

## ARBITRATION BEFORE JAMS

JENNER & BLOCK LLP, )  
                     Claimant,         )  
         -vs-                                 ) No. 1310019934  
 PARALLEL NETWORKS, LLC and         )  
 EPICREALM LICENSING LP,             )  
                     Respondents.     )

The deposition of SUSAN COHEN LEVY, called as a witness for examination, taken before VICTORIA C. CHRISTIANSEN, a Certified Shorthand Reporter of the State of Illinois, C.S.R. No. 84-3192, at 353 North Clark Street, Chicago, Illinois, on the 30th of May, A.D. 2012, at 11:05 a.m.



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1       PRESENT:

2               JENNER & BLOCK LLP,  
3               (353 North Clark Street,  
4               Chicago, Illinois 60654-3456,  
5               312-222-9350), by:  
6               MR. JOEL T. PELZ,  
7               jpelz@jenner.com, and  
8               MR. NORMAN M. HIRSCH,  
9               nhirsch@jenner.com,  
10              appeared on behalf of the Claimant;

11             MUNCK WILSON MANDALA,  
12             (12770 Coit Road, Suite 600,  
13             Dallas, Texas 75251,  
14             972-628-3600), by:  
15             MR. JAMIL N. ALIBHAI,  
16             jalibhai@munckwilson.com, and  
17             MS. JANE ANN R. NEISWENDER,  
18             jneiswender@munckwilson.com,  
19             appeared on behalf of the Respondents.

20  
21  
22  
23       REPORTED BY:   VICTORIA C. CHRISTIANSEN,  
24                      Illinois CSR No. 84-3192.



1 (WHEREUPON, the witness was duly  
2 sworn.)

3 SUSAN COHEN LEVY,  
4 called as a witness herein, having been first duly  
5 sworn, was examined and testified as follows:

6 EXAMINATION

7 BY MR. ALIBHAI:

8 Q. Could you please state your full name  
9 for the record.

10 A. Susan Cohen Levy.

11 Q. Ms. Levy, when did you become managing  
12 partner at Jenner & Block?

13 A. July 2008.

14 Q. When did you first become aware that  
15 Jenner & Block was representing Parallel Networks?

16 A. I don't recall.

17 Q. Did you have --

18 A. My guess is before that, but I'm not  
19 sure.

20 Q. Did you have any involvement in  
21 determining whether the firm should take on the  
22 representation of Parallel Networks?

23 A. No.

24 Q. Did you have any involvement in



1 negotiating and/or drafting a contingent fee  
2 agreement --

3 A. No.

4 Q. -- with Parallel Networks?

5 A. No.

6 Q. Prior to becoming managing partner, did  
7 you have any role or responsibility with respect to  
8 the cases?

9 A. With respect to what?

10 Q. The Parallel Networks cases.

11 A. No.

12 Q. You're aware that there were two cases,  
13 correct?

14 A. I'm aware that there was the Oracle case  
15 and the QuinStreet case, right?

16 Q. Right.

17 A. Okay.

18 Q. After you became the managing partner at  
19 the firm, did you have some responsibilities with  
20 respect to those cases?

21 A. Not really. My responsibilities as  
22 managing partner including billing and collections,  
23 so I had no -- I was not the responsible attorney  
24 or I wasn't involved in those cases, but I was



1 involved in the issue over the failure to pay  
2 expenses and other issues relating to billing and  
3 collections.

4 Q. Aside from those administrative  
5 responsibilities regarding billing and collection,  
6 did you have any other responsibilities with  
7 respect to those cases?

8 A. No.

9 Q. And is that how you sort of became  
10 involved in overseeing or looking at those cases,  
11 because of your role as managing partner?

12 A. Yes.

13 Q. I'm sorry. July what did you say?

14 A. July '08.

15 Q. In connection with becoming managing  
16 partner, did you get some type of report that  
17 showed what the status of billing and collection of  
18 certain cases was at the firm?

19 A. I get that reg- -- I get financial  
20 reports regularly.

21 Q. But as managing partner?

22 A. Yeah.

23 Q. What was your role in the firm before  
24 you became managing partner?



1           A.     I was a partner since 1990, I believe,  
2     and I was on the management and policy committees  
3     beforehand.

4           Q.     Management and policy committees?

5           A.     Management committee and policy  
6     committee.

7           Q.     And after you became managing partner,  
8     you stayed on the management committee and the  
9     policy committee?

10          A.     Yes.

11          Q.     And did you join any other committees?

12          A.     Well, I'm involved in all the  
13     committees. All the committees -- you know, I'm  
14     basically the chief executive officer of the firm,  
15     so all the committees of the firm basically are  
16     there reporting to the management committee and the  
17     managing partner.

18          Q.     And Mr. Valukas was the chairman of the  
19     firm when you became managing partner?

20          A.     He is the chairman, yes. Still is.

21          Q.     And he was the chairman --

22          A.     Yes.

23          Q.     -- when you became managing partner?

24          A.     Yes.



1 Q. With respect to the Parallel Networks  
2 cases, did you ask Terri Mascherin to become  
3 involved in the billing and collection issues?

4 A. At some point I had asked her to look at  
5 the case, help me understand what was going on.

6 We had at the time a big receivable in  
7 terms of expenses and we also had expended, you  
8 know -- it was a major contingent fee case in the  
9 firm, too, so I was looking at that.

10 Q. In terms of the amount of attorney time  
11 that had been invested in the case?

12 A. Yes, yes, yes, so...

13 Q. When I spoke to Ms. Mascherin yesterday,  
14 she didn't remember whether it was you or  
15 Mr. Valukas that had asked her to get involved, but  
16 you seem to think that it was you?

17 A. Well, it was probably me, and I saw some  
18 memos with Tony's name, so maybe me in conjunction  
19 with Tony.

20 Q. And why was it that you chose  
21 Ms. Mascherin for this role?

22 A. One is because she is a very skilled  
23 litigator with patent experience, and I, you know,  
24 would rely on her judgment in doing that.



1 Q. Any other reason --

2 A. And I believe we also had Don Harris  
3 look at it, too, who's another very skilled  
4 litigator.

5 Q. Any other reason that you had  
6 Ms. Mascherin look at the case?

7 A. Not really.

8 Q. And with respect to Ms. Mascherin  
9 looking at the case, what was it specifically that  
10 you wanted her to do?

11 A. Help advise me as to, you know, one,  
12 what's going on in the case and advise us -- advise  
13 me, you know, what we should do going forward.

14 Q. And did she do that?

15 A. Yes.

16 Q. Do you recall that she provided you with  
17 a memorandum regarding the status of the case?

18 A. I believe she provided me more than one  
19 memoranda.

20 Q. Okay. This was previously marked as  
21 Exhibit 6.

22 A. Okay.

23 Q. Do you recognize that document?

24 A. Yes.





1 Q. And if you need time to look at it,  
2 obviously feel free to do so, but my question is:  
3 Is this one of the memoranda that you recall  
4 Ms. Mascherin preparing for you regarding the  
5 epicRealm vs. Oracle case?

6 A. Yes.

7 Q. And based upon the memorandum that  
8 Ms. Mascherin had prepared and the information that  
9 she provided you, was it your opinion that the case  
10 should be attempted to be settled?

11 A. Well, I remember reviewing the memo and  
12 generally agreeing with Terri's recommendations  
13 that are set forth in the memo.

14 Q. Let me show you what was previously  
15 marked as Exhibit 7.

16 Is that an e-mail from you to  
17 Ms. Mascherin?

18 A. Yes, among others.

19 Q. And was it your instruction that the  
20 mediation be reconvened with the goal of achieving  
21 a settlement in the amount of \$30 million or more?

22 A. Let's see. "We agree with the  
23 recommendations in the memo. Please reconvene  
24 mediation in epicRealm with the goal of achieving a



1 settlement before trial and, if possible, before  
2 the pretrial conference in an amount of 30 million  
3 or more."

4 Yes, and this was Terri's recommendation  
5 in Paragraph 1 of her memo.

6 Q. And you're agreeing with that  
7 recommendation?

8 A. Yes, yes.

9 Q. Why did you think that that was a good  
10 recommendation?

11 A. For the reasons stated in her memo  
12 and -- it's a lengthy memo, and she sets forth her  
13 reasons why she made this recommendation.

14 Q. And you thought that made sense for the  
15 firm?

16 A. I think this made sense for our client,  
17 and based on the facts of the case and the  
18 recommendations here, it made sense. It sounded  
19 like it made sense to me.

20 Obviously for a settlement, you need two  
21 parties to reach agreement. I don't think that  
22 happened in October.

23 Q. Well, there had already been a mediation  
24 at the time that you received that memo, right?



1 A. Oh, I don't recall.

2 Q. Well, you told her to reconvene  
3 mediation.

4 A. Right.

5 Q. Do you see that?

6 A. Right.

7 Q. And the previous mediation had obviously  
8 been unsuccessful.

9 A. You know, I probably took the same  
10 language that Terri said, "we should reconvene  
11 mediation," so I don't remember what happened in  
12 the other mediation.

13 Q. Did you have a concern in October 2008  
14 that the firm was not going to recoup its  
15 investment in the firm in terms of attorney time?

16 A. No. I was concerned in October of 2008  
17 about the \$500,000 receivable that the client had  
18 not paid in breach of its agreement with us. That  
19 was my major concern in October of 2008 and later.

20 Q. And what was your recommendation with  
21 respect to how to handle that issue?

22 A. Well, I think I told the lawyers to get  
23 it paid, and, you know, we were watching that  
24 receivable, and that was a huge receivable for a



1 law firm -- we're not a bank -- and that's what I  
2 was focused on at the time.

3 Q. Did you consider whether terminating the  
4 relationship made sense in October 2008?

5 A. I don't know that we discussed  
6 termination in October 2008. I remember -- I think  
7 we were focused on getting the receivable paid.

8 Q. Take a look at the last page of  
9 Ms. Mascherin's memorandum.

10 (WHEREUPON, there was a short  
11 interruption.)

12 BY MR. ALIBHAI:

13 Q. On Page 7, do you see that paragraph?

14 A. Uh-huh.

15 Q. Does that refresh your recollection that  
16 one of the things that Ms. Mascherin was  
17 recommending was whether the contingent fee  
18 committee should re-examine and determine whether  
19 it's in the firm's strategic and financial  
20 interests to continue its engagement with  
21 epicRealm?

22 A. Well, you read part of it. I don't know  
23 that she's talking about termination right here  
24 because she's talking about pursuing additional



1 lawsuits. "EpicRealm is currently requesting that  
2 we initiate at least two additional lawsuits," so I  
3 don't know. She doesn't use the word  
4 "termination." I don't recall discussing that in  
5 October.

6 Q. Do you recall discussing that later?

7 A. Yes.

8 Q. You just don't remember discussing it --

9 A. I don't know that there were any  
10 discussions in October.

11 Q. Did you discuss the memorandum with  
12 anyone else after you received it and before you  
13 sent this e-mail that's Exhibit 7?

14 A. You know, I may have, and I may have  
15 discussed it with Tony Valukas. You know, I  
16 started the sentence, "We agree," so maybe I did.

17 Q. You don't remember any specific  
18 discussion?

19 A. I don't remember.

20 Q. When did the firm form a contingent fee  
21 committee?

22 A. You know, my guess is -- and I'm  
23 guessing it's like mid 2000s. 2005, 2006,  
24 something like that.



1 Q. And what's the role of the contingent  
2 fee committee?

3 A. It was to help management monitor  
4 contingent fee cases and it -- yeah.

5 Q. Does it have procedures regarding the  
6 intake of contingent fee cases, as well?

7 A. You know what? You are using the  
8 present. There is no longer a contingent fee  
9 committee anymore.

10 Q. Okay. When did the contingent fee  
11 committee go away?

12 A. Sometime over the last couple years, so  
13 there's no longer one.

14 Q. Is that role handled by some other  
15 committee?

16 A. It's really now handled by the  
17 management committee.

18 Q. Okay. So while the contingent fee  
19 committee existed, they sort of had this  
20 specialized look at the contingent fee cases role?

21 A. Right, to help management, you know,  
22 monitor those cases.

23 Q. So in this time frame, 2007, 2008 when  
24 the contingent fee committee did exist, was it



1 involved in the process of deciding whether the  
2 firm should take on a contingent fee case?

3 A. I don't think so.

4 Q. It was more so from an oversight --

5 A. Right, right.

6 Q. And so currently contingent fee cases  
7 that the firm has, the management committee  
8 oversees those cases just the way it would with any  
9 other case?

10 A. No, it's different. Actually, I monitor  
11 all the contingent fee cases now. That's part of  
12 my responsibility.

13 So I do that, and the management  
14 committee now is involved in approving the firm  
15 taking on contingency fee cases, but I along with  
16 other management and the policy committee monitor  
17 these cases, too.

18 Q. And in 2007 was there anyone at the firm  
19 that had to approve taking on a contingent fee  
20 case?

21 A. You know, I don't recall. I don't  
22 recall.

23 Q. And do you recall that in 2008,  
24 Mr. Bricker was the head of the contingent fee



1 committee?

2 A. Yes, yes.

3 Q. What do you recall happening with  
4 respect to that mediation that you were talking  
5 about being reconvened in the Parallel case?

6 A. I don't recall. I -- well, I recall  
7 accepting Terri's recommendation and relying on  
8 Terri.

9 Q. Sure. And do you recall that -- whether  
10 they tried to set up a mediation?

11 A. No.

12 Q. You don't remember any discussions about  
13 that?

14 A. No.

15 Q. Do you recall discussions about whether  
16 to take on additional cases that Parallel Networks  
17 was interested in pursuing?

18 A. No.

19 Q. Do you recall discussions about  
20 Microsoft being brought into one of the cases  
21 involving Parallel, specifically the QuinStreet  
22 case?

23 A. I saw some reference to that in some  
24 e-mails I received, but I don't recall anything.





1 Q. And do you recall that Microsoft filed a  
2 declaratory judgment complaint against Parallel  
3 Networks in that case?

4 A. I believe that's right.

5 Q. Did you have any involvement --

6 A. No.

7 Q. -- in discussions about that?

8 A. No.

9 (WHEREUPON, a certain document was  
10 marked Deposition Exhibit No. 60,  
11 for identification.)

12 BY MR. ALIBHAI:

13 Q. Ms. Mascherin, you're a litigator,  
14 right?

15 A. Levy.

16 Q. Sorry. Ms. Levy. I'm reading this  
17 e-mail.

18 A. That's okay.

19 Q. Ms. Levy, you're a litigator, right?

20 A. Yes.

21 Q. And you've taken depositions?

22 A. Yes.

23 Q. And you understand the ground rules of  
24 depositions?



1 A. Yes.

2 Q. Whenever I hand you a document, of  
3 course feel free to read it and familiarize  
4 yourself with it. Take as much time as you need.

5 MR. PELZ: And if you want to do what's called  
6 a full focus -- in this litigation, we call it a  
7 full focus -- take about ten minutes and look at  
8 every single word in a lengthy document.

9 BY MR. ALIBHAI:

10 Q. So taking a look at Exhibit 60, which is  
11 an e-mail from Ms. Mascherin to you, among others,  
12 do you remember that e-mail?

13 (WHEREUPON, there was a short  
14 interruption.)

15 BY THE WITNESS:

16 A. I remember receiving this e-mail, yes.

17 BY MR. ALIBHAI:

18 Q. Do you recall that around December 4,  
19 Judge Robinson, who was the judge presiding over  
20 the Parallel case, had entered a summary judgment  
21 finding non-infringement?

22 A. I don't remember it, but this refreshes  
23 my recollection.

24 Q. And one of the things that Ms. Mascherin



1 is discussing in here specifically is  
2 reconsideration of the summary judgment ruling.

3 A. Right, right.

4 Q. She then says, "Once we know what  
5 happens tomorrow, we'll have a decision to make  
6 regarding how much longer Jenner & Block will  
7 continue the representation."

8 A. Uh-huh.

9 Q. Do you see that?

10 A. Yes.

11 Q. Is that the first time that the firm  
12 began discussing whether to continue the  
13 representation?

14 A. I don't recall.

15 Q. Why was there a discussion about how  
16 much longer Jenner & Block would continue the  
17 representation?

18 A. I don't recall why Terri said that  
19 there. As I said, my biggest concern at this time  
20 was their failure to pay expenses in violation of  
21 their agreement, so I know I was focused on that.

22 Q. Were you focused on that to the point  
23 that that was going to be a grounds for  
24 termination?



1           A.     Well, I don't know that -- I don't know  
2     what my thought process was on December 4, but that  
3     was a concern of mine and -- you know, it was a  
4     concern during this time.

5           Q.     Did you have a discussion with  
6     Ms. Mascherin about how much longer Jenner & Block  
7     was going to continue the representation after  
8     December 4?

9           A.     How much longer we were --

10          Q.     She says here, "how much longer Jenner &  
11     Block will continue the representation," right?

12          A.     Yes.

13          Q.     Around December 4, did you have a  
14     discussion with her about that issue?

15          A.     I don't recall.

16          Q.     You don't remember discussing that  
17     subject at that time frame?

18          A.     Well, I think, you know, we were -- we  
19     were focused on this case and -- you know,  
20     principally because we had, one, expended a lot of  
21     money, and then we were -- they never paid our  
22     expenses and we were banking them for \$500,000, and  
23     then we -- this shows that around this time we lost  
24     summary judgment, so -- which would mean we had to,



1       you know, spend more and more money, so it was a --  
2       this is why I brought Terri in, to really focus on  
3       it and try to see, you know, what we can do.

4           Q.       And what were the options about what you  
5       could do?

6           A.       I don't know. You know, our options  
7       were whatever was available within our ethical  
8       obligations.

9           Q.       Which ethical obligations?

10          A.       Our ethical obligations as lawyers and  
11       Code of Professional Responsibility and all of  
12       that.

13          Q.       Was there some specific ethical  
14       obligation that the firm was concerned about?

15          A.       We're concerned with all of our ethical  
16       obligations.

17          Q.       Every day, right?

18          A.       Absolutely.

19          Q.       In every case?

20          A.       Absolutely.

21          Q.       But was there something specific in this  
22       case that you were concerned about?

23          A.       No.

24          Q.       Do you recall that after the summary



1 judgment ruling, there was a possibility that the  
2 court was going to hold a trial on invalidity  
3 issues in January?

4 A. I recall that, yes.

5 Q. And that there was a discussion about  
6 whether the summary judgment could become final --

7 A. Right.

8 Q. -- and appealable immediately?

9 A. Yes, I recall that.

10 Q. And did you have any involvement in  
11 discussions about which way to go in terms of going  
12 to trial or going the appellate route?

13 A. I don't think I really gave a meaningful  
14 opinion on that. I really relied on the lawyers  
15 who were involved in the case to make that  
16 decision, and I remember I agreed with it, whatever  
17 it was.

18 Q. Who were the lawyers who were working on  
19 the case besides Ms. Mascherin that you were  
20 talking to about the case?

21 A. I was talking mostly with Terri. Maybe  
22 Harry, but mostly with Terri.

23 (WHEREUPON, a certain document was  
24 marked Deposition Exhibit No. 61,



1 for identification.)

2 BY MR. ALIBHAI:

3 Q. I'm handing you what's been marked as  
4 Exhibit 61.

5 (WHEREUPON, there was a short  
6 interruption.)

7 BY THE WITNESS:

8 A. Is there a question?

9 BY MR. ALIBHAI:

10 Q. I was giving you an opportunity to look  
11 at it.

12 A. Go ahead.

13 Q. This seems to be an update from  
14 Ms. Mascherin regarding the status of the cases,  
15 right?

16 A. Yes.

17 Q. And I want to talk about specific parts  
18 of it.

19 A. Okay.

20 Q. There seems to be a random page in here,  
21 but that's how it was produced, so the page that  
22 says, "Page 2 of 4," of the e-mail itself.

23 A. Okay. Got it.

24 Q. And there's a discussion about



1 possibility of settlement.

2 A. Yes.

3 Q. And generally Oracle's counsel after  
4 having received summary judgment of  
5 non-infringement is saying that it may be willing  
6 to discuss a seven-figure settlement.

7 Do you see that?

8 A. Yes.

9 Q. And that was different than the 30  
10 million plus settlement that Ms. Mascherin was  
11 discussing in October and that you were  
12 recommending that they reconvene the mediation and  
13 try to get?

14 A. Well, I don't know. I mean, we were  
15 recommending -- we were recommending back in  
16 October that we try to settle it for 30 million.  
17 The other side now after summary judgment says,  
18 "We'll talk about seven figures," but I don't know  
19 where it would end up.

20 Q. Did you have any discussion about  
21 whether to pursue a settlement discussion with  
22 Oracle in the seven-figure range?

23 A. I don't recall that.

24 Q. On the bottom of Page 3, the header





1 says, "QuinStreet Background."

2 A. Uh-huh.

3 Q. And then the last bullet on the bottom  
4 of the page says, "We have told the client that we  
5 wish to terminate our engagement on this case."

6 Do you see that?

7 A. Uh-huh.

8 Q. You have to answer yes or no.

9 A. Yes.

10 Q. And did you have a discussion prior to  
11 the time of this e-mail, which is December 12, with  
12 Ms. Mascherin about the firm terminating its  
13 engagement on the QuinStreet case?

14 A. You know, I don't recall.

15 Q. You don't remember that conversation?

16 A. I don't remember it. You know, if she  
17 is -- "We have told the client that we wish to  
18 terminate our engagement on this case." My  
19 supposition is that we had a discussion on this,  
20 but I don't recall the conversation.

21 Q. Did you have any discussion around this  
22 time about terminating the engagement with respect  
23 to the Oracle case?

24 A. I may have, but I don't -- I don't



1 recall without seeing a memo.

2 Q. And then if you flip to the first page  
3 of the e-mail chain, the second e-mail in that  
4 chain is from you to Ms. Mascherin, right?

5 A. Right.

6 Q. And you were looking for a  
7 recommendation?

8 A. Absolutely.

9 Q. And she said she would recommend  
10 something the following week?

11 A. Yes.

12 Q. Do you recall on December 16 having a  
13 phone call with Ms. Mascherin and others regarding  
14 settlement discussions in the Oracle case?

15 A. Not offhand.

16 (WHEREUPON, a certain document was  
17 marked Deposition Exhibit No. 62,  
18 for identification.)

19 BY MR. ALIBHAI:

20 Q. Let me show you what's been marked as  
21 Exhibit 62 and see if that refreshes your  
22 recollection that you had this call with  
23 Ms. Mascherin and others regarding potential  
24 settlement of the Parallel Networks case.



1 (WHEREUPON, there was a short  
2 interruption.)

3 BY THE WITNESS:

4 A. Okay. What was your question?

5 BY MR. ALIBHAI:

6 Q. Do you remember having that call?

7 A. No, I don't -- I mean, I obviously -- I  
8 remember getting this e-mail, and then there's a  
9 call -- a meeting in my conference room, but I  
10 don't remember the conversation.

11 (WHEREUPON, a certain document was  
12 marked Deposition Exhibit No. 63,  
13 for identification.)

14 BY MR. ALIBHAI:

15 Q. This is Exhibit 63, and you can look at  
16 as much of it as you want, but the second e-mail in  
17 the chain is from you to Ms. Mascherin, and you  
18 say, "In my view, this warrants a personal phone  
19 call with the client to discuss this expense issue  
20 as well as the other issues we discussed  
21 yesterday," and the only reason I'm showing it to  
22 you is to see if that jogs your memory as to the  
23 other issues that you "discussed yesterday" that  
24 are referenced in the previous exhibit, that phone



1 call that we were talking about of December 16.

2 A. Yeah, I -- this looks like we're  
3 discussing their failure to pay us the \$500,000  
4 owed. The client told us that he's trying to raise  
5 the money. Terri writes to me saying that he gave  
6 us assurances that he would pay by yearend, but the  
7 message didn't say that, and we wanted confirmation  
8 in writing.

9 So I think that's what this was about.

10 Q. That's what the e-mail's about  
11 certainly.

12 A. Yeah.

13 Q. I was trying to see if this e-mail  
14 jogged your memory as to the issues that you  
15 "discussed yesterday" on that call that we were  
16 referencing on the 16th.

17 A. No, I don't remember.

18 Q. Okay.

19 A. And I don't know if it's anything other  
20 than expenses, getting assurances in writing,  
21 confirmation that we're going to get paid by the  
22 end of the year. That's what my focus was on.

23 Q. Did you have any involvement in this  
24 time frame with respect to the legal strategy or



1 the motion practice in the case itself?

2 A. No.

3 Q. You're still only working on it in terms  
4 of the billing, collection and administration  
5 issues?

6 A. Right, right. And, you know, Terri was  
7 there, and Terri gave me recommendations on that,  
8 and I -- as you can see, I tended to follow her  
9 recommendations, but I wasn't involved in the  
10 day-to-day management of the case.

11 Q. And with respect to that issue about the  
12 appeal or the trial in January, you're not involved  
13 in that part of that decision-making process?

14 A. What was the decision?

15 Q. I thought you recalled that there was  
16 the option to either try the case in January 2009  
17 regarding invalidity or there was an attempt to  
18 make the summary judgment a final judgment and make  
19 it immediately appealable.

20 A. Right, but I -- I thought the client and  
21 Oracle agreed on that, and that's the decision that  
22 was made.

23 Q. As to which way to proceed?

24 A. Yeah.



1 Q. Wasn't Jenner & Block giving the client  
2 advice?

3 A. You know, I don't recall exactly who  
4 said what, who made that -- I don't know who made  
5 that decision, but I -- I thought it was the client  
6 who made the decision and Oracle, so...

7 Q. You were not involved in that  
8 decision-making process?

9 A. Not -- no, no, no.

10 Q. Do you recall that there were cases  
11 pending in Texas that were settling and that funds  
12 from those settlements were going to be used to pay  
13 the outstanding expenses owed to Jenner & Block?

14 A. I recall seeing memos saying that the  
15 client was -- you know, was going to try to use  
16 funds from cases that might settle to pay us the  
17 money that it owed -- he owed, it owed.

18 Q. You recall that from back then or just  
19 recently?

20 A. I recall recently looking at the memos.

21 Q. This was previously marked Exhibit 11.  
22 Is that the type of memo that you're  
23 referring to --

24 A. Yes.



1 Q. -- about the settlement of other cases  
2 being used to pay expenses?

3 A. Yes.

4 Q. And again feel free to take a look at  
5 it, but I want to talk to you about the second  
6 paragraph under the paragraph numbered 1. It  
7 begins, "Once that agreement's done." That  
8 paragraph.

9 (WHEREUPON, there was a short  
10 interruption.)

11 BY THE WITNESS:

12 A. Okay.

13 BY MR. ALIBHAI:

14 Q. Do you recall a discussion about based  
15 on what the client decided to do regarding  
16 settlement or prosecuting an appeal of the court's  
17 summary judgment ruling that the firm was going to  
18 have to decide whether to terminate the engagement  
19 with the client?

20 A. I don't have any recollection outside of  
21 this memo.

22 (WHEREUPON, a certain document was  
23 marked Deposition Exhibit No. 64,  
24 for identification.)



1 BY MR. ALIBHAI:

2 Q. Ms. Levy, this is Exhibit 64.

3 Is this another update from  
4 Ms. Mascherin about the status of the payment of  
5 expenses from settlement agreements from other  
6 cases?

7 (WHEREUPON, there was a short  
8 interruption.)

9 BY THE WITNESS:

10 A. What's your question? I'm sorry.

11 BY MR. ALIBHAI:

12 Q. Is that another update from  
13 Ms. Mascherin regarding the payment of expenses  
14 from settlements of other cases?

15 A. Well, this is an update from Terri to me  
16 about the status of the promises that they're going  
17 to finally pay us the money that -- the over half a  
18 million dollars that was in arrears and the  
19 promises that they were making that they would pay  
20 us.

21 Q. Based on settlements in other cases?

22 A. I don't -- well, that's what -- that's  
23 what they told her, apparently. I have no  
24 firsthand knowledge of where the money came from or





1 was supposed to come from.

2 Q. Did you have discussions with  
3 Ms. Mascherin about her discussion with the client?

4 A. Not that I recall.

5 (WHEREUPON, a certain document was  
6 marked Deposition Exhibit No. 65,  
7 for identification.)

8 BY MR. ALIBHAI:

9 Q. This is Exhibit 65. Take a look first  
10 at the e-mail chain on the bottom and then going  
11 up.

12 (WHEREUPON, there was a short  
13 interruption.)

14 BY THE WITNESS:

15 A. Okay.

16 BY MR. ALIBHAI:

17 Q. Ms. Mascherin's e-mail discusses  
18 entering into a stipulation to make the summary  
19 judgment final and appealable, right?

20 A. Yes.

21 Q. And you seem to have recalled that there  
22 was an agreement or stipulation necessary? That's  
23 what you seemed to remember before, right?

24 A. Right.



1 Q. And so at that point Parallel Networks  
2 could take an appeal from that summary judgment  
3 ruling?

4 A. Right.

5 Q. And here Ms. Mascherin says, this is  
6 Monday, December 22, "Once the orders are entered,  
7 the client will have the right to appeal, and the  
8 firm needs to decide whether to terminate the  
9 representation now or whether to agree to handle  
10 the appeal."

11 A. I see that.

12 Q. Did you have a discussion with  
13 Ms. Mascherin about whether the firm was going to  
14 terminate the representation or agree to handle the  
15 appeal around this time?

16 A. I don't recall.

17 Q. Did you have a discussion with anyone  
18 else in the firm about that subject?

19 A. I don't -- I don't recall.

20 Q. And then you in response to her e-mail  
21 send -- it looks like you reply to everyone on the  
22 e-mail chain --

23 A. Right.

24 Q. -- and ask, "What happens to the motion



1 to reconsider?"

2 A. Right.

3 Q. What do you remember about the motion to  
4 reconsider?

5 A. You know, here I was saying I thought we  
6 were filing a motion to reconsider, and so what  
7 happened to that? And I don't recall whether we  
8 did or not.

9 Q. And what's your recollection about the  
10 issue that you raise about a settlement meeting?

11 A. I was just wondering if there are any.

12 Q. And did you receive a response about  
13 what was going on with the settlement discussions?

14 A. I don't recall.

15 Q. Was there a discussion about whether it  
16 made sense for the client to appeal the summary  
17 judgment ruling?

18 A. I don't -- I'm sorry. Were there  
19 discussions on that?

20 Q. Were you involved in any discussions on  
21 that?

22 A. I don't recall.

23 Q. You looked at the motion for  
24 reconsideration, right?



1 A. Well, actually, let me take that back.

2 There were discussions about whether  
3 Jenner would handle the appeal, and I remember  
4 participating in those discussions.

5 Q. Around this time frame?

6 A. Whenever. I think it was a little bit  
7 later.

8 Q. Okay. Do you remember looking at the  
9 motion to reconsider?

10 A. Not particularly.

11 (WHEREUPON, a certain document was  
12 marked Deposition Exhibit No. 66,  
13 for identification.)

14 BY MR. ALIBHAI:

15 Q. This is Exhibit 66. It's an e-mail from  
16 you to Ms. Mascherin, Mr. Smith, Mr. Goldman on  
17 December 23.

18 Does this refresh your recollection that  
19 you were reviewing the motion to reconsider?

20 A. Absolutely. If I said I read it, I read  
21 it.

22 Q. Sure. And does it help you remember  
23 anything about it?

24 A. No.



1 Q. Did you have a discussion with any of  
2 these people that day?

3 A. I may have. I may have.

4 Q. Nothing that you remember?

5 A. My general sense is that our lawyers  
6 thought we had a good chance on appeal.

7 Q. What was your sense based upon reviewing  
8 the motion to reconsider?

9 A. I relied on my lawyers.

10 Q. And Mr. Smith and Mr. Goldman were  
11 appellate counsel?

12 A. Yes.

13 Q. I'm sorry if I asked you this.  
14 Did I ask you and did you tell me  
15 whether you remember having a conversation with any  
16 of them that day?

17 A. I don't remember the conversation.

18 Q. At this point does Jenner & Block begin  
19 having discussions internally about whether to  
20 handle this appeal?

21 A. I don't recall whether it was December  
22 or January. I believe it was January. I don't  
23 know how early, but obviously if Paul and Mark are  
24 involved, they're appellate counsel, so...



1 Q. Do you recall that they prepared a  
2 budget regarding the appeal to the federal circuit?

3 A. Prob- -- yes, I do recall that.

4 Q. Do you recall that on December 24, the  
5 expenses were -- outstanding expenses were paid by  
6 Parallel Networks?

7 A. I recall that they were paid in late  
8 December. I don't know if all the outstanding  
9 expenses were, but I believe we got money from  
10 them, around a half million dollars or so.

11 Q. Around a half million dollars?

12 A. I'm not sure exactly the number and I  
13 don't know if that was all the expenses, but we did  
14 get some money.

15 (WHEREUPON, a certain document was  
16 marked Deposition Exhibit No. 67,  
17 for identification.)

18 BY MR. ALIBHAI:

19 Q. Exhibit 67 is an e-mail from  
20 Mr. Margolis to you and Ms. Mascherin. Let me know  
21 when you've had a chance to review it.

22 (WHEREUPON, there was a short  
23 interruption.)

24 BY THE WITNESS:



1           A.     Okay. I've read it.

2       BY MR. ALIBHAI:

3           Q.     First of all, you see that Mr. Margolis  
4       says that the client has now paid all of his  
5       outstanding obligations to Jenner & Block? It's in  
6       the first paragraph. Sorry.

7           A.     I see that he said that.

8           Q.     So is it your recollection that by  
9       December 30, the outstanding amounts had been paid?

10          A.     No. I mean, I'm not -- Paul's an  
11       attorney, he's not in our finance department, so  
12       unless I saw the finance -- the financial  
13       documents, I can't say that all of the outstanding  
14       obligations were paid.

15          Q.     You don't know one way or the other  
16       sitting here today?

17          A.     Right, I don't.

18          Q.     And who would have been in charge of the  
19       finance department at that time? Was that  
20       Mr. Bull?

21          A.     Pat Bull is our chief financial officer,  
22       Meredith Mendes is our chief operating officer, and  
23       they both report to me.

24          Q.     You see in this e-mail Mr. Margolis is



1 raising issues about what role Jenner & Block's  
2 going to have in these pending cases.

3 A. He raises them from a conversation with  
4 Mr. Fokas.

5 Q. Was the firm not discussing in the end  
6 of December 2008 what its role was going to be in  
7 the pending cases?

8 A. Well, yeah, apparently we were having  
9 that discussion and we were having that discussion  
10 with Mr. Fokas.

11 Q. And we already saw one document that  
12 talked about terminating the representation in the  
13 QuinStreet case, correct?

14 A. Which document are you referring to?

15 Q. Ms. Mascherin's e-mail which is Exhibit  
16 61.

17 A. I'm sorry?

18 Q. 61.

19 A. 61.

20 MR. PELZ: It's going to be one of the pink  
21 ones.

22 THE WITNESS: All right.

23 BY THE WITNESS:

24 A. All right. What are you referring to?





1 BY MR. ALIBHAI:

2 Q. On the bottom of Page 3 of 4, the last  
3 bullet point, the firm had already told the client  
4 that it wished to terminate its engagement on the  
5 QuinStreet case, right?

6 A. Yes.

7 Q. And then there was an issue about  
8 whether or not Jenner & Block wanted to handle the  
9 appeal in the Oracle/Parallel Networks case?

10 A. I'm sorry. What's your question?

11 Q. Was there a discussion around December  
12 30, 2008 as to whether Jenner & Block wanted to  
13 handle the appeal in the Oracle vs. Parallel  
14 Networks case?

15 A. Yeah. That was a question -- apparently  
16 from Paul's conversation with Mr. Fokas, that was a  
17 question.

18 Q. And aside from Mr. Margolis's  
19 conversation with Mr. Fokas, was that something  
20 that the firm was discussing?

21 A. Yes.

22 Q. And what was that discussion?

23 A. You know, I -- as I recall, we thought  
24 the appeal was strong and we would handle it



1 provided they paid us a retainer, because we didn't  
2 want to go through what we did before, which was  
3 fronting all the costs in violation and in breach  
4 of our agreement.

5 Q. And what type of retainer did the firm  
6 want?

7 A. I think the parties thought -- as I  
8 recall, I thought we worked out a \$500,000  
9 retainer, but then the client backed down on that.

10 Q. In December 2008, the firm was seeking  
11 the \$500,000 retainer?

12 A. No, no. I was talking about like a  
13 month later.

14 Q. Okay.

15 A. I think at this time we were -- at this  
16 time, based on my December 23 memo where I read the  
17 motion to reconsider and we discussed our -- we  
18 evaluated our chances on appeal, we had our top  
19 appellate lawyers, Paul Smith and Marc Goldman,  
20 looking at this matter.

21 They evaluated the appeal, they thought  
22 it was strong and, you know, the issue for me as  
23 the managing partner was how were we going to get  
24 paid for this, and that's what I was thinking about



1 in December and January.

2 Q. Get paid to handle the appeal?

3 A. Pay our costs, yes, yes.

4 Q. Okay.

5 A. And expenses.

6 Q. And do you recall having a conversation  
7 with Ms. Mascherin and Mr. Roper about the issues  
8 in that e-mail on December 30, 2008 at 2:00 p.m.?

9 A. No. On December -- I'm sorry. Which  
10 e-mail?

11 Q. Exhibit 67 was an e-mail that was sent  
12 to you on December 30, 2008 at 8:00 in the morning.

13 A. 9:00 a.m., yeah.

14 Q. Right?

15 A. Yeah.

16 Q. Do you remember having a conversation  
17 with Ms. Mascherin and others on December 30  
18 regarding those issues?

19 A. No.

20 Q. And all I have is a call-in number that  
21 says, "Let's plan on 2:00 p.m." That's what I'm  
22 looking at.

23 Does that remind you that there was a  
24 call that day?



1 A. Are you looking at a different document?

2 Q. Yeah. I'll show it to you.

3 A. Okay.

4 (WHEREUPON, a certain document was  
5 marked Deposition Exhibit No. 68,  
6 for identification.)

7 BY MR. ALIBHAI:

8 Q. If you look at the e-mail chain on the  
9 back page, it's the e-mail we just looked at in  
10 Exhibit 67, right?

11 A. Yes.

12 Q. And then it sort of bleeds over -- your  
13 e-mail cuts off on the first page and the second  
14 page, but you write back -- is Nora your assistant?

15 A. She was.

16 Q. At this time?

17 A. Yes.

18 Q. And so you were asking her to set up a  
19 conference call for the four of you before 2:30  
20 p.m.?

21 A. Yes.

22 Q. And then if you look at the very top of  
23 the e-mail chain, it's been scheduled for 2:00?

24 A. Okay.



1 Q. Do you see that?

2 A. Yes.

3 Q. I'm sure the answer is no, but does that  
4 remind you about the conversation at all?

5 A. No, but I'm sure we had it.

6 Q. You don't remember anything specific --

7 A. No.

8 Q. -- from it?

9 A. No.

10 MR. ALIBHAI: All right. Let's take a short  
11 break.

12 (WHEREUPON, the deposition was  
13 recessed from 12:06 to 12:17 p.m.)

14 BY MR. ALIBHAI:

15 Q. Do you recall having a discussion on  
16 December 31, 2008 with Ms. Mascherin, Mr. Roper and  
17 Mr. Smith regarding terminating the relationship  
18 with Parallel Networks?

19 A. I don't recall, but if there's a memo  
20 that Terri wrote on that, that may refresh my  
21 memory.

22 Q. You don't remember anything about that  
23 conversation?

24 A. Not offhand, and I don't know that there



1 was a conversation, but if there was, Terri had a  
2 habit of writing memos, so that would refresh my  
3 memory.

4 Q. Take a look at -- oh, you don't have  
5 that.

6 This appears to be marked as Exhibit 1.  
7 Have you seen that before?

8 A. Yes. This is our notice of termination.

9 Q. And Mr. Margolis was authorized by the  
10 firm to send that?

11 A. Yes.

12 Q. And you're copied on it?

13 A. Uh-huh.

14 Q. Yes?

15 A. Yes.

16 Q. So sometime before that letter was sent  
17 on January 2, 2009, a decision was made by Jenner &  
18 Block to terminate the representation of Parallel  
19 Networks?

20 A. Yes.

21 Q. Who made that decision?

22 A. I did.

23 Q. And did you have to consult with anyone  
24 to make that decision?



1           A.       I don't know whether I had to, but I  
2 talked -- I consulted with the members of the team.  
3 I discussed this with Terri Mascherin, I likely  
4 discussed it with Tony Valukas and potentially  
5 other members of the policy committee. I don't  
6 recall.

7           Q.       And do you remember any specific  
8 discussions at the end of December prior to January  
9 2 as to why the firm was terminating the  
10 representation?

11          A.       Well, I recall that I relied on advice  
12 of Terri Mascherin, so it's probably in one of  
13 Terri's memos. I recall that we were terminating  
14 for breach of the contract for failure to pay  
15 expenses as one of the reasons; the second reason  
16 was the substantial expenses that we would have to  
17 incur in the future if we would continue with that  
18 representation; and then the third -- and then  
19 also, you know, other advice from Terri that were  
20 in her memos.

21          Q.       What substantial expenses in the future  
22 were you concerned about?

23          A.       Well, both the cases would take a long  
24 time to resolve and it would -- they would cause us



1 to incur substantial expenses. I had no faith that  
2 this client would pay us our expenses as it was  
3 obligated to do under the agreement, and so on  
4 those grounds, we terminated.

5 And also I believe Terri advised us that  
6 under the agreement, we had a right to terminate  
7 and that we would get our expenses paid.

8 Q. Let me show you what will be marked as  
9 Exhibit 69.

10 (WHEREUPON, a certain document was  
11 marked Deposition Exhibit No. 69,  
12 for identification.)

13 BY MR. ALIBHAI:

14 Q. Exhibit 69 is an e-mail from you to  
15 Ms. Mascherin, Mr. Smith, Mr. Goldman and  
16 Ms. Farrell and it's dated January 2, right?

17 A. Yes.

18 Q. And January 2, if you look back at  
19 Exhibit 1, is the day that Mr. Margolis sent the  
20 letter that the "Re" line says, "Termination of  
21 Representation."

22 A. Yes.

23 Q. Do you recall why you were looking for  
24 Oracle's motion for summary judgment on





1       infringement and our response on January 2?

2           A.     No.

3           Q.     Were you out of town in California?

4           A.     Yes.

5           Q.     And so you wanted someone to send you a  
6       copy of it?

7           A.     Yes.

8           Q.     Do you recall if anyone did?

9           A.     They likely did.

10          Q.     Do you recall reviewing it, or did this  
11       issue, whatever you were concerned about, go away  
12       after this termination letter went out?

13          A.     I recall reviewing it, I think, but I'm  
14       not sure.

15          Q.     And do you remember why you were  
16       reviewing it?

17          A.     No, not -- it was in connection with  
18       this whole matter, but I don't remember  
19       specifically what I was looking at.

20          MR. ALIBHAI: This is Exhibit 70.

21                   (WHEREUPON, a certain document was  
22                   marked Deposition Exhibit No. 70,  
23                   for identification.)

24       BY MR. ALIBHAI:



1 Q. Let me know when you've had a chance to  
2 review that.

3 (WHEREUPON, there was a short  
4 interruption.)

5 BY THE WITNESS:

6 A. Okay.

7 BY MR. ALIBHAI:

8 Q. Who is Mary Ann O'Donnell?

9 A. She works in finance.

10 Q. And what specifically is her role and  
11 responsibility in finance?

12 A. Billing and collections.

13 Q. What is a special circumstance file?

14 A. That is when -- sometimes we put a file  
15 in special circumstance when it's doubtful whether  
16 it will be collected.

17 Q. And so Ms. O'Donnell was asking you as  
18 to -- whether to move the Parallel Networks files  
19 to special circumstance?

20 A. Yes. She wanted to know whether we  
21 should move these three matters to special  
22 circumstances.

23 Q. And at the top of the e-mail chain is  
24 your response, correct?



1 A. Right.

2 Q. And you told her not to?

3 A. Right.

4 Q. And why did you tell her not to?

5 A. Because we were in the process of  
6 withdrawing.

7 Q. Based on the termination?

8 A. Yes. The notice of -- we hadn't  
9 terminated yet, but we gave notice of termination.

10 Q. Do you recall that after the January 2  
11 letter was sent that Ms. Mascherin had discussions  
12 with Parallel Networks's corporate counsel  
13 regarding whether Jenner would stay in the cases?

14 A. I believe that there were continuing  
15 conversations with the client regarding the  
16 potential for Jenner to stay in the cases or handle  
17 the appeal.

18 Q. And do you remember anything about those  
19 discussions?

20 A. They're in the memos, so -- I don't -- I  
21 remember there were continuing conversations.

22 Q. You don't remember anything specific  
23 about them outside of what Ms. Mascherin told you  
24 in the memos?



1           A.       Yeah. I mean, I do remember, as I think  
2 I testified earlier, that we thought we had an  
3 agreement to be paid our fees to handle the appeal  
4 and we would get a \$500,000 retainer and we agreed  
5 to that, and then the client backed down because he  
6 told us he purportedly did not have the funds to  
7 pay 300,000 of it.

8           Q.       And that was in connection with amending  
9 the contingent fee agreement?

10          A.       Yeah. It would be a new agreement.

11          Q.       To proceed on an hourly basis?

12          A.       Yes.

13          MR. ALIBHAI: All right. They're bringing  
14 lunch in, so let's take a break.

15          THE WITNESS: Okay.

16                   (WHEREUPON, the deposition was  
17 recessed from 12:28 to 12:44 p.m.)

18 BY MR. ALIBHAI:

19          Q.       So after January 2, 2009, there were  
20 continuing discussions regarding on what terms  
21 Jenner would represent Parallel Networks, right?

22          A.       I recall after we sent the notice of  
23 termination there were continuing discussions with  
24 the client about, you know, whether -- whether and



1 on what terms, if at all, we would represent  
2 Parallel Networks.

3 Q. And one of the issues that you seem to  
4 recall was that the firm was requiring a \$500,000  
5 retainer? One of the issues that was being  
6 discussed.

7 A. One of the issues that was being  
8 discussed was, you know, what we would -- what it  
9 would take for us to handle the appeal in that  
10 case, and I think there was discussion about a  
11 \$500,000 retainer --

12 Q. And that's --

13 A. -- and we would be paid our -- you know,  
14 we would be paid by the hour.

15 Q. And that's what you were saying was a  
16 new fee agreement?

17 A. Yeah. It would be different than the  
18 contingent -- my understanding it wasn't a  
19 contingent fee.

20 Q. It was an hourly fee agreement?

21 A. Yes.

22 Q. And the discussions broke down about the  
23 timing of the payment of the \$500,000?

24 A. Well, it was more than that. It was --



1 Q. That was one of the issues?

2 A. Well, it was more than that, yeah,  
3 because I thought we had an agreement that we would  
4 do this work for a \$500,000 fee, and then the  
5 client backed down and tried to renegotiate that.

6 Q. When you say, "we had an agreement,"  
7 what do you mean "we had an agreement"?

8 A. That's what we were discussing. It  
9 wasn't a final agreement, but we were discussing  
10 that, and then the client backed down and wanted  
11 something different.

12 Q. And there were other issues that the  
13 firm and Parallel Networks could not come to an  
14 agreement on, as well, right?

15 A. What other issues?

16 Q. Was that the only issue that you're  
17 aware of?

18 A. I don't recall right now.

19 Q. Let me show you what's been previously  
20 marked as Exhibit 21. It's an e-mail from  
21 Mr. Margolis to Ms. Mascherin.

22 A. What's your question?

23 Q. Do you recall an issue coming up in the  
24 February 2009 time frame as to if the client could



1       come up with the \$500,000 that the firm was  
2       requesting whether the firm would represent  
3       Parallel Networks in the appeal?

4           A.       I recall that there -- I recall that  
5       there was discussion with the client where he  
6       agreed to put up a \$500,000 retainer and we would  
7       be paid our billable hours for the appeal. I  
8       recall that discussion.

9           Q.       And then as you recall it, that  
10       discussion fell apart because the client wasn't  
11       able to come up with the \$500,000, right?

12          A.       Well, I recall that it fell apart  
13       because the client told us it no longer would pay  
14       us \$500,000. It was -- I believe it was \$200,000  
15       right away and \$300,000 in 30 days, and the client  
16       told us he would no longer do that.

17          Q.       Okay. After that, do you recall a  
18       discussion coming up as to whether -- if the client  
19       could get the \$500,000 and pay it upfront as to  
20       whether the firm would represent Parallel Networks  
21       in the appeal?

22          A.       My memory was we were discussing that.  
23       We were discussing that, 200,000 with 300,000, and  
24       we were discussing the firm handling the appeal for



1 that, and then the client backed down -- backed out  
2 of that.

3 Q. Do you see here Mr. Margolis is  
4 concerned about the client is calling and what to  
5 say to him if he says that he can come up with the  
6 \$500,000?

7 A. I don't know that I ever saw this  
8 e-mail.

9 Q. I'm not saying that you did, but did  
10 Ms. Mascherin ask you, "What if the client could  
11 come up with the \$500,000 now?"

12 A. I don't recall that discussion.

13 Q. Okay. Was a decision made after the  
14 January 2 letter was sent to proceed and finalize  
15 the termination of the relationship between Jenner  
16 & Block and Parallel Networks?

17 A. I'm sorry. What was the question?

18 Q. After the January 2 letter was sent,  
19 Exhibit 1 --

20 A. Yes.

21 Q. -- was there a decision made to  
22 terminate the representation of Parallel Networks  
23 by Jenner & Block?

24 A. After this?





1 Q. Yes.

2 A. I recall that there were discussions, as  
3 I said, with the client for Jenner & Block to  
4 continue the representations, and ultimately the  
5 firm decided to terminate -- to withdraw from the  
6 representation consistent with all of its  
7 professional obligations and consistent with its  
8 agreement with Parallel Networks.

9 Q. So after the January 2 letter was sent  
10 and after all the discussions regarding whether and  
11 on what terms Jenner & Block would represent  
12 Parallel Networks, the firm eventually decided to  
13 withdraw from all cases and no longer represent  
14 Parallel, right?

15 A. Yes.

16 Q. Who made that decision?

17 A. I did.

18 Q. And why did you make that decision?

19 A. Several reasons. First of all, the  
20 client was in breach of the agreement that we had  
21 with them, with the contingent fee agreement  
22 because we were -- the client failed to pay  
23 expenses.

24 Ultimately after many, many, many months



1 of Jenner & Block paying expenses, it ultimately  
2 paid some of them, but there was no guarantee that  
3 the client would pay expenses going forward, and  
4 that is totally inconsistent with our policy, it's  
5 in breach of the agreement, and ultimately we tried  
6 to work out an agreement where they paid us by the  
7 hour, and the client backed down on that, and so I  
8 had no comfort that this client would continue to  
9 abide by its obligations under the contingent fee  
10 agreement in the future, so I made the decision in  
11 consultation with members of the Parallel Networks  
12 team and from counsel and likely discussions with  
13 Tony Valukas and other members of the policy  
14 committee made the decision to terminate.

15 Q. On January 2, 2009 when Exhibit 1 was  
16 sent, what was the then-existing breach of the  
17 agreement?

18 A. It was a long-standing breach of the  
19 expenses -- failure to pay expenses on a timely  
20 basis.

21 Q. Any other breach?

22 A. That's the one I recall.

23 Q. And in February when the decision was  
24 made not to represent Parallel Networks any



1 further, what was the breach then?

2 A. It was the same.

3 Q. You're not claiming that it was a breach  
4 for Parallel Networks not to agree to switch to an  
5 hourly fee agreement?

6 A. No, no, but I had no faith that they  
7 would pay our expenses in the future on a timely  
8 basis.

9 Q. But we were discussing that Jenner &  
10 Block and Parallel Networks were in negotiations to  
11 switch to an hourly fee agreement.

12 A. Right, right, right.

13 Q. That was the client's choice, right?

14 A. Absolutely.

15 Q. And the client chose not to do that?

16 A. Absolutely.

17 Q. After --

18 A. But we did have a -- you know, we  
19 were -- and you can show me documents to refresh my  
20 recollection, but I think we were originally told  
21 by either the client or somebody representing the  
22 client that he would agree to this \$200,000,  
23 \$300,000 upfront payment, and then he backed down.

24 So, you know, based on that along with



1 the long history of failing to pay expenses, I had  
2 no confidence that he would, you know, follow the  
3 terms of our contingency fee agreement and pay our  
4 expenses on a timely basis.

5 Q. Ms. Mascherin was the one handling the  
6 negotiations with Parallel Networks's counsel,  
7 correct?

8 A. Yes.

9 Q. And is she the person most familiar with  
10 the negotiations of how the contingent fee was  
11 going to be amended?

12 A. Absolutely.

13 Q. Were you involved in the decision to  
14 make a demand on Parallel Networks for the  
15 outstanding hourly fees owed to Jenner & Block?

16 A. Yes.

17 Q. Who made the decision to seek hourly  
18 fees for a contingent fee agreement?

19 A. Who made the decision? Well, it's set  
20 forth in the contract between Parallel Networks and  
21 Jenner & Block, which I believe was drafted by  
22 Parallel Networks, that we're entitled to our  
23 hourly fees, if that's your question.

24 If your question is who made the



1 decision to seek reimbursement of our fees, that  
2 was my decision.

3 Q. Let me show you what's been previously  
4 marked as Exhibit 23.

5 Who's Mr. Hoover?

6 A. Mr. Hoover is firm counsel.

7 Q. When did Mr. Markowski leave the firm?

8 A. I don't recall. I'm guessing two years  
9 ago, but that's a guess.

10 Q. Okay. Did you see this letter before it  
11 went out?

12 A. I likely saw this or some version of it.

13 Q. And where did you get the understanding  
14 that Jenner & Block was entitled to hourly fees?

15 A. This would have been -- I believe this  
16 was in Terri Mascherin's memos to me, so it was  
17 Terri's analysis and possibly firm counsel, also.

18 Q. Which firm counsel?

19 A. All of our firm counsel.

20 Q. And I was just asking if you remember  
21 somebody specifically saying anything about that.

22 A. What's that?

23 Q. Were you referring to someone specific  
24 as firm counsel?



1 A. No.

2 Q. Has anyone shown you any analysis as to  
3 whether under Texas law the firm could seek hourly  
4 fees under a contingent fee agreement?

5 MR. PELZ: Object to the form of the question.  
6 BY THE WITNESS:

7 A. I'm not going to disclose any  
8 attorney/client privileged information, but I don't  
9 recall seeing any of that.

10 BY MR. ALIBHAI:

11 Q. What attorneys have provided you legal  
12 advice regarding the issues about seeking the fees  
13 from Parallel Networks?

14 A. Mr. Pelz, Mr. Hirsch, Mr. Hoover,  
15 possibly Mr. Heinz.

16 Q. Anyone else?

17 A. (Shaking head).

18 Q. No?

19 A. No.

20 Q. Nobody outside Jenner & Block?

21 A. Not to me, no.

22 Q. Were you involved in discussions as to  
23 whether -- were you involved in any discussions as  
24 to whether to compromise the amount that Jenner &



1 Block was seeking?

2 A. What are you referring to?

3 Q. Are you aware that in 2011 --

4 MR. PELZ: At least initially you can answer  
5 that question yes or no, and then to the extent you  
6 were involved with -- if you're asking about  
7 information with respect to discussions that  
8 occurred between Jenner & Block and Parallel  
9 Networks, she can answer with respect to  
10 conversations that ultimately occurred between  
11 Jenner & Block and Parallel Networks, but I'm not  
12 going to have her testify about any internal  
13 discussions with respect to this issue.

14 But she can answer the question yes or  
15 no, at least the initial question, and then if you  
16 want to ask her about communications between Jenner  
17 & Block and Parallel Networks, I'll allow her to  
18 answer questions about those.

19 BY THE WITNESS:

20 A. I don't recall. I think there were  
21 discussions with Parallel Networks about a number,  
22 but I'd need to look at the memo again to be sure.

23 BY MR. ALIBHAI:

24 Q. Have you formed any opinions as to what



1 amount Jenner & Block is entitled to on a quantum  
2 merit basis?

3 MR. PELZ: You can only answer that question  
4 if you can answer it without disclosing information  
5 that was provided to you with respect to counsel --  
6 by counsel with respect to any of the work product  
7 with respect to this case.

8 THE WITNESS: Right, right.

9 BY THE WITNESS:

10 A. I don't think I can answer that without  
11 disclosing work product.

12 BY MR. ALIBHAI:

13 Q. Jenner & Block filed a demand for  
14 arbitration, correct?

15 A. Yes.

16 Q. Did you authorize that?

17 A. Yes.

18 Q. Jenner & Block has sought amounts under  
19 a claim for breach of contract in that case,  
20 correct, in that arbitration?

21 A. I'd have to look at it to make sure that  
22 I -- that I recall all the counts. There were  
23 several counts. I think it's breach of contract  
24 and unjust enrichment, but it could be something





1 else. I haven't looked at it for a long --

2 Q. You reviewed it before it was filed?

3 A. Yes.

4 Q. And what amounts is Jenner & Block  
5 seeking? Are you not the person that is involved  
6 in that decision?

7 A. Well, it would -- my understanding is  
8 we're seeking recovery of our fees.

9 Q. And there are alternative claims, as  
10 well, right?

11 A. If you could show it to me and...

12 (WHEREUPON, a certain document was  
13 marked Deposition Exhibit No. 71,  
14 for identification.)

15 BY MR. ALIBHAI:

16 Q. Exhibit 71 is the demand for arbitration  
17 filed by Jenner & Block.

18 (WHEREUPON, there was a short  
19 interruption.)

20 BY THE WITNESS:

21 A. Yes, this is the claim that we filed.

22 BY MR. ALIBHAI:

23 Q. And beginning on Page 15, there are  
24 multiple claims -- legal claims asserted.



1 A. Yes.

2 Q. One of them is breach of contract?

3 A. Yes.

4 Q. One's quantum meruit?

5 A. Breach of contract, quantum meruit,  
6 promissory estoppel and attorneys' fees.

7 Q. What amounts is Jenner & Block seeking  
8 under each of those counts?

9 A. Paragraph 70 says, "Jenner & Block is  
10 entitled to recover its reasonable and necessary  
11 attorneys' fees based on the Texas Civil Practice  
12 Code," and after that we request judgment in our  
13 favor against Parallel Networks and the entry of a  
14 binding arbitration order requiring Parallel  
15 Networks and epicRealm to compensate, reimburse and  
16 pay fees to Jenner & Block either at its standard  
17 hourly rate or an amount that is fair compensation  
18 in light of the benefits received by Parallel  
19 Networks and epicRealm.

20 We're also seeking all costs and  
21 expenses including reasonable attorneys' fees  
22 incurred by Jenner & Block in connection with  
23 enforcement of this agreement.

24 Q. What are the fees that Jenner & Block is



1 claiming as its standard hourly rates?

2 A. I don't have it at the -- I don't have  
3 the final numbers. It may be in the -- somewhere  
4 like \$10 million. I don't have the final number.

5 Q. Around \$10 million?

6 A. Something like that.

7 Q. And what is the amount that Jenner &  
8 Block is seeking as fair compensation in light of  
9 the benefits received by Parallel Networks and  
10 epicRealm?

11 MR. PELZ: Again, you can only answer if it  
12 doesn't disclose any information with respect to  
13 what you've gotten from counsel or any work product  
14 with respect to the case.

15 BY THE WITNESS:

16 A. Well, I'm looking here at Paragraph 39  
17 of the complaint. I'm sorry.

18 (WHEREUPON, there was a short  
19 interruption.)

20 BY THE WITNESS:

21 A. I'm sorry. What's your question?

22 MR. ALIBHAI: Can you read it back?

23 (WHEREUPON, the record was read by  
24 the reporter as requested as



1 follows:

2 "Q. And what is the amount that  
3 Jenner & Block is seeking as fair  
4 compensation in light of the  
5 benefits received by Parallel  
6 Networks and epicRealm?" )

7 BY THE WITNESS:

8 A. Yeah, I don't know if I can answer that  
9 without disclosing attorney/client privileged  
10 information.

11 BY MR. ALIBHAI:

12 Q. You don't intend to show up at the  
13 arbitration and have an opinion as to the value of  
14 that amount?

15 A. Well, my personal view is the value is  
16 \$10 million.

17 Q. Okay. Outside of that, you've not  
18 conducted an analysis as to what the amount that is  
19 fair compensation in light of the benefits received  
20 by Parallel Networks equals?

21 A. Well, they got the benefit of \$10  
22 million of legal work from Jenner & Block, so my  
23 personal opinion is it's \$10 million.

24 Q. Have you conducted any analysis as to



1 how to come up with that amount?

2 A. Yeah. That's what the invoices add up  
3 to.

4 Q. Okay.

5 A. And the invoices were sent every month  
6 and were never challenged by Parallel Networks, and  
7 the hard work of the Jenner & Block lawyers is why  
8 Parallel Networks was able to reach this very  
9 favorable settlement.

10 Q. Why do you think the settlement was  
11 favorable?

12 A. Well, it was a -- you know, they made  
13 money. They brought in money through the -- and  
14 Jenner & Block was not compensated for that.

15 Q. Are you aware that the firm was revising  
16 the invoices in 2010?

17 A. No.

18 Q. Do you know why that was done?

19 A. I don't know that it was done.

20 Q. You're not aware that Mr. Margolis was  
21 working on revised fee statements?

22 A. No.

23 Q. Other than the fair compensation in  
24 light of the benefits received by Parallel Networks



1 being measured by the hourly fees billed by Jenner  
2 & Block, do you have any other opinion as to the  
3 fair compensation in light of the benefits received  
4 by Parallel Networks?

5 A. Yeah. I think also the -- I think the  
6 agreement states that we're entitled to our hourly  
7 fees if we do terminate, and that to me is an  
8 agreement of the parties of what quantum meruit  
9 means, so...

10 Q. You're flipping through the agreement  
11 right now?

12 A. Yes, I'm flipping through it.

13 Q. Can you tell me where you're looking?

14 A. I'm looking at...

15 (WHEREUPON, there was a short  
16 interruption.)

17 BY THE WITNESS:

18 A. Paragraph 9(b) relates to termination by  
19 Jenner & Block, so I'm really relying on this  
20 agreement and Terri Mascherin's recommendations to  
21 me as to what this provided.

22 BY MR. ALIBHAI:

23 Q. And if you'll flip back to the agreement  
24 itself, looking at 9(b) where you were just



1 pointing to, that section begins, "If Jenner &  
2 Block determines at any time that it is not in its  
3 economic interest to continue the representation,"  
4 and it continues on that Jenner & Block may  
5 terminate?

6 A. "Jenner & Block may terminate this  
7 agreement by providing 30 days' prior written  
8 notice," yes.

9 Q. What factors led Jenner & Block to  
10 believe on January 2, 2009 when it sent Exhibit 1  
11 that it was not in its economic interest to  
12 continue the representation of epicRealm Licensing?

13 A. What factors?

14 Q. Yes.

15 A. I listed them previously. It was the --  
16 it was the breach of contract -- the long-standing  
17 breach of contract, the failure to pay our  
18 expenses, the -- if we stayed in this case -- the  
19 cases substantially longer, we'd have to go through  
20 the same thing, and I didn't have any confidence  
21 and the client had given me no confidence that he  
22 could -- that the client would abide by the  
23 provisions of the agreement where he would -- the  
24 client would reimburse us our expenses.



1 Q. Did you have any conversations with the  
2 client?

3 A. Never.

4 Q. Have you had any conversations with  
5 anyone that represented the client?

6 A. Never.

7 Q. At the time that Jenner & Block withdrew  
8 from all the representation of Parallel Networks,  
9 so around February 2009, okay, at that time --

10 A. I don't know the date exactly, but...

11 Q. The letter was sent January 2, 2009,  
12 right?

13 A. Yes.

14 Q. And then thereafter there was a  
15 withdrawal from the representation in the cases?

16 A. Well, I think we -- it wasn't immediate.  
17 There was -- you know, we worked with the client  
18 and did what we had to do to satisfy our  
19 professional obligations after that.

20 Q. So I'm talking about that time frame  
21 after January 2 --

22 A. Yes, yes.

23 Q. -- 2009.

24 A. Yes.





1 Q. What amount was Oracle willing to pay to  
2 settle the case?

3 A. I don't know.

4 Q. Do you not believe that as a result  
5 of -- you're aware that the summary judgment ruling  
6 that was entered in the Oracle case was reversed by  
7 the federal circuit?

8 A. Yes.

9 Q. And that was done by Baker Botts.  
10 Were you aware of that?

11 A. No.

12 Q. You don't know who --

13 A. It was another firm.

14 Q. Sorry?

15 A. I under- -- it was another firm.

16 Q. It wasn't Jenner & Block?

17 A. Yes.

18 Q. Do you believe that having a summary  
19 judgment of non-infringement reversed added value  
20 to the case?

21 A. I don't -- I can't answer that. I don't  
22 know.

23 Q. As a result of the final judgment of  
24 non-infringement being entered, did Oracle owe any



1 money to Parallel Networks?

2 A. I don't know.

3 Q. And do you know what amount QuinStreet  
4 was willing to pay to settle the case in the  
5 January 2009 time frame?

6 A. I don't know.

7 MR. ALIBHAI: All right. Let's take a  
8 two-minute break, and then I think we can wrap up.

9 (WHEREUPON, the deposition was  
10 recessed from 1:14 to 1:16 p.m.)

11 MR. ALIBHAI: Ready?

12 THE WITNESS: Yes.

13 MR. ALIBHAI: Ms. Levy, I have no further  
14 questions at this time.

15 THE WITNESS: Okay. Thank you.

16 EXAMINATION

17 BY MR. PELZ:

18 Q. Ms. Levy, I'm handing you what was  
19 marked yesterday by counsel for Parallel Networks  
20 as Exhibit 15 at the Mascherin deposition. Look at  
21 that, please.

22 (WHEREUPON, there was a short  
23 interruption.)

24 MR. PELZ: I'll note for the record that this



1 was not an exhibit used in today's deposition.

2 BY THE WITNESS:

3 A. Okay.

4 BY MR. PELZ:

5 Q. Do you recall on or about December 31  
6 the memorandum from Ms. Mascherin to you and others  
7 that is marked as Exhibit 15?

8 A. Yes.

9 Q. Did you in fact ask Ms. Mascherin to  
10 prepare that memo memorializing the conversations  
11 that occurred on December 30 and December 31?

12 A. Yes.

13 Q. Within those conversations was the  
14 analysis that Jenner & Block was conducting with  
15 respect to whether to send a notice of termination.  
16 Were those issues discussed during those  
17 meetings?

18 A. Yes.

19 Q. Have you reviewed this memorandum now?

20 A. Yes.

21 Q. Does this memorandum accurately to the  
22 best you recall reflect discussions that took place  
23 on those days of December 30 and 31 of 2008?

24 A. Yes.



1 Q. And is the information contained in that  
2 memorandum information that you relied on in making  
3 the decision to authorize sending the notice of  
4 termination?

5 A. Absolutely. This was the advice of  
6 Terri to me about the termination provisions of the  
7 agreement -- the contingent fee agreement and what  
8 they provided.

9 MR. PELZ: I don't have anything further at  
10 this time.

11 MR. ALIBHAI: Thanks for your time.

12 THE WITNESS: Okay. Thank you.

13 FURTHER DEPONENT SAITH NOT.  
14

15 (TIME NOTED: 1:19 P.M.)  
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24



1 STATE OF ILLINOIS )  
2 ) SS:  
3 COUNTY OF DuPAGE )  
4

5 I, VICTORIA C. CHRISTIANSEN, a Certified  
6 Shorthand Reporter of the State of Illinois, do  
7 hereby certify:

8 That previous to the commencement of the  
9 examination of the witness, the witness was duly  
10 sworn to testify the whole truth concerning the  
11 matters herein;

12 That the foregoing deposition transcript  
13 was reported stenographically by me, was thereafter  
14 reduced to typewriting under my personal direction  
15 and constitutes a true record of the testimony  
16 given and the proceedings had;

17 That the said deposition was taken  
18 before me at the time and place specified;

19 That I am not a relative or employee or  
20 attorney or counsel, nor a relative or employee of  
21 such attorney or counsel for any of the parties  
22 hereto, nor interested directly or indirectly in  
23 the outcome of this action.

24 IN WITNESS WHEREOF, I do hereunto set my



1 hand at Chicago, Illinois, this 7th day of June,  
2 2012.

3  
4 VICTORIA C. CHRISTIANSEN,  
5 Certified Shorthand Reporter.  
6

7  
8 C.S.R. Certificate No. 84-3192.  
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## I N D E X

WITNESS EXAMINATION

SUSAN COHEN LEVY

By Mr. Alibhai.....3

By Mr. Pelz.....74

## E X H I B I T S

NUMBER MARKED FOR ID

Exhibit No. 60 17Exhibit No. 61 22Exhibit No. 62 26Exhibit No. 63 27Exhibit No. 64 31Exhibit No. 65 33Exhibit No. 66 36Exhibit No. 67 38Exhibit No. 68 44Exhibit No. 69 48Exhibit No. 70 49Exhibit No. 71 65

NUMBER FIRST REFERRED TO

Exhibit No. 6 8

Exhibit No. 7 9



## I N D E X (Continued)

## E X H I B I T S

NUMBER	FIRST REFERRED TO
Exhibit No. 11	30
Exhibit No. 1	46
Exhibit No. 21	54
Exhibit No. 23	61
Exhibit No. 15	74





## DEPOSITION ERRATA SHEET

Our Assignment Number: 342085

Case Caption: Jenner & Block vs. Parallel Networks

## DECLARATION UNDER PENALTY OF PERJURY

I declare under penalty of perjury that I have read the entire transcript of my Deposition taken in the captioned matter or the same has been read to me, and the same is true and accurate, save and except for changes and/or corrections, if any, as indicated by me on the DEPOSITION ERRATA SHEET hereof, with the understanding that I offer these changes as if still under oath.

Signed on the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_.

\_\_\_\_\_  
SUSAN COHEN LEVY



## DEPOSITION ERRATA SHEET

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<b>A</b>				
<b>A.D</b>	8:11,12	45:10,14	65:4 66:7	<b>appears</b>
1:15	<b>advised</b>	48:13 49:20,	<b>analysis</b>	46:6
<b>a.m</b>	48:5	24 50:7	61:17 62:2	<b>appellate</b>
43:13	<b>ago</b>	52:13,18	68:18,24	22:12 37:11,
<b>abide</b>	61:9	62:10 63:23	75:14	24 42:19
58:9 71:22	<b>agree</b>	64:12 65:15,	<b>and..</b>	<b>approve</b>
<b>able</b>	9:22 13:16	22 67:22	65:11	15:19
55:11 69:8	34:9,14 59:4,	68:11 70:22	<b>and/or</b>	<b>approving</b>
<b>Absolutely</b>	22	74:7,11,13	4:1 81:12	15:14
21:18,20 26:8	<b>agreed</b>	76:11	<b>ANN</b>	<b>ARBITRATION</b>
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