

17 elected to terminate after -- if they were in compliance  
18 with terms of 9(b), they could receive their hourly  
19 rates prospectively after termination under 9(a)(i). Of  
20 course they were entitled to their expenses, and they  
21 could also recover under 9(a)(iii).

22 Q. (BY MR. PELZ) Did you understand the recovery  
23 under 9(a)(iii) would apply to their past work, sir?

24 A. I don't recall what my understanding of  
25 9(a)(iii) was at the time.

0084

1 Q. Well, 9(a)(iii) says, An appropriate and fair  
2 amount of the contingency fee -- contingent fee award  
3 based on Baker Botts' contribution to the result  
4 achieved as of the time of the termination of this  
5 agreement.

6 That has to refer to their prior work,  
7 doesn't it, sir?

8 A. I -- I don't recall what my recollection of  
9 9(a)(iii) was, Mr. Pelz.

10 Q. Well, do you have any understanding of it  
11 today, as you sit here as an experienced lawyer who's  
12 drafted contracts?

13 A. I do.

14 Q. What's your understanding?

15 A. My understanding is that if Baker Botts

16 terminated under 9(b), in compliance with the provisions  
17 of 9(b), and they were not in breach of the agreement,  
18 that they would be entitled to something under  
19 9(a)(iii).

20 Q. Okay. Well, they're -- for their work up until  
21 the time of terminating this agreement, correct, sir?

22 A. I think it's a little bit more detailed than  
23 that, I believe, for their work and the result achieved  
24 at the time of the termination.

25 Q. All right. Now, let's go to 9(b) in light of

0085

1 your testimony. Let's look at this sentence, the last  
2 sentence in 9(b). It says, If Baker Botts terminates  
3 this agreement, it shall continue to be entitled to  
4 receive compensation from epicRealm Licensing pursuant  
5 to (i), (ii) and (iii), in the preceding paragraph.

6 And will you agree that the preceding  
7 paragraph is 9(a), sir?

8 A. Yes.

9 Q. Up to the date of such termination. Doesn't  
10 that specifically say that it gets compensation under  
11 9(a)(i), (ii) and (iii) for the work up to the date of  
12 such termination, sir?

13 A. From the date of termination up to the date of  
14 term -- of such termination because there's a 30-day

15 written -- prior written notice provision. So my -- my  
16 interpretation of that provision, Mr. Pelz, is that if  
17 Baker Botts was in compliance with 9(b) and they hadn't  
18 breached the agreement, they would be entitled to  
19 receive their hourly rates from the date of termination  
20 through that 30-day period, and again, if they were not  
21 in breach, that they would be entitled to receive  
22 something under 9(a)(iii) based on their contribution to  
23 the result achieved as of the date of the time of such  
24 termination.

25 Q. So you think up to the date of such termination

0086

1 only refers to the time between the notice and the  
2 termination; is that correct?

3 A. Yes.

4 Q. Is there any correspondence between Baker Botts  
5 and epicRealm -- ERL or Parallel Networks reflecting  
6 that interpretation of this agreement?

7 A. I don't know. I don't know if there is. I  
8 don't have a recollection.

9 Q. Did you ever tell Kevin Meek that that's how  
10 you understood this agreement?

11 A. The -- this provision -- no, there was never  
12 any discussion between Kevin Meek and I regarding this  
13 provision because it never -- it never arose, and Baker