell
11 you about the firm as a whole. I generally did
12 not delete documents that I created in Word
13 Perfect, and kept them on the server. I
14 generally did not delete them.
15 Q Now, did your law firm in 2003 have
16 an individual whose job it was to maintain or
17 work on the computer system?
18 A I'm not sure I understood the
19 question.
20 (The requested portion was read
21 back)
22 MR. ANESH: Why don't you ask
23 him if he had an IT person.
24 MR. BLUESTONE: All right.
25 I'll adopt that question.

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1 MILLER
2 Q Did you have an IT person in your
3 office back in 2003?
4 A I believe we did.
5 Q Was he an employee of your law firm?
6 A No.
7 Q Was he an outside vendor of some
8 sort?
9 A He would have been.
10 Q What was his name back then?
11 A I don't recall.
12 Q Are there records at your law firm
13 that could answer that question?
14 A I don't know.
15 Q Who is it that maintains --
16 withdrawn.
17 Who is it that has access to or
18 maintains the records of your law office that
19 would contain whatever billing statements,
20 employment statements, vendor invoices or other
21 things that would show who was performing IT
22 work on your computer systems back in 2003?
23 MR. ANESH: Objection to the
24 form. You can answer.
25 A I believe the bills were generally --

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1 MILLER
2 or kept by Regina Allen. And -- I mean, she
3 wouldn't -- she had no check-signing authority,
4 but she generally would receive bills and at
5 least prepare a check to pay them.
6 Q Then she would maintain the bills and
7 the files concerning the bills thereafter?
8 A Yes.
9 Q Is she still an employee of your law
10 firm?
11 A Yes.
12 Q Were those bills and accompanying
13 documents kept on a computer system?
14 A Certainly the payments of a bill
15 should be on the computer system. I don't know
16 if the bill itself is on the computer system.
17 Q Did your law firm engage in scanning
18 of documents and saving them on digital files at
19 any time since 2003?
20 A I don't understand whether you're
21 asking me whether he ever did it or whether it
22 was a practice or --
23 Q Did you ever do it. First general
24 question, and then I was going to ask a more
25 particularized question, depending on your

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1 MILLER
2 answer.
3 THE WITNESS: Let me hear the
4 question back.
5 (The requested portion was read
6 back)
7 A I'm not sure what you mean by saving
8 them as digital files. We certainly scanned
9 documents in.
10 Q When you scan them in, are they then
11 saved on your computer?
12 A Not necessarily on my individual
13 computer.
14 Q On the server?
15 A They should be. They should be. How
16 long it stays on the server I don't know.
17 Q I'm trying to get to a general
18 practice first, and then we'll get to the
19 particulars and what happens thereafter.
20 Does your firm today own any
21 scanners?
22 MR. ANESH: Objection. What's
23 that have to do with anything?
24 MR. BLUESTONE: I'm going to
25 work backwards.

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1 MILLER
2 A Yes.
3 Q Do you know when they were first
4 obtained?
5 A I don't recall.
6 Q Did you have any scanners in 2003?
7 A I don't know. I don't recall.
8 Q Were any documents in the Thomas
9 versus Industrial Quick Search case scanned?
10 A I don't recall.
11 Q What was the practice at your law
12 firm in 2003 with regard to the handling of, for
13 example, a document demand sent by Plaintiff's
14 counsel in the Thomas versus IQS case in 2003?
15 MR. ANESH: Custom and practice
16 with respect to what?
17 MR. BLUESTONE: Handling of the
18 documents.
19 A I don't know whether you're asking me
20 about a general custom and practice or this
21 particular case.
22 Q In this particular case.
23 MR. ANESH: I have to object to
24 the form of the question, handling of
25 the documents. Does that mean who

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1 MILLER
2 opens the mail?
3 MR. BLUESTONE: I'd like to
4 start from the very beginning.
5 MR. ANESH: I don't know what
6 it means.
7 MR. BLUESTONE: Well, that's
8 okay. I think the witness might.
9 MR. ANESH: I don't think so.
10 Q Do you understand the question, sir?
11 A Let's have it read back. I'm not
12 sure that I understand it. Let's have it read
13 back.
14 (The requested portion was read
15 back)
16 MR. ANESH: Does that mean who
17 opened the mail? Does that mean
18 whatever was filed --
19 MR. BLUESTONE: Yes.
20 Q The very beginning. Who opened the
21 mail? Then what happened to the document
22 thereafter?
23 A I still don't know -- if you're
24 asking what happened on this Thomas case, I
25 don't recall who opened the mail, who first saw

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1 MILLER
2 it.
3 Q Would a -- Page 2, 3, 4 and 5 of
4 Exhibit D is a communication from Mike
5 Meiresonne to you; is that correct?
6 A Yes.
7 Q Did it concern a document demand or a
8 discovery request?
9 A Yes.
10 Q Do you know which particular
11 discovery request it references?
12 A It's referring to Thomas's or the
13 Plaintiffs in the underlying lawsuit, document
14 requests to the Defendants.
15 Q And Thomas's document request to the
16 Defendants took the form of a paper document
17 request that was transmitted to your law office;
18 is that correct?
19 A Yes.
20 Q Now, when that paper document request
21 came to your law office, did it come by mail?
22 MR. ANESH: If you know.
23 A I don't recall whether it was mail or
24 overnight mail.
25 Q Let's assume it was mail or overnight

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1 MILLER
2 mail.
3 Would someone in your office open
4 that envelope?
5 A Typically yes, but whether that
6 happened in this case I don't know.
7 Q And once the envelope was opened,
8 what would typically happen to the document, the
9 paper document request sent by Plaintiff to your
10 law office?
11 A Without referring to this specific
12 case, typically one of the secretaries or
13 assistants would open it, determine whose case
14 it was, and put it in the mailbox of that
15 particular attorney.
16 Q And at this time, between January and
17 April of '03, would it have gone to you?
18 A I can't answer it for that broad a
19 time frame.
20 Q Did this discovery request eventually
21 come to you for action?
22 A Yes.
23 Q And did you eventually take action
24 with regard to the discovery request?
25 A Yes. I was clearly the one who dealt

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1 MILLER
2 with Mike in getting the documents, going over
3 each particular request.
4 Q Now, this document request, which was
5 a series of pages on paper, was given to you?
6 A Yes.
7 MR. ANESH: Note my objection
8 to the form.
9 Q Would a copy of that document
10 normally have been scanned to the server?
11 A No.
12 Q Would photocopies of that document
13 have been made and filed within your office?
14 A Photocopy -- when you say of that
15 document, you mean of the document request?
16 Q Yes, sir.
17 A I can't tell that you that it was or
18 wasn't.
19 Q Would you normally have worked with
20 the single original of a document request, or
21 would you have put that some place and worked
22 with a photocopy for any reason?
23 A I've done it both ways.
24 Q Do you have any recollection as to
25 what happened with this particular document

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1 MILLER
2 request?
3 A No.
4 Q When your office received this
5 particular four-page document dated April 28th,
6 which is Pages 2, 3, 4, 5 of Exhibit D, how was
7 that four-page document handled?
8 It appears to be a fax. If the fax
9 came in, how would that normally be handled?
10 A First of all, I note it says nine
11 pages on the first page.
12 Q I understand. Yes.
13 A But if a fax was addressed to me, as
14 this one was, it would have been put into my
15 box, and I would have dealt with it.
16 Q Now, if faxes came into your office
17 in 2003, were they received as a printed-out
18 paper or a digital file that was then kept on
19 the server?
20 A Printed-out paper.
21 Q Was anything typically done with the
22 printed-out paper in terms of scanning?
23 A No.
24 Q Would that printed-out paper
25 eventually be filed with the case file?

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1 MILLER
2 A Yes.
3 Q Describe what the IQS case file
4 looked like as of April 28, 2003?
5 I'm interested in, were they kept in
6 Red-Wells? Were they kept in boxes? Were they
7 kept in filing cabinets? How were they kept?
8 MR. ANESH: Note my objection
9 to the form.
10 A For the most part Red-Wells. When we
11 were retained, we certainly received a lot of
12 documents from Mr. Meiresonne at that point, and
13 I don't remember if those were all in Red-Wells
14 or not.
15 But we maintained the -- at least
16 what we were generating, generally in Red-Wells,
17 and we would maintain it in a spare office we
18 had -- the IQS files maintained in a spare
19 office in a filing cabinet across the way from
20 Mr. Rosado's individual office.
21 Q Do you remember how much material you
22 received from Mr. Meiresonne when you started
23 representing them?
24 MR. ANESH: Note my objection
25 to the form.

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1 MILLER
2 A I can't put a number of pages on it.
3 He gave us copies of pleadings and motion papers
4 that occurred to date, both in the action that
5 was Exhibit A -- in Exhibit A and B.
6 I believe there was a Michigan
7 action, and that had been commenced in Michigan
8 by local counsel there, and he gave us at least
9 some papers regarding that.
10 And he also give us a lot of what I
11 call client documents which he thought might
12 relate to allegations in the lawsuit, and there
13 was a good number of them. I can't tell you
14 numbers of pages.
15 Q Now, did you ever have any
16 conversations with David Kohane of Cole Schotz
17 at or about the time your law firm took over
18 representation of the client?
19 A I remember having discussion with
20 someone at the firm. I can't recall whether it
21 was Mr. Kohane or not.
22 Q They were predecessor counsel to you;
23 is that correct?
24 A Yes.
25 Q Did you receive documents from them?

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1 MILLER
2 A I don't recall.
3 Q Did they send you their file
4 eventually?
5 A I don't recall that.
6 Q Do you know whether or not the case
7 had proceeded past the submission of the answer
8 to the second amended complaint at the time you
9 took over the case?
10 MR. ANESH: Note my objection
11 to the form.
12 Q Had there been any motions made?
13 MR. ANESH: Objection. Note my
14 objection to the form. When?
15 MR. BLUESTONE: When he took
16 over the case.
17 A There were no pending motions. There
18 was motion practice prior to us being retained.
19 Q Had it already been resolved one way
20 or another?
21 MR. ANESH: Note my objection
22 to the form of the question.
23 A As far as I know, yes.
24 Q Did you have any conversations -not
25 communications, conversation- with Mr.

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1 MILLER
2 Meiresonne between January 28, 2003 and
3 April 28, 2003 regarding document retention or
4 document handling for documents then in the
5 client's possession which were relevant to the
6 proceedings?
7 MR. ANESH: Objection to the
8 form of the question.
9 A I if understand your question
10 correctly, there were certainly many, many
11 conversations regarding what documents he had
12 that were responsive to the document request.
13 Where I had particular questions we
14 would certainly discuss them, besides the fact
15 that some of them may be included in written
16 communications.
17 So if that's what you're asking, then
18 yes. I had numerous conversations with Mr.
19 Meiresonne about how to handle document requests
20 and how did we respond to them.
21 Q That's not what I was asking, because
22 I didn't use the word request. I'm talking
23 about document retention.
24 MR. ANESH: Can I just make a
25 suggestion?

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1 MILLER
2 MR. BLUESTONE: Sure.
3 MR. ANESH: You were
4 questioning him about his document
5 retention for a good five or ten or
6 15 minutes.
7 Now I think -- I don't want to
8 presuppose, but I think you're
9 questioning him about conversations
10 he had about Mr. Meiresonne's
11 document retention.
12 MR. BLUESTONE: That's correct.
13 Yes.
14 MR. ANESH: So you're jumping
15 back and forth. So if you can make
16 that a little clearer in your
17 question, I think that would go a
18 long way.
19 Q I don't mean -- I'm not attempting to
20 surprise or trick question you in any way.
21 MR. ANESH: No, no. I'm not
22 accusing you of doing that. It's
23 just jumping back and forth.
24 MR. BLUESTONE: I was telling
25 your client as a prelude to my next

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1 MILLER
2 question.
3 Q I'm interested in discussions that
4 you had, if any, with Mr. Meiresonne about IQS's
5 document retention or his document retention of
6 documents then in their possession which might
7 essentially become subject to discovery requests
8 or production.
9 MR. ANESH: Okay. So first of
10 all, I need to know what period of
11 time you're talking about.
12 MR. BLUESTONE: Again, between
13 January 28 of '03 and April 28 of
14 '03.
15 MR. ANESH: You want to know if
16 he had any document -- any
17 discussions about -- with Mr.
18 Meiresonne about Mr. Meiresonne's own
19 document retention.
20 MR. BLUESTONE: Correct.
21 A Only to the extent that I told Mr.
22 Meiresonne on many occasions that we've got to
23 produce all documents that were responsive to
24 the request.
25 Is that -- I'm not sure if that's

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1 MILLER
2 what you mean by the word retention, but
3 certainly I said we've got to produce all the
4 documents that are responsive to the request.
5 Q For the purposes of my question,
6 there's a difference between production of
7 documents pursuant to a request and the
8 retention of documents.
9 By that I mean -- by retention I mean
10 the holding on to documents.
11 MR. ANESH: And/or discarding
12 of that.
13 MR. BLUESTONE: Versus
14 discarding of documents.
15 MR. ANESH: Do you want to --
16 MR. BLUESTONE: Please. Don't
17 break it. Don't break it.
18 MR. ANESH: I'm sorry.
19 A With that clarification, I do not
20 recall any conversation along those lines.
21 Q Were there any conversations in which
22 you discussed what documents or attempted to
23 catalogue what documents existed in the hands of
24 IQS between January 28, 2003 and April 28, 2003?
25 MR. ANESH: Objection to the

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1 MILLER
2 form.
3 A Only to the extent that they were
4 documents that were responsive to any document
5 request that was made by Thomas.
6 Q Okay. Now, would you agree with me
7 that Thomas didn't ask for every single piece of
8 paper that IQS had, rather they made specific
9 requests? We agree with that?
10 MR. ANESH: Note my objection.
11 A Their request was so broad, I don't
12 know how much else he would have had that was --
13 not have been responsive. So it's very hard to
14 sort of answer it in that context.
15 Q Did you ever have any discussion with
16 Mr. Meiresonne in which you discussed the entire
17 quantum or attempted to catalogue what documents
18 existed in total during -- between January 28th
19 and April 28, 2003?
20 A I don't know what you mean by in
21 total. In total as responsive to the -- I
22 certainly never catalogued.
23 But in total as to the documents --
24 were they responsive to the document requests,
25 the answer is yes. I had many discussions.

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1 MILLER
2 Q Did you ever have any discussions
3 during that time period, January 28, 2003 to
4 April 28, 2003, with Mr. Meiresonne over whether
5 any documents had been discarded by him?
6 A No.
7 Q Did you ever have any discussions
8 during that time period, January 28, 2003 to
9 April 28, 2003, about a cease and desist letter
10 that had been sent by Thomas prior to your law
11 firm becoming involved in the case?
12 THE WITNESS: Can you just read
13 back the question, please?
14 (The requested portion was read
15 back)
16 A I certainly knew about a cease and
17 desist letter which was issued in 2001, long
18 before we were retained.
19 I don't recall whether -- certainly
20 knew about it -- certainly by April 28th I knew
21 about it. I don't recall whether I discussed it
22 with Mr. Meiresonne per se.
23 Q Now, what we term the cease and
24 desist letter is a November 2001 letter from
25 Thomas to IQS; is that correct?

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1 MILLER
2 A I'll take your word for it on the
3 date. It sounds like about the right date.
4 Q It does sound like it's the right
5 date to you?
6 A Yes.
7 Q We'll assume for purposes of our
8 deposition that's the correct date. Now, do you
9 remember -- withdrawn.
10 What did you understand back in 2003
11 the subject matter of that letter to have been?
12 A At what point in 2003?
13 Q Up until -- let's say from
14 January 28, 2003 through April 28, 2003, what
15 did you understand the subject matter of that
16 letter to have been?
17 A I understood that there were -- they
18 were saying that he was copying Thomas's
19 descriptions of companies on Thomas's Web sites,
20 and they were demanding that he stop doing so.
21 Q Now, did you have any discussions
22 with Mr. Meiresonne about the legal consequences
23 of such a letter?
24 MR. ANESH: What -- talk period
25 of time.

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1 MILLER
2 MR. BLUESTONE: You're
3 absolutely right.
4 Q Between January 28th and April 28,
5 2003.
6 A I don't recall whether we did or
7 didn't.
8 Q Now, would it have been your practice
9 at that time to take notes of a conversation you
10 had with him about such a subject, if it had
11 taken place?
12 MR. ANESH: Objection. Asked
13 and answered.
14 MR. BLUESTONE: Not really.
15 MR. ANESH: He said he didn't
16 have a custom and practice.
17 MR. BLUESTONE: I understand.
18 And I'm asking him now whether he had
19 a practice with regard to that type
20 of conversation.
21 MR. ANESH: Objection. Asked
22 and answered. I think it was
23 covered. I'll allow him to answer it
24 again.
25 Q Did you have a practice at that time?

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1 MILLER
2 A No.
3 Q At that time, between January 28th
4 and April 28, 2003, did you understand the legal
5 consequences of a cease and desist letter sent
6 in November '01 to be important in this
7 particular case?
8 MR. ANESH: Note my objection
9 to the form of the question.
10 Important when? Objection to the
11 form.
12 A I'm not sure I understood the
13 question.
14 Q I'll rephrase it for you. I'll
15 rephrase it. I'll ask a different question.
16 Did you have any written
17 correspondence with Mr. Meiresonne about the
18 cease and desist letter between January 28, 2003
19 and April 28, 2003?
20 A I don't recall.
21 Q Did you have any written
22 correspondence with him during that same time
23 period with regard to holding on to documents as
24 a result of the cease and desist letter?
25 MR. ANESH: That was sent in

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1 MILLER
2 '01?
3 MR. BLUESTONE: That was sent
4 in '01. There's only one cease and
5 desist letter that we're talking
6 about. I'm not going to keep saying
7 the date.
8 MR. ANESH: Go ahead.
9 MR. BLUESTONE: It's obviously
10 this letter.
11 MR. ANESH: I'll note my
12 objection to the form of the
13 question.
14 THE WITNESS: I'll need to have
15 it read back now.
16 (The requested portion was read
17 back)
18 MR. ANESH: Objection.
19 A I -- I don't recall any such
20 conversation.
21 Q Did you at any time learn that
22 documents had been thrown away by -- withdrawn.
23 Did you at any time learn that
24 documents had been discarded by IQS or by Mr.
25 Meiresonne in this case?

1 MILLER
2 A Yes.
3 Q When did you first learn that?
4 A I certainly learned in the fall of
5 2003 about discarding of documents back on --
6 back when Web sites were being rewritten between
7 roughly early September of '01 into January of
8 '02.
9 And I also learned in that fall of
10 '03, and I'm not sure if it's the exact same
11 time, about the destruction of documents at the
12 IQS offices in late July and early August of
13 '03.
14 Q Did you learn whatever facts you just
15 spoke about by virtue of a motion by Plaintiffs
16 for sanctions against Defendants, or did you
17 learn about it beforehand from some other
18 source?
19 A With respect to the destruction of
20 documents, in late July, early August of '03 I
21 had no clue about that until I saw the motion
22 papers, spoliation motion by Thomas.
23 I'm not certain whether -- when Mr.
24 Meiresonne was deposed in the middle of October
25 of '03 whether the '01 into early '02 discarding

1 MILLER
2 of documents came up. That might have been at
3 that time, but I'm not certain.
4 Q Did Mr. Meiresonne's deposition take
5 place before or after the motion was filed?
6 A Before.
7 Q Was it completed before the motion
8 was filed?
9 A Yes.
10 Q Now, did Mr. Meiresonne between
11 January 28, 2003 and April 28, 2003 make any
12 inquiries of you or your law firm with regard to
13 proper document retention?
14 MR. ANESH: Objection. Asked
15 and answered. He said he doesn't
16 recall having any discussions about
17 that in those days.
18 MR. BLUESTONE: An inquiry
19 isn't the same as a discussion.
20 A I received no such inquiry from Mr.
21 Meiresonne.
22 MR. BLUESTONE: Off the record.
23 (Discussion off the record)
24 Q And did Mr. Meiresonne provide you or
25 your office with documents to be used to respond

1 MILLER
2 to the Plaintiff's document request during the
3 period January 28th to April 28, 2003?
4 A The short answer is he produced a lot
5 of documents which we produced when we made our
6 formal response to the document request.
7 I can't tell you off the top of my
8 head if it was by April 28th or some other date.
9 But yes. He provided quite a lot of documents,
10 which I reviewed and then we ended up producing.
11 Q Give me your best description of what
12 quite a lot of documents means.
13 A Oh, I don't know. I remember there
14 were -- we bound up into two -- we bound up into
15 two Acco-bound, you know, sets.
16 We couldn't fit it all in one Acco,
17 even with the large Acco binding. I don't
18 remember the number of pages, but I remember two
19 Acco-bound sets of documents.
20 Q By Acco-bound, is that -- you mean
21 like the thin strips across the top, or do you
22 mean some sort of like laminated three-ring
23 binder?
24 A No. The thin strips was the top.
25 You punched like a two-hole punch or three-hole

1 MILLER
2 punch, and then you Acco-bind it together.
3 Q All right. Okay. So would it be --
4 was it more documents than -- than -- is it more
5 than, you know, 500 pages would you say?
6 A I would say it was more than 500
7 pages.
8 Q What was the method by which Mr.
9 Meiresonne transmitted these documents to you,
10 your law office?
11 A I don't recall.
12 Q Were they delivered as paper, were
13 they delivered in digital form or some other
14 version?
15 A For the most part it was delivered as
16 paper.
17 Q And did you ever have any discussions
18 between January and April 28, 2003 with Mr.
19 Meiresonne about double-sided documents or
20 documents that had been previously -- paper that
21 had been previously used and then was reused on
22 the second side?
23 A Not in that time frame.
24 Q When was the first time that that
25 discussion took place, if at all?

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1 MILLER
2 A After the spoliation motion was made.
3 MR. BLUESTONE: Let's take two
4 minutes.
5 (Recess taken)
6 CONTINUED DIRECT EXAMINATION BY MR. BLUESTONE:
7 Q I'd like you to look at Page 3 of
8 Exhibit D, please. The one that has Paragraphs
9 9 through 26.
10 A Yes.
11 Q Would you look at Paragraph 22?
12 A Okay.
13 Q Now, I know you don't know what the
14 demand was to which 22 is responding, but do
15 you -- did you have any discussions with Mr.
16 Meiresonne about whether or not documents prior
17 to January '02 of any variety with relation to
18 the case existed?
19 MR. ANESH: When are we talking
20 about?
21 MR. BLUESTONE: During the
22 period January 28, 2003 to April 28,
23 2003.
24 A I don't recall.
25 Q Now, take a look at Paragraph 13 on

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1 MILLER
2 the same page, please.
3 If you read to yourself, starting
4 with the words "Each site has each company's."
5 The end of the paragraph, please.
6 A Read "Each site" to the end of the
7 paragraph.
8 MR. ANESH: Read it to
9 yourself.
10 Q Read it to yourself, and I'm going to
11 ask you a question about it.
12 A Okay. I've read it.
13 Q Now, Paragraph 13 was Mr.
14 Meiresonne's response to some particular demand
15 made by Thomas, correct?
16 A Yes.
17 Q Now, during that same time period up
18 until January -- from January 28, 2003 to
19 April 28, 2003, did you have any discussions
20 with Mr. Meiresonne about the substantive claims
21 made by Thomas and the substantive defenses that
22 IQS had?
23 MR. ANESH: What period of time
24 are we talking about?
25 MR. BLUESTONE: January to

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1 MILLER
2 April 2003.
3 A Yes.
4 Q Did you make any notes about those
5 substantive issues and the conversations you had
6 with Mr. Meiresonne?
7 A I don't recall.
8 Q As of April 28, 2003, what did you
9 understand the claim made against IQS by Thomas
10 to be?
11 A Well, there were multiple --
12 multitude of claims.
13 Q If you start with a general overview
14 of what the claims were, we can move from there.
15 A Well, certainly there were copyright
16 law infringement claims. Certainly I can recall
17 there was unfair competition claims, both
18 federal in terms of Lanham Act claims, as well
19 as state law, unfair competition.
20 There were defamation or slander --
21 defamation or liable claims involved. There
22 were false advertising claims. Those are the
23 ones I can remember off the top of my head.
24 Q Now, prior to January 28, 2003, had
25 you personally litigated any cases in federal

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1 MILLER
2 copyright claims?
3 A I don't believe so.
4 Q Had Mr. Rosado to your knowledge
5 litigated any federal copyright claims cases
6 prior to January 28, 2003?
7 A To my knowledge, no.
8 Q Had you personally litigated any
9 Lanham claims prior to January 28, 2003?
10 A I'm not sure, because of the date
11 involved.
12 Q Would you tell me what your
13 understanding back in 2003 of what a Lanham
14 claim was?
15 MR. ANESH: Note my objection.
16 A Well, the Lanham Act has -- from what
17 I recall has a few different subsections, but
18 certainly there's a false advertising element to
19 some claims, and there's sort of a
20 federalization of unfair law competition type
21 claims, if they fit under the Lanham Act.
22 There's a couple of different main
23 subsections that -- that a Plaintiff law firm
24 will often cite.
25 Q And were those subsections and claims

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1 MILLER
2 thereunder cited by Thomas in this particular
3 case?
4 A I believe at least one of them was,
5 maybe more.
6 MR. BLUESTONE: Off the record.
7 (Discussion off the record)
8 Q Other than the Lanham claims, Lanham
9 Act claims, had you litigated any unfair
10 competition claims prior to January 2003?
11 A Yes.
12 Q Tell me the general nature of your
13 experience in that area prior to January 2003.
14 MR. ANESH: Note my objection.
15 A I can't sit here and recall specific
16 cases. Unfair competition is a very broad term.
17 All sorts of Plaintiffs often cite that when
18 they can't figure out exactly -- perhaps when
19 they can't figure out exactly what they want.
20 So I can't cite you a -- specific
21 cases, but I know I've dealt with unfair
22 competition for many, many years.
23 Q And in the many, many years that
24 you've dealt with it, can you give me any
25 estimate of the number of cases in which you

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1 MILLER
2 dealt with it?
3 A No.
4 Q Is it more than five?
5 A Possibly.
6 Q Is it more than 20?
7 A Probably not.
8 Q Were any of those cases handled while
9 you were associated with Miller, Rosado &
10 Algois?
11 A Well, I'm just trying to give you a
12 time frame. We started the firm in '01, and by
13 '03 I can't say -- I cannot say whether or not I
14 handled them when I was at -- you know, when we
15 formed the partnership.
16 Q Now, subject to your counsel's
17 objection, I'm going to ask a question. You may
18 have answered it before, and that is, did you
19 have any discussions with Mr. Meiresonne prior
20 to January 28, 2003 with regard to your
21 impending retention?
22 MR. ANESH: Note my objection
23 to the form. Asked and answered. Go
24 ahead.
25 A I can't remember if it was before

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1 MILLER
2 January 28th. There was a Saturday morning when
3 he and his daughter came to our offices and we
4 first discussed the matter. Whether that was
5 before January 28th I cannot tell you.
6 Q It was before retention though?
7 A Yes.
8 Q And you participated in that
9 discussion?
10 A Yes.
11 Q Were you asked about your experience
12 in any of the areas that we just discussed by
13 Mr. Meiresonne?
14 A I don't recall.
15 Q Did you write him any letters or
16 communicate with him in writing in any way prior
17 to retention concerning your experience or Mr.
18 Rosado's experience in any of those areas?
19 THE WITNESS: Can you repeat
20 the beginning?
21 (The requested portion was read
22 back)
23 A Did I personally write to him prior
24 to retention? No. I didn't have any
25 correspondence with him prior to retention.

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1 MILLER
2 Q By correspondence you mean any kind
3 of writing with him, fax, letter.
4 A Prior to retention I don't -- I don't
5 believe I corresponded with him.
6 Q In January 2003 were you using e-mail
7 in your professional practice?
8 MR. ANESH: Prior to 03?
9 MR. BLUESTONE: In January of
10 '03.
11 A I'm trying to think whether -- I
12 think by that point we were, yes. But I cannot
13 say with a hundred percent certainty.
14 Q Does your law firm presently have a
15 proprietary Web site?
16 A We have a Web site. I don't know
17 what you mean by proprietary Web site.
18 Q Your own Web site.
19 A Yes.
20 Q When did you start that Web site?
21 A I don't recall.
22 Q Was it in -- can you tell me the
23 year?
24 A No, I can't.
25 Q Was it this year?

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1 MILLER
2 A No, no, no. It was certainly many
3 years back.
4 Q Do you think that -- do you think you
5 had one in 2003?
6 A I can't be certain. Probably, but I
7 can't be certain.
8 Q Do you have a vendor that maintains
9 your Web site?
10 A Maintains our Web site? I know we
11 have a computer guy. Whether he maintains the
12 Web site I can't tell you.
13 Q Do you have a vendor that hosts the
14 Web site?
15 MR. ANESH: If you know.
16 A I don't know.
17 Q Do you understand what that means?
18 A I don't fully understand when you say
19 host a Web site.
20 Q I'll give you a brief description.
21 Maybe it will trigger something.
22 MR. ANESH: Come on.
23 Q Is it in --
24 MR. ANESH: It's not a
25 question.

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1 MILLER
2 MR. BLUESTONE: It is a
3 question.
4 MR. ANESH: Give him a brief
5 description?
6 MR. BLUESTONE: Mark, Mark.
7 Please. I was in the middle of a
8 question.
9 MR. ANESH: No, you weren't,
10 but go ahead. Go, go, go.
11 MR. BLUESTONE: Mark, please.
12 Q A Web site is a program which is kept
13 on a computer some place, and it's connected to
14 the worldwide web. You know that.
15 Companies host Web sites by providing
16 a server some place where your Web site is
17 contained.
18 And when people go on the Web, they
19 actually go to their computer to see your Web
20 site.
21 Some people alternatively have an
22 in-house server that does that. Do you know
23 which of the two is your situation?
24 MR. ANESH: Objection to form.
25 A I'm not sure.

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1 MILLER
2 Q Does your present Web site maintain
3 e-mails for your law firm?
4 MR. ANESH: Objection to the
5 form.
6 A Does our present Web site?
7 Q What is your e-mail --
8 A We have a Web Host. We have a -- Web
9 Host is a company. I don't know if -- it's not
10 in-house per se. It's an outside Web Host
11 server that maintains --
12 Q Do you presently have an e-mail
13 address that you use for your professional
14 practice?
15 A Yes.
16 Q Tell me the e-mail address, please.
17 A Nmiller@mralaw.com.
18 Q When did you first use that e-mail
19 address?
20 A I can't recall specifically. It's
21 been many, many years.
22 Q Was it during the period of time when
23 you and your law firm was representing IQS?
24 A Yes.
25 Q Did you have an e-mail address at

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1 MILLER
2 aol.com prior to that that you were using for
3 your professional practice?
4 A For professional practice? Very,
5 very rarely. I had a home e-mail at aol.com.
6 Could it be that occasionally I sent something
7 from home relating to work? Sure. Could have
8 happened, but certainly not any kind of regular
9 basis.
10 Q The present e-mail address you use,
11 who is it -- withdrawn.
12 What vendor is it that maintains that
13 e-mail service for you?
14 MR. ANESH: Objection to form.
15 A I know it as Web Host.
16 Q You believe that's the name of the
17 company?
18 A I think so, but I'm not certain.
19 Q Does your office maintain billing
20 records, invoices or other records concerning
21 the work that Web Host does for your law firm?
22 A It they send us bills, we would pay
23 them and we would keep the bill, keep record of
24 the payment.
25 Q Who is the person at your law office

1 MILLER
2 who would be the custodian of such records?
3 A I think I mentioned Regina Allen
4 generally pays the bills, gets them -- pays
5 them. Mr. Rosado usually handles most of the --
6 I call the tech issues.
7 Q Has any search been done of e-mail
8 files in which your law firm received or sent
9 e-mails with regard to the IQS client?
10 A A search has been done, to the extent
11 we can do it in -- you know, locally, meaning in
12 the firm. I certainly searched my own e-mail
13 account.
14 Q Was there a request made of Web Host
15 or any other vendor that maintains your e-mail
16 service to search for e-mails that relate to
17 IQS?
18 A I know I -- personally I spoke with
19 Michael, who's our regular tech guy, and he put
20 me in contact with somebody else to see whether
21 or not e-mails were retrievable back from the
22 time period when we represented IQS, and I was
23 told they would not still be there from Web
24 Host.
25 Q Do you know the name of the person

1 MILLER
2 Actually the page has a page number on it.
3 A Yes.
4 Q At the time you wrote this letter on
5 April 16, 2003, had you spoken with any of
6 predecessor counsel or the Price Heneveld firm
7 concerning any of the issues raised in this
8 letter?
9 A So you're saying did I have a
10 conversation prior to this letter?
11 Q Yes, sir.
12 A Whether my conversations with them
13 were prior to this letter or not, I don't
14 recall.
15 Q Did you receive any files or
16 documents from either of those two entities
17 prior to April 16, 2003 concerning the copyright
18 or unfair competition issues?
19 MR. ANESH: Are you talking
20 about the Price firm or predecessor
21 firm?
22 MR. BLUESTONE: Yes, sir.
23 A I certainly don't recall receiving
24 anything from our predecessor counsel, Cole
25 Schotz.

1 MILLER
2 you spoke to?
3 A Not on the tip of my tongue. I mean,
4 it was Michael, our guy, but he referred me to a
5 different fellow. And I know I passed this
6 information along to my counsel back at the
7 time.
8 Q And I'm not asking what you said to
9 your counsel.
10 But do you have any writing
11 concerning your search for the e-mails?
12 A No, other than to counsel.
13 Q I don't want to know about those.
14 I'd like you to look at Page 6 of this document,
15 Exhibit D, and a letter on the Miller, Rosado &
16 Algios letterhead dated April 16, 2003.
17 This is a five-page letter, sir.
18 Would you confirm that I'm correct about that?
19 A Yes. I see this five-page letter.
20 Q Have you seen this April 16, 2003
21 letter before?
22 A Yes.
23 Q Are you the author of this letter?
24 A Yes.
25 Q Does your signature appear on Page 5?

1 MILLER
2 The Price firm, they may have sent
3 over -- they did give me either case citations
4 or printouts of actual cases on some of the
5 copyright issues, because I think we established
6 early on that we were going to -- we wanted them
7 to get it started, because they already had done
8 some work on it from what Mike had told us.
9 Now, whether or not we received anything on
10 paper from them I can't recall.
11 Q Now, you posed a number of questions
12 in this letter.
13 If you look at Page 2, there's a
14 series of questions that you've asked with
15 regard to copyright infringement, and I believe
16 it goes on to Pages 3 and 4 with other
17 questions.
18 Did you perform any legal research as
19 of April 16, 2003 with regard to answering these
20 questions?
21 MR. ANESH: Note my objection
22 to the form.
23 A Is your question did I do the
24 research before April 16, 2003?
25 Q Yes, sir.

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1 MILLER
2 A I don't recall.
3 Q Did you eventually do the research
4 yourself rather than, for example, relying upon
5 memos provided to you by other people with
6 regard to these questions?
7 MR. ANESH: Note my objection
8 to the form.
9 A The answer is both. I did do some
10 research myself, and we even hired that summer
11 someone to -- really for the purpose of
12 researching a lot of the copyright issues.
13 Q Summer of 2003?
14 A Correct.
15 Q Now, in the very first line of the
16 letter you say, "Enclosed is the discovery
17 schedule which we have agreed to."
18 Did that discovery schedule include a
19 visit to Michigan by Plaintiffs to review
20 documents?
21 A I doubt it.
22 Q Did the Plaintiffs obtain court
23 permission to make a visit to Michigan to review
24 documents, or was it a compilation by consent?
25 MR. ANESH: Objection to the

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1 MILLER
2 form of the question.
3 A By consent.
4 Q Do you know when that arrangement --
5 withdrawn.
6 Do you know when that consent was
7 given?
8 MR. ANESH: Note my objection
9 to the form.
10 A Consent to the idea of them going to
11 Michigan?
12 Q To review documents.
13 A Only that it was at some point, and I
14 can't tell you when, after we did our formal
15 response in the end of April or so to the
16 document request, we had put down that certain
17 files were available for inspection in Michigan,
18 and, you know, eventually we worked out a
19 time -- a time and date for that to happen.
20 MR. ANESH: Sound familiar?
21 MR. BLUESTONE: Off the record.
22 (Discussion off the record)
23 Q Did you have any discussions at any
24 time up until the actual document review with
25 Mr. Meiresonne about whether or not the

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1 MILLER
2 documents would be produced in New York through
3 your office or be held for inspection in
4 Michigan?
5 Did you have a discussion about that
6 general topic with Mr. Meiresonne up until
7 August 1st, let's say, 2003?
8 MR. ANESH: Note my objection
9 to the form of the question. The
10 documents were produced by him in New
11 York.
12 MR. BLUESTONE: I'm talking
13 about the balance of the documents
14 which were held in Michigan.
15 MR. ANESH: Note my objection
16 to the form of the question. You can
17 answer.
18 A Even before the first document
19 production, I recall discussions with Mr.
20 Meiresonne many times that there were certain
21 files in Michigan.
22 It would be too voluminous for him to
23 copy and send to us, but that he would be more
24 than willing to produce them in Michigan, if
25 they wanted to come out and look at them. So I

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1 MILLER
2 believe our formal response in response to
3 certain items indicated that.
4 Q Now, when he gave you that
5 information -- withdrawn.
6 MR. ANESH: Who's he? I'm
7 sorry.
8 MR. BLUESTONE: Withdrawn.
9 Q Did Mr. Meiresonne give you the
10 information you just related to you, that there
11 were files there and they were too voluminous to
12 copy?
13 A Well, that's -- they were too
14 voluminous to copy, and he didn't want them to
15 leave the office to go to New York for us to do
16 it.
17 So he didn't want to lose control
18 over these files. They were work -- I think he
19 described them as working files, at least some
20 of them as working files, where they might need
21 to be in them on an at least daily or regular
22 basis, so he didn't want those documents to
23 leave the office and those files to leave the
24 office.
25 Q Mr. Meiresonne gave you that

1 MILLER
 2 information?
 3 A Yes.
 4 Q Did you discuss with him the
 5 composition of those working files?
 6 A I'm sure I did.
 7 Q And if you did, do you remember
 8 whether you took any notes on those
 9 conversations?
 10 A I don't recall.
 11 Q Okay. Back on August 16, 2003 --
 12 A August?
 13 Q I'm sorry.
 14 A Thank you.
 15 MR. ANESH: April 16, 2003.
 16 MR. BLUESTONE: April. Thank
 17 you very much.
 18 Q How many cases were you handling as
 19 an attorney in your office?
 20 A I don't know.
 21 Q Do you have a way of finding out if
 22 you wanted to search?
 23 A There's no way to do it.
 24 Q You were working full time as an
 25 attorney in your office?

1 MILLER
 2 composition of working files, if they were
 3 imparted to you and you had a full load of cases
 4 and a full practice of law?
 5 MR. ANESH: Note my objection
 6 to the form of the question. What --
 7 A I don't think I understand the
 8 question, to be honest.
 9 MR. ANESH: Neither do I.
 10 MR. BLUESTONE: You can read it
 11 back, if you would like.
 12 (The requested portion was read
 13 back)
 14 A I don't understand what you mean by a
 15 composition of working files.
 16 Q How about imparted to you?
 17 MR. ANESH: I don't know what
 18 that means either.
 19 MR. BLUESTONE: Thank you,
 20 Mark. It's really not necessary for
 21 you to --
 22 MR. ANESH: I won't.
 23 MR. BLUESTONE: -- give
 24 comments.
 25 MR. ANESH: Okay.

BILLING
 *
 Compensation

1 MILLER
 2 A Yes.
 3 Q Were you working more than 40 hours a
 4 week on your work at the office?
 5 A Yes.
 6 Q On a typical week, how many hours
 7 were you working in your professional practice
 8 at that time?
 9 A I don't know if I could say a typical
 10 week. It varied greatly.
 11 Q Over six months' time on the average,
 12 were you working 60 hours a week on your
 13 practice?
 14 A It depends if I have -- if I was
 15 either having a trial or preparing for a
 16 trial --
 17 Q I'm trying --
 18 A -- whether I had a slew of
 19 depositions. I can't even take a six-month
 20 period -- I can't say oh, I was on the average
 21 there a certain number of hours per week. I
 22 just can't phrase -- I can't form it that way.
 23 Q How -- withdrawn.
 24 How did you in your professional
 25 practice keep track of details, such as the

1 MILLER
 2 MR. BLUESTONE: He said he
 3 didn't understand, so the question
 4 has to be rephrased.
 5 MR. ANESH: Okay.
 6 Q Mr. Meiresonne and you discussed the
 7 composition of his working files, yes?
 8 MR. ANESH: The what?
 9 A When you say composition --
 10 Q Of his working files.
 11 MR. ANESH: Note my objection.
 12 A In a -- it was a working file -- I
 13 don't know what you mean by working file. If
 14 you're talking about the files that he had to --
 15 Q You --
 16 A -- used in Michigan --
 17 Q You used the term working files
 18 before.
 19 A Okay. Yes. I said that he had used
 20 the term working files with respect to certain
 21 documents that he -- that he wanted them to come
 22 to Michigan to see.
 23 Q That's that I'm talking about. You
 24 used that term, so I've adopted it.
 25 A We identified that these were files

1 MILLER
 2 that would be responsive to certain document
 3 requests.
 4 Q I'm not asking for a definition. I'm
 5 just saying, he discussed the composition of
 6 those files with you?
 7 A I don't know that he discussed the
 8 details of the particular documents that were in
 9 those files, other than the fact that they would
 10 respond to document requests -- there would be
 11 documents in those files that would be
 12 responsive to document requests Thomas made.
 13 Q Did he ask you whether such files --
 14 the working files would be responsive to demands
 15 made by Thomas?
 16 A No. He told me they would be
 17 responsive. They were -- if not the entire
 18 file, there were at least documents -- be
 19 documents in the file that would be responsive.
 20 Q Did you have a discussion with him
 21 about why or whether they would be responsive?
 22 Did he ask your opinion whether they
 23 would be responsive?
 24 A I don't recall.
 25 Q Did he allude to what demand made by

1 MILLER
 2 know, whether e-mails or correspondence with the
 3 client about it, depending on the time frame and
 4 depends on the case, the volume of details.
 5 I may do it -- if there is a small
 6 time lag, I might not memorialize it in any way,
 7 shape or form if I -- if the production was
 8 coming up in the next few days.
 9 Q During the pendency of this
 10 particular action, IQS versus Miller, Rosado &
 11 Algios, you reviewed all of the documents that
 12 were provided to your counsel, right?
 13 A I have not reviewed every particular
 14 document that was supplied to counsel.
 15 Q Did you review what was supplied?
 16 Did you look through it before --
 17 MR. ANESH: When are we talking
 18 about? When supplying it?
 19 Q The documents supplied to your
 20 counsel.
 21 MR. ANESH: But when?
 22 MR. BLUESTONE: At any time
 23 during the pendency of this action.
 24 MR. ANESH: Note my objection
 25 to the form. You can answer.

like what no notes

then how can he say?

why would I make that determination

1 MILLER
 2 Thomas they would be responsive to?
 3 A I believe he would have. I believe
 4 he did.
 5 Q Now, my question is, in obtaining
 6 such details via conversation with a client, how
 7 did you memorialize or remember these details
 8 when you had a full practice of law going on?
 9 MR. ANESH: You want to know
 10 how he remembers it?
 11 MR. BLUESTONE: Or memorialized
 12 it.
 13 MR. ANESH: Note my objection
 14 to the form of the question.
 15 A Your question bounces between the
 16 particular and the general, so I'm not sure how
 17 to answer your question.
 18 Q What I'm trying to get at is how
 19 is -- how did you in your practice of law keep
 20 track of these kinds of details when you had
 21 many things going on?
 22 A If I had many things going on, I
 23 would -- whether it was -- I might make notes at
 24 the time.
 25 I might also memorialize it, you

1 MILLER
 2 A I certainly in a very general way
 3 took a look at what we supplied to counsel. I
 4 did not go over each document. Probably not
 5 many of them.
 6 Q Did you review the documents that
 7 were eventually Bates marked and provided to
 8 Plaintiff in this case?
 9 A I have no --
 10 MR. ANESH: When?
 11 MR. BLUESTONE: At any time.
 12 MR. ANESH: Note my objection
 13 to the form of the question.
 14 A I don't know whether I did or didn't.
 15 I reviewed some documents. Whether or not they
 16 were Bates mark stamped I don't recall, and
 17 whether or not they were provided to you I don't
 18 recall. I wouldn't know.
 19 Q Have you seen any handwritten notes
 20 in any of the documents that you've reviewed in
 21 any portion of the discovery phase of the IQS
 22 versus Miller, Rosado matter?
 23 A No. I wouldn't expect to have,
 24 because we turned the entire file over to Mr.
 25 Meiresonne.

+ no notes

1 MILLER
 2 And what we -- for the most part what
 3 we gave to counsel may have been a few extra
 4 copies of documents we had around and what was
 5 taken off my computer. So -- and my computer I
 6 wouldn't have handwritten notes.
 7 Q Did you type notes to yourself on
 8 your computer?
 9 A Very rarely. I -- every now and
 10 then, but rarely.
 11 Q Did you have any programs on your
 12 computer for taking notes about cases or places
 13 where you could link documents to case names,
 14 such as time matters or something else like
 15 that, case management programs?
 16 A Well, we have -- we do have a -- you
 17 know, we do have an Amicus program, where we put
 18 our time in.
 19 And you can certainly for a
 20 particular matter, when you calendar something,
 21 put a particular note in on the calendar.
 22 I don't know -- I don't know whether
 23 it has the ability to do more than that, what
 24 you're suggesting, but I certainly wouldn't have
 25 done that.

*Billings
get copies*

1 MILLER
 2 But we definitely got the benefit of
 3 some research by that firm we mentioned before,
 4 Price something or another.
 5 Q Look at Paragraph 3 on Page 2,
 6 please.
 7 It says, "As discussed yesterday, we
 8 need to go over instructions," and then it
 9 continues.
 10 Did you go over instructions that
 11 were given to personnel at IQS with Mr.
 12 Meiresonne?
 13 A Along the lines of what's stated
 14 here?
 15 Q Yes, sir.
 16 A Yes, I did.
 17 Q And -- now, when did those
 18 discussions take place?
 19 A It was ongoing things even before
 20 this letter. There were some discussions.
 21 Certainly early on we were told and we saw what
 22 had been submitted on some preliminary
 23 injunction motion in terms of an affidavit from
 24 a Chris Terryn and a Nicole, and I'm forgetting
 25 her last name right now.

1 MILLER
 2 Q Do you have such a separate program
 3 on your work station for taking notes about
 4 cases or caching notes about cases?
 5 MR. ANESH: Note my objection.
 6 A I don't understand the term caching,
 7 so I had to think I do not have it.
 8 Q Collecting and keeping --
 9 A No.
 10 Q -- notes.
 11 A Maybe the program exists on my
 12 computer, but if it does I don't use it.
 13 Q On Page 1 of your letter, in the
 14 second paragraph you write, "To the extent that
 15 counsel has already researched these issues, we
 16 do not wish to needlessly duplicate their
 17 efforts."
 18 Did you obtain any prior research on
 19 these issues from any counsel?
 20 MR. ANESH: Objection. Asked
 21 and answered.
 22 A I believe we -- whether we -- I
 23 believe we did. Whether it was in terms of a --
 24 anything formal or just some case cites or case
 25 names, I don't recall.

1 MILLER
 2 Q Does it begin with a K?
 3 A Korthals. Thank you. I know we went
 4 over that. And I know it was a problem from the
 5 beginning.
 6 So there would have been discussions
 7 ongoing that Chris Terryn was someone who had no
 8 apparent motive to lie about the instructions he
 9 said he was given.
 10 And that -- so I know we had
 11 discussions, and I tried to broaden it not just
 12 to instructions to Chris Terryn, but
 13 instructions other summer interns that we
 14 apparently used to create a lot of the IQS
 15 company descriptions.
 16 And we certainly did discuss how he
 17 came to recognize that certain IQS listings were
 18 substantially similar in content to Thomas
 19 entries.
 20 Q Did you memorialize these discussions
 21 in any fashion?
 22 A I don't recall. I mean, the
 23 document -- put it this way. I can certainly
 24 recall that the document production itself
 25 contained an e-mail which memorialized the

1 MILLER
2 discussions, because it referred to -- it was an
3 e-mail from either an advertiser or potential
4 advertiser, telling Mike that the stuff reads
5 just like the Thomas's stuff. So I mean, you
6 call that memorializing, that we produced an
7 e-mail? I don't know.

8 Q I'm talking about something you
9 created to memorialize it.

10 A I don't recall.

11 Q Are you aware of any letters, faxes,
12 e-mails or other writing by you to Mr.
13 Meiresonne at any time, which set forth your
14 understanding of the issue you just discussed?

15 A I don't recall either way.

16 Q When you say either way, you mean
17 from him to you or from you to him?

18 A No. I don't recall whether there
19 were -- there were or were not.

20 Q How about the same question from him
21 to you?

22 A Same answer.

23 MR. ANESH: When do you want to
24 take a lunch break?

25 MR. BLUESTONE: At your

1 MILLER

2 And it occurred right around the time
3 Mike had resigned his position. And Mike had
4 taken portions of those documents, certain
5 quotations from that document, and ones that
6 were denigrating Thomas for that matter.

7 And he had taken a portion of the
8 document and included it in either mass e-mails
9 or some form of advertising that was being sent
10 out.

11 And Thomas sued -- one of the
12 causes -- it says here. The third cause of
13 action was for copyright infringement from what
14 Mike had taken out of that document created by
15 Mr. Gennero.

16 Q And did you discuss the questions
17 raised by yourself on Page 2 below the words TR
18 Manifesto with Mr. Meiresonne?

19 MR. ANESH: Objection to the
20 form of the question.

21 A To the questions both -- there's
22 two -- the questions on Page 2 and 3 or just --

23 Q 2 and 3. Yes, sir.

24 A I certainly discussed Harriet Lublin
25 and his receipt of the manifesto from Harriet

1 MILLER
2 convenience. You tell me.
3 MR. ANESH: I need to make a
4 12:30 -- I have to do a 12:30
5 conference call. I made it that way
6 so --

7 MR. BLUESTONE: So you want to
8 break at 12:25?

9 MR. ANESH: 12:15, 12:20.

10 MR. BLUESTONE: How long do you
11 need?

12 MR. ANESH: About an hour.

13 MR. BLUESTONE: Off the record.
14 (Discussion off the record)

15 CONTINUED DIRECT EXAMINATION BY MR. BLUESTONE:

16 Q Can you explain to me what you
17 meant -- withdrawn.

18 Can you explain to me what the
19 copyright infringement of the TR Manifesto claim
20 was, as made by Thomas?

21 A A certain Thomas -- I think the term
22 seniors, someone at -- someone in a position
23 before he resigned, and I believe his name was
24 Gennaro, John Genarro, had written a document
25 which was loosely called the TR Manifesto.

1 MILLER

2 Lublin with Mike Meiresonne. I can't tell when
3 that conversation occurred.

4 The questions on Number 1 were
5 answered I know when we got -- when we got
6 information from Thomas, at least some of them
7 were. I don't recall whether I discussed that
8 with Mr. Meiresonne or not.

9 Q Did you receive any -- withdrawn.

10 Did you reach any legal conclusions
11 regarding the answers to the questions posed in
12 Paragraph 2 on Page 3 as to the requirement that
13 Plaintiff show you were on actual notice of the
14 copyright?

15 MR. ANESH: Note my objection.

16 A Well, yes. This was probably not
17 worded the most articulately, but it's copy --
18 you don't have to -- it's automatically subject
19 to copyright protection when it's authored.

20 But certainly in terms of whether or
21 not there was intentional infringement or not,
22 knowing -- knowing whether or not it's fair use
23 questions that would have been involved.

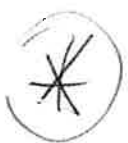
24 There isn't -- so the answer is
25 there's no requirement. We definitely found out

1 MILLER
 2 fairly quickly that there was no requirement
 3 that Plaintiff show that there was actual notice
 4 of copyright.
 5 So that question was answered for
 6 sure fairly quickly, I think. I don't know -- I
 7 mean, that's the legal question in there.
 8 In terms of when it was registered, I
 9 think it turns out it wasn't -- I don't
 10 remember. I think it was registered after --
 11 after Mr. Meiresonne had used portions of it.
 12 Q You used the term fair use just now.
 13 Yes?
 14 A Yes.
 15 Q Fair use is a legal principle that
 16 permits people to use a portion of copywritten
 17 material; is that correct?
 18 MR. ANESH: Note my objection
 19 to form.
 20 A I can't tell you whether that is the
 21 precise formulation.
 22 Q What do you understand fair use to
 23 be?
 24 A Along the lines, there are times you
 25 can use, without getting the permission of an

1 MILLER
 2 Q At any time prior to August 1, 2003,
 3 did you communicate or transmit in any fashion a
 4 legal conclusion as to the merits of Thomas's
 5 causes of action against IQS -- to IQS?
 6 A I can't think of any one overriding
 7 document before August of '03 which addressed
 8 every single cause of action, if that's what
 9 you're asking.
 10 Q Well, I'm not saying every single
 11 cause of action.
 12 In the legal professional world,
 13 attorneys are asked to give their clients
 14 assessments of the validity of the case against
 15 them, yes?
 16 MR. ANESH: Note my objection
 17 to the form.
 18 A I would say that's likely to be true.
 19 Q And you've done that at times in
 20 other cases?
 21 A Yes, I have.
 22 Q Did you ever write such an assessment
 23 of the quality or meritoriousness of the Thomas
 24 case again IQS to your client?
 25 A I do not recall doing it. There may

1 MILLER
 2 author, a document, even if those documents
 3 was -- it's authored by somebody else.
 4 And there are times -- especially
 5 parody situations. That's P-A-R-O-D-Y. Parody
 6 situations.
 7 And I remember researching at one
 8 point some fair use questions, and there was
 9 like a four-part test I think or four-factor
 10 test that the courts considered.
 11 Your way of putting it is not a bad
 12 shorthand version of it, as I recall, but you're
 13 looking at like four different factors to
 14 determine fair use.
 15 Q Did you reach a legal conclusion
 16 based upon your legal research whether fair use
 17 was an adequate -- whether fair use was a
 18 defense available IQS?
 19 A I did not come to a definitive
 20 conclusion. There were some factors that
 21 certainly cut against Mr. Meiresonne. Others
 22 might have been in his favor.
 23 But I think on the whole, I think the
 24 fair use defense would have been very difficult,
 25 given the commercial setting.

1 MILLER
 2 have -- in terms of the overall Thomas case
 3 against our client.
 4 Q Yes.
 5 A I don't know whether or not for any
 6 particular cause of action that I -- it's quite
 7 possible that I gave some assessment of a
 8 particular cause of action, but the factual
 9 record was still being developed here.
 10 Q Prior to -- withdrawn.
 11 The Defendant's answer was eventually
 12 stricken, yes?
 13 A Yes.
 14 Q Prior to that decision by Judge Owen,
 15 did you ever render an assessment of the
 16 settlement value of the case to the client?
 17 MR. ANESH: Note my objection
 18 to the form of the question.
 19 A You say the settlement value. There
 20 were discussions at a couple of different points
 21 in time about possibilities of settlement.
 22 So when you say the settlement value,
 23 I could tell you for certain that after we got
 24 Judge Owen's opinion --
 25 Q That was before.



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1 MILLER
2 MR. ANESH: Please finish the
3 answer.
4 A -- there were -- there were definite
5 discussions. Before then -- there were also
6 discussions after the hearing with Mr.
7 Meiresonne about what should be offered to
8 Thomas to try to get rid of the matter, but
9 before any decision was rendered.
10 Q Let me rephrase the question for you
11 then.
12 Before the spoliation motion was
13 made, did you ever give them a written
14 assessment of the values of the case, settlement
15 value or anything like that?
16 A I don't recall anything in terms of a
17 value as in here's a number that it's worth
18 doing.
19 I do recall there were discussions
20 with Thomas's attorneys and then consequently
21 between Mr. Meiresonne and myself regarding
22 possible ways to try to settle the case, some of
23 which did not involve money.
24 Q Were any of those reduced to writing?
25 A It's quite possible.

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1 MILLER
2 Q Are you aware of any?
3 A Sitting here today I can't -- I can't
4 recall one way or the other.
5 MR. BLUESTONE: Why don't we
6 break for your conference call.
7 1:15?
8 MR. ANESH: Yes.
9 (Recess taken)
10 CONTINUED DIRECT EXAMINATION BY MR. BLUESTONE:
11 Q Good afternoon. If you'll turn to
12 near the end of this page, that is an IQS letter
13 dated 4/19/03. It's a fax transmission.
14 MR. ANESH: What exhibit are we
15 on?
16 MR. BLUESTONE: Exhibit D.
17 This page (indicating).
18 MR. ANESH: What's the date,
19 April --
20 MR. BLUESTONE: 19 --
21 April 19th.
22 MR. ANESH: Got it.
23 Q Have you seen this document before?
24 A I -- I don't remember it.
25 MR. ANESH: You don't remember

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1 MILLER
2 receiving it?
3 THE WITNESS: Correct. I don't
4 recall this off the top of my head.
5 Q So by I don't remember receiving it,
6 does that mean you don't remember whether you
7 received it or not, or did you not receive it?
8 A I don't remember -- no. The first of
9 those.
10 Q Was there any way that you kept track
11 of correspondence coming to the office with
12 regard to a case you were handling in terms of a
13 listing of documents and inventory or anything
14 else?
15 MR. ANESH: Note my objection
16 to form.
17 A I'm sorry. Correspondence? Or did
18 you say something more general?
19 Q I said correspondence.
20 A We do have a correspondence file.
21 Q I understand. But was there a
22 listing of any kind made?
23 A No.
24 Q Was a scan made of this particular
25 document?

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1 MILLER
2 A I highly doubt it.
3 Q In your billing, would you refer to a
4 piece of correspondence that you had reviewed
5 and charged some time for with any degree --
6 with enough specificity to tell you what
7 particular document it was?
8 A The short answer is if there was
9 something more than just a quick, you know,
10 couple-of-minute review, I would generally note
11 in my time records when I have reviewed a
12 document.
13 Whether -- I rarely would put
14 reviewed fax dated April 19, 2003. I might say
15 reviewed fax received from Meiresonne or
16 received fax from IQS or just reviewed fax.
17 There's no rhyme or reason to it.
18 Q With that in mind, is there any
19 way -- withdrawn.
20 With that in mind, is there any
21 document that you have that can tell you
22 specifically whether you reviewed a particular
23 letter, fax, e-mail or other communications?
24 MR. ANESH: Objection. Are you
25 talking is there a document in

1 MILLER
2 existence today that can determine
3 whether he reviewed those things in
4 '03?
5 MR. BLUESTONE: Or even later,
6 but whether he reviewed them at all.
7 MR. ANESH: From what time
8 period?
9 MR. BLUESTONE: For any time
10 during the time he was representing
11 the client.
12 A Well, I would look at my time entries
13 certainly for around the time frame of any
14 particular document.
15 In the case of these pages in Exhibit
16 D, I would have looked to April 19th,
17 April 20th, April 21st to see if there's a
18 reference there.
19 Certainly I could look towards
20 correspondence to see either e-mails going out
21 if I have them -- I don't have them, but it
22 could be an e-mail in existence responding to it
23 or a fax or a regular letter in which I
24 discussed this, and I make reference to the
25 specific item.

1 MILLER
2 Q And the correspondence files might
3 show another letter, it might not, but that
4 doesn't mean -- withdrawn.
5 You wouldn't be able to determine
6 whether or not two letters came in that day, for
7 example?
8 A From the correspondence files I
9 could.
10 MR. ANESH: Note my objection
11 to the form.
12 A No -- okay. I don't have it. I'm
13 saying if I -- if I hadn't turned it over to Mr.
14 Meiresonne, if I still had all the IQS files in
15 my office, I could look at the correspondence
16 file and see whether there's two different
17 letters dated April 19th or around the time
18 period of any time entry in my billing records.
19 Q Did you make any photocopies of
20 records before you turned them over to Mr.
21 Meiresonne?
22 A Photocopies to Mr. Meiresonne? No.
23 We did not make photocopies.
24 Q Did you make any kind of inventory
25 before you turned it over?

1 MILLER
2 Q Apart from the billing file or the
3 time records for that particular time period,
4 and apart from a responsive letter which
5 references this, and from which you can deduce
6 that you had seen it and responded to it, is
7 there any document that you have that would
8 answer the question?
9 A Answer the question. I'm not sure
10 what you --
11 Q The question is did I see this
12 document, did I not see this document.
13 MR. ANESH: Note my objection
14 to the form of the question.
15 A Not that I can recall.
16 Q And if the billing records had
17 reviewed letter, do you have any way of linking
18 up that particular letter to a particular
19 document with specificity?
20 A I guess it would depend if any other
21 letters came in at that time. I didn't say
22 letter from IQS. I just said reviewed letter.
23 I would -- I would have to tell from
24 the correspondence files whether or not anything
25 else came in.

1 MILLER
2 A No. It was way too voluminous. We
3 would have spent ridiculous man hours trying to
4 create that inventory.
5 Q If you would take a look at the next
6 to the last line on this page, just above the
7 31, where it says "I would need a warehouse if I
8 kept them all for the last seven years," do you
9 see that line?
10 A Yes.
11 Q Do you know what that's referring to?
12 A I have to read the whole paragraph in
13 context and I -- I can't -- it's not my -- my
14 words, so I can't tell you what was in Mr.
15 Meiresonne's head.
16 MR. ANESH: That would have
17 been my objection. I didn't have
18 time to get it in.
19 THE WITNESS: I'm sorry. I
20 apologize.
21 MR. ANESH: It's okay.
22 Q Turning to the next page, do you see
23 in the middle of the page, Paragraph 3?
24 It says, "I received a letter from
25 Linda Jones"?

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1 MILLER
2 MR. ANESH: I'm sorry?
3 A I see that paragraph.
4 MR. ANESH: What page, 3?
5 MR. BLUESTONE: 3.
6 Q You testified earlier that -- about a
7 letter that had been received from a customer or
8 another senior or something like that; do you
9 remember that, saying something about seeing
10 identical material?
11 A Yes.
12 Q Is this the letter you're referring
13 to?
14 MR. ANESH: The letter from
15 Linda Jones?
16 MR. BLUESTONE: Yes.
17 A I don't recall. I mean, the name
18 Linda Jones doesn't refresh my memory, but I
19 definitely remember Mike discussing, and then
20 this obviously would confirm it, that that was a
21 letter or e-mail from -- I think it was either
22 an advertiser or potential advertiser.
23 I don't think Linda Jones is another
24 senior, saying that they were -- saying along
25 the lines of what I testified to before.

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1 MILLER
2 Q And clear understanding of the
3 workings of IQS, would "Clean-rooms org" be one
4 of those topic headings?
5 MR. ANESH: Note my objection
6 to the form of that question.
7 A I -- I don't recall enough about how
8 they named their Web sites. I could read what's
9 on this piece of paper here, but I don't have
10 any independent recollection.
11 Q Did you discuss this letter from
12 Linda Jones with Mr. Meiresonne?
13 A I definitely discussed with Mr.
14 Meiresonne there being some letter or -- I don't
15 know why an e-mail sticks in my mind, but some
16 communication from an advertiser.
17 I don't remember that it was Linda
18 Jones, but I definitely discussed with Mr.
19 Meiresonne that someone had noticed a big
20 similarity between the description of companies
21 in the Thomas register and the description of
22 companies in the Thomas Web site.
23 It was one of the things that made it
24 a tough case, that there clearly were entries
25 with similarities.

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1 MILLER
2 Q Did you consider that letter to be
3 significant in respect to his case?
4 MR. ANESH: What letter are we
5 talking about, this letter or Linda
6 Jones?
7 MR. BLUESTONE: Linda Jones.
8 Yes, sir.
9 MR. ANESH: I think the witness
10 already answered that he doesn't
11 know -- he doesn't recall the Linda
12 Jones letter, so I have to object to
13 the form of the question.
14 MR. BLUESTONE: I'll go with
15 the form.
16 Q You can answer it, please.
17 THE WITNESS: May I just hear
18 it back?
19 (The requested portion was read
20 back)
21 MR. ANESH: Note my objection.
22 A Yes.
23 Q And in what way was it significant?
24 A Well, my opinion as to its
25 significance?

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1 MILLER
2 Q Yes, sir.
3 A That it turned that Mike was aware at
4 whatever point in time he received -- and I
5 can't remember if it's the Linda Jones
6 communication or some other communication that I
7 have in my mind.
8 He was aware that someone noticed a
9 huge -- I call it a huge overlap, or that the
10 descriptions of companies were very similar to
11 the Thomas register.
12 And this was before -- I know it was
13 before the cease and desist letter. Even before
14 the cease and desist letter he was on actual
15 notice from someone that these descriptions were
16 very, very similar.
17 Q Did Thomas or its attorneys profess
18 knowledge of this letter?
19 A I'm pretty -- the letter I'm
20 referring to, again without knowing if it's the
21 Linda Jones letter, was disclosed. It was
22 responsive to a document request and we --
23 Q That's not what I'm asking.
24 MR. ANESH: When? Didn't have
25 a date. That's why he answered

1 MILLER
 2 you --
 3 MR. BLUESTONE: I'll rephrase
 4 the question.
 5 Q Before you -- withdrawn.
 6 Did you disclose this -- did IQS
 7 disclose -- did IQS disclose this letter to
 8 Thomas?
 9 MR. ANESH: In the discovery?
 10 MR. BLUESTONE: In discovery.
 11 A Again, whether it's the Linda Jones
 12 letter or some other one that I --
 13 Q Yes.
 14 A Yes. I'm pretty sure it was.
 15 Q Prior to IQS disclosing the letter to
 16 Thomas in discovery, did Thomas or its attorney
 17 profess knowledge of the letter to you?
 18 MR. ANESH: Did they
 19 communicate that knowledge?
 20 MR. BLUESTONE: Well, yes.
 21 MR. ANESH: Well, he doesn't
 22 know if they had knowledge unless
 23 they communicated --
 24 MR. BLUESTONE: I said profess.
 25 A Profess to me.

1 MILLER
 2 Now, you told me in a prior answer
 3 that getting the notice seemed to be of some
 4 significance to you, being told that there were
 5 similarities out there.
 6 MR. ANESH: He mentioned it
 7 to --
 8 MR. BLUESTONE: Please, Mark.
 9 Don't break into my form. Let me
 10 finish the question. Then you make
 11 your objection.
 12 Q Now, did the letter discuss the
 13 particular similarities?
 14 MR. ANESH: Note my objection
 15 to the form of the question.
 16 A I do not recall.
 17 Q Do you recall whether or not the
 18 analysis was performed on the purported
 19 similarities between the IQS listing and the
 20 Thomas listing which was discussed in the
 21 letter, whether or not it was in the letter?
 22 MR. ANESH: Objection to the
 23 form of the question.
 24 A I don't know if it was performed at
 25 the time of this document. I do know later on,

1 MILLER
 2 Q Yes.
 3 A I don't recall that.
 4 Q Did you ever view either the Linda
 5 Jones letter or the other letter that --
 6 whatever letter it was you were talking about
 7 here during your representation of IQS?
 8 A Yes. I remember reviewing it when
 9 we produced it.
 10 Q Okay. Did you have an opinion at
 11 that time whether or not the similarities which
 12 may have been noted in the letter were of legal
 13 significance to the IQS case?
 14 The similarities themselves. Not the
 15 notice, but the similarities.
 16 THE WITNESS: I'm sorry. Could
 17 I just get that question back?
 18 (The requested portion was read
 19 back)
 20 Q Do you understand my question?
 21 A I don't think -- the last part threw
 22 me off.
 23 Q Let me rephrase it for you then. A
 24 letter saying that there were similarities
 25 between the listings was sent.

1 MILLER
 2 and it was done I'm pretty sure after the
 3 spoliation motion was made, about reviewing
 4 basically everything, all the -- all the
 5 listings that were in Mike's Web sites back at
 6 around the time of these underlying e-mail or
 7 letter to the Thomas register descriptions.
 8 Q Who performed the analysis?
 9 A I think in the first instance it was
 10 Nicole Parker.
 11 Q And who performed the analysis in the
 12 latter instance?
 13 A That's what I mean. I'm saying after
 14 the spoliation motion, that project we
 15 undertook, I think the -- the -- I don't know
 16 what to say. The grunt work, whatever, the
 17 actual physically comparing descriptions in the
 18 Thomas register with the descriptions on Mike's
 19 Web sites back in '01 was done by Nicole Parker.
 20 Q Did any attorney analyze the legal
 21 significance of the letter and the similarities
 22 discussed in the letter on behalf of IQS?
 23 MR. ANESH: When?
 24 MR. BLUESTONE: At any time.
 25 MR. ANESH: Objection to the

1 MILLER
 2 form of the question.
 3 A I'm not following you. I certainly
 4 discussed with Mike that -- whatever was in the
 5 letter about similarities -- I certainly
 6 discussed whatever was in this letter or e-mail,
 7 the one that we produced in the litigation. So
 8 I -- did I discuss the legal significance of it?
 9 I don't recall.
 10 Q Let me rephrase the question then for
 11 you.
 12 There could be similarities between
 13 two authored works without legal significance,
 14 correct?
 15 MR. ANESH: Note my objection
 16 to the form of the question.
 17 A Yes.
 18 Q Did anyone analyze the degree of
 19 similarity between the listing noted in the
 20 letter and the Thomas listing, with a view
 21 towards whether or not it had legal significance
 22 to the IQS case?
 23 A I definitely -- I don't know whether
 24 at the time of this April 16th -- April 19th
 25 -I'm sorry- fax whether -- I don't remember the

1 MILLER
 2 So I mean, yeah. It would have been
 3 one of many, many, many listings where we looked
 4 at the significance of how much -- you know, how
 5 much substantial similarity there was between
 6 IQS Web site descriptions of companies and
 7 Thomas's descriptions of companies. I can't
 8 pull out this one particular listing or one
 9 particular Web site.
 10 Q Okay. And are there any notes of
 11 your discussions with Mike concerning this?
 12 A Notes per se, no. Not that I can
 13 recall.
 14 (Exhibit E, letters and
 15 e-mails, was marked for
 16 identification, as of this date.)
 17 MR. ANESH: Exhibit E?
 18 MR. BLUESTONE: Exhibit E.
 19 Q Exhibit E is a compilation of a
 20 number of different letters and e-mails, so
 21 we'll work our way through them.
 22 The top page of Exhibit E, which says
 23 Page 1 of 2 in the upper right-hand corner,
 24 appears to be an e-mail from you; is that
 25 correct?

1 MILLER
 2 communication enough -- well enough to know
 3 whether or not it listed exactly what was said
 4 in each.
 5 But I do know Mike said yes, that he
 6 had at some point reviewed it, and yes, it was
 7 very similar.
 8 And Mike -- Mike's attitude was well,
 9 by this point in time, in October 2001, they
 10 were already rewriting Web sites.
 11 MR. BLUESTONE: Okay. So I
 12 move to strike that which is not
 13 responsive.
 14 Q Did any attorney perform analysis
 15 with a view towards the legal significance of
 16 any similarities between the two?
 17 MR. ANESH: Objection to the
 18 form, and again, asked and answered.
 19 A Not in the time frame of this
 20 April 19, 2003 letter.
 21 Q Now, I didn't actually limit it to
 22 that time frame.
 23 A Then the answer would be it wasn't --
 24 the subsequent project was not limited to this
 25 one particular listing.

1 MILLER
 2 MR. ANESH: What are you
 3 talking about? It looks like an
 4 e-mail to him.
 5 MR. BLUESTONE: I see the --
 6 MR. ANESH: It's to Neil
 7 Miller.
 8 MR. BLUESTONE: I see in the
 9 upper left-hand corner it says
 10 nmiller@mralaw.com, inbox message.
 11 That's why I say that.
 12 MR. ANESH: Well --
 13 MR. BLUESTONE: Mark, don't
 14 testify for your witness.
 15 MR. ANESH: I'm not.
 16 MR. BLUESTONE: Mark, don't
 17 testify for your witness. We'll get
 18 there.
 19 MR. ANESH: I'm not.
 20 MR. BLUESTONE: We'll get
 21 there.
 22 MR. ANESH: I was just going to
 23 clear the record.
 24 MR. BLUESTONE: Thank you. The
 25 question was, and it can be answered

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1 MILLER
2 by your client in a yes or a no --
3 Q Is this an e-mail from you or to you?
4 A What is the this you are referring
5 to?
6 Q Page 1.
7 MR. ANESH: Well, with all due
8 respect, I'm not trying to get him to
9 testify one way or the other.
10 But it looks like there's
11 two -- at least two e-mails on Page
12 1. One looks like it's from him, and
13 the other one looks like it's to him.
14 MR. BLUESTONE: Thank you. And
15 I'm trying to figure out which came
16 first. But please don't have any
17 more testimony.
18 MR. ANESH: If you'd make the
19 record clear then --
20 MR. BLUESTONE: Mark, this is
21 an 11-page exhibit.
22 MR. ANESH: I counted the
23 pages. 11 pages.
24 MR. BLUESTONE: Thank you very
25 much.

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1 MILLER
2 MR. ANESH: You're welcome.
3 Q So looking at the bottom of this
4 sheet, is that -- is the bottom portion, which
5 says original message, is that an e-mail from
6 you to Mr. Meiresonne?
7 MR. ANESH: Where does it say
8 original message?
9 MR. BLUESTONE: Right there
10 (indicating), Mark.
11 A I see where it --
12 MR. ANESH: Can you show me?
13 Okay.
14 A Below where it says original message?
15 It appears to be.
16 Q Okay. The voluminous -- what did you
17 mean by the term "Voluminous advertiser files
18 you mentioned"?
19 MR. ANESH: Where are you
20 reading from?
21 THE WITNESS: I see where he's
22 reading from.
23 MR. ANESH: Got it.
24 A Mike told me there were voluminous
25 advertiser files.

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1 MILLER
2 Q And did you at any time prior to
3 sending this e-mail determine what they
4 consisted of?
5 A Only in a general sense. I didn't go
6 into what -- tell me every particular document
7 in your advertiser files.
8 Q Would these advertiser files be
9 considered for discovery purposes?
10 A Yes.
11 Q And were they being considered as to
12 whether they should be produced or not produced?
13 MR. ANESH: Note my objection
14 to the form of the question.
15 A No. There was no doubt that at least
16 some documents there would be documents within
17 those advertiser files that would respond to
18 Thomas's document request.
19 There wasn't a question of do we
20 produce or don't we produce. The question is
21 how do we produce.
22 Q And did you know as of April 29, 2003
23 whether the entirety of the advertiser files
24 should be produced or some portion of the
25 advertiser files?

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1 MILLER
2 A What was the date of the question?
3 Q The date of the e-mail.
4 A I don't know that we determined by
5 April 29th. I don't know one way or the other
6 whether we determined by April 29th just to
7 produce the entire advertiser files.
8 Q Did you ever reach an agreement with
9 Mike Meiresonne as to what portions, whether
10 it's zero or a hundred percent or something in
11 between, of the advertiser file should be
12 produced?
13 MR. ANESH: Objection to form.
14 A Yes.
15 Q What did you -- what agreement did
16 you reach?
17 A We reached an agreement that we were
18 going to produce the entire advertiser file.
19 Thomas was welcome to look through the
20 voluminous materials contained therein.
21 Q Did you ever have a discussion with
22 Mike Meiresonne as to the content of those
23 advertiser files prior to reaching that
24 agreement?
25 MR. ANESH: Objection. Asked

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1 MILLER
2 and answered. You can answer again.
3 A Yes.
4 Q When did you reach that agreement?
5 A I can't remember the date.
6 Q Is the discussion or the agreement
7 itself memorialized in any writing?
8 A Only to the extent it's e-mails or
9 correspondence between me and Mike.
10 Q Are you aware of any particular
11 e-mails or correspondence between the two of you
12 that memorializes that discussion?
13 A Sitting here now, no.
14 Q In your review of documents before
15 coming here today, did you come across any such
16 correspondence?
17 MR. ANESH: Objection to the
18 form of the question.
19 A I don't recall that.
20 Q Did you review any documents before
21 coming here today?
22 A Yes.
23 Q What documents did you review?
24 A I reviewed --
25 THE WITNESS: I'm sorry.

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1 MILLER
2 MR. BLUESTONE: He's just
3 looking at his fingernails.
4 MR. ANESH: I'm just stretching
5 my arm.
6 A I recall reviewing certain billing
7 records in the April 2003 and late July early
8 August 2003 time period. I remember seeing at
9 least some correspondence in those same time
10 periods.
11 Q Did any of that correspondence that
12 you actually reviewed discuss the contents of
13 the voluminous advertiser files, or any
14 discussions about what portions of them were to
15 be produced and which portions were not to be
16 produced?
17 A Not that I recall.
18 Q If any -- and I just want to make
19 sure I asked this the right way. Have you
20 ever -- withdrawn.
21 Do you -- are you aware of any
22 e-mails, correspondence, faxes or other letters
23 in which there is a memorialization of a
24 discussion as to the contents of the advertiser
25 files?

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1 MILLER
2 THE WITNESS: Can you read that
3 back?
4 (The requested portion was read
5 back)
6 A Well, I mean, we've seen some.
7 You're talking about the particulars of -- the
8 particular contents? I would say no, I'm not
9 aware of any.
10 Q Now, if you would go to the top of
11 this page.
12 MR. ANESH: Still Page 1?
13 MR. BLUESTONE: Still Page 1.
14 Q It appears to be an e-mail from Mr.
15 Meiresonne to you; is that correct?
16 A Appears to be.
17 Q And this seems to be the day after
18 you wrote to him?
19 A Appears to be.
20 Q Okay. Now, did you ever discuss with
21 him -- withdrawn.
22 It says, "It should but rather
23 limited, since we did clean out some of the
24 details because of space." Did I read that
25 correctly?

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1 MILLER
2 A Yes.
3 Q Did you ever discuss with him what
4 was cleaned out?
5 MR. ANESH: When?
6 MR. BLUESTONE: Ever.
7 MR. ANESH: What?
8 MR. BLUESTONE: Ever.
9 A Yes.
10 Q When for the first time did you
11 discuss with him materials being cleaned out of
12 the voluminous advertiser files?
13 MR. ANESH: Note my objection
14 to the form of the question.
15 A Sometime in the fall of 2003.
16 Q And by fall, can you be any more
17 specific?
18 A I think I mentioned earlier that I'm
19 not certain with regard to the documents that
20 were discarded in 2001 to early 2002, whether it
21 came up at Mike's deposition in mid October, or
22 whether I learned of that on the spoliation
23 motion. So my discussion with Mike on it would
24 depend on when I first learned of it.
25 Q But it definitely came after the

1 MILLER
 2 document review in Michigan?
 3 A Yes.
 4 Q Turning to the next page, please, of
 5 Exhibit E, this is a June 30th letter --
 6 June 30, 2003 letter, three pages, bearing Bates
 7 marks 877, 78 and 79. Is this your letter to
 8 Mark Fowler?
 9 A It appears to be. My letterhead
 10 isn't on it. I'm guessing it was -- I don't
 11 want to guess.
 12 I wrote to Mr. Fowler on more than
 13 one occasion. It appears to be. I don't
 14 recognize it in this particular form.
 15 Q Was it the firm's practice to keep
 16 this particular form and the letter that went
 17 out with a letterhead on it in the files?
 18 A I'm sorry. The practice would have
 19 been -- two different ways. The extent -- if
 20 you went to my computer and found a particular
 21 letter as it appears on my computer, you
 22 wouldn't see the letterhead.
 23 Q It would look like this?
 24 A It would look like this. We would
 25 keep -- our practice would have been to keep a

1 MILLER
 2 indicate that you went to the Satterlee law firm
 3 to review documents that they had?
 4 A I'm not sure if this letter says
 5 that, but I do remember being in their offices
 6 reviewing documents before we had them shipped
 7 over to my office.
 8 Q So the first paragraph is talking
 9 about your going to their office to review
 10 documents?
 11 A Yes.
 12 Q And the second paragraph discusses
 13 their review of documents in Michigan?
 14 MR. ANESH: Note my
 15 objection -- note my objection to the
 16 form of the question.
 17 A Both sides.
 18 Q Okay.
 19 A Yes. We were producing documents in
 20 Michigan and they were producing documents in
 21 Michigan.
 22 Q So is it correct to say that by
 23 June 30, 2003 you had already agreed they could
 24 review documents in Michigan?
 25 MR. ANESH: Who's they?

1 MILLER
 2 hard copy in the file with a letterhead on it.
 3 Q So you believe that this came from
 4 your computer, 6 -- I'm sorry. 877, 78 and 79?
 5 A I would be speculating.
 6 Q I can represent to you that it was
 7 produced by your attorney to me.
 8 A Okay.
 9 Q And do you know the origin of this
 10 particular document that went to your attorney?
 11 MR. ANESH: What do you mean,
 12 the origin?
 13 MR. BLUESTONE: Where it came
 14 from, his computer, a file --
 15 MR. ANESH: Oh.
 16 MR. BLUESTONE: -- warehouse.
 17 MR. ANESH: Note my objection
 18 to the form.
 19 A I can't answer for this particular
 20 document. I can only say we didn't -- we no
 21 longer have the correspondence files.
 22 We turned over to our attorney all
 23 documents that were -- appeared on my computer
 24 relating to this matter.
 25 Q Now, this -- does this letter

1 MILLER
 2 MR. BLUESTONE: Defendant --
 3 Plaintiffs in the Thomas case.
 4 A I would only base my answer based on
 5 what I'm reading here. I have no independent
 6 recollection.
 7 Q Okay. Do you know whether or not you
 8 had a phone conversation with Mr. Fowler that
 9 preceded this letter, and discussed or came to
 10 an agreement on the terms that you have set
 11 forth in the letter?
 12 A There's a few different parts to that
 13 question. I'll take my shot at answering --
 14 MR. ANESH: No, no. If you're
 15 not sure, tell him you're not sure.
 16 A I -- there's different parts to that
 17 question so --
 18 MR. ANESH: Note my objection
 19 to the form.
 20 A If you can break them up I'll answer
 21 them one by one.
 22 Q Sure. From time to time you had
 23 phone conversations with Mr. Fowler?
 24 A Some. My contact had diminished as
 25 time went on.

1 MILLER
 2 Q Does this letter memorialize a prior
 3 telephone conversation in which you agreed that
 4 they could go to Michigan and review documents?
 5 MR. ANESH: Note my objection
 6 to the form of the question.
 7 A It appears to, but I don't
 8 independently recollect a conversation.
 9 Q And would you have taken handwritten
 10 notes about a phone conversation you had on such
 11 an issue?
 12 A No. I would probably memorialize it
 13 with a letter such as this. I just say I
 14 don't -- sitting here today, I don't remember my
 15 conversation with Mr. Fowler.
 16 Q Was this your first memorialization
 17 of a discussion about reviewing documents in
 18 Michigan?
 19 A I don't know.
 20 Q Turn to the next -- not the next
 21 page, but the next document, which is a letter
 22 on the Miller, Rosado letterhead dated July 31,
 23 2003.
 24 This a letter from you to Mr. Saurack
 25 of the Satterlee firm?

1 MILLER
 2 Q If your billing records said, for
 3 example, T/C MM, would that tell you what the
 4 contents of the conversation were?
 5 MR. ANESH: Note my objection
 6 to the form of the question.
 7 A If the entry indicates the content of
 8 the conversation then it does. I mean,
 9 typically I would.
 10 Q Is there any other way of
 11 reconstructing the content of any particular
 12 telephone conversation, other than a notation in
 13 the billing records or some -- some reference to
 14 it in another writing?
 15 A No.
 16 Q Can you tell me at this time when you
 17 first discussed the document review with Mr.
 18 Meiresonne?
 19 MR. ANESH: The August 4th, 5th
 20 document review?
 21 MR. BLUESTONE: No. The
 22 impending document review in
 23 Michigan, what -- dated or not.
 24 MR. ANESH: When he first --
 25 A I can't tell from this. I can't tell

1 MILLER
 2 A It appears to be.
 3 Q And is this a three-page letter?
 4 A That's what is here. That's what
 5 appears to be here, yes.
 6 Q Is your signature on the third page?
 7 A Yes.
 8 Q Now, does this letter confirm a date
 9 to review documents at Mr. Meiresonne's office
 10 on August 4th and 5th, 2003?
 11 A Yes.
 12 Q Okay. Had you spoken with Mr.
 13 Meiresonne about the impending document review
 14 prior to July 31, 2003?
 15 A That would be my custom and practice,
 16 yes.
 17 Q Do you actually have a memory of that
 18 phone conversation?
 19 A No.
 20 MR. ANESH: Note my objection
 21 to the form of the question.
 22 Q Do you have any notes to show that
 23 you actually had a phone conversation with him?
 24 A The only notes would be if it's my
 25 billing records. I'm not aware of any notes.

1 MILLER
 2 from this document. Just given the dates
 3 involved I would -- I feel fairly confident I
 4 would have discussed it at some point prior to
 5 July 31st.
 6 MR. BLUESTONE: Off the record.
 7 (Discussion off the record)
 8 Q Now, did Mr. Meiresonne ever ask for
 9 any advice on how to handle the document review
 10 in Michigan from a procedural point of view?
 11 MR. ANESH: Note my objection
 12 to the form.
 13 A I'm not sure I understand the
 14 question, but the answer is I don't think so
 15 from a procedural point of view.
 16 But -- I mean, it was simple. We
 17 identified in an earlier document response that
 18 he's going to produce certain files, and he was
 19 going to produce them and allow them to copy it,
 20 what they wanted out of those files. I'm not
 21 sure what you're asking in terms of procedural
 22 point of view.
 23 Q Did he discuss with you the culling
 24 of any documents at any time before July 31,
 25 2003?

1 MILLER
 2 A Not that I recall.
 3 Q Did he discuss with you the issue of
 4 documents that were printed on two sides with
 5 unrelated materials?
 6 A Definitely not.
 7 Q Did he ever ask you for any advice on
 8 how to handle the document review visit in any
 9 fashion at all?
 10 MR. ANESH: Note my objection
 11 to the form of the question.
 12 A I can't -- I don't believe so, but
 13 I'm not sure I understood your question
 14 properly.
 15 Q Did he write you a letter saying how
 16 many hours a day should I let them be here? Did
 17 he ask -- what should I let them do?
 18 Should I let them take documents out
 19 of the office? Should I make them photocopy
 20 them here?
 21 Anything along those kind of
 22 questions? Anything about the procedure of how
 23 to hold the document review?
 24 A I -- I do remember in terms of -- it
 25 was take -- the files that we said we were going

1 MILLER
 2 A I do remember in that week of
 3 August 4th I was on trial a couple of days. It
 4 was finishing a trial that commenced in, I
 5 believe, May against Tom Liotti.
 6 And I -- what I remember is --
 7 discussed with Mike should I be in Michigan,
 8 because the question was should it be this week
 9 when I'm going to be on trial, or should we do
 10 it a different week when I can be there.
 11 Q And you had a discussion via phone or
 12 some other method?
 13 A I mean, we certainly didn't meet in
 14 person, so any discussion would have been by
 15 telephone.
 16 Q You could have had a discussion with
 17 e-mails.
 18 A Oh, god. I don't recall whether it
 19 was a subject of any e-mails, but I know I did
 20 discuss it with Mike.
 21 Q And do you have any notes on that
 22 discussion?
 23 A No.
 24 Q Do you remember the sum and substance
 25 of the conversation, whether in writing or --

MILLER
 never
 informed
 me
 8 day prior
 NO

1 MILLER
 2 to produce in Michigan, produce them. Let them
 3 copy it.
 4 I don't recall either way whether or
 5 not he asked any -- any questions about letting
 6 them copy them off premises or not. I don't
 7 recall that. And what else -- what else was in
 8 your question?
 9 Q How many hours a day?
 10 A I certainly don't recall that.
 11 Q Those were just some illustrative
 12 kind of questions.
 13 Were any questions asked of you
 14 concerning the procedure of how -- holding a
 15 document review?
 16 A I think I answered it to the best I
 17 can. I don't recall specifics, other than what
 18 I've already testified to.
 19 Q Were you actually on trial at or
 20 about that time period?
 21 A Yes.
 22 MR. ANESH: What time period?
 23 A Assuming you're meaning the time
 24 period they were in Michigan.
 25 Q Yes.

1 MILLER
 2 A I can't say it was one conversation
 3 or more than one. But I -- I had a discussion
 4 with Mike about the timing when they were going
 5 to come to Michigan, and whether or not he
 6 wished me to come out there.
 7 And the whole point was since this is
 8 going to be particular advertiser files, and we
 9 already said we're going to produce, there was
 10 no indication of any privilege problems or any
 11 other problems.
 12 This was going to be, okay, here's
 13 what we said we're going to produce in Michigan.
 14 Here it is.
 15 Mike determined -- we discussed
 16 certainly whether he wanted to incur the cost of
 17 me coming to Michigan for a few days.
 18 And this would have been in the
 19 context of when should that document production
 20 be.
 21 Q Did you ever write an e-mail to him
 22 saying you were sorry that you weren't there?
 23 A I don't recall. I mean, certainly in
 24 hindsight probably would have been better, but
 25 it wouldn't have changed the destruction. It

BS!
 NOT
 TRUE

1 MILLER *not true*
 2 already happened
 3 MR. ANESH: Take a break for a
 4 minute?
 5 MR. BLUESTONE: Sure.
 6 (Recess taken)
 7 CONTINUED DIRECT EXAMINATION BY MR. BLUESTONE:
 8 Q Turn to the next document after your
 9 letter, please.
 10 This is a document that in the upper
 11 right-hand corner has Page 1 of 1 on it?
 12 A Uh-huh.
 13 Q This is -- appears to me to be an
 14 e-mail with a recapitulation of an earlier
 15 e-mail. Do you remember seeing this document?
 16 MR. ANESH: Note my objection
 17 to the form of the question.
 18 A Okay. There's two different
 19 documents here.
 20 Q Yes.
 21 A The latter document doesn't appear to
 22 be an e-mail, though I guess it could be. Seems
 23 to be more like a fax.
 24 Q Could be a fax.
 25 A Do I recall either of these

1 MILLER
 2 Q Yes.
 3 MR. ANESH: Text of a fax?
 4 MR. BLUESTONE: That's what it
 5 says, Mark. *he shows Bellamy late*
 6 A It appears to be a reprint of a fax.
 7 Q Do you remember getting a fax on
 8 August 3, 2003 from Mr. Meiresonne to you?
 9 A I don't recall.
 10 Q Is the fax number -- is the telephone
 11 number that's written under the name Miller,
 12 Rosado & Algios your fax number at the office?
 13 A Yes.
 14 Q Do you remember discussing, quote,
 15 key word packet, close quote --
 16 A I do not.
 17 Q -- document with him ever?
 18 A I do not recall it.
 19 Q Is that a term of anything that you
 20 remember from the case, key word packet?
 21 A I do have some memory of the term key
 22 word packet in terms of how Thomas -- how IQS
 23 in -- when I say latter years, not in the --
 24 after I was involved, in how they -- how they
 25 configured their Web site-listed companies. The

1 MILLER
 2 documents? No.
 3 Q The recapitulation of the fax seems
 4 to be dated August 3, 2003.
 5 MR. ANESH: Note my objection.
 6 You're characterizing what the
 7 document is.
 8 MR. BLUESTONE: It's the text
 9 of the fax. It says so right there.
 10 MR. ANESH: Where does it say
 11 the word recapitulation?
 12 MR. BLUESTONE: It's a text of
 13 a fax.
 14 MR. ANESH: Where does it say
 15 recapitulation?
 16 MR. BLUESTONE: Text means
 17 recapitulation.
 18 MR. ANESH: I don't know what
 19 it means. I object to the form of
 20 the question. You're characterizing
 21 what it is.
 22 MR. BLUESTONE: Okay.
 23 Q Is this a text of a fax?
 24 A Meaning from where it says date
 25 August 3, 2003 down?

1 MILLER
 2 term key word packet is something to do with how
 3 they did that.
 4 Q Turn to the next page, please, sir.
 5 This is -- this appears to be an e-mail from
 6 Mike Meiresonne to you, dated Sunday, July 27,
 7 2003. Do you remember seeing this e-mail?
 8 A I remember seeing it last week.
 9 Q During your review of documents?
 10 A Yes.
 11 Q Do you remember -- do you remember
 12 seeing it back in July of '03?
 13 A I don't remember.
 14 Q Now, this has your correct e-mail
 15 address after the "To Neil Miller"?
 16 A Yes.
 17 Q Do you ever remember discussing an
 18 editorial update project with Mr. Meiresonne?
 19 A Editorial update.
 20 Q Look at Paragraph 1 in that e-mail.
 21 A I don't recall discussing the
 22 paragraph or that e-mail with Mr. Meiresonne. I
 23 could tell you, I -- I feel confident I would
 24 have discussed this e-mail with Mr. Meiresonne,
 25 because that would be my general practice in

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1 MILLER
2 doing so. I don't recall specific conversation
3 about Paragraph 1.
4 Q Do you have any particular
5 understanding of what he is referring to in
6 Paragraph 1 or Paragraph 2 of his e-mail?
7 MR. ANESH: Note my objection,
8 calling for what another person is
9 referring to.
10 MR. BLUESTONE: Right. I'm
11 asking if he has an understanding in
12 his own mind of what it means.
13 MR. ANESH: He didn't recall
14 getting the e-mail, so I don't know
15 how he can have an understanding of
16 something he didn't recall getting.
17 MR. BLUESTONE: If I got an
18 e-mail that said the Titanic just
19 sank -- if I saw an e-mail today that
20 said the Titanic just sank, I could
21 probably have an understanding of
22 what it meant.
23 MR. ANESH: Today? What
24 relevance is it? Today what
25 relevance is it?

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1 MILLER
2 MR. BLUESTONE: That's not the
3 point, Mark.
4 MR. ANESH: It is the point.
5 Q Do you have an understanding what he
6 was talking about?
7 MR. ANESH: Note my objection.
8 A In Paragraph 1, no, because in the
9 2000 time frame that doesn't make sense to me,
10 from what I remember of the case. Paragraph 2,
11 yes. TR advertiser files. Those are the files
12 he was going to produce in Michigan.
13 Q Wasn't one of the points that was
14 made on behalf of the IQS Defendants that some
15 files were discarded before the cease and desist
16 letter was sent?
17 MR. ANESH: Note my objection
18 to the form of the question. Could I
19 have the question read back?
20 THE WITNESS: Yes. Please do.
21 (The requested portion was read
22 back)
23 MR. ANESH: I have to object to
24 the form of the question.
25 A Yes.

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1 MILLER
2 Q And the cease and desist letter was
3 sent in the fall of 2001?
4 A I believe you showed me something
5 before which had a November 2001 date on it.
6 Q What I showed you before was not the
7 cease and desist letter.
8 A No. It was a reference to the cease
9 and desist letter.
10 Q Actually it wasn't. I think there --
11 MR. ANESH: Just answer the
12 question.
13 A The short answer is November 2001.
14 Q Right. The cease and desist letter
15 came from attorneys, didn't it?
16 A That's my memory of it.
17 Q And the letter we were talking about
18 came from some advertiser or customer, didn't
19 it?
20 A I was from a complete different
21 context. I wasn't referring to that at all.
22 MR. ANESH: You were referring
23 to something that he didn't ask you
24 about. Just listen to the question.
25 Q So let me go back so that I'm not

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1 MILLER
2 ambushing you with different terminology.
3 The -- there was a cease and desist
4 letter sent by the Satterlee law firm, was there
5 not?
6 A I believe so.
7 Q And some predecessor law firm for IQS
8 responded to it, did they not?
9 A Yes.
10 Q Now, there was also a letter from an
11 advertiser saying there was some sort of
12 similarities with a customer or something like
13 that?
14 A Yes.
15 Q Those are two different letters,
16 right?
17 A Yes.
18 Q Which letter were you talking about
19 just now when you answered my question, which of
20 the two?
21 A I have to hear your question again to
22 know which one I was referring to.
23 MR. ANESH: Objection to form.
24 Q Was one of the points raised in the
25 litigation whether documents were discarded

1 MILLER
 2 before the cease and desist letter from the
 3 attorneys?
 4 MR. ANESH: Objection.
 5 A Yes.
 6 MR. ANESH: Objection to the
 7 form of the question.
 8 Q And the cease and desist letter by
 9 the attorneys was sent in November of 2001, was
 10 it not?
 11 A Yes.
 12 Q So were any of the documents that
 13 were said to have been discarded before the
 14 letter discarded in 2000?
 15 MR. ANESH: What? How does he
 16 know?
 17 A I -- I don't know. I only know what
 18 people have testified as to when.
 19 MR. ANESH: Objection to the
 20 form of the question. This lawyer
 21 was not --
 22 MR. BLUESTONE: Okay, okay.
 23 Just object, Mark.
 24 MR. ANESH: He wasn't retained
 25 until January of '03. You're asking

1 MILLER
 2 A Yes.
 3 MR. ANESH: Objection. Asked
 4 and answered.
 5 Q What is your understanding?
 6 A My understanding is the files
 7 referring to -- within each Web site there would
 8 be -- for each IQS's Web sites there would be
 9 advertiser files for particular advertisers on a
 10 particular Web site.
 11 Q Now, did you respond to this e-mail?
 12 A I -- I don't recall.
 13 Q There's a request at the bottom that
 14 you responded, is there not?
 15 A Depends how you want to interpret
 16 anything else you could think of or not to
 17 include, but it would have been my practice to
 18 respond to something like this.
 19 Q Do you know whether you did?
 20 A Do I know? No. I don't recall
 21 any -- I don't recall my response.
 22 (Exhibit F, order to show
 23 cause, was marked for identification,
 24 as of this date.)
 25 Q I show you Exhibit F.

*Confusing
TR adv of mine
JS IQS
adv of mine*

*email
that he
did not
respond*

1 MILLER
 2 him about what happened in 2000.
 3 MR. BLUESTONE: I'll rephrase
 4 the question.
 5 Q Was testimony taken that some
 6 documents were discarded in 2000?
 7 A I don't recall that.
 8 Q When you say you don't recall that,
 9 that means one of two things. It means you
 10 don't know or you don't remember or you -- or
 11 it's not so.
 12 For example, did the sun not come up
 13 yesterday. You say I don't recall that. Which
 14 is it?
 15 MR. ANESH: Note my objection
 16 to the form of the question.
 17 A While I can recall discarding of
 18 documents during the rewrite project that began
 19 in August or September of 2001, sitting here
 20 today I cannot recall anyone -- any discussions
 21 about discarding of documents in 2000.
 22 Q Do you have any understanding from
 23 discussions with Mr. Meiresonne or any other
 24 source as to what the TR advertiser files
 25 referred to in Paragraph 2 are?

1 MILLER
 2 MR. ANESH: Is this
 3 (indicating) it?
 4 MR. BLUESTONE: Yes, sir.
 5 Q All right. Now turning to Page 2 of
 6 Exhibit F, this is an order to show cause for
 7 sanctions. Have you seen this document before?
 8 A Yes.
 9 MR. ANESH: Note it's an
 10 eight-page document, the first page
 11 of which appears to be an e-mail from
 12 Mike Meiresonne to Neil Miller dated
 13 Wednesday, December 17, 2003.
 14 THE WITNESS: I thought the
 15 question referred to Page 2 of this
 16 document.
 17 MR. ANESH: I understand. I'm
 18 just identifying it for the record.
 19 He's annexing -- he's presenting it
 20 as a complete exhibit.
 21 Q Now, is this the spoliation motion
 22 that we discussed or you've testified about?
 23 MR. ANESH: The order to show
 24 cause?
 25 MR. BLUESTONE: Yes.

January

lys

1 MILLER
2 A It's part of it.
3 Q Did the motion start by an order to
4 show cause, or was there a separate motion made
5 later?
6 A No. It's part of the order to show
7 cause.
8 Q Was there a notice of motion made
9 thereafter, or did everything spring from the
10 order to show cause?
11 A I believe everything sprang from the
12 order to show cause.
13 Q And did your law firm provide a
14 written opposition to the order to show cause?
15 A Yes.
16 Q And was it the order to show cause,
17 the opposition and supporting documents which
18 eventually became the body of the spoliation
19 motion?
20 MR. ANESH: Note my objection
21 to the form of the question.
22 A If I understand -- I'm not sure -- if
23 I understand you correctly, yes. There was an
24 order to show cause, supporting papers,
25 memorandum of law.

1 MILLER
2 in preparing our automatic disclosures, we had
3 to identify witnesses or possibly even
4 interrogatory answers.
5 We had to go over anyone who might be
6 a potential witness, and I -- Lisa Dokter was
7 probably among those names.
8 Q So her name was referenced in some of
9 the earlier discovery, her name?
10 A Her name was referenced, yes.
11 Q And do you know whether it was
12 referenced by both sides to the litigation or
13 only one side?
14 A I don't recall.
15 Q And did you discuss her relevance or
16 potential testimony or potential knowledge with
17 Michael Meiresonne before receiving this order
18 to show cause?
19 MR. ANESH: Note my objection
20 to the form of the question. *no*
21 A Only in the most general way.
22 Q Did you ever sit down and discuss
23 with Michael Meiresonne prior to the order to
24 show cause, as a latest date, the testimony
25 and/or potential testimony of any witnesses?

1 MILLER
2 There was our response memorandum of
3 law and various declarations or affidavits that
4 would sort of be the record of that motion.
5 Q Now, the order to show cause, the --
6 actually the order portion of the order to show
7 cause, which is the first page of -- second page
8 of the exhibit, first page of the order,
9 references the declaration of Lisa J. Dokter.
10 MR. ANESH: What page is that?
11 MR. BLUESTONE: It's the second
12 line of the order to show cause.
13 MR. ANESH: Okay.
14 Q Now, had you ever seen or heard of
15 the declaration of Lisa Dokter prior to seeing
16 this document?
17 A No.
18 Q Had any discovery been obtained from
19 Lisa Dokter prior to December 5, 2003, to your
20 knowledge?
21 A No.
22 Q Had you discussed Lisa Dokter with
23 Mike Meiresonne prior to seeing this order to
24 show cause?
25 A Not particularly to her, but I know

1 MILLER
2 A Any time prior to the order to show
3 cause?
4 Q Yes.
5 A Yes.
6 Q Can you tell me which witnesses and
7 their testimony you did discuss prior to this?
8 A Well, we certainly discussed the
9 whole slew of potential witnesses who were
10 employed by Thomas, or at least were connected
11 to Thomas through agreement -- through various
12 agreements, such as Mr. Gennaro who we talked
13 about earlier.
14 We talked about a lot of Thomas
15 witnesses. There's the third-party Defendants.
16 We talked about them as witnesses.
17 We talked about Mr. Terryn. He had
18 submitted an affidavit early on, as had Nicole
19 Korthals. We certainly discussed them having to
20 be deposed at some point.
21 Q I'm not -- I'm trying to get not to
22 whether they had to be deposed from a strategic
23 point of view, but actually what their potential
24 testimony would be. Did you have any of those
25 discussions?

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1 MILLER
2 A Yes. In terms of discussing a
3 particular person, we would discuss what we
4 might be able to obtain from that person, what
5 testimony maybe we could elicit from them.
6 Q In your law firm in December of 2003,
7 there were three partners. Were there any
8 associates?
9 A I don't believe so at that time.
10 Q Were there any paralegals who worked
11 on substantive parts of the case?
12 A I'm not sure what you mean by
13 substantive, but the short answer is I don't
14 believe there were.
15 Q Did anyone sit in on the
16 conversations that you had with Mike Meiresonne
17 concerning potential testimony, the substance of
18 potential testimony from any of these people?
19 A I don't believe so.
20 Q Did you make any written notes about
21 it?
22 A Not that I recall.
23 Q Do you remember the sum and substance
24 of discussions about Lisa Dokter prior to
25 December 3, 2003?

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1 MILLER
2 A No.
3 Q Do you remember the sum and substance
4 of discussions concerning Chris Terryn prior to
5 December 3, 2003?
6 THE WITNESS: Could you repeat
7 that question?
8 (The requested portion was read
9 back)
10 MR. ANESH: Why the
11 December 3rd date?
12 MR. BLUESTONE: Well, this is
13 the date of the order to show cause,
14 is it not?
15 MR. ANESH: No, it's not.
16 MR. BLUESTONE: December 5th.
17 Sorry. I should get glasses. My
18 mistake.
19 MR. ANESH: I don't know when
20 it was served.
21 MR. BLUESTONE: I'm just
22 picking an arbitrary date.
23 THE WITNESS: Can I just get
24 the question back?
25 (The requested portion was read

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1 MILLER
2 back)
3 A Discussions with Chris Terryn?
4 Q With Mr. Meiresonne. Must be my
5 fault. With Mr. Meiresonne concerning the
6 substantive testimony of Chris Terryn prior to
7 December 5, 2003.
8 A Yes. We had those discussions. It
9 would have been going over what he said in his
10 affidavit.
11 Q Do you remember anything -- any
12 greater detail on the sum and substance?
13 Do you remember what Mr. Meiresonne
14 said about him, about -- anything about him that
15 reflected on his testimony?
16 A I discussed with Mr. Meiresonne was
17 there anybody that could shake this person's
18 credibility, was there any -- I was trying to
19 fight for Mr. Meiresonne.
20 Was there any reason he knew that Mr.
21 Terryn to have lied. Mr. Meiresonne -- I don't
22 recall Mr. Meiresonne ever coming up with a
23 motive for Mr. Terryn to volunteer to Thomas
24 that copying went on and to have lied about it.
25 Q When you say I don't recall Mr.

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1 MILLER
2 Meiresonne, dot, dot, dot, are you saying that
3 you remember specifically that he didn't say
4 that, or that you don't remember whether he said
5 it?
6 MR. ANESH: His testimony
7 speaks for itself.
8 MR. BLUESTONE: No, it doesn't.
9 MR. ANESH: It's very clear.
10 MR. BLUESTONE: It's an
11 ambiguous answer.
12 MR. ANESH: It is very clear.
13 MR. BLUESTONE: No, no. I'm
14 sorry. Although you think it is, Mr.
15 Anesh, it's absolutely not.
16 For example, if I say I don't
17 recall the Yankees ever winning 12
18 World Series in a row --
19 MR. ANESH: And you're --
20 MR. BLUESTONE: -- I don't know
21 whether they did or not, or I'm
22 saying I know they didn't. It's just
23 a way of saying it.
24 Q Which one are we talking about?
25 MR. ANESH: I don't understand

1 MILLER
2 the question.
3 A To the best of my memory --
4 Q Yes.
5 A -- Mr. Meiresonne could not come up
6 with any motive Mr. Terryn had to lie. That was
7 one of the problems we had from day one on this
8 matter.
9 Q Fine. I understand. I just want to
10 know which of the two you meant. Now --
11 MR. ANESH: I need to take a
12 two-minute break. You tell me the
13 right opportunity.
14 MR. BLUESTONE: Go right ahead.
15 MR. ANESH: No, no. You're in
16 the middle of the document. Maybe
17 after this document.
18 MR. BLUESTONE: Okay.
19 Q Do you remember having any
20 conversations about the testimony of Lisa
21 Babcock prior to December 5, 2003 with Mr.
22 Meiresonne?
23 A For some reason the name Lindsay than
24 Lisa sticks in my mind, but assuming you mean
25 Lindsay Babcock --

1 MILLER
2 for depositions?
3 A Yes.
4 Q You did send them a list of -- I
5 think it was a very long list, maybe 12, 15
6 people that you thought had to be deposed and
7 wanted to figure out dates?
8 MR. ANESH: Objection to the
9 form. Asked and answered.
10 A I do not recall it. It could have
11 happened. I don't recall it.
12 Q Before sending out that list of names
13 or discussing a list of names of people to be
14 deposed with the Satterlee law firm, did you
15 discuss with Mr. Meiresonne the potential
16 testimony of any of those people?
17 A Yes.
18 Q Tell me the sum and substance of
19 those conversations, and to the best of your
20 ability the dates of those conversations.
21 A I would have to see the list or the
22 deposition notices. I discussed with Meiresonne
23 on more than one occasion who we should -- whose
24 deposition testimony we should be seeking, how
25 they fit that person into the case, what

*Neil
Should
have figured
it out*

1 MILLER
2 Q Yes.
3 A -- only -- prior to this spoliation
4 motion being made it was -- the only discussion
5 that we had would have been when he gave me a
6 list of people who he thought we had to disclose
7 for either interrogatory answers or automatic
8 disclosures, and the people in the editorial
9 department may have worked on the Web sites.
10 Q When he gave you that list, did you
11 discuss the potential testimony of any of those
12 people with him?
13 A I don't recall one way or the other.
14 Q Now, eventually you drafted a list of
15 people that you needed to depose; is that
16 correct?
17 A That I drafted a specific list?
18 Q Didn't you send a list to the other
19 side of people that you intended to depose?
20 A I sent out a lot of notices of
21 depositions. I don't recall whether I had one
22 particular list which said I want to depose A,
23 B, C, D, E, F, G and H.
24 Q Did you have some correspondence with
25 the Satterlee firm about trying to set up dates

1 MILLER
2 positive testimony we could elicit from them, or
3 what negative testimony might come out which we
4 should know ahead of time.
5 Q And did you make any written notes
6 about these conversations?
7 A Not that I recall.
8 MR. BLUESTONE: Do you want to
9 take a break?
10 (Recess taken)
11 CONTINUED DIRECT EXAMINATION BY MR. BLUESTONE:
12 Q Turning to Page 2, actually the
13 second page of Mr. Saurack's affidavit.
14 A The affidavit?
15 Q Yes, sir. Page 2, in Paragraph 2, he
16 says that Plaintiff subpoenaed Lisa Dokter on
17 October 8, 2003.
18 Did your office receive a copy of a
19 subpoena to her?
20 A I don't recall.
21 MR. ANESH: Where is this
22 going? Move on.
23 MR. BLUESTONE: Do you want me
24 to explain it to you?
25 MR. ANESH: You can explain it

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1 MILLER
2 to me, yes. Educate me.
3 MR. BLUESTONE: I'll explain it
4 to you at trial.
5 MR. ANESH: You're going to get
6 to trial?
7 Q Did you discuss with --
8 MR. BLUESTONE: I'm sorry.
9 What was his answer?
10 (The requested portion was read
11 back)
12 Q If you had received a subpoena for
13 Lisa Dokter -- withdrawn.
14 Did you receive subpoenas for any of
15 the -- any non-party witnesses that were served
16 by Plaintiffs?
17 A I don't recall.
18 Q Turning to the next page in Paragraph
19 8, Mr. Saurack discusses, quote, inadvertently
20 produced e-mail.
21 Do you know what e-mail he's talking
22 about there?
23 A Seeing this without the exhibits, the
24 motion, no.
25 Q It appears to be a Dokter e-mail.

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1 MILLER
2 Does that refresh your recollection from an
3 event that took place in the spoliation hearing?
4 MR. ANESH: It appears to be a
5 what?
6 MR. BLUESTONE: Dokter.
7 THE WITNESS: As in Lisa
8 Dokter.
9 MR. ANESH: Lisa Dokter.
10 MR. BLUESTONE: That's her
11 name, Dokter.
12 MR. ANESH: I understand, but
13 it -- it could be taken a different
14 way. You could just say Lisa Dokter.
15 MR. BLUESTONE: I would be
16 happy to.
17 MR. ANESH: Thank you.
18 Q Does that refresh your recollection
19 of the Lisa Dokter e-mail?
20 A I don't remember the e-mail. That
21 does not refresh my recollection as to the
22 particulars of the e-mail.
23 Q Did disparaging facts to 276 of
24 Thomas advertisers become an exhibit at the
25 spoliation hearing?

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1 MILLER
2 MR. ANESH: Note my objection
3 to the form of the question.
4 A It seems from this that it was an
5 exhibit to her declaration or affidavit.
6 Whether it was a separate exhibit at the
7 spoliation hearing I do not recall.
8 Q You notice the term Project Ajax?
9 A Yes. I see --
10 Q Paragraph 10.
11 A -- in Paragraph 10.
12 Q That became the subject of some
13 testimony at the spoliation hearing, did it not?
14 A I believe it did.
15 Q Now, did you ever discuss the term
16 Project Ajax with Mr. Meiresonne prior to
17 receiving this order to show cause?
18 A I believe I did.
19 Q Can you tell me what the sum and
20 substance of that conversation was?
21 A I can't recall the timing, but I'm *yes*
22 pretty certain it came up in Mr. Meiresonne's
23 deposition, which was prior to this spoliation
24 motion. I can't recall if it also came up prior
25 to that.

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1 MILLER
2 Q And the Meiresonne deposition took
3 place after the document production?
4 A Yes.
5 Q And so you can't -- you don't know
6 whether or not it was discussed prior to the
7 Meiresonne deposition?
8 MR. ANESH: Note my -- form --
9 was what discussed?
10 MR. BLUESTONE: Project -- the
11 term Project Ajax.
12 MR. ANESH: With this witness
13 and Mr. Meiresonne prior to his
14 deposition?
15 MR. BLUESTONE: Yes.
16 A I don't recall one way or the other
17 whether we discussed it prior to his deposition.
18 Q Did you prepare Mr. Meiresonne in any
19 fashion for his deposition?
20 A Yes.
21 Q Tell me the form that his preparation
22 took.
23 MR. ANESH: Note my objection
24 to the form of that question.
25 A I believe he came to our office the

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1 MILLER
2 day before. We went over the general ground
3 rules for testifying at deposition at least.
4 We went through some of the relevant
5 documents. There were areas of questioning that
6 might be -- you know, might come up at his
7 deposition.
8 Q Now, at that time there was no known
9 issue -- withdrawn.
10 At that time there was no issue known
11 to you of spoliation, was there?
12 A You are correct.
13 Q What did you expect at that time or
14 what did you tell him at that time the expected
15 areas of questioning would be at his deposition?
16 A I don't recall sitting here today.
17 Q Did you make any notes about the
18 preparation, either in preparation -- your own
19 preparation to do his preparation or as a result
20 of what went on at the preparation?
21 A I don't recall any notes.
22 MR. ANESH: Is there some claim
23 here that he failed to prepare him
24 for his deposition? I don't think
25 there is.

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1 MILLER
2 MR. BLUESTONE: Does it matter?
3 MR. ANESH: Yes. What
4 relevance does this all have?
5 MR. BLUESTONE: Does relevance
6 ever matter?
7 MR. ANESH: Yes, it does.
8 MR. BLUESTONE: It really
9 doesn't.
10 MR. ANESH: You can't ask him
11 what color his flower pots are
12 outside of his house.
13 MR. BLUESTONE: But you didn't
14 hear me ask anything like that. I'm
15 talking --
16 MR. ANESH: You're talking
17 about prepping him for his
18 deposition.
19 MR. BLUESTONE: I'm talking
20 about his work, Mark, in this case.
21 Now, I appreciate that from a
22 theoretical point of view you're
23 correct.
24 There are outward limits to
25 what I can ask, but this is well


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1 MILLER
2 within the outward limits. And as
3 you can see, I'm moving along
4 rapidly.
5 MR. ANESH: Those piles are
6 still pretty big.
7 MR. BLUESTONE: I really can't
8 help that there were 18 boxes of
9 documents in the file itself.
10 MR. ANESH: But that doesn't
11 mean they're all relevant to your
12 claim.
13 MR. BLUESTONE: If they were
14 there would be 18 boxes here. I see
15 three inches worth of paper here.
16 I'm trying to move it along as
17 quickly as I can. Off the record.
18 (Discussion off the record)
19 Q Moving back to the mundane from the
20 interesting, on Page 4 of his affidavit, would
21 you take a look at Paragraph 15?
22 A I'm sorry. 15?
23 Q Yes, sir. Do you recognize the name
24 Dina Kalavanos?
25 A Yes.

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1 MILLER
2 Q Who is Dina Kalavanos?
3 A From my understanding is that she is
4 an employee of Thomas, who as it says here put
5 in some -- an affidavit on motion papers that
6 occurred before we were involved in the case,
7 and I even believe we took her deposition at
8 some point in time.
9 Q Now, in Paragraph 19 it says that
10 they notified you on December 4, 2003 of the
11 impending order to show cause.
12 MR. ANESH: What paragraph?
13 MR. BLUESTONE: 19.
14 Q Did you receive a call to your office
15 concerning the pending order to show cause?
16 A I -- as this says, they left a
17 message for me.
18 Q Did you receive the message?
19 A Eventually, yes.
20 Q Did they tell you that they were
21 going to be in court seeking an order to show
22 cause the next morning?
23 MR. ANESH: Did the message say
24 that?
25 MR. BLUESTONE: Yes.

1 MILLER
 2 A Yes, but I don't believe I got the
 3 message until it was too late.
 4 Q I'm not impugning what you did. I'm
 5 just trying to find out whether or not such a
 6 message was left for you.
 7 A Yes.
 8 Q Now, did you go to court the next day
 9 at any time, even if it was too late, concerning
 10 the order to show cause?
 11 A I mean, other than me to appear to
 12 argue the motion --
 13 Q No. I mean the next day, December 5,
 14 2003.
 15 A No, I did not.
 16 Q Did you perform any work on the order
 17 to show cause on December 5, 2003?
 18 A I have to look at my billing.
 19 Q If you look at the next page, which
 20 appears to be a fax transmission from IQS to you
 21 dated --
 22 MR. ANESH: What next page?
 23 A What page are you on?
 24 Q I'm sorry. The next document, the
 25 portion -- after the order to show cause. Same

1 MILLER
 2 fax from Mike Meiresonne to Neil
 3 Miller, dated December 15, '03.
 4 Sorry. Go ahead.
 5 MR. BLUESTONE: Thank you.
 6 Q Now, did you ever discuss with Mr.
 7 Meiresonne whether they had electronic or
 8 digital versions of files concerning the running
 9 of IQS?
 10 A Well, I'm a little confused by your
 11 question, because of the running of IQS.
 12 Q Operation of IQS.
 13 A Well, still -- I mean, the Web sites
 14 are the Web, by definition. I didn't understand
 15 there to be any digital memorialization of the
 16 underlying creation of the Web sites.
 17 Q Would you look at the bottom
 18 paragraph of this first page? It starts out,
 19 "We have at least eight," comma.
 20 A Yes.
 21 Q Do you understand -- withdrawn.
 22 Did you ever discuss what the term
 23 reranks in electronic form meant with Mr. 
 24 Meiresonne?
 25 A I believe I did.

1 MILLER
 2 exhibit.
 3 MR. ANESH: There's nothing
 4 behind it. There's nothing else
 5 behind it.
 6 MR. BLUESTONE: Oh. Never
 7 mind.
 8 (Exhibit G, fax dated 12/15/03,
 9 was marked for identification, as of
 10 this date.)
 11 Q Showing you Exhibit G. Have you seen
 12 this top page document before?
 13 A I don't recall.
 14 Q Do you recognize the handwriting on
 15 the left-hand side?
 16 A No.
 17 Q Do you remember having any
 18 discussions after receiving the order to show
 19 cause concerning the sum and substance of Lisa
 20 Dokter's affidavit?
 21 A Yes.
 22 MR. ANESH: Note for the
 23 record, please, and I'm sorry, this
 24 is an 11-page document, Exhibit G,
 25 first page of which appears to be a

1 MILLER
 2 Q What did it mean in -- what was the
 3 sum and substance of those conversations?
 4 A In trying to respond to the
 5 spoliation motion, it came up what was in those
 6 files that was discarded.
 7 Among those were reranks. I
 8 understood reranks to be -- Meiresonne said,
 9 okay, we're going to take a certain Web site,
 10 take companies listed on Page 1, move them to
 11 Page 2. Companies on Page 2, move them to Page
 12 3 or vice-versa, and that's what I understood
 13 reranks to be, because that's my memory today
 14 what reranks were. And that some of those
 15 were -- at least hard copies were discarded.
 16 Q Were digital copies of reranks ever
 17 provided to Thomas?
 18 A I -- they were not part of the
 19 document production. I think -- well,
 20 withdrawn. That's my answer. I don't want to
 21 speculate.
 22 Q Were they ever provided to Thomas?
 23 A I believe we offered to provide to
 24 Thomas reranks that we still had.
 25 Q Was the argument made to the court

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1 MILLER
2 that there were substitutes available for the
3 discarded documents?
4 MR. ANESH: All discarded
5 documents?
6 MR. BLUESTONE: I didn't say
7 all, Mark. I said --
8 MR. ANESH: You said the
9 discarded documents. I have to
10 object to the form of the question.
11 Are you talking about the ones
12 in 2000? 2001? 2002? 2003? Which
13 discarded documents?
14 MR. BLUESTONE: I'll go with my
15 form. Your objection is noted.
16 MR. ANESH: I have to object to
17 the form of the question.
18 MR. BLUESTONE: And so you
19 have.
20 MR. ANESH: Can I have the
21 question read back, please?
22 (The requested portion was read
23 back)
24 MR. ANESH: That question also
25 assumes a fact that there were

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1 MILLER
2 substitutes for all discarded
3 documents, and this witness hasn't
4 testified to that.
5 MR. BLUESTONE: You know, Mark,
6 why don't you just answer for him?
7 MR. ANESH: I have to object to
8 the form of the question. It assumes
9 so many facts.
10 MR. BLUESTONE: Beyond
11 objecting to the form of the
12 question, what more are you garnering
13 for yourself, other than to tell the
14 witness how to answer?
15 MR. ANESH: I'm not telling him
16 how to answer the question. I object
17 to the form of the question.
18 MR. BLUESTONE: If you would
19 just keep it to that, we would
20 appreciate it.
21 MR. ANESH: Yes, but your
22 questions are so -- you say you're
23 not trying to catch him, but you
24 definitely are in the form of your
25 question. I'll object to the form of

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1 MILLER
2 the question. You can answer.
3 MR. BLUESTONE: For the eighth
4 time now I note your objection, Mr.
5 Anesh, sir.
6 A With respect to reranks or ranking
7 reports, I can recall that we did argue to the
8 court that effectively these documents had no
9 relevance to the lawsuit, and that in fact we
10 could show that because we had retained some
11 either ranking reports or reranks or both, and
12 we were happy to produce them if the court
13 wanted to see them, to show that we didn't
14 really care about them and they were irrelevant.
15 Q Were exhibits or exemplars or disks
16 with the electronic information on them ever
17 produced and brought to court?
18 MR. ANESH: Objection to the
19 form of the question.
20 A I do not recall.
21 Q If you turn to the page in this
22 exhibit that is dated December 6, 2003. This
23 (indicating) is the page.
24 MR. ANESH: December 6th.
25 A I have some writing on mine that's

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1 MILLER
2 not on yours.
3 Q That is from a sticky that was on
4 there. Not part of the document. Does that say
5 December 6th?
6 A Yes.
7 Q That starts "I have discovered"?
8 A "I had discovered." Yes.
9 MR. ANESH: Yes. "I had."
10 Q "I had discovered." Thank you. Now,
11 did you discuss the issue -- withdrawn.
12 Did you discuss with Mr. Meiresonne
13 any particular -- did you discuss with Mr.
14 Meiresonne the idea that Lisa Dokter was taking
15 paper from the recycling area and putting it
16 into the network printer?
17 MR. ANESH: What time were
18 these discussions?
19 MR. BLUESTONE: At or about
20 December 6, 2003.
21 A Yes.
22 Q And was that the first time that you
23 and he had discussed recycled paper or paper
24 that had been printed on one side and then
25 reused?

1 MILLER
 2 A To the best of my memory, yes, after
 3 the spoliation motion.
 4 Q Did you -- did he discuss with you at
 5 any time prior to the document review the fact
 6 that there were -- there was paper in his files
 7 that had unrelated information on one side of it
 8 and potentially related information on the
 9 other?
 10 MR. ANESH: Objection. Asked
 11 and answered. He testified he didn't
 12 have those discussions until later.
 13 You can answer again.
 14 A There was no discussion of that issue
 15 at all prior to the document production.
 16 MR. BLUESTONE: Off the record.
 17 (Discussion off the record)
 18 (Exhibit H, office memorandum,
 19 was marked for identification, as of
 20 this date.)
 21 MR. ANESH: H?
 22 MR. BLUESTONE: This is H.
 23 Q I'm going to show you a 16-page
 24 document which is entitled office memorandum to
 25 Neil Miller from Keith Schafer. Have you seen

*This is
he
called
me*

1 MILLER
 2 Q Michigan document review.
 3 A Correct.
 4 Q That took place in early August 2003.
 5 A Yes.
 6 Q What was the purpose for this office
 7 memorandum on Bastille Day 2003?
 8 MR. ANESH: Note my objection
 9 to the form of the question.
 10 A Because we did not have experience in
 11 the copyright area, I'd gotten some either
 12 citations or materials from that firm in
 13 Michigan, Price whatever.
 14 I wanted to get someone to do some
 15 more particular research to some of the
 16 copyright issues.
 17 And I think this memorandum was, I
 18 believe, the result of Mr. Schafer's research
 19 into those areas.
 20 Q And without being denigrating to Mr.
 21 Schafer in any way, did you consider using an
 22 admitted attorney or an attorney with any
 23 substantial experience in the field to produce a
 24 memorandum, rather than a law student?
 25 MR. ANESH: Note my objection

1 MILLER
 2 this document before?
 3 A Yes.
 4 Q Who is Keith Schafer?
 5 A He was an -- I believe a Hofstra law
 6 student. He was a law student who we hired in
 7 the summer to do some work, do some work
 8 researching copyright issues.
 9 Q And did you review this memorandum
 10 after it was written -- after it was written?
 11 A Yes.
 12 Q Did you use any of the legal research
 13 contained in it in any fashion?
 14 A Did I use any of the -- legal -- I
 15 mean, I certainly read most if not all of the
 16 cases he cited here.
 17 Q Let me rephrase the question. For
 18 example, did you -- did you quote any of this
 19 material in any of your motion practice later?
 20 A I don't recall.
 21 Q Now, at or about July 14, 2003, which
 22 is the date of this memorandum, the document
 23 review had not yet taken place, correct?
 24 A The document -- you mean Michigan had
 25 not yet taken --

1 MILLER
 2 to the form of the question.
 3 A No. I continued to fully review
 4 anything cited here anyway and make my own
 5 conclusions, but somewhat to start the process
 6 going.
 7 Q Having reviewed the memorandum, did
 8 you believe that there was an adequate defense
 9 to the copyright claims of Thomas?
 10 MR. ANESH: Note my objection
 11 to the form of the question.
 12 A The short answer is after taking this
 13 memorandum, reading the cases myself and doing
 14 some additional research, I thought there were a
 15 lot of problems in the defenses on the
 16 copyright. I thought the copyright claims had a
 17 lot of validity to them.
 18 Q Okay. You took into account the
 19 question of compilation versus --
 20 MR. ANESH: Note --
 21 MR. BLUESTONE: Let me finish
 22 the question.
 23 Q -- compilation versus an original
 24 work?
 25 A Yes.

(Circled text in transcript)

*BS
when
didn't
Bluestone
quote*

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1 MILLER
2 MR. ANESH: Note my objection.
3 Q And did you come to an opinion at or
4 about July 2003 whether or not the IQS material
5 was a compilation or original work?
6 A I'm confused by your question. The
7 IQS or the Thomas?
8 Q The IQS material. Was it a
9 compilation of the Thomas work? In a reverse --
10 wasn't there a reverse -- withdrawn.
11 IQS was accused of taking Thomas work
12 and using it without permission. Is that more
13 or less correct?
14 A Copyright infringement, yes.
15 Q And the theory would have been that
16 the Thomas work was protected by copyright, and
17 IQS had no -- did not have the right to use it
18 without permission, correct?
19 A I'm sorry. Is it correct that's what
20 -- that's what the contention was?
21 Q That's the claim, wasn't it?
22 A Yes.
23 Q And Thomas's right to copyright
24 protection would depend on whether it was
25 original work or a compilation; isn't that

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1 MILLER
2 correct?
3 A Not necessarily.
4 Q Would that be one of the deciding
5 factors?
6 A Take -- I can't answer in terms of
7 deciding factors.
8 Q Okay. Did you come to a legal
9 conclusion in or about July 2003 whether the
10 Thomas work had enough originality to sustain
11 copyright protection?
12 MR. ANESH: Note my objection
13 to the form of the question. Calls
14 for a legal conclusion.
15 MR. BLUESTONE: Which he
16 provided as their attorney.
17 MR. ANESH: You don't provide
18 legal conclusions as their attorney.
19 You provide the legal guidance as
20 their attorney. Legal conclusions
21 are for the court.
22 MR. BLUESTONE: Well put, Mr.
23 Anesh.
24 MR. ANESH: Thank you.
25 A I can't say it was by the time of

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1 MILLER
2 this memo, but I know I was following case law,
3 as to the originality requirements in terms of
4 the descriptions of the companies on the Web
5 sites.
6 And I don't think -- I can't tell you
7 it was by this date, the date of Exhibit H, but
8 I believe under prevailing law that there was
9 sufficient originality in the descriptions on
10 the Web site to sustain copyright --
11 Q The Thomas Web site.
12 A The Thomas Web site. To sustain a
13 copyright infringement claim based on those
14 descriptions.
15 Q You did review several articles in
16 the New York Law Journal on the issue, did you
17 not?
18 A I don't recall offhand whether I
19 viewed law journal articles.
20 Q Did your office have computerized
21 legal research accounts in 2003?
22 A I don't recall when we first signed
23 on to Westlaw.
24 Q Did you -- withdrawn.
25 Did your office have a library of

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1 MILLER
2 reporters?
3 A Which reporters?
4 Q New York Sub or the Appellate
5 Division Reporter or --
6 A We had the New York Reports,
7 Appellate Division Reporters, Miscellaneous
8 Reporters.
9 Q You had them in book form?
10 A Yes.
11 Q Did you eventually stop getting them
12 in book form?
13 A No. We still get them to this day.
14 Q Do you today have computerized legal
15 research in your office?
16 A Yes.
17 Q Do you have -- do you know when you
18 started using computerized legal research?
19 A I don't recall.
20 Q In your retainer agreement with IQS,
21 was there a provision concerning the cost of
22 legal research?
23 A I don't recall.
24 Q Did you charge clients for legal
25 research costs, other than the attorneys' time

1 MILLER
2 in doing the research, back in 2003? Do you
3 understand the question?
4 A I'm not sure that I do.
5 Q Okay. Some law firms charge clients
6 the cost of computerized legal research along
7 with the attorneys' time in doing the research.
8 Did you do that back in 2003?
9 A I do not and I did not.
10 Q Do you understand my question now?
11 A I believe I do.
12 Q Did you perform any legal research in
13 copyright law during the year 2003?
14 MR. ANESH: Note my objection
15 to the form. What do you mean, you?
16 MR. BLUESTONE: You.
17 MR. ANESH: You, your firm?
18 You, you individually? Your firm --
19 Q Mr. Miller --
20 MR. ANESH: -- your employees?
21 Q Mr. Miller --
22 MR. ANESH: Objection. Asked
23 and answered. You can answer it
24 again.
25 A Yes.

1 MILLER
2 Q Was there a separate research file
3 within the IQS file?
4 A There should be.
5 Q And did the IQS file have subfiles
6 within it?
7 A Yes.
8 Q What subfiles would it have had?
9 A Given the volume of files, I can't
10 recall every one.
11 Q Would it have a correspondence file?
12 A Yes.
13 Q Would it have had an expenses or
14 invoices file?
15 A Not as part of our legal file.
16 Q Would that have been kept separately
17 some place else?
18 A Probably so.
19 Q For example, I think you charged the
20 client once for travel to New York City to go to
21 a court appearance.
22 Would that have been kept in -- would
23 the receipt for the train ticket and the subway
24 or -- would that have been kept in a separate
25 file?

1 MILLER
2 Q Did you make notes about your legal
3 research?
4 A I don't recall.
5 Q Did you photocopy or print out cases
6 either from books or a computer illustrating the
7 legal research that you did?
8 A I don't recall at this time.
9 Q Would you have -- if you had case
10 photocopies, for example photocopies of some of
11 the cases that were mentioned in this
12 particular -- withdrawn. Let me start again.
13 Did Mr. Schafer provide you with
14 photocopied cases that are cited in his
15 memorandum?
16 A I believe he did. Whether it was
17 every case cited in his memorandum I don't know.
18 Q I'll represent to you that no such
19 cases are provided in the documents given to me
20 by your attorney.
21 Do you know whether they were in the
22 file at any time?
23 A I can't sit here today and say that
24 they were specifically put into the research
25 file.

1 MILLER
2 A For that kind of expense, I don't
3 know about -- that that would have been
4 retained.
5 Q For postage and FedEx'ing, would
6 receipts be kept for that?
7 A For FedEx'ing and overnight mailing,
8 presumably the bill or the portion of the bill
9 involving that case.
10 Q That would be kept in some separate
11 file from the legal file?
12 A Yes.
13 Q Would expenses for fees paid to the
14 court, would that have been kept in a separate
15 file?
16 A As a general matter or the IQS
17 matter?
18 Q In the IQS matter.
19 A I'm not sure that we paid any
20 expenses to the court in the IQS matter.
21 Q How about expenses for transcripts?
22 A I -- it is unlikely. I don't
23 remember the IQS file in particular. As a
24 general matter I would -- I would not keep a
25 bill for a deposition transcript in the legal

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1 MILLER
2 file.
3 Q There would be a separate file for it
4 to go into?
5 A Yes.
6 Q Same would be true of a court
7 transcript?
8 A A court -- yes.
9 MR. BLUESTONE: Excuse me one
10 second.
11 (Exhibit I, e-mails, was marked
12 for identification, as of this date.)
13 Q I'm showing you Exhibit I. It seems
14 to be a six-page document with a series of
15 e-mails on it.
16 Have you seen any of these e-mails
17 before?
18 A The first e-mail appearing at the top
19 of Page -- the first page of Exhibit I, I do not
20 recall that e-mail. I mean, I don't recall ever
21 seeing that.
22 The next e-mail, starting at the
23 bottom of that same page, I do not recall seeing
24 it.
25 The -- going to the second page of

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1 MILLER
2 Exhibit I, I do not recall ever seeing that.
3 Looking at the next e-mail going down, this
4 would be the middle of the page, I do not recall
5 seeing that.
6 The e-mail at the bottom, starting at
7 the bottom of the second page, I do not recall
8 seeing that. The -- going to the third page?
9 Q Yes. Please do.
10 A The first complete e-mail, I do not
11 recall seeing that. Looking at the bottom of
12 the third page, that e-mail, I do not recall
13 seeing that. Looking -- to go into the fourth
14 page?
15 Q Please do.
16 A The one at the top, it starts out
17 David Kohane, I do not recall seeing that. The
18 e-mail dated -- that same page dated April 23,
19 2003, that does refresh my recollection, that I
20 did receive something from the Price firm with
21 some case citations. I generally recall
22 receiving this. And I think that's the last
23 e-mail in this package.
24 Q Thank you. Now, was this -- was any
25 of this material shown to Mr. Schafer before he

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1 MILLER
2 wrote his 2003 memorandum?
3 MR. ANESH: Note my objection
4 to the form of the question.
5 A Certainly not the first few e-mails.
6 The last e-mail, I don't recall whether it was
7 given to him or not.
8 Q Thank you.
9 (Exhibit J, memo dated 8/13/03,
10 was marked for identification, as of
11 this date.)
12 Q Showing you what has been marked
13 Exhibit J. I ask you, have you seen this
14 before?
15 MR. ANESH: For the record,
16 it's a memo again from Keith Schafer
17 dated August 13, 2003, approximately
18 nine -- eight or nine pages.
19 A I generally recall receiving this
20 document.
21 Q Now, did -- did you do any review of
22 this document after August 13, 2003?
23 A I don't recall.
24 Q Did you ever come to an opinion on
25 the exposure to damages in terms of a dollar

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1 MILLER
2 figure for your client during the time you were
3 representing the client?
4 MR. ANESH: Is that a question?
5 Can I have the question read back?
6 (The requested portion was read
7 back)
8 MR. ANESH: Note my objection.
9 You can answer.
10 A Yes.
11 Q When?
12 A Certainly in connection with the
13 arbitration that took place in '07. I believe
14 even before that there --
15 Q And --
16 MR. ANESH: Finish.
17 Q I didn't mean to cut you off. Sorry.
18 A Even before that, in determining --
19 trying to settle the case, I think we tried to
20 get a sense of what all potential damages were,
21 including copyright infringement.
22 Q You settled the case before the
23 arbitration took place, didn't you?
24 MR. ANESH: Note my objection
25 to the form of the question.

*Neil's
memo*

1 MILLER
 2 A Yes. There was a settlement of the
 3 case, and part of the settlement of the court
 4 case was that there would be what I would call a
 5 baseball arbitration, where the arbitrator would
 6 pick either 2.5 million or three million in
 7 damages, but I -- anyway, that's...
 8 Q Another way of putting it is that IQS
 9 agreed to pay 2.5 million to Thomas, with the
 10 potential for paying an additional \$500,000,
 11 depending on the outcome of the arbitration; is
 12 that correct?
 13 A I think that's correct.
 14 Q And that \$500,000 was based upon
 15 attorneys' fees rather than statutory damages;
 16 isn't that correct?
 17 A No.
 18 Q What were the elements put before the
 19 arbitrator in order to decide whether or not the
 20 additional \$500,000 was due?
 21 A Well, I would have to look at the
 22 settlement agreement we entered into. My memory
 23 of it is that the arbitrator was to decide
 24 whether 2.5 million or three million
 25 represented -- which one of those figures was a

1 MILLER
 2 Q The date of this cover letter is
 3 December 5, 2003.
 4 MR. ANESH: I'm sorry?
 5 MR. BLUESTONE: The date of the
 6 cover letter is December 5, 2003.
 7 MR. ANESH: The date of the
 8 first page of the exhibit.
 9 A Referring to the fax cover sheet.
 10 Q Yes. It's all the same.
 11 MR. ANESH: Until the witness
 12 testifies he sent it somewhere or --
 13 how can it all be the same? He
 14 didn't testify he sent it so --
 15 MR. BLUESTONE: He testified it
 16 was sent.
 17 THE WITNESS: That's what
 18 appeared to be.
 19 Q December 5, 2003 was the date that
 20 you first saw the order to show cause?
 21 A I can't say it's the day I first saw
 22 it. It's the date -- I believe it's the date
 23 that it came into the office.
 24 Q Now, do you remember how it came into
 25 the office?

1 MILLER
 2 better representation of the damages that would
 3 be due to Thomas, which would have included
 4 attorneys' fees, but not limited to that.
 5 (Exhibit K, affidavit, was
 6 marked for identification, as of this
 7 date.)
 8 Q If you take a look at this, this is a
 9 four-page document, three pages of which are an
 10 affidavit, and one page is a cover fax sheet.
 11 Is that a fax sheet from your office?
 12 A It appears to be.
 13 Q Okay. Was this a fax that was
 14 transmitted to Mr. Meiresonne?
 15 A I can only tell you it appears to be.
 16 Q Do you recognize the declaration
 17 which comprise the last three pages of the
 18 document?
 19 MR. ANESH: What exhibit?
 20 MR. BLUESTONE: This is K.
 21 A Yes, I do.
 22 Q What do you recognize it to be?
 23 A A copy of the declaration of Lisa
 24 Dokter that was submitted by Thomas on its
 25 spoliation motion.

1 MILLER
 2 A No.
 3 Q Did it come by hand delivery or
 4 overnight mail? Fax? Some other way?
 5 A It was not by fax. I don't recall if
 6 it was overnight mail or if it was a hand
 7 delivery.
 8 Q Now, most of the letters that we've
 9 seen -- actually all of the letters we've seen,
 10 except for the retainer agreement, appear to be
 11 in your name.
 12 MR. ANESH: Objection to the
 13 form of -- is that a question?
 14 Q This is from Christopher Rosado; is
 15 that correct?
 16 MR. ANESH: Objection to the
 17 form of the question.
 18 A That's what it says here.
 19 Q Do you know if there's any reason why
 20 this was from Christopher Rosado rather than
 21 from you or from anybody else?
 22 A I would only be guessing.
 23 Q Now, did you discuss -- you
 24 personally discuss the declaration of Lisa
 25 Dokter with Mr. Meiresonne?

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1 MILLER
2 A Yes.
3 Q Did you discuss it on the same day
4 that it was received in your office or some
5 other time for the first time?
6 A I don't recall.
7 (Exhibit L, declaration, was
8 marked for identification, as of this
9 date.)
10 Q Exhibit L, can you identify that for
11 me, please?
12 MR. BLUESTONE: For the record,
13 Exhibit L is Bates marked 580 to 595.
14 A I'm sorry. The question was do I
15 recognize it?
16 Q Yes, sir.
17 A Yes.
18 Q Identify it, please.
19 A I don't know if it's the file
20 version, but it appears to be at the very least
21 a draft of a declaration for Mr. Meiresonne to
22 review and sign in connection with the
23 spoliation motion.
24 Q I want to draw your attention to an
25 anomaly on this particular document and some

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1 MILLER
2 other documents.
3 There appears to be an equal sign
4 where there should be an apostrophe. This is
5 continuous through the document.
6 Have you noticed this anomaly before
7 in any of your documents?
8 A No.
9 Q Was this a Word Perfect document that
10 was printed from your computer? That's the
11 question.
12 A The short answer is I don't know. I
13 draft in Word Perfect. I can't tell you whether
14 we converted this document to Word and this is a
15 printout of that, or whether whoever printed out
16 this particular one, be it Mr. Meiresonne, by
17 attorneys, your office, whether they converted
18 it to Word and printed it out.
19 Q This was provided by your
20 attorneys --
21 A I can't --
22 Q -- because it's Bates marked. You --
23 what Word Perfect version were you using on your
24 work station?
25 A Now we have Word Perfect 10, I

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1 MILLER
2 believe, but I don't recall in 2003 which
3 version of Word Perfect was out.
4 Q Was it the old 5.1?
5 A I don't recall.
6 Q Okay. Did you have to use key
7 strokes in order to make paragraphs and -- and
8 underlines and things like that, or was it a
9 Windows version?
10 A I can't answer the way you posed it.
11 Q Did you prepare this declaration for
12 Mr. Meiresonne?
13 A I prepared a declaration for Mr.
14 Meiresonne. I don't know if this is the final
15 version or a draft of it.
16 And as I said, I worked in Word
17 Perfect, so I don't think that I created this
18 particular document in this particular form.
19 Q Take a look at the bottom left-hand
20 corner of each of the pages.
21 Is that something that appears on
22 documents that you have created within your
23 work?
24 A No.
25 Q How did you transmit drafts of this

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1 MILLER
2 declaration to Mr. Meiresonne?
3 MR. ANESH: Note my objection
4 to the form of the question.
5 MR. BLUESTONE: Withdrawn.
6 You're right.
7 Q Did you provide drafts of the
8 declaration for Mr. Meiresonne to review?
9 A Yes.
10 Q How did you do that?
11 A I don't recall if it was by fax or
12 e-mail.
13 Q Was it -- was any of it by --
14 withdrawn.
15 MR. BLUESTONE: Why don't we
16 take five minutes here.
17 (Recess taken)
18 CONTINUED DIRECT EXAMINATION BY MR. BLUESTONE:
19 Q Now, if you'll turn to Page 6 and
20 look at the footnote there, I asked you before
21 whether or not this was brought to the court's
22 attention.
23 MR. ANESH: What are we talking
24 about, Page 6?
25 MR. BLUESTONE: Yes.

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1 MILLER
2 Q Whether or not the ranking reports in
3 electronic form were brought to the court's
4 attention.
5 Was this where they were brought to
6 the court's attention, sir?
7 MR. ANESH: Note my objection
8 to the form of the question. You
9 mean the only time this was brought
10 to the court's attention?
11 Q Was this one place where it was
12 brought to the court's attention?
13 MR. ANESH: Note my objection.
14 A Written document, yes.
15 Q Was it brought to the court's
16 attention in any other written document that you
17 know of?
18 A Possibly the hearing transcript when
19 the hearing was held on the spoliation motion.
20 I don't know whether you consider that a
21 document.
22 Q That's an interesting answer. By
23 written document I meant one that you or your
24 firm actually wrote, rather than transcribed
25 words of yours.

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1 MILLER
2 MR. ANESH: Objection to the
3 form.
4 A I also don't know whether you were
5 trying to include -- I don't remember whether or
6 not we presented one as an exhibit at the
7 spoliation hearing.
8 Q Are you familiar with the term
9 archive.org?
10 A Yes.
11 Q That's a Web site?
12 A Yes. That's my understanding.
13 Q What do you understand it to be?
14 A At the time of this lawsuit in
15 question, I understood it to be a Web site where
16 you could go back in time and get snapshots of
17 any Web site on particular dates where they had
18 snapshots.
19 Q Okay. And had you heard of
20 archive.org before becoming involved in this
21 lawsuit?
22 A No.
23 Q How did you learn of it for the first
24 time?
25 A I believe when Thomas -- Thomas at

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1 MILLER
2 some point indicated it had obtained snapshots,
3 and it produced them in discovery, of the IQS
4 Web sites from archive.org at a certain point in
5 time.
6 Q Did Mr. Meiresonne ask you or discuss
7 with you to get printouts from certain snapshots
8 on archive.org in order to support the IQS
9 arguments that it didn't do -- didn't discard
10 documents?
11 MR. ANESH: Can I have the
12 question read back, please?
13 (The requested portion was read
14 back)
15 MR. ANESH: I --
16 MR. BLUESTONE: If you want to
17 object just object. Don't explain
18 how the question is wrong.
19 MR. ANESH: A, I want to object
20 to the form of the question. B, do
21 you have a time period?
22 MR. BLUESTONE: At any time up
23 until the decision of Judge Owen in
24 the spoliation hearing.
25 MR. ANESH: I still object to

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1 MILLER
2 the form of the question. Do you
3 understand it?
4 A I -- I don't understand the way that
5 it was phrased at all.
6 Q I'll rephrase it.
7 MR. ANESH: Do you want to put
8 a time period?
9 MR. BLUESTONE: That's fair
10 enough.
11 Q Between the order to show cause of
12 December 5, 2003 and Judge Owen's findings of
13 fact and conclusions of law, whatever that date
14 was, did you and Mr. Meiresonne discuss
15 archive.org?
16 A Between the spoliation motion. I
17 don't recall if it was discussed in that time
18 frame.
19 Q Did he ever at any time up until the
20 judge's decision before the spoliation
21 hearing -- from the date that you started to
22 represent him up until the date of Judge Owen's
23 findings of fact and conclusions of law, did you
24 discuss archive.org with Mr. Meiresonne?
25 MR. ANESH: Note my objection

1 MILLER
 2 to the form of that question.
 3 A Yes.
 4 Q Can you tell me the sum and substance
 5 of those conversations that you had with him?
 6 A We discussed what it was certainly,
 7 that Thomas had apparently used it to obtain
 8 what I've called snapshots of IQS's Web sites
 9 for the particular descriptions that were on the
 10 IQS Web sites at the time of those particular
 11 snapshots.
 12 Q Are you finished?
 13 A That's what I recall. Yes.
 14 Q Did Mr. Meiresonne suggest that
 15 evidence obtained from archive.org be offered in
 16 support of IQS's position that documents said to
 17 be discarded could be demonstrated in some
 18 electronic fashion?
 19 MR. ANESH: Note my objection
 20 to the form of the question.
 21 A I would say no. Discarding of
 22 documents have no relevance to whether or not
 23 archive.org could take a picture of an IQS
 24 snapshot on a particular day.
 25 Q Okay. Was an argument ever made in

1 MILLER
 2 suggestion.
 3 Q Take a look at Paragraph 13 of the
 4 declaration.
 5 Would you read the paragraph to
 6 yourself for a second, please?
 7 MR. ANESH: Paragraph 13?
 8 MR. BLUESTONE: Yes, sir.
 9 MR. ANESH: Of Exhibit L?
 10 MR. BLUESTONE: Yes, sir.
 11 A Okay. I read it.
 12 MR. ANESH: I'm not done with
 13 it, please. One second. Okay.
 14 Q Now, the portion of that paragraph
 15 that starts "The Web site files, together with
 16 the M&A advertiser and prospect files were
 17 produced to both," and it goes on.
 18 What -- withdrawn. You authored this
 19 paragraph?
 20 A Yes.
 21 Q What did you mean by the Web site
 22 files in that paragraph?
 23 A The IQS files that they maintained
 24 for each Web site that they had.
 25 Q Are you talking about paper or

1 MILLER
 2 behalf of IQS that even if the paper copy of a
 3 document was discarded, it was still available
 4 in electronic format?
 5 MR. ANESH: Objection to the
 6 form of the question.
 7 A Well, you certainly point to my
 8 attention to something here. That is in
 9 Exhibit --
 10 Q The footnote --
 11 A The footnote, Exhibit L. You
 12 certainly pointed out. And top of my head, I
 13 don't recall one way or the other whether we
 14 made that argument.
 15 Q Did Mr. Meiresonne ever urge you to
 16 make a similar argument with regard to
 17 archive.org?
 18 MR. ANESH: Note my objection
 19 to the form of the question.
 20 A A similar argument that what? That
 21 archive.org would do what?
 22 Q That the documents said to be
 23 discarded could be found on archive.org, hence
 24 there was no spoliation.
 25 A I don't remember him making that

1 MILLER
 2 electronic files?
 3 A Paper.
 4 Q How do you know that?
 5 MR. ANESH: Note my objection
 6 to the form of the question. How do
 7 you know he wrote it?
 8 MR. BLUESTONE: He wrote it.
 9 Q How do you know -- how do you know
 10 that that's what you meant?
 11 MR. ANESH: What? He just told
 12 you that's what he meant.
 13 A I don't understand your question.
 14 MR. ANESH: That's a new one
 15 for me. How do you know that's what
 16 you meant. That's a new one for me.
 17 Q They were electronic Web site files
 18 still working.
 19 MR. ANESH: Note my objection
 20 to the form of the question. The
 21 witness testified -- told you what he
 22 meant. That's what he said.
 23 THE WITNESS: Should I answer?
 24 MR. BLUESTONE: Yes.
 25 MR. ANESH: Over my objection

*not ask
why the
judge*

1 MILLER
 2 you can answer.
 3 A The Web sites obviously were
 4 electronic form. The files pertaining to the
 5 creation of that Web site I understood from
 6 certainly Mr. Meiresonne, perhaps others as
 7 well, were in paper form.
 8 Q Do you have a specific memory of
 9 writing this paragraph?
 10 MR. ANESH: Is that the
 11 question?
 12 MR. BLUESTONE: That's the
 13 question.
 14 MR. ANESH: Note my objection
 15 to the form of the question.
 16 A No. I can't sit here and say I
 17 remember drafting this paragraph.
 18 Q Did you discuss this paragraph with
 19 Mr. Meiresonne?
 20 A I discussed the whole document with
 21 Mr. Meiresonne.
 22 Q And did he offer the suggestion that
 23 there were electronic Web site files?
 24 A Not that I recall.
 25 Q Is there a difference between ranking

1 MILLER
 2 MR. ANESH: Note my objection
 3 to the form of the question.
 4 A I think that was our position in
 5 response to the motion, yes.
 6 Q Was that IQS's position?
 7 A Yes.
 8 Q Did anyone from IQS offer an
 9 affidavit -- withdrawn.
 10 Were any affidavits from employees of
 11 IQS offered in the motion practice at the
 12 spoliation hearing on that position -- on that
 13 point?
 14 MR. ANESH: On behalf of IQS?
 15 MR. BLUESTONE: Yes.
 16 MR. ANESH: As opposed to --
 17 MR. BLUESTONE: On behalf of --
 18 MR. ANESH: Thomas.
 19 MR. BLUESTONE: -- Thomas.
 20 A Whether affidavit or declaration I
 21 don't recall, but we did certainly submit
 22 material from other employees.
 23 MR. ANESH: Other than Mr.
 24 Meiresonne?
 25 THE WITNESS: Other than Mr.

1 MILLER
 2 reports and Web site files?
 3 A I believe so.
 4 Q And were ranking reports offered in
 5 electronic form?
 6 MR. ANESH: Objection. You
 7 asked and answered.
 8 A I think we discussed that in terms of
 9 the last footnote on Page 6.
 10 Q The answer to the footnote is the
 11 answer to that question too; is that right?
 12 A Correct, and my other --
 13 MR. ANESH: Note my objection
 14 to the form of the question.
 15 THE WITNESS: I'm sorry.
 16 MR. ANESH: You can answer.
 17 Q You can answer.
 18 A I've had other prior testimony about
 19 whether or not it came up at the hearing.
 20 Q Okay. Mr. Meiresonne --
 21 MR. ANESH: Off the record.
 22 (Discussion off the record)
 23 Q Was Mr. Meiresonne's position that
 24 the documents discarded pertained to old
 25 reranking information?

1 MILLER
 2 Meiresonne.
 3 Q Which other employees offered an
 4 affidavit on that issue, that is, the documents
 5 discarded pertained to the old reranking
 6 information?
 7 A Well, I have to see exactly which
 8 employees said what, but I know we gave an -- an
 9 affidavit or declaration from Lindsay Babcock
 10 and from Nicole Parker, and one or both of those
 11 I believe also said the same thing.
 12 Q Is that Ms. Mortenson?
 13 A Well, Ms. Mortenson was one of the
 14 few IQS employees who didn't leave on bad terms,
 15 and she -- we contacted her because she was
 16 involved in the rewrite project back in '01.
 17 So when it was brought to my
 18 attention that Ms. Dokter wasn't telling the
 19 truth, instead you could imply -- she said
 20 material regarding the creation of the Web sites
 21 was discarded in '03. We went back to what
 22 happened in '01 and got an affidavit or
 23 declaration from her describing what had been
 24 discarded in '01.
 25 (Exhibit M, draft of opening

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1 MILLER
2 statement, was marked for
3 identification, as of this date.)
4 Q Showing you Exhibit M, it's a
5 compilation of two things, sir. Do you
6 recognize the document itself?
7 A Do I recognize the document itself.
8 MR. ANESH: One second.
9 Exhibit -- one second. Can I have
10 the question read back?
11 MR. BLUESTONE: It's a
12 compilation of two documents. Do you
13 recognize the document.
14 MR. ANESH: First of all, let's
15 identify it for the record, the first
16 page of which starts with the word
17 opening introduction, name, firm, who
18 represent, and it's one, two, three,
19 four, five -- ten pages. I'm sorry.
20 Now, the question again?
21 Q Do you recognize the document, sir?
22 MR. ANESH: Or any portion of
23 it. Just note for the record on my
24 copy Page 2 is entirely blank.
25 THE WITNESS: Same on the

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1 MILLER
2 original.
3 MR. ANESH: Okay.
4 A Yes.
5 Q What do you recognize this to be?
6 MR. ANESH: Can you just ask
7 him what portion of the document he
8 recognizes?
9 MR. BLUESTONE: If he
10 recognizes it all.
11 MR. ANESH: Do you recognize it
12 all? A number of my pages are
13 totally blank, just so you know.
14 MR. BLUESTONE: You can pull
15 the last page off.
16 THE WITNESS: I can pull this
17 last page?
18 MR. ANESH: The next to the
19 last page is also blank.
20 MR. BLUESTONE: Not on mine.
21 MR. ANESH: On mine.
22 THE WITNESS: Can we go off the
23 record for a second?
24 MR. BLUESTONE: Hang on.
25 THE WITNESS: Off the record?

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1 MILLER
2 MR. ANESH: Off the record.
3 (Discussion off the record)
4 MR. ANESH: Exhibit M is now
5 eight pages, and Page 2 of it is
6 blank.
7 MR. BLUESTONE: Just withdraw
8 our earlier description.
9 MR. ANESH: Is there a
10 question? Does he recognize all or a
11 portion of it?
12 A I recognize all of it, other than the
13 blank page.
14 Q Okay. What is this?
15 A Looks to be a draft of the opening
16 statement I was making at the spoliation
17 hearing.
18 What I can't tell from -- without
19 reading the whole thing is whether this was for
20 the oral argument on the motion in December '03
21 or the opening draft of my opening for the
22 February '06 hearing. I just can't tell from
23 these first three pages.
24 MR. ANESH: Can I also call
25 your attention to Page 4 of the

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1 MILLER
2 document, starts with the word
3 closing.
4 So does that -- you want to --
5 I don't know if you read the whole
6 document.
7 THE WITNESS: I was referring
8 to the first -- well, it's three
9 pages, but one is a blank page.
10 I'm saying I recognize the
11 draft of an opening, but I'm not sure
12 whether that was an opening in terms
13 of my oral argument in
14 December '03 --
15 MR. ANESH: Look at Page 4.
16 THE WITNESS: It says closing.
17 I have to read through it.
18 Q Well, sir --
19 THE WITNESS: I can't tell
20 whether it's --
21 Q If you look at the first two lines of
22 it, will that refresh your recollection?
23 A Oh. Last three days. That would
24 tell me it was the February '06 hearing.
25 Q Now, was this the last draft of your

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1 MILLER
2 notes for making an oral presentation?
3 MR. ANESH: Note my objection
4 to the form of the question.
5 Q I see -- let me withdraw the
6 question.
7 Who -- do you recognize the
8 handwriting on the closing page?
9 A I'm sorry. Which page?
10 Q That page right there (indicating).
11 MR. ANESH: The one entitled --
12 A Two different handwritings.
13 MR. ANESH: The one entitled
14 closing. Go ahead.
15 A I see some of mine and I see some
16 which is not mine.
17 Q Which is yours?
18 A Where I said -- if you go to the end
19 of the paragraph, where it starts "She had an
20 axe to grind with IQS," that handwriting at the
21 end of that is mine.
22 Q What does it say?
23 A "Not that -- not that" -- looks like
24 it says, "Not that attorneys called her. "She
25 said" -- trying to read my own handwriting.

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1 MILLER
2 Q It says, "Called the attorneys, not
3 that the attorneys called her." Is that right?
4 A "Not that attorneys called her." It
5 says, "She said," and I'm trying to read my
6 handwriting. I can't read it at this point in
7 time.
8 Q Is the point of this handwritten note
9 that she said she called the attorneys, not that
10 the attorneys called her?
11 A Right.
12 Q Is the handwriting below that on the
13 right somebody else's?
14 A Yes.
15 Q Was the handwriting that says "No
16 archive.org," was that your handwriting?
17 A No.
18 Q Is that your handwriting above that
19 in the -- between the paragraphs, "She said"
20 something?
21 A Yes.
22 Q On the next page, is that your
23 handwriting, "Terry" something?
24 A No.
25 Q And on Page 3 --

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1 MILLER
2 MR. ANESH: The closing.
3 MR. BLUESTONE: Of the closing.
4 Q -- is that your handwriting on the
5 second -- second full paragraph?
6 A No. To the right? That's not my
7 handwriting.
8 Q How about in between the paragraphs
9 further down?
10 A That is mine.
11 Q Okay. The hearing on the spoliation
12 motion was an oral hearing with testimony before
13 Judge Owen; is that correct?
14 A Yes. With the one thing -- proviso
15 that there was testimony taken in Michigan the
16 week before, which was produced -- introduced by
17 videotape.
18 Q But the videotape was played in the
19 courtroom, and the court reporter took down the
20 words from the videotape; is that correct?
21 A I believe so.
22 Q And objections were made to the
23 videotape at that time during the hearing?
24 A Objections to questions that were
25 posed.

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1 MILLER
2 Q Yes.
3 A Yes. Not objections to the videotape
4 as a whole being introduced.
5 Q Well, actually there were objections
6 made to the use of the videotape, were there
7 not?
8 A I don't -- I don't recall.
9 Q Were there objections made as to
10 whether the videotape and the testimony on it
11 was being offered for the truth of the matter
12 asserted, rather than for some other purpose?
13 A I don't recall.
14 Q Does it ring a bell at all?
15 A No.
16 Q Was -- was an objection made to the
17 Terry affidavit as to the purpose for it being
18 used, whether it was being offered for the truth
19 of the matter asserted or to show a lack of bias
20 or something else? Does that ring a bell?
21 A I don't recall -- in terms of the
22 Terry affidavit?
23 Q Yes.
24 A I don't recall.
25 Q Was the Terry affidavit read at the

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1 MILLER
2 hearing?
3 A Was it read into the record? I don't
4 recall it being read into the record.
5 Q Was it offered into evidence?
6 A I don't recall.
7 Q Now --
8 MR. ANESH: Is this all one
9 exhibit?
10 MR. BLUESTONE: That's one
11 exhibit. It's three days of
12 testimony.
13 I think you should give that
14 one to your client. Let me mark that
15 one. You can have this one.
16 MR. ANESH: This is one
17 document.
18 MR. BLUESTONE: I understand.
19 This is all one document too.
20 MR. ANESH: That's totally
21 different than what you gave me.
22 MR. BLUESTONE: No. It's
23 actually exactly the same. I didn't
24 want to -- I don't really intend to
25 ask any questions about the

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1 MILLER
2 transcript, but I'd like him to
3 identify the transcript for the
4 record for other purposes, that is
5 that it -- that a transcript was
6 taken -- off the record.
7 (Discussion off the record)
8 (Exhibit N, transcript of
9 hearing dated 2/14/06, was marked for
10 identification, as of this date.)
11 Q I'm going to show you Exhibit N.
12 MR. ANESH: Can we identify it
13 for the record?
14 MR. BLUESTONE: Let me do it my
15 way and we'll move on.
16 Q Have you seen that document before?
17 A I'm not sure that I ever did.
18 Q Did you ever see a transcript of the
19 three days of the spoliation hearing before
20 Judge Owen?
21 A I know that we received a transcript.
22 Whether I saw it or not I don't recall.
23 Q Okay.
24 (Exhibit O, transcript of
25 hearing dated 2/15/06, was marked for

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1 MILLER
2 identification, as of this date.)
3 Q I'm going to show you what has been
4 marked as Exhibit O, the transcript for the
5 hearing dated February -- Exhibit N is the
6 transcript for February 14, 2006.
7 MR. ANESH: Yes. Miller 1322
8 through 1352.
9 Q Exhibit O is Miller 1289 through
10 Miller 1311, which is the February 15, 2006
11 transcript. Have you seen that before?
12 A Same answer as the last transcript.
13 (Exhibit P, transcript of
14 hearing dated 2/16/06, was marked for
15 identification, as of this date.)
16 Q And Exhibit P is Miller 1223 to
17 Miller 1269, the February 16th transcript. Have
18 you ever seen that before?
19 A Same answer as with Exhibits N and O.
20 Q Okay.
21 MR. ANESH: Again, the
22 format -- note for the record that
23 you're not giving me courtesy copies
24 of those.
25 MR. BLUESTONE: I'm not going

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1 MILLER
2 to ask him any questions, so don't
3 worry about it.
4 If he doesn't recognize it, I'm
5 not going to ask him any questions
6 about it.
7 MR. ANESH: That's not the
8 issue. The issue -- with all due
9 respect, the issue is -- you already
10 asked him a question if he's ever
11 seen it before.
12 MR. BLUESTONE: And he has, and
13 so --
14 MR. ANESH: I am entitled to
15 get a copy of this in the form that
16 you showed it to him.
17 I will be happy to pay for your
18 copying Exhibit N, as in Nancy, O and
19 P. Is that okay?
20 MR. BLUESTONE: Sure.
21 MR. ANESH: I want you to xerox
22 it the same way you showed it to the
23 witness.
24 And note for the record that I
25 have not been provided at this date

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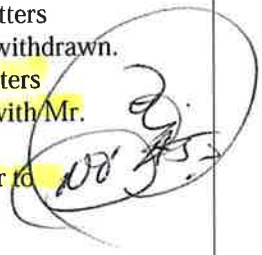
1 MILLER
2 with copies of N, O and P, and that
3 will be by Plaintiffs' counsel, and I
4 will make copies -- I'll pay for the
5 copies of those three exhibits.
6 MR. BLUESTONE: Even though
7 these are documents that you gave me.
8 MR. ANESH: Not in the form you
9 just showed it to the witness.
10 MR. BLUESTONE: Of course they
11 are.
12 MR. ANESH: No, they're not.
13 Anyway. They didn't have N, O and P
14 on it. Okay?
15 MR. BLUESTONE: And the front
16 page isn't sufficient for your use?
17 MR. ANESH: No.
18 MR. BLUESTONE: Okay.
19 MR. ANESH: I said I would pay
20 for it.
21 MR. BLUESTONE: I heard it. I
22 hear you.
23 MR. ANESH: Off the record.
24 (Discussion off the record)
25 (Exhibit Q, memorandum of law,

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1 MILLER
2 was marked for identification, as of
3 this date.)
4 Q I'm going to show you Exhibit Q, ask
5 you if you've ever seen that before.
6 A Yes.
7 Q Was this the memorandum of law
8 submitted on behalf of Thomas at the spoliation
9 hearing?
10 A No.
11 Q Was it the memorandum of law
12 submitted in support of their motion which led
13 to the spoliation hearing?
14 A Yes.
15 Q Now, were you permitted to file
16 opposition memorandum?
17 A Yes.
18 Q Were they permitted to file a reply
19 memorandum in the motion?
20 A I don't know if they were permitted,
21 but I don't think they did. Whether or not they
22 were permitted I don't recall.
23 Q Would they have been permitted with
24 an order to show cause to file a reply?
25 A If you're asking for my understanding

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1 MILLER
2 of court rules, the answer is no. You would
3 have to request it.
4 Q Now, did you obtain -- withdrawn.
5 Were you served with a copy of this
6 in a timely fashion in the motion practice which
7 led to the spoliation hearing?
8 A I believe so.
9 Q Did you review it?
10 A Yes.
11 Q Did you discuss it with Mr.
12 Meiresonne?
13 A I don't know that I discussed it with
14 Mr. Meiresonne.
15 Q Did you discuss any factual matters
16 raised in the spoliation hearing -- withdrawn.
17 Did you discuss any factual matters
18 raised in the order to show cause with Mr.
19 Meiresonne?
20 A The papers supporting the order to
21 show cause?
22 Q Yes.
23 A I'm sure I did.
24 Q Okay. Did you make any notes
25 concerning any of these discussions?



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1 MILLER
2 A I don't recall.
3 Q Do you remember the sum and substance
4 of the conversations?
5 A Well, there were numerous
6 conversations. Basically -- and on -- some of
7 these calls were with Ms. Parker and some was
8 Babcock, some with all three or two out of
9 three. I wanted to get to the bottom of what
10 happened here.
11 Q If I understand your answer, you had
12 multiple telephone calls concerning the issues
13 raised in the motion seeking a spoliation
14 hearing?
15 A Yes.
16 Q And those multiple phone calls were
17 between you Mr. Meiresonne, between you and Ms.
18 Parker, between you and Ms. Babcock, between you
19 and some combination of them?
20 A Yes.
21 Q How many phone calls in all would you
22 say there were?
23 A I don't recall. There could have
24 been one phone call where I first talked to Mr.
25 Meiresonne, and the same phone call he passed

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1 MILLER
2 the phone over and I talked to Ms. Babcock alone
3 without Mr. Meiresonne there.
4 So I can't tell you whether those are
5 separate phone calls on every situation. I
6 don't recall the number.
7 Q Understood. Now, were these phone
8 calls important in the handling of the response
9 to the order to show cause?
10 A Yes.
11 Q Did those phone calls lead to
12 declarations which were drafted for the various
13 witnesses?
14 A In part.
15 MR. ANESH: Could I have the
16 question read back?
17 MR. BLUESTONE: The question
18 was did these conversations lead to
19 declarations which were written for
20 various witnesses.
21 MR. ANESH: Including Mr.
22 Meiresonne.
23 MR. BLUESTONE: I didn't ask
24 that, but he's already answered the
25 question.

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1 MILLER
2 Q Did you draft declarations based upon
3 the telephone calls?
4 A Based in part upon the telephone
5 calls.
6 Q Part of the telephone calls. Is your
7 answer yes?
8 A Yes, if it's in part.
9 Q I understand. I changed the
10 question to in part.
11 A Yes.
12 Q Okay. Now, over what period of time
13 did the telephone calls and the drafting of the
14 response take?
15 A You'd have to look at the date of the
16 order to show cause and the date we received it
17 and the date of our opposition, and over that
18 period of time. I can't recall sitting here
19 today exactly what those dates are.
20 Q I understand how to calculate the
21 time. I was curious. Do you remember?
22 A No.
23 Q Is there a single page of notes from
24 any one of these telephone conversations that
25 you know exists?

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1 MILLER
2 A No.
3 Q How did you keep all of this
4 information in your head in order to draft
5 accurate, true and correct declarations?
6 MR. ANESH: Objection to the
7 form of the question.
8 MR. BLUESTONE: Okay.
9 MR. ANESH: He -- you're
10 twisting his testimony. You're
11 mischaracterizing --
12 MR. BLUESTONE: Don't say
13 anything more. You made your
14 objection.
15 MR. ANESH: Objection to the
16 form of the question.
17 Q Can I have an answer, sir?
18 A First of all, it doesn't mean that
19 there never was notes. I don't recall whether
20 or not I made them, but I might have made some
21 notes which were used for an affidavit or
22 declaration and then discarded. That's
23 certainly possible.
24 MR. ANESH: Off the record.
25 (Discussion off the record)

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1 MILLER
2 A In any event --
3 MR. ANESH: You assume in fact
4 that he --
5 MR. BLUESTONE: Mark, please
6 let him finish.
7 MR. ANESH: I didn't say
8 anything.
9 MR. BLUESTONE: Let him finish.
10 MR. ANESH: All right.
11 Q Sir, do you have anything more you
12 want to answer in that answer?
13 A Yes. To the extent that I would do a
14 draft of a declaration or affidavit based upon
15 what I knew at that point in time, and it might
16 get refined or revised later if facts changed or
17 supplemented.
18 But in the -- in the -- as I was
19 drafting, I was certainly trying to put down
20 what I knew.
21 Q Did you save -- withdrawn.
22 How did you create drafts of
23 declarations at that time?
24 A I can't answer specifically to these
25 declarations. I can just give you my general

1 MILLER
 2 practice.
 3 Q Please do.
 4 A My general practice is I will draft
 5 an affidavit -- affidavit or declaration based
 6 on what I know.
 7 Q How?
 8 A I would physically type it into Word
 9 Perfect on my computer, save it as a -- with a
 10 name.
 11 As facts changed or added or
 12 subtracted, I would go back into my document. I
 13 would edit the document accordingly, and then
 14 resave it typically with the same name.
 15 Q You wrote -- you overwrote the old
 16 documents?
 17 A Yes. In draft -- typically yes.
 18 Q Did you ever save multiple drafts as
 19 they changed?
 20 A Sometimes I do. It is not my usual
 21 practice.
 22 Q Okay. I'm going to represent to you
 23 that in the documents provided by your attorney,
 24 I didn't discern any multiple or sequential
 25 drafts of any one document.

1 MILLER
 2 human-like.
 3 I'm trying to trace the origin of
 4 documents that were provided to us in discovery.
 5 In discovery your attorneys provided various
 6 documents that have the Miller Bates marking on
 7 them, and you've seen some today. I believe
 8 they run from 0 to 4,000 approximately pages.
 9 I'm trying to figure out where they
 10 came from. Do you know the origin of the 4,000
 11 or so pages that were provided to us in
 12 discovery?
 13 A I can only tell you what I provided
 14 to my attorney. How it got to you I can't tell
 15 you.
 16 Q If you would tell me what you
 17 provided to your attorney, without telling me
 18 any conversations you had with him or any
 19 privileged matter, I would appreciate it.
 20 A To the extent we had hard copies of
 21 documents left, we made duplicate copies of
 22 deposition hearing transcripts that we might
 23 have held on to. We provided that to our
 24 attorney.
 25 To the extent that there were

1 MILLER
 2 You've reviewed the documents in this
 3 case. Have you run across any sequential or
 4 multiple drafts of any document in the documents
 5 provided under Miller 0 to 4000?
 6 A I have not done a review to see one
 7 way or the other whether or not I saved, as you
 8 call it, sequential documents. I told you what
 9 my practice is.
 10 Q You understood that question, what I
 11 meant by sequential drafts?
 12 A I understood it to mean the draft
 13 documents, save it, and then when you make a
 14 revision to it you save it with a different file
 15 name and number.
 16 Q Exactly, sir. Now, are your computer
 17 files with regard to the IQS case still residing
 18 on your server?
 19 A If I created the document, yes.
 20 Q And was -- were your server files the
 21 materials that were provided to your attorney
 22 for use in discovery responses in this case?
 23 A If I understand -- I'm not sure I
 24 understood your question.
 25 Q Let me rephrase it so it's more

1 MILLER
 2 documents that I created on my computer in Word
 3 Perfect, I instructed my secretary to download
 4 all those to one or more disks, and we gave that
 5 disk to our attorneys with those documents on
 6 it.
 7 Q Were those obtained from your work
 8 station, from the server or both?
 9 A I'm not sure if the secretary went
 10 into my office and got it off my work station,
 11 or whether she accessed it -- she should be able
 12 to access it from her work station to get
 13 documents that are created on my work station,
 14 if it was created on the server.
 15 MR. BLUESTONE: Now, if -- Mr.
 16 Anesh, if you wish I'll reduce in to
 17 a writing, but I would appreciate it
 18 if somebody could look on the server
 19 and work station to make sure no
 20 documents were inadvertently not
 21 transferred in good faith.
 22 MR. ANESH: We'll take it under
 23 advisement.
 24 MR. BLUESTONE: Okay. We'll
 25 knock off for today.

how small?
no

1 MILLER
 2 MR. ANESH: Okay. Thank you
 3 very much. Put on the record that
 4 we're both -- you're going to provide
 5 me with copies of the documents that
 6 are marked.
 7 And you're going to get back to
 8 me with some dates of your client's
 9 availability in Michigan, and I'm
 10 going to get back to you thereafter
 11 with some dates for my clients'
 12 availability.
 13 MR. BLUESTONE: Mr. Rosado
 14 and --
 15 MR. ANESH: All right. Off the
 16 record.
 17 (Discussion off the record)
 18 (Time noted: 4:03 p.m.)
 19
 20
 21
 22
 23
 24
 25

1 C E R T I F I C A T E
 2
 3 STATE OF NEW YORK)
 4 :ss
 5 COUNTY OF NEW YORK)
 6
 7 I, RONALD A. MARX, a Notary Public
 8 within and for the State of New York, do hereby
 9 certify:
 10 That NEIL A. MILLER, the witness
 11 whose deposition is hereinbefore set forth, was
 12 duly sworn by me and that such deposition is a
 13 true record of the testimony given by such
 14 witness.
 15 I further certify that I am not
 16 related to any of the parties to this action by
 17 blood or marriage; and that I am in no way
 18 interested in the outcome of this matter.
 19 IN WITNESS WHEREOF, I have hereunto
 20 set my hand this 7th day of January, 2011.
 21
 22
 23 _____
 24 RONALD A. MARX
 25

1 A C K N O W L E D G E M E N T
 2
 3 STATE OF NEW YORK)
 4 :ss
 5 COUNTY OF)
 6
 7 I, NEIL A. MILLER, hereby certify that I
 8 have read the transcript of my testimony taken
 9 under oath in my deposition of December 29,
 10 2010; that the transcript is a true, complete
 11 and correct record of my testimony, and that the
 12 answers on the record as given by me are true
 13 and correct.
 14
 15 _____
 16 NEIL A. MILLER
 17
 18 Signed and subscribed to before me
 19 this _____ day of _____, 2011
 20
 21 _____
 22 Notary Public, State of New York
 23
 24
 25

1 ***ERRATA***
 2 ELLEN GRAUER COURT REPORTING CO. LLC
 3 126 East 56th Street, Fifth Floor
 4 New York, New York 10022
 5 212-750-6434
 6
 7 NAME OF CASE: Industrial vs. Miller
 8 DATE OF DEPOSITION: December 29, 2010
 9 NAME OF WITNESS: Neil A. Miller
 10
 11 PAGE LINE FROM TO REASON
 12 _____
 13 _____
 14 _____
 15 _____
 16 _____
 17 _____
 18 _____
 19 _____
 20 _____
 21 _____
 22 Subscribed and sworn before me
 23 this _____ day of _____, 20__.
 24 _____
 25 (Notary Public) My Commission Expires:

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*INDUSTRIAL QUICK SEARCH, INC. VS.
MILLER, ROSADO & ALGOIS, LLP*

*NEIL MILLER
March 7, 2011*

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Co. LLC

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1 UNITED STATES DISTRICT COURT
2 EASTERN DISTRICT OF NEW YORK
3 -----x
4 INDUSTRIAL QUICK SEARCH INC.,
5 MICHAEL MEIRESONNE,
6 MEIRESONNE & ASSOCIATES, INC.,
7
8 Plaintiffs,
9
10 -against-
11 MILLER, ROSADO & ALGIOS, LLP,
12 CHRIS ROSADO and
13 NEIL A. MILLER, ESQ.,
14
15 Defendants.
16 -----x
17
18 77 Water Street
19 New York, New York
20
21 March 7, 2011
22 10:00 a.m.
23
24 Deposition of Defendant,
25 NEIL MILLER, before Shari Cohen, a Notary
Public of the State of New York.

ELLEN GRAUER COURT REPORTING CO. LLC
126 East 56th Street, Fifth Floor
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212-750-6434
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16
17
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21
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24
25

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1 STIPULATIONS
2
3 IT IS HEREBY STIPULATED AND AGREED by
4 and between the attorneys for the respective
5 parties herein, that the filing, and sealing
6 of the within deposition be waived.
7 IT IS FURTHER STIPULATED AND AGREED
8 that all objections, except as to the form of
9 the question, shall be reserved to the time
10 of the trial.
11 IT IS FURTHER STIPULATED AND AGREED
12 that the within deposition may be sworn to
13 and signed before any officer authorized to
14 administer an oath with the same force and
15 effect as if signed and sworn to before the
16 Court.
17
18
19 -oOo-
20
21
22
23
24
25

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1 MILLER
2 witness or printout for all the time
3 on the entire case?
4 MR. BLUESTONE: For the witness
5 for that period of time for that case.
6 A. Yes, I think the search
7 parameters were even slightly larger like
8 July 1 to August 15, but these are the
9 entries that came up.
10 Q. Who undertook the search for
11 these time records?
12 A. I did.
13 Q. Did you do it yourself or ask
14 somebody to do it for you?
15 A. Did it myself.
16 Q. You testified in your previous
17 deposition that you were working on a trial
18 that involved a Mr. Liotti on the other side;
19 is that correct?
20 A. Correct.
21 Q. Is this the case you are
22 talking about?
23 A. Yes, it is.
24 Q. How did you determine that this
25 was the particular case that involved Mr.

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1 NEIL MILLER, called as a
2 witness, having been duly sworn by a
3 notary public, was examined and
4 testified as follows:
5
6 EXAMINATION BY
7 MR. BLUESTONE:
8 Q. Mr. Miller, we started a
9 deposition and today is the continuation of
10 the second day of the deposition. You are
11 under oath now. Your counsel has provided me
12 with a two page document which we're going to
13 mark as Exhibit R.
14 (Plaintiff's Exhibit R,
15 Document, marked for Identification.)
16 Q. Mr. Miller, this Exhibit R is a
17 printout of time sheets?
18 A. It's a printout of certain time
19 on a certain case.
20 Q. Is it a printout of all the
21 time on the Kweit verses Muhlstein case for
22 the period July 9, 2003 through August 6,
23 2003?
24 MR. ANESH: Objection. You say
25 printout of all the time for the

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1 MILLER
2 Liotti that you testified about last time?
3 A. I've only tried one case
4 against Tom Liotti and this is it.
5 Q. I think you mentioned that you
6 were on trial during this period of time.
7 Did you actually -- what did you mean by
8 being on trial with the case?
9 MR. ANESH: Note my objection
10 to the form of the question.
11 A. It was a continuation of a
12 trial that had started I believe in May, but
13 could have been June where it was a non jury
14 matter where the second set of two days was
15 in this time frame. We were literally before
16 the judge trying the case.
17 Q. Reviewing this document here,
18 can you tell me how many days of trial are
19 shown on this printout?
20 A. Two.
21 Q. Are those for Tuesday, August
22 5th and Wednesday, August 6th?
23 A. That's correct.
24 Q. The rest of the time reports
25 are shown here, for example, on Monday,

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1 MILLER
2 August 4, 2003 you have an hour-and-a-half of
3 telephone calls, review and preparation of an
4 opening; is that a correct reading of that
5 entry?
6 A. The August 4th entry?
7 Q. Yes, sir.
8 MR. ANESH: Note my objection
9 to the form. You can answer.
10 A. My time telephone call with
11 Leon which would be Leon Kweit, a possible
12 2:00 p.m. start. I reviewed my research on
13 adhesion contracts.
14 MR. ANESH: Are you done?
15 THE WITNESS: No.
16 MR. ANESH: I don't want you to
17 talk about communications with other
18 clients.
19 A. I didn't go into what was said.
20 MR. BLUESTONE: He's reading
21 the entry.
22 A. I'm just reading what was here.
23 MR. ANESH: I just don't want
24 communications, that's all.
25 A. Because the trial was picking

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1 MILLER
2 up after a couple of months of inactivity I
3 prepared an opening for the re-start of the
4 trial.
5 Q. Were you also working on other
6 matters during this time period?
7 A. What do you mean by this time
8 period?
9 Q. July 9th through August 6,
10 2003?
11 A. Yes.
12 Q. Approximately how many other
13 litigation matters were you handling for your
14 firm at that time?
15 A. I can't begin to guess.
16 Q. Is it more than one?
17 A. I'm sure it would be.
18 Q. Is it more than 25?
19 A. I would doubt it.
20 Q. Do you believe it's between one
21 and 25?
22 A. I would think that's reasonable
23 to say.
24 Q. Having asked you those
25 questions, does it help you to further refine

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1 MILLER
2 the approximate number of litigations you
3 were handling for your law firm at that time?
4 A. No.
5 Q. Were you handling other matters
6 that you might not classify as litigation,
7 for example, transactional work?
8 A. I do a minimal amount of it. I
9 do do some. I cannot tell you whether I did
10 any in this time frame.
11 Q. Okay. Thank you. There was a
12 deposition that was held on March 1, 2011 of
13 the plaintiff Mike Meiresonne. Were you
14 present at that deposition, sir?
15 A. No.
16 Q. Did you review any documents
17 that were used as exhibits during that
18 deposition prior to the taking of the
19 deposition?
20 A. I don't know what exhibits were
21 marked at Mr. Meiresonne's deposition. I
22 can't answer that.
23 Q. That's what I'm trying to find
24 out. Did you and your counsel -- I'm not
25 asking what you said to each other, but did

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1 MILLER
2 you review any documents that were to be used
3 for exhibits at that deposition?
4 A. Again, you are asking me a
5 question I can't answer. I don't know what
6 documents were marked at his deposition.
7 MR. ANESH: Off the record.
8 (Discussion off the record.)
9 MR. BLUESTONE: Mark as S.
10 (Plaintiff's Exhibit S,
11 Document, marked for Identification.)
12 Q. Sir, take a look at Plaintiff's
13 Exhibit S. This is also marked DP, wasn't
14 crossed out, Exhibit 26.
15 MR. BLUESTONE: I'm presuming
16 this was Defendant's Exhibit 26, Mr.
17 Anesh?
18 MR. ANESH: I assume so, but I
19 can't say.
20 MR. BLUESTONE: Was this not
21 your exhibit at Mr. Meiresonne's
22 deposition?
23 MR. ANESH: I didn't depose
24 him.
25 MR. BLUESTONE: Who did

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1 MILLER
2 represent him?
3 MR. ANESH: Another attorney
4 from my office.
5 MR. BLUESTONE: The name?
6 MR. ANESH: Anthony Proscia.
7 MR. BLUESTONE: Do you know
8 what exhibits were used at that
9 deposition?
10 MR. ANESH: Sitting here, no, I
11 do not.
12 MR. BLUESTONE: I understand,
13 okay.
14 Q. Take a look at Exhibit S which
15 is also marked Exhibit 26. Have you seen
16 this document before?
17 A. I don't recall.
18 Q. Did you produce any documents
19 to your counsel which bore the header
20 NMiller@MRAlaw.com message composing, do you
21 see that header at the very top of the page?
22 A. Message composer?
23 Q. Do you see the header at the
24 very top of the page?
25 MR. ANESH: Objection to the

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1 MILLER
2 form of the question.
3 A. Not that I recall.
4 Q. Have you seen any documents
5 that appear the same as this with regard to
6 the header and the footer at the very bottom
7 which ends with the words compose.wssp?
8 A. I don't believe I have seen any
9 documents in this form, no.
10 Q. You will note, sir, that this
11 document does not contain a Bates marking at
12 the bottom corner, bottom right hand corner
13 nor does it contain a Bates marking in the
14 middle of the bottom of the document. Do you
15 have any knowledge of where this document
16 came from so that it was introduced as an
17 exhibit at a deposition?
18 A. I would only be speculating.
19 Q. Have you ever printed out
20 e-mails from your own e-mail address for this
21 or other cases?
22 MR. ANESH: Note my objection
23 to the form of the question. What do
24 you mean your own e-mail address?
25 Q. NMiller@MRA.law, that is your

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1 MILLER
2 e-mail address; is it not?
3 MR. ANESH: Professional
4 e-mail. Sometimes you own, I don't
5 know if it means personal.
6 MR. BLUESTONE: I understand,
7 sir. I'll rephrase the question for
8 you.
9 Q. Is NMiller@MRAlaw.com an e-mail
10 address that you use professionally?
11 A. Yes.
12 Q. Is it your e-mail address
13 professionally?
14 A. Yes.
15 Q. Does anyone else use that
16 e-mail address at work?
17 A. There could be times a
18 secretary or assistant sends something out
19 under my e-mail address at my instruction.
20 Q. Would you say that's pretty
21 rare?
22 A. Doesn't happen often.
23 Q. Have you been using that e-mail
24 address since 2003?
25 A. Yes.

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1 MILLER
2 Q. Do you currently use that
3 e-mail address?
4 A. Yes.
5 Q. In any of that time, sir, since
6 April 2003 to today, have you ever printed
7 out an e-mail on to paper from that e-mail
8 address?
9 A. Many times.
10 Q. Have you ever seen it looking
11 in the same format as Exhibit S?
12 A. No.
13 Q. Have you ever seen this format
14 before?
15 A. Not that I can recall.
16 Q. Taking a look at the message in
17 the main box below the from Neil Miller to X,
18 do you recognize that message?
19 A. I don't recognize it.
20 Q. Have you ever used the term
21 advertiser files in the IQS case when you
22 represented IQS?
23 A. Yes.
24 Q. What did you understand
25 advertiser files to mean?

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1 MILLER
2 A. I understood it to mean the
3 files that Industrial Quick Search maintained
4 regarding companies that advertised with it.
5 Q. Do you know when this e-mail
6 was sent?
7 A. No, I do not.
8 Q. Did you ever yourself review
9 the advertiser files to which you just
10 referred?
11 A. No.
12 Q. Did anyone from your office
13 review the advertiser files to which you just
14 referred?
15 MR. ANESH: At any time?
16 MR. BLUESTONE: At any time.
17 A. Not that I'm aware of.
18 Q. Did you ever discuss reviewing
19 the advertiser files to which you just
20 referred at any time?
21 A. I discussed it with Mike
22 Meiresonne.
23 Q. When did you discuss it?
24 A. In the course of the run up to
25 the document production we discussed whether

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1 MILLER
2 I should come out to Michigan to review files
3 for the document production and Mike did not
4 want to bear that expense and we didn't see
5 the need.
6 Q. You said two things in that
7 part of the sentence, first you said that we
8 did not see the need, tell me who we is?
9 A. Mr. Meiresonne and myself.
10 Q. How did you on your behalf
11 determine whether there was a need to review
12 the advertiser files?
13 MR. ANESH: Note my objection
14 to the form of the question. I don't
15 think he said that. Over my objection
16 you can answer.
17 A. As far as I was concerned and
18 Mr. Meiresonne agreed this was supposed to be
19 a simple thing. We had said in our document
20 production, our formal response that we would
21 produce advertiser files in Michigan and we
22 eventually arranged for them to come out to
23 do it and they were supposed to produce
24 everything and we had nothing to hide as far
25 as I and Mr. Meiresonne, let them come out

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1 MILLER
2 and look and waste their time.
3 MR. ANESH: Do you want to hear
4 the answer read back?
5 (Record read.)
6 Q. Read the question back.
7 (Record read.)
8 A. We had said in a formal
9 document response that the advertiser files
10 would be available for review in Michigan.
11 As far as I was concerned from my
12 conversation with Mr. Meiresonne, this was
13 going to be a simple thing. We were going to
14 produce our advertiser files in Michigan to
15 the plaintiff's counsel who would review
16 them. Everything was supposed to be produced
17 that was in those files. Mr. Meiresonne --
18 in terms of the need, I could go through all
19 the advertising material, advertising files
20 material, it would just be a tremendous
21 expense and Mr. Meiresonne certainly didn't
22 want to incur that expense.
23 Q. Did you have a conversation in
24 which Mr. Meiresonne told you specifically
25 not to review the documents neither you nor

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1 MILLER
2 anyone else from your firm?
3 MR. ANESH: Note my objection
4 to the form of the question.
5 A. It's hard to answer the way you
6 phrased it in terms of specifically since Mr.
7 Meiresonne did not wish to have the files
8 brought to New York because he said they were
9 working files and since he did not wish me to
10 come to Michigan, do you call that being
11 specific? I don't know. To me that's pretty
12 specific.
13 Q. Did he specifically tell you
14 not to come to Michigan?
15 MR. ANESH: Note my objection
16 to the form of the question.
17 A. I believe he did. It was a
18 matter of a discussion between us and he did
19 not want to incur the expense of us coming
20 out there.
21 Q. Did he specifically say that or
22 do you believe he did? There is a difference
23 between those answers and I would like to
24 know what you mean?
25 MR. ANESH: Note my objection

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1 MILLER
2 to the form of the question.
3 A. I can't tell you the specific
4 words Mr. Meiresonne used. We definitely
5 discussed whether I needed to come out to
6 Michigan for the document production and we
7 had a discussion when to schedule it and
8 whether I should be there and I can't tell
9 you the exact words he used, but clearly the
10 import was he did not need me to come to
11 Michigan to review files or for the
12 production of files.
13 Q. Was there any writing that
14 memorialized the words that you've just
15 spoken?
16 A. I don't believe so. I can't
17 recall every single writing.
18 Q. Have you reviewed your files to
19 look for any writings discussing that issue
20 since the inception of this lawsuit?
21 A. I know I reviewed maybe with
22 Mark there were some e-mails in that general
23 time frame and there were time records in
24 that time frame that we looked at the last
25 time I was here, but independent of that, no.

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1 MILLER
2 Q. Did you look for any
3 communications between you and Mr. Meiresonne
4 concerning whether or not you should go to
5 Michigan to review the documents since the
6 inception of this lawsuit?
7 MR. ANESH: Can I have the
8 question read back.
9 (Record read.)
10 MR. ANESH: Objection, asked
11 and answered. He referred to time
12 sheets previously. Over my objection
13 you can answer.
14 A. I don't know what I even could
15 have looked at given that I had turned the
16 files over to Mr. Meiresonne and my e-mails
17 from that time frame were not available so I
18 don't know what I could have looked at other
19 than the time sheets that were mentioned.
20 MR. BLUESTONE: Exhibit T.
21 (Plaintiff's Exhibit T,
22 Document, marked for Identification.)
23 MR. ANESH: Do you want to
24 maybe refer to it as 27 on 3/1?
25 MR. BLUESTONE: I'm going to do

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1 MILLER
2 both.
3 MR. ANESH: It eliminates the
4 need to --
5 MR. BLUESTONE: I appreciate
6 that, but I'm going to do both.
7 Q. I'm going to show you what was
8 marked Exhibit T which was previously marked
9 27 on 3/1/11. Ask you have you seen this
10 document before?
11 A. This is part of an exhibit I
12 saw last time. It kind of looks familiar to
13 me. Not the format, but I mean the substance
14 of the e-mail.
15 Q. The format is one of the
16 important things that I'm asking you about.
17 Do you recognize this format now that you
18 have seen a second exhibit, sir?
19 A. No.
20 Q. Do you see the words it should
21 be rather limited since we did clean out some
22 details because of space...?
23 A. I see the words.
24 Q. Do you remember seeing those
25 words before?

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1 MILLER
2 A. I don't remember unless it came
3 up at my last deposition session.
4 Q. Did you discuss with Mr.
5 Meiresonne back in 2003 the meaning of those
6 words and whether or not any documents were
7 thrown away?
8 MR. ANESH: Note my objection
9 to the form of the question. The
10 e-mail to Mr. Meiresonne asked if any
11 documents were thrown out so this is
12 the response so I don't know what
13 documents you're talking about.
14 MR. BLUESTONE: Either do I,
15 that's what I'm trying to find out.
16 MR. ANESH: I have to object to
17 the form of the question because are
18 you talking about did he have any
19 discussion about 2003 documents being
20 thrown away because the e-mail clearly
21 refers to '99 to 2001 documents being
22 thrown away.
23 MR. BLUESTONE: You can twist
24 my question any way you want, but
25 that's not what I asked. If you need

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1 MILLER
2 it read back, have it read back. I
3 asked him did he have any discussion
4 at all back in 2003 which is the date
5 of these e-mails.
6 MR. ANESH: About what
7 documents being thrown away, that's my
8 question. Are you referring to '01
9 documents?
10 MR. BLUESTONE: Mr. Anesh, I
11 started with documents. I'll go from
12 there. If he said he had no
13 discussion about documents at all,
14 then it doesn't matter whether they
15 are '03, '99 or 2010 documents.
16 MR. ANESH: With all due
17 respect --
18 MR. BLUESTONE: Sir.
19 MR. ANESH: I mean this with
20 all due respect, if he just answers
21 the question yes --
22 MR. BLUESTONE: Then I'll move
23 on to specificity.
24 MR. ANESH: I cannot rely on
25 you --

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1 MILLER
2 MR. BLUESTONE: Then you will
3 make a motion later.
4 MR. ANESH: I'll just make my
5 objection.
6 MR. BLUESTONE: You already
7 did, sir.
8 MR. ANESH: Okay.
9 MR. BLUESTONE: And really you
10 can just make your objection. I'm not
11 going to back down on the form so this
12 is a waste of space of my money.
13 Please don't waste my money anymore.
14 MR. ANESH: I'm just asking you
15 to be clear about documents, '01 or
16 '03 documents.
17 MR. BLUESTONE: Mr. Anesh, I'm
18 not going to keep paying for your
19 colloquy.
20 MR. ANESH: That's all.
21 MR. BLUESTONE: I'm not paying
22 for your colloquy, sir.
23 MR. ANESH: Go ahead, go ahead.
24 A. I think I need the question --
25 are you rephrasing?

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1 MILLER
2 Q. Yes. Did you have any
3 conversation about which documents if any
4 were thrown out with Mr. Meiresonne?
5 MR. ANESH: Objection.
6 A. Eventually, yes.
7 Q. When, sir?
8 A. We certainly had many, many
9 discussions when the spoliation motion was
10 made.
11 Q. That was December or later of
12 2003; is that right?
13 A. Maybe late November, something
14 like that.
15 Q. I'm talking about back in
16 April, did you have any conversations back in
17 April contemporaneous with these e-mails?
18 MR. ANESH: Objection.
19 A. I don't recall.
20 Q. Did you take any notes
21 concerning any conversations you had with Mr.
22 Meiresonne back in April of 2003
23 contemporaneous with these e-mails?
24 A. I don't recall.
25 Q. Have you looked back through

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1 MILLER
2 your files since the last deposition for any
3 documents at all whether in digital form,
4 paper form, note form or any other form, sir?
5 A. No, I have not looked back
6 through files.
7 (Plaintiff's Exhibit U,
8 E-Mail, marked for Identification.)
9 Q. Sir, I'm showing you Exhibit U
10 which is also Exhibit 28 from 3/1/11. I'm
11 going to ask you is this an e-mail from you
12 to Mike Meiresonne?
13 A. I could only tell you that it
14 appears to be.
15 Q. You will note that this is in a
16 different format from the prior exhibit.
17 Have you seen this format before with regard
18 to e-mails from NMiller@MRAlaw.com?
19 A. I'm not certain. What's making
20 me uncertain is this linked to line.
21 MR. ANESH: Where is that?
22 MR. BLUESTONE: Third line in
23 the header.
24 A. The bottom looks a little bit
25 cut off. There appears to be something on

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1 MILLER
2 the bottom cut off and I don't know if that
3 would make me less or more familiar with the
4 format of the document.
5 Q. I understand. Does that mean
6 you do recognize it or don't recognize it?
7 A. I said I'm not sure because of
8 that linked to line.
9 Q. So just from a language point
10 of view, how does the linked to line make it
11 more or less likely that you recognize this?
12 MR. ANESH: Note my objection
13 to the form of the question.
14 A. It makes it less likely.
15 Sitting here today I don't recall when I
16 print out an e-mail after I send one that it
17 has a linked to Neil Miller line on it.
18 Q. Understood so that means you
19 don't recognize this format?
20 A. I said that's what's giving me
21 the pause.
22 Q. I understand, that's great. Now
23 do you recognize any of the language in the
24 e-mail?
25 A. I'm not sure I understand what

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1 MILLER
2 you mean by recognize the language.
3 MR. ANESH: Note my objection
4 to the form of the question.
5 Q. Did you author this?
6 A. I don't recall.
7 Q. Do you recognize any of the
8 wording or the language or the phraseology of
9 what's written here?
10 MR. ANESH: Note my objection
11 to the form,
12 A. I recall some of the issues
13 that are discussed here.
14 Q. Not the issues, I'm talking
15 about the language itself?
16 A. It goes hand in hand. I do
17 remember about under prints that being an
18 issue so when you say the language about the
19 under prints, I don't recall that's the way I
20 drafted it, but I do recall that was an issue
21 in the case.
22 Q. Yes, sir, I understand that.
23 What I'm trying to hone in on it appears to
24 me from this exhibit that you are the author
25 and I'm trying to find out if you recognize

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1 MILLER
2 the language and whether you are the author
3 of this and Mark -- don't answer.
4 MR. ANESH: Objection, he
5 already did.
6 MR. BLUESTONE: That's fine.
7 A. I don't know if I'm the author
8 of this or not.
9 Q. Thank you, sir.
10 MR. BLUESTONE: Exhibit V.
11 (Plaintiff's Exhibit V,
12 Letter, marked for Identification.)
13 Q. Sir, I'm showing you an Exhibit
14 which is marked Exhibit V as in Victor and is
15 also Exhibit 31 on 3/1/11. This is a letter
16 that bears the words on top Miller Rosado &
17 Algios. Do you recognize this particular
18 letter, sir?
19 A. I recognize it to be a letter
20 with my signature. Do I recall writing it,
21 no.
22 Q. When I say do you recognize
23 this letter, I'm saying do you recognize this
24 particular. Obviously it has your letterhead
25 at the top, it has a signature line which

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1 MILLER
2 bears your name typewritten at the bottom,
3 but when I ask that question I mean do you
4 recognize this letter?
5 MR. ANESH: Note my objection.
6 A. I don't know how to answer when
7 you say recognize this letter. It's
8 certainly our letterhead or a reproduction of
9 our letterhead. It's my signature. When you
10 say do I recognize it, I don't remember it.
11 Q. What I'm trying to get at is
12 not your inferential understanding that it
13 probably is from your law firm. I'm asking do
14 you remember this particular letter for some
15 reason or another?
16 MR. ANESH: Same objection.
17 A. No, I don't recall it.
18 Q. Is this your signature on page
19 two, sir?
20 A. Yes.
21 Q. Did Miller Rosado back in 2003
22 use Airborne Express to send packages or
23 letters or mail to clients?
24 A. I believe we did.
25 Q. Look at page 2, sir, the second

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1 MILLER
2 full paragraph starting with the words I'm
3 assuming. If you read the rest of that I'll
4 ask you some questions.
5 A. Yes, I see that.
6 Q. Do you remember writing those
7 words?
8 A. I don't remember writing those
9 words.
10 Q. You use the term Michigan
11 counsel, do you see that term, sir?
12 A. Yes.
13 Q. What's your present
14 understanding of what you meant by that term
15 back on June 12, 2003?
16 A. He had a firm in Michigan, I
17 think it was Mika Meyers, I don't know how
18 you spell it and a fellow named Ron Redick
19 and they were assisting in terms of the
20 plaintiffs producing documents in Michigan or
21 third party plaintiffs and third party
22 defendants producing certain documents in
23 Michigan and they were going to be there to
24 review the documents being produced by
25 plaintiffs or third party defendants in

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1 MILLER
2 Michigan.
3 Q. Is it your current belief that
4 Michigan counsel had been engaged or had
5 agreed to be present at the document
6 production at IQS's offices?
7 MR. ANESH: Note my objection
8 to the form of the question. Which
9 document?
10 A. No.
11 Q. The document production on July
12 29, August 3, whatever the dates were?
13 A. To the document production in
14 IQS's office the answer is no.
15 Q. To make sure I understand it
16 and not just to cross-examine you, when you
17 say the answer is no, is it your present
18 understanding they would not be present in
19 Michigan for the document production at IQS's
20 offices?
21 A. Please read it back.
22 (Record read.)
23 A. Correct.
24 Q. Did you ever have an
25 understanding or belief that they were to be

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1 MILLER
2 present at the Michigan offices of IQS for
3 the document production in late July, early
4 August?
5 A. No.
6 Q. What did you mean by the words
7 that were written in this paragraph starting
8 with the words I am assuming?
9 A. This is now concerning the
10 plaintiffs and third party defendant's
11 document production to us. Just like we said
12 there is certain documents we're producing in
13 Michigan --
14 MR. ANESH: Let him finish. Go
15 ahead.
16 A. They were producing documents
17 at their Michigan counsel's office and again,
18 Mr. Meiresonne, I don't know at this point we
19 decided whether or not I would come out here,
20 but clearly Mike expressed an interest in
21 rather than me flying out to Michigan to
22 obtaining and handling copying those
23 documents that his Michigan counsel who filed
24 his own Michigan action which was stated at
25 that point would handle that.

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1 MILLER
2 Q. So am I correct that the
3 language in this particular paragraph refers
4 to Thomas' production to IQS?
5 A. Thomas and the third party
6 defendants.
7 Q. Production to IQS?
8 A. Yes.
9 MR. BLUESTONE: W.
10 (Plaintiff's Exhibit W,
11 E-Mail, marked for Identification.)
12 Q. Sir, I'm showing you Exhibit W
13 which is also marked Exhibit 36 on 3/1/11.
14 Do you recognize this e-mail?
15 A. No.
16 Q. Is this from Mr. Redick to who
17 you just referred?
18 A. It appears to be.
19 Q. The printing is very small.
20 Could you read what is written from Ron
21 Redick to Neil Miller?
22 A. Yes.
23 Q. It says something about 15
24 bankers boxes, do you see that?
25 A. I see where it says that.

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1 MILLER
2 Q. Prior to July 24, 2003, did you
3 have any knowledge or information concerning
4 the volume of documents which were at the IQS
5 office for the IQS document production at
6 their offices in late July, early August?
7 MR. ANESH: Note my objection
8 to the form of the question.
9 A. We are not talking about the
10 document production in Exhibit W now, you are
11 talking about document production at IQS's
12 offices?
13 MR. ANESH: You just switched
14 it. Do you mean to do that? I don't
15 think you do.
16 MR. BLUESTONE: No.
17 MR. ANESH: The witness pointed
18 out that he's referring to the
19 document production.
20 MR. BLUESTONE: Don't testify,
21 Mark. Stop. I appreciate your help.
22 Don't testify. I'll just work my way
23 through it as stupid as I am.
24 MR. ANESH: Did I call you
25 stupid?

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1 MILLER
2 MR. BLUESTONE: I'm saying the
3 word.
4 MR. ANESH: I never said that.
5 MR. BLUESTONE: I didn't say
6 you did. Stop, stop, stop, Don't
7 help.
8 MR. ANESH: Don't help, but
9 don't try to twist it either.
10 MR. BLUESTONE: Then object.
11 Your witness is an educated attorney
12 who knows his facts. He can answer the
13 question honestly as I'm sure he is
14 and he will straighten me out if I'm
15 wrong. We will get through this a lot
16 quicker if you don't help. I
17 appreciate your help.
18 Q. Sir, is this a document
19 production at Thomas' office that you
20 referred to?
21 MR. ANESH: Objection.
22 A. At Thomas' office, no.
23 Q. Tell me what document
24 production the message in Exhibit W refers
25 to?

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1 MILLER
2 A. It's referring to the document
3 production that I think was also referred to
4 in the last exhibit. Miller Johnson was
5 Thomas' counsel in Michigan and that was the
6 production of documents of Thomas and/or the
7 third party defendants.
8 Q. Wouldn't that be Thomas'
9 production of documents to IQS?
10 A. Third party defendants. You
11 said at Thomas' office and it was not at
12 Thomas' office.
13 Q. At the office of Thomas'
14 attorneys?
15 A. Correct.
16 Q. This was Thomas and third party
17 defendants' production to IQS?
18 A. Right. I'm not even certain if
19 there are any Thomas documents in here or
20 this was all third party defendants who lived
21 in Michigan and Indiana.
22 Q. Now, sir, as of July 24, 2003,
23 am I correct that that document review of
24 IQS's documents at IQS's office had not yet
25 taken place?

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1 MILLER
2 A. Correct.
3 Q. As of that date, sir, did you
4 have any knowledge of the volume of documents
5 at the IQS offices?
6 A. Not specifically. I knew there
7 were going to be a lot of documents being
8 produced. It was all the advertiser files.
9 Q. A lot of documents can mean two
10 boxes or two million boxes. Did you have any
11 idea of the approximate number of documents?
12 MR. ANESH: Objection.
13 A. No, I do not.
14 Q. No, you do not or no, you did
15 not?
16 A. Both.
17 Q. My questions are not as of
18 today, but as of July 2003?
19 A. Okay.
20 Q. Had anyone on your behalf or
21 your law firm's behalf reviewed any of those
22 documents prior to July 23, 2003?
23 MR. ANESH: Objection, asked
24 and answered. You can answer.
25 A. The short answer is I'm not

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1 MILLER
2 sure if some sampling of those documents may
3 have been either produced in our earlier
4 document production or sent by Mike at some
5 point. I don't recall if that might have
6 happened, but certainly we did not review the
7 vast, vast majority of documents out there.
8 Q. Had anyone prepared a list of
9 the documents that existed that were to be
10 shown at the document production?
11 A. I do not recall that.
12 Q. I do not recall that means a
13 couple of different things so I have to ask
14 you about that. Do you remember whether a
15 list existed in July of 2003?
16 A. No.
17 Q. Do you know whether a list
18 existed in 2003?
19 A. All I could say is I don't
20 recall ever seeing one sitting here today.
21 Q. Did you ever discuss a list
22 that might have existed in 2003?
23 MR. ANESH: Note my objection.
24 A. I'm not sure how to answer
25 that. Discuss a list that might have

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1 MILLER
2 existed.
3 Q. Did Mike Meiresonne say I have
4 a list of the documents even though you have
5 not seen it?
6 MR. ANESH: Objection.
7 A. I don't recall that.
8 Q. I'm going to ask you not to use
9 the term I don't recall that and the reason
10 I'll ask you --
11 MR. ANESH: No, you're not
12 going to tell him how to answer.
13 MR. BLUESTONE: Don't interrupt
14 me again. You make an objection at
15 the end.
16 Q. The reason I'll ask you not to
17 use that term is because it's euivocal. It
18 can mean I don't know or I don't remember and
19 it can mean two different things at the same
20 time and it's not a helpful answer. It's your
21 choice what to answer and your counsel can
22 raise his hand to me in a gesture saying I
23 object and he may object very well, but the
24 truth is it doesn't help either of us to give
25 me an equivocal answer. I'm going to ask you

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1 MILLER
2 if you remember I would appreciate a yes or
3 no when it's possible.
4 A. I would like to consult my
5 counsel as to whether I should abide by your
6 request or not.
7 Q. Take as long as you wish.
8 MR. ANESH: Let's go outside.
9 This is why it's taking a year and a
10 day.
11 MR. BLUESTONE: No, it's not.
12 MR. ANESH: Yes, it is.
13 (Recess taken.)
14 MR. ANESH: Go ahead.
15 MR. BLUESTONE: X.
16 (Plaintiff's Exhibit X,
17 Document, marked for Identification.)
18 Q. Have you seen Exhibit X which
19 is now before you, sir, also marked Exhibit
20 39 on 3/1/11?
21 A. I believe I have.
22 Q. When was the first time that
23 you saw this, sir?
24 A. Either in the -- either at the
25 deposition, my last deposition session or

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1 MILLER
2 perhaps in reviewing with counsel prior to
3 deposition.
4 Q. You see the words just above
5 the word thanks, anything else you can think
6 of not --
7 MR. ANESH: It's not what it
8 says.
9 Q. Anything else you could think
10 of or not to include, do you see those words?
11 A. I see the words.
12 Q. Did you have any conversations
13 with Mike Meiresonne in and about July 27,
14 2003 about the contents of the documents or
15 the volume of the documents to be produced at
16 the IQS offices?
17 MR. ANESH: Note my objection.
18 (Record read.)
19 A. Given the time frame of your
20 question, I'm sure I would have somewhere in
21 that time frame had suggestions with Mike
22 about either or both of those subjects.
23 Q. Do you know whether you
24 actually did?
25 A. No.

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1 MILLER
2 Q. Do you have any notes about any
3 conversations on that topic?
4 A. No.
5 MR. BLUESTONE: Y.
6 (Plaintiff's Exhibit Y,
7 Document, marked for Identification.)
8 Q. It's Exhibit Y marked 43
9 previously. Have you seen that Exhibit
10 before?
11 MR. ANESH: It's Exhibit 43 on
12 3/1/11 and it's Exhibit Y on 3/7/11.
13 For the record we'll identify
14 a letter from Quick Search from Neil
15 Miller dated December 9, '03.
16 I want to identify it since I
17 don't have a copy.
18 MR. BLUESTONE: The exhibit tab
19 does a fine job of it.
20 A. Is there a pending question?
21 Q. Have you seen that before?
22 A. I don't recall it.
23 Q. Do you know the name Sarah
24 Broene?
25 A. I remember the name coming up

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1 MILLER
2 occasionally with Mike Meiresonne.
3 Q. Had you discussed Sarah Broene
4 with him at or about the time of December 9,
5 2003?
6 A. Somewhere along the line in
7 discussing with Mike the spoliation motion
8 which is this time frame I think her name
9 came up as to whether she might have some
10 relevant information. I don't recall the
11 specifics.
12 Q. Did you ever speak with her
13 concerning any facts of the case?
14 A. No, I don't believe I did.
15 Q. Was an Affidavit obtained from
16 her concerning any of the facts of the case?
17 A. I don't believe so.
18 Q. Was an attempt to obtain an
19 Affidavit made from her to get one from her
20 -- was an attempt made to get one from her?
21 A. I don't believe so.
22 Q. Did you have a discussion with
23 Mr. Meiresonne about whether or not to get an
24 Affidavit from Sarah Broene?
25 MR. ANESH: Objection.

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1 MILLER
2 A. I don't recall.
3 Q. Did you ever determine through
4 conversations with any person what
5 information Sarah Broene might have which was
6 relevant to the Thomas verses IQS case?
7 MR. ANESH: Objection.
8 A. I don't recall the specifics,
9 but I'm sure I did.
10 Q. Was Sarah Broene the editorial
11 manager of IQS?
12 A. I don't recall at this point.
13 Q. Did she have information
14 concerning whether or not websites or other
15 proprietary information was copied as a
16 matter of regular course at IQS?
17 A. Could you read that back.
18 (Record read.)
19 MR. ANESH: Objection. How
20 would he know what information she
21 possessed?
22 MR. BLUESTONE: That's one of
23 the facts of the case here.
24 MR. ANESH: How would he know
25 what information she possessed?

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1 MILLER
2 MR. BLUESTONE: By doing an
3 investigation and speaking with
4 people. Make your objection. Stop
5 cuing him how to answer.
6 MR. ANESH: I'm not cuing him
7 how to answer. You are asking him what
8 someone else knew.
9 MR. BLUESTONE: Fine, just make
10 your objection.
11 MR. ANESH: Objection.
12 A. It's hard to answer the
13 question as you posed it. My recollection of
14 Sarah Broene is that she was not involved in
15 the tossing of documents in 2001. She was
16 hired after that point and she was not
17 employed, at least I don't believe she was
18 employed, at the time of the document review
19 that occurred in 2003, the project where Mr.
20 Meiresonne discarded documents.
21 MR. BLUESTONE: Z.
22 (Plaintiff's Exhibit Z,
23 E-Mails, marked for Identification.)
24 Q. Sir, Exhibit Z is a three page
25 document that contains multiple e-mails. I'd

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1 MILLER
2 like you to look at the first one which is
3 dated July 27, 2003 at 13.46.11 hours. Have
4 you seen that first e-mail before?
5 A. Didn't you just show it to me?
6 Q. It's the same one, isn't it?
7 MR. ANESH: Yes.
8 Q. Looking at the next one on the
9 first page dated 11 February 2006, 18.57.29,
10 have you seen that one before?
11 A. I believe I have.
12 Q. That one contains a reprint of
13 an earlier e-mail dated August 3, 2003?
14 MR. ANESH: Note my objection.
15 Q. That appears on this printout
16 in bold. Have you seen that particular
17 e-mail which seems to be a reprint of an
18 August 3, 2003 e-mail?
19 A. Just from looking at it I think
20 it may be a fax, not an e-mail, although it's
21 hard to be sure, the August 3, 2003 I'm
22 talking about now.
23 Q. If it was a fax, have you seen
24 that?
25 A. I believe I have.

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1 MILLER
2 Q. Looking at the next e-mail
3 which is dated 11 February 2006 at 15.59.16,
4 did you write that e-mail?
5 A. I appear to have, yes.
6 Q. You see in the second paragraph
7 the words I don't see a response that I made
8 to your July 27, 2003 e-mail?
9 A. I see that.
10 Q. Does that indicate to you that
11 at that time back in February 2006 you did
12 some sort of a search for whether or not
13 there was a response to the e-mail?
14 A. For some kind of e-mail
15 response or a fax response, yes.
16 Q. Do you have any particular
17 recollection of writing this e-mail?
18 MR. ANESH: Which one?
19 Q. The 11 February 2006 e-mail?
20 A. In a general way yes because of
21 the storm situation.
22 Q. There was a large snowstorm or
23 something?
24 A. They were predicting one and
25 that's why I remember giving him my home

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1 MILLER
2 e-mail address and my home phone number
3 because I was going to work from home rather
4 than in the office.
5 Q. Back then you had the
6 opportunity and the ability to search for
7 e-mails and faxes that might have been
8 responsive to his July 27, 2003 e-mail?
9 MR. ANESH: Note my objection.
10 A. Yes.
11 Q. What would you have searched at
12 that time, sir?
13 A. I would have searched my
14 e-mails for that time period and I would have
15 looked at my written correspondence files.
16 Q. Was it your practice back in
17 July of 2003 to read an e-mail and then
18 delete it?
19 MR. ANESH: Note my objection.
20 A. In general?
21 Q. With regard to IQS?
22 A. No, that would not have been my
23 practice to delete it right away.
24 Q. What was your practice with
25 regard to e-mails at that time?

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1 MILLER
2 A. My practice is other than for
3 perhaps very short perfunctory e-mails about
4 some topics my general practice was to retain
5 e-mails until the conclusion of the case.
6 Q. How did you retain them; in
7 electronic form?
8 A. I would just leave them on my
9 in box and sent box.
10 Q. In electronic form?
11 A. Yes. I also reprinted most
12 e-mails going or coming and put them in the
13 file.
14 Q. In paper form?
15 A. Yes.
16 Q. Did you delete the e-mails from
17 the IQS case at some time?
18 A. At some point later on, yes.
19 Q. When, sir?
20 A. When the representation ended.
21 Took up a lot of space in my boxes.
22 Q. You did not archive them in any
23 fashion?
24 A. We printed. My practice is to
25 print out e-mails so they would have been in

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1 MILLER
2 my file.
3 Q. You did not archive them in
4 digital format?
5 A. No.
6 Q. What did you do with the paper
7 printed versions of those e-mails?
8 A. They should be in our
9 correspondence files which eventually later
10 on were turned over to Mr. Meiresonne.
11 Q. All of your correspondence
12 files?
13 A. I believe so, yes.
14 Q. You didn't maintain any copies
15 of the correspondence files?
16 A. Correct.
17 MR. BLUESTONE: AA.
18 (Plaintiff's Exhibit AA,
19 Document, marked for Identification.)
20 Q. This is a document that's Bates
21 marked Miller 03772. It's dated 8/15/05.
22 Did you author this?
23 A. I believe so.
24 Q. How do you know that you
25 authored it?

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1 MILLER
2 A. I see my name at the bottom and
3 I was certainly in charge of the litigation.
4 Q. Do you recognize the format of
5 the printout?
6 A. No.
7 Q. Was this an e-mail, a fax, a
8 letter or something else?
9 A. It's not a letter for sure.
10 Whether it's an e-mail or just a document I
11 created, you know, typed up on my Word
12 Perfect and gave it to Preeti.
13 Q. Who is Preeti?
14 A. She was an associate we had for
15 a few months.
16 Q. An attorney?
17 A. She came right out of law
18 school and she had not been admitted to the
19 bar.
20 Q. A law school graduate?
21 A. Correct.
22 Q. But not yet an attorney?
23 A. Correct.
24 Q. Solely because of bar
25 admission?

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1 MILLER
2 A. Correct.
3 MR. BLUESTONE: Off the record.
4 (Discussion off the record.)
5 Q. What was the purpose of this
6 letter, sir?
7 MR. ANESH: Note my objection
8 to the form. He didn't say it was a
9 letter.
10 Q. What's the purpose of this
11 communication or writing?
12 A. Thomas had started a second
13 action against IQS at some point in the
14 summer of '05. We had to answer it and I
15 asked her to do some research.
16 Q. I see that in the bottom
17 paragraph it says should you desire to use
18 Westlaw, do you see that?
19 A. Yes.
20 Q. Westlaw is computerized legal
21 research?
22 A. Yes.
23 Q. Did your office use Westlaw for
24 computerized legal research?
25 A. Yes.

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1 MILLER
2 Q. Did you maintain an account
3 which categorized which work was done for
4 which clients?
5 MR. ANESH: Note my objection
6 to the form of the question; work or
7 research?
8 MR. BLUESTONE: Research.
9 Q. Which computerized legal
10 research was performed for which particular
11 clients?
12 A. I know when I go on to Westlaw
13 though I can't be sure at that time if it was
14 the same that they ask you to put in a client
15 ID and my general practice was to put one in.
16 Q. Did you charge IQS for the
17 computerized legal research costs aside from
18 time, attorney time you needed to do the
19 research?
20 A. No.
21 Q. So there were no computerized
22 legal research charges to the client?
23 A. There shouldn't be for any
24 reason.
25 Q. At any time prior to August 1,

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1 MILLER
2 2003 did you send a letter to IQS that
3 advised them of any obligation to put a hold
4 on documents or to hold on to documents or to
5 put aside documents for discovery purposes?
6 MR. ANESH: Note my objection.
7 A. To the best of my recollection,
8 no.
9 Q. Did you make any effort to
10 identify persons who had created any
11 documents at IQS?
12 A. Who created document --
13 MR. ANESH: Note my objection.
14 A. I'm not sure I understand what
15 you mean by created documents.
16 Q. In the largest general sense,
17 any persons who were in existence who had
18 participated in the creation of documents,
19 making, writing, printing, creating?
20 A. On a more general level
21 certainly preparing the automatic disclosures
22 at the outset of the discovery process I went
23 over, reviewed with Mr. Meiresonne every
24 person who was involved in, I don't know if I
25 would say a Thomas relationship or the

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1 MILLER
2 creation of websites and things like that so
3 if that's what you mean by creating
4 documents, I'm not sure.
5 Q. Did you determine at any time
6 prior to August 1, 2003 the actual number of
7 documents which were in existence and which
8 were being presented to the Thomas plaintiffs
9 for their review at the document production
10 at IQS offices?
11 MR. ANESH: Can I have that
12 question read back.
13 (Record read.)
14 MR. ANESH: Note my objection
15 to the form of the question. In
16 existence when?
17 Q. Prior to August 1st?
18 MR. ANESH: Note my objection.
19 I don't understand. You can answer.
20 A. The actual number, no.
21 Q. Do you even know the number of
22 boxes of documents that were being presented
23 at the IQS document production?
24 MR. ANESH: Note my objection.
25 A. You say boxes. I don't believe

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1 MILLER
2 they were being produced in box form. There
3 were advertiser files that were being
4 produced. There were other records being
5 produced. I don't believe it was being
6 produced or I don't recall whether or not
7 they were being produced in box form.
8 Q. Did you discuss with anybody at
9 IQS the contents of the files, folders,
10 boxes, filing cabinet, drawers or other
11 receptacles for the documents that were being
12 produced at the document production?
13 MR. ANESH: Objection to form
14 and objection asked and answered.
15 A. I'm sure I did.
16 Q. Did you determine whether there
17 were any privileged documents therein?
18 A. I certainly discussed with Mike
19 on a general level what the contents would be
20 and there were as far as I knew advertiser
21 files would not contain any attorney/client
22 communications.
23 Q. Did you know whether or not
24 there were any privileged documents within
25 those files whether they should have been

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1 MILLER
2 there or they should not have been there?
3 MR. ANESH: Objection to form.
4 A. Since I did not personally
5 review the files, I cannot tell you if a
6 privileged document was in there.
7 Q. Did you issue any instructions
8 to IQS, Mike Meiresonne or to anyone else
9 concerning review of the documents before the
10 production?
11 A. I don't recall that.
12 Q. Is it that you don't recall it
13 because it didn't happen and you don't
14 remember it not happening or is it that you
15 don't remember whether you did it or not;
16 that's the problem I have with I don't recall
17 that?
18 MR. ANESH: Objection.
19 A. To the best of my recollection
20 I don't recall.
21 Q. Thank you. Do you know of any
22 documents at all in which you directed or
23 gave instructions to IQS on a review of the
24 documents before the production?
25 MR. ANESH: Note my objection

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1 MILLER
2 to the form.
3 A. Could you read it back to me.
4 (Record read.)
5 MR. ANESH: Objection.
6 A. If you are referring to the
7 production in August?
8 Q. That's the production I'm
9 referring to, yes.
10 A. Then the answer is no, I don't
11 recall any such thing.
12 Q. Do you know of any such
13 documents is what my question really is, not
14 whether you recall them or not?
15 A. I don't know of any such
16 documents.
17 Q. Do you know of any documents in
18 which IQS was giving guidelines on which
19 documents were to be produced in August?
20 MR. ANESH: Note my objection
21 to the form of the question.
22 A. Could you read it back, please.
23 (Record read.)
24 A. You showed me a couple of
25 e-mails, but I don't think those were

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1 MILLER
2 instructions.
3 Q. My question is do you know of
4 any --
5 A. I don't know of any, but I'm
6 trying to remember the documents you just
7 showed me there.
8 Q. Assuming -- we'll take your
9 answer as except for those documents which
10 might have been marked as exhibits already,
11 do you know of any other documents?
12 A. No.
13 Q. Did you have any phone
14 conversations during the month of July 2003
15 with Mike Meiresonne about which documents to
16 produce at the document production?
17 MR. ANESH: Note my objection
18 to the form of the question.
19 A. I'm sure I did.
20 Q. Do you have any notes
21 concerning those phone conversations?
22 A. No.
23 Q. Do you have any bills
24 concerning those phone conversations?
25 A. My time records might show if I

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1 MILLER
2 spoke with Mr. Meiresonne about document
3 production.
4 Q. Do you know?
5 A. I'd have to look at my time
6 records.
7 Q. I'm saying do you know as you
8 sit here today? Without looking at a
9 document to refresh your recollection do you
10 know of any?
11 MR. ANESH: Note my objection.
12 A. I assume because I know I had
13 conversations with him about document
14 production in the time frame I would assume
15 my time records would reflect that I did. Do
16 I know that they do, I would have to look at
17 them. I assume that that would be there.
18 Q. Did you discuss the issue of
19 privileged documents with Mike Meiresonne
20 prior to the August document production?
21 MR. ANESH: You keep asking
22 about privileged documents. There's no
23 allegation here that he --
24 MR. BLUESTONE: Don't clog my
25 record.

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1 MILLER
2 MR. ANESH: Clog your record.
3 You are taking too much time on
4 irrelevant matters.
5 MR. BLUESTONE: Mark.
6 MR. ANESH: Objection.
7 MR. BLUESTONE: Thank you.
8 A. I don't recall.
9 Q. Did you discuss the concept of
10 work product with him?
11 MR. ANESH: Same objection.
12 MR. BLUESTONE: Thank you.
13 A. At any time or in that time
14 period?
15 Q. Same time period?
16 A. I don't recall.
17 Q. Do you know as you sit here
18 today approximately how many documents were
19 produced at the production?
20 MR. ANESH: Asked and answered.
21 A. In terms of specific number,
22 no. I know there were a lot -- a large
23 volume of documents produced. I don't know
24 the number.
25 Q. Have you ever handled a case

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1 MILLER
2 with so many documents before that date?
3 MR. ANESH: Note my objection.
4 A. Since I don't know the number,
5 I can't put that in context.
6 Q. Was there a particular reason
7 why you did not review the documents?
8 MR. ANESH: Note my objection.
9 Asked and answered.
10 MR. BLUESTONE: Thank you.
11 A. It made no sense -- talking to
12 Mike, it made no sense for me to come out
13 there to look at them. The large part of the
14 production was the advertiser files. We had a
15 confidentiality stip in place which is what
16 we wanted to do before we produced documents
17 in Michigan and our thought was let them --
18 there will probably be a lot of stuff that
19 will be largely irrelevant, let them look at
20 whatever they want and the exact volume was
21 really not a large concern.
22 Q. In July of 2003 how many
23 attorneys were working in your office?
24 A. Three.
25 Q. The three partners?

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1 MILLER
2 A. Correct.
3 Q. Any paralegals with paralegal
4 credentials?
5 A. Not with paralegal credentials.
6 Q. Any legal assistants with any
7 kind of particular credentials?
8 A. I don't know what you mean by
9 particular credentials.
10 Q. I believe there's legal
11 assistant credentials in which you could get
12 a degree.
13 A. I don't believe there's anyone
14 who had formal training.
15 Q. Do you have any employees who
16 were serving in those capacities without
17 those particular credentials?
18 A. Yes.
19 Q. How many?
20 A. One.
21 Q. What was that person's name?
22 A. Bonnie Siegel.
23 Q. Ms. Siegel was working in July
24 of 2003?
25 A. I'm almost positive, yes.

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1 MILLER
2 Q. Does she work there today?
3 A. Yes.
4 Q. What kind of work was she doing
5 in 2003?
6 A. She does a lot of different
7 things. She will act as a secretary at
8 times. I know for transactions she will
9 often assist in putting the documentation
10 together for closings and the like and
11 contracts and the like.
12 Q. This was back in 2003?
13 A. Yes. She will provide any
14 assistance anyone requests on litigation
15 tracking down phone numbers, tracking down
16 documents. She will do those kinds of tasks,
17 not necessarily formal paralegal tasks.
18 Q. The reason why I ask about 2003
19 is you are using a present tense verb and we
20 are talking about 2003. You said she will,
21 do you mean she would then?
22 A. Same then as now.
23 MR. ANESH: What's the
24 relevancy if she didn't work on this
25 case?

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1 MILLER
2 MR. BLUESTONE: The relevancy
3 is why didn't she work on the case
4 obviously, Mr. Anesh.
5 MR. ANESH: What?
6 MR. BLUESTONE: Why didn't
7 anyone go there and do the job, that's
8 the relevancy.
9 MR. ANESH: Because he didn't
10 want to pay for it.
11 MR. BLUESTONE: If you say so.
12 Maybe your client didn't want to
13 bother doing it.
14 MR. ANESH: Really? Do you
15 know a lawyer that doesn't want to go
16 any place not to get paid?
17 MR. BLUESTONE: I do, yes.
18 MR. ANESH: You do?
19 MR. BLUESTONE: Yes, sir.
20 MR. ANESH: Even if he had gone
21 there, the documents were already --
22 MR. BLUESTONE: Is this going
23 on the record? Strike that from the
24 record and don't make me pay for your
25 musings.

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1 MILLER
2 Q. Eventually a spoliation motion
3 was made?
4 A. Yes.
5 Q. Give me your best understanding
6 today of what the nature of the spoliation
7 motion was when it was made?
8 A. The spoliation motion contended
9 that all sorts of documents had been
10 discarded in the run up to the August 2003
11 document production. There had been I'll say
12 a week long project and Lisa Dokter provided
13 an Affidavit to Thomas saying that all sorts
14 of documents had been discarded and had been
15 reviewed and discarded in the week prior to
16 the document production in August 2003.
17 MR. ANESH: You done?
18 THE WITNESS: Yeah.
19 MR. ANESH: Go ahead, I'm
20 sorry.
21 Q. The spoliation motion was made
22 on paper?
23 A. Yes.
24 Q. Was your receipt of the motion
25 itself your first understanding that there

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1 MILLER
2 was a spoliation motion to be made or did you
3 have any conversations with plaintiffs
4 counsel prior to their making a paper motion?
5 A. I don't recall any conversation
6 -- the answer is no, to the best of my
7 recollection there were no conversations with
8 plaintiff's counsel prior to when the
9 spoliation motion was made.
10 Q. So the spoliation motion came
11 into your office on paper or did it come in
12 through electronic filing?
13 A. This was not an electronically
14 filed case. What I don't recall is whether
15 there was a telephone call or telephone
16 message left by plaintiff's counsel about it.
17 I seem to recall even though I didn't get it
18 in time a message had been left about an
19 Order to Show Cause and whether I wanted to
20 appear or was going to appear on it the
21 following morning, but by the time I got it I
22 think the appearance had happened.
23 Q. Did you have a conversation
24 with your client about the motion when you
25 learned about it?

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1 MILLER
2 A. I'm sure I did.
3 Q. At that moment --
4 MR. ANESH: What moment;
5 conversation, receipt?
6 MR. BLUESTONE: Let me finish
7 the sentence, Mark, before you break
8 in. I was going to say at that moment
9 when you spoke to your client for the
10 first time about the motion.
11 MR. ANESH: Stand corrected.
12 Q. Did you have any discussion
13 about whether documents had been discarded?
14 A. I don't recall if it was in the
15 first conversation or the second, but some
16 time very soon thereafter, yes.
17 Q. Let's take the time period from
18 when you first learned about the motion to
19 when you put in whatever opposition papers
20 you eventually put in, this is the time
21 period we're talking about now, learning
22 about it to putting in your opposition
23 papers. Did you have conversations with your
24 client about the nature of the documents
25 which were presented to the Thomas

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1 MILLER
2 plaintiffs?
3 A. Yes.
4 Q. Was your client able to state
5 the numbers of documents that were presented
6 to the Thomas plaintiffs?
7 A. I believe he did.
8 Q. Did he have a list of the
9 documents which were presented to the Thomas
10 plaintiffs?
11 A. Not that I recall seeing.
12 Q. Have you ever seen a list of
13 the documents which were presented to the
14 Thomas plaintiffs?
15 MR. ANESH: Objection, asked
16 and answered.
17 A. Not that I recall seeing.
18 (Recess taken.)
19 Q. What relief did the spoliation
20 motion seek?
21 A. I think it certainly sought to
22 strike his pleadings. It may have also asked
23 for alternative leave if they did not get
24 that.
25 Q. When you say strike his

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1 MILLER
2 pleadings, could you be a little more
3 specific?
4 A. Striking the pleadings of
5 Industrial Quick Search, I think it's
6 Meiresonne & Associates and Mike Meiresonne.
7 Q. That would be both the Answer
8 and the Counterclaims?
9 A. And the Third Party Complaint,
10 yes.
11 Q. Tell me what effect striking
12 the answer of IQS, Meiresonne & Associates,
13 Michael Meiresonne and John Does 1 through 5
14 would have had at that time?
15 MR. ANESH: Note my objection,
16 calls for a legal conclusion. Over my
17 objection you can answer.
18 A. It means the Complaint at that
19 point would be unopposed and the plaintiff
20 could get damages on the causes of action in
21 the Complaint. It meant the counterclaims
22 would be stricken, there could be no recovery
23 on them and the third party -- the
24 affirmative claims in the Third Party
25 Complaints could no longer be pursued.

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1 MILLER
2 Q. Could the defendants litigate
3 over the amount of damages after the striking
4 of their Answer?
5 MR. ANESH: Same objection.
6 A. In my opinion, yes.
7 Q. Would it be fair to say that
8 the striking of an Answer in that situation
9 would have meant that they had to admit
10 liability, but could still argue over the
11 amount or existence of damages?
12 MR. ANESH: Same objection.
13 A. I would not say admit
14 liability, but they could not contest it.
15 Q. They could not contest
16 liability, but they could argue about the
17 existence or amount of damages?
18 A. Yes.
19 Q. Had you previous to the
20 spoliation motion being made performed any
21 legal research on the issues of copyright
22 infringement in this case?
23 MR. ANESH: Can I have the
24 question read back.
25 (Record read.)

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1 MILLER
2 A. Yes.
3 Q. Tell me what legal research you
4 yourself performed?
5 A. I personally performed?
6 Q. You yourself.
7 A. Early on in the representation,
8 I can't remember exactly how early, I had
9 gotten some case sites from a Michigan firm
10 that had done some research on Mike's behalf.
11 I remember reading those cases, doing
12 research, going past that research to look at
13 the law in copyright infringement and me
14 personally I remember hiring a Hofstra law
15 student to also do some research. Then I
16 looked at the cases he came up with and did a
17 little further research based on his
18 research.
19 Q. Was that Keith Shafer?
20 A. That's correct.
21 Q. You say you hired a Mr. Shafer
22 to do research. Is Exhibit H from your first
23 deposition some of the fruits of that
24 research?
25 MR. ANESH: Can you hold off a

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1 MILLER
2 second, please, so I can get my copy
3 of the exhibit. I want to read my
4 own. It's right here.
5 A. Yes.
6 Q. Okay, thank you. You said that
7 you spoke with a person from the Michigan law
8 firm?
9 A. There was a Michigan law firm
10 that had done some research for Mr.
11 Meiresonne.
12 Q. Is Exhibit I a response to that
13 request for information?
14 A. I'm trying to follow the e-mail
15 chain here. This doesn't look like at least
16 the first couple of pages are dated prior to
17 our representation. I'm looking later on in
18 Exhibit I specifically on the fourth page and
19 this seems to be the case I mentioned getting
20 some case citations, starting on the fourth
21 page appears to be an e-mail to me with those
22 case citations.
23 Q. Thank you. Is Exhibit J which
24 I'm showing you now further fruit of Mr.
25 Shafer's research?

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1 MILLER
2 MR. ANESH: Note my objection
3 to the form of the question. I don't
4 know what means further fruit.
5 MR. BLUESTONE: I refer you to
6 Wong Sung verses US, Mr. Anesh.
7 A. Yes.
8 MR. BLUESTONE: I highly
9 recommend you read the case for the
10 answer to your question.
11 A. The answer is yes.
12 Q. What were the copyright
13 infringement claims against IQS based on and
14 by that I mean what documents were said to
15 have been copied or used or infringed upon?
16 A. As I recall sitting here today
17 the works infringed upon were allegedly the
18 Thomas register itself and the descriptions
19 of companies contained in there, the
20 selection, coordination and arrangement were
21 alleged to have been copied and there was
22 this document written by a fellow named John
23 Gennero which was also the subject of a
24 copyright infringement claim.
25 Q. At any time during the time

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1 MILLER
2 period we're talking about, making the motion
3 to your opposition papers, did you discuss
4 potential damages with your client?
5 A. I don't recall.
6 Q. Did you have conversations with
7 your client at all during that time period?
8 MR. ANESH: Objection, asked
9 and answered.
10 A. Yes.
11 Q. Tell me what subjects you
12 remember, not subjects you assume, but what
13 subjects you remember being discussed with
14 him during that time period?
15 A. Our focus was as to what the
16 Lisa Dokter Affidavit or declaration was all
17 about and it quickly became apparent to us
18 that many of the documents that Lisa Dokter
19 said had been discarded in '03 in fact had
20 been discarded in '01 when they were
21 rewriting the websites and I think this came
22 up the last time I testified, but it was very
23 clear that in 2001 Mr. Meiresonne and his
24 staff when they were rewriting the company
25 descriptions on the websites threw out all

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1 MILLER
2 the printouts that they had had in their
3 files. They could not have been thrown out in
4 2003 if they were thrown out in 2001 so we
5 were certainly attacking that. We had a lot
6 of discussions on that subject. We had a lot
7 of discussions on that subject. We had a lot
8 of discussions as to exactly what kind of
9 discarding did take place in 2003 prior to
10 the August document production. Trying to
11 think of main topics. That was our main focus
12 by far were those two topics what got thrown
13 out in 2001 and I remember we discussed Jenny
14 Mortensen and we tracked her down at that
15 point an ex IQS employee or Mr. Meiresonne
16 tracked her down, someone tracked her down, I
17 spoke with her, I got a declaration from her
18 and we she confirmed that in 2001, maybe the
19 beginning of 2002 as they were rewriting
20 websites, documents concerning the website's
21 original content were discarded then, but it
22 was pre-litigation and Mr. Meiresonne and I
23 discussed at length that we were better off
24 putting the focus on the destruction in 2001
25 than in 2003 because it was prior to

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1 MILLER
2 litigation and I think Mr. Meiresonne even
3 said that the majority, I think we put in the
4 declaration what the percentage was, of
5 websites that were rewritten by the time they
6 got a cease and desist letter.
7 Q. Was it your position that there
8 was a legal difference between documents
9 which were destroyed in 2001 verses documents
10 which might have been destroyed during the
11 on-going litigation?
12 MR. ANESH: Objection to the
13 form of the question.
14 A. Short answer is to some degree.
15 It's never good to throw out documents at any
16 time. Certainly prior to the cease and
17 desist letter you are on stronger legal
18 ground than after a cease and desist letter,
19 but certainly there would be ramifications
20 for Mr. Meiresonne and IQS for destroying
21 documents even after the cease and desist
22 letter. We could not change that. It
23 happened, so be it, but it was still
24 pre-litigation. We thought the penalties
25 might be significantly less, but it doesn't

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1 MILLER
2 get around the fact that there were documents
3 also discarded in 2003.
4 Q. During that period of time
5 again did you discuss finding Ms. Broene with
6 Mr. Meiresonne?
7 A. I think I answered that
8 previously. I know we discussed Mr. Broene.
9 Q. I'm talking about a discreet
10 period of time now, not in general ever?
11 A. We discussed Ms. Broene.
12 Whether we discussed tracking her down or
13 what the substance of what she might have to
14 offer, I don't recall which of those.
15 Q. Do you have any notes at all
16 about any of the conversations, discussions,
17 analyses that took place during this time
18 period from the filing of the motion to your
19 opposition papers?
20 A. I don't have any such files.
21 MR. BLUESTONE: BB.
22 (Plaintiff's Exhibit BB,
23 Document, marked for Identification.)
24 Q. Sir, you are looking through
25 BB. Have you seen this previously?

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1 MILLER
2 A. Not in this format. I have
3 seen the document, but not in this format.
4 Q. I will represent to you that, I
5 should not represent, but I believe that this
6 format occurred when it was changed from Word
7 to PDF and I believe that you have equal
8 signs instead of apostrophes as a result.
9 A. That was one of the clues that
10 I had not seen it in this format.
11 Q. This is the format that I have
12 it in and this is the format that was
13 produced by your attorney at 01023 through
14 01042. Have you seen this before in probably
15 the more correct format?
16 A. Yes.
17 Q. Was this authored by your law
18 firm?
19 A. Yes.
20 Q. Turning to page 2 it says at
21 the beginning of the page the accompanying
22 declarations of defendants Michael
23 Meiresonne, Lindsey Babcock, Nicole Parker
24 and Jenny Mortensen not only contradict Ms.
25 Dokter's and then it goes on. Were those all

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1 MILLER
2 included?
3 MR. ANESH: Were they what?
4 MR. BLUESTONE: All included.
5 MR. ANESH: In what?
6 MR. BLUESTONE: With the memo
7 that went to the court.
8 MR. ANESH: When you say all
9 included, with the motion?
10 Q. Were they exhibits to your
11 opposition papers to the motions?
12 A. I don't know if I would call
13 them exhibits. We certainly submitted the
14 declarations to the court in our opposition
15 to the motion.
16 Q. They were included with your
17 motion practice?
18 MR. ANESH: I thought they were
19 included in the memo.
20 A. I don't know if they were
21 physically attached to the Memorandum of Law.
22 Q. Who was it that interviewed the
23 persons for whom a declaration was prepared?
24 MR. ANESH: Note my objection
25 to the form of the question.

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1 MILLER
2 A. I certainly personally spoke
3 with each of these people listed on page 2.
4 They also may have had conversations among
5 themselves, but I spoke to each of these
6 people.
7 Q. Who authored their
8 declarations?
9 A. I did.
10 Q. Personally or through somebody
11 in your firm?
12 A. Personally.
13 Q. Did you personally gather the
14 information necessary to author the
15 declarations?
16 MR. ANESH: Note my objection
17 to the form of the question.
18 A. For the most part, yes. There
19 may have been conversations among themselves
20 that either Mr. Meiresonne or Ms. Parker
21 relayed to me.
22 Q. You gathered the information
23 either directly from the people or from other
24 sources, but you personally gathered it all?
25 A. Yes.

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1 MILLER
2 Q. So anything that you authored
3 you based upon information that you gathered?
4 A. You keep saying I gathered. I
5 may have gathered it from Mr. Meiresonne who
6 gathered it from Lindsey Babcock or Jenny
7 Mortensen, but from that sense yes.
8 Q. Were you joined in the
9 authorship of the declarations by anyone in
10 the firm?
11 A. No.
12 Q. Did you work solely on this
13 stuff?
14 MR. ANESH: Note my objection
15 to the form.
16 Q. The reason I ask that is
17 because I see that Mr. Rosado has some time
18 records and I'm trying to determine if he
19 participated here?
20 A. His participation was that
21 after I drafted all the papers he reviewed
22 them, made whatever suggestions he made. I
23 don't recall what they were at this point and
24 then I either adopted his suggestions or
25 rejected them as we saw fit and then it went

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1 MILLER
2 out to the court.
3 Q. Would it be fair to say that he
4 worked mostly as an editor of the papers?
5 MR. ANESH: Note my objection.
6 Q. And you worked as an author of
7 the papers?
8 MR. ANESH: Note my objection
9 to the form of the question. He
10 didn't say he worked as an editor.
11 A. I certainly did all the
12 drafting. Did he edit, he reviewed them. I
13 can't be sure if he made one change to it.
14 He may have, but I just don't recall at this
15 point.
16 Q. Did Lindsey Babcock give you
17 any information about what documents were at
18 the IQS offices at the beginning of June 2003
19 and which documents remained still in
20 existence at the IQS offices as of July 29,
21 2003?
22 MR. ANESH: Can I have that
23 read back before you answer, please.
24 (Record read.)
25 A. I don't recall using those

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1 MILLER
2 particular -- that particular time frame June
3 2003 and July 29.
4 Q. Are you familiar with what's
5 come to be called Project Ajax?
6 A. I remember being educated about
7 it at the time, but I'm not sure if I was
8 educated about it in the time frame of the
9 spoliation motion or I think it came up
10 before then, but it may have also come up at
11 spoliation, I'm not sure.
12 Q. Was work performed on the IQS
13 documents in the month prior to the document
14 production?
15 MR. ANESH: Note my objection,
16 work performed?
17 MR. BLUESTONE: I'm trying to
18 go from the general to the specific.
19 MR. ANESH: I don't know what
20 you mean by work performed or by who
21 so I have to object.
22 Q. Was it alleged that documents
23 were discarded during the month prior to the
24 document production at the IQS offices?
25 A. Yes.

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1 MILLER
2 Q. I'll call the activity of
3 organizing, putting into shape or otherwise
4 working on the files as working on the files,
5 that's what I'm going to call it for the
6 purposes of this deposition.
7 MR. ANESH: I don't understand
8 it. You just asked if there were any
9 allegations that --
10 MR. BLUESTONE: This doesn't
11 refer to the prior question.
12 MR. ANESH: It's very difficult
13 to separate what you're talking about,
14 I'm sorry.
15 MR. BLUESTONE: You have to
16 listen more carefully.
17 MR. ANESH: I'm listening as
18 carefully as I can.
19 MR. BLUESTONE: Don't encumber
20 my record anymore, please.
21 MR. ANESH: What are you
22 referring to?
23 Q. Was Project Ajax another name
24 for the work that was being performed on the
25 files in the month prior to the document

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1 MILLER
2 production?
3 MR. ANESH: Note my objection.
4 A. Not as you -- from what I was
5 told by Mr. Meiresonne and others not as you
6 defined working on the files.
7 Q. What was Mr. Meiresonne's
8 position as to what went on with the files in
9 the month prior to the document production?
10 A. You keep using that time frame
11 the month prior. The discarding of documents
12 was basically done the week prior to the
13 production of documents in August 2003 that
14 was the basis for the motion. I can only
15 tell you what was set forth in the
16 declaration was my understanding of what had
17 happened.
18 Q. What was Mr. Meiresonne's
19 position as to what happened?
20 A. As I recall you could look at
21 his declaration. Sitting here today as I
22 recall it is he had seen that the reverse
23 side of some paper had been used by his staff
24 to print documents out on so in other words
25 if his staff was going to print something off

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1 MILLER
2 the computer, they took eight-and-a-half by
3 11 paper that was in the recycle bin that had
4 something on one side and used the other side
5 of the paper to print it. His position was
6 that he took a look at the files somewhere
7 around a week prior to the production, saw
8 that he had a lot of personal information
9 that was on the other side of a paper in the
10 files so initially it started out, this was
11 according to him, he wanted to start out by
12 in effect producing only the relevant side
13 and not his personal information that was on
14 the other side.
15 According to Mr. Meiresonne and
16 I believe Ms. Parker, Ms. Parker said gee, as
17 long as we are going through the files, let's
18 clean out a lot of other stuff that's in the
19 files that's completely irrelevant and just
20 takes up a lot of space. Mr. Meiresonne's
21 position, but it was not believed by the
22 court, was that the review process that took
23 place was effectively to not produce the side
24 that had the personal information, but the
25 copy of the side that did and to clean out

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1 MILLER
2 those files the way Ms. Parker had suggested
3 doing with a lot of ranking reports and other
4 kinds of documents that to Mr. Meiresonne had
5 no bearing on the lawsuit, but I didn't know
6 this at the time it happened.
7 Q. What was it that you didn't
8 know at the time it happened?
9 A. That this review process had
10 even taken place. I did not know at the time
11 until the spoliation motion came in that
12 there was personal information on one side
13 and other information relevant to the
14 advertiser file on the other side. I did not
15 know that they were discarding any kind of
16 documents whatsoever.
17 Q. During the week prior to the
18 document production, did you have any
19 conversations with Mr. Meiresonne about
20 getting ready for the document production?
21 MR. ANESH: Objection, asked
22 and answered.
23 A. I believe I did.
24 Q. Do you remember the sum and
25 substance of those particular conversations?

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1 MILLER
2 A. No.
3 Q. Do you have any notes about
4 those particular conversations?
5 A. No.
6 Q. Did the subject of those
7 conversations ever become written about in
8 e-mails between you and Mr. Meiresonne
9 thereafter?
10 A. Thereafter, I don't know what
11 you mean by thereafter.
12 Q. Did later e-mails between you
13 and Mr. Meiresonne contain references to any
14 conversations which took place during that
15 week's time?
16 MR. ANESH: Note my objection.
17 A. I don't recall whether any ones
18 you showed me today refer to conversations.
19 Q. Do you remember any that
20 specifically do?
21 A. Sitting here today I don't
22 recall.
23 Q. Do you remember any letters
24 that refer to those conversations?
25 A. I don't recall.

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1 MILLER
2 Q. Did you set forth the position
3 in this Memorandum of Law as to the validity
4 of Thomas' claims for violation of copyright?
5 MR. ANESH: Note my objection.
6 A. Can I review it?
7 Q. Please do.
8 A. I see reference to the
9 copyright issues on the bottom of page 18 and
10 top of page 19 of Exhibit BB.
11 Q. As of the date of this
12 memorandum, we'll call it the date you filed
13 it, did you have an opinion as to the value
14 of the Thomas claims?
15 MR. ANESH: Note my objection.
16 You can answer.
17 A. I don't believe I formed any
18 opinion as to the value of Thomas' copyright
19 claims at that point.
20 Q. Did you thereafter perform
21 legal research for use in formulating an
22 opinion on the value of the Thomas claims?
23 MR. ANESH: At any time?
24 MR. BLUESTONE: At any time.
25 A. Yes.

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1 MILLER
2 Q. We'll limit it for the moment
3 up until the date of the settlement between
4 IQS and Thomas. Tell me what legal research
5 you performed between the date of the
6 memorandum and the date of the settlement
7 which was relative to determining the value
8 of the Thomas claims?
9 MR. ANESH: Note my objection
10 to the form.
11 A. I can't tell you when I first
12 researched those questions, but certainly
13 before the settlement when we were
14 negotiating with Thomas as about to be paid
15 on the settlement, I formed an opinion on
16 that issue.
17 Q. What legal research did you
18 perform to help you form that opinion is my
19 question?
20 MR. ANESH: What legal
21 research?
22 MR. BLUESTONE: I asked if he
23 did any legal research.
24 MR. ANESH: Note my objection.
25 A. I can't put the time frame on

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1 MILLER
2 it. I certainly looked at the statute and
3 willful infringement. I know I had to
4 research how many infringements occurred and
5 that would go towards forming my opinion as
6 to what the exposure was for damages.
7 Certainly the right to attorney's fees was --
8 again from the face of the statute the right
9 to attorney's fees would be there. I think
10 that covers your question.
11 Q. Do you have any way of knowing
12 whether this was the final memo which was
13 submitted to the court notwithstanding the
14 formatting errors in this particular version?
15 A. I don't recall sitting here now
16 what was submitted immediately prior to the
17 spoliation hearing. There probably -- my
18 memory is that there were findings of fact,
19 proposed findings of facts and conclusions of
20 law that were submitted at that time.
21 Q. Prior to testimony?
22 A. I believe so, but that's on
23 memory.
24 Q. Do you know if this Memorandum
25 of Law was submitted prior to testimony or

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1 MILLER
2 post testimony?
3 A. Referring to Exhibit BB?
4 Q. BB?
5 A. Well long before testimony.
6 Q. This is prior to the hearing?
7 A. This is long prior to the
8 actual testimony.
9 THE WITNESS: Off the record.
10 (Discussion off the record.)
11 MR. BLUESTONE: CC.
12 (Plaintiff's Exhibit CC,
13 Document, marked for Identification.)
14 Q. Exhibit CC is a document that
15 is Bates marked Miller 01120 through Miller
16 1134. Have you seen this before, sir?
17 A. As with the last document the
18 format doesn't look the same, but I prepared
19 defendant's proposed findings of facts and
20 conclusions of law and this appears to be
21 them even though it's printed out in a
22 different format.
23 Q. This was prepared before any
24 testimony was taken?
25 A. Yes.

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1 MILLER
2 Q. Did you prepare this document,
3 sir?
4 A. Yes.
5 Q. Personally?
6 A. Yes.
7 Q. Did Mr. Rosado also look at it
8 for comments?
9 A. I don't recall.
10 MR. BLUESTONE: DD.
11 (Plaintiff's Exhibit DD,
12 Document, marked for Identification.)
13 Q. Sir, I'm showing you a six page
14 document?
15 A. Mine is five.
16 MR. ANESH: Mine is five.
17 Q. I stand corrected, a five page
18 document marked DD with the word closing at
19 the top. Have you seen this document before,
20 sir?
21 A. Yes.
22 Q. Is this a draft proposed
23 closing that you were to make at the hearing?
24 A. Yes.
25 Q. Did you send this to the client

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1 MILLER
2 for comments?
3 A. I don't recall.
4 Q. Do you recognize the
5 handwriting on the document?
6 A. Yes.
7 Q. Whose handwriting is that?
8 A. Mine. First page, third page
9 is mine, fourth page is mine.
10 Q. Was there any issue of the
11 validity of the copyright claims taken up at
12 the hearing?
13 A. I'm not sure what you mean by
14 taken up at the hearing.
15 Q. Let me rephrase it. Was it the
16 subject of any testimony?
17 A. It came up in argument between
18 the attorneys as I recall or colloquy and I
19 do recall that when Mr. Meiresonne was
20 examined by Mr. Rittinger he was questioned I
21 think over my objection as to the underlying
22 matters and the fact and the copying that
23 took place in 2001.
24 Q. As distinguished from what
25 particular acts were undertaken by an

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1 MILLER
2 individual, was there any issue as to the
3 validity of the copyright infringement claims
4 themselves that was subject to the testimony
5 at the hearing?
6 MR. ANESH: Objection to the
7 form of the question.
8 A. I'm not sure how you separate
9 out the validity of the claims themselves
10 verses testimony about them. I recall -- I
11 guess the transcript would bear me out one
12 way or the other that I did argue in effect
13 even as one possible sanction if the court
14 wanted to find that the copying took place
15 and leave us to our legal arguments as to
16 whether or not that was infringement, without
17 having read the transcript at all, lately
18 anyway, I think that did come up.
19 MR. BLUESTONE: EE.
20 (Plaintiff's Exhibit EE,
21 Letter, marked for Identification.)
22 Q. EE is a five page letter
23 bearing Bates mark Miller 00896 through
24 00900. Is this a letter that you authored,
25 sir?

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1 MILLER
2 A. Appears to be a copy. Again,
3 I'm not sure I saw it quite in this format
4 printing, but otherwise it appears to be a
5 letter I did write to the court.
6 Q. This would have been a letter
7 that when sent out would have had a law firm
8 letterhead on it?
9 A. Yes.
10 Q. Did the judge ever take action
11 with regard to your letter and the January
12 27, 2004 letter from plaintiff's attorneys?
13 MR. ANESH: Note my objection
14 to the form of the question. How
15 would he know what the judge did in
16 response to this?
17 Q. Wrote a note, wrote a docket
18 entry, wrote a letter saying I'm going to
19 look at them, I'm not going to look at them
20 or something else?
21 MR. ANESH: Note my objection.
22 You can answer.
23 A. I don't recall any response.
24 Q. When you authored this, did you
25 deliver it by overnight mail to the court and

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1 MILLER
2 send it to plaintiff's attorneys?
3 A. As it says by overnight mail I
4 assume it was delivered that way.
5 Q. Do you have any particular
6 memory?
7 A. No.
8 MR. BLUESTONE: FF.
9 (Plaintiff's Exhibit FF,
10 Document, marked for Identification.)
11 Q. FF is a document that bears
12 Bates mark 1209 through 1220. It also seems
13 to have a fax line or several fax lines at
14 the top. Do you recognize this document?
15 A. Yes.
16 Q. What do you recognize it to be,
17 sir?
18 A. Judge Owens' findings of fact
19 and conclusions of law.
20 Q. Did you receive this from
21 Satterlee Stephens?
22 A. I believe so. I think I got it
23 from them before we got the court's -- got it
24 from the court.
25 Q. What action if any did you take

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1 MILLER
2 with regard to the receipt of these findings
3 of facts and conclusions of law vis-a-vis
4 discussions with your client?
5 A. I'm sure I would have forwarded
6 it to my client and discussed it with him.
7 Q. Do you remember?
8 A. I definitely recall discussing
9 this document with Mr. Meiresonne.
10 Q. Do you recall the specific
11 first conversation?
12 A. No.
13 Q. Do you recall the number of
14 specific conversations you had with him?
15 A. No.
16 Q. You remember having
17 conversations with him concerning it, yes?
18 A. Yes.
19 Q. More than one?
20 A. Yes.
21 Q. Number of conversations?
22 A. Quite a number.
23 MR. BLUESTONE: GG.
24 (Plaintiff's Exhibit GG,
25 Letter, marked for Identification.)

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1 MILLER
2 Q. GG is a letter dated August 3,
3 2006 on your letterhead. It doesn't have a
4 signature on it. Do you remember preparing
5 this letter, sir?
6 A. I don't recall preparing it.
7 Q. Any reason to believe that you
8 did not send this off to the client with a
9 copy of the findings of fact?
10 A. No.
11 Q. By Judge Owens' decision which
12 is the term you use here, you are referring
13 to the findings of fact and conclusions of
14 law?
15 A. Yes.
16 Q. Had you formulated any opinions
17 as of that date as to the values of claims
18 made in the case?
19 A. I'm not certain. I seem to
20 recall that at some prior point and I don't
21 recall exactly when we discussed making a
22 settlement offer to Thomas and assuming that
23 that happened I would have at least done
24 something to form an opinion as to the value
25 of the claims.

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1 MILLER
2 Q. Judge Owens directed that a
3 hearing be held on damages in his findings of
4 fact and conclusions of law?
5 MR. ANESH: Objection to the
6 form of the question. I think it's
7 damages and monetary sanctions so I'm
8 objecting to the form of the question.
9 MR. BLUESTONE: You really
10 don't need to cue the witness as to
11 what to say.
12 MR. ANESH: I'm not cuing him.
13 MR. BLUESTONE: You are. Make
14 your objection.
15 MR. ANESH: Objection.
16 MR. BLUESTONE: Thank you.
17 Q. Did he call for a damages
18 hearing, sir?
19 A. Yes.
20 Q. Do you remember what date of
21 the damages hearing was to be?
22 A. Yes, because it was September
23 11th and it was the fifth year anniversary
24 unfortunately of those tragic events.
25 Q. As a result did you write a

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1 MILLER
2 memo to your client discussing potential
3 damages?
4 A. Yes.
5 MR. BLUESTONE: HH.
6 (Plaintiff's Exhibit HH,
7 Document, marked for Identification.)
8 Q. Is this a document that you
9 prepared, sir?
10 A. It appears to be, yes.
11 Q. It says from Neil Miller?
12 A. Yes, I remember preparing the
13 document.
14 Q. It's Bates marked Miller 764
15 through 769; is that correct, sir?
16 A. Yes.
17 Q. What is your understanding of
18 the statutory damages for copyright
19 infringement back in 2006?
20 A. My understanding is set forth
21 here in light of Justice Owens' decision
22 there was going to be a willful infringement
23 and it could be up to \$150,000 for willful
24 infringement.
25 Q. That was a single element of

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1 MILLER
2 \$150,000 or was it \$150,000 for each of
3 multiple infringements?
4 A. For each work that is
5 infringed. I believe it was my -- I'm not
6 sure if it was here, I said the court should
7 find there was only one work that was
8 infringed.
9 Q. Does this memo correctly set
10 forth your understanding of potential damages
11 facing IQS back on August 11, 2006?
12 A. I would have to read the whole
13 thing to be certain of that, but it should
14 summarize certainly most of my opinions as to
15 what the damages would be, but there were
16 wild card elements. The biggest wild card was
17 what punitive damages might get imposed.
18 Q. Did you discuss punitive
19 damages?
20 A. I would have to read it
21 through.
22 Q. Please take the chance to look
23 at it.
24 MR. ANESH: Can I point it out
25 to move it along?

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1 MILLER
2 MR. BLUESTONE: Sure.
3 MR. ANESH: Go to the last
4 page.
5 A. I see the reference on the last
6 page. I see two places on the last page.
7 Q. Okay. Did you calculate that
8 the potential damages could yield a total of
9 with \$1,420,000 in your last paragraph?
10 MR. ANESH: Note my objection
11 to the form of the question.
12 A. I don't think that's a fair way
13 to characterize what I wrote here.
14 Q. Did you write the words putting
15 aside the discount for present value, this
16 would yield a total package of \$1,420,000?
17 MR. ANESH: Where are you
18 reading from?
19 MR. BLUESTONE: The third line
20 from the bottom on page 6, did I read
21 it correctly?
22 MR. ANESH: Yeah. I just
23 didn't know where you were reading
24 from.
25 A. I would have to refamiliarize

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1 MILLER
2 myself with what comes right before that as
3 to whether I was saying that was total -- I
4 see.
5 Q. I'm not asking you for your --
6 MR. ANESH: Let him finish.
7 A. You asked a specific question
8 about whether I thought the damages were a
9 certain thing.
10 MR. ANESH: Please let him
11 finish.
12 MR. BLUESTONE: He's ruminating
13 about a question that was not asked.
14 MR. ANESH: I know about
15 ruminating, but let him finish his
16 answer.
17 MR. BLUESTONE: He was not
18 answering anything. He was simply
19 ruminating.
20 THE WITNESS: Let's hear the
21 question back.
22 (Record read.)
23 MR. ANESH: I made an objection
24 saying the document speaks for itself.
25 MR. BLUESTONE: Good and the

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1 MILLER
2 answer is yes or no.
3 A. Those words do appear there and
4 I wrote them.
5 Q. Did you make any revisions to
6 this particular memorandum after August 11,
7 2006?
8 MR. ANESH: Note my objection.
9 A. I don't recall doing a specific
10 amendment to this memorandum.
11 Q. Did you change your opinion
12 about the types of damages or the statutory
13 bases for damages after August 11, 2006?
14 MR. ANESH: Same objection.
15 A. Change my opinion.
16 Q. If you don't mind, don't speak
17 out loud, just think to yourself.
18 A. Could you break the question
19 up, there were two different parts to it?
20 MR. BLUESTONE: Ask the
21 question again.
22 (Record read.)
23 MR. ANESH: Same objection.
24 A. I believe the answer is no.
25 MR. BLUESTONE: II.

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1 MILLER
2 (Plaintiff's Exhibit II,
3 Letter, marked for Identification.)
4 Q. Looking at Exhibit II which is
5 970 through 972, this is a letter that you
6 authored, sir?
7 A. Yes.
8 Q. Can you tell me where --
9 A. Let me backtrack a second. I
10 authored this letter. There may have been
11 portions of this either authored or at least
12 pursuant to suggestions of an attorney in
13 Michigan Mike had brought in at that point.
14 Q. Did you use his words or did
15 you use his concepts?
16 A. That's what I don't recall.
17 Q. Understood. Do you believe
18 that the date of August 15, 2006 is correct?
19 A. I have no reason to disbelieve
20 it.
21 Q. Did this letter constitute a
22 settlement offer?
23 A. Yes.
24 Q. Did defendants respond to this
25 letter?

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1 MILLER
2 A. Yes.
3 Q. How did they respond, sir?
4 A. I don't recall if it was verbal
5 or in writing.
6 Q. What was the sum and substance
7 of their response?
8 A. I don't know if it was in
9 response to this particular letter, but
10 eventually they responded with a number that
11 was much, much, much, much higher.
12 MR. BLUESTONE: JJ.
13 (Plaintiff's Exhibit JJ,
14 Settlement Agreement, marked for
15 Identification.)
16 Q. JJ is a document which is
17 entitled settlement agreement and is 3984
18 through 3993. Have you seen this before,
19 sir?
20 A. Yes.
21 Q. Is this the final signed
22 version of the settlement agreement between
23 Thomas and IQS?
24 A. It appears to be.
25 Q. Was this negotiated by you on

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1 MILLER
2 behalf of IQS?
3 A. For the most part yes. The
4 attorney in Michigan I think his name was AJ
5 Birkbeck, he was in on my conversations with
6 Mr. Rittinger so I'm not sure how I could
7 break down whether I did the sole
8 negotiations or not.
9 Q. What did you understand the
10 subject matter of the arbitration set forth
11 in point 2 was to be?
12 A. Whether the final damages would
13 be \$2.5 million or \$3 million or 3 million
14 20,000.
15 Q. What did you understand the
16 basis for a decision between the two was to
17 depend on?
18 MR. ANESH: Note my objection.
19 MR. BLUESTONE: Withdrawn.
20 Q. How was the arbitrator to use a
21 particular standard to decide whether to
22 award the \$520,000 or not, what did it depend
23 on?
24 MR. ANESH: Note my objection
25 to the form of the question.

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1 MILLER
2 A. Evidence was to be put before
3 the arbitrator as to what the total damages
4 were and the arbitrator was to choose one of
5 two numbers 3 million or 2,500,000, what
6 would be the better representation of
7 damages.
8 Q. Of damages that were due to
9 Thomas based on the total amount of statutory
10 damages or attorney's fees or some other --
11 A. Everything.
12 Q. -- basis?
13 A. Everything. Statutory claims,
14 common law claims, punitive damages,
15 attorney's fees, everything.
16 Q. Did you participate in the
17 arbitration?
18 A. Yes.
19 Q. Was the participation in the
20 arbitration the last acts that you undertook
21 for the client?
22 A. I believe so. I think after
23 the decision came in on the arbitration
24 that's when our representation ended.
25 MR. BLUESTONE: I'm going to

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1 MILLER
2 take five minutes.
3 (Recess taken.)
4 MR. BLUESTONE: KK.
5 (Plaintiff's Exhibit KK,
6 Document, marked for Identification.)
7 Q. Take a look at KK, please. Can
8 you explain the format of your billings to
9 me; typically is a cover sheet sent to the
10 client along with specific time records or is
11 it just a cover sheet sent or something else?
12 A. This was prepared by Mr.
13 Rosado. This is his typical form where he
14 would send -- he would enclose the time
15 sheets behind it and then do a summary on a
16 page. I have seen his bills.
17 Q. Did Mr. Rosado send all the
18 bills in the IQS case?
19 A. I'm pretty sure, yes.
20 Q. Do you remember sending any
21 bills yourself?
22 A. No.
23 Q. Looking at KK, this is a letter
24 that's dated April 2, 2004, Miller 000001
25 through 36.

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1 MILLER
2 MR. ANESH: Four zeros.
3 Q. Have you seen this document
4 before?
5 A. I'm not certain I have.
6 Q. N-A-M stands for you?
7 A. Yes.
8 Q. If you look at page one of the
9 time sheets that's page 2 Bates marked, tell
10 me as an example when you say review Mike's
11 fax T/C Mike re fax letter to Fowler, what
12 does review Mike's fax mean when you write it
13 in a billing entry like this; does it mean
14 you read it, does it mean you copied it and
15 gave it to an associate or whatever?
16 A. I didn't give it to an
17 associate. I certainly read it.
18 Q. Would you normally take notes
19 about a fax? Would you make notes on the
20 fax, would you do something else?
21 MR. ANESH: Note my objection.
22 What does that have to do with billing
23 records?
24 MR. BLUESTONE: I'm trying to
25 understand how to read what the

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1 MILLER
2 billing records mean. That's why I'm
3 asking for a few basic definitions.
4 A. I would never put in my billing
5 records made notes on a fax if that's what
6 your question is.
7 Q. Would that be part of your time
8 in doing that?
9 A. If I did put notes on a fax,
10 yes, it would be.
11 Q. If you put notes on a fax and
12 you billed the client for the time, would you
13 make a notation about that?
14 A. I'm sorry?
15 MR. ANESH: Objection, asked
16 and answered. He said no.
17 A. I don't quite understand that.
18 Q. For example, you billed one
19 hour of time for the events of reviewing a
20 fax, making a telephone call concerning the
21 fax and writing a letter to someone, correct?
22 A. Correct.
23 Q. If part of that work had been
24 making notes on the fax, would you have noted
25 that if it was part of the one hour's time?

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1 MILLER
2 MR. ANESH: Objection.
3 A. I would not have noted it in my
4 billing records.
5 Q. This Exhibit KK starts with
6 times from August 4, 2003 and goes through
7 times on March 31, 2004. Would it have been
8 your firm's practice for this to be inclusive
9 of all the time that you spent on this case
10 between those two dates?
11 A. Yes, with the exception that
12 sometimes when at least for me personally
13 sometimes when I have a quick conversation
14 about something or some short amount of time
15 I may not always put it down.
16 Q. Some things you don't bill for?
17 A. I may neglect to put it down,
18 yes.
19 Q. Was there a schedule upon which
20 you billed this particular client?
21 MR. ANESH: Note my objection.
22 A. I don't know.
23 MR. ANESH: He didn't bill the
24 client.
25 Q. Did you see the bills before

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1 MILLER
2 they went out?
3 A. No.
4 Q. Did you check the bills for
5 accuracy with regard to your own billing
6 times?
7 A. I believe the answer is no if I
8 understand you correctly.
9 Q. Tell me how a billing entry was
10 made in your office at that time?
11 A. I can only speak for me.
12 Q. That's what I'm saying.
13 A. You said in my office. For me
14 I would generally at the time I performed
15 services I would go into Amicus Attorney,
16 click on the matter, the files, hit new for
17 new entry if it was a new day's billing, I
18 would put N-A-M in and I would describe the
19 services. If I went back later the same day,
20 instead of hitting new, I would edit the
21 entry to go back in later the same if I went
22 back in.
23 Q. So you attempted to develop one
24 entry for every day that you made an entry?
25 You didn't want multiple entries for one day?

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1 MILLER
2 MR. ANESH: Note my objection.
3 A. On the whole, that's correct.
4 Q. Did you in any way check for
5 the accuracy of your entries whether they
6 were printed on a piece of paper and sent to
7 a client?
8 MR. ANESH: Objection, asked
9 and answered.
10 A. No, not for Chris. If I did
11 the billing on one of my clients, then I
12 would print it out and I would probably take
13 a look at it.
14 Q. So now if you would turn to
15 page 00003 and look at the September 17,
16 2003 entry, can you tell me what the sum and
17 substance of your conversation with Mike re
18 strategy on depositions was?
19 A. Just viewing this record I
20 don't recall.
21 Q. Is there any document within
22 your files that would help you remember what
23 you talked about that day?
24 A. If there was something in our
25 files by that day where we determined with

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1 MILLER
2 plaintiff's counsel the order of depositions,
3 Mike was deposed first which was in mid
4 October, but I can't tell you there is a
5 document in my file that would explain this
6 any further.
7 Q. Let me break it down a little
8 bit. Do you know of any documents in your
9 file that would explain it in any fashion?
10 A. No.
11 Q. Turning to page 06, if you look
12 at the entry for October 20, 2003, you see
13 where it says review fax from Mike T/C Mike
14 re fax settlement position TC Rittinger re
15 his settlement overture. What settlement
16 overture was made October 20, 2003?
17 A. There was an overture made not
18 concerning payment of money or maybe there
19 was a very small part of it. I believe it
20 was about the possibility of Thomas buying
21 out IQS in some form or fashion or getting a
22 percentage of IQS.
23 Q. Whose overture; was it theirs
24 or yours?
25 A. Theirs.

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1 MILLER
2 Q. Did it come in the form of a
3 conversation or writing?
4 A. I believe it came up in a
5 conversation and at Mr. Meiresonne's
6 deposition.
7 Q. Off the record conversation at
8 the deposition?
9 A. Yes.
10 MR. ANESH: Note my objection.
11 What means off the record?
12 MR. BLUESTONE: Not taken down
13 by the stenographic person.
14 A. I don't believe it was taken
15 down. It could have been immediately after.
16 Q. What was the sum and substance
17 of your conversation with Mr. Meiresonne
18 concerning the settlement position on October
19 20, 2003?
20 A. I don't recall that particular
21 day's discussions with Mike. I can only
22 recall in general position.
23 Q. Any notes on your specific
24 conversations that day?
25 A. I don't recall.

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1 MILLER
2 Q. Any follow up letter concerning
3 your specific conversation that day?
4 A. I don't recall.
5 Q. If you look at the October 21st
6 entry you see a telephone call. T-C is always
7 telephone call on these bills?
8 A. Yes.
9 Q. Telephone call Doug Siegel re
10 joint copywrites and works for hire, research
11 re joint copyrights works for hire and
12 collective works. Does this refer to one of
13 the two exhibits we looked at today, Siegel
14 drafts of the Siegel memos?
15 A. I believe the Siegel memo or
16 e-mail was considerably earlier, but it
17 doesn't mean I didn't use them as a resource
18 at some subsequent point.
19 Q. What was the sum and substance
20 of your telephone call that day?
21 A. I don't recall.
22 Q. Take a look at October 29,
23 2003, you had a conversation concerning
24 settlement possibilities with Mike?
25 A. That's what it says.

Page 383

1 MILLER
2 Q. This is still before the
3 spoliation motion was served upon you; is
4 that right?
5 A. Yes.
6 Q. It was after the document
7 production?
8 A. Yes.
9 Q. Had you had any notice by that
10 date October 28 or 29, 2003 that there was an
11 issue of spoliation to be raised by the
12 Thomas plaintiffs?
13 MR. ANESH: Objection, asked
14 and answered. You can answer.
15 A. Not that I recall. Sorry, to
16 the best of my recollection, no.
17 Q. What was the sum and substance
18 of your discussion on settlement
19 possibilities that day?
20 A. Again, I cannot point to the
21 discussion that took place on that day. I can
22 only tell you in general what the discussions
23 were.
24 Q. Any notes on that conversation?
25 A. I don't know of any.

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1 MILLER
2 Q. Any follow up letters on that
3 conversation?
4 A. I don't recall.
5 Q. November 3rd entry, next page,
6 again, Mike re settlement. Could you tell me
7 the sum and substance of that conversation?
8 A. I don't recall that particular
9 conversation.
10 Q. Any notes about that
11 conversation?
12 A. I don't recall any.
13 Q. Do you remember what the
14 party's positions or overtures or offerings
15 or stated settlement positions were on that
16 day?
17 A. On that particular day?
18 Q. Yes, sir.
19 A. I don't recall that particular
20 day.
21 Q. Would you turn to page 10.
22 Take a minute if you need to look at the page
23 before, but is this Friday, December 5, 2003
24 entry TCS which means telephone call with
25 Ritinger Mike re Plaintiff's Order to Show

Page 385

1 MILLER
2 Cause. Is this your first notice of the
3 spoliation Order to Show Cause?
4 MR. ANESH: If you recall.
5 A. I don't recall.
6 Q. Do you have any entries that
7 precede this that deal with an Order to Show
8 Cause or spoliation motion?
9 A. I don't see any references to
10 it.
11 Q. Did the spoliation motion
12 contain the Dokter Affidavit?
13 A. Yes.
14 Q. Was it the Dokter Affidavit
15 upon which the spoliation motion was at least
16 in part based?
17 A. Yes.
18 Q. Did you discuss the Dokter
19 Affidavit with Mike in the days that followed
20 the receipt of the spoliation motion?
21 A. I'm sure I did.
22 MR. BLUESTONE: LL.
23 (Plaintiff's Exhibit LL,
24 Document, marked for Identification.)
25 Q. LL is an Exhibit Bates marked

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1 MILLER
2 00022 through 35. Have you seen this
3 document before, sir?
4 A. I don't recall.
5 Q. The line that says total amount
6 remitted, does that indicate how much money
7 had been paid by the client to your law
8 office by that date?
9 A. I would assume it does.
10 MR. ANESH: We don't want you
11 to assume. Either you know or you
12 don't know.
13 A. I don't know.
14 MR. ANESH: Do not guess and do
15 not assume.
16 A. I don't know.
17 Q. Can you explain what partial
18 refund of retainer is?
19 MR. ANESH: If you know.
20 A. I don't know how that's being
21 used here.
22 Q. Who would know the answer to
23 that question?
24 A. Mr. Rosado.
25 Q. The fees and expenses bill

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1 MILLER
2 through March 31, 2006, that's a number
3 that's already been billed and paid?
4 MR. ANESH: Note my objection.
5 Do you know?
6 Q. Do you know?
7 A. No, I don't know.
8 Q. Mr. Rosado does know the answer
9 to these questions?
10 MR. ANESH: I don't think he
11 knows what Mr. Rosado knows.
12 Q. Is Mr. Rosado the person at
13 your firm who prepared this bill?
14 A. Yes.
15 Q. Do you recognize his signature?
16 A. Yes.
17 Q. Is that his signature at the
18 bottom?
19 A. Yes.
20 Q. As far as you know is he the
21 person at your law firm who would understand
22 how to explain the answers to my questions
23 concerning this particular bill?
24 A. If anyone would know, he would.
25 Q. This bill concerns dates from

Page 388

1 MILLER
2 April 2006 if you will examine --
3 A. 2007.
4 Q. 2006.
5 A. I'm sorry, going back.
6 Q. Through March 28, 2007; is that
7 correct, sir?
8 A. Appears to be.
9 MR. BLUESTONE: MM.
10 (Plaintiff's Exhibit MM,
11 Document, marked for Identification.)
12 Q. This is a September 4, 2007
13 bill, sir; is that correct?
14 A. Yes.
15 Q. Have you seen this before?
16 A. I don't recall.
17 Q. This doesn't have a signature
18 on the bottom, but would this also have been
19 prepared by Mr. Rosado?
20 A. I believe so.
21 Q. Is that indicated to you
22 because the billing sheet page 0051 is a
23 Chris Rosado printout?
24 A. I know Chris handled all the
25 billing on this matter.

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1 MILLER
2 Q. This relates to work done in
3 August of 2007?
4 A. Yes.
5 MR. BLUESTONE: NN.
6 (Plaintiff's Exhibit NN,
7 Document, marked for Identification.)
8 Q. NN is a document comprised of
9 two pages 00048 and 49. Is this a bill dated
10 October 1, 2007?
11 A. Appears to be.
12 Q. Is this also prepared by Chris
13 Rosado?
14 A. I presume so.
15 Q. Does this also reflect work
16 done on September 4, 2007?
17 A. Yes.
18 Q. Is this the last entry for work
19 that was performed by your law office?
20 A. I don't know.
21 Q. Would Mr. Rosado know by
22 checking this against his own records?
23 MR. ANESH: Objection. I don't
24 know how he knows what someone else
25 would know.

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1 MILLER
2 Q. Does your law firm maintain
3 billing records for this client still?
4 A. Yes, we could look on Amicus to
5 see if it's the last entry.
6 Q. Mr. Rosado or someone else from
7 your law firm could compare the date
8 September 7, 2007 and determine if that's the
9 last entry that was made for billing with
10 regard to this client?
11 A. Yes.
12 MR. ANESH: You could do it by
13 interrogatory too, couldn't you?
14 Never mind.
15 MR. BLUESTONE: This is Exhibit
16 OO and it consists of Miller 0052
17 through 55122.
18 (Plaintiff's Exhibit OO,
19 Document, marked for Identification.)
20 MR. ANESH: Note for the record
21 that the copies are cut off.
22 A. I see 54, half a number.
23 MR. ANESH: These are right.
24 These are wrong.
25 Q. Sir, if you would turn to page

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1 MILLER
2 55. That is half an entry, it actually
3 carries over from the prior page, Monday,
4 April 21, 2003 entry.
5 A. Okay.
6 Q. That's half an entry, the first
7 one, right?
8 A. Yes.
9 Q. It carries over from the page
10 before?
11 A. Yes.
12 Q. It says telephone call to Doug
13 Siegel re intellectual property issues. Do
14 you remember what was discussed in that
15 telephone call?
16 A. Other than generally the
17 intellectual property issues, no.
18 Q. Any notes about that?
19 A. No.
20 Q. Turning to page 57 looking at
21 the Monday, June 16th entry, it says
22 conference with K Shafer. What does K stand
23 for?
24 A. Keith.
25 Q. Re research results to date.

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1 MILLER
2 What research would that have been, sir?
3 A. The research I asked him to do
4 in connection with the case mostly in the
5 copyright area.
6 Q. Did you review materials that
7 day, do you remember?
8 A. I don't recall.
9 Q. Any notes about your work that
10 day?
11 A. No.
12 Q. It also says telephone call to
13 Mike re discovery strategy. What discovery
14 strategy were you discussing with Mike that
15 day?
16 A. I don't recall.
17 Q. Any notes about that?
18 A. Not that I'm aware of.
19 Q. On June 25, 2003 this says --
20 MR. ANESH: Page 58?
21 Q. Yes, sir. Telephone call to
22 Fowler, production of documents. Who is
23 Fowler?
24 A. Mark Fowler was an attorney at
25 Satterlee Stephens.

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1 MILLER
2 Q. Attorneys for plaintiff Thomas?
3 A. Yes.
4 Q. What documents and what
5 production were you discussing; were you
6 discussing IQS's production to Thomas or
7 Thomas' production to IQS?
8 A. Given that it was Mark Fowler
9 I'm fairly certain it was Thomas' production
10 to IQS.
11 Q. Did they divide the work in
12 some fashion that it gives you that
13 impression?
14 MR. ANESH: Note my objection
15 to form.
16 A. I don't know how they divided
17 the work, I just know Mark Fowler was
18 involved early on and he seemed to be
19 involved in the production of documents by
20 Thomas to us rather than our production to
21 them.
22 Q. If you look down at the July 3,
23 2003 entry on the same page you see telephone
24 call with Saurak?
25 A. Yes.

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1 MILLER
2 Q. Re confidentiality stip and
3 production of documents. Does this imply to
4 you that this was documents to be produced by
5 IQS?
6 A. I don't know. Saurak took over
7 more and more of what Mr. Fowler had been
8 doing and I was involved with Mr. Saurak on
9 both document productions.
10 Q. Are you unable to tell me what
11 documents this refers to?
12 A. I'm unable to tell you,
13 correct.
14 Q. Any notes about what this
15 conversation was, the sum and substance of
16 it?
17 A. No.
18 Q. Turning to the July 14, 2003,
19 this is about two weeks before the document
20 production; is that correct?
21 A. I think it's more like three
22 weeks, but whatever.
23 Q. You reviewed a letter from
24 Saurak and you wrote a letter to Mike. Do you
25 know what these letters consisted of or the

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1 MILLER
2 sum and substance of the letters were?
3 A. I don't recall.
4 Q. You had a telephone call with
5 Mike on July 16, 2003?
6 A. Yes.
7 Q. It says re position on document
8 request. Do you know what that refers to?
9 A. I'm pretty sure it was our
10 position on our document request and
11 objections that had been made by defendants,
12 sorry, by plaintiffs.
13 Q. Do any of the entries on this
14 page 00059 refer to any conversations that
15 you had with Mike Meiresonne concerning his
16 or IQS' production of documents to Thomas?
17 MR. ANESH: On page 59?
18 A. On this page?
19 Q. On this page?
20 A. I believe so.
21 Q. Tell me which entries refer to
22 that, your conversations with him about
23 production?
24 A. The July 22, 2003 entry may
25 have involved in part that issue. The July

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1 MILLER
2 23, 2003 entry certainly, I should not say
3 certainly, I'm pretty sure that involved that
4 issue. The July 24, 2003 entry just from my
5 note in here, my billing record here clearly
6 involved that issue.
7 Q. Referring to the July 23, '03
8 entry, it says telephone call Mike re events
9 at meeting. What meeting are you talking
10 about?
11 A. I had a meeting as earlier in
12 the entry indicates. I went to the Satterlee
13 Stephens law firm to review documents and
14 besides reviewing what had been produced, we
15 sat there and discussed the document
16 production, both document productions that
17 were going to occur in Michigan.
18 Q. Does anything in this entry for
19 July 23, 2003 indicate that you discussed
20 document production in Michigan with Mike
21 Meiresonne?
22 MR. ANESH: Objection, asked
23 and answered. He already said it did.
24 MR. BLUESTONE: I don't see
25 where it does.

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1 MILLER
2 MR. ANESH: Objection, asked
3 and answered.
4 MR. BLUESTONE: Okay, you have
5 your objection. You cannot stop him
6 from answering. Let him answer again.
7 You will have your objection at trial.
8 MR. ANESH: Objection, asked
9 and answered and you cannot keep
10 asking the same question over and over
11 again.
12 Q. You can answer the question.
13 MR. ANESH: You can answer the
14 question.
15 A. May I hear the question back.
16 (Record read.)
17 MR. ANESH: Objection, asked
18 and answered.
19 MR. BLUESTONE: Just a read
20 back.
21 MR. ANESH: Want to make sure
22 it's there.
23 A. The fact that I see later in
24 that entry telephone conversations with Ron
25 Redick and Saurak re scheduling of document

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1 MILLER
2 Q. There is an entry here that you
3 mentioned July 24, 2003 telephone call Saurak
4 Mike re document production in Michigan. Does
5 that mean you had a telephone discussion with
6 Mike?
7 A. Yes.
8 Q. Is it the S after -- is it the
9 C-S that tells you that?
10 A. They were separate
11 conversations.
12 Q. Does the C-S indicate there
13 were two telephone conversations?
14 A. Yes or maybe more than two, but
15 it was at least two.
16 Q. What was the sum and substance
17 of the conversation with Mike?
18 A. I don't recall.
19 Q. Any notes about that
20 conversation?
21 A. No.
22 Q. Turning to the next page 00060,
23 sir, did you have a conversation with Mike
24 Meiresonne on July 25th?
25 A. I don't recall. I don't see

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1 MILLER
2 productions in Michigan leads me to strongly
3 believe in addition to actual memory that
4 part of my conversations with Mike about the
5 meeting was about scheduling the document
6 production in Michigan.
7 Q. You have an actual memory of
8 that particular conversation?
9 A. I have an actual memory that
10 following my meeting at Satterlee Stephens
11 where I discussed with them when I was there
12 I discussed it with Mike both document
13 productions of Michigan and then had some
14 conversations with Ron Redick and Saurak to
15 confirm we would go ahead and do these two
16 document productions in Michigan.
17 Q. Could you please tell me the
18 sum and substance of your memory of the
19 conversation with Mike Meiresonne concerning
20 -- sum and substance of that conversation
21 with Mike Meiresonne?
22 A. I don't have a memory of
23 precisely what we discussed about the
24 document production to Michigan. Generally
25 speaking it would have been on scheduling.

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1 MILLER
2 one listed here.
3 Q. Did you perform any work on
4 this case between July 25th and July 31,
5 2003?
6 MR. ANESH: Including July 25th
7 and July 31st?
8 MR. BLUESTONE: That's a good
9 point.
10 Q. July 26th to July 30th did you
11 do any work on this case?
12 MR. ANESH: In between those
13 dates?
14 A. I may have, but I obviously
15 didn't bill anything.
16 Q. Do you have any memory of doing
17 work on the case?
18 A. I don't have an independent
19 recollection, no.
20 Q. Do you remember any
21 conversation you had with IQS during that
22 period of time?
23 A. I don't recall.
24 Q. Do you have any memory of doing
25 any e-mails to IQS during that period of time

Page 401

1 MILLER
2 whether it's billed or not?
3 A. I don't recall.
4 Q. It says here that you had a
5 telephone conversation with Mike on July
6 31st; is that correct?
7 A. Yes.
8 Q. What was the sum and substance
9 of that conversation?
10 A. I don't recall anything other
11 than what's stated here which covers a few
12 different topics.
13 Q. Could you explain to me why the
14 next entry is out of date sequence?
15 A. It appears to be an overnight
16 delivery for a flat rate and I didn't do the
17 billing, but logically it would have been the
18 bill came in for the overnight delivery and
19 it was posted.
20 MR. ANESH: Disbursement?
21 A. It's a disbursement, yes, flat
22 rate \$20.
23 Q. Are the time records otherwise
24 in date order for work performed?
25 A. They should be.

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1 MILLER
2 Q. Did you perform any work on the
3 IQS case on August 1st, 2nd or 3rd?
4 A. I don't recall it. If I did,
5 it was something very quick.
6 Q. There's an entry for review of
7 Mike's fax on August 4, 2003. What was the
8 sum and substance of that fax?
9 A. I think you showed me that fax
10 earlier today or maybe it was reprinted
11 within an e-mail. I think you showed it to
12 me. I reviewed the fax, talked to Mike about
13 it and wrote a letter to Mr. Fowler.
14 Q. Do you know what date the
15 document production at IQS ended?
16 A. Date it ended, I don't recall.
17 Q. Are there any other entries
18 concerning the document production at the IQS
19 offices found on page 00060?
20 A. Sitting here today I don't
21 recall my August 5, 2003 letter to Mike
22 that's indicated on that page. I see that
23 Mike sent me a fax which I reviewed on August
24 7th. I don't recall what the subject of my
25 letter to Mike that I wrote on August 13th

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1 MILLER
2 was.
3 Q. If you would look at page 00061
4 on August 21st there is an entry concerning
5 Thomas' position re settlement. Could you
6 tell me what their position re settlement was
7 as of that date?
8 A. In that time frame and this may
9 be the one before depositions were going to
10 get rolling I spoke to Mr. Rittinger and may
11 have been the first time I ever spoke to him,
12 it was the partner at Satterlee Stephens who
13 was in charge of the case and I called to ask
14 him basically in a very general way can this
15 be settled.
16 Q. And the answer was?
17 A. And the answer was from him in
18 effect no, they want to put Mike out of
19 business.
20 MR. BLUESTONE: PP. It is a
21 five page document which appears to be
22 a bill from the law firm of Price
23 Heneveld dated 2/10/03.
24 (Plaintiff's Exhibit PP,
25 Document, marked for Identification.)

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1 MILLER
2 A. Seems to be more than one bill
3 here.
4 MR. ANESH: May 7, '03 bill and
5 June 9, '03 bill.
6 Q. Series of bills then. Have you
7 seen any of these bills before?
8 A. No.
9 Q. Who was Price Heneveld?
10 A. I believe that was the firm
11 that Doug Siegel worked at that did the
12 intellectual property research that was
13 shared with me.
14 Q. Looking at page 2 of the
15 document, page 3 of the bill, you see at the
16 head there of the paragraph it says legal
17 research re copyright infringement and
18 competition?
19 A. Yes.
20 Q. Do you know what that refers
21 to?
22 A. You would have to ask them. I
23 could only surmise.
24 Q. The answer is you don't know
25 for sure what it refers to, right?

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1 MILLER
 2 A. I could only read the document
 3 and make my own --
 4 MR. BLUESTONE: Off the record.
 5 (Discussion off the record.)
 6 MR. BLUESTONE: That's all the
 7 questions I have.
 8 (Time noted: 1:00 p.m.)
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1 C E R T I F I C A T E
 2
 3 STATE OF NEW YORK)
 4 :
 5 COUNTY OF NEW YORK)
 6
 7 I, SHARI COHEN, a Notary
 8 Public within and for the State of New York,
 9 do hereby certify:
 10 That NEIL MILLER, the witness
 11 whose deposition is hereinbefore set forth,
 12 was duly sworn by me and that such deposition
 13 is a true record of the testimony given by
 14 such witness.
 15 I further certify that I am
 16 not related to any of the parties to this
 17 action by blood or marriage; and that I am in
 18 no way interested in the outcome of this
 19 matter.
 20 IN WITNESS WHEREOF, I have hereunto
 21 set my hand this 17th day of March, 2011.
 22
 23
 24
 25 SHARI COHEN _____

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1 A C K N O W L E D G E M E N T
 2
 3 STATE OF NEW YORK)
 4 :
 5 COUNTY OF)
 6
 7 I, NEIL MILLER, hereby certify that I
 8 have read the transcript of my testimony
 9 taken under oath in my deposition of March 7,
 10 2011; that the transcript is a true, complete
 11 and correct record of my testimony, and that
 12 the answers on the record as given by me are
 13 true and correct.
 14
 15
 16
 17 _____
 18 NEIL MILLER
 19
 20 Signed and subscribed to before
 21 me, this day of ,
 22 20 .
 23 _____
 24 Notary Public, State of New York
 25

Page 408

1 ***ERRATA***
 2 ELLEN GRAUER COURT REPORTING CO. LLC
 3 126 East 56th Street, Fifth Floor
 4 New York, New York 10022
 5 212-750-6434
 6 NAME OF CASE: IQS vs. Miller
 7 DATE OF DEPOSITION: March 7, 2011
 8 NAME OF WITNESS: NEIL MILLER
 9
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PAGE	LINE	FROM	TO	REASON
8	_____	_____	_____	_____
9	_____	_____	_____	_____
10	_____	_____	_____	_____
11	_____	_____	_____	_____
12	_____	_____	_____	_____
13	_____	_____	_____	_____
14	_____	_____	_____	_____
15	_____	_____	_____	_____
16	_____	_____	_____	_____
17	_____	_____	_____	_____
18	_____	_____	_____	_____
19	_____	_____	_____	_____
20	_____	_____	_____	_____
21	_____	_____	_____	_____

22 Subscribed and sworn before me
 23 this ___ day of _____, 20__ .
 24 _____
 25 (Notary Public) My Commission Expires:

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Exhibits to Neil A. Miller Deposition

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	Date	Title	Bates #
A.	01/08/2003	Second Amended Complaint filed by Thomas Publishing and Product Information Network, Inc.	
B.	01/29/2003	Answer to Second Amended Complaint, Affirmative Defenses, and Third-Party Claims	MILLER 01366-01419
C.	01/28/2003	Letter of Retention, Miller Rosado & Algios, LLP	
D.	03/12/2003	Letter from Neil A. Miller to Mark A. Fowler, Esq. enclosing Reply to Counterclaims of Third Party Defendants	MILLER 00868
	04/28/2003	Fax from Mike Meiresonne to Neil Miller	
	04/16/2003	Letter from Neil A. Miller to Mike Meiresonne enclosing discovery schedule, detailing causes of action	
	04/19/2003	Fax from Mike Meiresonne to Neil Miller	
E.	04/29/2003	Email from Neil Miller to Mike Meiresonne re voluminous advertiser files	
	06/30/2003	Letter from Neil A. Miller to Mark A. Fowler, Esq.	MILLER 00877-00879
	07/31/2003	Letter from Neil A. Miller to Walter A. Saurack, Esq.	
		Various emails between Neil Miller and Mike Meiresonne	
F.	12/17/2003	Email from Mike Meiresonne to Neil Miller	
	(date?)	Order to Show Cause for Sanctions Pursuant to F.R. CIV.P. Rule 37 and a Temporary Restraining Order	
	12/05/2003	Affidavit of Walter A. Saurack	
G.	12/15/2003	Fax from Mike Meiresonne to Neil Miller re editorial info entered into database	
	01/08/2006	Fax from Mike Meiresonne to Neil Miller Re: Korthals	
	01/23/2004	Fax from Mike Meiresonne to Neil Miller Re: Docs found	

	12/06/2003	Fax from Mike Meiresonne to Neil Miller re Lisa Dokter and "Don's deposition"	
	12/06/2003	Fax from Mike Meiresonne to Neil Miller re TR had 1/3 of their 2003 advertisers not renew	
	01/26/2003	Fax from Mike Meiresonne to Neil Miller with sample ranking report (report not attached)	
H.	07/14/2003	Office Memorandum from Keith Schafer to Neil Miller Re: Copyright Infringement issues	
I.		Various emails between Mike Meiresonne, Mika Meyers, and Price, Heneveld re Copyright Damages	
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	12/05/2003	Fax Cover Sheet from Christopher Rosado to Mike Meiresonne	
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T.	04/30/2003	Email response from Mike Meiresonne to Neil Miller re "we did clean out some details"...	

U.	05/07/2003	Email from Neil Miller to Mike Meiresonne re confidentiality stipulation, underprint, missing letters, lack of damages, and copyright infringement issues	
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W.	07/24/2003	Email from Ron M. Redick to Neil Miller and Mike Meiresonne re TPC Document Review	
X.	07/27/2003	Email from Mike Meiresonne to Neil Miller re massive editorial update project, advertiser production files, etc.	
Y.	12/29/2003	Fax from Mike Meiresonne to Neil Miller Re: Sara Broene and Lindsay, other issues	
Z.	02/11/2006	Emails between Mike Meiresonne and Neil Miller re document production, re-ranking reports	
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MM.	09/04/2007	Miller, Rosado & Algios, LLP Invoice to Michael Meiresonne	MILLER 00050-00051
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