

STATE OF MICHIGAN
IN THE CIRCUIT COURT FOR THE COUNTY OF KENT

INDUSTRIAL QUICK SEARCH, INC.,
and MICHAEL MEIRESONNE,
Plaintiffs,

vs.

Case No. 12-08354-NMB

Hon. Christopher P. Yates

LESLIE C. MORANT, LAW WEATHERS
and RICHARDSON, P.C., and
A.J. BIRKBECK,
Defendants.

The Deposition of LESLIE C. MORANT,
Taken at 60 Monroe Center, N.W.,
Grand Rapids, Michigan,
Commencing at 1:00 p.m.,
Monday, June 2, 2014,
Before Peggy S. Savage, CSR-4189, RPR.

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 20
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 25

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 8
 9 ALSO PRESENT:
 10 A.J. Birkbeck
 11 Michael Meiresonne
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1 Grand Rapids, Michigan
 2 Monday, June 2, 2014
 3 1:00 p.m.
 4
 5 LESLIE C. MORANT,
 6 was thereupon called as a witness herein, and after
 7 having first been duly sworn to testify to the truth,
 8 the whole truth and nothing but the truth, was
 9 examined and testified as follows:
 10 MR. GRIMM: Okay. For the record, this is
 11 the deposition of Les Morant taken pursuant to notice
 12 and pursuant to Michigan Court Rules.
 13 EXAMINATION
 14 BY MR. GRIMM:
 15 Q. Mr. Morant, you know we're here on this suit
 16 Meiresonne versus you and Birkbeck. At the time that
 17 you first were hired to have anything to do with the
 18 underlying case, were you an associate or a partner
 19 with Law Weathers?
 20 A. Associate.
 21 Q. When had you been brought into that firm?
 22 A. 2004.
 23 Q. Was that your first job after law school?
 24 A. No.
 25 Q. Okay. When were you admitted to practice?

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1 A. 1999, in Illinois.
 2 Q. Okay. Let's see. Prior to deciding to take the case,
 3 did you talk to Suanne Watt Stay about her
 4 involvement?
 5 A. Well, it wasn't my decision to take the case.
 6 Q. Okay. Whose was it?
 7 A. I believe that Mike Roth came to me and asked me to do
 8 some research for Mr. Meiresonne and Mr. Birkbeck, who
 9 were interested in exploring whether a claim existed.
 10 Q. Okay. Who made the decision to take the case?
 11 A. That, I don't know. It was before my involvement. I
 12 believe that Mr. Meiresonne was an active client of
 13 Kevin Krauss, who was a partner in the firm.
 14 Q. Do you know if Kevin Krauss had any decision-making
 15 well, do you know if he had anything to do with
 16 accepting the case on behalf of your firm or you just
 17 don't know?
 18 A. I don't know.
 19 MR. STEC: Steve, just for clarification,
 20 when you say take the case, you mean take the request
 21 from a client to do the research?
 22 MR. GRIMM: Well, we're going to get into
 23 that.
 24 MR. STEC: Okay.
 25 BY MR. GRIMM:

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1 Q. Okay. So when the case came in to your firm, my
 2 understanding is that Suanne was the first one to do
 3 research on it?
 4 MR. STEC: Same objection on the vagueness
 5 of the question, because I --
 6 MR. GRIMM: Okay.
 7 MR. STEC: -- don't know what you mean by
 8 case, whether it was an assignment to look into a
 9 potential lawsuit or not. So if you could clarify it,
 10 I would appreciate it.
 11 MR. GRIMM: Sure.
 12 BY MR. GRIMM:
 13 Q. So my understanding is this. That Mr. Birkbeck
 14 contacted your firm on behalf of Mr. Meiresonne to do
 15 research into certain potential causes of action on
 16 behalf of Mr. Meiresonne; is that right?
 17 A. You're asking me what Mr. Birkbeck did. I don't know
 18 the answer to that. I know that I was asked to
 19 research whether claims existed. My understanding was
 20 that Suanne Watt Stay had looked at that before I did.
 21 Q. All right. Did you -- okay. Go ahead.
 22 A. But that's the extent of my knowledge of what happened
 23 prior to me coming on board.
 24 Q. Did you talk to Suanne about what she had found
 25 regarding potential causes of action?

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1 A. I did not. Or at least I don't recall talking to her.
 2 I might have, but I don't recall it.
 3 Q. There wouldn't be any memos internally between you and
 4 her regarding what she had found?
 5 A. Huh-uh. No.
 6 Q. Do you recall seeing her memo or email to, I believe,
 7 Mr. Birkbeck regarding potential causes of action at
 8 any time?
 9 A. I don't recall offhand --
 10 Q. Okay.
 11 A. -- whether there was an email of hers that I saw.
 12 There may have been. I don't recall.
 13 Q. Okay. All right. In this matter, you know -- and I'm
 14 going to get into some of the details, but to let you
 15 know, I'm going to be skipping around a little bit; so
 16 for that, I apologize in advance.
 17 Prior to this Meiresonne and IQS versus
 18 Terryn matter, how many appeals did you do before the
 19 appeal in that case was filed?
 20 A. I have no idea, really. I mean, I'd be speculating,
 21 but I certainly drafted a number of appeals or handled
 22 a number of appeals prior to that.
 23 Q. Any idea how many; less than ten, more than ten?
 24 A. Probably more than ten.
 25 Q. In Michigan courts?

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1 A. In Michigan and elsewhere.
 2 Q. Were you considered an appellate attorney at Law
 3 Weathers?
 4 A. Law Weathers doesn't have a classification for --
 5 Q. Okay.
 6 A. -- people who handle appeals. Pretty much everyone in
 7 the litigation department handles appeals.
 8 Q. Did you discuss the appeal with -- the court of
 9 appeals appeal, did you discuss that with Steve
 10 Stapleton at any time prior to the filing of the
 11 appeal?
 12 A. I don't recall whether I discussed that with Steve or
 13 not. I don't know that I would have before the court
 14 of appeals appeal.
 15 Q. Was he a more experienced appellate attorney than you
 16 or would you not agree with that?
 17 A. Well, Steve has been practicing longer than I have by
 18 maybe 10, 15 years, so I'm assuming that he is more
 19 experienced than me.
 20 Q. Okay. With regard to prior to filing the lawsuit in
 21 the state court, who did you consult with at Law
 22 Weathers regarding the merits of the potential case?
 23 A. I believe I discussed it with Mike Roth, who's the
 24 head of the litigation department.
 25 Q. Do you recall specifically any conversations with him

1 on that subject?
 2 A. Not with any specificity, no.
 3 Q. Would there be any memoranda memorialization of that
 4 meeting or those meetings?
 5 A. Maybe not a memo. I mean, there might have been an
 6 email in there from me to Mike saying that these are
 7 the potential claims that I researched.
 8 Q. Was there -- would there be an email from Mr. Roth
 9 signing off on your research?
 10 A. Well, no, because, you know, we really -- we presented
 11 it to Mike Meiresonne and A.J. Birkbeck. You know, we
 12 presented that these are the possible claims if
 13 you're -- you know, and the pitfalls of those claims.
 14 It was for them to sign off on, not --
 15 Q. There was an email --
 16 A. -- not for me or Mike.
 17 Q. Yeah. There was an email -- I don't think I brought
 18 it -- before suit was filed in which you emailed, I
 19 believe, A.J. Birkbeck and Mike Meiresonne in which
 20 you kind of indicated the possible causes of action
 21 and you also indicated that simply being able to bring
 22 them is no guarantees of their success; is that what
 23 you're kind of talking about?
 24 A. Yes.
 25 Q. And in that, you said that given that caveat that you

1 recommended filing a complaint?
 2 A. Yeah. If they were interested in moving forward,
 3 claims were -- these were good-faith claims that could
 4 be brought, but the caveat was that, you know, these
 5 were -- it was going to be an uphill battle. There
 6 were certainly factual problems with what had happened
 7 in New York that were going to be a problem, and there
 8 were -- you know, there were some issues -- unresolved
 9 issues of law that would make it difficult to -- to go
 10 forward. But, you know, given those caveats, that
 11 was -- that was my understanding that if they wanted
 12 to move forward -- and because one of those issues was
 13 statute of limitations, I said, you know, if -- if you
 14 want to move forward on these, I recommend that you do
 15 it sooner rather than later --
 16 Q. Right.
 17 A. -- because you have one of those issues.
 18 Q. And I think you also said in that email something --
 19 you did mention that they may not survive summary
 20 disposition given what I think you just mentioned?
 21 A. Correct.
 22 Q. Okay. Who took the lead on preparing the complaint in
 23 the underlying case?
 24 A. I believe that we did. I believe that Law Weathers
 25 did. I did.

1 Q. Who else would have worked with you at Law Weathers on
 2 that?
 3 A. Well, I had, you know, some other lower associates
 4 that were, you know, helping me out with the research
 5 on that, but that was really it. I mean, the -- and,
 6 of course, you know, A.J. and Mike were involved in
 7 the drafting of the -- and revisions to the draft
 8 complaint. They provided the facts, mainly.
 9 Q. They provided the facts?
 10 A. Yeah.
 11 Q. What material did you review before you prepared the
 12 complaint, if you recall?
 13 A. Well, I mean, there was extensive research done.
 14 Q. And what I'm really getting at is not the research.
 15 I'm talking about what documentation did you review
 16 before filing the complaint?
 17 A. Well, it was whatever A.J. provided through Mike -- or
 18 Mike through A.J., I should say. They provided some
 19 of the stuff from the New York lawsuit, I recall, and,
 20 you know, some of the -- because a lot of the facts, I
 21 think, were garnered from the complaints or the -- the
 22 litigation in that matter. There was a whole -- I
 23 think there was a whole file that A.J. provided.
 24 Q. Okay. You had written -- and I'm going to show it to
 25 you in a minute. But there was an August 14, 2007

1 email -- I'm sorry. This was -- well, let's see here.
 2 This is a bit confusing. This is an email from you,
 3 although it says from A.J. Birkbeck, and I think that
 4 was a different email. But it -- I'm going to show --
 5 MR. GRIMM: What was the -- 41; is that
 6 what we are on now? I think 41.
 7 MARKED FOR IDENTIFICATION
 8 DEPOSITION EXHIBIT 41
 9 1:12 p.m.
 10 BY MR. GRIMM:
 11 Q. Okay. So this was August -- I don't know what it was
 12 because the first part is from A.J. Birkbeck, but I'm
 13 pretty sure this is from you. I'll show it to you.
 14 Just take a look at it. Do I have that right, where
 15 it starts Gentlemen, about -- not even a fifth of the
 16 way down, it starts Gentlemen; that's from you, right?
 17 A. It appears to be, although this is not the format in
 18 which I recognize it.
 19 Q. I understand. Well, here's my question on that. You
 20 see there's a series of numbers. And this is
 21 information, I gather, you were seeking from A.J.
 22 Birkbeck and Mike --
 23 A. That's correct.
 24 Q. -- Meiresonne?
 25 Let's go down the list. I don't have a

1 copy in front of me, so just start with number 1, tell
 2 me what it is and then tell me did you get that
 3 information. What is number 1?
 4 A. Number 1 is, Exactly what claims were raised against
 5 IQS in the New York action?
 6 Q. Did -- okay. Why did you want that?
 7 A. Well, collateral estoppel was an issue. So, you know,
 8 if you're trying to avoid getting your complaint
 9 dismissed out on collateral estoppel, you want to make
 10 sure that you know whether the claims you're bringing
 11 would have been covered or not covered under that.
 12 Q. Would it be fair to say that going into this,
 13 collateral estoppel was your biggest issue?
 14 A. That was my biggest concern, and I think I said that
 15 in the prior email that you discussed.
 16 Q. Okay. Did you get that information from A.J. or Mike
 17 Meiresonne?
 18 A. You know, it's hard for me to say today, because, you
 19 know, this was seven or eight years ago, but I believe
 20 that I did.
 21 Q. Okay. What's number 2 on there?
 22 A. Number 2 is, Who were the people named as third-party
 23 defendants in that case and why?
 24 Q. Did you get that information, as far as you recall?
 25 A. I believe that I did.

1 Q. All right. Rather than going through all of these,
 2 you asked for all of these things on there. I believe
 3 it ends with number 10; is that right?
 4 A. Correct.
 5 Q. Did you get the information you were seeking, as far
 6 as you can recall?
 7 A. Let me read through them here.
 8 Q. Okay.
 9 A. I believe that I did.
 10 Q. Okay. Did you -- part of this case, the underlying
 11 case, I think you mentioned earlier, revolved around a
 12 decision and a ruling by Federal Judge Owen in the
 13 federal court action in New York, correct?
 14 A. Um-hum. Yeah, that was the 800-pound gorilla in the
 15 room.
 16 Q. Right. That was the main issue you were -- that was
 17 the whole thing, whether collateral estoppel applied
 18 to that finding, whether it was fully litigated --
 19 A. Right.
 20 Q. -- and all the rest of it?
 21 A. Yeah, and whether it precluded bringing an
 22 indemnification or contribution claim against Terry
 23 in this action.
 24 Q. And I think that was one of the main things you were
 25 referring to when you said this may not survive

1 summary disposition, correct?
 2 A. Correct.
 3 Q. Because you knew, like you said, that would be the
 4 800-pound gorilla we had to --
 5 A. Right.
 6 Q. -- remove from the room?
 7 A. Right.
 8 Q. So then the complaint's filed, and then Thomas doesn't
 9 refile an answer to the complaint, correct? They file
 10 a motion for summary disposition?
 11 A. Well, it wasn't Thomas. It was --
 12 Q. Terry, right.
 13 A. Yeah.
 14 Q. There was an agreement, apparently -- well, at least
 15 there was an agreement to defend Terry. Thomas was
 16 defending Terry, correct?
 17 A. Yeah. Not as a named party, but yes.
 18 Q. Right. And Terry filed a motion for summary
 19 disposition --
 20 A. Motion to dismiss on the pleadings --
 21 Q. Okay.
 22 A. -- correct.
 23 Q. All right. And you went to -- did you argue that
 24 motion?
 25 A. I did. Against that motion, yes.

1 Q. Right. And Mr. Birkbeck was in attendance at that
 2 hearing?
 3 A. Yes, he was, to my recollection.
 4 Q. Was Mr. Meiresonne at the hearing, as far as you
 5 remember?
 6 A. I don't recall. He may have been.
 7 Q. You just don't know?
 8 A. I just don't recall. I mean, again, it's been a
 9 number of years.
 10 Q. Would you agree that Judge Kolenda was hostile to your
 11 position?
 12 MR. STEC: At the beginning?
 13 MR. GRIMM: Yes.
 14 THE WITNESS: You know, I don't -- I don't
 15 remember it that way.
 16 MR. GRIMM: Okay.
 17 THE WITNESS: I don't know that I would say
 18 he was hostile to our position.
 19 MR. GRIMM: Okay.
 20 THE WITNESS: I would say he might have
 21 favored the plaintiffs' position more than ours, but I
 22 wouldn't say that he was hostile to our position, at
 23 least that's not my recollection of that hearing.
 24 MR. GRIMM: Okay. Okay.
 25 THE WITNESS: And I might add with Judge

1 Kolenda sometimes it's hard to know exactly what he's
2 thinking.
3 BY MR. GRIMM:
4 Q. After the hearing, did you have a sense of where --
5 and you kind of touched on it there. But after the
6 hearing, did you have a sense that the motion did not
7 go well, that Kolenda was likely to grant their
8 motion?
9 A. You know, I don't recall. I don't recall how I felt
10 after that first motion.
11 Q. You were aware that Thomas filed a second -- the
12 original case was Thomas versus Meiresonne and IQS,
13 the underlying New York case, right?
14 A. Correct.
15 Q. And were you aware that after the Terryn case was
16 filed, there was another Thomas action filed in New
17 York?
18 A. Was I aware contemporaneous --
19 Q. Yes.
20 A. -- with its filing?
21 Q. Yes.
22 A. No.
23 Q. Were you aware -- when did you first become aware of
24 its filing?
25 A. I mean, at some point after it was filed, I believe

1 that Mr. Birkbeck informed me that there was now a
2 second suit going on in New York involving Thomas and
3 IQS.
4 Q. Did you have anything to do with that litigation?
5 A. Not to my recollection.
6 Q. When walked out of Kolenda's court, he did not
7 issue an opinion right away?
8 A. That's my recollection is that he did not issue an
9 opinion right away. It took a number of weeks, I
10 think.
11 Q. Did you have a sense of what he was going to do, what
12 the likely outcome was going to be?
13 A. I don't recall today having a sense for where things
14 were going. But if I -- if I had a sense for where
15 things were going, it would have been expressed in
16 emails between myself and in-house counsel.
17 Q. I'm going to show you what was marked as Number --
18 Exhibit Number 39 in the Birkbeck deposition. And
19 assume for me that this email was written after the
20 hearing in front of Judge Kolenda but before his
21 opinion, okay?
22 A. Okay.
23 Q. And I just want you to take a minute and read the
24 highlighted part, and then I'm going to ask -- you
25 know, not out loud, just read it, and then I'm going

1 to ask you a couple of questions from that, okay?
2 A. Okay. I've read the highlighted portion.
3 Q. Okay. If I could have that back. One of the -- this
4 is -- I want you to assume, also, that this was
5 written by Mr. Birkbeck and sent to Mr. Meiresonne,
6 okay?
7 A. Okay.
8 Q. After the Kolenda hearing but before the opinion came
9 out. And it says -- and if you want to read along,
10 that's fine, but otherwise -- it said that Kolenda was
11 hostile. And you've already said you don't recall
12 whether or not you felt that way, correct?
13 A. Correct.
14 Q. And then it says, Assuming a negative ruling comes
15 this week, we need to discuss the merits and potential
16 costs of appeal. Do you recall discussing with A.J.
17 before the Kolenda opinion whether or not an appeal
18 would be likely?
19 A. What do you mean by be likely?
20 Q. Well, let me rephrase it. What I'm asking --
21 A. You mean whether a negative ruling would be likely?
22 Q. What I'm asking -- well, yeah. Let me do it again.
23 Did you discuss with -- after the hearing with Kolenda
24 but before his opinion came out, do you recall
25 discussing with Mr. Birkbeck whether or not a negative

1 ruling would come -- was likely based on the hearing
2 and the pleadings?
3 A. You know, I don't recall today whether we had those
4 discussions.
5 Q. Okay.
6 A. But, again, if we did have them, they're likely to be
7 in email form.
8 Q. Okay.
9 A. I tended to do every -- to do all of my communications
10 on this matter through email.
11 Q. Before the -- you read this highlighted portion here,
12 and I'm going to ask you, read that last sentence --
13 I'm going to read it upside-down if I can. Is it fair
14 to say that the highlighted portion -- in the
15 highlighted portion, it's discussing a potential
16 appeal; is that right? Is that fair?
17 A. Well, I didn't draft this, so I feel hesitant to
18 speculate on it, what its meaning is. But with that
19 understanding, the first part of the paragraph says
20 assuming we appeal, and then I believe the rest of the
21 paragraph discusses the appeal.
22 Q. Right.
23 A. This potential appeal.
24 Q. Right.
25 A. So that would be my reading of this. But, again, I

1 didn't draft it, so I can't --
 2 Q. I understand. So the last sentence says, Unlike
 3 Thomas versus IQS, there's virtually no chance that we
 4 would be ordered to pay the other side's attorney
 5 fees, paren, the need to do so there was statutory.
 6 Did you discuss the likelihood of potential -- a
 7 potential order to pay the other side's attorneys with
 8 Mr. Birkbeck sometime after the Kolenda opinion was --
 9 or sometime after the argument in front of Kolenda but
 10 before his opinion was issued?
 11 A. I don't recall ever doing that.
 12 Q. Is this a statement that you would have agreed to back
 13 then, Unlike Thomas versus IQS, there's virtually no
 14 chance that we would be ordered to pay the other
 15 side's attorney fees?
 16 MR. STEC: Well, I'm going to object on a
 17 foundation ground, first of all. There's no
 18 foundation that he understands what the issues were in
 19 the Thomas decision and the statutory issues that are
 20 referenced therein. But other than that, go ahead.
 21 THE WITNESS: I mean, I can only answer
 22 that generally, and I would say that -- I mean, I
 23 would pretty much never say that, because you can't
 24 ever account for what a judge or a jury might --
 25 might -- might do. I mean, you don't want to make

1 definitives -- I wouldn't make a definitive statement
 2 saying you're not ever going to get sanctioned,
 3 because you never know what crazy judges or juries
 4 might do.
 5 BY MR. GRIMM:
 6 Q. In fact, you don't -- one of the reasons you don't do
 7 that is because, potentially, it could mislead the
 8 client into making a decision that may not be based on
 9 fact?
 10 A. Yeah. I mean, without saying that that's what
 11 happened in that paragraph, I -- yeah. I mean, I
 12 don't give percentages of winning for the same reason
 13 I don't say you'll never get sanctioned or you'll
 14 never win or you'll never lose, because you just --
 15 you just never know. Never say never.
 16 Q. Tell me -- so Kolenda's decision comes down, and then
 17 there are a lot of emails back and forth about whether
 18 or not there's going to be an appeal, correct?
 19 A. Correct.
 20 Q. What was your role in making the decision whether or
 21 not to appeal?
 22 A. Well, I don't know that I played any role in making
 23 the decision. I think my role was to assess whether
 24 there were claims that could be appealed, and I
 25 believe that we did that. I think we looked at

1 Kolenda's decision where he basically invites the
 2 appeal and answers issues of first impression in
 3 Michigan and acknowledges that that's what he's doing
 4 And, you know, report back to -- to the client through
 5 capable in-house counsel that the -- that there are
 6 issues here that are appealable if that's the decision
 7 the client chooses to make.
 8 Q. And you never gave any -- any -- you never quantified
 9 the likelihood of success or failure?
 10 A. Not that I recall. I -- as I said earlier, I make it
 11 a practice not to give percentages or do that kind of
 12 thing.
 13 Q. Did you ever discuss with Mr. Birkbeck the general
 14 numbers regarding the number of appeals that are
 15 successful in Michigan?
 16 A. No. I don't recall having that conversation.
 17 Q. Did he ever ask that of you?
 18 A. Not that I recall.
 19 Q. At the time -- and, again, I apologize for jumping
 20 around here. But at the time the lawsuit was filed
 21 and prior to that time, given your exposure to and
 22 interaction with Mr. Birkbeck particularly, did you
 23 consider Mr. Meiresonne an experienced litigant or did
 24 you have no opinion one way or another?
 25 A. Well, to me, Mr. Meiresonne seemed -- you said

1 Meiresonne?
 2 Q. Yeah.
 3 A. Yeah, Mr. Meiresonne seemed to be experienced in
 4 litigation. He had been involved in a lengthy and
 5 cantankerous litigation in New York, and he had been
 6 involved through our firm with some prior litigations
 7 in Michigan. So I considered him to be a
 8 sophisticated litigant.
 9 Q. Did you expect Mr. Meiresonne would rely on his
 10 advice -- on the advice of counsel regarding
 11 particularly whether to file the appeal?
 12 A. Yeah, I guess so. Yeah, I would say that I would
 13 expect that he would listen to his counsel. I don't
 14 know that counsel was making the decision, but -- or
 15 giving advice rather than just saying whether issues
 16 were there that could be appealed, but -- but, yeah, I
 17 would expect that he would have listened to counsel in
 18 helping form his opinion.
 19 Q. Do you think it is within the standard of care for an
 20 attorney to say to his client that there is virtually
 21 no chance that you will be ordered to pay the other
 22 side's attorney fees?
 23 MR. STEC: Objection.
 24 THE WITNESS: Yeah, I don't feel that I'm
 25 qualified to opine on that.

1 BY MR. GRIMM:
 2 Q. Well, why not? You're an attorney, right?
 3 A. Well, I am an attorney. I mean, I can answer for
 4 myself. I can't say whether it's within the standard
 5 of care for all attorneys to ever say that, but it's
 6 not something I would personally do.
 7 Q. What do you consider the standard of care in that
 8 regard to be?
 9 A. Well, I don't know. That's -- maybe that's why we
 10 need -- you know, that's for an expert to decide.
 11 Q. Well, so you -- you don't know what the standard of
 12 care is for an attorney with regard to making a
 13 definitive statement that there's virtually no chance
 14 that you will be ordered to pay the other side's
 15 attorney fees? You don't know what the standard of
 16 care is in that regard?
 17 A. I don't know that I wouldn't do it. I don't know that
 18 there aren't any circumstances under which it would be
 19 appropriate.
 20 Q. Well, what about the circumstances in this particular
 21 case, do you think that was within the standard of
 22 care to make that statement given the facts of this
 23 case?
 24 A. I mean, I would not have said it.
 25 Q. I got that. My question is, though, because you --

1 you said depends on the case. What about this
 2 particular case, given Judge Owen's ruling, given all
 3 the other caveats that you issued before -- to your
 4 credit, right?
 5 A. Right.
 6 Q. -- do you think that that was within the standard of
 7 care to make a definitive statement like that?
 8 A. Well, I mean, it's just opinion, but -- but, no, I
 9 would not have considered that to be within what I
 10 thought to be the standard of care to say that.
 11 Q. Okay. Did Mr. -- and I know this is to your
 12 recollection, and if you don't recall, say so, because
 13 I know that -- and I didn't bring the whole file here,
 14 because I don't really feel like going through every
 15 single email.
 16 A. Of which there are millions.
 17 Q. Literally. So I really don't feel like going through
 18 all of those, because my view is they say what they
 19 say.
 20 A. Right.
 21 Q. So asking you does it say that really wastes
 22 everybody's time, right?
 23 A. Absolutely.
 24 Q. So here's the question, though. From what you
 25 recall -- and if the answer is look at the emails,

1 that's fine. But from what you recall, what did
 2 Mr. Birkbeck tell you at the outset was the reason
 3 that Mr. Meiresonne wanted to file a case against
 4 Terry?
 5 A. My recollection is that -- my recollection is that
 6 Mr. Birkbeck told me that Mr. Meiresonne had been
 7 defrauded by Mr. Terry, that Mr. Terry had lied in
 8 bringing his whistleblowing claim against IQS in the
 9 New York action, that he had copied those materials on
 10 his own, and cost IQS and -- and -- and
 11 Mr. Meiresonne, you know, several million dollars as
 12 a -- as a result of his actions, and that was the
 13 basis for wanting to bring the lawsuit in Michigan.
 14 Q. Did you -- were you of the opinion that the Terry --
 15 from your standpoint. I don't want you to speculate
 16 as to Birkbeck. But from your position in -- in
 17 filing the complaint, was it your understanding that
 18 the Terry action was brought solely as an effort by
 19 IQS to mitigate damages in the IQS versus Miller
 20 action? And if you want, I can back up and kind of
 21 lay a foundation for what the Miller action was,
 22 unless you know.
 23 A. Yeah, I -- you know, why don't you backtrack, because
 24 I don't recall specifically.
 25 Q. All right. My understanding was Miller was the

1 attorney in the underlying federal case, Thomas I,
 2 right?
 3 A. Right.
 4 Q. And there was a claim, IQS versus Miller, as a result
 5 of the imposition of those sanctions and the
 6 settlement for the 2-1/2 million.
 7 A. Okay.
 8 Q. So having laid that, my question is, was it your
 9 understanding, ever, that the Terry action was
 10 brought solely as an effort by IQS to mitigate damages
 11 in the IQS versus Miller action?
 12 A. That's not my recollection.
 13 Q. If that had been your recollection or if it had been
 14 your understanding -- well, let me do that over.
 15 If -- if Mr. Birkbeck had come to you and said, look,
 16 I want to file a complaint against Terry solely for
 17 the purpose of mitigating damages in this potential
 18 legal malpractice action against the New York
 19 attorney, would that have changed your opinion
 20 regarding filing the lawsuit?
 21 A. I might have not recommended it based on if that was
 22 the purpose of bringing the suit.
 23 Q. And that would be -- tell me if I'm wrong, but that
 24 would be because, as you said in an email -- well,
 25 just for the record, trust me on this, it was

1 September 17, 2007. That's the email where you kind
 2 of gave the caveat, you know.
 3 A. Um-hum.
 4 Q. Anyway, so I think one of the reasons you would answer
 5 that way, if I'm right, tell me if I'm wrong, would be
 6 it may be very difficult for these claims to survive
 7 summary disposition?
 8 A. Correct.
 9 Q. That was your thought going in?
 10 A. Yes.
 11 Q. And so then if you knew that, look, the only reason
 12 Mr. Birkbeck wanted to file a complaint was to
 13 mitigate potential damages, that might have changed
 14 your opinion?
 15 A. Correct.
 16 Q. In fact, given the fact that they may not survive
 17 summary disposition, more likely than not it would
 18 have changed your opinion, correct?
 19 A. Yeah. I think I probably would not have recommended
 20 moving forward if -- if -- and that's a big if,
 21 because it's speculative. It wasn't my understanding
 22 this is why we were bringing the suit. We were
 23 bringing the suit because Terryn defrauded them.
 24 Q. Right.
 25 A. But -- but, yeah, if -- if that were the

1 understanding, I think I would have said maybe we
 2 should rethink -- rethink that course of action.
 3 Q. And it certainly would have changed your opinion
 4 regarding whether or not to file an appeal from
 5 Kolenda's decision, right?
 6 MR. STEC: Well, there's no foundation that
 7 he made a decision to file the appeal. He's told
 8 you that --
 9 MR. GRIMM: I'm not saying he did. And if
 10 I said that, I'm sorry, but --
 11 MR. STEC: So you're asking him whether it
 12 would have modified his assessment of whether there
 13 were appealable issues?
 14 MR. GRIMM: Yeah. Yeah. Or whether to
 15 bring the opinion -- the appeal.
 16 BY MR. GRIMM:
 17 Q. Here's what I'm asking. If you had -- well, I guess I
 18 know the answer, because your first recommendation
 19 would have been don't file suit?
 20 A. Right.
 21 Q. So this is speculative in some sense?
 22 A. Right.
 23 Q. But let me put it this way, though. Hypothetically,
 24 if you found out after -- if you found out after the
 25 suit was filed but before Kolenda renders his decision

1 that the only -- the sole reason that the Terryn
 2 matter was brought in the first place was, as I said,
 3 to mitigate the damages, once Kolenda issued his
 4 ruling, what do you think -- again, it's a
 5 hypothetical -- without speculating, what would your
 6 advice have been regarding an appeal?
 7 A. Well, I mean, I really wasn't asked to give advice on
 8 whether to bring an appeal. It was just on whether
 9 to -- whether there were appealable issues. But, you
 10 know, with the same -- it would have been the same as
 11 whether -- you know, whether my advice would have been
 12 to bring the claim. It would have been, you know,
 13 you're throwing good money after bad.
 14 Q. Who -- was it Mr. Birkbeck that was advising Mr. -- as
 15 far as you know, was it Mr. Birkbeck that was advising
 16 Mr. Meiresonne on the decisions regarding whether or
 17 not to file the lawsuit, whether or not to appeal; you
 18 were basically in the role of here's what you can do
 19 if you decide to do it?
 20 A. Kind of, yeah. My -- my role was not to have direct
 21 contact with Mr. Meiresonne. I think early on in
 22 the -- in the representation I was sending him things
 23 directly, and -- and I think he -- he asked that I not
 24 send him things directly.
 25 Q. Mr. Meiresonne?

1 A. Mr. Meiresonne.
 2 Q. Okay.
 3 A. So I -- my -- my input was given to his in-house
 4 counsel, who then, I expect, you know, would report
 5 these things to him. And, indeed, you know, all of
 6 our emails were cc'd to Mr. Meiresonne, so I was aware
 7 that he was being informed, but I wasn't aware of, you
 8 know, other conversations that Mr. Meiresonne was
 9 having with his own in-house counsel.
 10 Q. I'm not sure you meant to say that when you said all
 11 of the emails were being cc'd to Mr. Meiresonne, and
 12 maybe you're not aware, but there were some that were
 13 not. There were some that were just between you and
 14 Mr. Birkbeck, right?
 15 A. Presumably, yeah.
 16 Q. Yeah.
 17 A. But the majority, I think, were copied to
 18 Mr. Meiresonne.
 19 Q. Okay. So then who did the bulk of the research
 20 regarding the appealable issues after Kolenda?
 21 A. Well, I don't recall who did the bulk of the research,
 22 but I do recall that to save money in-house counsel
 23 prepared the first draft of the appeal. And I think
 24 we might have done some of the research. We, meaning
 25 Law Weathers, might have done some of the research

1 leading up to that, but my recollection is that the
 2 first draft of the appeal came from Mr. Birkbeck and
 3 Mr. Meiresonne.
 4 Q. Now -- and I don't have it, but my understanding is
 5 that there was a lot of editing going into this
 6 appeal, correct?
 7 A. Correct.
 8 Q. Hang on one second, please. Do you recall seeing any
 9 emails from Mr. Meiresonne asking about the chances of
 10 an appeal -- the chances of a successful appeal?
 11 A. I don't recall any specifically, but there might have
 12 been emails where he asked those questions.
 13 Q. But it was your practice not to provide percentage of
 14 chances, and that we talked about?
 15 A. Yes, that's correct.
 16 Q. Okay. So, at some point, there's a decision to move
 17 ahead with the appeal, and I don't -- in the
 18 deposition -- I probably should have brought -- but in
 19 the deposition of Mr. Birkbeck, there was a discussion
 20 about some of these emails. I know you were involved
 21 in them. You may not remember, but let me just ask it
 22 this way. Do you recall -- because here's the way
 23 I -- let me throw all that out, start over.
 24 A. Okay.
 25 Q. The way I saw this thing leading up to the appeal

1 was -- and correct me if this is wrong, but,
 2 basically, you're saying, guys, I need to know what
 3 you want to do on this; is that right?
 4 A. Yeah, I think that that's correct. Yeah.
 5 Q. And you were saying here's what the issues can be?
 6 A. Right.
 7 Q. I think you've got arguments on these. But you were
 8 kind of leaving it to Birkbeck and Meiresonne to make
 9 the decision?
 10 A. Correct.
 11 Q. And you would expect, because Mr. Birkbeck was
 12 Mr. Meiresonne's general counsel, that that would be
 13 something he would advise him on regarding whether or
 14 not that is going to go ahead or not, that was left to
 15 them?
 16 A. Correct.
 17 Q. All right.
 18 A. Yeah. I presumed that those decisions would be made
 19 between Mr. Meiresonne and his general counsel.
 20 Q. And the nature of those conversations, except as
 21 contained in emails, you just don't know what they
 22 talked about, and you don't know what representations
 23 Mr. Birkbeck made to Mr. Meiresonne in that regard?
 24 A. Correct.
 25 Q. Did we already discuss, as far as you're concerned,

1 A.J. Birkbeck's role in developing the arguments for
 2 the appeal?
 3 A. Well, he -- we discussed that he had prepared the
 4 first draft and was, you know, very involved with the
 5 editing of it after that. Just in general terms, you
 6 know, it was a very hands-on, in-house representation.
 7 You know, we -- there's some cases where in-house
 8 counsel only wants a memo once every couple of months,
 9 and there's some cases where in-house wants to have
 10 daily contact and information, and this was a very
 11 active in-house representation.
 12 Q. So on a scale of one to ten, very hands-on being ten,
 13 one being memo once a month is fine, where would you
 14 put him?
 15 A. It was a ten.
 16 Q. Did you -- based upon that assessment on your part,
 17 did you get the impression that Mr. Meiresonne was
 18 relying on Mr. Birkbeck's advice and counsel?
 19 MR. GILCHRIST: Let me object to the
 20 foundation.
 21 MR. STEC: You're asking him to speculate,
 22 form, foundation.
 23 BY MR. GRIMM:
 24 Q. You know, don't speculate. I'm saying based upon that
 25 conduct by Mr. Birkbeck, did you get an impression as

1 to whether or not Mr. -- the extent to which
 2 Mr. Meiresonne was relying on Mr. Birkbeck?
 3 A. Yeah, my understanding was that -- that they were
 4 having regular communications and -- and -- and, yes,
 5 that he was relying on Mr. Birkbeck's counsel in
 6 making his decisions.
 7 Q. So at some point -- so at some point, there's a
 8 decision made by Mr. Meiresonne, Mr. Birkbeck to let's
 9 move ahead with the court of appeals, let's file it,
 10 right?
 11 A. Correct.
 12 Q. And there was -- there was substantial work that went
 13 into it, I understand that. Then you made an
 14 estimate -- you had made an estimate of the costs of
 15 the appeal. Do you know, as you sit here today, or
 16 would the billings answer this question, what the
 17 total bill for the appeal was?
 18 A. I have no idea.
 19 Q. It would be reflected in the billings?
 20 A. Yeah.
 21 Q. And that would be easy to determine based upon the
 22 line item you put for the reason you're charging
 23 whatever you're charging?
 24 A. Right. Yeah, on the firm's bills, it's broken out by
 25 date.

1 Q. Okay.
 2 A. So from the date that the appeal decision was made
 3 until the date it was filed, perhaps, or, you know,
 4 until the end of the appeal --
 5 Q. Now, you --
 6 A. -- that would be reflected in the bills.
 7 Q. I'm sorry, I didn't mean to cut you off. Actually, I
 8 did, that's why I said it, but I apologize for doing
 9 so.
 10 Do you -- did you have anything to do with
 11 the outstanding bills that Law Weathers is claiming in
 12 a counterclaim that are owed by Mr. Meiresonne to the
 13 firm? Did you have anything to do with the collection
 14 of those bills?
 15 A. No. He was -- Mr. Meiresonne was Kevin Krauss's
 16 client, so the -- Kevin and, to a lesser degree, Mike
 17 Roth would negotiate the billings with -- with
 18 Mr. Meiresonne. I didn't really have direct
 19 responsibility for that.
 20 Q. So any questions that I would ask you, like efforts to
 21 collect on that after the conclusion of the Terryn
 22 matter, would be better directed to --
 23 A. Sorry, that's me.
 24 Q. Take your time. Do you need it?
 25 A. No.

1 Q. -- would be better directed to Mr. Krauss or Mr. Roth?
 2 A. Yeah, that's my recollection.
 3 Q. Okay. Did you -- so the -- the appeal brief is
 4 finally completed between you and Mr. Birkbeck and
 5 it's filed and then there was a cross-appeal, I
 6 believe, on the sanction issue, right?
 7 A. Correct.
 8 Q. And my understanding, also, is that prior to the
 9 hearing or oral argument, when you got -- or the
 10 briefing was completed, Terryn kind of waived the
 11 argument with regard to sanctions, but they didn't
 12 brief it, right?
 13 A. Correct. They did not preserve their -- properly
 14 preserve their sanctions argument for appeal.
 15 Q. Right. Now, the -- you did the argument on behalf of
 16 Mr. Meiresonne and IQS, right?
 17 A. Correct.
 18 Q. Would it be fair to say that the panel was hostile?
 19 A. It would be very fair to say that Judge Talbot was
 20 hostile. The other two members of the panel I don't
 21 recall weighing in very much at all. Not that they
 22 had oxygen to breathe, because Talbot was -- was
 23 taking it all out of the room with his, you know --
 24 Q. I read the transcript.
 25 A. -- fist pounding.

1 Q. I read the transcript. My guess is -- have you read
 2 the transcript?
 3 A. Unfortunately, yes.
 4 Q. As bad as the transcript is, it was probably worse
 5 being there, wasn't it?
 6 A. Absolutely.
 7 Q. I gathered that.
 8 A. It was a very uncomfortable afternoon.
 9 Q. Yeah. So here's just a couple of questions on that.
 10 Talbot's enmity was directed toward your side of the
 11 ledger, right?
 12 A. Correct.
 13 Q. After the hearing -- well, Mr. Birkbeck was at the
 14 hearing, too, right?
 15 A. Correct.
 16 Q. I take it that he did not -- well, I know -- never
 17 mind. I know that's the case.
 18 The issue of sanctions came up at that
 19 hearing, didn't it?
 20 A. An issue of sanctions came up. It was my recollection
 21 that it was not during my direct but during my
 22 opponent's tes- -- or argument, an issue came up about
 23 whether it would be proper to sanction for filing the
 24 complaint, and I -- I addressed that in my rebuttal
 25 and said it would not be proper. For one, they hadn't

1 preserved it, their right to ask for it, and I think
 2 that was the extent of it.
 3 Q. Which kind of surprised you, because they waived it on
 4 appeal, because they didn't brief it, right?
 5 A. Well, I don't know that they had acknowledged that
 6 they had waived it. I think they were, you know,
 7 hoping to get something from nothing, if you will.
 8 Q. I gotcha. And just so I don't try to -- I'm going to
 9 show you that. I've highlighted a couple of portions.
 10 This is a Tuesday, August 10, 2010 email from you to
 11 Mr. Birkbeck, copy to Stapleton and Morgan. So it's
 12 quite a ways after the fact. I'll show it to you. So
 13 just -- I just want to make sure. This is what I'm
 14 seeing, right, it's an email from you to those folks?
 15 A. Yeah, this appears to be an email from -- from me to
 16 A.J., Stapleton, and Morgan.
 17 Q. And Mr. Meiresonne is not in that email, correct, was
 18 not included in it?
 19 A. He was not. But by including his in-house counsel, I
 20 presumed that it's going to the company.
 21 Q. No, I just want to make sure. So one of the things
 22 you say in this is that -- and you're talking about
 23 the argument. And it says, We rightly argued that
 24 Terryn had allowed his appellate sanctions argument to
 25 lapse and the court of appeals found the same, but no

1 one thought the court of appeals would order sanctions
 2 sua sponte until the oral argument where that issue
 3 was raised, right? That's what that says?
 4 A. Let me see.
 5 Q. It's right there. I read that right, correct? And I
 6 just want to ask you some questions about that.
 7 A. Yeah, that is what it says.
 8 Q. Okay. And I think what you're -- tell me if this is
 9 right. What you were getting at there was that
 10 because it was waived -- because they didn't brief it?
 11 A. Correct.
 12 Q. It was kind of a surprise to you that they -- they're
 13 talking sua sponte here about sanctions?
 14 A. Well, it was a surprise to me that -- that Talbot
 15 would have brought up sanctions to David Gass and kind
 16 of went through this whole rigmarole about --
 17 Q. How do we do it.
 18 A. -- how do we do it when they waived their right to get
 19 sanctions. So, yeah, it was very concerning at that
 20 point.
 21 Q. And you were concerned, as you say in the email, that
 22 they brought it up themselves? That was a concern on
 23 your part?
 24 A. Correct.
 25 Q. And Mr. Birkbeck was at that hearing with you. He

1 heard the same thing you did, correct?
 2 A. I presume so, yes. He was at the hearing. I assume
 3 he heard it.
 4 Q. If he was paying attention.
 5 A. I'm sure he was paying attention. We were -- we were
 6 on pins and needles.
 7 Q. All right. Did you -- if you recall, after the
 8 hearing is over and you're limping out of the
 9 courtroom, did you have a discussion with Mr. Birkbeck
 10 about that issue regarding the sanctions; do you
 11 recall?
 12 A. You know, I don't recall, but I'm sure that we did.
 13 I'm sure that we discussed all the, you know, things
 14 that were raised at the hearing, including the
 15 sanctions issue.
 16 Q. Did you convey to -- in an email or otherwise -- to
 17 Mr. Meiresonne how badly the hearing went?
 18 A. I don't know if I did personally. I mean, you know,
 19 his counsel was there and I presumed was going right
 20 back to report to him.
 21 Q. Which is what he usually did?
 22 A. Which is what I presumed he usually did.
 23 Q. Yeah. Okay. Prior to -- so you go to the court of
 24 appeals hearing, and we talked about all of that.
 25 A. Um-hum. Yes.

1 Q. And I'm just going to -- I'm just going to cut to
 2 this. There was -- in the deposition of Mr. Birkbeck,
 3 I asked him some questions about this issue. And
 4 maybe you don't know about it. Tell me if you do know
 5 about it, because you can stop me. This issue about a
 6 potential deal or offer to walk away from the whole
 7 Terryn matter and Thomas II, right, by this -- by
 8 Mr. Ritinger, New York counsel for Thomas, you know
 9 what I'm talking about, right?
 10 A. I've learned of it, yes.
 11 Q. Okay. I'm going to show you Exhibit 40 from the
 12 Birkbeck deposition. And like I said, I'm going to
 13 try to cut through a lot of this and just cut right to
 14 the chase here. The way it looks to me is like
 15 Tuesday, March 23rd, 2010, is the first time you found
 16 out that there was a potential to walk away from -- a
 17 global walk-away type of resolution. And I'm going to
 18 show you Exhibit 40, and the highlighted portion is
 19 from -- an email from Mr. Birkbeck to you, and tell
 20 me -- well, just tell me once you've read it.
 21 A. I've read it. It --
 22 MR. STEC: Wait for the question.
 23 BY MR. GRIMM:
 24 Q. Okay. So you've read it. So my question is, am I
 25 right that this email is the first time you learned

1 about a potential -- even a potential to walk away or
 2 an effort to walk away globally?
 3 A. To my recollection.
 4 Q. Okay. Now, I asked Mr. Birkbeck in his deposition,
 5 that prior to receiving the court of appeals opinion,
 6 I asked him if he had told you that Mr. Ritinger had
 7 made some kind of statement to that effect, that that
 8 was a possibility, that why don't we all just walk
 9 away from this. This is before the opinion came out
 10 from the court of appeals, after the argument. Is
 11 that a true statement?
 12 A. That's not true to my recollection. I -- I think
 13 after the court of appeals oral argument, I would have
 14 strongly recommended that they take a walk-away deal
 15 because we took it in the shorts that day. So I don't
 16 recall having any conversations in that time period
 17 where it was disclosed that we had a deal on the table
 18 at the time to walk away.
 19 Q. It was, as you say, take it in the shorts, in your
 20 experience, that's about as bad as it gets in a court
 21 of appeals, isn't it?
 22 A. It's as bad as I've ever gotten it in the court of
 23 appeals, and I hope that other people have not had
 24 worse.
 25 Q. So you -- so you had the impression not only that it

1 was likely that you would lose the appeal, but there
 2 was also this issue, potentially, of sanctions being
 3 brought up for the first time in that argument, right?
 4 A. That's correct. Well, for the first time --
 5 Q. By the court.
 6 A. By the court, yes.
 7 Q. Because it was in -- in the cross-appeal but not
 8 briefed?
 9 A. Yeah. In every -- in every brief that was filed and
 10 every -- you know, the complaint, they answer all
 11 these things, there was a request for sanctions put
 12 in. But Judge Kolenda properly noted that, you know,
 13 these were good-faith claims and that he couldn't
 14 sanction us for bringing them. And, presumably, the
 15 court of appeals would have given that deference,
 16 which, apparently, they, you know, chose not to do,
 17 so ...
 18 Q. Well -- and as you put in this email, that can happen
 19 with any court --
 20 A. Right.
 21 Q. -- because it's their discretion.
 22 A. That's right.
 23 Q. And they kind of put everybody on notice that at least
 24 they were thinking about going down that road?
 25 A. Yeah, that's right.

1 Q. So let me ask you this question then. That if you
 2 were not told by Mr. Birkbeck that Mr. Rittinger had
 3 made this offer -- no, throw that one out, too.
 4 If you had been told -- if you had been
 5 told that that was an offer that was on the table,
 6 what would your recommendation to Mr. Birkbeck -- or,
 7 you answered that, that you would have said take it,
 8 get it done, walk away, move away.
 9 A. After the court of appeals argument, I would have
 10 recommended that we not, you know, mess with this any
 11 more because of the potential for a bad result from
 12 the court of appeals.
 13 Q. As far as you recall, if Mr. Birkbeck testified that
 14 he did absolutely tell you that there was this
 15 potential offer on the table before the opinion came
 16 out, as far as you recall, would that be a true
 17 statement?
 18 A. I think that that would be an inaccurate statement.
 19 Q. An inaccurate?
 20 A. Correct.
 21 Q. Just give me one second, because I want to find that.
 22 I just want to make sure I didn't misquote anything.
 23 So I've got a few more questions, but I do want to
 24 just -- well, let me just ask you this before I find
 25 this. Sorry. Do you feel like this statement or this

1 discussion by the panel is -- particularly Talbot,
 2 let's just stay with Talbot, because he was the one
 3 that was really driving that train. Is that something
 4 that should have been reported to Mike after that
 5 hearing, Mike Meiresonne?
 6 A. Yeah. I think that's -- my expectation would be that
 7 that's something that would have been reported, that
 8 the court had brought up sanctions even though the
 9 sanctions claim had been -- not been properly
 10 preserved for appeal.
 11 Q. And because your role was what it was, which we've
 12 talked -- I don't think we can beat the horse any
 13 more. That's something you would have expected
 14 Mr. Birkbeck to do?
 15 A. Correct, when he -- when he left the courtroom and
 16 went to talk to Mike about what happened, presumably.
 17 That's what I presume he did.
 18 Q. And, in fact, the standard of care would have required
 19 that, right, given the fact that sanctions were
 20 discussed?
 21 A. I think that would have been ordinary, yes.
 22 Q. Okay. We've covered that. All right. So did you
 23 feel as though, at the court of appeals hearing, when
 24 there was a statement made by Talbot, if you remember,
 25 where just kind of off-the-cuff or somewhere out of

1 the blue he said, well, we can sanction either the
 2 parties or the attorneys or both; do you remember that
 3 discussion he had?
 4 MR. STEC: Well, you're taking it out of
 5 context. He used the word frivolous in there, and
 6 there hadn't been any finding of any frivolous --
 7 MR. GRIMM: Right. But what he was
 8 saying -- I don't know if somebody has the transcript.
 9 BY MR. GRIMM:
 10 Q. But I think there was a statement that said -- because
 11 they were talking about how do we do it, do you
 12 remember that, how do we even go about doing it, and
 13 there was an issue of where do we have the hearing
 14 because Kolenda had retired, and there was a
 15 discussion about sending it back to his replacement,
 16 who I don't think they knew at the time, but it was
 17 Trusock. But there was a statement that one of them
 18 made that we can sanction under the court rule either
 19 the litigant or the attorneys; do you remember that?
 20 MR. STEC: Well, let me --
 21 THE WITNESS: I don't remember that. I'm
 22 sorry.
 23 MR. GRIMM: Do you have that? I'm sorry.
 24 You have.
 25 MR. STEC: I'm going to object. I do have

1 it. And what the judge said, on page 31, was, well,
2 if there were a finding of frivolous, it also can be
3 applied, as you know under the court rule, both to the
4 litigants as well as counsel.

5 MR. GRIMM: Right.

6 MR. STEC: But that was in the context of
7 talking about -- Gass was arguing about -- Kolenda
8 should have imposed sanctions if he would have
9 addressed the other three counts that he never
10 addressed. That's what Gass was arguing about which
11 led to that whole exchange.

12 BY MR. GRIMM:

13 Q. But there was a statement in there -- in that hearing,
14 there was a statement about the court rule allows for
15 a court, in its discretion, to sanction either the
16 counsel or the litigant, correct? He just read it.

17 A. It says what it says.

18 Q. Yeah. Did you feel like that put you in a potential
19 conflict situation with Mr. Meiresonne or not?

20 A. No, because, again, they -- what they were talking
21 about was the sanctions for bringing the claim -- for
22 bringing the complaint, and the court of appeals
23 doesn't have -- didn't have authority to sanction
24 Mr. Meiresonne or us for bringing the complaint,
25 because Judge Kolenda didn't do so, unless they found

1 that Kolenda abused his discretion.

2 Q. All right.

3 A. So --

4 Q. So, eventually, this gets back to Trusock?

5 A. Correct.

6 Q. Why was -- why did you have Steve Stapleton handle
7 that part of the case?

8 A. Well, once -- my recollection is --

9 Q. Yes.

10 A. -- once we had the bad result, you know, from the
11 court of appeals, Mr. Meiresonne wanted to have
12 someone more senior handle his appeals going forward,
13 the appeals to the Supreme Court and the remand before
14 Judge Trusock.

15 Q. Okay.

16 A. So I -- you know, I met with Mike Roth and -- and Bob
17 Buchanan, and we talked about who the -- who that
18 would be. And Steve Stapleton had just taken a case
19 to the court of appeals and was a more experienced --
20 or the Supreme Court and was a more experienced
21 litigator on that vein of work, so it was decided to
22 hand it off to Steve.

23 Q. Okay.

24 A. Long answer short, the client requested it.

25 Q. Just going back, one question was -- we had talked

1 about this reason for filing the lawsuit, about it
2 being solely to mitigate damages in another case. We
3 talk -- you answered all of that. Would your answer
4 with regard to those questions on that be the same if
5 the reason -- the initial reason for bringing the
6 lawsuit was to make Christopher Terryn feel some of
7 Meiresonne's pain?

8 MR. STEC: Object to vagueness, but go
9 ahead if you understand what that means.

10 THE WITNESS: Yeah, I don't know that I
11 under- -- I would understand what feel the pain would
12 mean, but -- but I -- yeah, I mean, I don't think
13 you -- you bring a lawsuit out of pure spite or
14 vindictiveness. I don't think you do that, either. I
15 don't think those claims work. But -- but, you know,
16 by feel the pain, it would mean he cost him \$2-1/2
17 million and he, you know, needs to -- and he defrauded
18 him, then I think, you know, that would be a different
19 answer.

20 BY MR. GRIMM:

21 Q. It would depend on what Mr. Birkbeck meant by a
22 statement like that?

23 A. Correct.

24 MR. GILCHRIST: Mr. Birkbeck?

25 MR. GRIMM: Um-hum. Give me one minute

1 with Meiresonne.

2 MR. STEC: Sure.

3 (Off the record at 2:07 p.m.)

4 (Back on the record at 2:10 p.m.)

5 MR. GRIMM: Okay. I'm all set. All done.

6 MR. GILCHRIST: All right. Why don't you
7 give me a five-minute break, and we'll finish up
8 really quick.

9 (Off the record at 2:10 p.m.)

10 (Back on the record at 2:20 p.m.)

11 EXAMINATION

12 BY MR. GILCHRIST:

13 Q. Mr. Morant, my name is Mark Gilchrist.

14 A. Hi, Mark.

15 Q. I'm here on behalf of A.J. Birkbeck. I just have a
16 couple of follow-up questions for you.

17 A. Okay.

18 Q. You've used the terms describing A.J.'s role in the
19 IQS v Terryn lawsuit both as in-house counsel and
20 general counsel. Do you use those terms
21 interchangeably?

22 A. I do.

23 Q. Okay. Okay.

24 A. I believe, actually, I used in-house counsel and then
25 Mr. Meiresonne's counsel used general counsel. I was

1 just repeating his choice of terms.
 2 Q. And that's fine. I think that A.J. has described
 3 himself as general counsel and I think plaintiff has
 4 used similar language. But at least in your mind,
 5 in-house counsel and general counsel are --
 6 A. Synonymous.
 7 Q. -- interchangeable terms?
 8 A. That's correct.
 9 Q. Okay. And then your role in all of this, obviously,
 10 was as outside litigation counsel?
 11 A. Correct.
 12 Q. And you or your firm made all the filings in that
 13 case, including the appeals?
 14 A. We filed the briefs, correct.
 15 Q. Right. And conducted all the oral arguments?
 16 A. Correct.
 17 Q. And -- and A.J. was in attendance of those things, but
 18 he never made -- he never stood up in court or made
 19 any arguments on the plaintiffs' behalf in this case?
 20 A. Well, I can't speak to what happened, only my portion
 21 of the involvement in it.
 22 Q. All right. And would I be right with respect to your
 23 portion, the portion of your involvement in the case?
 24 A. To my recollection, that's correct.
 25 Q. Okay. Let me show you what has been marked previously

1 as Exhibit 39. And you were asked about that document
 2 by Mr. Grimm earlier in the deposition; do you recall
 3 that?
 4 A. I do.
 5 Q. Okay. And have you read A.J.'s deposition?
 6 A. I have not.
 7 Q. Okay. He testified, with respect to the last
 8 sentence, Unlike Thomas versus IQS, there's virtually
 9 no chance that we would be ordered to pay the other
 10 side's attorney fees. The need to do so there was
 11 statutory. Do you see where I'm pointing?
 12 A. I do.
 13 Q. A.J. testified at his deposition that that sentence
 14 was referring to the trial court aspect of the case,
 15 not the court of appeals.
 16 A. I -- I can't speak to the context of that, because I
 17 didn't write it, and it's only one page out of what
 18 appears to be, perhaps, a multi-page document.
 19 Q. Okay. But -- but as a result of that, you, obviously,
 20 have no evidence to indicate that A.J. was incorrect
 21 as to what he was referring to when he drafted that
 22 sentence; is that fair?
 23 A. That's fair. I can't speak to the context of what he
 24 meant, because I didn't draft it.
 25 Q. Okay. And -- and as -- I mean, there's nothing that

1 you would glaringly disagree with with respect to
 2 A.J.'s prior testimony that he was referring to the
 3 lower court action, not the court of appeals; is that
 4 also correct?
 5 MR. STEC: Well, he said he didn't read his
 6 testimony, so objection, foundation.
 7 THE WITNESS: Well, I mean, if -- if what
 8 this was referring to was the -- being sanctioned for
 9 the underlying -- for filing of the complaint and we
 10 were already in the court of appeals and Kolenda had
 11 already ruled that -- found that our underlying
 12 complaint was not frivolous, then -- then I -- I mean,
 13 I still would not say never or, you know, that there
 14 was very -- but it would be -- it would have been --
 15 it would have taken the court of appeals to have found
 16 that Kolenda had abused his discretion in not
 17 sanctioning us to a result in sanctions. So to that
 18 extent, I would -- that's my understanding of what
 19 that would have said as to that. I mean, again, I --
 20 I would not have said never, but -- because I just --
 21 anything can happen, but -- but it would make more
 22 sense, at least, if that's what it was referring to.
 23 BY MR. GILCHRIST:
 24 Q. And, in fact, that's exactly what happened, right? I
 25 mean, Kolenda had the opportunity to sanction and he

1 declined --
 2 A. Declined.
 3 Q. -- to exercise that opportunity, correct?
 4 A. Right.
 5 Q. You read Kolenda's opinion.
 6 A. I have.
 7 Q. And would it be fair to say in reading his opinion
 8 that he found evidence to support IQS's position,
 9 correct?
 10 A. Absolutely.
 11 Q. And evidence to support Terryn's position?
 12 A. Correct.
 13 Q. And thought that it was, in fact, an issue of first
 14 impression in Michigan?
 15 A. Right.
 16 Q. Made his decision in Terryn's favor --
 17 A. Correct.
 18 Q. -- correct?
 19 But was in no way going to issue sanctions
 20 because it was a close call?
 21 A. Correct.
 22 Q. Okay.
 23 A. Yeah, that's my understanding. He invited the appeal,
 24 Kolenda's decision.
 25 Q. And I was going to ask you that, because you used that

1 exact language.
 2 A. Yes.
 3 Q. Because it was an issue of first impression and
 4 because it was filed in good faith, Kolenda invited
 5 the appeal, for the court of appeals to decide this
 6 issue?
 7 A. That's correct. And in a footnote, I think he even
 8 mentioned that the court of appeals would have to pass
 9 on these issues, you know, would have to take up these
 10 issues.
 11 Q. Let me show you the second sentence on Exhibit 39.
 12 There A.J.'s clearly referring to the appeal, because
 13 he references the appeal.
 14 A. You're talking about the second sentence in the first
 15 paragraph?
 16 Q. I'm sorry, I pointed to the wrong place. We can only
 17 speculate, that sentence.
 18 A. Okay.
 19 Q. And I read that correctly when I say, We can only
 20 speculate as to the grounds for appeal until such time
 21 as we have a chance to review his decision.
 22 A. Correct, that's what it reads.
 23 Q. Okay. And you agree that his decision would be Judge
 24 Kolenda's opinion -- Judge Kolenda's decision, by his,
 25 because it's singular? He's not talking about a

1 in your mind, decision makers and you were executing
 2 what you felt they wanted; is that fair?
 3 A. Correct.
 4 Q. Okay.
 5 A. Correct.
 6 Q. But on the other hand, of course, if they were making
 7 decisions that, in your mind, maybe not even likely,
 8 but there was a chance that sanctions would be
 9 forthcoming, either to the plaintiff or certainly to
 10 your law firm as the entity who signed the document to
 11 be submitted, you would have raised those red flags,
 12 right?
 13 A. To whom?
 14 Q. To either A.J. or the plaintiff, probably A.J.
 15 A. Well, yeah. I mean, Mr. Birkbeck was in the room for
 16 the oral argument. I mean --
 17 Q. I'm talking about before the -- before the briefs
 18 were -- were submitted or at -- at the time the
 19 decision to pursue the appeal was taken, okay, so well
 20 before oral argument.
 21 A. Okay. So can you restate your question?
 22 Q. I can. Absolutely. My fault for not orienting you.
 23 A. I lost the question in the -- in there.
 24 Q. To the proper time frame.
 25 A. Yeah.

1 panel.
 2 A. Well, I think given the date of the document, that
 3 that is the assumption that I would make.
 4 Q. Because this came out prior to --
 5 A. The oral argument in the court of appeals. That's
 6 January --
 7 MR. STEC: 2008.
 8 THE WITNESS: 2008.
 9 BY MR. GILCHRIST:
 10 Q. Okay. And, you know, we've used the term speculation,
 11 and I'm not -- I don't ask us to insult your
 12 intelligence at all, but when you read that, a fair
 13 reading of that -- or fair reading of this, that
 14 sentence, is that A.J. is saying that, you know, until
 15 we get Kolenda's decision, we're not going to have any
 16 idea what the basis of the appeal is going to be?
 17 A. Correct, because we don't know the basis on which he's
 18 going to uphold or deny the motion.
 19 Q. And then, of course, we can only speculate means we
 20 can only guess?
 21 A. Correct.
 22 Q. All right. Now, there was some discussion about the
 23 issue of potential sanctions in the court of appeals
 24 and -- I mean, I recognize that it's your testimony
 25 that the plaintiff and A.J. were, perhaps, more the,

1 Q. If at the point in time where everybody is deciding
 2 should we pursue an appeal --
 3 A. Okay.
 4 Q. -- or not, if even -- even in your mind that they were
 5 the decision makers and you were just executing the
 6 plan, if you thought there was, you know, any kind of
 7 risk or -- I mean, I realize we can never say never.
 8 A. Right.
 9 Q. I litigate, so I understand that. I know exactly what
 10 you're saying. But if there was a risk, whether we
 11 call it real or significant or whatever --
 12 A. Right.
 13 Q. -- of sanctions as to either the plaintiff, as the
 14 party, or, presumably, Law Weathers --
 15 A. Right.
 16 Q. -- as the party's attorney, that you would have raised
 17 red flags; you would have said, whoa, hold on a
 18 second, I'm not sure we can do that?
 19 A. In the -- I think I understand your question. In
 20 the -- in the assessment of claims or -- or, you know,
 21 issues that would have to be addressed in appealing,
 22 yes, if there were -- if sanctions was a -- was a big
 23 risk, we would have identified that in the issues that
 24 we addressed in looking at the -- in looking at
 25 whether you could appeal or not, but -- or, you know,

1 whether appealing was, you know, a great idea or not.
2 But the -- given that Kolenda had already denied a
3 sanctions, you know, request, it would have been more
4 of an uphill for plaintiffs to get sanctions, because
5 they would have to have Kolenda's decision overturned,
6 so it would have been less likely in this -- in this
7 case.

8 Q. So the risk of anybody getting sanctioned by the court
9 of appeals dropped when Kolenda said no, I'm not
10 issuing sanctions?

11 A. Correct. On the basis of filing the complaint,
12 correct. But there's -- I mean, there's always a risk
13 that you can be sanctioned by any court, and all
14 attorneys know that. You know, courts do what they
15 want to do, and they have the authority on their own
16 and discretion to sanction people. So there is a risk
17 that's always -- that's kind of a smaller inherent
18 risk that's always there.

19 Q. But in pursuing the appeal, if that was a risk that
20 you were concerned about, you would have -- you would
21 have raised that with somebody?

22 A. We did not -- or I did not think that the plaintiffs
23 would prevail on their -- on appealing Judge Kolenda's
24 sanctions ruling.

25 Q. Even if they had not dropped it, right?

1 A. Yeah, even if they had not dropped it because of the,
2 you know, benefit you get from the lower court's
3 ruling.

4 Q. And what is that? What benefit does the party get
5 from the lower court's ruling?

6 A. That -- well, they -- you would -- the reviewing court
7 would have to overturn the lower court to change his
8 ruling, and that's a higher standard.

9 Q. You testified that in this case, the overwhelming, if
10 not all, medium of communication was -- with respect
11 to you was by way of email?

12 A. Yeah. The vast majority of communications with the
13 plaintiff -- with Mr. Meiresonne and Mr. Birkbeck were
14 through email.

15 Q. Okay. And you don't think -- again, I mean, there's
16 no email that's -- where you're raising the specter of
17 sanctions at the point in time when -- when everyone
18 is deciding whether to pursue this appeal in your best
19 recollection?

20 A. I don't recall whether there is or is not. I have not
21 looked back through the many, many volumes of emails
22 that we had.

23 Q. What did you do to prepare for today?

24 A. Not much, frankly. I came in and I met with counsel
25 and walked through some issues; but other than that, I

1 didn't really review anything today.

2 Q. Do you remember an email or an issue -- this was
3 marked as Exhibit 29 in the plaintiff's deposition,
4 and I'll certainly show it to you. But before I do
5 that, I just want to ask if you recall the issue,
6 where somebody asked if -- if we -- by we, I mean, you
7 know, IQS -- ought to affirmatively ask for sanctions.
8 And you said, ah, no, slow down, I don't think that we
9 ought to do that.

10 A. What was the time frame on that again?

11 Q. I can show it to you.

12 A. I think he has it.

13 Q. Do you remember the issue at all?

14 A. Vaguely.

15 Q. Go ahead and take a look at it.

16 A. Okay. I've read it.

17 Q. And was I correct in terms of my sort of paraphrasing
18 of the issue, there was a request made that IQS
19 affirmatively seek sanctions and you advised against
20 that?

21 A. Yeah, that appears to be correct.

22 MR. GRIMM: Can I see that?

23 BY MR. GILCHRIST:

24 Q. And the reason, as I read it, is because, no, the
25 court of appeals doesn't like that stuff, let's take

1 the -- the higher ground, and just deal with their
2 argument on sanctions, and that's the best way to
3 handle it?

4 A. That's correct. Yeah, that and their -- their appeal,
5 their cross-appeal, you know, was a good-faith
6 cross-appeal. So, yeah, there really wasn't a reason
7 to sanction -- go for sanctions against them. That
8 was -- that I felt would have been worthwhile.

9 Q. Even though you reported things through Mr. Birkbeck,
10 there's no doubt in your mind that your client, in the
11 underlying case, was IQS, right?

12 A. Correct.

13 Q. And that IQS and Mr. Meiresonne are -- I mean,
14 Mr. Meiresonne is the face of IQS?

15 A. Mr. Meiresonne, yes, was the principal -- was the
16 principal of IQS, right.

17 Q. Right. I mean, you're not -- in terms of keeping the
18 clients well informed, you have to -- a person has to
19 be well informed, just not a corporate entity doesn't
20 keep information, right?

21 A. Correct. But I would add that in-house counsel was a
22 person --

23 Q. Right.

24 A. -- as well.

25 Q. But let me ask you this way. I mean, your -- if you

1 were concerned that Mr. Meiresonne was not being well
 2 informed, then it would have been your ethical
 3 obligation to make sure that he was or do you think
 4 that you just had to keep A.J. informed?
 5 A. Well, that's an assumption. I never felt that way,
 6 that Mr. Meiresonne wasn't being informed.
 7 Q. And that's where I was going.
 8 A. My understanding was that he was always being informed
 9 by Mr. Birkbeck.
 10 Q. And that's where I was going. That -- that based on
 11 your review of the emails and the information that was
 12 going back and forth, you were satisfied that
 13 Mr. Meiresonne was sufficiently informed to make
 14 decisions about the case?
 15 A. Correct.
 16 Q. Okay.
 17 A. To my understanding, correct.
 18 Q. This Thomas II settlement offer that's been an issue,
 19 let me show you an email. I don't remember if this
 20 has been previously marked. It's an email dated
 21 February 9, 2010, from A.J. to you; is that correct?
 22 MR. GRIMM: What was that question? Sorry.
 23 MR. STEC: It's an email from A.J. to Les.
 24 THE WITNESS: Correct, this is an email
 25 from A.J. to me, dated February 9, 2010.

1 BY MR. GILCHRIST:
 2 Q. Okay. And February 9th was after the oral argument --
 3 A. Correct.
 4 Q. -- but before the court of appeals decision?
 5 A. Correct, to my recollection.
 6 Q. Okay.
 7 MR. GRIMM: Can I see it?
 8 MR. GILCHRIST: Sure.
 9 BY MR. GILCHRIST:
 10 Q. And what A.J. is telling you here is I would like to
 11 discuss the Terry case with you today in light of the
 12 recent developments in New York; is that right?
 13 A. That's what it says, correct.
 14 MR. GRIMM: And let's mark this.
 15 MARKED FOR IDENTIFICATION
 16 DEPOSITION EXHIBIT 42
 17 2:39 p.m.
 18 BY MR. GILCHRIST:
 19 Q. Exhibit 42. Take a look at the time entry from the
 20 9th.
 21 A. Okay.
 22 MR. GRIMM: I'm sorry, do you need it to
 23 ask him questions?
 24 MR. GILCHRIST: I do, but if you want to
 25 take a look at it, feel free.

1 MR. GRIMM: Okay. What number is that, by
 2 the way? Is that 42?
 3 MR. GILCHRIST: 42.
 4 BY MR. GILCHRIST:
 5 Q. The time entry on the 9th indicates, of course, this
 6 is a billing entry from A.J.'s law firm, Fulcrum Law
 7 Group, from February of 2010; is that what it appears
 8 to be?
 9 A. That's what it appears to be.
 10 Q. Sure. And on the 9th, it indicates draft email to Les
 11 Morant, Law Weathers, regarding New York developments
 12 in Thomas II; is that right?
 13 A. That's what it says.
 14 Q. 0.1, and then there's a telephone -- there's an entry
 15 indicating a telephone conference with yourself
 16 regarding the same of a .4; is that right?
 17 A. That's what it says.
 18 Q. And then a review of an email from Mr. Meiresonne
 19 regarding the same. That's the final entry?
 20 A. Correct.
 21 Q. Okay. Now, this was shortly after the Thomas II
 22 settlement conference where they -- the walk-away
 23 offer, as we're describing it, was made.
 24 A. I don't know that to be a fact, but I'll take your
 25 word for it.

1 Q. Do you -- having seen this entry, having seen the
 2 email that, hey, we need to talk -- we being yourself
 3 and A.J. -- we need to talk about the developments in
 4 New York, does that change your time frame at all as
 5 to when you learned about the walk-away effort? Does
 6 that refresh your memory as to having discussions with
 7 A.J. about the offer to -- for everyone just to go
 8 their separate ways?
 9 A. No. My recollection is that that conversation
 10 regarded something else that happened in New York, and
 11 I think Mr. Birkbeck requested some research and a
 12 memo on something that -- that happened at the -- in
 13 New York, and it may be reflected in my own time
 14 records.
 15 Q. Did you know that Mr. Meiresonne specifically wanted
 16 to keep that settlement demand from -- from you?
 17 A. I didn't know that until just recently when I read
 18 about that.
 19 Q. Did you read about that in Mr. Meiresonne's
 20 deposition?
 21 A. No. I think I reviewed an email relating to that with
 22 counsel prior to the hearing today.
 23 Q. Okay. And -- and in reviewing those emails, was it as
 24 clear to you as it was to me that Mr. Meiresonne did
 25 not want to tell you about the settlement offer, but

1 A.J. said, no, we have to tell you about the
2 settlement offer?
3 MR. STEC: Well, I'm going to object,
4 because I don't think those emails say that and they
5 don't refer to some specific settlement offer. So I
6 object, there's no foundation for that. I certainly
7 don't dispute that there's a discussion going back and
8 forth about some Thomas issues but not specifically
9 with regard to that.
10 BY MR. GILCHRIST:
11 Q. Well, let me show you, in light of that objection, and
12 I'll ask you the same question, February 9th email
13 from Mr. Birkbeck to the plaintiff indicating Les
14 needs to know all of the facts, even the Thomas II
15 demands; did I read that properly?
16 A. You did read that properly.
17 Q. Okay. And did you take that as being A.J. is
18 advocating to plaintiff that you need to be kept up to
19 speed on certain things?
20 A. I mean, you know, I wasn't privy to any of those at
21 the time, but that's what it appears to be saying.
22 Q. And the email -- Mr. Meiresonne's email right above
23 that indicates he also has to know that we want to
24 continue to prosecute Terryyn if at all possible; did I
25 read that right?

1 A. That's what it says, correct.
2 Q. So we need him to know that we do want to prosecute
3 Terryyn; did I also read that correctly?
4 A. Correct.
5 Q. But not contingent on the Thomas II demands.
6 A. That's what it says.
7 Q. Okay. And as a litigator, a demand typically is an
8 offer or request from one's opponent to do something;
9 is that fair?
10 A. Fair.
11 Q. And I know it's not exactly clear with respect to
12 these emails, but a demand can also be used in the
13 context of a settlement demand. That's a phrase that
14 we, as litigators, use fairly often, right?
15 A. It can be, correct.
16 Q. Right. And I understand this one is not -- it's not
17 exactly clear, but it certainly is referencing demands
18 all over these emails, right?
19 A. Yeah. I mean, it's the first I've really seen them,
20 but yes.
21 Q. Can you think of any other demands that would have
22 arisen out of the Thomas II piece of litigation, other
23 than a settlement offer, that would have impacted the
24 Terryyn litigation?
25 A. You know, I mean, I wasn't involved with Thomas II

1 I'd hate to speculate on -- I don't know what was
2 going on in that action, but it's hard to imagine
3 anything else that would happen there that would
4 affect the action in Michigan.
5 Q. And then, lastly -- again, this is on February 9th --
6 corroborating A.J.'s time entry, or at least the email
7 does, spoke with Les on both accounts and he agrees.
8 That's what the email I'm pointing to says; is that
9 right.
10 A. Well, yeah. I mean, the email says, We want Les to
11 understand that we want to proceed with Terryyn if we
12 still have a chance to win and if the cost of doing so
13 is not prohibitive. Spoke with Les on both accounts
14 and he agrees. He's getting an estimate on cost and
15 whether it would be likejy -- or whether he would be
16 the attorney doing it. Let's talk soon. That's what
17 it says. It -- well, yeah.
18 Q. While we took a break, I asked you to flip through
19 the -- the rebuttal.
20 A. I did.
21 Q. And it looks like you made a note here or a sticky
22 note with --
23 A. Counsel did.
24 Q. -- with something on it.
25 MR. GILCHRIST: Okay. Do you want this

1 back, Gary?
2 MR. STEC: I just wanted to mark it so -- I
3 anticipated where -- what you were going to ask him --
4 so he wouldn't lose the spot.
5 BY MR. GILCHRIST:
6 Q. You had testified earlier, I think, that when you had
7 your opportunity for rebuttal that you pointed out
8 that -- that, hey, Terryyn waived the opportunity to
9 seek sanctions; is that -- was that your testimony?
10 A. Well, yeah. I --
11 Q. Yes?
12 A. Yes.
13 Q. Okay. And I didn't see that -- as I was reading
14 through the rebuttal, when you were testifying, I
15 didn't see you raise that point; did you on -- on
16 reflection?
17 A. Well, on -- I mean, I didn't -- I didn't say -- or
18 maybe I did, but I didn't see it in there, where it
19 said, you know, that they waived it. But what I
20 pointed out in that -- basically, the entirety of the
21 rebuttal was that all of the claims that they were
22 saying in their brief were frivolous and should have
23 been in their favor and that was the basis for their
24 argument on -- for their sanctions on the underlying
25 case were, in fact, not frivolous and could not

1 support a finding of sanctions. So that's what the
 2 entirety of the rebuttal basically says.
 3 Q. Okay. And I think that's fair. I mean, I think what
 4 you're saying, my read of the rebuttal, is that there
 5 was support to bring all of these claims.
 6 A. Correct.
 7 Q. And I don't know if you used the term good faith, but
 8 that's what --
 9 A. Correct.
 10 Q. -- you're implying --
 11 A. Correct.
 12 Q. -- in making argument; is that fair?
 13 A. Correct. And it was, you know, to point out that the
 14 issues that weren't raised by Kolenda in his decision,
 15 which were the ones that were the subject of Terryn's
 16 cross-appeal, were, in fact, good-faith claims and
 17 could not be sanctioned.
 18 MR. GILCHRIST: I'm sorry, I was kind of
 19 reading and listening at the same time. Can you say
 20 that again?
 21 THE WITNESS: Well, maybe she can read it
 22 back. It would be better.
 23 MR. STEC: Well, he's just saying that the
 24 three counts that Gass was relying upon in the request
 25 for sanctions weren't even addressed by Kolenda.

1 THE WITNESS: Yeah.
 2 MR. GILCHRIST: Okay.
 3 THE WITNESS: Yeah.
 4 BY MR. GILCHRIST:
 5 Q. Did you look at any emails after -- that -- that you
 6 may have comprised after oral arguments in the court
 7 of appeals?
 8 A. When; today?
 9 Q. Recently. I mean such that they'd be fresh in your
 10 memory.
 11 A. Not really.
 12 Q. And I ask this, and I can assure you I don't know the
 13 answer, but I'm just trying to get your -- your take
 14 on it. After oral argument, did you compose an email
 15 saying, hey, guys we're in trouble or -- or something
 16 to that effect? Whether or not you actually used the
 17 term sanctions or not, but did you let anybody know
 18 this is -- this is problematic?
 19 A. I mean, I may have at some point, but how far away
 20 that was from the date of the argument, I -- I
 21 couldn't say. I'm sure that we discussed the
 22 possibility, yeah, of sanctions and other things. I
 23 mean, like -- like I said in -- on direct, I had -- I
 24 believe that as we walked out of the courthouse, A.J.
 25 and I had a conversation about all the things that

1 happened that day at the -- at the hearing, including
 2 sanctions discussion.
 3 Q. Did you have a sense as to whether you were misled by
 4 Mr. Meiresonne regarding the time frame of the
 5 copying?
 6 A. I recall at some point in time that became an issue
 7 late in the litigation.
 8 Q. When you say became an issue, in what way?
 9 A. Well, it was brought to my attention that they may
 10 have been incorrect about Mr. Terryn and whether he
 11 was the first to copy. That was late in the -- that
 12 was, I think, around the time that the Supreme Court
 13 briefs were being filed.
 14 Q. You were operating under the presumption that -- that
 15 Terryn was the only one doing the copying?
 16 A. Correct.
 17 Q. And do you have a sense as to whether A.J. was
 18 operating under that same assumption?
 19 A. Well, I got the underlying facts from A.J., so I
 20 presume that he was -- that that was his
 21 understanding, as well.
 22 Q. Okay. And at some point in time, you said later in
 23 the litigation, you became aware of -- of differing
 24 facts?
 25 A. It was -- well, A.J., I think, wrote me an email and

1 indicated that they had done an internal investigation
 2 or something and found that Mr. Terryn wasn't,
 3 perhaps, the only one or the first one to be doing the
 4 copying.
 5 Q. And you thought that was a problem?
 6 A. I did think that was a problem.
 7 Q. Why would that be a problem?
 8 A. Well, it was a 180 from the facts that we had pled and
 9 vociferously argued throughout. It undercut the basic
 10 premise of the claim, in my opinion.
 11 Q. Can you -- when you learned of this information, can
 12 you -- can you place it in the timeline of events?
 13 A. Well, I think it was -- it was certainly after the
 14 appellate arguments and after the court of appeals
 15 opinion. I think it was right before the Supreme
 16 Court briefs were to be filed.
 17 Q. The complaint that was filed in the -- in the Terryn
 18 case, did you prepare that?
 19 A. I did, myself and Mr. Birkbeck.
 20 Q. Okay. And do you remember that it was a verified
 21 complaint?
 22 A. I do.
 23 Q. And what does that mean?
 24 A. That means that the client has verified that all facts
 25 that are stated in the complaint are true and

1 accurate.
 2 Q. Okay. And did the verified complaint state anything
 3 with respect to whether -- state anything with respect
 4 to when the copying occurred?
 5 A. I believe that it did. I mean, I don't recall the
 6 specific paragraphs of it offhand.
 7 Q. What's your best recollection?
 8 A. My recollection is that it stated that Mr. Terryn
 9 was -- had decided on his own to copy these facts
 10 and -- or these Thomas entries and had proceeded to do
 11 so.
 12 Q. In other words, that Terryn had acted solely on his
 13 own?
 14 A. Correct.
 15 Q. Okay. And, again, that was signed by the plaintiff,
 16 Mr. Meiresonne?
 17 A. Correct. The complaint was signed by him, correct.
 18 Q. And is that attesting then that, at least in his mind,
 19 that all the facts as stated in that pleading are --
 20 are accurate?
 21 A. That is my understanding of the verification, correct.
 22 MR. GILCHRIST: Okay. Steve, do you have
 23 any more?
 24 MR. GRIMM: No.
 25 MR. GILCHRIST: Okay. Give me one minute

1 DEPOSITION EXHIBIT 43
 2 2:56 p.m.
 3 MR. GILCHRIST: Okay. No further
 4 questions.
 5 MR. GRIMM: Thank you.
 6 (The deposition was concluded at 2:56 p.m.
 7 Signature of the witness was not requested by
 8 counsel for the respective parties hereto.)
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1 then.
 2 MR. GRIMM: No, we're done. Oh, while
 3 you're looking, I think -- can we have this one, the
 4 last one you referred to, marked?
 5 MR. GILCHRIST: Yeah. I wasn't sure if we
 6 had marked it or not, but let's --
 7 MR. GRIMM: Do you know, Gary, if we have?
 8 MR. STEC: I don't remember.
 9 MR. GRIMM: Let's just mark it. If it's a
 10 duplicate -- is that all right with you guys?
 11 MR. GILCHRIST: Okay.
 12 MR. STEC: Yeah.
 13 MR. GILCHRIST: Let's just identify it.
 14 MR. GRIMM: Do you want me to do it? I've
 15 got it right here.
 16 MR. GILCHRIST: Yeah, that's fine.
 17 MR. GRIMM: So just for the record, we're
 18 marking, as Exhibit 43, which might be duplicative,
 19 but it is a series of emails between -- well, there's
 20 one A.J. Birkbeck to Mike Meiresonne, Mike Meiresonne
 21 to A.J. Birkbeck, A.J. Birkbeck to Mike Meiresonne, et
 22 cetera. And there's one on that date from A.J.
 23 Birkbeck to Les Morant dated -- and copying Mike
 24 Meiresonne, dated February 9. Okay.
 25 MARKED FOR IDENTIFICATION

1 CERTIFICATE OF NOTARY
 2 STATE OF MICHIGAN)
 3) SS
 4 COUNTY OF OTTAWA)
 5
 6 I, PEGGY S. SAVAGE, certify that this
 7 deposition was taken before me on the date
 8 hereinbefore set forth; that the foregoing questions
 9 and answers were recorded by me stenographically and
 10 reduced to computer transcription; that this is a
 11 true, full and correct transcript of my stenographic
 12 notes so taken; and that I am not related to, nor of
 13 counsel to, either party nor interested in the event
 14 of this cause.
 15
 16
 17
 18
 19
 20
 21
 22 PEGGY S. SAVAGE, CSR-4189, RPR
 23 Notary Public,
 24 Ottawa County, Michigan.
 25 My Commission expires: 7-13-19

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From: "A. J. Birkbeck" <ajbirkbeck@fulcrumlaw.com>
To: <LesMorant@LWR.com>, "Mike Meiresonne" <mikem@industrialquicksearch.com>
Date: Tue, 14 Aug 2007 14:00:47 -0400
Subject: Terryn Case - Conference Call

When: Thursday, August 16, 2007 10:00 AM-11:00 AM (GMT-05:00) Eastern Time (US & Canada).
Where: Teleconference

A. J. Birkbeck will initiate the call.

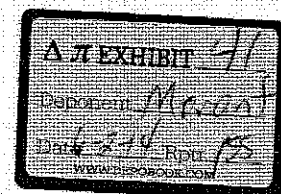
Gentlemen:

Mike Roth asked me to take a look at your case and research possible claims IQS could bring against Chris Terryn arising from his employment and false statements made to or in NY courts regarding IQS and its business activities. I have begun that process in earnest but I have several questions about the underlying lawsuit in NY that need to be answered before I can definitively respond to your inquiry. Specifically, I would like to know:

1. Exactly what claims were raised against IQS in the NY action?
2. Who were the people named as 3rd party defendants in that case and why?
3. Was Chris Terryn named as a 3rd-party defendant in that action, and if not, why not?
4. What was the exact date of the judgment in the NY action?
5. Was the judgment timely appealed by IQS? If so, when was claim of appeal filed?
6. Has IQS satisfied the judgment against it in the NY action?
7. What were the factual issues decided by the NY Court?
8. What is IQS' version of the facts (in essence, what were IQS' defenses to the underlying copyright claims and its factual claims against Terryn, or how did Terryn lie)?
9. Did Terryn have any kind of employment contract or internship contract with IQS? Did IQS have one with GVSU he acted under or had to comply with?
10. What was the contractual relationship between TP, IQS and M&A?

On the facts I am currently aware of, it appears IQS would like to bring one or more of the following claims: fraud, tortious interference, defamation, indemnification, contribution, restitution, injurious falsehood, breach of contract, and breach of duty of good faith and loyalty. Until I hear back from you with more facts, I will not be able to definitively state whether any of those claims can be properly brought given that many of the actions we would be complaining if took place back in April-May of 2001. Thus, it appears time is of the essence. I left you a voicemail today with my telephone number and my contact information is also posted below. I look forward to hearing from you regarding the above.

Best regards, Leslie C. Morant



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Invoice submitted to:
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Grand Rapids, MI 49506
Mike Meiresonne

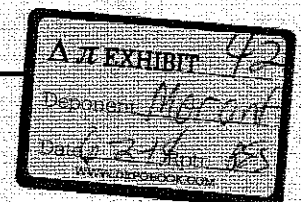
August 31, 2010

Invoice # 13756

Professional Services

	<u>Hrs/Rate</u>	<u>Amount</u>
<u>IQS - Employee Litigation</u>		
2/1/2010 Review and analysis of email from Les Morant, Esq., Law Weathers (0.1) and commence review and analysis of recent caselaw potentially impacting appellate argument (0.7); draft email to Les Morant, Esq., Law Weathers, regarding same (0.1).	0.90 300.00/hr	270.00
2/2/2010 Review and analysis of caselaw regarding claims on appeal in Terry, and relate back to pleadings (1.1); teleconference regarding oral argument and legal strategy regarding new case law and opposing arguments (1.2)	2.30 300.00/hr	690.00
2/3/2010 Travel to Law Weathers (0.3 - NO CHARGE); office conference with Les Morant, Esq., Law Weathers, regarding legal issues and preparation for hearing (1.0); attend appellate hearing (1.2) and office conference with Les Morant, Esq., Law Weathers, regarding same (0.2); return from Law Weathers' offices (0.2 - NO CHARGE); review and analysis of email from Les Morant, Esq., Law Weathers, regarding case law cited by Judge Talbot (0.1).	2.50 300.00/hr	750.00
2/9/2010 Draft email to Les Morant, Esq., Law Weathers, regarding New York developments in Thomas II (0.1); teleconference with Les Morant, Esq., Law Weathers, regarding same (0.4); review and analysis of Mike Meiresonne, Industrial Quick Search, Inc. email regarding same and draft response to same (0.1).	0.60 300.00/hr	180.00
2/10/2010 Review and analysis of Les Morant, Esq., Law Weathers, memorandum regarding Appellate Action and Motion requirements (0.2).	0.20 300.00/hr	60.00
2/11/2010 Draft legal memorandum to Les Morant, Esq., Law Weathers, regarding appellate Motion, procedure and content (0.3); review and analysis of reply (0.1) and teleconference with Les Morant, Esq., Law Weathers, (0.2) and Mike Meiresonne, Industrial Quick Search, Inc. (0.1) regarding same.	0.90 300.00/hr	270.00

(616) 458-9900



A. J. Birkbeck

From: A. J. Birkbeck
Sent: Tuesday, February 09, 2010 3:01 PM
To: Mike Meiresonne
Subject: RE: re[2]: IQS v. Terryn

I am only on ibuprofen now, so no meds. I stand by it. ;-) We want Les to understand that we want to proceed with Terryn if we still have a chance to win AND if the cost of doing so is not prohibitive.

Spoke with Les on both accounts, and he agrees. He is getting us an estimate of cost of appeal, and whether he would be the attorney doing it. Let's talk soon.

- A. J.

From: Mike Meiresonne [mailto:mikem@industrialquicksearch.com]
Sent: Tuesday, February 09, 2010 2:46 PM
To: A. J. Birkbeck
Subject: re[2]: IQS v. Terryn

your last sentence does not make clear sense.....the meds?

he also needs to know we want to continue to prosecute Terryn if at all possible.....so we need him to know that we do want to prosecute terryn....but not contingent on the thomas 2 demands.....I don't want to spend a bunch of money on him understanding that claim.....

Thanks.

Mike Meiresonne
877-977-5377 ext.103



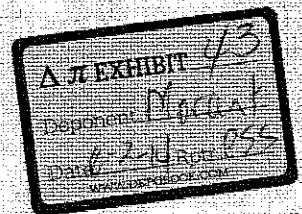
INDUSTRIAL QUICK SEARCH, INC.®
MANUFACTURER DIRECTORY

Patent Issued 1/27/09 Patent #7,483,872

Original Message

From: "A. J. Birkbeck" <ajbirkbeck@fulcrumlaw.com>
To: "Mike Meiresonne" <mikem@industrialquicksearch.com>
Cc:
Date: Tue, 9 Feb 2010 13:01:32 -0500
Subject: RE: IQS v. Terryn

Les needs to know all the facts, even the Thomas II demands. However, he also needs to know we want to continue to prosecute Terryn if at all possible.



- A. J.

From: Mike Meiresonne [<mailto:mikem@industrialquicksearch.com>]
Sent: Tuesday, February 09, 2010 12:46 PM
To: A. J. Birkbeck
Subject: re: IQS v. Terryn

Do we want to mention the Thomas case? It may take away any strong position he may have.....I am sure he now wants to get rid of the case irregardless of the hundred grand I have spent on it.

Thanks.

Mike Meiresonne
877-977-5377 ext.103



INDUSTRIAL QUICK SEARCH, INC.®
MANUFACTURER DIRECTORY

Patent Issued 1/27/09 Patent #7,483,872

-----**Original Message**-----

From: "A. J. Birkbeck" <ajbirkbeck@fulcrumlaw.com>
To: "Les Morant, Esq. [LesMorant@LWR.com]" <LesMorant@LWR.COM>
Cc: "Mike Meiresonne" <mikem@industrialquicksearch.com>
Date: Tue, 9 Feb 2010 11:56:30 -0500
Subject: **IQS v. Terryn**

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Les -

As I mentioned in my call to your office this morning, I would like to discuss the Terryn matter with you later today, in light of the latest developments in New York. Please give me a call at your earliest convenience.

Cordially,



A. J. Birkbeck Esq.
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