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1 Q. -- would you read that to yourself.  
 2 (WHEREUPON, Mr. Stephen Novack left  
 3 the deposition proceedings.)  
 4 BY THE WITNESS:  
 5 A. Okay.  
 6 BY MR. MARINELLO:  
 7 Q. Where did that information come from?  
 8 A. I assume we must have gotten that  
 9 information either from the documents that we have  
 10 with -- that were turned over to me, or it's  
 11 perhaps Mr. Spehar provided that information.  
 12 Q. Okay. Now, do you understand the chart  
 13 that's referred to in that paragraph to be the  
 14 chart that is attached to Exhibit 27?  
 15 A. Yes.  
 16 Q. All right. If you look at Paragraph 27,  
 17 at the very last sentence --  
 18 A. Um-hum.  
 19 Q. -- it says, "However, it was Spehar  
 20 Capital's and CMGT's regular course of dealing to  
 21 'orally' add third parties to the list without  
 22 updating Exhibit A in writing." Do you see that?  
 23 A. I see it.  
 24 Q. What is your factual basis for making

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1 that statement?  
 2 A. I assume it was information generated by  
 3 Mr. Spehar.  
 4 Q. Do you know for a fact what the basis  
 5 for that information is, instead of assuming that  
 6 it came from Mr. Spehar? Did you talk to  
 7 Mr. Spehar about that?  
 8 A. No.  
 9 Q. Do you know that it came from  
 10 Mr. Spehar?  
 11 A. No.  
 12 Q. Okay. You assume it did, though. Okay.  
 13 What does it mean -- does that clarify  
 14 for you what the function of Exhibit A was?  
 15 A. Does it clarify the function of  
 16 Exhibit A. I -- I -- I'm sorry. I must be missing  
 17 it. I don't quite understand.  
 18 You're saying that these people are  
 19 attached as Exhibit A for people that Spehar could  
 20 talk to, but that the list itself is not complete  
 21 according to our complaint and that it could be  
 22 added or amended orally from time to time. So this  
 23 is a partial list, apparently.  
 24 Q. Well, apart from what Mr. Spehar told

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1 you, do you have any evidence --  
 2 A. I didn't talk to Mr. Spehar.  
 3 Q. Okay. Strike that.  
 4 Apart from whatever information you or  
 5 your counsel received from Mr. Spehar, do you have  
 6 any other evidence that it was Spehar Capital's and  
 7 CMGT's regular course of dealing to orally add  
 8 third parties to Exhibit A?  
 9 A. I did not talk to anybody about that  
 10 personally.  
 11 Q. Okay. Is the answer, then, that you  
 12 have no information other than the assumption that  
 13 it came from Spehar?  
 14 A. Again --  
 15 MR. JOYCE: He said -- he's answered that  
 16 about three times.  
 17 BY THE WITNESS:  
 18 A. Right.  
 19 MR. JOYCE: That's his answer.  
 20 BY MR. MARINELLO:  
 21 Q. Is that your answer, sir?  
 22 A. Yes.  
 23 Q. All right. Paragraph 31, if you would  
 24 turn to that, says that Mayer Brown was legal

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1 counsel for the minority-owned insurance company  
 2 project, first as counsel for Spehar Capital and  
 3 Franco, and then as counsel for the partnership,  
 4 MP.  
 5 What is your factual basis for saying  
 6 that Mayer Brown was counsel to SC, Spehar Capital?  
 7 A. I don't have any independent knowledge  
 8 of that.  
 9 Q. Where did that information come from?  
 10 A. I presume it was from Spehar Capital.  
 11 Q. Did you ever attempt to verify with  
 12 Mayer Brown or anyone else whether that statement  
 13 was true?  
 14 A. Personally?  
 15 Q. Yes.  
 16 A. No.  
 17 Q. Do you know of anyone else who did try  
 18 to verify whether that statement was true?  
 19 A. I -- I don't know.  
 20 Q. All right. Paragraph 33 says that, "On  
 21 or about February 5, 2005, Sealaska signed a letter  
 22 of intent to purchase a 51 percent interest in CMGT  
 23 for \$2,000,000." Do you see that?  
 24 A. I do.

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1 Q. Have you ever seen that letter of  
 2 intent?  
 3 A. I don't recall.  
 4 Q. Are you -- do you know whether that  
 5 statement is true?  
 6 A. I presume it to be true. I haven't seen  
 7 the letter, though, and I don't recall seeing the  
 8 letter.  
 9 Q. Do you know what it's based on?  
 10 A. What's what based on?  
 11 Q. Well, do you know where that's -- where  
 12 that -- where did that information come from?  
 13 A. I don't know.  
 14 Q. Are you aware of the fact that Sealaska  
 15 rejected the idea of investing in CMGT?  
 16 A. Yes.  
 17 Q. And they rejected it -- what was the  
 18 figure that they were talk -- when -- when Sealaska  
 19 rejected it, what was the amount of money that they  
 20 were talking about?  
 21 A. I don't recall.  
 22 Q. It was a lot less than 2 -- \$2 million,  
 23 wasn't it?  
 24 A. It might be. I don't know.

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1 Q. So, for all you know, this statement  
 2 that I just drew your attention to really has no  
 3 basis in fact?  
 4 MR. JOYCE: Wrong. He just told you he  
 5 doesn't know. Now you're asking him to speculate.  
 6 BY MR. MARINELLO:  
 7 Q. You're not aware of it having any basis  
 8 in fact?  
 9 MR. JOYCE: Again, I object. You're asking  
 10 him to speculate. He told you he doesn't know the  
 11 source of the information.  
 12 MR. MARINELLO: Okay.  
 13 MR. JOYCE: Then you draw your silly little  
 14 conclusion.  
 15 BY MR. MARINELLO:  
 16 Q. Let's turn to Paragraph 37.  
 17 THE VIDEOGRAPHER: I need change the tape.  
 18 MR. MARINELLO: Need to change the tape? All  
 19 right. Fine. Let's do that.  
 20 Let's take break while our court --  
 21 videographer changes the tape.  
 22 THE VIDEOGRAPHER: Going off the video record  
 23 at 1:58 p.m.  
 24 (WHEREUPON, the deposition was

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1 recessed from 1:58 p.m. until  
 2 2:02 p.m.)  
 3 THE VIDEOGRAPHER: Going back on the video  
 4 record at 2:02 p.m., the beginning of Tape No. 4.  
 5 BY MR. MARINELLO:  
 6 Q. Okay. If we turn to Paragraph 37 for a  
 7 minute, please.  
 8 A. Okay.  
 9 Q. Okay? Read the last sentence of  
 10 Paragraph 37.  
 11 A. "Although CMGT and Sealaska were on the  
 12 brink of closing a deal, they ultimately were  
 13 unable to reach mutually agreeable terms."  
 14 Q. Do you know how close they were to  
 15 reaching a deal?  
 16 A. No.  
 17 Q. Where did this information come from?  
 18 A. I assume that -- well, I really don't  
 19 know. I'm not going to make an assumption. I  
 20 don't know the answer to the question.  
 21 Q. Okay. If you turn the page, please.  
 22 A. Um-hum.  
 23 Q. Paragraph 40 refers to a conversation, a  
 24 conference call that took place on January 27,

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1 2003. Do you see that?  
 2 A. I see that.  
 3 Q. Where did the information about that  
 4 conference call come from?  
 5 A. Either in the information that was given  
 6 to me by Mr. Franco or, I would presume, by  
 7 Mr. Spohar.  
 8 Q. Do you remember any information that  
 9 Mr. Franco gave you with respect to that conference  
 10 call?  
 11 A. Again, I don't -- I -- I don't.  
 12 Q. Do you know that he gave you any  
 13 information about the conference call?  
 14 A. I don't know.  
 15 Q. Okay. Paragraph 41 --  
 16 A. Um-hum.  
 17 Q. -- states that in May -- "In or around  
 18 May of 2003, Given and Trautner revived Trautner's  
 19 Newco deal under the same terms that Franco had  
 20 rejected in January." Do you see that?  
 21 A. I do.  
 22 Q. What -- what's the factual basis for  
 23 that assertion?  
 24 A. I don't know the answer to that

1 question.  
 2 Q. Okay. Do you know whether the certain  
 3 factual circumstances that CMGT was in had changed  
 4 from January of 2003 to May, 2003?  
 5 A. I don't have that information with me  
 6 now.  
 7 Q. Well, let me ask you this. Do you know  
 8 whether CMGT's business took a downturn between  
 9 January of 2003 and May of 2003?  
 10 A. I don't know the answer to the question.  
 11 Q. No idea at all?  
 12 A. I -- I'm sorry, no, I don't.  
 13 Q. Okay. Well, the implication of your  
 14 complaint is that there's something wrong about a  
 15 situation where a new funding idea is rejected in  
 16 January, but then suddenly is acceptable in May.  
 17 Doesn't that depend on whether the  
 18 circumstances had changed?  
 19 A. Maybe, maybe not. I don't know the --  
 20 Q. Maybe not --  
 21 A. -- answer to that.  
 22 Q. -- but if the circumstances had changed,  
 23 that might go a long way to explaining why the  
 24 financing had become acceptable, correct?

1 client contracts, but that MBRM's accrued fees  
 2 would be paid at closing."  
 3 Q. Do you know whether it's truthful -- a  
 4 truthful statement that the letter of intent  
 5 provided that Mayer Brown's accrued fees would be  
 6 paid at closing?  
 7 A. What are we referring to? The letter on  
 8 Paragraph 3 or what?  
 9 Q. This is your complaint, sir, so I would  
 10 hope you would have the answer to that question.  
 11 But --  
 12 A. What exhibit are you referring to?  
 13 Q. I'm not referring to any exhibit at this  
 14 moment.  
 15 A. Okay.  
 16 Q. You have stated in Paragraph 42 of your  
 17 complaint, not mine, that the Given-drafted letter  
 18 of intent provided that Mayer Brown's accrued fees  
 19 would be -- would be paid at closing.  
 20 A. That was my understanding.  
 21 Q. I'm asking you if that's a truthful  
 22 statement.  
 23 A. That's my understanding.  
 24 Q. Okay. Let's turn to Exhibit 3, okay,

1 MR. JOYCE: You're asking him to speculate. I  
 2 object. He doesn't know the answer, so you want  
 3 him to speculate. It's improper.  
 4 BY THE WITNESS:  
 5 A. I don't know the answer to what you're  
 6 asking me.  
 7 BY MR. MARINELLO:  
 8 Q. You have no idea, sir?  
 9 MR. JOYCE: You asked about three times on  
 10 that. He said he doesn't know.  
 11 BY MR. MARINELLO:  
 12 Q. Now, the -- what's called the Newco  
 13 letter of intent is attached as Exhibit 3 to your  
 14 complaint, and your complaint says that the letter  
 15 of intent provided for Newco either to purchase --  
 16 to purchase all of CMGT'S assets either by paying  
 17 half a million dollars in cash or by giving CMGT  
 18 20 percent of the shares of Newco, correct?  
 19 A. That's what it says.  
 20 Q. Okay. Paragraph 42, please. Read the  
 21 first sentence out loud, please.  
 22 A. "The Given-drafted letter of intent also  
 23 stated that Newco would not assume any of CMGT's  
 24 liabilities; other than those associated with

1 which is the letter of intent, and let's turn to  
 2 Page 2 of that letter of intent. Are you there?  
 3 A. I am.  
 4 Q. All right. Let's go to paragraph  
 5 numbered 4 where it says "Certain Conditions  
 6 Precedent." Do you see that?  
 7 A. Um-hum.  
 8 Q. And you need to answer with a word  
 9 rather than uh-huh, just for the court reporter.  
 10 A. Okay.  
 11 Q. All right. Paragraph (c), do you see  
 12 that?  
 13 A. I do.  
 14 Q. Would you read it?  
 15 A. It says, "Because of Mayer Brown  
 16 Rowe & Maw's familiarity with Oldco, Newco required  
 17 that they document the proposed transaction. Such  
 18 work will be paid for by Newco on an hourly basis  
 19 plus an agreement to also reimburse a certain  
 20 percentage of legal fees that are currently unpaid,  
 21 all as agreed to between Mayer Brown Rowe Maw and  
 22 Newco."  
 23 Q. Okay. Now let me ask you a question.  
 24 Does that say that all of Mayer Brown's accrued

1 fees will be paid at closing?  
 2 MR. JOYCE: Objection. This is absolutely  
 3 absurd. It says what it says.  
 4 BY MR. MARINELLO:  
 5 Q. Is it your understanding, sir, that that  
 6 document provides that all of Mayer Brown's fees  
 7 will be paid at closing?  
 8 A. It was my understanding all of  
 9 Mayer Brown's fees were going to be paid at  
 10 closing.  
 11 Q. And is that based on what this document  
 12 says, or is that based on something else?  
 13 A. I don't recall.  
 14 Q. Well, as you look at these words here  
 15 and -- and you read the words that say there's  
 16 going to be a reimbursement of -- and I quote, "a  
 17 certain percentage of legal fees" --  
 18 A. Could have been a hundred percent.  
 19 Q. Could have been.  
 20 A. Right.  
 21 Q. Could have been no percent or 1 percent,  
 22 right?  
 23 A. Could have been.  
 24 Q. So how does -- how do you go from that

1 language, which is unclear as to what it means, to  
 2 stating that Mayer Brown's accrued fees were going  
 3 to be paid at closing?  
 4 A. That was my understanding.  
 5 Q. Okay. And it was based on nothing more  
 6 than your interpretation of that provision?  
 7 MR. JOYCE: That's what -- is that --  
 8 BY THE WITNESS:  
 9 A. No.  
 10 MR. JOYCE: -- a question? Is that -- what --  
 11 what is that?  
 12 BY THE WITNESS:  
 13 A. That's not what it said. It said a  
 14 certain percentage of, and I just finished telling  
 15 you it could have been a hundred percent. My  
 16 understanding was they were going to be paid a  
 17 hundred percent.  
 18 BY MR. MARINELLO:  
 19 Q. And what was that understanding based  
 20 on?  
 21 A. On my understanding of how that  
 22 transaction was going to go.  
 23 Q. And what was that based on?  
 24 A. I don't know what you --

1 Q. What was your understanding based on  
 2 other than the language we just read?  
 3 A. Well, I probably received information  
 4 from either Franco and/or Mr. Spehar.  
 5 Q. Well, you've already told me a number of  
 6 times, as your counsel has pointed out, that you  
 7 didn't speak to Mr. Franco, so how --  
 8 A. That's not --  
 9 MR. JOYCE: That's not true.  
 10 BY THE WITNESS:  
 11 A. -- what I said. I did --  
 12 MR. JOYCE: Absolutely not true.  
 13 BY THE WITNESS:  
 14 A. -- not say that the all.  
 15 MR. JOYCE: Absolutely not true. He never  
 16 spoke with Mr. Given.  
 17 BY MR. MARINELLO:  
 18 Q. He -- okay. So you --  
 19 A. I never spoke with Mr. Given.  
 20 Q. -- think that you spoke to Mr. Franco  
 21 about --  
 22 A. I told you --  
 23 Q. -- about the fees?  
 24 A. -- that I -- I don't have a present

1 recollection of dates, times that I spoke to  
 2 Mr. Franco, that it's conceivable that I spoke to  
 3 him but that I'm not sure.  
 4 And as I sit here today, I'm still not  
 5 sure.  
 6 Q. So -- so every time --  
 7 A. So --  
 8 Q. Every time there's a fact in this  
 9 complaint, you're going say, well, it's possible  
 10 that you spoke to Mr. Franco? Is that what you  
 11 mean? Because you can't remember, so maybe you  
 12 did? Is that your --  
 13 A. It's --  
 14 Q. -- testimony?  
 15 A. -- possible that I did, and it's  
 16 possible that I didn't --  
 17 Q. Okay.  
 18 A. -- or the information came to me  
 19 elsewhere.  
 20 Q. And can you identify where it came from?  
 21 A. I'm going to explain something. I'm a  
 22 bankruptcy trustee. I was not there when this  
 23 transaction occurred.  
 24 I succeed to the cause of action, as you

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1 well know, so I don't have an independent  
 2 recollection of what occurred and what didn't  
 3 occur.  
 4 The best that I can do is get the  
 5 information that is available to me as bankruptcy  
 6 trustee, whether it's from Mr. Spehar, documents,  
 7 or otherwise, and pursue a matter that I think is  
 8 reasonable, and that's exactly what I'm doing.  
 9 Q. And do you have any -- any -- do you  
 10 recognize that you have any responsibility  
 11 whatsoever to make sure that there's the slightest  
 12 accuracy to anything you put down on paper?  
 13 A. Of course. I have counsel that's  
 14 representing me that's done an investigation and  
 15 recommended to me to file a -- a cause of action,  
 16 which I in fact have filed.  
 17 Q. Okay. Are you relying on your counsel  
 18 for that then?  
 19 A. My counsel did an investigation, and I  
 20 made the final decision to proceed.  
 21 Q. Right, and let me ask you this: When  
 22 you decided to put in your complaint that you  
 23 proceeded with that all of Mayer Brown's accrued  
 24 fees were going to be paid at the closing, what was

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1 that based on other than possible conversations you  
 2 cannot recall plus the language of the agreement  
 3 that you attached as an exhibit to your complaint?  
 4 A. It's conceivable that we received  
 5 information from Mr. Spehar.  
 6 Q. Conceivable?  
 7 A. It's -- but I don't recall today.  
 8 Q. Okay. Now, let me ask you another  
 9 question about that. It says in your complaint  
 10 that the fees are going to be paid at closing.  
 11 Does it say anything in your exhibit  
 12 about when this payment is going to be made?  
 13 MR. JOYCE: What -- what payment?  
 14 MR. MARINELLO: The -- the payment to  
 15 Mayer Brown.  
 16 BY THE WITNESS:  
 17 A. I assume at closing.  
 18 BY MR. MARINELLO:  
 19 Q. You assume it. Does it say anything in  
 20 this -- in this document that you attached as the  
 21 agreement?  
 22 A. Well, doesn't it say "at closing"?  
 23 Q. I'm asking you that question, sir.  
 24 MR. JOYCE: Well, the document speaks for

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1 itself. He's not here to read a document and tell  
 2 you what it says.  
 3 BY MR. MARINELLO:  
 4 Q. Do you see anywhere in the discussion  
 5 about Mayer Brown getting a certain percentage of  
 6 its legal fees where it says "and those fees will  
 7 be paid at closing"?  
 8 A. I'd have to read the entire document.  
 9 Q. Take your time.  
 10 MR. JOYCE: Now, look. If you've got a  
 11 paragraph to point him to, point him to it.  
 12 MR. MARINELLO: Well, I do. I've already  
 13 pointed him. It's Paragraph --  
 14 BY THE WITNESS:  
 15 A. But I'm --  
 16 MR. MARINELLO: -- 4(c).  
 17 BY THE WITNESS:  
 18 A. -- not sure whether the rest --  
 19 BY MR. MARINELLO:  
 20 Q. Hold on.  
 21 A. -- of the agreement may --  
 22 Q. It's Paragraph 4(c). Look at 4(c).  
 23 Look at Paragraph 4(c). Does it say they're going  
 24 to be paid at closing?

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1 A. No, it does not.  
 2 Q. Okay. I -- you know, if you can find it  
 3 someplace else, then you'll have to chance to  
 4 rehabilitate your testimony at that time.  
 5 MR. JOYCE: He doesn't need any  
 6 rehabilitation. Your testimony -- your answers are  
 7 so simple to respond to, they've been responded to.  
 8 MR. MARINELLO: So be it.  
 9 BY MR. MARINELLO:  
 10 Q. Do you have any notes from any of your  
 11 alleged conversations with Mr. Franco?  
 12 A. I don't think so.  
 13 Q. Are there any documents that would  
 14 refresh your recollection about any alleged  
 15 conversations you had with Mr. Franco?  
 16 A. No, I don't think so.  
 17 Q. Is there anything else that you can  
 18 think of that might refresh your recollection as to  
 19 any conversations you allegedly had with  
 20 Mr. Franco?  
 21 A. Not that I recall at the time.  
 22 Q. Okay. Let's look at Paragraph 43. You  
 23 say that, "On information and belief, Given  
 24 pressured Franco to agree to the Newco letter of

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1 intent."

2 How do you know that Mr. Given pressured

3 Franco to agree to the Newco letter of intent?

4 A. I'm not sure.

5 Q. Is this more information that Mr. Spehar

6 gave you?

7 A. I don't know the answer to that.

8 Q. Okay. Your complaint in Paragraph 43

9 also says that Mr. Given did not advise Franco

10 that, if similar terms that were nevertheless more

11 favorable to CMGT were offered to Sealaska or other

12 potential investors, CMGT would likely be able to

13 close a deal that was better than the Newco deal

14 for CMGT.

15 What is the factual basis for that

16 assertion that Mr. Franco -- that Mr. Given did not

17 advise Mr. Franco of that?

18 A. Well, this says "on information and

19 belief," right?

20 Q. Yes.

21 A. Okay.

22 Q. So I'm asking you what's the -- what's

23 the -- what's the factual basis for it.

24 Is it your position that if you make an

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1 allegation on information on belief you can make

2 any --

3 A. No, no, no.

4 Q. -- allegation you want without --

5 A. Of course not.

6 Q. -- any factual basis?

7 A. Of course not.

8 Q. Okay. So then what's the factual basis

9 for that?

10 A. I don't recall right now.

11 Q. Okay. Is there anything that would

12 refresh your recollection?

13 A. I -- I'm sure I must have documentation

14 or information. But I'd --

15 Q. Do you know --

16 A. -- have to go through boxes and boxes of

17 stuff, so I don't really know. I'm not prepared to

18 answer it right now, because I don't have the

19 answer.

20 Q. Can you -- can you identify anyone who

21 is going to testify at trial to that fact, alleged

22 fact?

23 MR. JOYCE: Well, it's -- first of all, that's

24 an inappropriate question for him to be answering

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1 right now. If you want to serve that

2 interrogatory, we'll answer it.

3 BY MR. MARINELLO:

4 Q. If -- are you aware -- okay. Let's go

5 on from there.

6 You go on to say that, "Given failed to

7 give Franco this advice" -- well, strike this.

8 Did -- did Franco ever tell you that

9 Given failed to give him that advice?

10 A. No. I don't believe I had a

11 conversation to that extent.

12 Q. Did -- and -- okay.

13 And then you say, "On information and

14 belief, Given failed to give Franco this advice

15 because the Newco deal ensured that Mayer Brown's

16 accrued fees would be paid." We've already talked

17 about Exhibit 3.

18 A. Yes.

19 Q. And I've already shown you that it -- it

20 does -- it provides a certain percentage may be

21 paid, depending on an agreement that may or may not

22 happen.

23 But is there anything else that you can

24 point to besides that that ensured that

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1 Mayer Brown's accrued fees would be -- would be

2 paid?

3 A. Not off the top of my head, no, I don't.

4 Q. Okay.

5 A. Sorry.

6 Q. All right. Paragraph 44, you state in

7 the middle of the paragraph that on August 14,

8 2004 -- I'm sorry, August, 14, 2003, Given and

9 Franco pre-approved a letter of intent with the

10 Washoe, and that you've attached a copy of that

11 letter of intent to Paragraph 4 -- to your

12 complaint as Exhibit 4.

13 Is -- is Exhibit 4 a copy of that

14 document?

15 A. I'll have to take a look and see.

16 I'm not sure. I think --

17 Q. Okay.

18 A. -- so.

19 Q. Where did you get Exhibit 4 from?

20 A. I don't recall.

21 Q. Exhibit 4 in Paragraph 3 -- I'm sorry,

22 in -- in the very first paragraph that's not

23 numbered refers to an investment of \$2½ million in

24 CMGT. Do you see that?

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1 A. I do.  
 2 Q. Are you aware of any point in time when  
 3 the Washoe Indian Tribe was willing to invest  
 4 \$2½ million into CMGT?  
 5 A. Well, this was obviously not signed,  
 6 so --  
 7 Q. I didn't ask you about whether this was  
 8 signed. What I asked you is, do you have any  
 9 information to suggest that the Washoe ever  
 10 intended to invest \$2½ million --  
 11 A. I did not --  
 12 Q. -- in the company?  
 13 A. -- speak to anyone from the Washoe, so I  
 14 don't have an answer to the question.  
 15 Q. And, in fact, this letter that you're  
 16 looking at -- this is dated August 14, 2003. Do  
 17 you know how many employees CMGT had by that time?  
 18 A. No.  
 19 Q. Do you know whether any of the officers  
 20 of the company had been paid a nickel in salary for  
 21 the years 2003 or 2002?  
 22 A. No.  
 23 Q. So it's very possible that they hadn't  
 24 been paid in two years?

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1 MR. JOYCE: Objection. You're asking him to  
 2 speculate. He doesn't know.  
 3 MR. MARINELLO: He had no idea one way or the  
 4 other?  
 5 MR. JOYCE: He's answered the question. He  
 6 doesn't know.  
 7 BY THE WITNESS:  
 8 A. Right. I don't know.  
 9 BY MR. MARINELLO:  
 10 Q. Okay. Do you know how many clients CMGT  
 11 had in -- in August of 2003?  
 12 MR. JOYCE: You asked that about two hours  
 13 ago.  
 14 MR. MARINELLO: Well, this is August 14, 2003.  
 15 MR. JOYCE: You asked that about -- same  
 16 question about two hours ago. It's amazing you're  
 17 now going over it again. He didn't know then.  
 18 He's not going to know now.  
 19 BY THE WITNESS:  
 20 A. I don't know the answer.  
 21 BY MR. MARINELLO:  
 22 Q. Do you know what its losses were or what  
 23 its income was or anything else?  
 24 MR. JOYCE: You asked him that two hours ago.

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1 He didn't know then. He's not going to know now.  
 2 BY THE WITNESS:  
 3 A. Right, I don't know the answer to that.  
 4 BY MR. MARINELLO:  
 5 Q. Can you think of any credible reason why  
 6 anyone in the world would believe that the Washoe  
 7 Indian Tribe or any other third party was  
 8 interested in putting \$2½ million into CMGT on  
 9 August 14, 2003, given the terrible financial  
 10 condition that that company was in?  
 11 MR. JOYCE: I object. He already testified he  
 12 doesn't know -- he didn't know its financial  
 13 condition.  
 14 BY MR. MARINELLO:  
 15 Q. You didn't know its financial condition,  
 16 and you never bothered to find out, did you?  
 17 A. I didn't say that. I said I just didn't  
 18 know it.  
 19 Q. And did you ever bother to find out?  
 20 A. It may be in the documents that were  
 21 turned over to me.  
 22 Q. It may; it may not be, correct?  
 23 A. That's right. It may not be.  
 24 Q. And -- and if it isn't, it's -- you

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1 never tried to find out?  
 2 A. No.  
 3 Q. Okay. Now, your complaint also says  
 4 that "Franco sent CMGT shareholders a letter  
 5 soliciting proxies for the Newco deal and stating  
 6 that there were no other alternatives," and you've  
 7 attached a copy of Mr. Franco's letter as  
 8 Exhibit 5.  
 9 Let's look at Exhibit 5. Is that a true  
 10 copy of the letter that Mr. Franco, as you  
 11 understood -- stand it, sent out to all of the  
 12 investors of CMGT on August 15th?  
 13 A. I haven't seen this in a long time. I  
 14 believe it to be.  
 15 Q. Okay. If you look at the second  
 16 paragraph of his -- of his letter, he says, "I've  
 17 attempted to personally discuss the proposed  
 18 transaction with each of you." Do you see that?  
 19 A. I see it.  
 20 Q. Do you know whether he did that or not?  
 21 A. No.  
 22 Q. Do you have any reason to believe he  
 23 didn't?  
 24 MR. JOYCE: I object. He has -- he doesn't



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1 have any knowledge.  
 2 MR. MARINELLO: Well, he might have knowledge  
 3 that suggests he didn't speak to everybody.  
 4 MR. JOYCE: He said he has no knowledge. Then  
 5 you ask a silly question and ask him to speculate.  
 6 MR. MARINELLO: I object to your  
 7 characterization, and I don't want to argue with  
 8 you, Mr. Joyce.  
 9 MR. JOYCE: Okay.  
 10 BY MR. MARINELLO:  
 11 Q. The next paragraph says that, "The  
 12 funding process for CMGT has been excruciating for  
 13 all of us." Do you know what that refers to?  
 14 A. No.  
 15 Q. Did you ever try to find out what  
 16 that -- what Mr. Franco meant by that?  
 17 A. No.  
 18 Q. Okay. He says in that same paragraph  
 19 that, "In addition to devoting over three years of  
 20 my life to CMGT, I have personally advanced over  
 21 150,000 of my own money keeping CMGT afloat."  
 22 Do you have any reason to doubt that  
 23 that's true?  
 24 A. No.

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1 Q. Okay. Does that suggest to you that  
 2 CMGT was in great financial condition as of  
 3 August 15, 2003?  
 4 A. People advance money for their own  
 5 company all the time.  
 6 Q. That wasn't my --  
 7 A. So I don't --  
 8 Q. That wasn't my question.  
 9 A. I don't find that to be unusual.  
 10 Q. I didn't ask you if it was unusual. I  
 11 asked you if you had any idea as of August 15 --  
 12 doesn't that fact suggest to you that -- that CMGT  
 13 was in financial trouble as of August 15th, 2003?  
 14 A. No.  
 15 Q. It doesn't, okay.  
 16 Now, this letter also states that --  
 17 okay. Let's go -- I'll -- I'll withdraw that  
 18 question.  
 19 Let's go to Paragraph 45 of your  
 20 complaint. You say that, "On or about August 29,  
 21 2003, the Washoe committed to deliver a signed  
 22 letter of intent by September 2, 2003, which they  
 23 did."  
 24 Have you ever seen a copy of that letter

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1 of intent?  
 2 A. No, I don't recall. What does  
 3 Paragraph 6 say?  
 4 Q. Your complaint says that a copy of the  
 5 Washoe September 2, 2003 letter of intent is  
 6 attached as Exhibit 6. Let's look at Exhibit 6.  
 7 A. I see it.  
 8 Q. Okay. Is that signed?  
 9 A. No.  
 10 Q. Have you ever seen a signed copy of that  
 11 document, signed by the Washoe?  
 12 A. I don't recall seeing a signed copy.  
 13 Q. Your -- your complaint says that there's  
 14 a signed letter of intent from the Washoe Tribe and  
 15 that a copy is attached as Exhibit 6, and when we  
 16 look at Exhibit 6, it's not signed. How do you  
 17 explain that?  
 18 A. It says, "On or about August 29th, the  
 19 Washoe committed to deliver a signed letter of  
 20 intent, which they did." That doesn't necessarily  
 21 mean that we had it in our possession.  
 22 Q. Oh, I see.  
 23 A. They may have delivered --  
 24 Q. So, in other words -- in other words,

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1 what your -- we should -- we should interpret the  
 2 first sentence of your complaint to say that the  
 3 Washoe committed to deliver a signed letter of  
 4 intent by September 2nd, and then the "which they  
 5 did" is supposed to me, "Yeah, they really did  
 6 commit to deliver a signed letter of intent by  
 7 September 2nd like we just said"?  
 8 A. I suppose you could interpret it that  
 9 way.  
 10 Q. Is that the way you interpret it? It's  
 11 your complaint. Is that how you interpret it?  
 12 A. Well, I think you should interpret it  
 13 any way you like.  
 14 Q. I'm asking you 'cause it's your  
 15 complaint.  
 16 A. All I know is that Paragraph 3 --  
 17 Paragraph 6 is not signed.  
 18 Q. You mean Exhibit 6?  
 19 MR. JOYCE: Exhibit 6.  
 20 BY THE WITNESS:  
 21 A. Exhibit 6.  
 22 BY MR. MARINELLO:  
 23 Q. And you've never seen a signed letter of  
 24 intent from the Washoe?

1 A. I did not ask to see one.  
 2 Q. But you've never seen one?  
 3 A. Personally, no, I've not seen one.  
 4 Q. Okay. Your complaint suggests that  
 5 there is one, but, in fact, you've never seen one?  
 6 MR. JOYCE: He's said that about three times.  
 7 BY THE WITNESS:  
 8 A. I've not personally seen a letter signed  
 9 by the Washoe.  
 10 BY MR. MARINELLO:  
 11 Q. Have you ever asked Mr. Spehar, "Hey,  
 12 where's the letter of intent that the Washoe  
 13 supposedly signed, that great deal that made  
 14 everything that everybody else at CMGT was doing to  
 15 try and get financing an absolute fraud because  
 16 they had this great deal from the Washoe?" Did you  
 17 ever ask him that question?  
 18 A. No.  
 19 Q. Did you ever consider whether  
 20 Mr. Spehar, whom you're now in litigation with, had  
 21 sold you a bill of goods when he told you the  
 22 facts -- the alleged facts relating to what  
 23 Mayer Brown and CMGT and everybody else did?  
 24 A. Did I ever consider that?

1 situation, I proceeded to file.  
 2 Q. Let me ask you --  
 3 A. I don't know --  
 4 Q. -- a question about that.  
 5 A. -- what else to tell you.  
 6 Q. Well, let me ask you a question about  
 7 that. You say the filing was based on  
 8 recommendations by counsel, right?  
 9 A. Investigations.  
 10 Q. Investigations by counsel. Do you  
 11 believe you filed this complaint in good faith?  
 12 A. Yes.  
 13 Q. Based on what?  
 14 MR. JOYCE: He just told you.  
 15 MR. MARINELLO: Well, I'm asking him now.  
 16 MR. JOYCE: You must be hard of hearing.  
 17 MR. MARINELLO: No, I'm not hard of hearing.  
 18 MR. JOYCE: Or dumb, one or other.  
 19 BY THE WITNESS:  
 20 A. I -- I --  
 21 MR. MARINELLO: You know, Mr. --  
 22 MR. JOYCE: Hold on.  
 23 MR. MARINELLO: You know, Mr. Joyce --  
 24 MR. JOYCE: Hold on.

1 Q. Yes.  
 2 A. I have to look at facts from all sides,  
 3 and what I did is hire counsel to help me  
 4 investigate the underlying facts and make a  
 5 determination and a recommendation to me whether to  
 6 proceed and whether sufficient facts --  
 7 Q. Um-hum.  
 8 A. -- existed in order to proceed, and  
 9 that's what I did.  
 10 Q. What facts, if any --  
 11 A. So I tried to -- I tried -- just let me  
 12 finish -- not to speak to Mr. Spehar about these  
 13 issues, if at all, because he was being represented  
 14 by counsel.  
 15 I hesitated to talk to him about such  
 16 issues without his counsel, and getting additional  
 17 information from him is sometimes difficult and at  
 18 the same time not always possible because of the  
 19 attorney-client relationships that he has with his  
 20 own attorneys.  
 21 That's why I hired -- one of the reasons  
 22 that I hired special counsel to investigate.  
 23 And I was -- the -- the filing is based  
 24 on recommendations, and after I looked at the

1 MR. MARINELLO: -- that's totally --  
 2 MR. JOYCE: You've answered this question.  
 3 MR. MARINELLO: That's totally inappropriate,  
 4 and, you know --  
 5 MR. JOYCE: Your questions are obnoxious,  
 6 repetitive.  
 7 MR. MARINELLO: My question is --  
 8 MR. JOYCE: Poorly phrased.  
 9 MR. MARINELLO: -- very simple. Yes, yes,  
 10 yes.  
 11 BY MR. MARINELLO:  
 12 Q. My question is this: You claim you  
 13 filed this complaint in good faith.  
 14 A. I do.  
 15 Q. Based on what?  
 16 MR. JOYCE: He told you, investigation of  
 17 counsel and his own investigation. He said it  
 18 about ten times. Okay?  
 19 MR. MARINELLO: Don't answer the question for  
 20 him, Mr. Joyce.  
 21 MR. JOYCE: Don't ask the question ten times.  
 22 BY MR. MARINELLO:  
 23 Q. What did you base -- what do you base  
 24 your conclusion on that you filed this case in good

1 faith?  
 2 A. Because I've done an investigation of my  
 3 own and a recommendation of counsel who likewise  
 4 investigated.  
 5 Q. What investigation did you do of your  
 6 own other than to look at some documents that  
 7 Mr. Jud Todhunter and that Mr. Franco gave you and  
 8 that Mr. Given gave you?  
 9 A. That's all.  
 10 Q. That's all, okay. And did any of those  
 11 documents tell you that the Washoe signed a letter  
 12 of intent on September 2nd, 2003?  
 13 A. Did any of those documents tell me?  
 14 Q. Yeah.  
 15 A. Those documents don't usually speak to  
 16 me, but --  
 17 Q. Well, okay. I'm not trying to be cute  
 18 with you, Mr. --  
 19 A. Well, you know what?  
 20 Q. -- Grochocinski, but if --  
 21 A. I mean --  
 22 Q. You want to be cute with me, that's  
 23 your --  
 24 A. No.

1 Q. -- up to you.  
 2 A. I'm not trying to be cute either.  
 3 Q. Did you see a document in those files  
 4 that was --  
 5 A. I've already --  
 6 Q. -- signed by the Washoe?  
 7 A. -- told you I have not seen an executed  
 8 document --  
 9 Q. Did you see --  
 10 A. -- on the Washoe.  
 11 Q. -- a document in those files that said,  
 12 "We have an executed document from the Washoe?"  
 13 A. Not that I recall.  
 14 Q. Okay. Did you see anything in those  
 15 files that suggested you saw -- that you had a  
 16 document signed by the Washoe?  
 17 A. Not that I recall.  
 18 Q. Okay. So then your investigation didn't  
 19 support this allegation one iota, did it?  
 20 A. I believe it does.  
 21 Q. You believe it does based on what?  
 22 A. On the investigation of counsel.  
 23 Q. Did your counsel report to you that they  
 24 had seen a document from the Washoe that was

1 signed?  
 2 MR. JOYCE: That's attorney-client privilege.  
 3 I direct you not to answer the question.  
 4 MR. MARINELLO: That is a factual question,  
 5 and it is not protected by the attorney-client  
 6 privilege.  
 7 MR. JOYCE: Then file your motion.  
 8 BY MR. MARINELLO:  
 9 Q. We have filed a document request in this  
 10 case. You've seen it, haven't you?  
 11 A. I believe so.  
 12 Q. You've produced documents, haven't you?  
 13 A. I have.  
 14 Q. Have you produced a signed letter of  
 15 intent from the Washoe?  
 16 MR. JOYCE: Maybe --  
 17 BY THE WITNESS:  
 18 A. I told you.  
 19 MR. JOYCE: Maybe you can't hear.  
 20 BY THE WITNESS:  
 21 A. I told you. I don't --  
 22 MR. JOYCE: Stop, stop.  
 23 We're going to leave here in a minute  
 24 and not come back without a Court Order if you

1 don't quit acting like you can't hear or can't  
 2 remember. You're asking the same question --  
 3 MR. MARINELLO: No.  
 4 MR. JOYCE: -- again and again.  
 5 MR. MARINELLO: I -- I -- you know, I disagree  
 6 with your characterization, but I'm not going to  
 7 argue with you. I'm just going to move on.  
 8 MR. JOYCE: Well, I'd like to --  
 9 MR. MARINELLO: I think the point has --  
 10 MR. JOYCE: Move on --  
 11 MR. MARINELLO: -- been made.  
 12 MR. JOYCE: -- yeah.  
 13 MR. MARINELLO: Um-hum.  
 14 BY MR. MARINELLO:  
 15 Q. Now, your complaint in Paragraph 4 -- 45  
 16 says that, "Franco verbally agreed to let the  
 17 Washoe have until October 15 to complete the due  
 18 diligence."  
 19 What is your basis for that factual --  
 20 what's the factual basis for that statement?  
 21 A. I believe that was information that was  
 22 provided to me from Mr. Spehar.  
 23 Q. Anything else?  
 24 A. Not that I can recall.

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1 Q. Okay. Now, Paragraph 46 says that  
 2 Given -- Mr. Given on September 3rd, 2003,  
 3 inexplicably modified the letter of intent to  
 4 remove one day from the Washoe's due diligence  
 5 time.  
 6 What do you mean by "inexplicably"?  
 7 A. I don't know. Like I suppose you could  
 8 strike "inexplicably" and just say "Given  
 9 modified." I don't know.  
 10 Q. Do you know -- do you have any idea why  
 11 he modified the letter of intent?  
 12 A. Well, since I haven't spoken to  
 13 Mr. Given, I don't know the answer to that.  
 14 Q. Well, if you reviewed the documents,  
 15 didn't you notice that the -- that -- that some of  
 16 the documents that he authored explained why he  
 17 changed the date to September 29th?  
 18 A. It's been so long since I've seen the  
 19 documents, I'm sorry, sir, I -- I don't recall.  
 20 Q. Okay.  
 21 A. So if you want to point it out to me,  
 22 then maybe it would make sense --  
 23 Q. Well --  
 24 A. -- to me.

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1 Q. -- the question -- the questions  
 2 really -- sir, this is your complaint, and I just  
 3 want to know what -- you know, what your basis was  
 4 for putting these allegations in here, so I'm not  
 5 going to have time to show you every document in  
 6 the case.  
 7 Now, you complain -- I'm sorry. You say  
 8 that the letter of intent was changed by Given in  
 9 certain ways that are set out in Paragraph 46.  
 10 (a) says that "CMG expected to close the New" --  
 11 "Newco deal by September 30th, 2003."  
 12 Do you know if that statement was true?  
 13 Did Newco -- the question, frankly, is this: Did  
 14 Newco expect to close -- I'm sorry, did CMGT expect  
 15 to close the Newco deal by September 30th, 2003?  
 16 A. Based on investigation of counsel, I  
 17 assume that to be the case.  
 18 Q. Okay. So -- so that was -- so that  
 19 change that Mr. Given made was truthful then,  
 20 correct?  
 21 A. I'm assuming so.  
 22 Q. Okay. The next thing in (b), it says,  
 23 "CMGT would consider any other competing bids until  
 24 such time as a transaction was consummated." Do

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1 you have any reason to believe that wasn't true?  
 2 A. No.  
 3 Q. Okay. The third thing that Given did is  
 4 he said CMGT did not anticipate closing any other  
 5 transaction before September 29, 2003.  
 6 Are you aware of any deals other than  
 7 the Newco deal and the alleged Washoe transaction  
 8 that were being considered by CMGT as of the time  
 9 that Given wrote that letter?  
 10 A. No, I'm not aware of any.  
 11 Q. Okay. So that was also a true statement  
 12 by Mr. Given then, correct, to the best of your  
 13 knowledge?  
 14 A. Yes, to the best of my knowledge.  
 15 Q. All right. And then (d) says that  
 16 "Franco was the only CMGT employee available to  
 17 attend to all the various parties conducting due  
 18 diligence."  
 19 Are you aware of any other CMG employees  
 20 who were available to help with the due diligence  
 21 besides Mr. Franco?  
 22 A. I'm not aware of any.  
 23 Q. So that was also a truthful statement by  
 24 Mr. Given, then, wasn't it?

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1 A. I just said I'm not aware of any. I'm  
 2 not sure whether it's true or not.  
 3 Q. But -- but you have no --  
 4 A. But I'm not aware of any.  
 5 Q. -- reason to doubt Mr. Given was making  
 6 a true statement when he said that?  
 7 A. Again --  
 8 MR. JOYCE: You're asking him to speculate.  
 9 BY THE WITNESS:  
 10 A. Again, I -- I --  
 11 MR. JOYCE: He doesn't know --  
 12 BY THE WITNESS:  
 13 A. I don't --  
 14 MR. JOYCE: -- he doesn't know.  
 15 BY THE WITNESS:  
 16 A. I don't know the answer to the question.  
 17 I'm only saying that I have no present reason to  
 18 say yes or no or whatever. It's -- I just don't  
 19 know.  
 20 BY MR. MARINELLO:  
 21 Q. Now, it says next that Given didn't  
 22 offer any explanation for the modifications he made  
 23 to the letter of intent.  
 24 Given didn't offer any explanations to

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1 whom?  
 2 A. I -- I don't know the answer to that  
 3 question.  
 4 Q. Do you know whether Mr. Given in fact  
 5 offered explanations for -- to Mr. Franco?  
 6 A. He might have.  
 7 Q. And he might -- do you know whether  
 8 he -- Mr. Franco may have even made some of these  
 9 changes when --  
 10 A. I -- I --  
 11 Q. -- he asked Mr. Given to -- to put them  
 12 into the letter?  
 13 MR. JOYCE: I object. You're asking him to  
 14 speculate. He said he doesn't know.  
 15 BY MR. MARINELLO:  
 16 Q. Do you know whether Mr. Franco suggested  
 17 some of these changes?  
 18 A. No, I don't know the answer to that.  
 19 Q. Okay. Now, if you look at Paragraph 47,  
 20 there's a statement that the Trautner/Newco deal  
 21 was verbally added to Exhibit A of the letter  
 22 agreement between Spehar Capital and CMGT. Do you  
 23 see that?  
 24 A. Yes, I see it.

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1 Q. What is the factual basis for that  
 2 statement? What do you rely on for that statement?  
 3 A. Well, the only one that would know  
 4 anybody -- thing about that would be Mr. Spehar.  
 5 Q. So that's --  
 6 A. So I assume --  
 7 Q. That's from --  
 8 A. -- that would be --  
 9 Q. -- Mr. Spehar?  
 10 A. -- best to -- I assume so, yes.  
 11 Q. Okay. Did you talk to anybody else  
 12 about whether that was a true statement?  
 13 A. Other than investigations with my  
 14 counsel, no.  
 15 Q. Um-hum. Did your counsel report any  
 16 fact to you with respect to whether that  
 17 Trautner/Newco deal was added to Exhibit A?  
 18 MR. JOYCE: Objection, attorney-client  
 19 privilege. I direct you not to answer the  
 20 question.  
 21 BY MR. MARINELLO:  
 22 Q. Are you taking that direction?  
 23 A. Yes.  
 24 Q. All right. Let's look at

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1 Paragraph 40 -- 49.  
 2 A. Okay.  
 3 Q. Do you have any information -- well --  
 4 well, strike that.  
 5 What information do you have, if any, to  
 6 suggest that Mayer Brown was representing Spehar  
 7 Capital as one of Millennium Partners' four general  
 8 partners?  
 9 A. I assume it must come from Mr. Spehar.  
 10 Q. Do you have any other basis than that?  
 11 A. No, 'cause I wouldn't have the inside  
 12 information on that particular document.  
 13 Q. Did you take what Mr. Spehar told you  
 14 just hook, line, and sinker and just accept all of  
 15 it as true?  
 16 A. Hook, line, and sinker? No, but on the  
 17 other hand, counsel investigated this situation. I  
 18 assume that -- that they did whatever they needed  
 19 to do with respect to this, and -- and if they  
 20 needed to ask him the question, they asked him the  
 21 question. If Mr. Spehar provided it to him, that's  
 22 fine.  
 23 Q. Did -- did --  
 24 A. Is that the --

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1 Q. Let me ask you this --  
 2 A. -- allegation --  
 3 Q. -- question. Do you know that your  
 4 counsel did that?  
 5 A. No, I don't.  
 6 Q. Did your counsel report any fact to you  
 7 with respect to whether Mayer Brown represented  
 8 Spehar Capital as a -- one of the partners --  
 9 MR. JOYCE: That's attorney-client --  
 10 BY MR. MARINELLO:  
 11 Q. -- of MP?  
 12 MR. JOYCE: -- communication. We're not going  
 13 to answer. Why -- why do you keep wasting time --  
 14 MR. MARINELLO: Instruct him --  
 15 MR. JOYCE: -- with this?  
 16 MR. MARINELLO: -- not to answer.  
 17 MR. JOYCE: I have instructed him.  
 18 MR. MARINELLO: Okay. Then we'll --  
 19 MR. JOYCE: I'm going to instruct him every  
 20 single time you ask for attorney-client  
 21 communications.  
 22 MR. MARINELLO: Well, I'm going to make a  
 23 record of it, because I don't think your objection  
 24 is well taken.

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1 MR. JOYCE: Okay.  
 2 MR. MARINELLO: Okay? So I'm not arguing with  
 3 you. I don't want you to argue with me.  
 4 I'll -- I'll ask the question. You  
 5 object and instruct him not to answer. I'll ask if  
 6 he's going to follow that direction, and we'll move  
 7 on, just like that.  
 8 MR. JOYCE: That's fine.  
 9 MR. MARINELLO: Okay.  
 10 BY MR. MARINELLO:  
 11 Q. All right. Let's turn the page, please,  
 12 to Page 14 of your complaint. Paragraph 51 states  
 13 that "Given made no effort to settle the dispute  
 14 over the scope of SC's letter agreement." Do you  
 15 see that?  
 16 A. I do.  
 17 Q. What facts do you base that on?  
 18 A. I believe that Mr. Spehar indicated  
 19 that -- that there was no agreement or no  
 20 conversations with -- with CMGT relative to his  
 21 agreement or alleged breach prior to the  
 22 litigation.  
 23 Q. Did you look at the documents that were  
 24 exchanged between Mr. Given, on the one hand, and

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1 Mr. Spehar on the other that related to  
 2 Mr. Spehar's claim?  
 3 A. I -- you know what? It's been so long,  
 4 I'm probably not even sure if I've seen all of  
 5 those documents. If you'd like to provide them to  
 6 me, I'd be happy to take a look at them, but I  
 7 don't -- I don't -- just don't have a present  
 8 recollection of those.  
 9 Q. Um-hum. Do you remember any statements  
 10 in those documents where Mr. Given specifically  
 11 referred to the fact that he and Mr. Franco had  
 12 talked to Mr. Spehar about the -- the --  
 13 Mr. Spehar's allegations and had not been able to  
 14 resolve them?  
 15 MR. JOYCE: Can I have the question read back.  
 16 (WHEREUPON, the record was read by  
 17 the reporter.)  
 18 MR. JOYCE: Thank you.  
 19 BY THE WITNESS:  
 20 A. So what's the question now? I don't  
 21 understand it.  
 22 BY MR. MARINELLO:  
 23 Q. Do you remember any statements like that  
 24 in Mr. Given's e-mail? No?

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1 A. No.  
 2 Q. Okay. Do you know what assets, if any,  
 3 CMGT had available at that time to offer to  
 4 Mr. Spehar prior to the closing of the Trautner  
 5 transaction?  
 6 MR. JOYCE: Can I have the question read back.  
 7 (WHEREUPON, the record was read by  
 8 the reporter.)  
 9 MR. JOYCE: Thank you.  
 10 BY THE WITNESS:  
 11 A. No.  
 12 BY MR. MARINELLO:  
 13 Q. Do you know whether -- do you know what  
 14 Mr. Spehar's relationship was to Mr. Trautner?  
 15 A. No, not really.  
 16 Q. Do you know if they got along?  
 17 A. I don't know.  
 18 Q. Do you know if they hated each other?  
 19 A. I don't know.  
 20 Q. Do you know if they had had prior  
 21 disputes?  
 22 A. I don't know.  
 23 Q. Do you know if Mr. Trautner wanted  
 24 anything to do with Mr. Spehar?

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1 A. I don't know.  
 2 Q. Do you know whether Mr. Spehar insisted  
 3 as part of any settlement that he had to become  
 4 part of Newco and had to work with Newco to find  
 5 financing to be part of its future?  
 6 A. I don't know.  
 7 Q. Do you know whether any such proposal  
 8 like that was acceptable to Mr. Trautner?  
 9 A. I don't know what was acceptable to  
 10 Mr. Trautner.  
 11 Q. Do you know whether any settlement with  
 12 Mr. Spehar was possible in or around this time  
 13 frame?  
 14 A. I don't know the answer to that.  
 15 Q. You -- okay. Now, Paragraph 52 says  
 16 that, "Spehar Capital was determined to amicably  
 17 resolve the dispute." What does that mean to you?  
 18 A. I think that Mr. Spehar likely wanted to  
 19 get a resolution, but that there was no basis on  
 20 which to reach a -- an agreement between CMGT and  
 21 Spehar Capital.  
 22 Q. Why was there no basis?  
 23 A. I -- I don't know, because I didn't -- I  
 24 wasn't there. I'm just -- I'm speculating.

1 Q. I don't want to be facetious, but did  
 2 you ever see the movie -- the TV show Friends?  
 3 A. Sure.  
 4 Q. You know Phoebe?  
 5 A. I do.  
 6 Q. You know when Phoebe said in that one --  
 7 that one series, "I'd" -- "I'd" -- "I'd really like  
 8 to help you, but I don't want to"? Do you remember  
 9 that?  
 10 A. No, I really don't recall that.  
 11 Q. Okay. Let me ask you this, okay?  
 12 Mr. Spehar, you say, and Spehar Capital  
 13 was determined to amicably resolve this dispute.  
 14 Did they want to resolve this dispute on anything  
 15 short of a full adherence to every demand they  
 16 made?  
 17 A. I don't know the answer to that.  
 18 Q. Okay. And do you know whether --  
 19 A. I wish I did.  
 20 Q. And do you know --  
 21 A. But I don't know.  
 22 Q. -- whether -- and do you know whether  
 23 CMGT even had the possibility of giving Mr. Spehar  
 24 what he demanded in order to settle the case?

1 A. I just don't know.  
 2 Q. -- recollection?  
 3 MR. JOYCE: You said you're on Paragraph 54,  
 4 you said?  
 5 MR. MARINELLO: Yes.  
 6 MR. JOYCE: I don't see "hard-line."  
 7 MR. MARINELLO: "Given's --"  
 8 MR. JOYCE: Oh, I see it.  
 9 MR. MARINELLO: "-- hard-line responses."  
 10 MR. JOYCE: Got it, yeah.  
 11 MR. MARINELLO: Um-hum.  
 12 BY THE WITNESS:  
 13 A. Did you want me to look at 12 and take a  
 14 shot at it?  
 15 MR. JOYCE: Why? If you know, you know. If  
 16 you don't, you don't.  
 17 BY THE WITNESS:  
 18 A. I haven't seen it in a long time.  
 19 BY MR. MARINELLO:  
 20 Q. Take a look at Exhibit 12, sure.  
 21 A. Well, at the bottom, it says, "PS, Ron,  
 22 in between your many epithets and derogatory  
 23 comments, you were extremely dismissive today of my  
 24 efforts to discuss a settlement based on honoring

1 A. I don't know.  
 2 Q. Okay. Now, Paragraph 53 says that  
 3 Spehar sent Given and Franco a series of e-mails  
 4 that again tried to resolve a dispute. Have you  
 5 reviewed those e-mails?  
 6 A. Not in a very long time.  
 7 Q. Have you reviewed Mr. Given's responses  
 8 to Mr. Spehar?  
 9 A. Same response, not in a very long time.  
 10 Q. Well, what do you mean when you say that  
 11 Given's responses were hard-line? What does that  
 12 mean?  
 13 A. If you could point out to me what --  
 14 Q. Yeah, that's in --  
 15 A. -- you're talking about.  
 16 Q. -- Paragraph 54.  
 17 A. I know, but I don't -- I -- I'd have to  
 18 see what we were talking about in order for me to  
 19 be able to respond to that. I don't know. I --  
 20 it --  
 21 Q. You -- you don't --  
 22 A. I'm just speculate -- I don't know off  
 23 the top of my head. I'm sorry.  
 24 Q. You have no --

1 Spehar's Capital. You encouraged me to 'bring it  
 2 on' and told me you were 'not afraid' because  
 3 whatever I do would not affect your deal. In your  
 4 words, this deal will go forward."  
 5 Well, I don't know. I mean, sounds  
 6 hard-line to me, but I -- I don't know.  
 7 Q. Yeah, well, that's Mr. Spehar, again,  
 8 characterizing what someone else said, right?  
 9 A. Well --  
 10 Q. So you're going to take -- you took --  
 11 you decided when you drafted this complaint and  
 12 when you approved it that if Mr. Spehar said it,  
 13 that was good enough for you, right?  
 14 A. Well, on the other hand, it would be Ron  
 15 Given saying, "No, I didn't," right, since he'll  
 16 be --  
 17 Q. Not just Ron Given. How about  
 18 Mr. Franco? Was he on those calls?  
 19 A. I don't know if he was or he wasn't.  
 20 Q. You never found out, did you?  
 21 A. Well, was he?  
 22 Q. You're the one who had the obligation to  
 23 investigate --  
 24 A. I --

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1 Q. -- before you --  
 2 A. I had --  
 3 Q. -- filed a complaint, Mr. --  
 4 A. As far as --  
 5 Q. -- Mr. --  
 6 A. As far as I'm concerned --  
 7 Q. Excuse me. We can't talk over each  
 8 other. So let me --  
 9 A. Okay.  
 10 Q. -- finish my point.  
 11 A. Sure.  
 12 Q. You had the obligation to investigate  
 13 before you filed your complaint, not me.  
 14 A. As far as I'm --  
 15 MR. JOYCE: And he told you --  
 16 BY THE WITNESS:  
 17 A. -- concerned --  
 18 MR. JOYCE: -- what he did. He told you he  
 19 investigated.  
 20 BY THE WITNESS:  
 21 A. -- this was a conversation between  
 22 Mr. Spehar and Ron Given.  
 23 BY MR. MARINELLO:  
 24 Q. But you don't know that.

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1 A. There's no indication anywhere in this  
 2 that says it was between anybody else.  
 3 Q. Well, I beg --  
 4 A. So --  
 5 Q. -- your pardon. Doesn't a copy of this  
 6 e-mail go to Mr. Lou Franco?  
 7 A. We're talking about the telephone  
 8 conversation.  
 9 Q. Is there anything in here that says  
 10 it -- he wasn't on the call, Mr. Franco wasn't  
 11 on --  
 12 MR. JOYCE: Objection.  
 13 BY MR. MARINELLO:  
 14 Q. -- the call?  
 15 MR. JOYCE: You know, that's ridiculous.  
 16 BY MR. MARINELLO:  
 17 Q. Is there anything in here that says  
 18 Mr. Franco wasn't on the call?  
 19 A. Doesn't say that he was either.  
 20 Q. Right, so you just assumed that he  
 21 wasn't? Okay. All right.  
 22 Now, let me point out something to you,  
 23 Paragraph 55, you talk about Mr. Given giving CMGT  
 24 negligent advice, okay?

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1 And you say that on August 26, for  
 2 example, Mr. Franco sent a letter to CMGT's  
 3 shareholders regarding the Newco deal and that the  
 4 letter says in part -- and then you quote part of  
 5 the letter.  
 6 And the letter says -- read that, would  
 7 you, the first two sentence.  
 8 MR. JOYCE: What's he reading it for? You're  
 9 just wasting time. It's right here in the  
 10 document.  
 11 BY THE WITNESS:  
 12 A. "Gerry Spehar/Spehar Capital has claimed  
 13 that he is entitled to compensation as a result of  
 14 the Newco transaction under a contract he has with  
 15 CMGT. Your management and legal counsel strongly  
 16 agree with the contention."  
 17 BY MR. MARINELLO:  
 18 Q. Strongly disagree.  
 19 MR. JOYCE: Disagree.  
 20 BY THE WITNESS:  
 21 A: Disagree, sorry.  
 22 BY MR. MARINELLO:  
 23 Q. Stop right there, "strongly disagree  
 24 with the" -- "this contention."

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1 Do you know whether Mr. Franco and  
 2 Mr. Given and the other people that were involved  
 3 in CMGT did disagree with Mr. Spehar?  
 4 A. I believe they did.  
 5 Q. Okay. Now let's look at -- at  
 6 Exhibit 3, which is, as I understand it, your --  
 7 your best understanding of what the agreement was  
 8 with -- with -- I'm sorry. It's not Exhibit 3.  
 9 It's Exhibit 2, the agreement between Spehar  
 10 Capital and CMGT.  
 11 MR. JOYCE: That's your characterization of  
 12 Exhibit 2.  
 13 BY MR. MARINELLO:  
 14 Q. Well, let me ask you this. Is Exhibit 2  
 15 the -- what you understand to be the agreement  
 16 between -- between CMGT and Spehar Capital?  
 17 A. I don't know if that's the extent of the  
 18 agreement at all. Mr. Spehar didn't sign this.  
 19 Only --  
 20 Q. Well, I mean --  
 21 A. -- Mr. Franco did.  
 22 Q. Your complaint refers to an agreement  
 23 between Mr. Spehar -- between Spehar Capital and  
 24 CMGT, and it particularly refers to parties to



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1 Exhibit 2.  
 2 Now, is there some other agreement that  
 3 you're referring to?  
 4 A. I -- I thought that there was more to  
 5 the agreement. Wasn't there something amended by a  
 6 letter or something?  
 7 MR. JOYCE: Right.  
 8 BY MR. MARINELLO:  
 9 Q. Look at Paragraph 25 of your complaint  
 10 on Page 6.  
 11 A. Didn't we just do this?  
 12 Q. Well, I -- I mean, but you're  
 13 questioning it again, so I want to go back and make  
 14 sure I've got the -- I'm -- I'm reading your --  
 15 your complaint correctly.  
 16 A. A copy --  
 17 Q. Isn't Exhibit 2 the agreement you claim  
 18 is in effect between CMGT and -- and Spehar  
 19 Capital?  
 20 A. But I think the terms were amended  
 21 again.  
 22 Q. When do you think they were amended  
 23 again?  
 24 A. Revised their October 1st letter on or

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1 about September 30th, 2002.  
 2 Q. And doesn't it say, "A copy of the  
 3 September 30th, 2002 letter agreement is attached  
 4 hereto and incorporated herein by reference as  
 5 Exhibit 2"?  
 6 MR. JOYCE: It says that, yes.  
 7 BY MR. MARINELLO:  
 8 Q. Does it say that?  
 9 A. Yes, it does say that.  
 10 Q. Well, I mean, you're -- let's look at --  
 11 at Exhibit 2. Isn't that dated September 30, 2002?  
 12 MR. JOYCE: We've already been through this  
 13 already, you know.  
 14 BY THE WITNESS:  
 15 A. Yes, it does.  
 16 BY MR. MARINELLO:  
 17 Q. Is that the agreement or isn't it?  
 18 A. I don't know.  
 19 Q. You have no idea?  
 20 A. I didn't say I had no idea.  
 21 Q. Well, do you have an --  
 22 A. Okay.  
 23 Q. -- idea or not?  
 24 A. I think that there was more to this

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1 agreement than simply this.  
 2 Q. Based on what?  
 3 A. Well, frankly, Spehar didn't sign this  
 4 agreement.  
 5 Q. Well, you attached it to your complaint.  
 6 A. I understand.  
 7 Q. Have you seen another agreement that  
 8 Spehar did sign?  
 9 A. Not that I recall.  
 10 Q. There's lots of things that aren't  
 11 signed that are attached to your complaint --  
 12 A. Okay.  
 13 Q. -- that are supposed to be the copy.  
 14 How do you know -- how did you know when  
 15 you filed this complaint that -- that Exhibit --  
 16 this belonged as Exhibit 2?  
 17 MR. JOYCE: He already answered that question  
 18 before. You are wasting your valuable time.  
 19 BY MR. MARINELLO:  
 20 Q. Do you want to answer my question, sir?  
 21 A. I don't even know what your question is  
 22 anymore. I've answered it so many times already, I  
 23 don't remember anymore.  
 24 Q. Well, I -- here's -- look, here -- let

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1 me -- real simple.  
 2 A. I mean, how many times do I have to --  
 3 Q. Okay, look. Real --  
 4 A. -- answer the same question --  
 5 Q. Real simple.  
 6 A. -- all over again?  
 7 Q. Real simple. If you're in my shoes, you  
 8 want -- and -- and someone is -- is claiming that  
 9 there's an agreement that governs a transaction and  
 10 that's the basis of the litigation, you want to  
 11 know what agreement they're referring to.  
 12 And I'm asking you, you've attached --  
 13 A. The paragraph --  
 14 Q. -- Exhibit 2 --  
 15 A. -- says what it says.  
 16 Q. Well, I -- yes, and one can say that  
 17 about everything, right?  
 18 A. It says what it says.  
 19 Q. That's a meaningless statement.  
 20 My question to you is very simple. Is  
 21 Exhibit 2 your understanding of the agreement, the  
 22 written agreement between CMGT and Spehar Capital?  
 23 MR. JOYCE: He has answered that question  
 24 about five times.

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1 MR. MARINELLO: I don't think he has, and  
 2 he keeps --  
 3 MR. JOYCE: But -- but --  
 4 MR. MARINELLO: -- changing --  
 5 MR. JOYCE: -- you don't --  
 6 MR. MARINELLO: -- his mind.  
 7 MR. JOYCE: You don't like his answer. That's  
 8 the problem.  
 9 BY MR. MARINELLO:  
 10 Q. Well, is it --  
 11 MR. JOYCE: So --  
 12 BY MR. MARINELLO:  
 13 Q. -- or is it -- isn't it?  
 14 A. To the best of my knowledge, this is --  
 15 this formulates part of the agreement between the  
 16 two. The rest of them that -- I would have to take  
 17 a look at other documents to see.  
 18 Q. Is there anyplace in Exhibit 2 where it  
 19 says that if a letter of intent is approved, Spehar  
 20 is entitled to be paid?  
 21 A. It's been a long time since I've read  
 22 it. I don't know.  
 23 Q. Well, let me refer you to something,  
 24 okay? If you look at the word "Compensation," the

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1 heading "Compensation" on Page 3 -- do you see  
 2 that, of Exhibit 2? Page 3 of Exhibit 2 has the  
 3 word "Compensation" at the top?  
 4 A. Gotcha.  
 5 Q. Okay. And it says -- this is the  
 6 section of the agreement, isn't it, that defines  
 7 and states what Spehar Capital is going to be paid  
 8 for compensation, right?  
 9 A. Yes.  
 10 Q. Okay. And at the very bottom of  
 11 Paragraph 1, doesn't it say, "immediately at the  
 12 successful closing of a funding or a transaction as  
 13 outlined above, such fees to be determined as  
 14 follows"?  
 15 MR. JOYCE: If it reads -- that's what it  
 16 says, yes.  
 17 BY THE WITNESS:  
 18 A. That's what it says there.  
 19 BY MR. MARINELLO:  
 20 Q. Okay. And don't you understand that to  
 21 require that there be a closing of a funding or  
 22 other transaction before Mr. Spehar's -- before  
 23 Spehar Capital is entitled to be paid?  
 24 A. Well, there's also a part down here that

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1 says "stock compensation," so it appears that  
 2 there's additional types of compensation payable in  
 3 cash. Then there's a stock compensation, and the  
 4 stock compensation, it seems, "At such time as CMGT  
 5 receives and accepts a term sheet or other  
 6 commitment from an investor for a minimum of  
 7 \$1,000,000 accepted capital, CMGT will award Spehar  
 8 Capital stock compensation," and the like, so it  
 9 looks like --  
 10 Q. So stop for a second, okay?  
 11 A. It looks like there's other types of  
 12 compensation through here.  
 13 Q. Let's stop for a second. Let's go to --  
 14 isn't Exhibit 4 Mr. Trautner's letter of intent?  
 15 A. I have no idea. I'd have to --  
 16 Q. No. It's --  
 17 A. -- go take a look at it.  
 18 Q. No, I'm sorry. That's wrong. Let me  
 19 give you the right exhibit.  
 20 MR. MARINELLO: Is it 3?  
 21 BY MR. MARINELLO:  
 22 Q. Yeah, Exhibit 3 is Mr. Trautner's letter  
 23 of intent, correct?  
 24 A. Okay.

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1 Q. And we already established, I think, by  
 2 talking earlier that it offered CMGT one of two  
 3 things, half a million in cash or 20 percent of  
 4 Newco's stock, right?  
 5 A. It offered CMGT?  
 6 MR. JOYCE: Right.  
 7 BY THE WITNESS:  
 8 A. Oh, yes. Okay.  
 9 MR. JOYCE: We went through --  
 10 BY MR. MARINELLO:  
 11 Q. Okay.  
 12 MR. JOYCE: -- that before. You're correct.  
 13 BY MR. MARINELLO:  
 14 Q. Now, let's go back to what you were  
 15 pointing out to under Stock Compensation.  
 16 A. Um-hum.  
 17 Q. You pointed out that  
 18 Paragraph 1(b)(1) --  
 19 A. Um-hum.  
 20 Q. -- says, "At such time as CMGT receives  
 21 and accepts a term sheet."  
 22 A. Um-hum.  
 23 Q. Is Trautner's letter of intent a term  
 24 sheet?

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<p>1 A. I don't know.</p> <p>2 Q. Is it -- okay.</p> <p>3 It also says, "At such time as CMGT</p> <p>4 receives and accepts a term sheet or other</p> <p>5 commitment --"</p> <p>6 A. Right.</p> <p>7 Q. -- from an investor."</p> <p>8 A. Um-hum.</p> <p>9 Q. Do you think Mr. Trautner's letter of</p> <p>10 intent is a -- a term sheet or other commitment</p> <p>11 from an investor?</p> <p>12 A. Oh, I suppose it be could read that way.</p> <p>13 Q. Well, is a letter -- do you understand a</p> <p>14 letter of intent to be a commitment?</p> <p>15 A. Well, it might be a commitment.</p> <p>16 Q. All right. Let's just --</p> <p>17 A. Depending on -- depending on -- on how</p> <p>18 it -- it eventually plays out. I mean, I don't</p> <p>19 know.</p> <p>20 Q. Is a letter of intent a commitment?</p> <p>21 MR. JOYCE: He's already answered that</p> <p>22 question.</p> <p>23 BY MR. MARINELLO:</p> <p>24 Q. Maybe as it plays out --</p>	<p>1 of at least \$2½ million. I would think that --</p> <p>2 Q. Well, let me -- let me ask you --</p> <p>3 A. -- that would --</p> <p>4 Q. Let me ask you about that, okay? I</p> <p>5 mean, I -- I really think you're taking quite a lot</p> <p>6 of liberty with the -- with the words in front of</p> <p>7 you.</p> <p>8 First of all, isn't it clear from</p> <p>9 Mr. Trautner's letter of intent that CMGT gets one</p> <p>10 of two things, \$500,000 in cash is one possibility,</p> <p>11 right?</p> <p>12 A. Um-hum.</p> <p>13 Q. Yes?</p> <p>14 A. Yes.</p> <p>15 Q. And the other possibility -- it's not</p> <p>16 100 percent of the stock of Newco, is it? It's</p> <p>17 20 percent, right?</p> <p>18 A. Yes.</p> <p>19 Q. And Newco is going to have a</p> <p>20 capitalization of \$2½ million, right?</p> <p>21 A. Right.</p> <p>22 Q. If you have 20 percent --</p> <p>23 A. Um-hum.</p> <p>24 Q. -- of a company that has a</p>
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<p>1 A. It says --</p> <p>2 Q. -- it can be --</p> <p>3 A. It says --</p> <p>4 Q. -- a commitment, but is --</p> <p>5 A. It says "other commitment." It doesn't</p> <p>6 say "a commitment."</p> <p>7 Q. Okay.</p> <p>8 A. So it says "other commitment" and a --</p> <p>9 and a -- you know, you could read it to indicate</p> <p>10 that --</p> <p>11 Q. Um-hum.</p> <p>12 A. -- a -- a letter -- a letter of</p> <p>13 agreement like this may be some type of other</p> <p>14 agreement. I mean, I --</p> <p>15 Q. Okay.</p> <p>16 A. It -- it -- it's hard to tell, but it's</p> <p>17 certainly within the bounds of interpretation,</p> <p>18 and -- and on top of that, it said, "Old" --</p> <p>19 "Oldco," which I assume to be the old company,</p> <p>20 "will receive an assurance that Newco's initial</p> <p>21 capitalization will be at least \$2½ million."</p> <p>22 So this transaction would not only</p> <p>23 result in cash or shares, but that the shareholders</p> <p>24 would end up with a company that had capitalization</p>	<p>1 capitalization of \$2½ million, is -- what is that --</p> <p>2 worth? Isn't that worth about \$500,000 in capital,</p> <p>3 20 percent of 2½ million?</p> <p>4 MR. JOYCE: Aren't you arguing now about</p> <p>5 what --</p> <p>6 MR. MARINELLO: I'm asking him his</p> <p>7 understanding.</p> <p>8 BY MR. MARINELLO:</p> <p>9 Q. Isn't that right?</p> <p>10 A. Maybe.</p> <p>11 Q. Okay. Well, then let's go back to</p> <p>12 Exhibit 2 and that Paragraph 1(b)(i) that you</p> <p>13 cited.</p> <p>14 Let's assume for the sake of argument</p> <p>15 that Mr. Trautner's letter of intent is a term</p> <p>16 sheet or other commitment. Doesn't it say that it</p> <p>17 has to be for a minimum of a million dollars?</p> <p>18 A. That particular paragraph says so.</p> <p>19 Q. Okay. So would this stock compensation</p> <p>20 even apply?</p> <p>21 A. Well, I don't know. You're -- you're</p> <p>22 assuming that the valuation at the time of closing</p> <p>23 is -- is it. If there was an initial contribution</p> <p>24 of \$2½ million, it's conceivable that the actual</p>

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1 value of the company on a go-forward basis, which  
 2 is what you're assuming, may be substantially more  
 3 than \$2½ million. Going concerns have values more  
 4 than simply dollars in the bank.  
 5 Q. Was this a new company or a going  
 6 concern?  
 7 A. Well, this is going to be -- this was a  
 8 going concern. This would have been --  
 9 Q. Is Newco a going concern or a brand new  
 10 company?  
 11 MR. JOYCE: Before or after the closing?  
 12 BY THE WITNESS:  
 13 A. Yeah.  
 14 BY MR. MARINELLO:  
 15 Q. At the closing.  
 16 A. Well, it would have been a new --  
 17 it's -- it's essentially taking over the old  
 18 company and going forward, so it's a --  
 19 Q. Oh, I see. So -- so taking over the  
 20 business of a company that's had tremendous losses  
 21 and financial troubles suddenly makes the company  
 22 worth a lot more than the capitalization?  
 23 MR. JOYCE: Well, that -- that -- hold on.  
 24 That's -- that's your characterization. I mean,

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1 you're sitting here characterizing it as a company  
 2 that wasn't worth a damn thing, okay? So if you --  
 3 if you have your characterization --  
 4 BY MR. MARINELLO:  
 5 Q. Do you know otherwise?  
 6 A. I'm just suggesting to you that you --  
 7 that your questions don't necessarily assess the  
 8 financial situation of a company.  
 9 If somebody is going to put \$2½ million  
 10 into a company and has a bunch of software and  
 11 other IP information and it's going forward, it may  
 12 have a substantial value on a go-forward basis and  
 13 it's now a company that may be worth many times  
 14 \$2½ million.  
 15 Q. What --  
 16 A. So --  
 17 Q. What IP --  
 18 A. -- I don't really know the answer to the  
 19 question.  
 20 Q. What IP information did -- was Newco  
 21 going to have from CMGT?  
 22 A. It's the software.  
 23 Q. The -- that's the same software you sold  
 24 to Mr. Spehar for \$1500, is that correct?

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1 A. That's a liquidation value.  
 2 Q. Oh, I see. And --  
 3 A. There's a different value for ongoing.  
 4 Q. I see. Okay. So your claim is that by  
 5 taking this -- this software that you sold for  
 6 \$1500 and putting it into a new company, suddenly  
 7 it could be worth many, many, many times that?  
 8 MR. JOYCE: That's not --  
 9 BY MR. MARINELLO:  
 10 Q. Is that your testimony?  
 11 MR. JOYCE: That's not his claim at all.  
 12 BY THE WITNESS:  
 13 A. And you got to --  
 14 MR. JOYCE: Hold on.  
 15 BY THE WITNESS:  
 16 A. -- understand --  
 17 MR. JOYCE: Hold on. Hold on.  
 18 MR. MARINELLO: Wait. I want an answer from  
 19 the witness, not from you.  
 20 MR. JOYCE: He's not going to accept your  
 21 characterization. If you want to ask a --  
 22 MR. MARINELLO: He doesn't have to.  
 23 MR. JOYCE: -- question, ask a question.  
 24 MR. MARINELLO: I did.

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1 MR. JOYCE: That -- no. That -- that was your  
 2 characterization of his answer.  
 3 MR. MARINELLO: Well, I asked --  
 4 MR. JOYCE: He's not -- he's not required  
 5 to --  
 6 BY MR. MARINELLO:  
 7 Q. Is it your position, sir --  
 8 MR. JOYCE: Hold on. He's not --  
 9 BY MR. MARINELLO:  
 10 Q. Is it your --  
 11 MR. JOYCE: Hold on. He's not required to  
 12 accept your characterization --  
 13 MR. MARINELLO: Okay.  
 14 MR. JOYCE: -- nor to say whether you did it  
 15 accurately.  
 16 MR. MARINELLO: Well, you know, let's move on.  
 17 Let's move on.  
 18 MR. JOYCE: Go ahead. You're doing it,  
 19 finally.  
 20 BY MR. MARINELLO:  
 21 Q. Well, let's just -- let me ask you this:  
 22 Are you aware of any other software, IP  
 23 information, IP assets of any kind that Newco was  
 24 going to acquire from CMGT other than the software

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1 that you sold to Spehar Capital for \$1500?  
 2 A. I don't know. The only thing that was  
 3 left at the time of the -- of the involuntary was  
 4 that software that I sold.  
 5 Q. Do you have any information that would  
 6 suggest to you that there was ever anything more  
 7 than that?  
 8 MR. JOYCE: He said he didn't know.  
 9 BY THE WITNESS:  
 10 A. I don't know.  
 11 BY MR. MARINELLO:  
 12 Q. Okay. Thank you.  
 13 I would ask you to look at Paragraph 56  
 14 of your complaint. In this paragraph, you say that  
 15 "Givens' advice to New" -- "to Franco was negligent  
 16 in that Given knew or should have known that SC  
 17 would file a lawsuit if CMGT did not settle and  
 18 that litigation with SC would be fatal to CMGT's  
 19 attempts to obtain financing."  
 20 Where did that -- what's your factual  
 21 basis for that information?  
 22 A. I think that, given some of the e-mails  
 23 that I've seen, that you brought to my attention --  
 24 and I don't recall what exhibit it was or which one

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1 it was -- it appeared to me that Mr. Given knew  
 2 that a lawsuit would be filed.  
 3 Whether it turned out to be fatal to his  
 4 attempts to obtain financing is a conclusion based  
 5 on that, because I -- it's unlikely that somebody  
 6 would give financing to a company that's involved  
 7 in substantial commercial litigation without  
 8 getting it resolved at the time of closing.  
 9 I suppose it's always possible, but my  
 10 view is that it's not.  
 11 Q. Um-hum. So what do you think Mr. Given  
 12 should have done to prevent that lawsuit from being  
 13 filed by SC?  
 14 A. I think he should have tried to settle  
 15 it.  
 16 Q. Do you know that he didn't try to settle  
 17 it?  
 18 A. It -- it doesn't look like it got done.  
 19 I don't recall seeing any specific proposals that I  
 20 can recall, but I -- maybe I'm in error and I  
 21 don't -- just don't recall them, but I don't  
 22 remember seeing a proposal that says we're going to  
 23 pay you XYZ, or we'll do something else for you in  
 24 order to try to settle it. Maybe there is, but I

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1 don't recall it.  
 2 Q. Okay.  
 3 A. So --  
 4 Q. Do you know whether CMGT had any money  
 5 with which to pay Mr. -- Spehar Capital X, Y, or Z?  
 6 A. No, I don't know the answer to that.  
 7 Q. If -- if CMGT did not have any money to  
 8 pay Spehar Capital, how could CMGT pay Spehar  
 9 Capital money?  
 10 MR. JOYCE: Well, that -- obviously you have  
 11 figured that one out, right? That's a brilliant  
 12 question. He was talking about a settlement, so  
 13 you propose -- you pose a question that --  
 14 MR. MARINELLO: Yeah.  
 15 MR. JOYCE: -- makes it impossible.  
 16 MR. MARINELLO: Well, I mean, he's sitting  
 17 here saying, "Oh, well, they could have paid him  
 18 money."  
 19 BY MR. MARINELLO:  
 20 Q. You don't know that they had any money  
 21 to pay him, do you?  
 22 A. I -- I don't know that they had any  
 23 money.  
 24 Q. Do you have any --

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1 A. But they may have had any -- maybe at  
 2 that time CMGT was still an operating entity or had  
 3 an opportunity to continue to operate. They could  
 4 have tried other means of resolving the dispute  
 5 with Mr. Spehar.  
 6 Q. Well, let's stick on --  
 7 A. But -- but --  
 8 Q. -- money for a second --  
 9 A. But --  
 10 Q. -- for a second. Do you know if it had  
 11 any money?  
 12 A. I -- I don't know.  
 13 MR. JOYCE: He said --  
 14 BY THE WITNESS:  
 15 A. I don't know.  
 16 MR. JOYCE: -- he doesn't know. He's  
 17 already --  
 18 BY MR. MARINELLO:  
 19 Q. Do you know --  
 20 MR. JOYCE: -- said that.  
 21 BY MR. MARINELLO:  
 22 Q. -- if it was operating at a loss or not?  
 23 MR. JOYCE: You already asked that before. He  
 24 didn't know. You must have a --

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1 BY MR. MARINELLO:  
 2 Q. So you don't --  
 3 MR. JOYCE: -- bad memory.  
 4 BY MR. MARINELLO:  
 5 Q. You don't have -- do you have any basis  
 6 whatsoever for -- for suggesting that CMGT had  
 7 money to pay Mr. Spehar or his company?  
 8 A. General Motors is operating at a huge  
 9 loss, and they're still manufacturing cars. So it  
 10 just goes to show you in this country that just  
 11 because you have an operating loss doesn't mean  
 12 that the company can't survive in some fashion or  
 13 another.  
 14 Q. My question is --  
 15 A. Perfect example.  
 16 Q. My question to you is very simple.  
 17 Do you have any factual basis whatsoever  
 18 for believing that CMGT had money with which to pay  
 19 Mr. Spehar?  
 20 MR. JOYCE: He -- he answered that question.  
 21 BY THE WITNESS:  
 22 A. I don't know if it had money or not, but  
 23 that --  
 24

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1 BY MR. MARINELLO:  
 2 Q. Okay.  
 3 A. -- doesn't --  
 4 Q. And you've --  
 5 A. -- mean it didn't have --  
 6 Q. -- never bothered to find out?  
 7 A. It doesn't mean that they don't have  
 8 other assets in which to do it.  
 9 Q. Are you aware of any assets that they  
 10 had to do it with?  
 11 A. They -- maybe they had their contract  
 12 rights with the other companies in the development  
 13 of the software.  
 14 Q. I'm asking you if you know of any assets  
 15 they had.  
 16 A. No, I don't --  
 17 Q. Okay. And when --  
 18 A. -- know when that --  
 19 Q. -- you took over the company, you didn't  
 20 find any, did you?  
 21 A. It's a liquidating concern.  
 22 Q. Did you --  
 23 A. It was out of business.  
 24 Q. -- find any assets when you took over

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1 the company?  
 2 A. That asset of a -- of an operating  
 3 company, a going concern, had already terminated.  
 4 So that is --  
 5 Q. Fine.  
 6 A. -- not -- no longer an --  
 7 Q. Did you --  
 8 A. -- asset.  
 9 Q. -- find any other assets?  
 10 A. I told you at the beginning; the only  
 11 asset that there was that I could see was the  
 12 software and a potential cause of action. That's  
 13 all.  
 14 Q. Right, and the potential cause of action  
 15 is the very thing we're talking about right now,  
 16 right?  
 17 A. At the time of liquidation, it's --  
 18 Q. So let's --  
 19 A. -- the only thing.  
 20 Q. Yeah, so let's -- let's go back to in  
 21 time to when Spehar raised its claim and you say  
 22 that Given should have settled it.  
 23 What assets do you believe CMGT had at  
 24 that time that it could have used to settle the

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1 case with Spehar?  
 2 A. I assume at that time -- I think at that  
 3 time, if I'm not mistaken, CMGT was still  
 4 operating.  
 5 Q. What income did it have?  
 6 A. It -- you're assuming that you have to  
 7 have income in order to settle. Why did --  
 8 Q. What cash did it have?  
 9 A. Why didn't they give Spehar an interest  
 10 in the company?  
 11 Q. Do you have any idea whether Spehar was  
 12 willing to take that?  
 13 A. You asked the question.  
 14 Q. I'm asking you right now.  
 15 A. You're asking if I know of any assets,  
 16 and I just told you this was an operating company.  
 17 Operating companies have ability to resolve matters  
 18 without simply having cash on hand.  
 19 Q. Are you aware of any assets that they  
 20 had that they could have offered to Mr. Spehar?  
 21 A. It's an operating company.  
 22 Q. Any assets that you're aware of that  
 23 they could have offered?  
 24 A. What assets are you referring to?

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1 Q. Any. Are you -- are aware of -- can you  
 2 identify --  
 3 A. Again --  
 4 Q. -- one?  
 5 A. -- you'll have to be more specific. The  
 6 company itself is an asset.  
 7 Q. So your position is they could have  
 8 offered Mr. Spehar stock in the company?  
 9 A. Could have. I didn't say they --  
 10 Q. And do you think --  
 11 A. -- had to.  
 12 Q. And -- and is that what Mr. Spehar was  
 13 after?  
 14 A. I don't know. I never asked Mr. Spehar.  
 15 Q. Okay.  
 16 A. Wasn't mine to settle. It happened to  
 17 me after it was done.  
 18 Q. Should Mr. Given have recommended  
 19 settlement if Spehar's claim was without merit?  
 20 A. I'm a bankruptcy lawyer, so I'm going to  
 21 answer that as I would a bankruptcy lawyer.  
 22 Sometimes people settle things, good bad  
 23 or otherwise, in order for their business or their  
 24 operations of their company to survive, and that's

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1 a business call.  
 2 That's a judgment call that needs to be  
 3 assessed between the various parties who are in  
 4 charge. If they felt like they wanted to go  
 5 forward and litigate the issue, that's fine.  
 6 If they want to resolve an issue, then  
 7 settlement and compromise is certainly acceptable,  
 8 and so sometimes people settle things for lots of  
 9 different reasons, whether it's valid or not valid.  
 10 Q. Do you know whether the shareholders of  
 11 CMGT were interested in settling with Mr. Spehar?  
 12 A. I don't know the answer to that.  
 13 Q. Do you know whether Mr. Franco was  
 14 interested in -- in settling with Mr. Spehar?  
 15 A. I don't know.  
 16 Q. Do you know whether Mr. Franco and the  
 17 other shareholders of CMGT at that point in time  
 18 just wanted to quit the business and let it  
 19 disappear?  
 20 A. Maybe they did. I don't know the answer  
 21 to that.  
 22 Q. Is it your view that the shareholders of  
 23 the company are entitled to walk away from the  
 24 company if they so choose?

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1 MR. JOYCE: That's irrelevant to this case.  
 2 I mean -- but you can answer it it.  
 3 BY THE WITNESS:  
 4 A. Shareholders can close up a company any  
 5 time they feel like it.  
 6 BY MR. MARINELLO:  
 7 Q. Do you know whether that's the decision  
 8 that they made in this case?  
 9 A. Don't know the answer to that.  
 10 Q. Do you know whether anybody from CMGT at  
 11 any point in time tried to find counsel to  
 12 represent the company in litigation in California?  
 13 A. No.  
 14 Q. You don't know?  
 15 A. You mean other than Mr. Given?  
 16 Q. Yes.  
 17 A. No, I don't know the answer to that.  
 18 Q. Don't know the answer to that? Do you  
 19 know whether they decide -- anybody at -- at CMGT  
 20 made a decision that it was going to be too  
 21 expensive to hire counsel and just wasn't worth the  
 22 effort?  
 23 A. No.  
 24 Q. Do you know if Given ever talked to

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1 Franco about settlement?  
 2 A. I don't know what Mr. Franco and  
 3 Mr. Given talked about.  
 4 Q. Um-hum. Do you know whether Mr. Given  
 5 recommended settlement to Mr. Franco under certain  
 6 circumstances?  
 7 A. May have. I don't know the answer to  
 8 that.  
 9 Q. So you don't really know whether Given's  
 10 advice was negligent in that Given knew and should  
 11 have known that, if the case didn't settle, Spehar  
 12 Capital would -- would -- would file litigation?  
 13 A. Well, apparently they never transmitted  
 14 that information to Mr. Spehar, so whatever they  
 15 discussed between themselves was discussion between  
 16 themselves, but certainly it didn't result in a  
 17 resolution that would have maybe settled or  
 18 compromised CMGT's problem with Mr. Spehar.  
 19 Q. So what you're saying is, because there  
 20 was no settlement, it must have been that Mr. Given  
 21 never recommended settlement and was negligent, is  
 22 that what you're saying?  
 23 A. No, not necessarily.  
 24 Q. Okay. You say here that CMGT had not

1 made a good faith attempt to resolve a dispute.  
 2 What is your factual basis for that?  
 3 A. I didn't see any type of a resolution  
 4 that was provided to Mr. Spehar to see if they  
 5 could get rid of this case.  
 6 Q. You mean, you didn't see a settlement  
 7 proposal to Mr. Spehar?  
 8 A. I -- not that I can recall.  
 9 Q. Didn't they suggest to Mr. Spehar that  
 10 he wait until the transaction with Trautner closed  
 11 and then have his claim for compensation be  
 12 litigated at that point or otherwise resolved?  
 13 MR. JOYCE: Is that a settlement, or is this a  
 14 new question?  
 15 BY THE WITNESS:  
 16 A. That doesn't sound like a settlement to  
 17 me. I mean, I don't -- why would somebody that's  
 18 contingent upon the sale have to litigate it after  
 19 the sale closed? That doesn't sound like much --  
 20 BY MR. MARINELLO:  
 21 Q. Well, it isn't your --  
 22 A. -- of a settlement to me.  
 23 Q. -- understand -- isn't it your  
 24 understanding that Mr. Spehar was claiming he had a

1 MR. MARINELLO: All right. You know, it's not  
 2 nonsense, but -- your position is nonsense, but I  
 3 don't want to argue with you. We're going to  
 4 disagree about this case until the end of time.  
 5 MR. JOYCE: I don't think so. I think it will  
 6 end before the end of time, unless you know  
 7 something that I don't know.  
 8 If the world is going to end pretty  
 9 soon, why don't we quit this deposition and do  
 10 something fun?  
 11 BY MR. MARINELLO:  
 12 Q. Okay. In Paragraph -- hang on a second.  
 13 In Paragraph 58 of your complaint, you  
 14 say that, "On information and belief, Given  
 15 negligently advised CMGT not to appear and defend  
 16 the SC lawsuit." What is that based on? What are  
 17 the facts that that's based on?  
 18 A. Again, I -- I think I answered this  
 19 before. I thought that I saw something in the  
 20 documents or something from Mr. Franco to indicate  
 21 that -- or maybe one of the other shareholders, for  
 22 all I know, to indicate that Mr. Given advised  
 23 about the jurisdiction that there was no basis on  
 24 the -- on the injunction and not to file an

1 right to compensation if the transaction closed?  
 2 A. Yeah, but you're -- you're presuming --  
 3 Q. Well, I'm -- let me --  
 4 A. Your question --  
 5 Q. I'm -- I'm talking --  
 6 A. -- says it --  
 7 Q. I'm taking it --  
 8 A. -- closes and now --  
 9 Q. -- one step at a time.  
 10 A. -- he gets to sue. I don't -- doesn't  
 11 sound like a settlement to me.  
 12 Q. Let me ask you --  
 13 A. I don't know.  
 14 Q. Let me -- let --  
 15 A. Maybe I'm nuts, but --  
 16 Q. Well, let's -- let's take it a step at a  
 17 time. If the company didn't have anything to offer  
 18 Mr. Spehar and --  
 19 MR. JOYCE: I'll object --  
 20 BY MR. MARINELLO:  
 21 Q. -- the company suggested --  
 22 MR. JOYCE: -- to that premise. We've already  
 23 spent about a half hour proving that premise is  
 24 just nonsense.

1 appearance.  
 2 Q. Is there anything that you've seen that  
 3 Mr. Given wrote where he said, "Don't appear in  
 4 California"?  
 5 A. I -- not that I recall.  
 6 Q. Is there anything you saw that Mr. Given  
 7 wrote where he said, "Don't appear in California,  
 8 because the California Courts don't have  
 9 jurisdiction and you don't have to worry about that  
 10 lawsuit in California"?  
 11 MR. JOYCE: Can I have that question read  
 12 back.  
 13 (WHEREUPON, the record was read by  
 14 the reporter.)  
 15 MR. JOYCE: That's enough.  
 16 BY THE WITNESS:  
 17 A. Not that I've seen in writing.  
 18 BY MR. MARINELLO:  
 19 Q. Okay. Is there anything you've seen  
 20 that anybody else wrote, put in writing, that said,  
 21 "Mr. Given has told us that CMGT should not appear  
 22 in the California lawsuit"?  
 23 A. I thought so, but I -- you know, it's  
 24 been a long time since I've seen these documents,



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1 and I just don't recall, but I know that I've seen  
 2 something like that, but I just --  
 3 Q. You can't identify it?  
 4 A. Well, there's thousands of documents.  
 5 MR. JOYCE: But he's -- he's --  
 6 BY THE WITNESS:  
 7 A. I'm sorry, I --  
 8 MR. JOYCE: You've asked that question, I  
 9 think --  
 10 BY MR. MARINELLO:  
 11 Q. Can you identify --  
 12 MR. JOYCE: -- three times.  
 13 BY MR. MARINELLO:  
 14 Q. -- what it is --  
 15 MR. JOYCE: He said he doesn't know what it  
 16 is.  
 17 BY MR. MARINELLO:  
 18 Q. -- you're referring to?  
 19 A. I -- I can't remember if it was  
 20 something that one of the shareholders said,  
 21 something that I saw in another e-mail, something  
 22 that came across my desk, something that was in the  
 23 Franco documents, something that Franco, in fact,  
 24 said to me. I just don't recall right now. I'm

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1 sorry.  
 2 Q. Um-hum. Okay. Let's turn to exhibit --  
 3 excuse me one second.  
 4 MR. JOYCE: By the way, this complaint we have  
 5 does not have all the exhibits.  
 6 MR. MARINELLO: I'm sorry?  
 7 MR. JOYCE: The complaint does not have all  
 8 the exhibits.  
 9 MR. MARINELLO: The one I gave the witness  
 10 certainly does. I think your does, too.  
 11 MR. JOYCE: No, it doesn't.  
 12 MR. MARINELLO: Which one are you missing?  
 13 MR. JOYCE: I'm missing several, actually.  
 14 I think I start with 13, but I'm  
 15 missing -- let me just --  
 16 MR. MARINELLO: You know what -- let me tell  
 17 what that is, Ed. The -- in your complaint, you  
 18 had two tabs that were both marked Exhibit 12, and  
 19 one is in fact -- should be Exhibit 13.  
 20 MR. JOYCE: I haven't got 14 either.  
 21 MR. MARINELLO: Well, you know what,  
 22 afterwards, we'll --  
 23 MR. JOYCE: That's okay. I --  
 24 MR. MARINELLO: -- try to straighten that out.

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1 MR. JOYCE: It isn't a big deal.  
 2 MR. MARINELLO: Okay.  
 3 MR. JOYCE: I mean, if -- if -- if you ask to  
 4 look at it, I'll look over his shoulder.  
 5 BY MR. MARINELLO:  
 6 Q. Okay. Let's look at Exhibit 12 for a  
 7 second, okay, Mr. Grochocinski?  
 8 A. Um-hum.  
 9 Q. And, in particular, I'm looking at --  
 10 begins with an e-mail from Ron Given. Do you see  
 11 that?  
 12 MR. JOYCE: My 12 is an August 26, '03 CMGT  
 13 letter.  
 14 MR. MARINELLO: Look at the one right before  
 15 that.  
 16 BY THE WITNESS:  
 17 A. From Robert Carroll?  
 18 MR. JOYCE: I don't have -- the one before it  
 19 is -- hold on. 24, it's a three-page e-mail.  
 20 MR. MARINELLO: There you go. That's it.  
 21 MR. JOYCE: -- from Given --  
 22 MR. MARINELLO: Yeah, that's the -- that's  
 23 Exhibit -- the Exhibit 12 I'm talking about.  
 24

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1 BY MR. MARINELLO:  
 2 Q. You've got it, don't you  
 3 Mr. Grochocinski?  
 4 A. From Robert Carroll?  
 5 MR. JOYCE: I see. There's two 12s. Yeah,  
 6 okay.  
 7 BY THE WITNESS:  
 8 A. So Robert Carroll from Given?  
 9 MR. JOYCE: No.  
 10 BY MR. MARINELLO:  
 11 Q. No.  
 12 MR. CISZEWSKI: It was printed out by Carroll.  
 13 BY THE WITNESS:  
 14 A. Oh.  
 15 BY MR. MARINELLO:  
 16 Q. It was printed out by Carroll, but  
 17 it's --  
 18 A. Oh, okay.  
 19 Q. But, look, it's Ronald Given to --  
 20 A. Given to --  
 21 MR. JOYCE: gspe --  
 22 BY THE WITNESS:  
 23 A. Spehar.  
 24

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1 BY MR. MARINELLO:  
 2 Q. Lou Franco and so forth, correct? Do  
 3 you have the page?  
 4 A. I have it.  
 5 Q. Okay. All right. Now, if you turn the  
 6 page to the second page of Exhibit 12, that is an  
 7 e-mail from Mr. Spehar to Lou Franco and Ron Given,  
 8 correct, dated August 19, 2003?  
 9 A. I'm sorry. Say that again. I  
 10 apologize.  
 11 Q. Yeah. That's an e-mail from Gerry  
 12 Spehar to Lou Franco and Ron Given dated August 19,  
 13 2003.  
 14 MR. JOYCE: Right.  
 15 BY MR. MARINELLO:  
 16 Q. Do you see that?  
 17 A. Yes, I see it now.  
 18 Q. Okay. I'm going to ask you to look at  
 19 the body of the second paragraph where it says,  
 20 "Thus, Chuck and his investor group should also be  
 21 immediately informed that both the Newco  
 22 contemplated in Chuck's LOI and Oldeo, CMGT, would  
 23 be obligated to honor Spehar Capital's contract  
 24 with CMGT." Do you see that?

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1 A. I see what it says.  
 2 Q. So isn't it your understanding that  
 3 Mr. Spehar was taking the position that the new  
 4 company that Chuck Trautner wanted to start --  
 5 A. Um-hum.  
 6 Q. -- was going to still have to abide by  
 7 the contract that Mr. Spehar -- Spehar Capital had  
 8 made with CMGT?  
 9 MR. JOYCE: That's what it says, yeah.  
 10 BY THE WITNESS:  
 11 A. That's what it says, yeah.  
 12 BY MR. MARINELLO:  
 13 Q. Okay. And didn't that mean, among other  
 14 things, that Spehar Capital was going to be  
 15 involved in any financing and other transactions  
 16 that Newco did in the future?  
 17 A. I don't know if that's the case or not.  
 18 I'm not sure.  
 19 Q. Okay. You don't know one way or the  
 20 other?  
 21 A. Well, I -- I'm not sure that I  
 22 necessarily have to come to that -- to that  
 23 conclusion or not.  
 24 Q. Um-hum. And do you know whether

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1 Mr. Trautner was willing to have Spehar Capital  
 2 involved in his Newco venture?  
 3 A. I don't know.  
 4 Q. Okay. And if you would turn to the next  
 5 document, which is -- the next document is also  
 6 marked Exhibit 12.  
 7 MR. MARINELLO: That should be 13, if you want  
 8 to correct that.  
 9 MR. JOYCE: Okay.  
 10 MR. MARINELLO: Okay? And then if we turn to  
 11 yet the next exhibit, that's Exhibit 14. That's  
 12 the Touch Speed corporate documents. Don't you  
 13 have that?  
 14 MR. JOYCE: I think I did do.  
 15 MR. MARINELLO: Okay.  
 16 MR. JOYCE: I do have 14, yeah.  
 17 MR. MARINELLO: And then 15 -- Exhibit 15 is a  
 18 e-mail from Mr. Given to Lou Franco and all the  
 19 other shareholders of CMGT. Do you see that?  
 20 MR. JOYCE: I got -- I got that, yeah.  
 21 MR. MARINELLO: Okay. That's dated  
 22 December 17 of 2003.  
 23 MR. JOYCE: Yes.  
 24 BY MR. MARINELLO:

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1 Q. Do you have that, Mr. Grochocinski?  
 2 A. I believe so. I'm just going to get  
 3 there.  
 4 Q. Okay.  
 5 A. Yeah, September 17th, 2003, Mr. Given to  
 6 Lou Franco, Wong, and a whole bunch of other  
 7 people.  
 8 Q. Okay. And those other people are the  
 9 shareholders of CMGT, correct?  
 10 A. Looks like it. I don't know if it's all  
 11 of them, but it looks like a lot of them.  
 12 Q. Okay. And the fax that's attached, do  
 13 you know what that is?  
 14 A. Looks like a facsimile cover sheet, a  
 15 letter to Mr. Given and a copy of a order to show  
 16 cause, re: preliminary injunction, temporary  
 17 restraining order in California.  
 18 Q. Okay. And Mr. Given sent a copy of that  
 19 TRO to every -- to the shareholders of CMGT so that  
 20 they wouldn't -- and they -- so to -- to advise  
 21 them that this -- that he'd received this order  
 22 from the California Court, correct?  
 23 A. I assume.  
 24 Q. All right.

1 A. I don't know what the reason, but, yes,  
2 that's what it looks like.  
3 Q. In his e-mail Mr. Given says that  
4 "Mayer Brown has not been retained to deal with  
5 this matter and we do not expect to be." Do you  
6 see that?  
7 A. I do.  
8 Q. That put -- at the very least, that put  
9 every shareholder on notice that from that date  
10 forward, Mayer Brown was not going to represent  
11 CMGT in the litigation in California, correct?  
12 A. That's what it says.  
13 Q. And that's -- okay. And so from that  
14 date forward, any of the shareholders who got this  
15 e-mail from Mr. Given should have known that  
16 Mayer Brown was not going to represent the company  
17 from that point forward, at least in any litigation  
18 in California, correct?  
19 A. Mr. Given said that he was not going to  
20 be retained.  
21 MR. JOYCE: No, he didn't say that.  
22 BY THE WITNESS:  
23 A. Mayer Brown was going to be --  
24 MR. JOYCE: He didn't say that at all. Why

1 A. -- you're asking me --  
2 Q. Based on what was that?  
3 A. I believe they continued to represent  
4 CMGT. They were -- they had an obligation to -- to  
5 represent them.  
6 Q. And why did they have an obligation to  
7 go out to California and represent them there?  
8 Based on what?  
9 A. Their general representation of them as  
10 counsel.  
11 Q. You have attached to your complaint a  
12 copy of their engagement letter, correct?  
13 A. I -- I don't recall, but okay.  
14 Q. Well, does the engagement letter say  
15 that they're going to represent CMGT in litigation?  
16 A. I don't recall what it says.  
17 Q. Why don't you look at it. It's  
18 Exhibit I.  
19 Oh, I'm sorry. That is not the one --  
20 yes, that's it. That's it.  
21 Does that agreement say anything about  
22 representing CMGT in litigation?  
23 A. I don't know. It's a pretty broad  
24 statement here.

1 don't you read what he says.  
2 THE WITNESS: It says, "Mayer Brown has not  
3 been retained to deal with this matter --"  
4 MR. JOYCE: And?  
5 THE WITNESS: "-- and we do not expect to be."  
6 MR. JOYCE: Okay.  
7 THE WITNESS: That's what it says.  
8 BY MR. MARINELLO:  
9 Q. Are you aware that -- that Mayer Brown  
10 ever was retained to represent CMGT in California?  
11 A. You mean specifically in terms of a  
12 writing?  
13 Q. In any way whatsoever.  
14 A. Well, it's my view that they still  
15 continue to have an obligation.  
16 Q. I didn't ask you that question. I asked  
17 you whether they ever -- this letter says, "We have  
18 not been retained, and we do not expect to be."  
19 Do you know whether as of that date CMGT  
20 had retained Mayer Brown to represent it in the  
21 litigation in California?  
22 A. I think the retention was ongoing. So  
23 if --  
24 Q. Based on --

1 Q. Um-hum.  
2 A. It says, "I will be leading this  
3 engagement on behalf of the firm and anticipate  
4 calling upon the services of other firm lawyers on  
5 a 'as-needed' basis."  
6 Q. Right. Let's look --  
7 A. I don't know exactly what that means.  
8 Q. Maybe you don't --  
9 A. Maybe --  
10 Q. -- and that's a problem for you perhaps,  
11 but let's look at Paragraph --  
12 A. Well, maybe --  
13 Q. -- I.  
14 A. -- it's not a problem for me. Maybe  
15 it's a problem for you.  
16 Q. Let's look at the first paragraph, okay,  
17 and see about your lack of understanding and how it  
18 relates to Paragraph 1.  
19 Does Paragraph 1 say that, "This letter  
20 confirms our agreement for the provision of legal  
21 services in connection with its initial  
22 capitalization, formative acquisition activities,  
23 and other related general corporate activities"?  
24 Does it say that?

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1 A. Yeah, it does.  
 2 Q. Does it say anything about litigation in  
 3 that paragraph?  
 4 A. Litigation could arise out of those  
 5 aspects.  
 6 Q. I asked you if it says anything about  
 7 litigation in that paragraph.  
 8 A. Nope.  
 9 Q. Does it say anything about litigation  
 10 anywhere else in this letter?  
 11 A. I think it's a very broad understanding.  
 12 Q. I didn't ask you that. I asked you --  
 13 A. Sure you --  
 14 Q. -- whether --  
 15 A. -- did. You asked me exactly that  
 16 question.  
 17 Q. Does the word "litigation" appear in  
 18 this letter anywhere?  
 19 A. Doesn't have to.  
 20 Q. Does it?  
 21 A. It doesn't --  
 22 Q. I didn't ask you --  
 23 A. -- have to.  
 24 Q. I didn't ask you if it had to.

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1 MR. JOYCE: Let -- let -- let's take a --  
 2 BY MR. MARINELLO:  
 3 Q. Does it?  
 4 MR. JOYCE: Let's take a short break.  
 5 BY MR. MARINELLO:  
 6 Q. Does the word "litigation" appear in  
 7 this letter?  
 8 MR. JOYCE: Let's take a short break, because  
 9 the letter does speak for itself. Just maybe two  
 10 or three minutes.  
 11 MR. MARINELLO: All right. Let's do that.  
 12 THE VIDEOGRAPHER: Going off the video record  
 13 at 3:25 p.m.  
 14 (WHEREUPON, the deposition was  
 15 recessed from 3:25 p.m. until  
 16 3:40 p.m.)  
 17 THE VIDEOGRAPHER: Going back on the video  
 18 record at 3:40 p.m., the beginning of Tape No. 5.  
 19 BY MR. MARINELLO:  
 20 Q. Okay. In Paragraph 59 of your  
 21 complaint, you say that CMGT failed to appear and  
 22 defend at a TRO hearing because of negligent advice  
 23 provided by Given. What is the factual basis for  
 24 that statement?

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1 MR. JOYCE: You already asked that question,  
 2 but --  
 3 BY THE WITNESS:  
 4 A. I thought I saw something from Mr. Given  
 5 indicating that they weren't going to appear, but I  
 6 could be wrong.  
 7 THE WITNESS: Thank you very much.  
 8 MR. CISZEWSKI: Sure.  
 9 BY MR. MARINELLO:  
 10 Q. Can you identify what -- what it is  
 11 in -- more specifically than that?  
 12 A. I don't know. I'd have to look through  
 13 all of this.  
 14 MR. CISZEWSKI: Do you want some water?  
 15 MR. MARINELLO: Yeah. That would be great.  
 16 Thank you very much.  
 17 BY THE WITNESS:  
 18 A. I don't know. I'd have to look through  
 19 some of the documents here.  
 20 BY MR. MARINELLO:  
 21 Q. Okay.  
 22 A. I apologize.  
 23 Q. Okay. Let me ask you to turn to  
 24 Paragraph -- I'm sorry, to Exhibit 16.

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1 A. Okay.  
 2 Q. Okay. Now, Exhibit 16 is a -- an e-mail  
 3 from Ron Given dated September 16, 2003, correct?  
 4 A. Um-hum, yes.  
 5 Q. And it is to the shareholders of CMGT,  
 6 correct?  
 7 A. It appears so.  
 8 Q. Okay. And this e-mail advises them that  
 9 the TRO has been filed and -- by -- by -- by Spehar  
 10 in Los Angeles, correct?  
 11 A. Yes, I guess so.  
 12 Q. Okay. And it says in the very first  
 13 paragraph that Lou Franco is reluctantly planning  
 14 to leave his position with CMGT and pursue other  
 15 opportunities and that representatives of Newco  
 16 have said that they intend to terminate the LOI --  
 17 and this is all unless the litigation filed by  
 18 Spehar is withdrawn, correct?  
 19 A. I don't know. I'd have to read this,  
 20 but --  
 21 Q. Well, why don't you read the first  
 22 paragraph to yourself then.  
 23 A. That's what it says.  
 24 Q. Okay. Do you know -- do you have any

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1 reason to doubt the truth of the statements in  
 2 Paragraph 1?  
 3 A. I don't know.  
 4 Q. You have no reason to believe they're  
 5 not true, do you?  
 6 A. I don't have a reason to believe that  
 7 they are, nor do I have a reason to believe that  
 8 they aren't.  
 9 Q. Okay. Now, I'd ask you to go to the  
 10 fourth paragraph. Well --  
 11 A. Okay.  
 12 Q. Well, no, the third paragraph. The  
 13 third paragraph says -- just read that to yourself.  
 14 Is this the -- and then -- and then I'll ask you a  
 15 question. Let me know when you're done reading  
 16 that.  
 17 A. I've read it.  
 18 Q. Okay. Is that the e-mail that you're  
 19 referring to when you say that you saw something  
 20 that suggested that Mr. Given had said that there's  
 21 no jurisdiction in California?  
 22 A. It's possible.  
 23 Q. Are you aware of anything else --  
 24 A. I don't know.

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1 Q. -- other than that?  
 2 A. I'd have to look at other --  
 3 Q. Okay.  
 4 A. -- documents.  
 5 Q. Is this -- is this the -- the -- the  
 6 e-mail or writing that you said -- where Mr. Given  
 7 suggested that injunctive relief was inappropriate  
 8 if all Gary Spehar was really seeking was money in  
 9 California?  
 10 A. Certainly it's one of them. I don't  
 11 know if there are any others, but --  
 12 Q. Can you --  
 13 A. -- certainly.  
 14 Q. Can you identify anything else?  
 15 A. Not at this moment.  
 16 Q. Um-hum. Do you have a view as to  
 17 whether injunctive relief was -- would have been  
 18 granted if -- if there had been a defense mounted  
 19 by CMGT?  
 20 A. No. A Judge entered the order, so I  
 21 assume the Judge entered a valid order. I don't  
 22 know.  
 23 Q. You have no idea whether it would be  
 24 appropriate or inappropriate -- strike that.

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1 You have no idea what would have  
 2 happened if there'd been a defense put up?  
 3 A. I don't know the answer to that.  
 4 Q. Okay.  
 5 A. I'm not an Appellate Court. Nobody  
 6 appeared, and the Judge entered the order, so I  
 7 assumed it was valid.  
 8 Q. You see the next paragraph where it says  
 9 spurious -- whether Spehar's actions are spurious  
 10 or not, CMGT has no money to fight this battle?  
 11 A. That's what it says.  
 12 Q. Do you know whether that's true or not?  
 13 A. I don't know.  
 14 Q. Okay. All right. Let's turn to  
 15 Paragraph 61 of your complaint, please. It says  
 16 that on October 2nd, Given notified CMGT's  
 17 shareholders that because of the lawsuit, Newco had  
 18 terminated the letter of intent.  
 19 A. Okay.  
 20 Q. Do you have any reason -- do you have  
 21 any -- do you have any knowledge -- any reason to  
 22 believe that that's not a true statement?  
 23 A. No, I have no reason to believe yes or  
 24 no or that it's true or not true.

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1 Q. Do you know whether Newco did or did not  
 2 terminate the letter of intent?  
 3 A. I believe that Newco did terminate the  
 4 letter of intent.  
 5 Q. Okay. Your next paragraph says that no  
 6 one from CMGT appeared at the October 3rd  
 7 preliminary injunction hearing, correct?  
 8 A. I believe that's the case.  
 9 Q. Okay. What is your basis for saying  
 10 that the reason nobody from CMGT appeared is  
 11 because of negligent advice provided by Given?  
 12 A. I believe that he indicated that he did  
 13 not believe that there was a jurisdictional basis,  
 14 and, for whatever reason, he chose not to appear.  
 15 Q. Well, we know that he chose not to  
 16 appear, because he told people he wasn't going to  
 17 appear back in the e-mail that he sent that you've  
 18 marked as your Exhibit --  
 19 A. 16.  
 20 Q. -- 16, right?  
 21 A. Okay.  
 22 Q. No, not 16. Let's not get the wrong  
 23 number.  
 24 A. Sorry.

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1 Q. It's Exhibit 14 -- 15.  
 2 A. No. I thought it was in 16 that he said  
 3 it was -- there was no jurisdictional basis. I'm  
 4 sorry. Isn't this the long one that you told me --  
 5 "It seems obvious there is not jurisdictional basis  
 6 for Gary Spehar to bring his --"  
 7 Q. You're answering the wrong question.  
 8 A. I apologize. Maybe I don't understand  
 9 the question then.  
 10 Q. Okay. We know Mr. Given wasn't going to  
 11 appear in California, 'cause he'd already said in  
 12 your Exhibit 15 that Mayer Brown had not been  
 13 retained to deal with the Spehar litigation matter  
 14 and did not expect to be, correct?  
 15 MR. JOYCE: It says that. We've said that  
 16 three or four times.  
 17 BY THE WITNESS:  
 18 A. Yes.  
 19 BY MR. MARINELLO:  
 20 Q. Okay. Well, I just wanted to reference  
 21 that.  
 22 A. Yeah, okay.  
 23 Q. Okay. So now he has sent everybody a  
 24 copy of a TRO --

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1 A. Um-hum.  
 2 Q. -- and a -- with an order as to when a  
 3 preliminary injunction hearing going to be held,  
 4 and it's pretty clear based on what he sent  
 5 everybody that the Court in California did enter a  
 6 TRO, right?  
 7 A. Yes.  
 8 Q. Okay. So, obviously, the California  
 9 Court wasn't concerned about jurisdiction, right?  
 10 MR. JOYCE: How do we know what the Court was  
 11 concerned about?  
 12 BY THE WITNESS:  
 13 A. Yeah, I don't know.  
 14 MR. JOYCE: He can't read minds.  
 15 BY THE WITNESS:  
 16 A. All I know is that they entered the  
 17 order, so...  
 18 BY MR. MARINELLO:  
 19 Q. Okay. They entered the order, so  
 20 whether it did or didn't have jurisdiction really  
 21 didn't make any difference with respect to the  
 22 issuance of the TRO?  
 23 A. Well, I'm not -- all I know is that the  
 24 Court entered the order, so I have to --

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1 Q. Okay.  
 2 A. -- I'm accepting --  
 3 Q. Okay.  
 4 A. -- whatever the Court did, and I --  
 5 Q. Okay.  
 6 A. -- I presume that it did what it thought  
 7 it had the power to do.  
 8 Q. So is it your belief, then, that the  
 9 reason that CMGT did not appear and defend the  
 10 preliminary injunction hearing was because  
 11 Mr. Given had previously told them that he didn't  
 12 think there was jurisdiction in California?  
 13 A. I assume in part.  
 14 Q. And -- and that -- is that an assumption  
 15 on your part?  
 16 A. Isn't that what he said; it seems that  
 17 there is know jurisdictional basis for Gary Spehar  
 18 to bring the lawsuit in California?  
 19 Q. Yes, he did say that, but did he say,  
 20 "You don't have to appear to contest it"? I  
 21 mean --  
 22 A. Well, he's their --  
 23 Q. Let me ask you --  
 24 A. -- attorney.

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1 Q. -- this question. Let me ask you --  
 2 A. He's their --  
 3 Q. -- this question.  
 4 A. -- attorney. If he's telling them  
 5 there's no jurisdiction --  
 6 Q. Well, let me ask you something. You're  
 7 an attorney. You're an attorney, right?  
 8 A. I am.  
 9 Q. Have you had clients sued in places  
 10 where there's no jurisdiction over them ever in  
 11 your career?  
 12 A. I assume somewhere along the line.  
 13 Q. Okay. Is your advice to them, "Oh,  
 14 there's no jurisdiction; don't appear," or is your  
 15 advice to them, "There's no jurisdiction, so go and  
 16 fight jurisdiction"?  
 17 A. Well, it depends on the circumstances, I  
 18 guess.  
 19 Q. Yeah, okay. The fact of the matter is,  
 20 Mr. Grochocinski, you don't know what Mr. Given  
 21 said to Mr. Franco or anyone else at CMGT other  
 22 than what you see in that e-mail that you've  
 23 attached, correct?  
 24 MR. JOYCE: He's already said that you're

1 wrong on that. You've asked this question about  
 2 ten different ways.  
 3 BY THE WITNESS:  
 4 A. Well, I -- I obviously was not in the  
 5 same room when Mr. --  
 6 BY MR. MARINELLO:  
 7 Q. Um-hum.  
 8 A. -- Franco and Mr. Given spoke, so I have  
 9 no idea what they --  
 10 Q. Um-hum.  
 11 A. -- actually said to one another --  
 12 Q. Okay.  
 13 A. -- but --  
 14 Q. And you I don't know if Mr. -- if  
 15 Mr. Franco -- I'm sorry,  
 16 You don't know if Mr. Given said to  
 17 Mr. Franco, "Oh, don't appear in California because  
 18 there's no jurisdiction," you don't know that he  
 19 said that, do you?  
 20 A. No, not --  
 21 Q. And -- and all you had --  
 22 A. -- not in those words.  
 23 Q. And all you had to do was pick up the  
 24 telephone and call Mr. Franco and say, "Mr. Franco,

1 did Mr. Given tell you this," and you would have  
 2 had an answer, wouldn't you?  
 3 A. I don't know if I would have had an  
 4 answer or not.  
 5 Q. But you didn't even try and find out,  
 6 did you?  
 7 A. I did not talk to Mr. Franco about this  
 8 situation --  
 9 Q. Right, and -- and --  
 10 A. -- to the best of my knowledge.  
 11 Q. To the best of your knowledge, your  
 12 lawyers never did either, did they?  
 13 A. I don't know the answer to that.  
 14 Q. And you never called Mr. Given and asked  
 15 him if that's what he advised either, right?  
 16 A. I did not personally do that, no.  
 17 Q. And -- and you don't know anyone who  
 18 did?  
 19 A. Again, I don't -- did not do that.  
 20 Q. Um-hum, okay. Do you know anybody who  
 21 did do that?  
 22 A. Not that I --  
 23 Q. Okay.  
 24 A. -- believe.

1 Q. Okay. You say in Paragraph 63 that on  
 2 December 1st -- strike that. Hold on a second.  
 3 Do you know whether Mr. Given gave any  
 4 advice to CMGT not to appear and defend at the  
 5 preliminary injunction hearing?  
 6 MR. JOYCE: Preliminary, okay.  
 7 BY THE WITNESS:  
 8 A. I don't know the answer to that.  
 9 BY MR. MARINELLO:  
 10 Q. Okay. Have you ever asked anybody that  
 11 question?  
 12 A. No, I did not.  
 13 Q. Do you know anybody who has asked  
 14 anybody that question?  
 15 A. I don't know.  
 16 Q. Okay. Your Paragraph 63 of your  
 17 complaint says that on December 1st, Spehar Capital  
 18 served CMGT with an amended complaint seeking  
 19 damages. Do you see that?  
 20 A. Yes.  
 21 Q. Do you know whether CMGT ever defended  
 22 itself against that amended complaint?  
 23 A. I don't believe it did.  
 24 Q. Okay. Do you know why it didn't?

1 A. No.  
 2 Q. Okay. In Paragraph 65, you say that if  
 3 Spehar Capital had not obtained its injunction,  
 4 then CMGT would have closed the financing deal with  
 5 Newco and would have received funding.  
 6 Did the Newco deal provide that CM --  
 7 that CMGT would get funding?  
 8 A. The Newco deal, to the best of my  
 9 knowledge, indicated that there would be some  
 10 payment. It was -- it was going to take over  
 11 Oldco, which would have been CMGT, and the new  
 12 company would have been Newco, so I'm not sure that  
 13 I understand the question exactly.  
 14 I don't know if can be answered quite  
 15 the way it --  
 16 Q. Well --  
 17 A. -- you want me to answer it, so I'm not  
 18 really sure.  
 19 Q. Well, is there any suggestion in the  
 20 Trautner proposal that Trautner is going to give  
 21 funding to CMGT?  
 22 A. Well, funding is a --  
 23 Q. Just -- just answer my question if you  
 24 can.

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1 MR. JOYCE: Well, he is answering your  
 2 question. Don't interrupt him. Let him answer it.  
 3 BY THE WITNESS:  
 4 A. Funding is a -- a -- a different --  
 5 you're assuming that -- that this is a traditional  
 6 circumstance where some company is coming in to  
 7 provide funding and maybe either receiving a  
 8 security interest or some shares of stock or  
 9 whatever.  
 10 The Newco deal was a -- essentially a --  
 11 a buyout of Oldco, so it was more of a merger than  
 12 it was anything else, and so it was a slight bit  
 13 different, to the best of my understanding, than a  
 14 traditional funding of a -- of a transaction at a  
 15 closing where another party is coming in to provide  
 16 money in exchange for shares of stock. It was  
 17 different.  
 18 BY MR. MARINELLO:  
 19 Q. As you understand it, at the end -- if  
 20 the Newco transaction had closed, isn't it a fact  
 21 that at the end of the day, Newco would have had  
 22 CMGT's assets and -- and CMGT would have had  
 23 20 percent of Newco's stock?  
 24 A. As one of the possibilities. I remember

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1 that there were other possibilities, but that's  
 2 certainly one of the possibilities.  
 3 Q. There were two possibilities, correct?  
 4 A. 500,000 cash, I think, and --  
 5 Q. Yeah --  
 6 A. Or --  
 7 Q. Okay. Did --  
 8 A. -- 20 percent, I think. I -- I don't  
 9 know if there's anything else in there. I don't  
 10 recall, but from my --  
 11 Q. Didn't -- didn't the shareholders of  
 12 CMGT approve the 20 percent transaction?  
 13 A. I don't know.  
 14 Q. Doesn't your complaint allege that?  
 15 A. I -- I'd have to look at it again, but  
 16 if they did, then they did.  
 17 Q. Okay. What it is, it is, I guess?  
 18 A. I guess.  
 19 MR. JOYCE: Yeah. Yeah, we'll stipulate to  
 20 that.  
 21 BY THE WITNESS:  
 22 A. Okay.  
 23 BY MR. MARINELLO:  
 24 Q. Okay. Your Paragraph 65 says that if

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1 CMGT had received funding, it would have been a  
 2 highly profitable company. What do you mean by  
 3 that?  
 4 A. Well, I think that had it received the  
 5 moneys that it was requesting, it would have been  
 6 in a position to continue to operate and utilize  
 7 its -- its software and its contacts that it had in  
 8 the past in order to continue growing and moving  
 9 forward.  
 10 Q. You say to continue growing. Was --  
 11 in -- in 2003 when this possible deal with Trautner  
 12 was being discussed, was CMGT growing at that time?  
 13 A. I -- I don't know. Maybe the word  
 14 continued growing -- I should say it would grow.  
 15 I --  
 16 Q. Do you know whether at that time CMGT  
 17 was declining?  
 18 A. I -- I don't know.  
 19 Q. Okay. You said that by the statement  
 20 you meant that if CMGT had received the funds it  
 21 was asking for. What funds was it asking for?  
 22 A. Well, wasn't it trying to obtain funding  
 23 from various sources? I thought the number of  
 24 \$2½ million was being bandied about here --

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1 Q. Well --  
 2 A. -- from either --  
 3 Q. -- this doesn't --  
 4 A. -- Sealaska or the Indian Tribe. So,  
 5 you know --  
 6 Q. You think it would have -- you think  
 7 that the Sealaska -- some -- one of those Indian  
 8 Tribes was about to give them money?  
 9 A. I don't know, because the transactions  
 10 didn't close.  
 11 Q. Okay. But Paragraph 65 of your  
 12 complaint says that if the injunction hadn't been  
 13 obtained, that CMGT would have closed the deal with  
 14 Newco, right?  
 15 A. I believe that that's the truth.  
 16 Q. Right, and if it had closed the deal  
 17 with Newco, then at the end of the day, CMGT would  
 18 have had 20 percent of Newco's stock, right?  
 19 A. Yes.  
 20 Q. Okay. It wouldn't have had any money,  
 21 would it?  
 22 A. Well, I don't know. 20 percent of an  
 23 ongoing company might be worth a lot of money.  
 24 Q. Might be, but it would get 20 percent of



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1 the stock; it wouldn't get any cash in that  
 2 transaction?  
 3 A. Well, cash doesn't necessarily mean  
 4 value.  
 5 Q. I'm just asking you a question.  
 6 A. Yes, but -- to the best of my knowledge,  
 7 no, they would not receive cash. They would  
 8 receive --  
 9 Q. Right.  
 10 A. -- stock.  
 11 Q. Right. The deal provided for stock, not  
 12 more money, right? Not for funding, right?  
 13 A. That's correct.  
 14 Q. Okay. So if -- so CMGT wasn't going to  
 15 get any funding out of that Newco deal, it was just  
 16 going to get 20 percent of the stock, and if  
 17 anybody was going to be profitable, it was going to  
 18 be Newco --  
 19 A. You're assuming --  
 20 Q. -- right?  
 21 A. -- that -- that cash and funding are  
 22 equivalent. I'm not assuming that at all.  
 23 Q. I'm not making any such --  
 24 A. Value is value.

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1 Q. I'm not making any such assumption at  
 2 all. I'm just pointing --  
 3 A. That's exactly what you said.  
 4 Q. I'm pointing out the fact that if the  
 5 Newco deal closed, as you allege in Paragraph 65 of  
 6 your complaint, what would have happened, by your  
 7 own documents and words, is that there would have  
 8 been a company, Newco, that would have owned CMGT's  
 9 assets?  
 10 A. Yes.  
 11 Q. And all CMGT would have had is  
 12 20 percent of the Newco's stock, correct?  
 13 A. Yes.  
 14 Q. Okay. So if anybody was going to become  
 15 a highly profitable company, it was going to be  
 16 Newco 'cause Newco was the company that was  
 17 continuing the business, right?  
 18 A. But CMGT would have had 20 percent.  
 19 Q. Okay. That's right. CMGT would have  
 20 had 20 percent of Newco, correct?  
 21 A. That's --  
 22 MR. JOYCE: We've gone over this.  
 23 MR. MARINELLO: Okay.  
 24 MR. JOYCE: -- about five times.

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1 BY THE WITNESS:  
 2 A. That's what it says.  
 3 BY MR. MARINELLO:  
 4 Q. That's not what it says, but I think  
 5 we've clarified. All right.  
 6 What value did CMG have -- CMGT have in  
 7 your value -- in your -- in your view as of, let's  
 8 say, September 1st, 2003?  
 9 A. I don't know. I haven't done that  
 10 analysis.  
 11 Q. Do you -- do you know that it had any  
 12 value?  
 13 A. I don't know. I haven't done the  
 14 analysis.  
 15 Q. Okay. You allege in Paragraph 70 that  
 16 CMGT -- that defendant's negligence -- negligence  
 17 caused CMGT to lose its substantial value.  
 18 What's the basis of your saying that  
 19 CMGT had a substantial value at that time?  
 20 MR. JOYCE: That's 70, you say?  
 21 MR. MARINELLO: Yes.  
 22 BY MR. MARINELLO:  
 23 Q. Can you answer my question?  
 24 A. I don't even know what the question is

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1 now.  
 2 MR. MARINELLO: Would you repeat it to him,  
 3 please.  
 4 (WHEREUPON, the record was read by  
 5 the reporter.)  
 6 BY THE WITNESS:  
 7 A. A substantial value or a loss in value?  
 8 BY MR. MARINELLO:  
 9 Q. You say in your complaint in  
 10 Paragraph 70 that defendants' negligence caused  
 11 CMGT to lose its substantial value.  
 12 A. That's why I'm asking the question. Are  
 13 you asking me --  
 14 Q. So my question to you is, how do you  
 15 know that CMGT had a substantial value to lose?  
 16 A. Well, one of the insiders was trying to  
 17 do a deal for Newco, so it must have had some value  
 18 to somebody.  
 19 Q. Do you know whether CMGT -- I'm sorry,  
 20 whether Spehar Capital had a good claim or a bad  
 21 claim against Mayer Brown -- I'm sorry, against  
 22 CMGT in the California litigation?  
 23 MR. JOYCE: You mean the injunction or the  
 24 damages or any part of it?

1 MR. MARINELLO: Good point. I'll take it  
 2 one -- one at a time.  
 3 BY MR. MARINELLO:  
 4 Q. Do you know whether Spehar Capital had a  
 5 good -- what you would view as a good claim against  
 6 CMGT for a -- for injunctive relief in the  
 7 California action?  
 8 A. I don't know.  
 9 Q. Do you know whether Spehar Capital had a  
 10 good claim for money damages against CMGT in the  
 11 California action?  
 12 A. Independently, I don't know.  
 13 Q. Have you ever investigated either of  
 14 those two things?  
 15 A. There was a judgment entered in favor  
 16 of -- of Spehar Capital. I'm just taking the Court  
 17 at its -- at its word that they -- they -- he  
 18 adequately proved up whatever the damages were.  
 19 The Judge entered in the order. Apparently there  
 20 was jurisdiction over the parties, and judgment was  
 21 entered. I --  
 22 Q. So your understanding is that the claims  
 23 that Spehar Capital had against CMGT in California  
 24 were good claims, both from the point of view of

1 BY THE WITNESS:  
 2 A. It's not the answer you want, counsel.  
 3 What do you want me to answer to?  
 4 BY MR. MARINELLO:  
 5 Q. My question is very simple.  
 6 A. Okay.  
 7 Q. Did you -- did you -- did you reach a  
 8 conclusion as to -- ever as to whether Spehar  
 9 Capital had a good claim for injunctive relief  
 10 against CMGT in the California litigation, yes  
 11 or no?  
 12 A. No.  
 13 Q. Okay. And did you ever form a belief as  
 14 to whether Spehar Capital had a good claim for  
 15 money damages against CMGT in the California  
 16 action?  
 17 A. No.  
 18 Q. Okay. I want to go back to an earlier  
 19 time period, and that is -- you were appointed the  
 20 trustee September 21st, correct?  
 21 A. I don't remember offhand, but okay.  
 22 Q. All right. And then you told --  
 23 A. That's in --  
 24 Q. You told me --

1 the injunction and from the point of view of  
 2 damages?  
 3 MR. JOYCE: That's not what he said.  
 4 BY THE WITNESS:  
 5 A. I -- not what I -- I said. I said that  
 6 I accepted the Court's entry of the judgments --  
 7 BY MR. MARINELLO:  
 8 Q. I didn't ask you --  
 9 A. -- at face value. I didn't make an  
 10 independent assessment as to whether the -- the  
 11 claims were valid or invalid.  
 12 Q. Well, I never asked you what you  
 13 accepted or didn't accept from the Court. Maybe --  
 14 MR. JOYCE: But that was --  
 15 BY MR. MARINELLO:  
 16 Q. -- that's where the confusion --  
 17 MR. JOYCE: -- his answer. See, that's his  
 18 answer.  
 19 MR. MARINELLO: But that was not the answer to  
 20 my question.  
 21 MR. JOYCE: Well, no, it's not the --  
 22 BY THE WITNESS:  
 23 A. You want --  
 24 MR. JOYCE: -- answer you want.

1 A. -- '04, right?  
 2 Q. Right. '04, right.  
 3 What I'd like to know is, as best you  
 4 can recreate it, how many times did you speak to  
 5 Mr. Spehar or his counsel after -- you know, during  
 6 the year 2004?  
 7 A. I -- I -- I don't even know if I could  
 8 give a -- a good estimate on that. Could have been  
 9 20. Could have been 10. Could have been 50. I  
 10 don't know.  
 11 Q. Okay.  
 12 A. I'm sorry.  
 13 Q. And those discussions began somewhere  
 14 about approximately ten days after you were  
 15 appointed, you said?  
 16 A. I had an initial conversation with  
 17 Mr. Todhunter about ten days after my appointment,  
 18 and then he sent me the Franco citation examination  
 19 documents, and then I don't recall when I next  
 20 spoke to anybody after that.  
 21 Q. I think we already covered your  
 22 conversation with Mr. Todhunter, correct?  
 23 A. Yes.  
 24 MR. JOYCE: Yes.

1 BY MR. MARINELLO:  
 2 Q. And -- and you said you weren't sure if  
 3 Mr. Franco was or wasn't on that call -- I'm --  
 4 A. No.  
 5 Q. -- sorry.  
 6 A. That was Mr. --  
 7 Q. I'm sorry.  
 8 A. -- Spehar.  
 9 Q. You weren't sure if Mr. Spehar was or  
 10 wasn't --  
 11 A. Yeah.  
 12 Q. -- on that call?  
 13 A. I don't -- I just don't recall.  
 14 Q. All right. Approximately when was the  
 15 next time you spoke to Mr. Todhunter or to  
 16 Mr. Spehar?  
 17 A. Again, I don't know. Probably sometime  
 18 after I had a chance to digest some of the -- the  
 19 citation documents.  
 20 Q. So about how long are we talking about?  
 21 A. I don't know. I don't -- I'm just  
 22 speculating. I really don't -- don't know.  
 23 Q. Few days after you got them?  
 24 A. Oh, I don't remember when I received

1 concerning the security status of this claim?  
 2 A. Yes.  
 3 Q. And -- and the trial was approximately  
 4 November 24th and 25th of 2008?  
 5 A. Yes.  
 6 Q. And so you're telling me that -- that  
 7 you didn't meet with Mr. Spehar about this  
 8 malpractice claim until --  
 9 A. I --  
 10 Q. -- until then?  
 11 A. I have to tell you something. I  
 12 don't -- I don't have a recollection about meeting  
 13 him face to face.  
 14 Q. Um-hum. And you don't have a  
 15 recollection about meeting Mr. Todhunter prior to  
 16 November 24, 2008 either?  
 17 A. Oh, no. I've seen Mr. Todhunter many  
 18 times.  
 19 Q. Well, I mean, have you seen him about  
 20 the -- met with him about the malpractice claims?  
 21 A. I thought that Mr. Todhunter -- we may  
 22 have had -- we may have had coffee together at some  
 23 point in time, but I don't -- you know, it wasn't a  
 24 specific meeting to sit down and talk to him about

1 them exactly. I -- you know, I'd just be  
 2 speculating. I'm not sure. Certainly within a  
 3 couple of weeks, I would imagine.  
 4 Q. Okay.  
 5 A. I don't know if that gives you a good  
 6 enough time frame or not, but that's about the best  
 7 that I can do.  
 8 Q. All right. And did you -- did  
 9 you actually -- when is the first time you had a  
 10 meeting with Mr. Todhunter or with Mr. Spehar?  
 11 A. I don't think I actually met. I think  
 12 we just talked on the phone. I didn't meet with  
 13 Mr. Todhunter face to face. We just spoke on the  
 14 phone.  
 15 Q. Did you ever meet with Mr. Spehar face  
 16 to face?  
 17 A. No, I don't -- I don't remember seeing  
 18 Mr. Spehar, frankly, at all. You know, I'm -- I  
 19 know this -- I don't think I -- I met him until we  
 20 had the trial in Court. I'm trying to remember if  
 21 I remember seeing him.  
 22 Q. When you say -- when you say you had --  
 23 when you refer to the trial in Court, you're  
 24 talking about the litigation between you and he

1 this. I mean --  
 2 Q. When you --  
 3 A. -- we may have met each other for -- you  
 4 know, in Court or whatever, and we sat down and  
 5 talked about the status of the -- the citation and  
 6 where we were with respect to a carve-out, things  
 7 of that sort, things that he was interested in.  
 8 Q. But you didn't talk to him about the  
 9 malpractice claims at that meeting?  
 10 A. I really didn't talk to Mr. Todhunter  
 11 much about the validity of the underlying claim.  
 12 Some of that was done with Mr. Klenda, more so than  
 13 with Mr. Todhunter.  
 14 Mr. Todhunter was really bankruptcy,  
 15 local counsel, and his counsel -- his firm was  
 16 hired to register the judgment in DuPage County,  
 17 Circuit Court, issue the citation, conduct the  
 18 citation examination of Mr. Franco, and to initiate  
 19 the involuntary bankruptcy.  
 20 Q. Um-hum. And Mr. Klenda, did you have a  
 21 meeting with him at any point in time?  
 22 A. No. The only time I met Mr. Klenda was  
 23 in 2008 at the trial.  
 24 Q. Okay. Did you have conversations with

1 Mr. Klenda in the 2004 time frame after you were  
2 appointed?

3 A. I'd have to look at my documents and  
4 see. We may have had e-mail discussions during  
5 that period of time, but I think I spent most of my  
6 time determining the validity -- of what I believed  
7 the validity of the judgment and the -- and the  
8 fact that the citation was entered and the basics  
9 of what else was involved with the case.

10 In an involuntary, you have to make a  
11 determination whether there was any other assets  
12 there.

13 So for the most part, the beginning of  
14 that kind of a case, even though there's litigation  
15 possible -- I know about the litigation. I had to  
16 be told about the -- the software, and I needed to  
17 ask questions, because there are no schedules or  
18 statements of affairs, to determine if there were  
19 any other potential assets out there.

20 So that -- most of my initial first  
21 probably 30 or 40 days of the case relate to those  
22 kinds of activities.

23 Q. Um-hum. How many times did you talk to  
24 Mr. Klenda in the first 30 or 40 days after you

1 could have been 3, could have been 10. I don't  
2 think it was 50, but, you know, it -- it was  
3 probably somewhere between 5 and 10 times, I would  
4 think for sure.

5 Q. What did -- what did you talk to  
6 Mr. Spehar and Mr. Todhunter about in those early  
7 phone calls?

8 A. I don't know. We talked about  
9 Mr. Franco's deposition testimony, his citation  
10 testimony, the entry of the judgment in California,  
11 those kinds of things.

12 I think Mr. Spehar must have mentioned  
13 something about the fact that he thought that there  
14 was a -- a cause of action against Mayer Brown and  
15 Mr. Given arising out of the representation of  
16 Mr. Given and Mayer Brown of CMGT. But -- well,  
17 that's --

18 Q. What -- what did you discuss about  
19 Mr. Franco's deposition testimony in the citation  
20 proceeding?

21 A. Oh, I don't know. I don't recall now.

22 Q. Well, what did Mr. -- what did  
23 Mr. Franco say in his deposition testimony in the  
24 citation proceeding that was of any interest to

1 were appointed?

2 A. I have no clue, not without looking at  
3 it. I don't --

4 Q. Um-hum.

5 A. -- know if we talked or it was just  
6 e-mails.

7 Q. Um-hum.

8 A. He may have called me up to say, "Hi,  
9 how are you? I'm Steve Klenda," but I don't recall  
10 that conversation.

11 Q. Did you have conversations with  
12 Mr. Spehar during that time frame?

13 A. With -- with representation of counsel.

14 Q. Who would have -- who would have been on  
15 the phone call --

16 A. It would have --

17 Q. -- with him?

18 A. -- been Mr. Todd and/or Mr. Klenda, if  
19 at all.

20 Q. Okay. And that's the 10, 20, 30, 50,  
21 you don't know how many --

22 A. I don't even --

23 Q. -- there were?

24 A. -- know, yeah. It could have been 5,

1 you?

2 A. Well, he said that he had resigned as  
3 the president of -- of CMGT, but that he was still  
4 continuing to act as -- I don't know, not really an  
5 agent; an agent is the wrong term -- in -- in some  
6 kind of a capacity to assist with the liquidation  
7 or the wind-down of the company.

8 And I don't recall now offhand what his  
9 testimony said. I'd have to go back and look at  
10 it. It's been a long time since I've read it.

11 Q. Um-hum. Anything else you remember  
12 about Mr. Franco's deposition testimony in the  
13 citation proceeding?

14 A. I'm sorry. I -- I don't without looking  
15 at it.

16 Q. But you understood Mr. Franco to be  
17 trying to wind CMGT down -- I'm sorry, CMGT down in  
18 that September, October, 2003 time frame?

19 A. Yes, to the extent that it -- it was not  
20 ongoing business operations any longer. I think  
21 after the judgment was entered, it -- it kind of  
22 terminated.

23 Q. Well, the judgment was entered in  
24 March 18, 2004, correct?

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1 A. Well, then that would -- then I'm wrong  
 2 about the time period, because I didn't talk to  
 3 Mr. -- he said that he resigned in 2003, but  
 4 obviously, he was there yet when -- to get served  
 5 the process, or the Secretary of State of Delaware  
 6 got served, one or the other.  
 7 Q. But in the September, October, 2003 time  
 8 frame, Mr. -- Mr. Franco was trying to wind down  
 9 CMGT and take care of whatever remaining business  
 10 it had, right?  
 11 A. Again, I'm not sure if it's then or what  
 12 his process -- when he was testifying in the  
 13 citation proceeding later, that that's what his --  
 14 his role had turned out to be.  
 15 I didn't really ask him his role or --  
 16 or see anything that I can recall about what his  
 17 role was in September of '03. It was really during  
 18 the -- during the months or after the judgment was  
 19 entered by Spehar in '04.  
 20 Q. What do -- what do -- what do you  
 21 remember Spehar telling you about the -- the  
 22 malpractice action against Mayer Brown?  
 23 A. What do I remember?  
 24 Q. Um-hum.

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1 A. In -- in what regard?  
 2 Q. What did Spehar tell you about the  
 3 malpractice claims against Mayer Brown in his  
 4 conversations with you?  
 5 A. Well, in brief, he -- he essentially  
 6 told me that he believed that there was a breach of  
 7 his agreement respecting Spehar Capital, that he  
 8 initiated litigation as a result of the breach,  
 9 that CMGT was served with process in California, a  
 10 judgment was entered, and that Mayer Brown and --  
 11 and Mr. Given were representing CMGT and failed to  
 12 appear and defend.  
 13 I -- I mean, that's putting it kind of,  
 14 you know, in a distilled fashion, but I don't  
 15 recall any other specifics. Unless somebody could  
 16 refresh my recollection of something, I don't  
 17 really, you know...  
 18 MR. MARINELLO: All right. What -- what  
 19 exhibit number are we up to?  
 20 THE COURT REPORTER: 34.  
 21 MR. MARINELLO: All right. Would you mark  
 22 that exhibit, please.  
 23 (WHEREUPON, a certain document was  
 24 marked Defendant's Exhibit No. 34,

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1 for identification, as of  
 2 01/19/2009.)  
 3 MR. JOYCE: You said you're on 34?  
 4 MR. MARINELLO: Yes.  
 5 MR. JOYCE: How about 33?  
 6 THE WITNESS: 33 was the complaint, I think.  
 7 MR. JOYCE: You're right. Very good.  
 8 BY MR. MARINELLO:  
 9 Q. Okay. As 34, I've marked a -- an e-mail  
 10 from Gerry Spehar to Irwin -- Irving Bailey and  
 11 also with carbon copy to Lou Franco. Have you ever  
 12 seen this document before?  
 13 A. I don't have a present recollection.  
 14 It's possible it's in our documents, but I don't --  
 15 haven't seen it in a very long time if I've seen  
 16 it.  
 17 Q. Okay. The -- the PI. number at the  
 18 bottom indicates it came from your files, correct?  
 19 A. I -- yes, well, we produced these, so it  
 20 must be in our files somewhere.  
 21 Q. Okay. If you look at the fourth  
 22 paragraph of this e-mail, it -- it says that, "We  
 23 currently service four clients with 9,000  
 24 employees."

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1 A. Um-hum.  
 2 Q. You need to answer verbally.  
 3 A. Yes. I'm sorry. I apologize.  
 4 Q. Okay. And it also says, "In" -- "In the  
 5 first quarter of 2002, we had 11 clients with over  
 6 46,000 employees" --  
 7 A. Um-hum.  
 8 Q. -- right?  
 9 A. Yes.  
 10 Q. So that -- that indicates there's been  
 11 quite a drop in the number of employees covered by  
 12 their product, doesn't it: from 46,000 down to  
 13 9,000?  
 14 A. Well, obviously, from 30 -- 40 -- 30 --  
 15 46,000 down to 9 would be a reduction.  
 16 Q. Okay. And do you have any reason to  
 17 doubt the truth of that statement?  
 18 A. I don't have any reason to either  
 19 believe or disbelieve. It's a statement made from  
 20 Mr. Spehar to Irving Bailey with a carbon copy to  
 21 Lou Franco, so I wasn't involved with this, so I  
 22 don't know. I just take it at face value.  
 23 MR. MARINELLO: 35, please.  
 24 (WHEREUPON, a certain document was

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1 marked Defendant's Exhibit No. 35,  
 2 for identification, as of  
 3 01/19/2009.)  
 4 BY MR. MARINELLO:  
 5 Q. As Exhibit -- I'm sorry.  
 6 As Exhibit 35 I have marked a  
 7 consolidated balance sheets document for 12/31/2001  
 8 and 12/31/2000, and then there's a consolidated  
 9 statement of income and retained deficit attached  
 10 to that --  
 11 A. Um-hum.  
 12 Q. -- and then some notes to financial  
 13 statements. These also were produced by your  
 14 office, correct?  
 15 A. Yes.  
 16 Q. And have you reviewed these financial  
 17 statements?  
 18 A. Not in some time.  
 19 Q. Did you ever review them?  
 20 A. I must have seen them. I -- I turned  
 21 them over, so --  
 22 Q. Do you have any reason to question the  
 23 accuracy of the information that this exhibit  
 24 contains?

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1 A. I haven't had -- done an audit, so I  
 2 don't know. This is something that's produced by  
 3 CMGT. I don't know if it's valid, invalid, or not,  
 4 but it was something that was produced, so I -- I  
 5 just don't have an independent knowledge, because I  
 6 didn't do an independent investigation as to  
 7 whether this was true or not true.  
 8 Q. Um-hum. You've never -- you've never  
 9 tried to determine what the financial condition of  
 10 the company was on these dates?  
 11 A. No.  
 12 MR. MARINELLO: Okay. All right. And then  
 13 would you mark this as the next exhibit, please.  
 14 (WHEREUPON, a certain document was  
 15 marked Defendant's Exhibit No. 36,  
 16 for identification, as of  
 17 01/19/2009.)  
 18 BY MR. MARINELLO:  
 19 Q. As Exhibit 36 I've marked a --  
 20 consolidated balance sheets for CMGT, Inc., as of  
 21 5/31/2002 and 12/31/2001, and attached to that are  
 22 consolidated statements of income and retained  
 23 deficit for the same time periods.  
 24 Have you seen this document before?

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1 A. Same time periods? Looks like these are  
 2 for 5/13 of '02, and 12/31/01, right?  
 3 Q. That's what I just said.  
 4 A. Oh, I -- I apologize. I didn't hear  
 5 that. Yes, that's what it says.  
 6 Q. Okay. And, again, these are from your  
 7 office's --  
 8 A. Yes.  
 9 Q. -- production, correct?  
 10 A. Right.  
 11 Q. Have you ever investigated -- do you  
 12 have any reason to believe these figures are  
 13 inaccurate?  
 14 A. Again, I've not done an independent  
 15 evaluation or had accountants or anybody else to do  
 16 these things, so I don't know, but it's just in the  
 17 books and records of CMGT.  
 18 Q. Um-hum.  
 19 (WHEREUPON, a certain document was  
 20 marked Defendant's Exhibit No. 37,  
 21 for identification, as of  
 22 01/19/2009.)  
 23 BY MR. MARINELLO:  
 24 Q. And then as Exhibit 37 I have marked

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1 consolidated balance sheets for CMGT as of  
 2 9/30/2002 and 12/31/2001 and a corresponding  
 3 nine-month period income statement.  
 4 These also came from your office,  
 5 correct?  
 6 A. They did.  
 7 Q. And do you have any reason to doubt the  
 8 accuracy of the statements that are on these -- on  
 9 this document?  
 10 A. No. Same answer that I had before. I  
 11 haven't done an independent evaluation. I've not  
 12 hired an accountant to determine whether these  
 13 figures are correct or incorrect. I just accepted  
 14 it's in the books and records of CMGT. I don't  
 15 even know who prepared those.  
 16 Q. Um-hum.  
 17 MR. MARINELLO: Would you mark that, please.  
 18 (WHEREUPON, a certain document was  
 19 marked Defendant's Exhibit No. 38,  
 20 for identification, as of  
 21 01/19/2009.)  
 22 BY MR. MARINELLO:  
 23 Q. Okay. As Exhibit 38 I've marked an  
 24 e-mail from Gerry. Spehar to you dated November 16,

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1 2006. Is that an e-mail you received from Spehar  
 2 on that date?  
 3 A. Looks like it might be.  
 4 Q. Mr. Grochocinski, what is -- what is  
 5 your involvement in the pleadings that get filed in  
 6 the litigation with respect to the Mayer -- Mayer  
 7 Brown case? Do you review the pleadings before  
 8 your counsel files them?  
 9 A. I certainly get copies.  
 10 Q. Do you review them before they're filed?  
 11 A. Yeah, for the most part.  
 12 Q. Do you check them to see if you agree  
 13 with what they're -- they say?  
 14 A. Yes.  
 15 Q. And do you check them to see whether  
 16 they're accurate or not?  
 17 A. Well, I'm not exactly sure what you mean  
 18 by that. Do I read them over and -- and believe  
 19 that they essentially set forth the -- our -- our  
 20 allegations and that we haven't committed, you  
 21 know, a falsehood to the best of my knowledge, yes.  
 22 Q. If there's something in them which you  
 23 disagreed with, you would you bring that to your  
 24 counsel's attention, correct?

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1 A. Yeah, if I -- if I caught it, sure.  
 2 MR. MARINELLO: 39.  
 3 MR. JOYCE: 39, right?  
 4 (WHEREUPON, a certain document was  
 5 marked Defendant's Exhibit No. 39,  
 6 for identification, as of  
 7 01/19/2009.)  
 8 BY MR. MARINELLO:  
 9 Q. As Exhibit 39 I've marked a -- an e-mail  
 10 from Gerry Spehar to Gerry Spehar, is what it says  
 11 at the top, but if you look down the course of  
 12 e-mails, you'll see that there's e-mails that were  
 13 to you also.  
 14 One from Gerry Spehar dated April 3rd,  
 15 2006, to you, for example, is the very next one  
 16 down. Do you see that?  
 17 A. I'm sorry. I'm just trying to review  
 18 this. I -- again, I apologize. Tell me what --  
 19 what the question is again.  
 20 Q. These are e-mails that you received or  
 21 were sent to Mr. Spehar on or about the date they  
 22 bear, correct?  
 23 A. Says from Gerry Spehar to me, to me from  
 24 Klenda, from me to Steve Klenda with a carbon copy

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1 to Mr. Todhunter.  
 2 Q. Okay. So these are all e-mails that you  
 3 received or sent on -- on or about the dates that  
 4 they bear, correct?  
 5 A. I assume so.  
 6 MR. MARINELLO: Okay. Would you mark that as  
 7 40, please.  
 8 (WHEREUPON, a certain document was  
 9 marked Defendant's Exhibit No. 40,  
 10 for identification, as of  
 11 01/19/2009.)  
 12 BY MR. MARINELLO:  
 13 Q. As Exhibit 40, I've marked an e-mail to  
 14 you -- I'm sorry, from you to Steve Klenda, dated  
 15 February 25th, 2005. You did send this e-mail,  
 16 correct?  
 17 MR. JOYCE: Can I have one? I need a copy.  
 18 MR. MARINELLO: I'm sorry.  
 19 MR. JOYCE: That's fine.  
 20 MR. MARINELLO: There you go.  
 21 MR. JOYCE: Thanks.  
 22 BY THE WITNESS:  
 23 A. Yes, I believe I did.  
 24 BY MR. MARINELLO:

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1 Q. Okay. No more questions about that,  
 2 Mr. Grochocinski.  
 3 MR. MARINELLO: Next one.  
 4 (WHEREUPON, a certain document was  
 5 marked Defendant's Exhibit No. 41,  
 6 for identification, as of  
 7 01/19/2009.)  
 8 BY MR. MARINELLO:  
 9 Q. As Exhibit 41, I've marked an e-mail  
 10 from Mr. Klenda to you dated June 9, 2005. Is that  
 11 an e-mail that you received from Mr. Klenda on that  
 12 date?  
 13 A. I believe so.  
 14 Q. And then if you look at the e-mail  
 15 beneath that, that's one from you to Mr. Klenda on  
 16 June 9, 2005, correct?  
 17 A. Yes.  
 18 MR. MARINELLO: Okay. Did you get one of  
 19 those, Mr. Joyce?  
 20 MR. JOYCE: I did, yeah. Thanks.  
 21 (WHEREUPON, a certain document was  
 22 marked Defendant's Exhibit No. 42,  
 23 for identification, as of  
 24 01/19/2009.)

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1 BY MR. MARINELLO:  
 2 Q. As Exhibit 42 I have marked a letter  
 3 from you to Scott -- Scott Schreiber.  
 4 A. Okay.  
 5 Q. Is that a letter you sent to him about  
 6 that date?  
 7 MR. JOYCE: Can I have 42?  
 8 MR. MARINELLO: Yeah.  
 9 BY THE WITNESS:  
 10 A. I assume so.  
 11 BY MR. MARINELLO:  
 12 Q. Okay. And attached to it is the quit  
 13 claim bill of sale for the software that you sold  
 14 to Spehar Capital for \$1500, correct?  
 15 A. Yes.  
 16 MR. MARINELLO: If you'll give me five  
 17 minutes, I think we can finish this up.  
 18 MR. JOYCE: Great.  
 19 THE VIDEOGRAPHER: Going off the video record  
 20 at 4:35 p.m.  
 21 (WHEREUPON, the deposition was  
 22 recessed from 4:35 p.m. until  
 23 4:43 p.m.)  
 24 THE VIDEOGRAPHER: Going back on the video

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1 record at 4:43 p.m.  
 2 MR. MARINELLO: Okay. Mr. Grochocinski, I do  
 3 not have any more questions at this time.  
 4 I want to put on the record, though,  
 5 that at this deposition, your -- your counsel has  
 6 handed us some additional documents from Mr. Ross,  
 7 from Mr. Donwen, from Ms. Quarles, from Corporation  
 8 Service Company.  
 9 I think that's probably all of it, and  
 10 we will have those Bates numbered and --  
 11 THE WITNESS: Yes, and I apologize. They were  
 12 contained in my adversary file relative to the  
 13 investors, and I didn't realize that they were  
 14 there. So I apologize for not having them turned  
 15 over to you earlier.  
 16 MR. JOYCE: Okay. Thank you very much.  
 17 THE WITNESS: Thank you.  
 18 THE COURT REPORTER: Signature?  
 19 MR. JOYCE: We'll reserve signature.  
 20 FURTHER DEPONENT SAITH NOT.  
 21  
 22  
 23  
 24

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1 IN THE UNITED STATES DISTRICT COURT  
 2 NORTHERN DISTRICT OF ILLINOIS  
 3 EASTERN DIVISION  
 4 DAVID GROCHOCINSKI, etc., )  
 5 Plaintiff, )  
 6 -vs- ) No. 06 C 5486  
 7 MAYER BROWN ROWE MAW LLP and )  
 8 RONALD B. GIVEN, )  
 9 Defendants. )  
 10 I hereby certify that I have read the  
 11 foregoing transcript of my deposition given at the  
 12 time and place aforesaid, consisting of Pages 1 to  
 13 390, inclusive, and I do again subscribe and make  
 14 oath that the same is a true, correct and complete  
 15 transcript of my deposition so given as aforesaid,  
 16 and includes changes, if any, so made by me.  
 17  
 18 DAVID GROCHOCINSKI  
 19 SUBSCRIBED AND SWORN TO before me  
 20 this day of , A.D. 200 .  
 21  
 22 Notary Public  
 23  
 24

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1 STATE OF ILLINOIS )  
 2 ) SS:  
 3 COUNTY OF DU PAGE )  
 4 I, LINDA M. STRATTON, a Notary Public  
 5 within and for the County of DuPage, State of  
 6 Illinois, and a Certified Shorthand Reporter of  
 7 said state, do 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



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1 hand and affix my seal of office at Chicago,  
 2 Illinois, this 29th day of January, 2009.  
 3  
 4  
 5  
 6  
 7 Notary Public, DuPage County, Illinois  
 8 My commission expires 7/2/11.  
 9  
 10 C.S.R. Certificate No. 84-2613.  
 11  
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 16  
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 22  
 23  
 24

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EXHIBITS

2 NUMBER	MARKED	
3 Defendant's Deposition Exhibit	PAGE	LINE
4 No. 15.....	72	5
5 No. 16.....	81	11
6 No. 17.....	91	4
7 No. 18.....	97	19
8 No. 19.....	98	14
9 No. 20.....	106	2
10 No. 21.....	118	24
11 No. 22.....	132	7
12 No. 23.....	136	21
13 No. 24.....	141	9
14 No. 25.....	148	11
15 No. 26.....	159	16
16 No. 27.....	161	21
17 No. 28.....	174	3
18 No. 29.....	176	8
19 No. 30.....	179	14
20 No. 31.....	194	1
21 No. 32.....	200	3
22 No. 33.....	208	13
23 No. 34.....	378	24
24 No. 35.....	381	1

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EXAMINATION

2 WITNESS	PAGE LINE	
3 DAVID GROCHOCINSKI		
4 By Mr. Marinello (a.m.)	4	5
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