

# EXHIBIT A

UNITED STATES DISTRICT CIRCUIT  
SOUTHERN DISTRICT OF FLORIDA

CASE NO. 05-80387 CIV RYSKAMP/VITUNIC

STEVEN A. SILVERS, an individual,  
Plaintiff,

v.

GOOGLE INC., a Delaware corporation,  
Defendant.

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GOOGLE INC., a Delaware corporation,  
Counterclaimant,

v.

STEVEN A. SILVERS, an individual;  
STELOR PRODUCTIONS, INC., a Delaware  
Corporation; STELOR PRODUCTIONS, LLC, a  
Delaware limited liability company,  
Counterdefendants.

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DEPOSITION OF STEVEN SILVERS  
VOLUME I

Tuesday, October 10, 2006  
1:00 p.m. - 8:00 p.m.  
2699 South Bayshore Drive  
Miami, Florida 33133

Reported By:  
Thomas R. Neumann  
Notary Public, State of Florida  
Network Reporting Corporation  
Phone: 888.358.8188  
305.358.8188

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<p>1 A Substance of the case, I don't believe so.</p> <p>2 Q The merits of the case?</p> <p>3 A I don't believe so.</p> <p>4 Q What about with representatives of Stelor,</p> <p>5 have you had any discussions with them? I'm not</p> <p>6 talking about settlement discussions now.</p> <p>7 Discussions with Mr. Esrig or Mr. Jeffrey about the</p> <p>8 merits of the case down here?</p> <p>9 MS. CALABRIA: At what time, Kevin?</p> <p>10 BY MR. KAPLAN:</p> <p>11 Q At any time. Since it was filed April</p> <p>12 2005.</p> <p>13 A When you say substance I don't know if you</p> <p>14 can quantify that for me.</p> <p>15 Q For example, whether your notice was</p> <p>16 valid, your notice of default or termination?</p> <p>17 A I don't believe so. I mean I don't</p> <p>18 recall.</p> <p>19 Q Did you ever express the view to Mr. Esrig</p> <p>20 that the notice Ms. McQuilkin served, the notice of</p> <p>21 termination in April 2005 was inadequate?</p> <p>22 A I don't recall. I might have had</p> <p>23 conversation with him about what he had communicated</p> <p>24 to me that his lawyers believed. I don't believe</p> <p>25 that I would have brought that up to him.</p>	<p>1 BY MR. KAPLAN:</p> <p>2 Q If Mr. Esrig says that you told him,</p> <p>3 Ms. McQuilkin blew the notice requirement, do you</p> <p>4 dispute that?</p> <p>5 A I don't recall ever saying that to him and</p> <p>6 if it was it was probably during -- and if it was it</p> <p>7 was during the settlement negotiations. I don't</p> <p>8 believe I ever said that to him.</p> <p>9 Q Are you sure it was during the settlement</p> <p>10 negotiation?</p> <p>11 A I'm not sure. I can't be a hundred</p> <p>12 percent positive.</p> <p>13 Q When did the discussion -- where did the</p> <p>14 discussion take place in which you recall mentioning</p> <p>15 to Mr. Esrig the possibility, as you put it, that</p> <p>16 Ms. McQuilkin blew the notice requirement?</p> <p>17 A First of all, I don't recall mentioning</p> <p>18 that ever. So if that's something that Mr. Esrig</p> <p>19 has communicated, I don't have any knowledge of</p> <p>20 that. The only time that I met Mr. Esrig was when I</p> <p>21 spoke to him up in Maryland when we tried to</p> <p>22 negotiate a possible settlement and then I met him</p> <p>23 and Mr. Jeffrey in a restaurant a day or two later.</p> <p>24 There was a number of communications going back and</p> <p>25 forth that they were basically trying to persuade me</p>
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<p>1 Q Did you ever mention to Mr. Esrig your</p> <p>2 view that Ms. McQuilkin blew it in terms of the</p> <p>3 notice.</p> <p>4 A I might have mentioned to him that I</p> <p>5 thought perhaps there might have been a possibility</p> <p>6 of that, but nothing definitive because as far as</p> <p>7 Gail was concerned the notice was properly --</p> <p>8 MR. COOPER: Let's not -- please don't go</p> <p>9 into attorney client communications, and if</p> <p>10 these communications were part of your</p> <p>11 communications with him regarding settlement</p> <p>12 that's also not fair game and please tell him</p> <p>13 that's part of our settlement discussions and</p> <p>14 don't answer the question.</p> <p>15 I wasn't privy to those. I'm not sure --</p> <p>16 I mean he is prefacing his question telling you</p> <p>17 I'm not asking for settlement discussions, but</p> <p>18 then he is asking you for them. So you need to</p> <p>19 be able to draw the line here and I can't help</p> <p>20 you with that. Please keep a close eye on not</p> <p>21 revealing attorney-client privilege and if</p> <p>22 these communications had to do with settlement</p> <p>23 tell him so and don't answer.</p> <p>24 THE WITNESS: Okay.</p> <p>25</p>	<p>1 that Ms. McQuilkin, you know, basically blew it. I</p> <p>2 remember that conversation. But I don't know at any</p> <p>3 time I agreed to that.</p> <p>4 MR. COOPER: I need to take a break now</p> <p>5 because it's 2:45. I need to call on the phone</p> <p>6 here.</p> <p>7 BY MR. KAPLAN:</p> <p>8 Q Let me just ask one question before we</p> <p>9 break.</p> <p>10 Did you ever tell anybody other than</p> <p>11 your lawyers that you were contemplating bringing</p> <p>12 a malpractice claim against Gail McQuilkin or</p> <p>13 Kozyak Tropin?</p> <p>14 A Once again.</p> <p>15 Q Did you ever tell anybody other than a</p> <p>16 lawyer of yours that you were contemplating bringing</p> <p>17 a malpractice claim against Gail McQuilkin or Cozyak</p> <p>18 Tropin?</p> <p>19 A No. What I was --</p> <p>20 MR. COOPER: It's a yes or no question.</p> <p>21 Did you ever tell anybody? If you didn't tell</p> <p>22 anybody --</p> <p>23 THE WITNESS: Not that I can recall.</p> <p>24 MR. KAPLAN: Don't do that. The witness</p> <p>25 wasn't finished answering.</p>

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1 MR. COOPER: Object to the form.  
 2 THE WITNESS: I believe that's an issue at  
 3 hand, yes.  
 4 BY MR. KAPLAN:  
 5 Q And if Google wins in connection with that  
 6 claim do you agree that would put you in breach of  
 7 this warranty provision?  
 8 MR. COOPER: Object to the form.  
 9 THE WITNESS: I don't have that answer. I  
 10 mean that's a legal answer to be answered.  
 11 BY MR. KAPLAN:  
 12 Q If Google wins its claim and your  
 13 ownership of the trademark rights, the Google mark  
 14 is invalidated, wouldn't that put you in breach of  
 15 this representation, Mr. Silvers?  
 16 MR. COOPER: Object to the form.  
 17 THE WITNESS: It would appear that it  
 18 would.  
 19 BY MR. KAPLAN:  
 20 Q Now, take a look at paragraph 6 if you  
 21 would.  
 22 MS. CALABRIA: Excuse me. What was  
 23 Mr. Silvers' response?  
 24 THE WITNESS: It would appear that it  
 25 would.

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1 BY MR. KAPLAN:  
 2 Q Take a look at paragraph 6, Article 6, are  
 3 you there, page 4?  
 4 A Uh-huh.  
 5 MR. COOPER: Roman numeral VI down here.  
 6 Notices quality control and samples.  
 7 BY MR. KAPLAN:  
 8 Q Specifically paragraph C.  
 9 A Uh-huh.  
 10 Q It says, "Prior to the commencement of  
 11 manufacturer and sale of the licensed products  
 12 licensee shall submit to licensor for his input at  
 13 no cost to licensor a reasonable number of samples."  
 14 Do you see that provision?  
 15 A Uh-huh.  
 16 Q And you complain as one of the basis for  
 17 terminating the agreement that Stelor failed to  
 18 comply with that provision, right?  
 19 A That's correct.  
 20 Q Now we agree -- or rather do we agree that  
 21 the timing for Stelor's obligation to provide you  
 22 with samples is prior to commencement of manufacture  
 23 and sale of the products, right?  
 24 MS. CALABRIA: Object to form.  
 25 MR. COOPER: Object to the form.

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1 BY MR. KAPLAN:  
 2 Q You can answer.  
 3 A Yes, that's what it says, yes.  
 4 Q So until Stelor starts to manufacture and  
 5 sell products is it correct that Stelor has no  
 6 obligation to show you samples?  
 7 A No, that's not correct.  
 8 Q Why not?  
 9 A Read what it says, "Prior to the  
 10 commencement of manufacturing" it could be a year,  
 11 it could be six months, it could be two months.  
 12 They have to have prototypes made before they could  
 13 manufacture. So it says prior to the commence of  
 14 manufacturing. It doesn't mean the day before, two  
 15 days before, and the sale of licensed product.  
 16 Q Is it fair to say the provision fails to  
 17 specify exactly how long prior to the commencement  
 18 of manufacture and sale samples have to be provided  
 19 to you?  
 20 MR. COOPER: Object to the form.  
 21 THE WITNESS: I think a reasonable and  
 22 prudent person would know that's not the day  
 23 before manufacture. So I would have to say  
 24 that it's not spelled out specifically, but a  
 25 reasonably prudent person that would be reading

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1 this would know that prior to the commencement  
 2 of manufacturing I should have been provided  
 3 with adequate samples for my input.  
 4 BY MR. KAPLAN:  
 5 Q So basically you are saying it's a  
 6 reasonable time prior to the commencement of  
 7 manufacturing, right?  
 8 A I think so, yes.  
 9 MR. COOPER: Object to the form.  
 10 THE WITNESS: Yes.  
 11 BY MR. KAPLAN:  
 12 Q What do you think a reasonable time is?  
 13 A 30 days.  
 14 Q Take a look at paragraph 8 of the  
 15 agreement, intellectual property protection.  
 16 MR. COOPER: Sorry, paragraph 8 or Section  
 17 8.  
 18 MR. KAPLAN: Section 8. Thank you. What  
 19 do you want me to call them paragraphs,  
 20 articles?  
 21 MR. COOPER: Sections.  
 22 BY MR. KAPLAN:  
 23 Q Sections, okay. Section 8, 8A, "Licensor  
 24 hereby grants licensee all right, power, interest to  
 25 seek, obtain and maintain all intellectual property

<p style="text-align: right;">Page 206</p> <p>1 withdrawn provided Stelor performed certain 2 obligations? 3 A The document speaks for itself. I don't 4 know where it would be or not be. 5 Q It's not in there, is it? 6 A If you say it's not in there it's not in 7 there. 8 Q I say it's not in there, so we agree it's 9 not in there? 10 A No, we don't agree. You say it's not in 11 there. The document speaks for itself. 12 Q Well, show me in the document where you 13 think is the person who signed it it says the 14 withdrawal of the notice is conditioned on 15 something? 16 MR. COOPER: Objection. The document 17 speaks for itself and you are calling for a 18 legal conclusion with this question. 19 BY MR. KAPLAN: 20 Q Will you answer, Mr. Silvers? 21 A I don't have an answer to give you. 22 Q Now, let's look at the bullet points. 23 A Okay. 24 Q There are five of them, right? 25 A Yes.</p>	<p style="text-align: right;">Page 208</p> <p>1 THE WITNESS: I believe if the settlement 2 agreement was breached the license agreement 3 would be immediately breached. I guess the 4 document speaks for itself. 5 BY MR. KAPLAN: 6 Q Did you give Stelor 60 days to cure its 7 breaches of the settlement agreement before you 8 terminated the license agreement? 9 MR. COOPER: Object to the form. 10 THE WITNESS: I'm not sure how this 11 worked. I believe if the settlement agreement 12 was breached then the license agreement was 13 automatically breached. There was no need for 14 an additional 60 day curing period. 15 BY MR. KAPLAN: 16 Q What's the basis for that as you 17 understand it? 18 MR. COOPER: Again, if you have an 19 understanding of that separate and apart from 20 communications with your attorney answer it. 21 If your only understanding is from 22 communications with your attorney don't answer 23 based on attorney-client privilege. 24 THE WITNESS: So I reserve might rights 25 based upon attorney-client privilege which she</p>
<p style="text-align: right;">Page 207</p> <p>1 Q These are the specific breaches that you 2 think -- these are the specific reasons why you 3 think Stelor is in breach of the settlement 4 agreement, right? 5 A Okay. 6 Q These bullet points all relate to 7 provisions of the settlement agreement, right? 8 A I believe so. 9 Q They all reference specific paragraph 10 numbers, correct? 11 A Yes. 12 Q Are all of those paragraph numbers 13 references to the settlement agreement? 14 A I believe so. 15 Q Are any of them references to the license 16 agreement? 17 A I do not believe so. Let me see here. I 18 don't believe so. 19 Q This letter was the first time you ever 20 provided written notice to Stelor of alleged 21 breaches of the settlement agreement, correct? 22 A I believe so. 23 Q And the letter purported to terminate the 24 license agreement effective immediately, correct? 25 MR. COOPER: Object to the form.</p>	<p style="text-align: right;">Page 209</p> <p>1 communicated to me as to the reasons for her 2 having filed these letters and notices. 3 BY MR. KAPLAN: 4 Q Just so we are clear. Do you agree that 5 you gave Stelor no opportunity to cure these 6 breaches before terminating the agreements, yes or 7 no? 8 MR. COOPER: Object to the form. 9 THE WITNESS: I don't believe I had an 10 obligation according to my conversation with my 11 counsel that I needed to do that. I can't give 12 you a yes or no answer because there is no yes 13 or no answer to be given. 14 BY MR. KAPLAN: 15 Q Sir, I'm not asking what you believed was 16 required or not. I'm just asking what you did. Did 17 you give Stelor any opportunity to cure the breaches 18 before you terminated the license agreement? 19 MR. COOPER: You are referring to as of 20 April 27, 2005? 21 BY MR. KAPLAN: 22 Q Let me ask you a question. I asked you a 23 moment ago to confirm this letter was the first time 24 you ever put Stelor on notice of any alleged 25 breaches of the license -- of the settlement</p>

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<p>1 agreement and you answered, yes, it was.                  2 A To the best of my knowledge, yes.                  3 Q So after putting Stelor on notice of the                  4 breaches for the first time in this April 27, 2005                  5 letter how much time did you give Stelor to cure                  6 those breaches before terminating the license                  7 agreement?                  8 A I don't believe there was any time,                  9 minimal time.                  10 Q No time, right?                  11 A I don't know if it was no time, but I                  12 think it was minimal time.                  13 Q Upon sending this letter you thought the                  14 license agreement was terminated, right?                  15 A Yes.                  16 Q That's why the letter says on page 2 on                  17 the bottom of the second paragraph --                  18 A Yes.                  19 Q -- that the agreement was terminated                  20 "effective immediately," right?                  21 A Yes.                  22 Q Now, you easily could have given Stelor                  23 time to cure these alleged breaches, right?                  24 MR. COOPER: Object to the form.                  25 THE WITNESS: The answer to that question</p>	<p>1 A Yes.                  2 Q Take a look at paragraph 9 if you would.                  3 A Alright.                  4 MR. COOPER: Just one second. Is your                  5 copy of the first page of this April 27 under                  6 the word any that paragraph doesn't continue on                  7 the next page?                  8 MR. KAPLAN: Yes.                  9 BY MR. KAPLAN:                  10 Q Are you looking at paragraph 9, sir?                  11 A Yes.                  12 Q All it says is that you acknowledge that                  13 Stelor is converting to a Delaware LLC, right?                  14 That's the first sentence, correct?                  15 A Yes.                  16 Q And the second sentence says that upon the                  17 conversion that any options that were granted to you                  18 and the corporation will be converted to a like                  19 amount of unit interest under the LLC, right?                  20 A Correct.                  21 MR. COOPER: That's not what it says.                  22 MR. KAPLAN: Then make an objection to                  23 form.                  24 MR. COOPER: Objection to form,                  25 mischaracterizes the document.</p>
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<p>1 is based upon the communications with                  2 counsel --                  3 MR. COOPER: Don't answer.                  4 THE WITNESS: Attorney-client that I                  5 followed her advice and that was that there was                  6 no need to give any more notice.                  7 BY MR. KAPLAN:                  8 Q These breaches were the kinds of things                  9 that certainly could have been cured, right, if they                  10 even existed?                  11 A After the fact. I mean some of these                  12 breaches would be able to be cured after the fact of                  13 them being breached.                  14 Q Well, let's look at the specific breaches                  15 for a second.                  16 A Okay.                  17 Q Look at the first one. You say, "Stelor                  18 failed to provide you with unit interests --"                  19 MR. COOPER: Let me see your copy.                  20 BY MR. KAPLAN:                  21 Q "-- in Stelor LLC under paragraph 9,"                  22 right?                  23 A Yes.                  24 Q You got the settlement agreement in front                  25 of you?</p>	<p>1 MR. KAPLAN: That's a speaking objection.                  2 Just say objection to form because you know the                  3 local rules limit your objections to that.                  4 BY MR. KAPLAN:                  5 Q So if you are going to get -- if your                  6 options are going to be converted to unit interest                  7 under the LLC, Mr. Silvers, the conversion has got                  8 to take place first, right?                  9 A Okay.                  10 Q Until the conversion occurs and is                  11 completed you agree that Stelor couldn't give you                  12 any unit interest in the LLC, right?                  13 A They certainly could have provided me with                  14 some documentation that that's what they were going                  15 to do.                  16 Q Well, what requirement is there in this                  17 paragraph to give you documentation of that? That's                  18 not what it says, is it?                  19 A Okay. So they failed to do that.                  20 Q Well, the conversion hadn't been completed                  21 as of April 2005, right?                  22 A I don't know that to be a fact.                  23 Q Well, don't you think you better -- don't                  24 you think you better had -- it's getting late, let                  25 me try it again.</p>

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<p>1 just ask you about one exhibit that's attached to                  2 that. Let me turn to that page. Just give me one                  3 second. It's Exhibit FFF.                  4 (Deposition Exhibit 118 was                  5 marked for identification.)                  6 MS. CALABRIA: Kevin, is this the April                  7 29th letter?                  8 MR. KAPLAN: No. This is Gail McQuilkin's                  9 June 17th declaration.                  10 MS. CALABRIA: Give me one second, please.                  11 Let me try to find it.                  12 The first or second action?                  13 MR. KAPLAN: 80393.                  14 MS. CALABRIA: Was that the first or the                  15 second?                  16 MR. KAPLAN: Second.                  17 MS. CALABRIA: Okay, go ahead.                  18 BY MR. KAPLAN:                  19 Q Okay. Is that a declaration that you                  20 signed, Mr. Silvers?                  21 A Yes.                  22 Q Did you understand that form to be                  23 something that confirmed you were making those                  24 statements under oath?                  25 A That's what it says.</p>	<p>1 So then we would have had the issue of                  2 what I was paying checks to the Aurora for: Check                  3 came to me, I took the check and sent it to the                  4 Aurora Collection. The Aurora Collection turned                  5 around and sent it to the insurance company, end                  6 of story.                  7 Q So you had the checks, right? The checks                  8 that you paid to the Aurora, you had those, they                  9 were readily available, correct?                  10 A Yes. I had checks that I made payable to                  11 Aurora for my monthly insurance premiums.                  12 Q And you could easily have provided those                  13 checks to Stelor, correct?                  14 A They were never -- there was no checks                  15 that were asked to be provided by Stelor. There was                  16 documentation that was asked by me to provide Stelor                  17 of health insurance premiums being paid by Aurora                  18 not by Steven Silvers. Let's make that clear.                  19 So I took the liberty of contacting the                  20 CEO of the company of Aurora Collection, Ryan                  21 Blumquist and he turned around provided                  22 documentation -- proper documentation of the money                  23 that was paid by me on behalf of my insurance that                  24 was sent to the insurance company.                  25 Q Mr. Silvers, I need you to answer the</p>
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<p>1 Q This is like an affidavit, right?                  2 A That's what it says.                  3 Q It says you paid to the Aurora Collection                  4 the amounts reflected in a chart, but I don't see                  5 that chart attached. That statement was true, that                  6 you paid those amounts to the Aurora Collection?                  7 A If I said that that's what it was.                  8 Q How did you pay, cash, check?                  9 A By check, I believe.                  10 Q Why couldn't you just provide copies of                  11 the checks to Stelor?                  12 A Because the checks were made payable to                  13 the Aurora Collection not to the insurance company.                  14 The only person that could prove that the checks                  15 were being made to the insurance company on my                  16 behalf was the Aurora Collection who directly made                  17 the checks from their company, deposited it                  18 directly to -- excuse me, sent directly to                  19 Neighborhood Health Partnership, the insurance                  20 company. And that was made clear to Stelor that                  21 that's the way it was going to be handled.                  22 I probably could have had no problem                  23 supplying checks, but the checks would have been                  24 shown they were made payable to the Aurora                  25 Collection not to the insurance company.</p>	<p>1 questions that I'm asking. I got a limited amount                  2 of time left for the deposition, and if you are not                  3 going to answer my questions then we will have an                  4 issue when we get to the end of that time and I'm                  5 not done with my questions.                  6 I understand what you are saying but                  7 that's not what I asked you. Listen to my                  8 question and please answer what I asked.                  9 You had the checks that you paid to                  10 Aurora, correct?                  11 A Yes.                  12 Q You could easily have provided those                  13 checks to Stelor, correct?                  14 MR. COOPER: Object to the form.                  15 THE WITNESS: If they would have asked me                  16 to provide checks to them I could have easily                  17 done that, that's correct.                  18 BY MR. KAPLAN:                  19 Q In fact, you refused to provide those                  20 checks to Stelor, correct?                  21 A No. I'm not sure that's an accurate                  22 statement. Why would I refuse to provide checks to                  23 Stelor?                  24 Q Did your lawyer ever ask you to assemble                  25 those checks to provide to Stelor?</p>

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1 down the googles.com Web site, didn't you?  
 2 A Yes.  
 3 MR. COOPER: Object to the form.  
 4 BY MR. KAPLAN:  
 5 Q So what was the point of that assurance  
 6 that you gave to Stelor?  
 7 A Things had changed between our  
 8 relationship and basically what they had done they  
 9 didn't keep their word to me about specific things,  
 10 and I'm sure that my reasons were sound.  
 11 Q Is it fair to say that in taking those  
 12 actions in April of 2005 you did not stand by the  
 13 promise you made to Stelor in 2003, is that fair to  
 14 say?  
 15 A Two years is a long time for things have  
 16 changed.  
 17 Q So the answer to my question is yes,  
 18 correct?  
 19 A Yes.  
 20 Q Alright. Take a look at Exhibit E if you  
 21 would. That's an April 14, 2003 letter that I sent  
 22 to your lawyer Ms. McQuilkin. Do you recognize that  
 23 letter?  
 24 A I don't think I would have seen this  
 25 letter but that's okay.

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1 Q Take a look at the checks.  
 2 A Okay.  
 3 Q Do you recognize those checks?  
 4 A Yes.  
 5 Q You received those checks, your lawyer  
 6 received those checked?  
 7 A I believe so.  
 8 Q Your lawyer cashed those checks?  
 9 A No.  
 10 Q Are you sure about that?  
 11 A Let me see, hold on. I may have made a  
 12 mistake here, excuse me. Yes, I'm sorry. I think  
 13 these checks were involving the settlement agreement  
 14 action, and these were checks that were owed to me.  
 15 Q In fact, let me show you Exhibit 120,  
 16 copies of those cancelled checks with the  
 17 endorsement of your lawyer's at Kozyak Tropin; is  
 18 that correct?  
 19 (Deposition Exhibit No. 120 was  
 20 marked for identification.)  
 21 THE WITNESS: Yes, I believe so.  
 22 MS. CALABRIA: What are you marking as  
 23 Exhibit 120?  
 24 MR. KAPLAN: The four checks -- those  
 25 checks with the cancelled marks.

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1 THE WITNESS: These are '05, right, okay.  
 2 Before the termination.  
 3 MS. CALABRIA: And attached to an April  
 4 29th letter?  
 5 MR. KAPLAN: I don't know, they are  
 6 someplace.  
 7 MS. CALABRIA: Is the first one dated  
 8 4/28/05?  
 9 MR. KAPLAN: 3/7/05.  
 10 THE WITNESS: These were all checks that  
 11 were previously owed to me.  
 12 BY MR. KAPLAN:  
 13 Q Okay. And they were received by your  
 14 lawyers and cashed, right?  
 15 A Okay. So you have here -- there was only  
 16 two checks received by my lawyer and cashed. The  
 17 other ones were received by me, I believe, and  
 18 cashed. Pay to the order of Bank of America. These  
 19 checks here are for 5,000 and 5,000 and 5,000 were  
 20 paid to me so the payment was not to my lawyer. The  
 21 only checks that were paid to my lawyer were the  
 22 2,000, the 4,000 and 318.  
 23 Q So the first three checks in Exhibit 120  
 24 were paid to your lawyer and deposited by your  
 25 lawyer, correct?

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1 A Yes, and they subsequently, I think, gave  
 2 me a check for that amount.  
 3 Q And the next -- the last three checks were  
 4 paid directly to you and cashed by you, correct?  
 5 A Yes.  
 6 Q Hand me that exhibit back.  
 7 A (Witness complies.)  
 8 Q Okay. Let me show you a March 23, 2005  
 9 e-mail from Gail McQuilkin to me. Take a look at  
 10 this. I'm going to give Johanna the record site and  
 11 let me know when you are done reading it. That's  
 12 Exhibit 121.  
 13 (Deposition Exhibit No. 121 was  
 14 marked for identification.)  
 15 MS. CALABRIA: So what exhibit was that,  
 16 Kevin?  
 17 MR. KAPLAN: Hold on. It's in the Esrig  
 18 declaration, Exhibit H.  
 19 MS. CALABRIA: Repeat that.  
 20 MR. KAPLAN: That's in the supplemental  
 21 Esrig declaration, Exhibit E.  
 22 MS. CALABRIA: What's the docket entry?  
 23 MR. KAPLAN: 53.  
 24 BY MR. KAPLAN:  
 25 Q Are you finished reading this e-mail,



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<p>1 A I don't recall. I don't recall my frame 2 of mind back then.</p> <p>3 Q Do you agree that Stelor could reasonably 4 expect upon receiving this e-mail that it would have 5 a week or two weeks to schedule the audit?</p> <p>6 A I don't see the e-mail of the response to 7 what happened in this response. "Please give me a 8 date in the next two weeks other than the April 28th 9 or 29th which are good for him for the visit. 10 Thanks." From what I remember my lawyer instructing 11 me I guess it's attorney privilege what she told me. 12 So I can't answer that question.</p> <p>13 Q You can't answer my question. 14 Is it reasonable to expect -- for Stelor 15 to expect based on this communication that it had 16 a week or two to schedule the audit, yes or no?</p> <p>17 MR. COOPER: Object to the form.</p> <p>18 THE WITNESS: Based upon that e-mail I 19 would have to say yes.</p> <p>20 BY MR. KAPLAN:</p> <p>21 Q In fact, the e-mail say the auditor is 22 preparing a letter outlining the documents and 23 records he will need available, do you see that?</p> <p>24 A Yes.</p> <p>25 Q Was that letter ever provided to Stelor?</p>	<p>1 now. I assure you I will get back to you and Stelor 2 by Friday." Ever seen that e-mail?</p> <p>3 A I don't believe so.</p> <p>4 MR. COOPER: Is this redacted? 5 MR. KAPLAN: Yes.</p> <p>6 BY MR. KAPLAN:</p> <p>7 Q So this is one day before you sent the 8 termination letter, correct?</p> <p>9 A It appears that way, the 26th and the 10 27th.</p> <p>11 Q Had you decided to terminate on April 12 26th?</p> <p>13 A I believe Gail was preparing something for 14 the 27th. It was obvious the 27th when you got the 15 letter.</p> <p>16 Q A little misleading for her to write back 17 and say, "I assure you I'll get back to you and 18 Stelor by Friday." when she was intending to send a 19 termination letter on your behalf on Wednesday, 20 right?</p> <p>21 MR. COOPER: Object to the form. Don't 22 answer on attorney-client privilege.</p> <p>23 BY MR. KAPLAN:</p> <p>24 Q That's not privilege. I'm asking for your 25 view.</p>
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<p>1 A I'm not certain. I do not know that 2 answer.</p> <p>3 Q Assuming it wasn't, do you know why?</p> <p>4 A No, I don't.</p> <p>5 Q Would it be reasonable for Stelor to 6 expect to see that letter before it provided dates 7 for when the audit would be scheduled?</p> <p>8 MR. COOPER: Object to the form.</p> <p>9 THE WITNESS: I don't know what my 10 lawyer's frame of mind was about this letter. 11 I know there was a lot of communication going 12 back and forth between you on behalf of Stelor 13 and myself and Gail on behalf of myself. 14 I remember that period distinctly and 15 there was a lot of back and forth e-mails to 16 that effect. I think she was waiting on dates 17 from you and you were waiting on dates from 18 her. I don't know the specifics between the 19 two of you.</p> <p>20 BY MR. KAPLAN:</p> <p>21 Q Turn, if you would, to Exhibit I, the next 22 one. Do you see the e-mail April 26th from 23 Ms. McQuilkin to me, have you ever seen that before?</p> <p>24 A April 26, this is the 22nd --</p> <p>25 Q "I cannot get into this with you right</p>	<p>1 Do you agree it was a little misleading 2 for her to assure us she would get back to us on 3 Friday when she intended to send a termination 4 letter the next day. Do you agree or not?</p> <p>5 MR. COOPER: Same objection, 6 attorney-client privilege. Don't answer.</p> <p>7 BY MR. KAPLAN:</p> <p>8 Q Take a look at the last exhibit to this 9 declaration, two certificates of insurance. What's 10 wrong with those certificates?</p> <p>11 A These were the ones after the fact, I 12 believe. I'm not a hundred percent certain on that, 13 but I believe these are the ones that were -- hold 14 on one second.</p> <p>15 Q The first certificates were policy term 16 July 2004 to July 2005. Do you agree that's before 17 the fact, right?</p> <p>18 A No. We have certificates or some 19 information that was originally sent to us that are 20 different from these numbers and these policy 21 figures.</p> <p>22 Q Does this certificate of insurance satisfy 23 what you understood to be the insurance requirements 24 for the period July '04 to July '05, yes or no?</p> <p>25 A I cannot give you a definitive answer on</p>

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