

EXHIBIT C

UNITED COURT DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK
ECF CASE NO.: 12-CV-1340

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EDWARD L. WHITE, P.C.,

Plaintiff,

-against-

WEST PUBLISHING CORPORATION d/b/a "West", and
REED ELSEVIER INC., d/b/a LexisNexis,

Defendants.

----- -x

VIDEO DEPOSITION OF EDWARD L. WHITE

New York, New York

August 30, 2012

REPORTED BY:

DANIELLE GRANT

Ref: 8095

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August 30, 2011

10:15 a.m.

Video Deposition of EDWARD L. WHITE,
held at the offices of Weil Gotshal & Manges, LLP,
767 Fifth Avenue, New York, New York pursuant to
Notice before DANIELLE GRANT, a Shorthand Reporter
and Notary Public of the State of New York.

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A P P E A R A N C E S:

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IT IS HEREBY STIPULATED AND
AGREED that the filing and sealing of
the within deposition be, and the
same are hereby waived;

IT IS FURTHER STIPULATED AND
AGREED that all objections, except as
to the form of the question, be and
the same are hereby reserved to the
time of the trial;

IT IS FURTHER STIPULATED AND
AGREED that the within deposition may
be sworn to before any Notary Public
with the same force and effect as if
sworn to before the Court;

1
2 VIDEOGRAPHER: Good morning. This
3 is tape number one of the videotaped
4 deposition of Edward L. White in the
5 matter of Edward L. White, P.C. versus
6 West Publishing Corporation d/b/a West
7 and Reed Elsevier Inc. d/b/a LexisNexis
8 in the United States District Court
9 Southern District of New York. This
10 deposition is being held at Weil,
11 Gotshal & Manges LLP, located 767 Fifth
12 Avenue, New York, New York 10753 on
13 August 30, 2012 at approximately 10:15
14 a.m.

15 My name is Richard Ramos and I am
16 the legal video specialist. The court
17 reporter is Danielle Grant.

18 Will counsel please introduce
19 themselves beginning with the party
20 noticing this proceeding.

21 MR. MARKS: Benjamin Marks from
22 Weil, Gotshal & Manges, counsel for the
23 West Publishing Corporation.

24 MR. GERBA: John Gerba from Weil,
25 Gotshal Manges, also for West.

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MR. WHITNEY: Craig Whitney from Morrison Foerster, counsel for LexisNexis, a division of Reed Elsevier.

MS. BRETZ: Emily Bretz, also from Morrison Foerster, counsel for LexisNexis.

MR. BLUE: Gregory Blue for the plaintiff.

VIDEOGRAPHER: Will the court reporter please swear in the witness.

EDWARD L. WHITE, called as a witness, having been first duly sworn by Danielle Grant, a Notary Public within and for the State of New York, was examined and testified as follows:

EXAMINATION BY

MR. MARKS:

Q Mr. White, my name is Benjamin Marks and I represent West Publishing Corporation in this matter.

Would you please state your name and address for the record.

A Edward Leslie White. 3208 Broken Bow Court, Edmond, Oklahoma 73013.

1 E. White

2 A Intellectual property, both
3 litigation and patent prosecution, et cetera?

4 Q Yes.

5 A Probably 30 to 40.

6 Q What percentage of your practice is
7 copyright related?

8 A Small. It varies, but I would say
9 less than 10 typically.

10 Q How many active litigation matters
11 is the firm handling right now?

12 A Where cases have been filed?

13 Q Yes.

14 A Thirty.

15 Q Is that a typical caseload for any
16 given year?

17 A Again, it varies, but for the most
18 part, yes.

19 Q Give me a range from low end to
20 high end, recognizing it's approximate.

21 A For the last ten years?

22 Q Sure.

23 A Well, the first year I had ramped
24 up but I basically took anything that came in
25 the door so I ended up with a lot of cases, some

1 E. White

2 of which were not the best cases, but. So I
3 think probably early in my career it would have
4 been 50, 60, 70, and it's tailed off in terms of
5 the number now.

6 Q Has there ever been a time where
7 your firm was handling less than ten cases since
8 the first year?

9 A No.

10 Q And over the past three years how
11 many active litigation matters has your firm
12 handled that have involved at least one court
13 filing by the firm, that would be dozens of
14 cases?

15 A Yes.

16 Q Are you the sole owner of Edward L.
17 White, P.C.?

18 A Yes.

19 Q How many employees does Edward L.
20 White, P.C. have?

21 A One.

22 Q Has it ever had more than one
23 employee?

24 A Yes.

25 MR. BLUE: Can I just ask for a

1 E. White

2 clarification. You mean total employees
3 other than Mr. White.

4 THE WITNESS: Yes.

5 Q No, no, I'm asking for the total
6 number of employees including Mr. White?

7 A Two. Currently, and yes, it has
8 had more than two.

9 Q Okay. If you could just walk me
10 through, since the inception of the firm, how
11 many other people have worked for the firm, who
12 they are and what their roles have been?

13 A The last employee I had was Rafael
14 Glapion, who was an associate. And before him I
15 had -- I've had over the years several clerks,
16 you know, honestly there have probably been five
17 over the years, law school students.

18 Q When have you had any law school
19 students working for your firm in the past three
20 years?

21 A Yes, Sierra Freeman in the last
22 three years.

23 Q And when did Miss Friedman work for
24 the firm?

25 A Two summers ago, it would have

1 E. White

2 affected any of the fee arrangements you've made
3 with any of your clients?

4 MR. BLUE: Objection.

5 A Ask that again.

6 Q Has at availability of some of your
7 court filings on West Law or/and Lexis affected
8 any of the fee arrangements you had made with
9 clients?

10 MR. BLUE: Same objection, vague.

11 A I don't know.

12 Q From your perspective has that been
13 a factor at all?

14 A It's possible.

15 Q Has it ever come up in discussions
16 over what your fee would be?

17 A It's never come up in discussions.

18 Q Has it ever been part of your
19 internal calculus about what rates you would
20 seek to be paid for your representation?

21 A No.

22 Q To your knowledge, has the
23 availability of some of your court filings on
24 West Law and Lexis affected your ability to earn
25 fees from clients?

1 E. White

2 A I believe it has.

3 Q How so?

4 A I believe part of what I offer
5 is -- I've done certain kinds of cases, I've
6 royalty cases, I've done copyright, both
7 prosecution and defense, I've done patent
8 infringement and defense cases. And to the
9 extent people can take my work now and use my
10 work in a fairly simple fashion, I think that
11 that set of information I have has a value and I
12 think it's been decreased.

13 Q Have you ever attempted to measure
14 the amount by which the value of your work has
15 been decreased?

16 A I don't know how I would do that.

17 Q Do you know how anyone would do
18 that?

19 A I'm not in that kind of business
20 but I suspect there's probably some way to make
21 an analysis.

22 Q But sitting here today you're not
23 aware of any way to make that analysis?

24 A Correct.

25 Q Has the availability of some of

1 E. White

2 your court filings on West Law and Lexis
3 affected your cost of providing legal advice to
4 clients?

5 A Potentially. I hadn't thought
6 about that.

7 Q How has it affected the cost, your
8 cost of providing legal services to clients?

9 A I'm just kind of, thinking out
10 loud, but I pay for Lexis services, and to the
11 extent Lexis collecting briefs, it could have
12 affected it and made my legal service more
13 expensive if they're spending money collecting
14 services and charging more or less or it could
15 have lessened it. It I don't know how it would
16 affect it, but it's an indirect effect if there
17 is one.

18 Q And sitting here today, you have no
19 knowledge of whether or not that Lexis's
20 collection of briefs has had any impact on the
21 pricing of the services you that you purchase
22 from Lexis?

23 A Yes.

24 Q Same answer as to West Law for the
25 period for you were a West Law subscriber?

1 E. White

2 his own behalf or on behalf of a client?

3 Q On your own behalf?

4 A Yes.

5 Q And you had your own firm for ten

6 years before registering a single copyright,

7 correct?

8 A Yes. For --

9 Q On my own behalf.

10 And is it fair to say that your

11 firm has prepared hundreds of court filings?

12 A Yes.

13 Q Is it fair to say thousands of

14 court filings?

15 A Probably.

16 Q Do you have any understanding of

17 whether copyright registration is a common

18 practice among law firms or attorneys with

19 respect to court filings they prepare on behalf

20 of clients?

21 A I haven't asked.

22 Q You don't have an understanding one

23 way or the other?

24 A Correct.

25 Q Are you aware of any other

1 E. White

2 attorneys or law firms with registered
3 copyrights in court filings?

4 A Again, I haven't asked, so, and I
5 haven't done the search, so no.

6 MR. MARKS: I'd like to mark as
7 White Exhibit 5 a copy of a two-page
8 document bearing the Bates numbers
9 P00119 and 120.

10 (Certificate of Registration was
11 marked as White Exhibit No. 5 for
12 identification, as of this date.)

13 Q Mr. White, have you seen White
14 Exhibit 5 before?

15 A Yes.

16 Q What is White Exhibit 5?

17 A It's a certificate of registration
18 for a brief.

19 Q And the title of the brief is
20 Plaintiffs' Combined Motion for Summary Motion
21 for Plaintiffs and Ramsey and brief in support,
22 correct?

23 A Yes.

24 Q And this was the summary judgment
25 motion that you filed in the Beer v. XTO Energy

1 E. White

2 case on behalf of Miss Beer and Miss Bique in
3 their seeking of termination of liability on
4 their individual claims?

5 A Correct.

6 Q What is the reference to the date
7 of first publication on this form?

8 A Are you asking me what the date is?

9 Q I see that the date is May 20,
10 2009, and what I'm asking is what is that date a
11 reference to? What happened on that date?

12 A I believe that's when it was filed.

13 Q Was there any distribution of the
14 motion and brief in support by you other than
15 filing it with the court?

16 A I believe we sent it to the client
17 by regular mail -- the clients by regular mail.
18 And there may have been others, but that is a
19 likely one.

20 Q Did you serve it on opposing
21 counsel?

22 A Via the court system it does that
23 automatically.

24 Q And other than filing the document
25 with the court and mailing a copy of it to your

1 E. White

2 clients, are you aware of any distribution by
3 you or on your behalf to anyone else?

4 A I believe I probably provided it to
5 the experts as well that were involved in that
6 case, but I -- and there may have been others.

7 Q Anyone else you can think of
8 sitting here today?

9 A Not that I can think of sitting
10 here today.

11 Q Is there anyone else who authorized
12 it -- authorized to distribute this document on
13 behalf of the firm?

14 A Other than myself and Jan?

15 Q Correct?

16 A And Marty could have distributed it
17 on behalf of the firm. He may have sent it to
18 someone, I don't know.

19 Q You're not aware of Miss Inman or
20 Mr. -- excuse me, Dr. High distributing a copy
21 of this brief to anybody who wasn't either a
22 client or an expert or a party in the case?

23 A Correct.

24 Q Under the heading Author there's a
25 line that says, "Author created text compilation

1 E. White

2 editing."

3 Do you see that?

4 A Yes.

5 Q What is that a reference to?

6 A I think that the firm created the
7 whole thing.

8 Q So the reference to text is that
9 the firm prepared the text of the document?

10 A Correct.

11 Q What's the reference compilation?

12 A Well, there were also exhibits, and
13 I can't remember if it's as registered the
14 exhibits were attached but there -- some of the
15 exhibits that were attached were not drafted by
16 the firm, they were compiled into the document.

17 Q And so your assertion of copyright
18 doesn't include any of the exhibits, it merely
19 would cover whatever compilation copyright there
20 might be in picking exhibits written by other
21 people?

22 MR. BLUE: Objection.

23 A I mean, generally speaking, I think
24 that's correct.

25 Q And what is the reference to

1 E. White

2 MR. BLUE: Objection.

3 A I think -- I think that's more
4 accurate.

5 Q And you don't have any written
6 agreement with Dr. High governing ownership of
7 copyrights in work product that he contributed
8 to in connection with that case, do you?

9 A I don't believe so.

10 Q And Dr. High did in fact contribute
11 to the drafting of plaintiffs' combined motion
12 for summary judgment?

13 A I'm sure he saw it and I'm sure he
14 said things about it, but whether he contributed
15 to drafting I couldn't say as I sit here today.

16 Q He provided you with written
17 comments on your draft?

18 A Yes.

19 Q Made editorial suggestions?

20 A Yes.

21 MR. MARKS: I'd like to mark as
22 White Exhibit 6, a two-page document
23 bearing the Bates number P00054 to 55.

24 (Document, Bates stamped P00054 to
25 55 was marked as White Exhibit No.

1 E. White

2 6 for identification, as of this
3 date.)

4 Q Mr. White, have you seen White
5 Exhibit 6 before?

6 A Yes.

7 Q What is White Exhibit 6?

8 A A certificate of registration for
9 plaintiffs' motion in limine.

10 Q And this is a motion in limine
11 filed on behalf of the plaintiffs in the Beer
12 versus XTO Holdings case?

13 A Right.

14 Q And was this motion filed on behalf
15 of just Miss Beer and Miss Bique or was this
16 filed on behalf of the class?

17 A Class.

18 Q And is the reference next to the
19 line date of first publication, is that the date
20 that this motion in limine was filed with the
21 court?

22 A Yes, I believe it was.

23 Q And in addition to filing this
24 document with the court, did you mail a copy of
25 it to your clients?

1 E. White

2 A I'm not sure we mailed the motion
3 in limine. I would have discussed it with them.

4 Q And did you provide a copy of the
5 motion to the experts in the case?

6 A I doubt it.

7 Q Are you aware of any distribution
8 of the motion in limine by you or anyone acting
9 on behalf of the firm to anyone other than
10 filing of the court?

11 A No.

12 Q And that's true not only at the
13 time it was filed but subsequently until
14 discovery in this case, correct?

15 A I provided it to counsel, but yes.

16 Q Counsel in this case in connection
17 with this litigation?

18 A Correct.

19 Q And that's true of the -- the
20 motion for summary judgment as well, but there
21 was -- I asked you a series of questions about
22 whether or not it had been distributed by you or
23 on your behalf and I believed I was asking about
24 at any point in time, but I'd like to make sure
25 that that's how you understood the question?

1 E. White

2 A Well, yes, that's how I think I
3 understood the question and I don't believe
4 there's been any distribution other than in the
5 case or to counsel.

6 Q And on White Exhibit 6 there is a
7 reference to it being a work made for hire.

8 Do you see that?

9 A Yes.

10 Q And is that the same designation as
11 work made for hire for the same reasons as we
12 discussed in relation to White Exhibit 5?

13 A Yes.

14 Q That it was prepared by an employee
15 of Edward L. White, P.C. within the scope of his
16 employment?

17 A It was prepared for Edward L.
18 White, P.C., yes.

19 Q And did Dr. High contribute to the
20 motion in limine?

21 A I don't believe so. If he did it
22 would have been editorial comments.

23 Q There's a limitation of the
24 copyright claim and it says "Materials from this
25 claim, text from other sources."

1 E. White

2 Do you see that?

3 A Yes.

4 Q And what's that a reference to?

5 A I think we included that in all of
6 these and -- I don't recall specifically in this
7 instance.

8 Q You did not include a similar
9 limitation in your registration of White Exhibit
10 5, correct?

11 A Looks like we didn't.

12 Q Even though White Exhibit 5 you
13 believe included exhibits that were prepared by
14 third parties, correct?

15 A I believe so, yes.

16 Q Sitting here today would you agree
17 it would have been appropriate to include a
18 limitation on the copyright claims that you were
19 claiming in the copyright and the individual
20 exhibits that were attached and prepared by the
21 third parties?

22 MR. BLUE: Objection.

23 A I'd have to go back and look at it,
24 but it's possible that that limitation, but I
25 don't think to the extent I would have claimed a

1 E. White

2 those were accurate.

3 Q Did your clients review the draft
4 of the brief?

5 A Yes, I feel confident they did.
6 It's the normal practice in this kind of
7 situation.

8 Q It's a normal practice that they
9 would provide comments on the brief?

10 A Sometimes the comments would simply
11 be, "it looks like," but yes, they would
12 typically say something.

13 Q Did you have any assistance in the
14 case research in connection with this motion?

15 A I would expect that Marty would
16 have helped at least in terms of making his
17 editorial comments, but I don't recall
18 specifically.

19 Q You don't recall whether or not you
20 had any clerks or other research assistants
21 working on this with you?

22 A I don't believe so at this time.

23 Q Does Dr. High ever utilize research
24 assistants or clerks to help him in the
25 performance of his work in connection with his

1 E. White

2 relationship with you?

3 A I don't believe so.

4 Q Why was this document prepared?

5 A The document was prepared in order
6 to attempt to secure summary judgment for the
7 named plaintiffs.

8 Q Is there any other reason that you
9 prepared this document?

10 A Well, they also -- it's in my
11 strategy of the litigation, but --

12 MR. BLUE: I just want to avoid a
13 situation where --

14 Q I'm not trying to intrude on work
15 product or privilege. My question is, was there
16 any reason that you prepared this document other
17 in connection with your advocacy on behalf of
18 your clients in the Beer versus XTO Energy case?

19 A No, essentially that was it.

20 Q You qualified with essentially. Is
21 there any reason unrelated to your
22 representation of these clients that you
23 prepared this document?

24 A None that I can think of.

25 Q And at the time that you prepared

1 E. White

2 the document you anticipated that you would be
3 filing it with the court on behalf of your
4 clients, correct?

5 A Correct.

6 Q And you filed the summary judgment
7 motion with the court because you wanted the
8 court to consider it and grant the motion,
9 correct?

10 A That was the primary reason, yes.

11 Q What are the ancillary reasons that
12 you filed with the court?

13 MR. BLUE: Can we also --

14 MR. MARKS: Without --

15 MR. BLUE: -- say it's the same
16 caveat, you're not talking about
17 litigation strategy or how he advised
18 the clients how to proceed.

19 Q If it relates to litigation
20 strategy, I will accept that that's the reason.
21 You don't have to give me the particulars of the
22 litigation strategy.

23 A Litigation strategy.

24 Q No reason unrelated to prosecution
25 of a litigation?

1 E. White

2 A Correct.

3 Q And you knew at the time it was
4 prepared that it would be available on Pacer,
5 correct?

6 A Yes.

7 Q For anyone with a Pacer
8 subscription to download?

9 A I think you have to have a
10 subscription but I knew it would be on Pacer.

11 Q And that anyone, any member of the
12 public who wanted to obtain it from Pacer would
13 be able to obtain it?

14 A Assuming they had the subscription.

15 Q Are you aware of any restrictions
16 on who can obtain a Pacer subscription?

17 A I don't know there's requirements.

18 Q And you also knew that a copy of
19 the brief would be available from the courthouse
20 itself, correct?

21 A Yes.

22 Q And that any member of the public
23 who went in and complied with whatever terms the
24 Western District of Oklahoma has set up for
25 copying briefs could go in and may a copy,

1 E. White

2 right?

3 A Yes.

4 Q And did the possibility that
5 somebody might make a copy of your brief from
6 Pacer and distribute your brief affect your
7 decision to write this motion?

8 A If I had prior knowledge of that
9 fact, I still would have written the motion, if
10 that's what you're asking me.

11 Q That is what I'm asking you. The
12 answer is yes?

13 A Yes.

14 Q And did the possibility that
15 someone might make a copy of your brief in Pacer
16 and distribute your brief affect the quality of
17 your work on this motion?

18 A No.

19 Q And at the time you prepared the
20 motion, you had no way of knowing whether West
21 or Lexis would include a copy of it in a
22 database, correct?

23 A Correct.

24 Q Subsequent to your filing of this
25 document with the court, and until, until this

1 E. White

2 case was commenced, has anyone ever requested a
3 copy of this document from you?

4 A Well, that gets into -- there --
5 there's another counsel involved with this case,
6 so that, a copy was certainly provided to them.

7 Q When you say this case, I want to
8 make sure --

9 A Beer.

10 Q Beer v. XTO, okay. And who is
11 that?

12 A The Helms Underwood is the firm,
13 Helms Underwood Cook.

14 Q And you provided a copy of this
15 brief to that firm?

16 A Say you, Edward L. White, P.C., I
17 believe Jan would have -- may have provided a
18 copy to them.

19 Q And that was in connection with
20 their representation of members of your original
21 class?

22 A Yes.

23 Q And the reason that a copy was
24 provided was to -- was because they had assumed
25 representing members of a class that you had at

1 E. White

2 one point represented?

3 A Correct.

4 Q And that's the only reason that you
5 provided a copy of the brief to them?

6 A Yes.

7 Q And to your knowledge that's the
8 only reason they requested a copy of the brief
9 was to assume the representation of the
10 individuals you had previously represented?

11 A Yes.

12 Q Have you ever offered to license
13 the copyright you claim in this work to anybody
14 else?

15 A No.

16 Q Has anyone ever asked you for such
17 a license?

18 A No.

19 MR. MARKS: I'd like to mark as
20 White Exhibit 8 a document bearing Bates
21 number P0001 through P00024.

22 (Motion in Limine was marked as
23 White Exhibit No. 8 for
24 identification, as of this date.)

25 Q Mr. White, what is White Exhibit 8?

1 E. White

2 A It's plaintiffs' motion in limine
3 in Beer versus XTO.

4 Q Can you describe for the process of
5 how this document was prepared?

6 A Generally speaking, it was prepared
7 by me addressing the issues that I felt needed a
8 motion in limine filed on and gathering the
9 relevant background information and legal
10 authority and drafting a brief.

11 Q And you believe that Dr. High
12 provided editorial comment on this brief?

13 A I believe he probably did on this
14 one.

15 Q And did Miss Inman play a similar
16 role with respect to White Exhibit 8 as she did
17 in White Exhibit 7 with regard to formatting the
18 document and providing the cover sheet and the
19 certificate of service, et cetera?

20 A Yes.

21 Q Were there any other contributors
22 to the preparation of the motion?

23 A To the extent we talked to clients
24 about it that may have had comments, it's
25 possible.

1 E. White

2 Q Did anyone, to your knowledge,
3 other than you and Dr. High perform any of the
4 case research associated with the preparation of
5 this motion?

6 A I'm sorry, what was that?

7 Q I'm asking who did the case
8 research in connection with the preparation of
9 the motion?

10 A It would have been me, and then to
11 the extent he was providing editorial comments,
12 there may have been work by Dr. High.

13 Q And this document was prepared on
14 behalf of the class in Beer v. XTO Energy in
15 order to persuade the court to exclude certain
16 evidence from trial in this action?

17 A Essentially. I mean you know what
18 a motion in limine is, but yes.

19 Q Was there any other reason that you
20 prepared this document other than for the
21 purpose of representing your clients in the Beer
22 v. XTO Energy case?

23 A No.

24 Q And at the time the document was
25 prepared you anticipated that it would be filed

1 E. White

2 with the court, correct?

3 A Yes.

4 Q And you knew at the time it was
5 prepared that once filed it would be available
6 on Pacer?

7 A Yes.

8 Q And you knew at the time it was
9 prepared that once filed it would be available
10 for copying at the courthouse?

11 A Yes.

12 Q And the possibility that somebody
13 might copy and distribute your brief did not
14 affect your decision to write this motion, did
15 it?

16 A Correct.

17 Q And the possibility that someone
18 may copy and distribute your brief did not
19 affect the quality of your work on this motion,
20 did it?

21 A No.

22 Q At the time you prepared this
23 motion you had no way of knowing whether West or
24 Lexis would include a copy of it in a database,
25 correct?

1 E. White

2 A Right.

3 Q And have you ever offered to
4 license the copyright you claim in this work to
5 anyone else?

6 A No.

7 Q Has anyone ever asked you for such
8 a license?

9 A No.

10 Q And has anyone ever asked you for
11 such a license?

12 A No.

13 Q Has anyone every asked you for a
14 license to your copyright in any of your
15 registered copyrights?

16 A You're asking me if on the ones
17 that were filed on behalf of the firm, not my
18 clients.

19 Q Correct, not your clients. Thank
20 you for the clarification.

21 With regard to the documents for
22 which you secured a copyright registration, I'm
23 asking has anybody ever attempted to license
24 your copyright in any of those Works?

25 A No one has ever expressly asked me

1 E. White

2 for a license to an Edward L. White, P.C.
3 registered work, no.

4 Q Have you ever offered a license to
5 the copyright in any Edward L., P.C. registered
6 work?

7 A No.

8 Q You brought Beer v. XTO Energy as a
9 putative class action, correct?

10 A Yes.

11 Q And with Miss Beer and Miss Bique
12 as the name plaintiffs, correct?

13 A Correct.

14 Q And on or about March 20, 2009, the
15 court granted your motion for class
16 certification, correct?

17 A I think the date's right.

18 Q You were appointed counsel for the
19 class?

20 A Yes.

21 Q And Miss Beer and Miss Bique were
22 appointed as representatives of the class?

23 A Correct.

24 Q On May, I think we've already
25 talked about that on May 20, 2009 you filed a

1 E. White

2 motion for summary judgment on behalf of Miss
3 Beer and Miss Bique?

4 A I believe that's right.

5 Q That's White Exhibit 7?

6 A Yes.

7 Q And your motion was limited to the
8 individual claims of the named plaintiffs and
9 did not cover the claims to the class, correct?

10 A Correct.

11 Q And on or about February 5, 2010,
12 the court granted summary judgment to Miss Beer
13 and Miss Bique on their individual claims,
14 correct?

15 A I believe that's right.

16 Q And shortly before the court award
17 summary judgment to Miss Beer and Miss Bique,
18 you filed a second motion for summary judgment
19 on the issue of class damages, correct?

20 A Yes. I think again the timing
21 sounds right.

22 MR. MARKS: I'm going to mark as
23 White Exhibit 9 a copy of the docket in
24 Beer versus XTO Energy. I don't mean to
25 make this a memory test on dates so let

1 E. White

2 me provide you with a copy of the docket
3 and you can confirm for me whether or
4 not anything, as we go through the
5 sequencing is inaccurate to the best of
6 your recollection.

7 (Beers v. XTO Energy court docket
8 was marked as White Exhibit No. 9
9 for identification, as of this
10 date.)

11 Q So if you turn to the portion of
12 the document which is where the entries are
13 organized chronologically, that has us in the
14 spring of 2010, I think on page 20 of the
15 document we've got the -- excuse me, on page 19
16 of the document there's an entry, entry 148
17 reflects that on February 5th the court granted
18 the plaintiffs' motion for summary judgment with
19 respect to their individual claims?

20 A Yes.

21 Q And if you look up ahead at docket
22 entry 144, on February 2nd you filed a motion
23 for summary judgment on damages for all
24 plaintiffs, correct?

25 A Yes.

1 E. White

2 Q And the court denied the second
3 summary judgment motion for damages on behalf of
4 all plaintiffs as premature as there had been no
5 determination for liability for the class,
6 correct?

7 A The court's order reflects what the
8 court did. I think it was a little more
9 complicated.

10 Q You would agree with me that the
11 court denied motion for summary judgment on
12 damages to the class?

13 A Yes.

14 Q And on April 13, 2010 the court
15 decertified the class, correct?

16 A Yes.

17 Q And the court found that you were
18 not adequately protecting absent class members,
19 correct?

20 A Again, the court's order says what
21 it says.

22 Q And the court's order said that --
23 reflected its determination that you were not
24 adequately representing the class, correct?

25 MR. BLUE: Objection.

1 E. White

2 A It said what it said.

3 Q As a result of that order you were
4 removed as counsel for the class, correct?

5 A Yes.

6 Q And the court also found that Miss
7 Beer and Miss Bique were no longer adequate
8 representatives of the absent class?

9 A Yes, I believe that's correct.

10 Q And at the end of April 2010,
11 Mr. Goodard and Mr. Fenkhauser (phonetic) filed
12 a motion to intervene as names plaintiffs with
13 new counsel, correct?

14 A Goddard, yes.

15 Q Excuse me, Goddard, thank you.

16 And after the court's
17 determination that you were no longer adequate
18 class counsel, you wrote to members of the
19 absent class and offered to represent them
20 individually, correct?

21 A I'm not sure the sequencing is
22 exactly correct but I did -- there was certainly
23 communications.

24 Q Communications between you and
25 members of the class following the court's

1 E. White

2 decertification of the class, correct?

3 A Well, there's no class following
4 decertification.

5 Q Members of the -- members of the
6 formerly certified class?

7 A Yes.

8 Q And in those communications you
9 offered to represent those parties individually
10 in continuing litigation against XTO Energy,
11 correct?

12 A Again, the letters speak for
13 themselves, but yes, essentially that's correct.

14 Q You wanted to stay involved as
15 counsel for those parties, correct?

16 A Yes.

17 Q And by May 15, 2010, you had filed
18 copyright registrations for 15 of the court
19 filings and discovery documents that you had
20 prepared while acting as counsel for the
21 formerly certified class?

22 A I think the dates are right, yeah.

23 Q And you wanted to prevent new
24 counsel from copying the work product you had
25 done on behalf of the class, correct?

1 E. White

2 A I wanted to protect my intellectual
3 property, if that's what you're asking me.

4 Q And the concern that you had was
5 that other lawyers who were seeking to act on
6 behalf of the same individuals you were seeking
7 to represent would use your work product in
8 their own efforts to represent those same
9 individuals?

10 MR. BLUE: Objection.

11 Go ahead.

12 A That was certainly a concern.

13 Q What other concern did you have?

14 A Well, again, it's -- I think that
15 the best way to say it was I was seeking to
16 protect my intellectual property and that was a
17 significant concern.

18 Q What else motivated the timing of
19 registering 15 documents in the case other than
20 the fact that you had been removed as counsel
21 for the class, there was a motion to intervene
22 with new class counsel, and you were seeking to
23 represent those same individuals in their
24 individual capacity?

25 A Well, part of it was I didn't have

1 E. White

2 a trial that I had expected to have and so I had
3 more time. But your assertion that that was
4 copying by subsequent counsel was a concern is
5 accurate.

6 Q And what I'm trying to understand
7 is were there any other concerns motivating the
8 last 15 copyright registrations that you've made
9 in your career on behalf of your firm?

10 MR. BLUE: Objection, asked and
11 answered?

12 A Yes.

13 Q And what were they?

14 A A desire to protect my intellectual
15 property.

16 VIDEOGRAPHER: Excuse me, Counsel,
17 we're coming down to seconds.

18 MR. MARKS: That's fine. Why don't
19 we go ahead and change now.

20 VIDEOGRAPHER: The time is 11:53
21 and we're off the record.

22 (Whereupon, at 11:53 a.m., a recess
23 was taken to 11:59 a.m.)

24 (The deposition resumed with all
25 parties present.)

1 E. White

2 VIDEOGRAPHER: The time is 11:59
3 and this begins tape two of the
4 videotaped deposition of Edward L.
5 White.

6 Q In July of 2010, Mr. White, the
7 court in Beer v. XTO -- XTO Energy granted the
8 motion to intervene, correct?

9 A Yes.

10 Q And you were directed to deliver
11 all discovery materials to intervener's counsel,
12 right?

13 A Correct.

14 Q And after the court learned about
15 your outreach to members of the decertified
16 class concerning potential individual
17 representations, the court enjoined you and
18 Dr. High from any future correspondence with
19 class members, correct?

20 A The court entered an order that was
21 to some extent consistent with what you said.

22 Q How was it inconsistent with what I
23 said?

24 A You can read the order.

25 Q Sitting here today can you identify

1 E. White

2 anything about my statement's that inaccurate?

3 A I don't have the order in front of
4 me.

5 Q But I agree with you, the order
6 says what it says but you can't identify
7 anything incorrect in my statement sitting here
8 today?

9 MR. BLUE: Objection.

10 A Nothing specific.

11 Q And you don't dispute that the
12 court enjoined you and Dr. High from future
13 correspondence with members of the class that
14 had been certified with you as class counsel?

15 A Again, I have to look at exactly
16 what the court order said, but that was the
17 tenor of the order.

18 Q And the new named plaintiff's who
19 intervened in the case filed a class
20 certification motion in August 2010, correct?

21 A I believe so.

22 Q And earlier the court certified the
23 class with new class counsel and new
24 representative plaintiffs, correct?

25 A Yes.

1 E. White

2 Q And earlier this year the case
3 settled right before trial?

4 A Yes, it did.

5 Q And class counsel in that case has
6 submitted a fee request of more than \$18
7 million, correct?

8 A Correct.

9 Q And you have filed a motion asking
10 the court to award you a portion of the attorney
11 fee award and to reimburse your firm for
12 specific litigation expenses, correct?

13 A Yes.

14 MR. MARKS: I'd like to mark as
15 White Exhibit 10, a document bearing the
16 title "Motion in Support of Class
17 Counsel's Fee Request and Request for
18 Separate Allocation of Fees to White and
19 to Prior Class Representatives."

20 (Motion in Support of Class
21 Counsel's Fee Request and Request
22 for Separate Allocation of Fees to
23 White and to Prior Class
24 Representatives was marked as White
25 Exhibit No. 10 for identification,

1 E. White

2 Q And have you used West Law to
3 access a court filing prepared by another
4 attorney?

5 A Again, it -- it's possible, but I
6 don't believe so. I don't think that back when
7 I had West Law I was aware of that as an option.

8 Q Has anyone ever accessed an
9 attorney authored court filing via West Law on
10 your behalf?

11 A No.

12 Q Has anyone ever used Lexis to
13 access a court filing prepared by another
14 attorney on your behalf?

15 MR. BLUE: Objection, vague.

16 A No, I don't believe so.

17 Q When did you first become aware
18 that a document prepared by your firm was
19 available on West Law?

20 A Sometime after I became aware of
21 course that they were offered, but I don't -- I
22 can't tell you when exactly.

23 Q How did you become aware of it?

24 A I -- honestly I can't tell you.

25 Q You don't remember?

1 E. White

2 A No.

3 Q How did you become aware that a
4 document prepared by Edward L. White, P.C. was
5 available on Lexis?

6 A I think, and I don't know if this
7 is true in fact, my assumption was once I
8 figured out that briefs were available that I
9 had assumed that basically all federal briefs
10 were available, that there was some sort of
11 program to pull those off and kind of in an
12 automated fashion index and process.

13 Q Do you understand sitting here
14 today whether or not that's the case?

15 A I don't know if that's the case.

16 Q Did you ever search Lexis for a
17 copy of a brief or other court filing prepared
18 by your firm?

19 A I believe I did.

20 Q And were you able to locate any?

21 A I believe I was, yeah.

22 Q Which documents were you able to
23 identify?

24 A I believe some of the Beer
25 documents, one or more of the beer documents.

1 E. White

2 Q And when did you conduct that
3 search?

4 A I don't know. After they were
5 registered in 2010, but I don't know when.

6 Q Certainly within the last year or
7 two which is the time frame in which you've
8 indicated you first became aware that Lexis made
9 briefs available, correct?

10 A Correct.

11 Q And have you ever conducted a
12 search for your own materials on West Law?

13 A No.

14 Q Has anyone ever done that on your
15 behalf?

16 A It's possible, I don't know.

17 Q Sitting here today, you're not
18 aware of anybody having searched West Law for
19 copies of your briefs or other court filings on
20 West Law?

21 A Correct.

22 Q When was the last time that you
23 used Lexis to access one of your own documents?

24 A I don't know.

25 Q Within the past year?

1 E. White

2 A I don't know.

3 Q Since the case was filed?

4 A I don't know.

5 Q Do you know whether or not any
6 documents prepared by Edward L. White, P.C. are
7 currently available on Lexis?

8 A No, I don't know.

9 Q Do you know whether any documents
10 prepared by Edward L. White, P.C. are currently
11 available on West Law?

12 A No, I don't know.

13 Q Do you have any understanding of
14 the time period for which any particular
15 document authored by your firm was available on
16 West Law?

17 MR. BLUE: I'm sorry, just for
18 clarification, dates during which it was
19 available.

20 Q Yeah, the time period, for how long
21 it was available.

22 A I don't know.

23 Q Same answer as to Lexis?

24 A Correct.

25 Q The amended complained in this

1 E. White

2 action places two Works at issue in this
3 copyright infringement action, correct.

4 A I don't know that that's accurate.

5 Q Do you believe that more Works are
6 at issue than two?

7 A Well, paragraphs 4 and -- paragraph
8 4 talks about two particular Works, but then the
9 exhibit we looked at has more Works referenced,
10 so I don't know when you say places then at
11 issue, I'm not sure what that means.

12 Q As the plaintiff in this case, do
13 you believe that you're seeking relief on behalf
14 of injunctive relief or damages with -- let me
15 break that apart. Are you seeking damages from
16 West Law and Lexis for infringements of Works
17 other than the motion in limine or the motion
18 for summary judgment?

19 MR. BLUE: Objection. We made that
20 clear in the documents.

21 MR. MARKS: You're referring to
22 your representation that it's only two
23 Works at issue?

24 MR. BLUE: Yes.

25 MR. MARKS: Well, I will accept

1 E. White

2 your representation on the record here
3 that the only two Works at issue are the
4 motion in limine that's been marked as
5 White Exhibit 8 and the motion for
6 summary judgment that's been marked as
7 White Exhibit 7?

8 MR. BLUE: Correct, for purposes of
9 this litigation, reserving rights with
10 respect to everything else, currently at
11 issue are those two writings.

12 Q And my question for you, Mr. White,
13 is turning to White Exhibit 7, how did you
14 become aware that plaintiffs' combined motion
15 for summary judgment in the Beer v. XTO Energy
16 case was available on West Law?

17 A As I said to you, my assumption was
18 that when I found out they had this brief bank,
19 whatever you want to call it, that all federal
20 filings were on there. So I didn't become -- I
21 don't recall a specifically becoming aware that
22 that pleading was on there. My belief was that
23 all federal pleadings were on there.

24 Q Do you have any reason to believe
25 that this document was ever made available on

1 E. White

2 West Law other than your belief that all federal
3 pleadings were made available on West Law?

4 MR. BLUE: Objection.

5 A I'm not sure exactly what you're
6 asking but I had, I think, my testimony is I had
7 a belief that all pleadings were available.

8 Q I will represent to you that your
9 belief is incorrect.

10 A All right.

11 Q Okay. And I'm asking whether
12 there's any other basis for your belief that
13 this document that's been marked as White
14 Exhibit 7 was ever available on West Law other
15 than your belief that West Law was making all
16 federal pleadings available?

17 A Other than as a part of this
18 litigation information that's been produced, I
19 didn't have an independent...

20 MR. BLUE: And let me just
21 interject to object to the extent your
22 question includes a request for
23 conversations between Mr. White and his
24 counsel concerning this litigation.

25 MR. MARKS: I'm not asking for the

1 E. White

2 A Same answer.

3 Q The answer is no, you don't have
4 any knowledge?

5 MR. BLUE: Objection.

6 A My answer was that I don't have a
7 specific recollection of having done a search
8 but my -- I may have more likely on Lexis done a
9 search because I had that service, but my belief
10 was that they were all available.

11 Q And you didn't -- you don't have
12 any recollection sitting here today of searching
13 for this document on Lexis or West Law?

14 A No.

15 Q Okay. With respect to the
16 plaintiff's motion in limine that's been marked
17 as White Exhibit 8, you don't -- other than
18 conversations, excluding whatever conversations
19 you may have had with counsel, you don't have
20 any basis to no one way or the other whether
21 plaintiff's motion in limine was ever made
22 available on West Law?

23 MR. BLUE: Objection.

24 A My answers with respect to this
25 document would be the same as with respect to

1 E. White

2 others.

3 Q You don't have specific knowledge
4 of this document ever appearing on West Law and
5 you don't have specific knowledge of this
6 document ever appearing on Lexis, correct?

7 MR. BLUE: Objection.

8 A Correct, other than as previously
9 discussed.

10 Q Other than a belief that West Law
11 and Lexis were making all federal filings
12 available, correct, and conversations with
13 counsel?

14 A Again, as previously discussed,
15 yes.

16 Q Are you aware of any instance in
17 which another attorney has copied the
18 expressions set forth in White Exhibit 8?

19 A No.

20 Q Are you aware of any instance in
21 which another attorney has used the expressions
22 set forth in White Exhibit 7?

23 MR. BLUE: Objection.

24 A No.

25 Q Prior to filing this lawsuit, did

1 E. White

2 you ever ask West Law to remove materials
3 written by Edward L. White, P.C. from its
4 database?

5 A No.

6 Q Prior to filing this lawsuit, did
7 you have any communications with West Law about
8 not putting any of your materials into the
9 database in the first place?

10 A No.

11 Q Did you ever have any communication
12 at any time with anyone at West about the
13 availability of your materials in its database?

14 A I don't believe so.

15 Q Has anyone ever told you that a
16 request from West to remove your materials from
17 its database would be futile?

18 A Has anyone told me that, no.

19 Q Do you have any reason to believe
20 that such a request would be futile?

21 A Yes.

22 Q What's the basis for your belief?

23 A Dealing with West in the past.

24 Q What -- what about your dealings
25 with West in the past makes you believe that

1 E. White

2 requesting that they remove materials from their
3 database would be futile, absent federal court
4 litigation?

5 A It's just my general impression
6 based on prior dealings with West that a request
7 from one attorney to remove materials would have
8 been futile.

9 Q And you never made such a request?

10 A Correct.

11 Q And what are the nature of your
12 dealings that gave you the impression that they
13 wouldn't entertain a dialogue if you wanted
14 materials removed from the database?

15 A Less than reasonable behavior from
16 West previously.

17 Q What is the behavior that you're --
18 to which you're referring?

19 A I had a dispute about how much
20 we -- I owed them, the firm owed them upon
21 termination. And I can't remember if that
22 contract was specifically with me as an
23 individual or for the firm, but a dispute
24 associated with termination of prior West
25 service.

1 E. White

2 A Less than a year.

3 Q When was your first communication
4 with Mr. Blue in relation to this action?

5 A Same thing, I don't know.

6 Q Did you retain the Bragar Wexler
7 firm at the same time that you retained
8 Mr. Blue?

9 A My expressed dealings have been
10 with Mr. Blue.

11 Q Have you had any communications
12 with Mr. Bragar?

13 MR. BLUE: That's a yes or no. I
14 just don't want you to get into the
15 substance of communications.

16 Q I'm not asking for the substance,
17 I'm asking about communication.

18 A I don't believe so.

19 Q How did you come to met Mr. Blue?

20 A Mr. Blue and I discussed a couple
21 of litigation matters.

22 MR. BLUE: I'm going to object to
23 the extent that you're asking for the
24 substance of those discussions.

25 Q And excluding your counsel in this

1 E. White

2 action, have you had conversations with other
3 attorneys about the availability of briefs on
4 West Law or Lexis?

5 MR. BLUE: I'll object to the
6 extent that previous answers have
7 discussed that.

8 Q You can answer.

9 A I believe I have.

10 Q Who's that?

11 A Couldn't say specifically. Like
12 most lawyers, I talk to my friends and
13 colleagues about various legal matters and it
14 would have been in that context of, you know,
15 did you realize that this was out there.

16 Q Sitting here today, you can't
17 recall a specific conversation?

18 A No, I can't recall a specific.

19 Q Has anyone ever told you in words
20 or in substance that they would writing legal
21 briefs if they were copied and distributed by
22 West Law and Lexis without permission?

23 A No.

24 Q Has anyone told you in words or in
25 substance that the quality of their briefs would

1 E. White

2 diminish if they were copied and distributed by
3 West Law and Lexis without permission?

4 A No.

5 Q Has anyone ever told you that they
6 had complained to West Law or Lexis about the
7 availability of court filings on West Law or
8 Lexis?

9 A It, you know, it's one of those
10 deals, I don't have a specific recollection but
11 I believe that somebody I talked to had
12 mentioned that they had complained.

13 Q You don't recall who this person
14 is?

15 A No, I don't.

16 Q Man or a woman?

17 A I believe it was a man, but I've --
18 I've had quite a few conversations with folks
19 about this issue so I can't be sure who it was.

20 Q Since the filing of the complaint,
21 you mean?

22 A Since and before.

23 Q So you've had quite a few
24 conversations about this issue before you filed
25 a complaint in this action?

1 E. White

2 MR. BLUE: Objection.

3 A Friends and colleagues, yes.

4 Q But you can't recall a single
5 conversation?

6 A No.

7 Q Did you memorialize anything about
8 whether anybody has ever complained to Lexis or
9 West Law?

10 A No.

11 Q Nobody ever shared with you a copy
12 of a written complaint?

13 A No.

14 Q Nobody put that in an e-mail, this
15 was all oral communications if they happened?

16 A They happened, communications about
17 this issue, but I don't recall any e-mails.

18 Q Turning your attention to the
19 amended complaint which is still before you I
20 believe, you authorized the filing of the
21 amended complaint, correct?

22 A Yes.

23 Q Did you review it for factual
24 accuracy before it was filed?

25 A Yes.

1 E. White

2 copies of the Works, prepared derivative Works
3 and distributed copies of the Works, end quote.

4 Could you see that?

5 A Yes.

6 Q What is the basis for your
7 allegation that West and Lexis have compared
8 derivative Works?

9 A Well, without limiting this
10 explicitly to the answer, I mean there's a lot
11 of legal arguments involved, but I think
12 certainly taking the Works off of Pacer and
13 putting them on their database would be one
14 instance. Sending them via an e-mail to someone
15 would be another instance.

16 Q That would be a derivative work?

17 A I think it's a derivative work,
18 yes.

19 Q Okay. So --

20 A It's not a very significant change,
21 but they indexed them, they put them on the
22 database, they made them available. I think all
23 those are derivative Works.

24 Q It's all creation of derivative
25 Works?

1 E. White

2 A Yes.

3 Q You aren't going to stop being a
4 lawyer if you lose this case, are you?

5 A I don't expect to.

6 Q You don't expect to stop or you
7 don't expect to lose?

8 A Either.

9 Q All right. Assume with me that --
10 but you would agree that if you lost this case
11 you wouldn't stop being a lawyer, would you?

12 A Correct. Not just because of that.
13 I mean at some point I will because I'll die or
14 retire.

15 Q And even if you lose this case you
16 will continue to represent your clients to the
17 best of your ability, won't you?

18 A Certainly.

19 Q And win or lose in this case, you
20 will still file motions when you think it's in
21 your client's best interest to do so, correct?

22 A Yes.

23 Q And win or lose this case, you will
24 still respond to motions filed against your
25 clients in other cases, correct?

1 E. White

2 A Yes.

3 Q Have you suffered any damages from
4 the available -- availability of the motion to
5 dismiss -- excuse me, the motion for summary
6 judgment and the motion in limine on West Law?

7 MR. BLUE: Objection.

8 A Any actual damages?

9 Q Yes, any actual damages?

10 A Again, we talked early on about
11 some -- some -- some of the perceived damage
12 that I see that's difficult to calculate, but
13 yes, I think I have and I think it's also
14 reduced the value of my practice to the extent
15 that the available -- availability of those
16 Works makes it easier for someone else to
17 undertake oil and gas litigation and
18 specifically kind of roll up the litigation like
19 those two briefs related to.

20 Q And do you have any knowledge about
21 another attorney accessing your motion for
22 summary judgment through West Law or Lexis?

23 A Other than as it relates to
24 information I learned in this litigation, no.

25 Q And do you have any knowledge or

1 E. White

2 awareness of another attorney accessing your
3 briefs through West Law or Lexis in order to
4 provide services in competition with you?

5 A No, but I believe that happens.

6 Q What is the basis for your belief?

7 A Why does West and Lexis sell the
8 briefs other than for use by counsel and use by
9 counsel is to some extent by definition
10 competition and so it's facilitating more
11 effective competition with me.

12 Q And do you have any understanding
13 of how many people have accessed your motion for
14 summary judgment through Pacer?

15 A I don't.

16 Q Do you have any understanding of
17 how many attorneys have accessed your motion in
18 limine through Pacer?

19 A No.

20 Q Do you have any understanding of
21 how many attorneys have made copies of either
22 your motion for summary judgment or your motion
23 in limine at the courthouse?

24 A No.

25 Q So you have no idea whether or not

1 E. White

2 the percentage of attorneys who might have
3 accessed either of those Works through West Law
4 or Lexis is tiny as a percentage of the people
5 who have obtained copies of those documents
6 through Pacer or from the court itself?

7 A I don't know what fraction of
8 people that have accessed those Works have done
9 so through Lexis or West Law versus Pacer, if
10 that's your question.

11 Q And if somebody wanted to see those
12 briefs so that they could compete more
13 effectively with you, they could go get a copy
14 from Pacer, couldn't they?

15 A If they specifically knew about the
16 case at issue and knew that they wanted those
17 specific briefs, but it's, you know, not part of
18 my complaint in this case is that it's the
19 systematic way and you know, the text search
20 ability and the ability to pull up a whole set
21 of briefs on an issue is what undercuts my
22 ability to practice. It's not just that one
23 brief's available if you know that case and you
24 know you want that brief, which has always been
25 the case, but it's that there's a systematic way

1 E. White

2 that someone can have access, use, and basically
3 have a whole roadmap for a case based on briefs
4 on file.

5 Q And can you identify a single
6 client represent -- client representation that
7 you have lost because of the availability of one
8 of your Works on West Law or Lexis?

9 A I can't imagine someone coming to
10 me and saying I would have hired you but I went
11 to Joe Smith because he told me he could get
12 these briefs off Lexis. It's never happened but
13 I can't imagine how it would.

14 Q And are you aware of any case that
15 you have lost in part because your litigation
16 adversaries had access to briefs that you had
17 filed in the past?

18 A Again, I can't imagine that
19 specifically coming up but it certainly is, and
20 I didn't mention that fact before, but that, the
21 access of adversaries to briefs in an easy
22 fashion that involve Edward L., you know, Ed
23 White, is another way in which I could have been
24 harmed by the --

25 Q The fact that a litigation

1 E. White

2 adversary could have used West Law or Lexis to
3 obtain copies of briefs you have filed in the
4 past?

5 A Correct.

6 Q And your litigation adversaries
7 know who you are presumably, right?

8 A Presumedly.

9 Q So they could go to the courthouse
10 and get copies of your briefs and filings,
11 couldn't they?

12 A Again, not as in a simple of
13 fashion, but yes.

14 Q So it's easier for them to get it
15 through West Law and Lexis, but they could get
16 it through publicly available records at the
17 courthouse or on Pacer, correct?

18 A Yes.

19 Q You have also alleged that you have
20 suffered irreparable injury from the
21 availability of the motion for summary judgment
22 and the motion in limine on West Law?

23 A I think we allege that, yes.

24 Q And is the irreparable injury any
25 different from what you've described? Is that a

1 E. White

2 different kind of harm or just a different way
3 of describing the same problem from your
4 perspective?

5 A I think it's a different way of
6 describing the same problem.

7 Q And the same question as to Lexis,
8 have you suffered any irreparable injury from
9 the availability of the motion for summary
10 judgment and the motion in limine on Lexis other
11 than what you've just described?

12 A I don't think so.

13 Q Turning your attention to paragraph
14 32. It's an allegation that says, quote, Unless
15 enjoined from doing so, the defendants'
16 continued commercial use of the Works will cause
17 plaintiff irreparable harm by depriving it of
18 both the right to control the reproduction and
19 distribution of copyrighted Works and to receive
20 revenue from those Works, end quote.

21 Do you see that?

22 A Yes.

23 Q How are you being deprived of the
24 right to receive revenues from the motion in
25 limine and the motion for summary judgment?

1 E. White

2 A I think to the extent the copies of
3 my -- copies of derivative Works and the like
4 are created from my Works without payment and
5 without authorization I've been harmed.

6 Q Is the only loss of revenues to
7 which you're referring the fact that you're not
8 being paid a fee by West Law or Lexis?

9 A No, I think I've described other
10 harms.

11 Q But I'm -- I'm referring
12 specifically to your allegation you are being
13 deprived of your right to receive revenues from
14 the motion for summary judgment and the motion
15 in limine, and I'm trying to understand how
16 you're being deprived of the right to receive
17 revenues from those Works?

18 A I think it says we've derive, or as
19 I've discussed earlier, and then also in
20 addition specifically, as you kind of hinted at,
21 specific use based or access based or copy based
22 fees associated with reproduction or creation of
23 derivative Works.

24 Q You don't get any compensation from
25 Pacer when somebody uses Pace to make a copy of

1 E. White

2 the motion for summary judgment or motion in
3 limine, do you?

4 A I don't.

5 Q You don't get compensated by the
6 federal court system when somebody goes to the
7 courthouse and makes a copy of your motion for
8 summary judgment or your motion in limine, do
9 you?

10 A I don't.

11 Q Are you being damaged by the
12 availability of your Works to the public through
13 Pacer?

14 MR. BLUE: Objection to the extent
15 it calls for a legal conclusion.

16 Q I'm asking for a factual -- I'm
17 asking a factual question. Are you being
18 damaged by the availability of your court
19 filings to the public through Pacer?

20 A I don't know if I'd say it exactly
21 that way. I think that the value of my
22 intellectual property would be slightly higher
23 if it were not available on Pacer. I suspect
24 that. But as part of being a part of the Pacer
25 system you have to submit Works to be a part of

1 E. White

2 the Pacer system.

3 Q And that's true for court filings,
4 right, too, when you make a public court filing
5 the public has access to it, right?

6 A Correct.

7 Q Are you damaged by the availability
8 at the courthouse of copies of your public
9 filings?

10 A I suppose to a limited extent, yes,
11 the same extent, but part of the system.

12 Q And you're being irreparably
13 injured by the fact that the court makes your
14 documents available to the public, right?

15 MR. BLUE: Objection.

16 A I don't know if I'd say it that
17 way.

18 Q Would you say you're being
19 irreparably injured by the availability on Pacer
20 of your briefs and other court filings?

21 A Again, I don't know that I'd say it
22 that way. I don't -- they have -- it's a
23 different situation in my mind.

24 Q And what is the difference?

25 A The federal systems for filing

1 E. White

2 pleadings, Pace is anyway, and it's a part of
3 how lawyers do business.

4 Q And it's been -- the public
5 availability of court filings have been part of
6 the way lawyers do business since long before
7 the invention of Pacer, correct?

8 A Generally speaking, court files
9 open, yes. But they're not indexed and they're
10 not available in an Internet search.

11 MR. MARKS: We've reached a
12 convenient break point for lunch. Why
13 don't we take however long you guys want
14 to take for 40 minutes, half-hour?

15 MR. BLUE: Why don't we go off the
16 record?

17 VIDEOGRAPHER: The time is 12:50
18 and we're off the record.

19 (Whereupon, at 12:50 p.m., a recess
20 was taken to 1:34 p.m.)

21 (The deposition resumed with all
22 parties present.)

23 VIDEOGRAPHER: The time is 1:34 and
24 this begins tape number three of the
25 videotaped deposition of Edward L.

1 E. White

2 White.

3 Q Mr. White, I'd like to start by
4 asking you a question that was asked earlier
5 today, and I understand from my colleagues that
6 the transcript may not have come out clearly so
7 bear with me, I'm just going to ask the question
8 again.

9 We were speaking earlier today
10 about the summary judgment motion that you
11 filed on behalf of Miss Beer and Miss Bique in
12 the Beer v. XTO Energy case.

13 Do you recall that?

14 A Yes.

15 Q Did the possibility that someone
16 might make a copy of your summary judgment
17 motion and supporting brief from Pacer and
18 distribute that material affect your decision to
19 write the summary judgment motion?

20 A No.

21 Q Your professional reputation has
22 not been compromised by the fact that West Law
23 and Lexis subscribers have been able to access
24 some of your court filings through those
25 services, has it?

1 E. White

2 A I don't believe so.

3 Q And your ability to represent
4 clients effectively has not been comprised by
5 the availability of some of your past court
6 filings on West Law or Lexis, has it?

7 A My ability to represent them
8 effectively has not been compromised, but as I
9 explained, I think it affects my business.

10 Q Because other lawyers are able to
11 compete for business with you by -- through
12 access to your briefs?

13 A Well, as we've discussed, but yes,
14 essentially.

15 Q The brief filed on your behalf in
16 opposition to West's and Lexis's partial motions
17 to dismiss cited briefs written by other
18 lawyers, correct?

19 A I believe that's correct.

20 Q I don't want to make this a memory
21 test. Let me hand you a copy of plaintiff's
22 memorandum of law in opposition to defendants'
23 motions to dismiss filed on your behalf in this
24 case.

25 If I could point your attention to

1 E. White

2 Q Do you recall approximately when
3 you registered to file with the Western -- to be
4 authorized to file electronically with the
5 Western District of Oklahoma?

6 A It was before it became mandatory,
7 but I don't recall what year that was. There
8 was a voluntary period where you could either
9 file in paper file or file electronically, and
10 then there was a point where it became mandatory
11 and I had registered prior to that mandatory
12 point.

13 Q Are you registered with any state
14 courts to file electronically?

15 A No.

16 MR. WHITNEY: I'm going to mark two
17 documents here just to speed up the
18 process. The first document marked as
19 White 11 is documents Bates numbered P25
20 to P29. And the second marked as White
21 12 is a document Bates numbered P86 to
22 P91.

23 (E-mail bearing Bates numbers P25
24 to P29 was marked as White Exhibit
25 No. 11 for identification, as of

1 E. White

2 this date.)

3 (E-mail bearing Bates numbers P86
4 to P91 was marked as White Exhibit
5 No. 12 for identification, as of
6 this date.)

7 Q Mr. White, have you seen what's
8 been marked as Exhibit 11 before, which is the
9 one that starts with Bates number P25?

10 A Yes.

11 Q And what is it?

12 A This is the -- a copy of the e-mail
13 that's received from the court upon filing of a
14 document and this particular one is document
15 176, a motion in limine.

16 Q And is this the motion in limine
17 that is at issue in this case that you're
18 accusing Lexis and West and copyright
19 infringement on?

20 A I believe it's the same one, yes.

21 Q And Exhibit 12 for Bates number
22 P86, can you tell me what that document is?

23 A It's the same kind of thing, it's
24 an e-mail notice regarding the motion for
25 summary judgment.

1 E. White

2 Q And is that the same -- is that the
3 motion for summary judgment that is at issue in
4 this case that you're accusing West and Lexis of
5 copyright infringement on?

6 A I believe so, there are two but I
7 think this is the correct one.

8 Q Did you receive these notices after
9 filing the Works at issue in the Beer v. XTO
10 Energy case?

11 A Yes, I would have received a notice
12 by e-mail.

13 Q Do you have an understanding of who
14 can get these notices?

15 A Anyone who's entered an appearance
16 in the case, any counsel or parties or pro se
17 entered an appearance, and I think in this
18 particular instance it indicates on page P87 who
19 got the notice.

20 Q Do you know if attorneys who are
21 not representing parties in this case can
22 receive these ECF notices?

23 A I don't receive any in cases where
24 I'm not an attorney but it's possible I suppose.

25 Q What was your understanding of the

1 E. White

2 availability of these briefs after they were
3 filed?

4 MR. BLUE: Objection, asked and
5 answered.

6 You can answer it again.

7 A My -- I knew that they were filed
8 and therefore available on Pacer and also I
9 believe that you could get a -- I say this -- I
10 think you can get a paper copy at the courthouse
11 although I have not done that in a long time.

12 Q If I can turn you to the -- sort of
13 the top third of these documents, we can look at
14 Exhibit 11 but you can see that the same
15 language exists on Exhibit 12. It says, the
16 second to last sentence above where it says U.S.
17 District Court near in the middle of the page,
18 "To avoid later charges, download a copy of each
19 document during this first viewing." If you
20 want to back it up it says -- let me read the
21 whole paragraph to make it clear.

22 "Judicial conference of the United
23 States policy permits attorneys of record and
24 parties in a case (including pro se
25 litigations) to receive one free electronic

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E. White

copy of all documents filed electronically if receipt is require by law or directed by the filing. Pacer access fees apply to all other users. To avoid later charges, download a copy of each document during the first viewing. However, if the reference document is a transcript, the free copy and 30 page limit do not apply."

Do you see where it says that?

A Yes.

Q When you -- do you receive these notices when other attorneys file briefs in cases in which you are representing a party?

A Yes.

Q Do you download a copy of that document upon receiving these notices?

A I typically don't, but Jan does on my behalf.

Q What do you or Jan do with the document after it's downloaded?

A Typically it's saved to our computer files.

Q And do you print out that document on occasion, those documents on occasion?

1 E. White

2 significant limitation.

3 Q And is it your understanding that
4 copyright prohibits an individual from copying a
5 document without the authority of the copyright
6 owner?

7 MR. BLUE: Objection, calls for
8 legal conclusion.

9 You can answer.

10 A As a general rule, absent an
11 argument for fair use, yes.

12 Q And are you aware that a document
13 available on Pacer can be copied by any member
14 of the general public without permission of the
15 copyright owner?

16 MR. BLUE: You're talking once
17 again that it -- that's it's possible
18 that it's done or are you saying that
19 it's lawful?

20 MR. WHITNEY: I'm saying say it's
21 authorized by the person that filed the
22 document.

23 A So I'm sorry --

24 MR. WHITNEY: I'm sorry. On that
25 basis I'll object on vague. If you can

1 E. White

2 restate it I would appreciate it.

3 Q Okay. Are you aware that by filing
4 a document with ECF, you are authorizing any
5 member of the public to access and copy the
6 document filed through ECF?

7 MR. BLUE: Objection calls, for a
8 legal conclusion.

9 You can answer.

10 A I'm aware of the idea as expressed
11 in this policy that litigants -- litigants
12 receive a free copy and others can purchase
13 copies as specified here.

14 MR. BLUE: I just want the record
15 to show that Mr. White is referring to
16 Exhibit No.

17 THE WITNESS: 15.

18 MR. BLUE: 15.

19 Q Do you have any objection to
20 members of the public accessing your document, a
21 document that you had filed with the court via
22 ECF accessing it via Pacer?

23 A Not generally.

24 Q Do you have a specific objection to
25 a member of the public accessing a document you

1 E. White

2 filed via ECF via Pacer?

3 A I don't have an objection to them
4 accessing it, I have an objection to what
5 happened to information that Lexis and West
6 accessed, but the access initially, no.

7 Q Do you have any objection to a
8 member of the public making a copy of the brief
9 that you have filed with the court via ECF via
10 Pacer?

11 A Not in general terms.

12 Q Do you have any specific objection
13 to a member of the public making a copy of a
14 brief you have filed with the court via ECF via
15 Pacer?

16 A Well again, I filed suit, so I have
17 an objection here. But other than this case, I
18 don't know of any specific objectionable
19 instances.

20 Q So other than West and Lexis, you
21 have no objection to any member of the public
22 copying, making a copy of a brief you have filed
23 via ECF via Pacer?

24 A Objection to the extent it was
25 asked and answered earlier.

1 E. White

2 But otherwise, you can answer.

3 A I don't have a specific objection
4 at this time. I can see again hypotheticals
5 where I might have an objection, but I don't
6 know of any other than what I'm complaining
7 about here.

8 Q And you recognize that members of
9 the public may have made copies of briefs that
10 you have filed with the courts via ECF via
11 Pacer?

12 A It's possible.

13 MR. WHITNEY: We're going to mark
14 Exhibit 16.

15 (Reed Elsevier Inc.'s (Lexis) First
16 Request for Documents was marked as
17 White Exhibit No. 16 for
18 identification, as of this date.)

19 Q Just had the court reporter mark
20 Exhibit 16, which Plaintiff's Response to
21 Defendant Reed Elsevier Inc.'s (Lexis) First
22 Request for Documents. Lexis is in parenthesis.

23 Have you seen this before, Mr.
24 White?

25 A Yes.

1 E. White

2 of our initial discussions of his work for the
3 firm.

4 Q Around what time would that have
5 been?

6 A I don't really know, I would say
7 2003, in that time frame. Could have been
8 earlier, 2002.

9 Q Do you recall a specific
10 conversation in this regard?

11 A No, it was ten years ago. But I
12 recall that the subject matter of intellectual
13 property and when intellectual property practice
14 came up and to the extent he Works for the firm,
15 it's the firm's property.

16 Q Okay. Request number 25 -- see
17 we're skipping right -- moving right along.

18 A That's nice.

19 Q The request seeks all
20 communications between you and LexisNexis
21 regarding the Works -- no, I'm sorry. All
22 communications between you and LexisNexis. The
23 response, notwithstanding the general objections
24 as to the complaint work, plaintiffs have no
25 responsive documents.

1 E. White

2 Do you see that?

3 A Yes.

4 Q Have there been any communications
5 between you and LexisNexis regarding the Works
6 at issue in this case?

7 A I don't believe so. Other than the
8 litigation.

9 Q Of course. Have there been any
10 communications between you and West Law
11 regarding the Works at issue in this case?

12 A Other than the litigation
13 communications, no.

14 Q Request number 26 seeks all
15 communications with third parties other than
16 counsel of record in this case about LexisNexis.
17 The response, notwithstanding the general
18 objections as to the complaint Works, plaintiffs
19 have no responsive documents.

20 Do you see that?

21 A Yes.

22 Q Have there been any communications
23 with third parties other than counsel of record
24 in this case about LexisNexis with regard to the
25 Works at issue in this case?

1 E. White

2 A Yes.

3 Q Have there been any written
4 communications with third parties other than
5 counsel of record in this case about LexisNexis
6 with regard to the Works at issue in this case?

7 A No.

8 Q Do you recall any -- have there
9 been any oral communications with third parties
10 other than counsel of record in this case about
11 LexisNexis with regard to the Works issue in
12 this case?

13 A Yes. And as it relates to these
14 communications or this question, generally as
15 I've said, I know I've had communication with
16 other colleagues and friends that are counsel
17 about this particular issue. I don't know the
18 specific communications but there are along the
19 lines of did you know this was happening and
20 that sort of thing.

21 Q Other than those conversations with
22 colleagues, just letting them know what's
23 happening, have you had any other communications
24 regarding the work -- about LexisNexis with
25 regard to the Works at issue in this case?

1 E. White

2 A I don't think so.

3 Q And the same response with regard
4 to West Law?

5 A Correct.

6 Q Look at request number 28. That
7 request seeks all correspondence, including, but
8 not limited to cease and desist letters and take
9 down notices with any person requesting that the
10 copyrighted material be removed from any
11 publicly available sources, whether available
12 for free or for cost regardless of time period.
13 The response, notwithstanding the general
14 objections as to the complaint Works,
15 plaintiff's have no responsive documents.

16 Do you see that?

17 A Yes.

18 Q Other than the complaint in this
19 action, do you have any correspondence with any
20 person requesting that copyrighted material be
21 removed from any publicly available sources?

22 A As to the Works, no.

23 Q Do you have any correspondence with
24 any person requesting the copyrighted material
25 be removed from any publicly available sources

1 E. White

2 not -- not including the Works?

3 A Well, I've represented clients in
4 that context and asked for their Works to be
5 removed from various sources.

6 Q Have you ever asked for Works that
7 are -- that Edward L. White, P.C. claims
8 copyright ownership to be removed from any
9 publicly available sources other than the
10 complaint in this action?

11 A I don't believe so.

12 Q Did you search for documents
13 responsive to these requests for production?

14 A Yes.

15 Q And what did you do in that search?

16 A Several things. I directed Jan to
17 get together some things, some obvious
18 categories of materials. There was some, the
19 registration form. I asked -- I asked her to
20 look for documents that she might have in her
21 computer or in the paper files that responded
22 and then I did a search on my computer for
23 responsive materials as well.

24 Q Did you search through e-mail?

25 A I searched through e-mail, yes.

1 E. White

2 A Is that the person at OCU who
3 accessed?

4 Q Maybe.

5 MR. BLUE: You don't get to ask
6 questions.

7 THE WITNESS: I get to ask. I
8 don't usually get the answers.

9 Q Other than on Lexis or West Law or
10 in a court's electronic document system, are you
11 aware of any documents that you authored and
12 filed with the court are available on line?

13 A I believe that one or more of the
14 documents filed in the Beer versus XTO case is
15 on file associated with the web site that's
16 maintained for that case.

17 Q Any other examples?

18 A It would not -- no, I'm not aware
19 of any specific examples.

20 MR. WHITNEY: Okay, let's take a
21 break here. I may be able to wrap it up
22 soon.

23 VIDEOGRAPHER: The time is 2:49 and
24 we're off the record.

25 (Whereupon, at 2:49 p.m., a recess

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E. White

was taken to 2:58 p.m.)

(The deposition resumed with all parties present.)

VIDEOGRAPHER: The time is 2:58 and we're back on the record.

Q Mr. White, to the extent that anyone accessed your briefs on Lexis or West Law, you're not aware of the reasons why they did, correct?

A Correct.

Q And you did not create the motion for summary judgment at issue in this case in order to license or sell it to other lawyers, correct?

A Not -- not for that purpose.

Q And you did not create the motion in limine at issue in this case license in order to license or sell it to other lawyers, correct?

A Same answer.

Q Has anyone ever offered to license any of your briefs, pleadings or motions?

A Not directly.

Q Have they offered indirectly?

A Well, to the extent I've been

1 E. White

2 contacted and people have asked me to serve as
3 co-counsel on the case, I think in part that's
4 the work on cases I've done and they know I have
5 knowledge that is embodied in those briefs.

6 Q But they've offered to retain you
7 as co-counsel?

8 A Correct.

9 Q They haven't offered to license a
10 brief that you had previously offered?

11 A Correct.

12 Q And have you ever attempted to
13 license any of the Works you've created and
14 filed with courts of record?

15 A You mean to sell a, "Here's a copy
16 fro \$50," that kind of a transaction.

17 Q Correct.

18 A No.

19 MR. MARKS: Nothing further.

20 MR. BLUE: Nothing from the
21 plaintiff.

22 VIDEOGRAPHER: The time is 2:59 p.m
23 and we're off the record.

24 (Time noted: 2:59 p.m.)

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E. White

EDWARD L. WHITE

Subscribed and sworn to before me
this _____ day of _____ 2012.

NOTARY PUBLIC