

**IN THE UNITED STATES DISTRICT COURT FOR THE  
NORTHERN DISTRICT OF ILLINOIS, EASTERN DIVISION**

DAVID GROCHOCINSKI, not individually	)	
but solely in his capacity as the Chapter 7	)	
Trustee for the bankruptcy estate of	)	
CMGT, INC.,	)	
	)	
Plaintiff,	)	No. 06 C 5486
	)	
v.	)	Judge Virginia M. Kendall
	)	
MAYER BROWN ROWE & MAW LLP	)	Magistrate Judge Morton Denlow
and RONALD B. GIVEN,	)	
	)	
Defendants.	)	

**UNOPPOSED MOTION FOR EXTENSION OF TIME**

Defendants Mayer Brown Rowe & Maw LLP and Ronald B. Given (together, the “Defendants”), by their attorneys, hereby seek an extension of time to file their objections to the “Alternative Ruling” in Magistrate Judge Denlow’s Memorandum Opinion and Order (the “Magistrate’s Order”) dated June 9, 2008.

**Background**

1. On October 30, 2007, this Court bifurcated this case to first allow for discovery and summary judgment proceedings on the defenses that the Court and parties have at various times referred to as the “absurd result,” “unclean hands” or “fraud on the court” defenses (the “Defenses”). After the entry of that order, Defendants issued written discovery requests regarding the Defenses to Plaintiff and a third-party, Spehar Capital, LLC (“SC”). In response, Plaintiff and SC objected to certain of Defendants’ document requests by asserting the attorney-client privilege and work-product doctrine (the “Privilege Objections”).

2. On December 13, 2007, this matter was referred to Magistrate Judge Denlow for ruling on the Privilege Objections.

3. On June 9, 2008, Magistrate Judge Denlow issued the Magistrate's Order resolving the Privilege Objections. The Magistrate's Order contained two alternative rulings.

**The Primary Ruling**

4. The primary ruling in the Magistrate's Order (the "Primary Ruling") is set forth in the first paragraph on page 30 of the Magistrate's Order and can be summarized as follows:

- (a) Plaintiff and SC are required to produce all documents pre-dating Plaintiff's filing of the Complaint because they were put "at issue" by this Court's analysis of the Defenses, Defendants' motion to dismiss, Defendants' motion to reconsider and Plaintiff's motion for a protective order; but
- (b) Plaintiff and SC are not required to produce any documents listed on their privilege logs that post-date Plaintiff's filing of the Complaint because those documents were not put "at issue."

5. The Primary Ruling was based upon the assumption (which Defendants believe is correct), that this Court intended to place at issue the pre-filing communications among Plaintiff, his counsel and SC. (Magistrate's Order at 30.) The Magistrate's Order also made an alternative ruling (the "Alternative Ruling") in the event that the Magistrate Judge's assumption was later found to be wrong. The Alternative Ruling decided whether Plaintiff independently put these pre-filing communications at issue.

**The Alternative Ruling**

6. The Alternative Ruling, under its own terms, applies only if this Court did not intend to place at issue the pre-filing communications among Plaintiff, his counsel and SC. Thus, the

Alternative Ruling could apply only if the Court sustains the objection to the Primary Ruling that Plaintiff intends to file.<sup>1</sup> The Alternative Ruling is set forth in the second paragraph on page 30 of the Magistrate's Order and it is summarized as follows:

- (a) Even though Plaintiff "affirmatively stated" that he filed this case in good faith based upon his and his attorneys' investigation, he did not put his pre-filing privileged communications "at issue" because he has not specifically relied upon any of those pre-filing privileged communications to advance his "good faith" argument; and
- (b) Defendants cannot overcome Plaintiff's work-product objection because Defendants have not shown that they have a substantial need and no access to the substantial equivalent information as required by Fed. R. Civ. P. 26(b)(3)(A). Thus, Plaintiff and SC are not required to produce any of the documents listed on their privilege log.

7. Respectfully, Defendants believe that the Alternative Ruling in the Magistrate's Order is clearly erroneous and/or contrary to law. Thus, Defendants do object to the Alternative Ruling pursuant to Fed. R. Civ. P. 72(a).

### **Requested Relief**

8. Because the Alternative Ruling is contingent, and will not apply unless and until the Primary Ruling is reversed, the Alternative Ruling may never be implicated. Among other things, the Alternative Ruling would not apply if Plaintiff's objection to the Primary Ruling is overruled and the Primary Ruling is allowed to stand.

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<sup>1</sup> Defendants will not file any objections to the Primary Ruling. Defendants have been advised that Plaintiff intends to file objections to the Primary Ruling.

9. Under these circumstances, it would be a waste of the Court's and parties' resources to brief and argue Defendants' objections to a contingent Alternative Ruling that may never become effective.

10. Accordingly, Defendants respectfully request that the Court extend the time for them to file any and all objections to the Alternative Ruling pursuant to Fed. R. Civ. P. 72(a) until such time as the Court rules on any objection to the Primary Ruling asserted by Plaintiff. This way, the Court and parties will brief and consider Defendants' objections to the Alternative Ruling only if it will truly be implicated in this case.

11. After consultation, Defendants' counsel understands that Plaintiff's counsel has no objection to the relief sought herein. This is the first request for an extension of time relating to Defendants' objections to the Alternative Ruling.

WHEREFORE, Defendants respectfully request that the Court grant Defendants: (a) an extension of time to object to the Alternative Ruling pursuant to Fed. R. Civ. P. 72(a) until ten (10) days after the entry by the Court of an order (if any) that renders the Alternative Ruling operable; and (b) such other and further relief as is appropriate.

Respectfully submitted by,

MAYER BROWN ROWE & MAW LLP and  
RONALD B. GIVEN

By:                   /s/ Steven J. Ciszewski                    
  One Of Their Attorneys

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**CERTIFICATE OF SERVICE**

Steven J. Ciszewski, an attorney, hereby certifies that he caused a true and correct copy of the foregoing Unopposed Motion for Extension of Time to be served through the ECF system upon the following:

Edward T. Joyce  
Arthur W. Aufmann  
Robert D. Carroll  
Edward T. Joyce & Assoc., P.C.  
11 S. LaSalle St., Suite 1600  
Chicago, IL 60603

on this 23rd day of June, 2008.

/s/ Steven J. Ciszewski