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1 IN THE UNITED STATES DISTRICT COURT  
 2 NORTHERN DISTRICT OF ILLINOIS  
 3 EASTERN DIVISION  
 4 DAVID GROCHOCINKSI, not )  
 5 individually, but solely in )  
 6 his capacity as the Chapter 7 )  
 7 Trustee for the bankruptcy )  
 8 estate of CMGT, INC., )  
 9 Plaintiff, )  
 10 vs. ) Case No. 06 C 5486  
 11 MAYER BROWN ROWE & MAW LLP, )  
 12 RONALD B. GIVEN and CHARLES W.)  
 13 TRAUTNER, )  
 14 Defendants. )  
 15 The deposition of ROBERT GERARD  
 16 SPEHAR, called for examination, taken pursuant to  
 17 the Federal Rules of Civil Procedure of the  
 18 United States District Courts pertaining to the  
 19 taking of depositions, taken before SHARYN A.  
 20 EVERMAN, CSR No. 84-2315, a Notary Public within  
 21 and for the County of DuPage, State of Illinois,  
 22 and a Certified Shorthand Reporter of said state,  
 23 at 124 A South County Farm Road, Wheaton,  
 24 Illinois, on the 21st day of January, A.D. 2009,

1 (WHEREUPON, the witness was duly  
 2 sworn.)  
 3 ROBERT GERARD SPEHAR,  
 4 called as a witness herein, having been first  
 5 duly sworn, was examined and testified as  
 6 follows:  
 7 EXAMINATION  
 8 BY MR. CISZEWSKI:  
 9 Q. Good morning, sir. Can you state and  
 10 spell your name, please?  
 11 A. I'm Robert Gerard Spehar, but I go by  
 12 Gerry, G-e-r-r-y, S-p-e-h-a-r.  
 13 Q. Okay. Mr. Spehar, you agreed to  
 14 appear here in Illinois voluntarily if we paid  
 15 your travel costs?  
 16 A. That is correct.  
 17 Q. Okay. And are you represented by  
 18 counsel here this morning?  
 19 A. I am represented by counsel, Michael  
 20 O'Brien.  
 21 Q. And Mr. O'Brien advised me that your  
 22 travel costs were \$762.35, and he submitted  
 23 documentation for most of that and then estimated  
 24 the cab fare, so I'm handing you a check that we

1 at 8:59 a.m.  
 2 PRESENT:  
 3 EDWARD T. JOYCE & ASSOCIATES, P.C.,  
 4 (Eleven South LaSalle Street, 1600,  
 5 Chicago, Illinois 60603-1304,  
 6 312-641-2600), by:  
 7 MR. ROBERT D. CARROLL,  
 8 appeared on behalf of the Plaintiff;  
 9 NOVACK AND MACEY LLP,  
 10 (100 North Riverside Plaza,  
 11 Chicago, Illinois 60606-1501,  
 12 312-419-6900), by:  
 13 MR. STEVEN J. CISZEWSKI,  
 14 appeared on behalf of the Defendants;  
 15 O'BRIEN LAW OFFICES, P.C.,  
 16 (124A South County Farm Road,  
 17 Wheaton, Illinois 60187,  
 18 630-871-9400), by:  
 19 MR. MICHAEL A. O'BRIEN,  
 20 appeared on behalf of the Deponent.  
 21  
 22 REPORTED BY: SHARYN A. EVERMAN, C.S.R.  
 23 CERTIFICATE NO. 84-2315.  
 24

1 have made out to Spehar Capital LLC for \$762.35.  
 2 A. Thank you.  
 3 Q. And do you agree that that discharges  
 4 any obligation that my firm or my client had to  
 5 pay for your travel expenses to come here?  
 6 A. I do.  
 7 Q. Okay. Now, what is Spehar Capital  
 8 LLC?  
 9 A. It is a California limited liability  
 10 corporation.  
 11 Q. And what does it do?  
 12 A. It was formed initially as a trading  
 13 enterprise -- I came out of the securities  
 14 industry -- but also it helps advise -- not  
 15 advise, but actually consults with clients to  
 16 help them raise venture capital.  
 17 Q. And is Spehar Capital LLC still  
 18 operating?  
 19 A. Yes, it is.  
 20 Q. For the same functions that you just  
 21 mentioned?  
 22 A. Yes.  
 23 Q. And what's your role at Spehar  
 24 Capital?

1 A. I own it. I'm the only employee, and  
2 I am the president, CEO, and chief cook and  
3 bottle washer.

4 Q. Okay. And you own 100 percent of the  
5 LLC?

6 A. I do, yes.

7 Q. Has anyone other than yourself ever  
8 had any ownership interest in Spehar Capital?

9 A. No.

10 Q. And can you just explain in a little  
11 more detail what you do on a day-to-day basis?

12 A. Right now, I write briefs for lawsuits  
13 for the most part is what I do. I have been very  
14 engaged in not only this action, but also the  
15 action the trustee has had against me; so I've  
16 been very, very involved with that lately.

17 Prior to having to deal with this, I  
18 took on a very limited number, extremely limited  
19 number, of clients who after -- I initially  
20 worked in the securities industry for 25 years,  
21 mostly in mortgage-backed sales and trading.

22 I operated as Spehar Capital to do  
23 securities sales and trading for quite a while  
24 and then began to get into venture capital on my

1 solicited me. I saw the opportunity there, and I  
2 did work on two deals with those people because  
3 largely of the affiliation with quality players  
4 they had -- Mayer Brown, Hartford Insurance, and  
5 the characters themselves that were involved, Lou  
6 Franco and Wayne Baliga, B-a-l-i-g-a.

7 I thought this was a golden  
8 opportunity, and so I devoted myself to it for  
9 2 years and primarily those two deals, MOIC and  
10 CMGT.

11 Q. Now, has Spehar Capital ever closed  
12 any financing for any of those four clients?

13 A. For the four clients?

14 Q. Um-hum.

15 A. Spehar Capital for CMGT brought in a  
16 final term sheet that was a firm commitment from  
17 Sealaska that CMGT rejected. That would have  
18 closed.

19 Spehar Capital also brought in -- was  
20 instrumental in bringing in per the contract a  
21 term sheet or letter of intent for Newco, which  
22 definitely would have closed.

23 Q. But none of the clients actually  
24 obtained financing, is that right?

1 own as an investor and then eventually I was  
2 chased down for these opportunities by the ex-CFO  
3 of CMGT and I agreed to help them raise some  
4 money and selectively I work with other companies  
5 if it's something that I feel might benefit me.

6 Q. Okay. When was Spehar Capital formed?

7 A. The LLC itself was formed as an LLC in  
8 2001, right around the time that I became  
9 involved with CMGT. I believe it was sometime  
10 around June of 2001.

11 Prior to that I did business as Spehar  
12 Capital from the late '90s on in a sales and  
13 trading capacity.

14 Q. And how many clients has Spehar  
15 Capital had for the purpose of raising capital  
16 for the client?

17 A. Very limited. In fact, I  
18 have maybe -- I'm trying to recall -- somewhere  
19 in the neighborhood of four.

20 The two that I really focused my  
21 efforts on -- again, this was not something that  
22 I came to as a business that I wanted to really  
23 pursue. I came out of the industry pretty flush,  
24 and I was actually in a retirement mode when CMGT

1 A. Through no fault of their own, that's  
2 correct.

3 Q. And has Spehar Capital ever had any  
4 employees other than yourself?

5 A. No.

6 Q. You mentioned a little bit about it,  
7 but what was your last job before starting Spehar  
8 Capital?

9 A. I worked -- came to California in '86  
10 to work for First Interstate Bank, which was a  
11 primary dealer at the time, and I worked for 8 or  
12 10 years with First Interstate's trading division  
13 creating mortgage-backed securities products  
14 during the S&L crisis and trading with  
15 institutional investors. My clients were the  
16 State of California, the State of Michigan, all  
17 of the top money managers, many of them, Freddie  
18 Mac.

19 I then transitioned once -- I believe  
20 First Interstate was bought by Security Pacific,  
21 which was then bought by Wells Fargo.

22 I worked for Standard Charter. They  
23 hired me for a while as a new product specialist,  
24 as vice president of new products.

1 I then worked for Alex Brown & Sons,  
2 started an L.A. office for them in sales and  
3 trading mortgage-backed securities.

4 And then when Alex Brown was bought by  
5 Deutsche Bank, I believe -- I'm not sure -- I  
6 elected to stay in L.A. I worked -- then I  
7 started the first iteration of Spehar Capital.

8 I worked as Spehar Capital affiliated  
9 with a firm called Briarwood Securities to clear  
10 my trades and to actually settle my trades,  
11 because I was not a broker-dealer, in the late  
12 '90s for a period of maybe 2 years.

13 That's when I met Mike Bowers, who was  
14 the CFO of CMGT. He was familiar with my trading  
15 and sales, which at that time I was trading with,  
16 I believe, Goldman Sachs and Salomon Brothers and  
17 numerous securities, many clients like that, so I  
18 had a pretty good volume of trades going. Mike  
19 knew that I knew those folks, and he solicited me  
20 for CMGT.

21 A couple years later after that  
22 iteration of Spehar Capital, I was hired by  
23 Nomura Securities. I worked for them for a  
24 couple of years.

1 capacity that I was doing for CMGT. I was very  
2 well qualified for it, but I had not worked in  
3 that specific area.

4 I had helped -- the company that I had  
5 made the money on was a company called  
6 Authorizer. It was the first iteration -- it was  
7 a Nasdaq-traded stock. It was the first  
8 iteration of the Internet securities firms. It  
9 was funded by Goldman Sachs and Citibank, I  
10 believe, and I helped that company after I had my  
11 investment in it to expand its market in the  
12 United States; so I was working with them on that  
13 sort of a basis.

14 I was also semi-involved with a friend  
15 of mine in the type of trading opportunities that  
16 are an alternative to going public, so it's --  
17 these are reporting shells that are either  
18 created or existing on exchanges and that you can  
19 merge a nonpublic company into as a cheaper way  
20 of going public; so I had some experience with  
21 that.

22 Q. Okay. Can you tell me about what kind  
23 of college or graduate level degrees that you  
24 have?

1 And then during my first tenure with  
2 Spehar Capital, I also began investing in venture  
3 capital, and I had a very good success with a  
4 couple of firms during the dot-com run-up that  
5 allowed me to make a bunch of money and I  
6 retired. Subsequent to that, I unretired.

7 Q. Hold on a second.

8 So when was it that you retired back  
9 after the venture capital investments?

10 A. I retired from Nomura Securities in  
11 March of 2000, March or April of 2000, I believe.

12 Q. And then when was it that you came out  
13 of that retirement?

14 A. When Mike solicited me to help CMGT  
15 out in -- I believe my first contract with CMGT  
16 was June of 2001. I don't know if I actually  
17 signed a contract at that point in time, but  
18 that's when I began working for them.

19 We signed, I think, our first contract  
20 in November or October of 2001.

21 Q. Prior to signing the contract with  
22 CMGT in about October of 2001, did you have any  
23 experience finding financing for businesses?

24 A. No. I mean, not directly in the same

1 A. I have a B.A. from the University of  
2 Colorado, and then I have a chartered -- I'm a  
3 chartered financial analyst, which is a  
4 three-year graduate level program in finance.

5 Q. Is that from a school or an entity, or  
6 who issues those?

7 A. It's the Chartered Financial  
8 Analyst -- I can't remember what they call it  
9 right now, but I believe it's the Chartered  
10 Financial Analyst Institute or something.

11 It's a program that is -- there are  
12 maybe a hundred thousand or a little more  
13 worldwide CFAs, probably more than that right  
14 now. It's a three-year, very rigorous testing  
15 program that focuses on finance, focuses on  
16 ethics, and it's pretty much de rigeur for  
17 portfolio managers, investment bankers, advisors  
18 in the financial services industry.

19 If you look up the institute, you'll  
20 see it's an equivalent of a Ph.D. in finance.

21 Q. Okay. And do you have any other  
22 professional licenses or certifications?

23 A. They may have lapsed now because I  
24 didn't keep them up, but I was a Series 7

1 license, Series 63, and then I was also as a  
2 principal, which I believe is a Series 65.

3 Q. Do those series relate to what trading  
4 you can do?

5 A. I believe the 63 is commodities  
6 trading; the Series 7 is a general securities  
7 license; and then the Series 65 -- I can't  
8 remember the number -- it's the principal, so  
9 you're allowed to actually govern an office,  
10 which I needed when I was running Spehar Capital  
11 as a trading entity.

12 Q. Now, you mentioned that your first  
13 interaction with CMGT was through Mike Bowers, is  
14 that right?

15 A. Yes.

16 Q. And did he approach you?

17 A. Yes.

18 Q. And did he call you? Was it an  
19 e-mail? What form of communication was it?

20 A. You know, I can't recall. We are  
21 talking -- I believe Mike was -- I was dealing  
22 with Mike on a fairly -- well, when I was running  
23 Spehar Capital, I was actually a satellite office  
24 of Briarwood Securities and then clearing through

1 It was a very, very difficult -- I  
2 would say venture-capital-wise a more difficult  
3 market that we have today capital-markets-wise,  
4 extremely difficult.

5 So CMGT, if I recall, had a financing  
6 that was presented to them that they could have  
7 taken in the fall of 1999. They didn't do it,  
8 and then they got -- were having a very hard time  
9 raising money.

10 But they had -- so they had turned  
11 down a deal, the former chairman, and then I  
12 think Lou Franco came on board. They tried to  
13 chase that one down and didn't have any luck  
14 because of the environment, and that's when Mike  
15 approached me to try and help them, because he  
16 knew of my institutional investor connections.

17 But it was the dot-com environment  
18 that was extremely difficult, and then it was  
19 compounded by 9/11 when that happened.

20 Q. Okay. And did you have an  
21 understanding at the time of why CMGT needed or  
22 wanted this financing?

23 A. Yeah. CMGT at that time had  
24 instituted a strategic partnership with Hartford

1 another firm. I interacted with Mike on a very  
2 regular basis because I was doing daily trades,  
3 so we knew each other pretty well.

4 When he approached me, I can't  
5 remember when that exactly was. It was sometime  
6 after that, I believe, when I was -- after I had  
7 actually left Nomura Securities. And I really  
8 can't recall if it was e-mail or in writing or  
9 phone calls, but I know that it was probably more  
10 phone calls.

11 Q. Okay. So was Mike Bowers using Spehar  
12 Capital to do his trades? Is that what was  
13 happening?

14 A. Spehar Capital was using Mike Bowers'  
15 firm, Briarwood Securities, to do its trades, and  
16 then I was clearing through another firm.

17 Q. Okay. And when you first talked with  
18 Mike about CMGT, what is it that he asked you to  
19 do or how --

20 A. They had -- 2000, if you recall, was  
21 the dot-com crisis. March, 2000, was when the --  
22 prior to 2000, pretty much any 20-year-old with a  
23 great idea could get funded by venture  
24 capitalists. Post-2000, almost no one could.

1 Insurance, and they were working with Cigna and  
2 Liberty Mutual as well.

3 Those three companies, as well as some  
4 other companies, were referring their  
5 disability -- these were three of the nation's  
6 top five disability insurers, and they were --  
7 CMGT's business helped their business in the  
8 sense that their clients were demanding of the  
9 service.

10 And they also had helped the insurers  
11 themselves mitigate their disability costs  
12 because it offered earlier intervention in  
13 disabilities, and so they were advocates of CMGT.  
14 Hartford in particular was an advocate and had  
15 turned clients over to them and in an efforts to  
16 help CMGT get funded had put in place a letter of  
17 intent to enter into a strategic -- a formal  
18 strategic relationship with them whereby they  
19 would be -- CMGT would be servicing their  
20 clients. Hartford would refer the clients to  
21 CMGT at no cost whatsoever.

22 So Hartford -- just to answer your  
23 question, Hartford had -- part of that LOI was a  
24 \$2 million requirement, that CMGT have \$2 million

1 in funding, and so CMGT needed to raise that  
2 money to satisfy the requirements of Hartford's  
3 LOL.

4 Q. And what did -- after getting  
5 retained, what did Spehar Capital do generally to  
6 try to locate financing for CMGT?

7 A. Initially, it struck me -- I also had  
8 a relationship with a close friend of mine who  
9 ran some businesses for the Alaska native  
10 community. They are the -- in the sense of the  
11 financial incentives that they are allowed, they  
12 are the premium minority providers in the  
13 country. They have great minority advantages.

14 And I saw a link between this business  
15 and them because they -- as marketers, their  
16 business is basically using their minority  
17 advantage to help market. They like to own  
18 51 percent of a company. Under that business  
19 model, the company then becomes a minority  
20 company and, therefore, can access the Alaska  
21 native community's minority advantages in trying  
22 to sell their product.

23 So I saw that -- that was the first  
24 thing I did was go to the Alaska native community

1 financial projections that were up to speed to be  
2 able to do the job well, so I put those together  
3 for them over the course of the first year.

4 To the extent that I needed -- I was  
5 also ethically just very demanding of them that I  
6 wanted to represent things correctly; so to the  
7 extent that I needed financials to put that  
8 together, I got them from Jim Wong. I never  
9 really had access to anything on a full-on basis,  
10 however.

11 Q. Did you ever request something that  
12 you weren't given from CMGT as far as financial  
13 data?

14 A. I don't know. I can't remember.

15 Q. You can't recall an instance where  
16 that happened?

17 A. Yeah, I can't recall.

18 Q. At the time that you were working with  
19 CMGT to try to locate financing for it, were you  
20 working for any other clients whom you were  
21 trying to locate financing for?

22 A. Yes. I mean, there was one other  
23 client. There was -- I'm trying to remember.  
24 Advanced -- it was an early stage -- it was an

1 through a friend of mine and that started  
2 immediately. Then I worked with several other  
3 companies, also venture capitalists.

4 Q. Is it fair to say that, as part of the  
5 work you were doing for CMGT, that you became  
6 over time intimately familiar with their  
7 financial condition?

8 A. Yes.

9 Q. And did you have access to all of  
10 CMGT's books and records?

11 A. No.

12 Q. What did you have? What did you have  
13 access to?

14 A. My interface was CMGT was primarily  
15 Lou Franco, and Lou's -- I spoke also with Jim  
16 Wong, who was their accountant.

17 In the course of -- I created  
18 financial projections. When I came on board,  
19 even though it was not part of my initial  
20 engagement, I realized that CMGT was -- my job  
21 was to basically articulate their business to the  
22 investment community; and I as part of my prior  
23 life had learned how to model fairly well.

24 And I realized that they didn't have

1 environmental -- pie this current rush that we  
2 have for green financing, it was a company that  
3 created ethanol out of waste products.

4 So, yes, I was involved with that  
5 company. I can't recall the name right now, but  
6 Advanced something or other; and I hooked them up  
7 with some venture capitalists. It was not -- the  
8 timing was not quite right like it is now for  
9 green investments, so we didn't get that done.

10 But, yes, I was very involved in that  
11 company for a while, too. That was really the  
12 only other company that I can recall.

13 Q. Okay. Now, during the time you were  
14 working with CMGT, how much of your time would  
15 you spend working on this, the CMGT deal?

16 A. Nonstop. I was -- Lou Franco asked me  
17 to be president. That's how involved I was. I  
18 devoted 2 years of my life to those two  
19 opportunities, and those were primarily the two  
20 primary opportunities. Lou and I would have 10,  
21 15 conversations a day sometimes.

22 Q. Now, during that period of time, these  
23 2 years where you devoted all or most of your  
24 time to CMGT, did you forego other opportunities

1 that were presented to you?  
 2 A. Oh, yeah, a lot.  
 3 Q. Okay.  
 4 A. I wanted to be very selective from  
 5 what I was doing. Initially I didn't want to do  
 6 this; and then my financial situation changed, so  
 7 that was a bit of a driver, too.  
 8 But I was very selective about the  
 9 opportunities I wanted to be involved in, and I  
 10 saw great opportunity in CMGT and the MOIC, so  
 11 that's where I devoted my time.  
 12 Q. And while you were working with CMGT,  
 13 though, were there other opportunities that  
 14 presented themselves that you would have liked to  
 15 have gotten involved with?  
 16 A. Yes.  
 17 Q. But you couldn't because of the time  
 18 spent with CMGT?  
 19 A. Yeah, it was part of that.  
 20 Q. Now, you know who Ron Given is, right?  
 21 A. I sure do.  
 22 Q. And do you know for what reason he was  
 23 retained by CMGT?  
 24 A. I believe in reading his engagement

1 an understanding that this financing was  
 2 essential for CMGT to succeed as a business?  
 3 A. Yes.  
 4 Q. And if it didn't get this financing,  
 5 CMGT was probably going to fail; isn't that a  
 6 fair statement?  
 7 A. Yes. If they didn't get financed,  
 8 that they did need some financing.  
 9 Q. I want to talk about a couple  
 10 documents here.  
 11 MR. CISZEWSKI: Let's mark this as Spehar 1.  
 12 (WHEREUPON, a certain document  
 13 was marked Spehar Exhibit  
 14 No. 1, for identification, as of  
 15 1/21/09.)  
 16 BY MR. CISZEWSKI:  
 17 Q. Now, sir, you've been handed what we  
 18 have marked as Spehar Deposition Exhibit No. 1.  
 19 Do you recognize this document?  
 20 A. I do.  
 21 Q. Okay. And what do you recognize it to  
 22 be?  
 23 A. One of the documents that CMGT put  
 24 together to explain to potential investors,

1 letter it was to -- I think initially Mayer Brown  
 2 was retained to help CMGT with the acquisition of  
 3 TouchSpeed, and then there was also, I believe,  
 4 some -- I don't know if they were actively trying  
 5 to raise funds. Ron kind of deferred to me once  
 6 I came on board on that, but I believe there was  
 7 a component of the engagement that had to do with  
 8 that as well.  
 9 Q. Do you know what Ron's background is  
 10 or what his area of expertise is?  
 11 A. I knew him as a commercial -- his  
 12 involvement with CMGT mostly on the business  
 13 side, but Ron was -- you know, the way he dealt  
 14 with CMGT, he was the lawyer for absolutely  
 15 everything they did.  
 16 Q. Okay. But you know that Mr. Given  
 17 doesn't have a litigation background, right?  
 18 A. I didn't know that for certain. I  
 19 didn't know what his background was. I knew his  
 20 involvement with CMGT was mostly focused on the  
 21 business side, but, again, he did everything for  
 22 them. He was their own lawyer.  
 23 Q. Now, when CMGT approached you about  
 24 trying to locate financing for it, did you have

1 prospective investors, its position; market  
 2 position.  
 3 Q. Okay. Did you prepare this document?  
 4 A. I probably worked on this document  
 5 with Lou Franco jointly. He and I worked  
 6 together on most of these jointly.  
 7 Q. Okay. I want to direct your attention  
 8 to the third page of this document; and after the  
 9 end of the bullet point list, you see the  
 10 paragraph that starts, "This tracking  
 11 illustrates"?  
 12 A. Correct.  
 13 Q. Okay. At the very end of the third  
 14 line, there's a sentence that says, "Also CMGT  
 15 was generating both substantial RFP activity,"  
 16 and I want to stop there.  
 17 What is RFP activity?  
 18 A. Request for proposal.  
 19 Q. What does that mean?  
 20 A. That's an insurance term. CMGT was  
 21 piggybacking on the insurance experience of all  
 22 of its principals, including some of its major  
 23 investors, like Wayne Baliga; and in the  
 24 insurance business, Hartford, Cigna, Liberty

1 Mutual, they receive requests for proposals from  
2 clients as competitive proposals, and so they  
3 answer those with their proposals.

4 Q. Okay.

5 A. And in the course of answering those,  
6 they would include CMGT as a part of their  
7 proposal. That's what that refers to.

8 Q. So, in other words, if a client of  
9 Hartford went to Hartford looking for a proposal,  
10 Hartford might respond by presenting CMGT?

11 A. Yes, along with its disability  
12 insurance and those requests would come from  
13 Marsh, Aon, or sometimes directly from the  
14 clients; but usually they'll have a third party  
15 involved to generate those requests.

16 Q. And is that how CMGT got all of its  
17 business?

18 A. The majority of it; it got some  
19 direct. Of the clients they had -- just to give  
20 you an example -- I believe Atlanta Gas and Light  
21 might have come from Liberty Mutual, Honda of  
22 America came from Hartford, Howard Hughes Medical  
23 Institute came from Cigna.

24 I may have those names mixed up a

1 A. Yes.

2 Q. Okay. Then this paragraph continues  
3 in bold, "Bad News," and then there's a sentence  
4 there.

5 Can you explain what that sentence  
6 means?

7 A. Yes. Taking Hartford as an example or  
8 any of the insurance carriers, they were very  
9 supportive of CMGT. CMGT was viewed by all of  
10 the top players -- and you can see this very  
11 clearly in Sealaska's due diligence if you guys  
12 have that.

13 Marsh, Aon, all the top insurance  
14 companies viewed CMGT as the best of breed, the  
15 gold standard in this business. They wanted to  
16 do business with them.

17 Their reluctance was that they were  
18 not funded, and they wanted them to be -- as  
19 Hartford's LOI witnesses, they wanted \$2 million  
20 worth of funding. If CMGT attained that,  
21 Hartford we believed would have come right back  
22 on board. If CMGT did not, it would be very  
23 difficult to bring Hartford back.

24 Q. And what was the basis for your belief

1 little bit, but that's how they got a lot of  
2 their clients.

3 Q. Can you think of a CMGT client that  
4 did not come through the RFP process?

5 A. Yes. That would be eBay.

6 Q. Anybody else?

7 A. Possibly ZILOG also, and they were  
8 working with Providence Health Systems right when  
9 we were doing -- in 2003 when we were doing  
10 the -- I mean, there were a lot of direct  
11 proposals that did not turn into clients.

12 And, as I believe this document  
13 probably articulates, the major impediment to  
14 bringing clients on board was a look at CMGT's  
15 long-term viability, and that had to do with  
16 funding.

17 Q. If we continue after the reference to  
18 RFP activities, it says, "We had 11 clients with  
19 55,000 employees under contract as of January,  
20 2002."

21 A. Correct.

22 Q. And is that, to the best of your  
23 recollection, an accurate reflection of the  
24 client base that CMGT had at that time?

1 that Hartford would have come right back on board  
2 if CMGT had gotten the financing?

3 A. The depth of their willingness to --  
4 for a company this size, CMGT, to have a company  
5 of the size of Hartford turn over all of its  
6 clients on a regular basis to them, that's a very  
7 strong statement that they liked the service.

8 Q. Now, did the partnership that CMGT  
9 have with Hartford end at some point in time?

10 A. Yes.

11 Q. Do you recall when that was?

12 A. It was roughly the late December,  
13 2001/early 2002 range, I believe. Actually, it  
14 probably bled into maybe March, 2002, somewhere  
15 in there.

16 Q. What about the relationship that CMGT  
17 had with Cigna? Did that come to an end at some  
18 point?

19 A. That was -- I don't recall a formal  
20 termination of any relationship there. It wasn't  
21 as formal of a relationship either to begin with  
22 as it was with Hartford, so that's more of a  
23 question for Lou Franco.

24 I know they were still in the mix and



1 they were still occasionally referring clients,  
2 as well as Liberty Mutual.

3 Q. So if I ask you the same question for  
4 Liberty Mutual, the answer would be the same as  
5 Cigna?

6 A. Maybe a little more of a -- I believe  
7 there were more direct engagements with Liberty  
8 Mutual sometime around, let's say, March, April,  
9 2002, when we were working with some other  
10 venture capitalists to try and establish more of  
11 a formal relationship with them.

12 And so when you say "terminate," there  
13 were more direct discussions with them about  
14 that. I don't know if it was ever formally  
15 terminated or not, but there were more  
16 discussions with them than with Cigna.

17 Q. Did those discussions lead to  
18 anything?

19 A. An understanding, I think, that if  
20 CMGT were funded, Liberty Mutual would again  
21 refer clients to them.

22 Again, I think the main thing to take  
23 away here is that all of these major companies  
24 were dealing with CMGT for a reason. They had

1 relationship with Jackson Lewis?

2 A. Michael Lotito and, I think, Frank  
3 Alvarez were the two partners who were dealing  
4 with that. Their business was workplace issues.  
5 CMGT was a very -- they viewed CMGT as  
6 a very strong component of an overall strategy  
7 they were going to put in place to deal with  
8 workplace issues for their clients.

9 They represented, I believe, in the  
10 Sealaska due diligence that, of their client  
11 base, the major issue that they had was family  
12 medical leave compliance and absence management;  
13 so in terms of return to work strategies, CMGT  
14 was a big component of that.

15 Q. Did CMGT ever get any new clients or  
16 any business as a result of the relationship with  
17 the lawyers at Jackson Lewis?

18 A. No. That was -- again, they came on  
19 board roughly at the time we were doing the  
20 Sealaska due diligence. Everybody, including  
21 Jackson Lewis, was looking for CMGT to be funded.

22 Q. What about Aon? What was the nature  
23 of that relationship?

24 A. Greg Perez I believe was the fellow

1 other choices, and they viewed this company as  
2 the best of breed.

3 Q. Okay. But even though they were the  
4 best of breed, these companies still couldn't  
5 have a long-term relationship with CMGT without  
6 the funding?

7 A. Correct.

8 Q. Now, other than Hartford, Cigna, and  
9 Liberty Mutual, were there any other strategic  
10 partnerships that CMGT had?

11 A. They had relationships with ICS, which  
12 is Integrated Care Services I believe is the name  
13 of it. It's a California -- what's called a  
14 third-party administrator that deals with  
15 California school systems and some of the  
16 high-tech firms out there. So that was a  
17 strategic partnership that was ongoing.

18 And then they dealt on a less formal  
19 basis with Marsh and Aon as well and then Jackson  
20 Lewis, which is the largest employment law firm,  
21 employment -- I don't know what you call them.  
22 They deal with employment issues in the country.  
23 They have something like 40 partners.

24 Q. What was the nature of the strategic

1 there who was working with Lou. He was running a  
2 section of the country for Aon. I believe Greg  
3 was the person who referred Providence Health  
4 Systems to Lou.

5 Lou came out of Aon. Wayne Baliga was  
6 part of Aon, so the company had a strategic  
7 relationship with Aon from some management  
8 positions there. So they knew of the management  
9 and they knew of the business. Aon also, I  
10 believe, has its own absence management business.

11 But, you know, all of these  
12 companies -- and there's another testament right  
13 there. Marsh also has its own absence management  
14 business. I think it's called Sedgwick.  
15 Nevertheless, their arms that were dealing as  
16 third-party administrators were referring  
17 business to CMGT because it was that much better.

18 Q. Okay. Other than -- I mean, going  
19 back to Aon for a second, you mentioned that  
20 there was a possible referral of Providence  
21 Health Systems.

22 Is there any other business that  
23 CMGT --

24 A. Got from Aon?

1 Q. Yes.  
 2 A. That's a question for Lou. I don't  
 3 know.  
 4 Q. And what about Marsh? Can you explain  
 5 the nature of that relationship?  
 6 A. Same thing there. Dawn Darmore I  
 7 believe is the lady's name there at Marsh who was  
 8 running that side of the business for Marsh. She  
 9 was a proponent of CMGT. She wrote a letter of  
 10 recommendation to Sealaska.  
 11 And the same as Aon, basically, they  
 12 viewed CMGT as the premier provider, and she was  
 13 referring clients; but, again, she wanted to  
 14 only -- she wanted to know CMGT was funded before  
 15 she would really go great guns with that.  
 16 Q. Do you know how many clients were  
 17 referred?  
 18 A. I do not. Lou would know that.  
 19 Q. And what about ICS? What was the  
 20 nature of that relationship?  
 21 A. They were a more formal partner in the  
 22 sense -- Lou might have even had a formal written  
 23 agreement with them. I'm not sure if he did or  
 24 not.

1 A. Yes.  
 2 Q. And what is it?  
 3 A. This looks like an e-mail that was  
 4 from Lou to Tom Rogers of Odin Capital, a copy to  
 5 me about -- we were working with -- we were  
 6 trying to get Odin Capital to fund us at that  
 7 point in time.  
 8 Q. I think we've said Lou a couple of  
 9 time, both of us.  
 10 We are both referring to Lou Franco,  
 11 is that right?  
 12 A. Correct.  
 13 Q. And we have been throughout the  
 14 whole --  
 15 A. Yes, yes.  
 16 Q. Can you read the paragraph starting  
 17 with "Active Clients" -- it's the third  
 18 paragraph -- and ending with "Client Totals"?  
 19 A. "We have 7 active --"  
 20 Q. You don't have to -- just read it to  
 21 yourself.  
 22 A. Okay.  
 23 (Short pause.)  
 24 BY THE WITNESS:

1 But they referred -- if I recall, I  
 2 think Lou might have gotten eBay and ZILOG  
 3 through them. They were working on the  
 4 California school systems also.  
 5 Q. Now, do you know if ICS had any  
 6 hesitation about referrals because of the lack of  
 7 financing?  
 8 A. ICS was better about that. They were  
 9 not as reluctant as the others, although they did  
 10 have concerns.  
 11 Q. Okay. So there was some reluctance;  
 12 just not as much as others?  
 13 A. Yes, they still referred.  
 14 MR. CISZEWSKI: Go ahead and mark this as  
 15 Exhibit No. 2.  
 16 (WHEREUPON, a certain document  
 17 was marked Spehar Exhibit  
 18 No. 2, for identification, as of  
 19 1/21/09.)  
 20 BY MR. CISZEWSKI:  
 21 Q. Mr. Spehar, you've been handed what we  
 22 marked as Exhibit No. 2.  
 23 A. Yes.  
 24 Q. Are you able to identify what this is?

1 A. Okay.  
 2 BY MR. CISZEWSKI:  
 3 Q. And does this to the best of your  
 4 recollection accurately reflect the client base  
 5 that CMGT had at this time, which was about  
 6 February of 2002?  
 7 A. I believe so, yes.  
 8 Q. Okay. That's all the questions I've  
 9 got about that document.  
 10 (WHEREUPON, a certain document  
 11 was marked Spehar Exhibit  
 12 No. 3, for identification, as of  
 13 1/21/09.)  
 14 BY MR. CISZEWSKI:  
 15 Q. We have handed you what's been marked  
 16 as Deposition Exhibit No. 3.  
 17 A. Um-hum.  
 18 Q. Can you identify this document?  
 19 A. Yes, I can.  
 20 Q. What is this?  
 21 A. This appears to be an e-mail from me  
 22 to Andrea Davis, who was the liaison with  
 23 Siemens.  
 24 Q. Okay. And were you working on a

1 potential financing transaction with Siemens?  
2 A. Yes, and it was -- Siemens was being a  
3 liaison to the Washoe tribe.

4 Q. I want to direct your attention to  
5 Page 2 of this e-mail; and about a third of the  
6 way down, there's a paragraph that starts, "We  
7 currently service four clients."

8 If you could just read that to  
9 yourself, that entire paragraph.

10 (Short pause.)

11 BY THE WITNESS:

12 A. Okay.

13 BY MR. CISZEWSKI:

14 Q. You wrote this paragraph, right?

15 A. Yes, I believe I did.

16 Q. Okay. And so this was an accurate  
17 statement of what CMGT's client base was at this  
18 time, which was July of 2003, right?

19 A. Yes. Now, my information would all  
20 come through Lou, so that's -- when you say I  
21 wrote this, yes, but I was very careful about  
22 running everything I did through Lou.

23 Q. Well, for example, before you sent  
24 this e-mail, would Lou have reviewed the e-mail

1 time to be able to use their software services to  
2 service those clients in-house from Hartford.

3 Q. Okay. And was CMGT losing money at  
4 that point in time?

5 A. Yes.

6 Q. And did you know that at this point in  
7 time CMGT's officers weren't getting paid?

8 A. Did I know they weren't getting paid?  
9 I believe there were some checks being cut to  
10 them. I'm not sure. That was all between Lou  
11 and Jim Wong.

12 I don't think they were being fully  
13 paid. I don't know in what capacity they were  
14 being paid, but I believe there was some money  
15 flowing to them.

16 Q. Did you know that Lou Franco and other  
17 investors had been charging CMGT expenses to  
18 their own personal credit cards because CMGT had  
19 been --

20 A. I had been told that, yes.

21 Q. Who were you told that by?

22 A. Lou Franco.

23 Q. When did he tell you that?

24 A. Several times.

1 before it went out?

2 A. He may have -- I'm not sure -- but we  
3 would certainly have talked about it.

4 Q. Okay.

5 A. If not in particular for this e-mail,  
6 this would have been information that we would  
7 have talked about at some time prior to that and  
8 I was comfortable that he would be comfortable  
9 with it.

10 Q. Okay. So obviously there was a  
11 significant drop in CMGT's client base from early  
12 2002 --

13 A. Yes.

14 Q. -- in first couple of exhibits to July  
15 of 2003, is that right?

16 A. Definitely, yes.

17 Q. And the revenue dropped substantially  
18 as well?

19 A. Yes. And as reflected in here, what  
20 happened when Hartford became very concerned  
21 about funding, they took a lot of their clients  
22 back in-house.

23 And they actually, I believe, cut CMGT  
24 a hundred thousand dollar check at that point in

1 Q. Do you recall when the first time he  
2 told you that was?

3 A. No, I don't.

4 Q. Was it back when you were trying to  
5 negotiate the financing transactions?

6 A. There would be -- in putting  
7 together -- I mean, if you look at the  
8 projections that were put together, there's a  
9 CMGT obligations section there. I believe all of  
10 these credit card debts that he told me about are  
11 listed there, so yes.

12 Q. And these are projections that you put  
13 together?

14 A. With Lou.

15 Q. Okay.

16 A. I was the -- I was -- yes. I mean, I  
17 designed them. All of the inputs, the data, was  
18 from Lou, blessed by Lou.

19 Q. And these were projections that were  
20 constructed in 2002, 2003, that time frame?

21 A. They began construction in late 2001  
22 probably and then continued development from that  
23 point forward.

24 Q. Did you ever see any documentation of

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1 Lou's assertion to you that the officers were  
 2 charging things on their personal credit cards?  
 3 A. No.  
 4 Q. Did you have any reason to doubt what  
 5 he said about that?  
 6 A. No. I was very assiduous with him  
 7 telling him that I wanted to represent honestly  
 8 to clients, and so that's what I represented.  
 9 Q. So you believed him?  
 10 A. Yes.  
 11 Q. And would you say at this point in  
 12 time, which this e-mail is in July of 2003, that  
 13 CMGT was in a desperate financial condition?  
 14 A. Yes.  
 15 Q. And that was because they hadn't  
 16 gotten funding, is that right?  
 17 A. Correct.  
 18 MR. CISZEWSKI: This will be No. 4,  
 19 (WHEREUPON, a certain document  
 20 was marked Spehar Exhibit  
 21 No. 4, for identification, as of  
 22 1/21/09.)  
 23 BY MR. CISZEWSKI:  
 24 Q. Sir, we have handed you what's been

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1 marked as Spehar Deposition Exhibit No. 4.  
 2 Are you able to identify this  
 3 document?  
 4 A. Yes.  
 5 Q. What is it?  
 6 A. It's an e-mail that went to someone at  
 7 Warburg Pincus from me, copied to Lou Franco.  
 8 Q. And if you look towards the bottom of  
 9 Page 1, it looks like it has the same or very  
 10 similar "We currently service 4 clients"  
 11 paragraph --  
 12 A. Um-hum.  
 13 Q. -- that we saw from the last e-mail,  
 14 is that right?  
 15 A. It looks like it, yes.  
 16 Q. And so CMGT's financial condition  
 17 didn't improve between July and August of 2003,  
 18 is that right?  
 19 A. No.  
 20 Q. And no financing was obtained during  
 21 that time period?  
 22 A. No.  
 23 MR. O'BRIEN: I'm sorry. Can we just read  
 24 that question and answer back? I think there was

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1 a double negative that doesn't sound right.  
 2 MR. CISZEWSKI: Okay. Let me just ask a  
 3 different question.  
 4 BY MR. CISZEWSKI:  
 5 Q. Was any financing obtained by CMGT  
 6 between July and August of 2003?  
 7 A. During the month of August?  
 8 Q. Right.  
 9 A. No, not that I'm aware of.  
 10 THE WITNESS: Thank you.  
 11 MR. O'BRIEN: Sure.  
 12 MR. CISZEWSKI: Let's go ahead and mark this  
 13 as Exhibit No. 5, please.  
 14 (WHEREUPON, a certain document  
 15 was marked Spehar Exhibit  
 16 No. 5, for identification, as of  
 17 1/21/09.)  
 18 BY MR. CISZEWSKI:  
 19 Q. We have handed you what's been marked  
 20 as Spehar Deposition Exhibit No. 5.  
 21 Are you able to identify this  
 22 document?  
 23 A. Yes, I am.  
 24 Q. And what is it?

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1 A. This is an e-mail from myself to Lou  
 2 Franco copied to a couple of shareholders.  
 3 Q. And what was the involvement of  
 4 Warburg Pincus at this time?  
 5 A. This was 2003. We were now 2 years  
 6 post-9/11, and the venture capital market was  
 7 beginning to come back.  
 8 Warburg Pincus is perhaps the  
 9 premier -- one of the premier venture capitalists  
 10 in this country. They were looking seriously at  
 11 the absence management business as a potential  
 12 investment, and they out of the blue contacted  
 13 CMGT -- I think on reference from perhaps Marsh  
 14 or Aon -- and asked us to send them some  
 15 information so they could evaluate a potential  
 16 investment.  
 17 Q. When did Warburg Pincus contact CMGT?  
 18 A. Best of my recollection, it would have  
 19 been sometime maybe July, early August, somewhere  
 20 in there; late July or early August. I'm  
 21 guessing.  
 22 Q. Of 2003?  
 23 A. Correct. It was a surprise call.  
 24 Q. And did CMGT ever provide

1 documentation for Warburg Pincus to do any type  
2 of due diligence?

3 A. We provided our normal investment  
4 package materials that we provided.

5 In terms of -- yes. I mean, if you  
6 call that due diligence, yes. It was not an  
7 in-depth due diligence study like Sealaska did,  
8 but it was what we normally provided.

9 Q. And did Warburg Pincus pursue it after  
10 the initial information was provided?

11 A. They did not. I believe they thought  
12 that it was possibly too small of an investment  
13 for them. They are a very large venture capital  
14 firm.

15 Q. And do you recall when Warburg Pincus  
16 said they were out?

17 A. This e-mail is the 29th of August. It  
18 was sometime after that. I can't tell you  
19 exactly when.

20 Q. Okay.

21 A. I think it was fairly soon after that.

22 Q. And was Salman Niaz --

23 A. Salman Niaz. I'm not sure how you  
24 pronounce it, either.

1 A. This is a return to CMGT of the  
2 verbiage that we had sent them -- CMGT had sent  
3 them for a letter of intent that the Washoe had  
4 taken and put on their letterhead and returned to  
5 CMGT to sign so they could do a deal.

6 Q. Okay. And when did CMGT provide this  
7 language to the Washoe?

8 A. August 14th, and this was approved by  
9 Ron Given and Lou Franco, the language.

10 Q. And how do you know that?

11 A. Because I was involved in it. I wrote  
12 the original language, provided it to Ron and to  
13 Lou, and they marked it up and then gave  
14 approval.

15 Q. Did Mr. Franco later claim that you  
16 weren't authorized to send this language to the  
17 Washoe on August 14th?

18 A. I don't know. No, I don't believe  
19 that he ever claimed that this particular  
20 language I was not authorized to.

21 I think there were some changes to  
22 this language, additional changes, made by Ron  
23 Given and Lou Franco and maybe some other  
24 comments that I made that he claimed I wasn't

1 Q. Was that someone at Warburg Pincus?

2 A. Yes, he was. He was one of the people  
3 that was charged with reviewing the whole area of  
4 absence management.

5 Q. Great.

6 MR. CISZEWSKI: Mark this as Exhibit No. 6.  
7 (WHEREUPON, a certain document  
8 was marked Spehar Exhibit  
9 No. 6, for identification, as of  
10 1/21/09.)

11 BY MR. CISZEWSKI:

12 Q. Mr. Spehar, we have handed you what we  
13 have marked as Deposition Exhibit No. 6, and this  
14 is a copy of the malpractice complaint that was  
15 filed against Mayer Brown in the CMGT bankruptcy  
16 case.

17 A. Okay.

18 Q. And I want you to turn, if you would,  
19 to Exhibit Tab No. 6.

20 A. Okay.

21 Q. Can you identify what this document  
22 is, Exhibit 6?

23 A. Yes, I can.

24 Q. What is it?

1 authorized to; but this language, no, he did not.  
2 This language was approved by Lou and Ron to send  
3 to them.

4 Q. Okay. Great. Have you ever seen a  
5 signed copy of this document?

6 A. No. It was not signed, and the reason  
7 was that the Washoe -- I was involved in this, so  
8 I know this from personal knowledge.

9 The Washoe made an e-mail commitment  
10 to CMGT -- and you should have that in your Mayer  
11 Brown files -- that they were going to do the  
12 deal, and they sent this to CMGT to be signed  
13 because they had put it on their letterhead and  
14 they wanted to make sure that CMGT approved it  
15 first and signed it and then they were going to  
16 sign it.

17 It never got to the signing stage  
18 because Ron Given got involved.

19 Q. Okay. Can you go back to the body of  
20 the complaint and take a look at Paragraph 45,  
21 which is on Page 12?

22 A. Yes.

23 Q. Can you read the first sentence of  
24 that paragraph to yourself?

1 A. Yes.  
 2 MR. O'BRIEN: I'm sorry. Which paragraph?  
 3 MR. CISZEWSKI: Paragraph 45, first  
 4 sentence.  
 5 BY THE WITNESS:  
 6 A. I see that.  
 7 BY MR. CISZEWSKI:  
 8 Q. And that sentence isn't true, is it?  
 9 A. They never did deliver a signed letter  
 10 of intent, no, they did not. They did commit to  
 11 delivering one.  
 12 When they actually put it on their  
 13 letterhead, the chairman wanted to send it to  
 14 CMGT to sign first; and so there became a  
 15 disconnect there between what they had committed  
 16 to and what they actually ended up doing.  
 17 But, no, they ended up not signing it,  
 18 again because they expected CMGT to sign it  
 19 first.  
 20 Q. Okay. So these last three words,  
 21 "which they did," those are false, right?  
 22 A. They are a mistake.  
 23 Q. Okay. You've talked to the trustee in  
 24 this case, David Grochocinski, right?

1 don't recall any instance in which either the  
 2 trustee or his counsel asked you if the Washoe  
 3 signed a letter of intent?  
 4 A. Specifically that, no, I do not.  
 5 Q. And the Washoe deal didn't close, is  
 6 that fair?  
 7 A. That is true.  
 8 Q. Okay. And in your opinion, what are  
 9 the reasons that the Washoe didn't close?  
 10 A. The reason it did not close was  
 11 because Ron Given changed the terms that you see  
 12 in that Exhibit 6 here to more onerous terms that  
 13 the Washoe could not live with.  
 14 Specifically he redlined this and sent  
 15 it back to them stating that they would have to  
 16 have their due diligence done, A, by  
 17 September 30th, and, B, CMGT -- so they were not  
 18 going to have any sort of extension of  
 19 October 15th, which they had expected; and, B,  
 20 that CMGT could close its Newco deal at any point  
 21 prior to September 30th, which would obviate  
 22 their due diligence.  
 23 So the Washoe could not live with  
 24 that, Ron was adamant about that, and that's why

1 A. I have, yes.  
 2 Q. Did he ever ask you if the Washoe  
 3 signed this letter of intent?  
 4 A. I can't recall. I don't believe so,  
 5 but I can't recall.  
 6 Q. And you've talked to the trustee's  
 7 counsel in this case?  
 8 A. Yes.  
 9 Q. Did they ever ask you if the Washoe  
 10 signed the letter of intent?  
 11 A. Again, I can't recall specifically.  
 12 Q. Can you recall it at all?  
 13 You said you can't recall it  
 14 specifically, so I don't want there to be any  
 15 confusion.  
 16 A. I don't believe -- I don't know. I  
 17 cannot recall if they ever specifically asked me.  
 18 I mean, there is no signed letter of  
 19 intent that I know of; put it this way. I  
 20 believe this would be an inadvertent mistake.  
 21 Q. Okay.  
 22 A. The mistake would be that they are --  
 23 go ahead.  
 24 Q. Okay. But as you sit here today, you

1 the deal walked.  
 2 Q. Why do you say that the Washoe thought  
 3 that they would be able to get an extension until  
 4 October 15th?  
 5 A. Because if you look at -- I can't  
 6 recall the exact document, but there is -- CMGT  
 7 had the ability -- and I believe it's in the  
 8 Newco LOI, but I'm not sure; we'd have to look at  
 9 this -- to extend the closing period for Newco  
 10 to, I believe it was, October 17th maybe even.  
 11 I spoke with Lou Franco about giving  
 12 the Washoe that extra leeway to do due diligence  
 13 so they'd have at least 45 days, and he agreed  
 14 that that would be a wise thing.  
 15 That's what I told the Washoe they  
 16 could have. That's where Lou came back later --  
 17 you were referring to something he had a  
 18 disagreement with me over.  
 19 He specifically authorized that. I  
 20 told the Washoe they could have that amount of  
 21 time for due diligence. Ron was adamant that  
 22 they could not once Lou went to him, and that's  
 23 how it happened.  
 24 Q. So I just want to make sure I get the

1 sequence of events right.

2 You had a telephone conversation, was  
3 it, with Lou when he --

4 A. Yes.

5 Q. And during that call, who brought up  
6 the idea of extending the due diligence until  
7 October 15th?

8 A. Lou and I had talked about that  
9 several times prior to that because the Washoe --  
10 recall, this just started on October -- excuse  
11 me, August 13th.

12 You'll notice in your e-mail files  
13 there's an e-mail from Lou to Ron saying that  
14 this is a deal that he believed was a real deal  
15 that we ought to do, CMGT ought to do.

16 We put together the original letter of  
17 intent that was approved by everyone; blessed by  
18 Ron, redlined by Ron, redlined by Lou, and sent  
19 to the Washoe on August 14th that we were hoping  
20 would come back to us fairly quickly.

21 When it didn't, when it took until  
22 roughly, if I recall correctly, maybe August 29th  
23 for the Washoe to actually commit -- and I was  
24 pushing them because I was under the gun then by

1 took 2 weeks for them to get back to you after  
2 you sent out the proposed --

3 A. No, but that's a very, very -- they  
4 were at that time looking at building a call  
5 center of their own. They were getting  
6 financing, I was told, by Siemens through  
7 Citibank for some of this stuff. So there was  
8 some interplay going on.

9 Two weeks is a very short period of  
10 time, and they were really pushing the gun to  
11 make that kind of commitment when they had just  
12 seen the deal really from Siemens in the middle  
13 of August.

14 Q. Did somebody from the Washoe  
15 communicate to you that those are the reasons, or  
16 are you just thinking of the reasons on your own?

17 A. Why they were late?

18 Q. Why it took 2 weeks.

19 A. No, I was in communication directly  
20 with the Washoe myself during that period of time  
21 on a regular basis. I had a liaison there. I'm  
22 trying to recall his name right now. I'll think  
23 of it in a second.

24 Q. Was it Garrett?

1 Ron to try and get something done besides Newco.

2 So I got the Washoe to send an e-mail  
3 to Lou saying we are committed to doing this deal  
4 and getting you a signed letter of intent. Then  
5 they put it on their letterhead, and they sent it  
6 to us. That I believe was somewhere around  
7 September 2nd maybe.

8 That's when the fireworks started  
9 because I thought -- you know, we had in the  
10 interim from between August 13th and  
11 September 2nd, when it began to get a little  
12 later, I had to talk to Lou about the  
13 possibility of them extending it and his ability  
14 to do that under the Newco LOI; and he agreed  
15 that would be a wise thing.

16 That's when I told the Washoe, so they  
17 were under the impression that they would have at  
18 least until October 15th to do their due  
19 diligence. And they were going to supply them  
20 with all the due diligence that Sealaska had done  
21 so it would be a fairly easy process that they  
22 could speak with some compatriots on about the  
23 due diligence.

24 Q. Did the Washoe ever tell you why it

1 A. Yes, Garrett Furnichi.

2 Q. And so after you sent the letter --  
3 the first letter on August 14th, you had a  
4 conversation with Lou, but only Lou, and Ron  
5 Given wasn't part of that conversation?

6 A. Ron and I were not on speaking terms  
7 at that point in time.

8 Q. And that's the conversation you had  
9 with Lou only that you came away with the  
10 understanding that you could offer October 15th?

11 A. I had several conversations with Lou,  
12 yes.

13 Q. Just as a reminder to help our court  
14 reporter --

15 A. Okay. Thank you.

16 Q. -- you're going to know the answer  
17 before I'm done with the question, but just wait  
18 for me to get it out.

19 A. My apologies.

20 Q. That's all right.

21 And so then it was after -- you  
22 communicated that to the Washoe that they would  
23 have October 15th because of your understanding  
24 of the call you had with Lou, and then later on

1 Lou said you shouldn't have done that?  
2 A. I saw an e-mail later on, I believe,  
3 from Lou to Ron in which he said that he had not  
4 said that. That's not true. We had that  
5 understanding.

6 Q. And why weren't you on speaking terms  
7 with Ron Given at this time?

8 A. Ron wouldn't talk to me. That was not  
9 my call.

10 Q. Okay.

11 A. I had a very difficult time having  
12 conversations with Ron.

13 Q. And when did that start?

14 A. When did this start? The -- during  
15 the month of August when the whole deal went down.  
16 that caused our dispute, I tried to arrange --  
17 Lou kept telling me that he could not explain to  
18 me the actual reasons that I was excluded from  
19 Newco, that those were legal reasons, that Ron  
20 Given was calling the shots and I should to speak  
21 to Ron.

22 I tried to set up a conference call  
23 with Ron, and that took forever to get done; but  
24 I finally got him on the phone -- I believe it

1 Mr. Franco that we talked about a few minutes ago  
2 where he agreed to extending the due diligence  
3 deadline, can you think of any other source where  
4 this information would have come from?

5 A. Other than Franco's agreement? No, it  
6 was Franco's agreement and our reading, our joint  
7 reading, of the ability for him to extend and  
8 which you can find in the -- whatever that  
9 agreement is. I believe it's in the LOI.

10 Q. And the only person present on the  
11 phone or in person when Mr. Franco had this  
12 conversation with you where you understood he  
13 would verbally agree to extend the due diligence  
14 deadline was you and Mr. Franco, right?

15 A. I believe so. I mean, we were also --  
16 Lou and I were on the phone with some people from  
17 Siemens periodically. I don't know if this came  
18 up in that time frame.

19 We may have mentioned to them also  
20 that we had that ability early on in case there  
21 was a need to extend; so there may have been a  
22 mention of it to some of the Siemens folks as  
23 well, but I'm not sure about that.

24 Q. And did you tell anybody at the Washoe

1 was August 19th -- and that was -- until we went  
2 to the Washoe together, I believe that was the  
3 only time I talked to Ron Given.

4 Q. Okay. I just wanted to make sure  
5 there was nothing before the Newco situation came  
6 up.

7 A. No, no. Prior to the Newco situation,  
8 Ron Given, Lou Franco, and I as far as I was  
9 concerned were the triumvirate that was really  
10 trying to get this financed. We were working  
11 very, very well together. This was all a  
12 surprise to me.

13 Q. Okay. Can you look at Paragraph 45  
14 now?

15 A. Yes.

16 Q. It's on Page 12. And can you read  
17 just the very last sentence?

18 A. Yes.

19 Q. Did Mr. Franco have any verbal  
20 communications directly with the Washoe?

21 A. I don't believe so, but I can't recall  
22 for certain.

23 Q. Okay. So can you think of anything --  
24 other than the conversation you had with

1 about the extension of the due diligence deadline  
2 other than Garrett?

3 A. No. I spoke with Garrett. He was my  
4 liaison.

5 Q. And only Garrett?

6 A. Yes.

7 Q. Do you think that Ron Given did not  
8 want the Washoe deal to go through?

9 A. Judging by his actions? Yes. Why? I  
10 couldn't speculate.

11 Q. Okay. And what actions were they that  
12 lead you to think that he didn't want the Washoe  
13 deal to go through?

14 A. The fact that we had agreed on  
15 specific letter of intent language that he had  
16 signed off on on August 14th and then he -- when  
17 they came back and wanted to do the deal, he  
18 changed the terms in a way that made them walk  
19 away.

20 And that's -- you know, we are talking  
21 about a period of August 14th to September 2nd.  
22 Why?

23 And, by the way, I would make you  
24 aware of the fact that no one at CMGT -- the



1 shareholders were never made aware of the Washoe  
2 deal.

3 Q. Okay. We will come back to that in a  
4 little bit.

5 After the Washoe objected to the  
6 changes in the LOI, didn't Ron Given try to talk  
7 to the Washoe to get them to still try to move  
8 forward with the deal?

9 A. Yes, he and I got on the phone  
10 together with them.

11 Q. Okay.

12 A. But he refused to -- the Washoe  
13 asked -- they stated their position, which is  
14 they needed more time for due diligence, and Ron  
15 refused to change.

16 Q. Okay. And didn't Mr. Given want to  
17 talk to the Washoe directly?

18 A. Director?

19 Q. Directly.

20 A. Directly? Yes, he did.

21 Q. He did not want to have you involved,  
22 is that right?

23 A. That's correct. I refused.

24 Q. Why did you refuse?

1 Lou actually directed me to or not -- if he did,  
2 I told him that that was inappropriate; that this  
3 was my relationship and I would be on the phone.

4 Q. Okay. So eventually you and Ron did  
5 have a telephone call with Garrett?

6 A. Yes, we did.

7 Q. When did that take place?

8 A. I believe September 4th.

9 Q. Okay. And who said what during that  
10 telephone call?

11 A. Who said what? It was not that long.

12 It was all centered on the ability to -- to  
13 extend the contract so that there would be  
14 adequate time for due diligence.

15 Garrett, I believe -- as I recall,  
16 Garrett expressed that they were still interested  
17 if they could have the adequate time for due  
18 diligence, and Ron said he couldn't change the  
19 contract or the new wording.

20 And, again, the wording was difficult  
21 in two senses -- one, not extending; two, the  
22 ability that he put in there for CMGT to close  
23 Newco at any point prior to September 30th.

24 Q. So the Washoe were essentially asking

1 A. It was my relationship. Given the way  
2 that -- the contentiousness of what was going on  
3 there, I didn't trust Ron.

4 Q. What did you think he was going to do?

5 A. I had no idea. It was my  
6 relationship. I had a legitimate reason to be  
7 there. I wanted to be there. I wanted to make  
8 sure -- he was changing the deal. I wanted to  
9 try and advocate him changing back to what we  
10 had.

11 Q. Isn't it true that Lou Franco directed  
12 you to allow Given to talk to the Washoe directly  
13 without you --

14 A. No.

15 Q. -- involved in the conversation?

16 A. No, I don't recall that. I'm sorry.  
17 My apologies.

18 Q. Let me reask the question so it's  
19 clear.

20 Isn't it true that Lou Franco directed  
21 you to allow Mr. Given to talk to the Washoe  
22 directly without you present or on the telephone?

23 A. You know, I don't believe he did. I  
24 know that was Ron's strong preference. Whether

1 for two more weeks? Is that --

2 A. Yeah. You know, we were getting to  
3 the point now -- we were now at September 4th; so  
4 even with that 2 weeks, it was starting to become  
5 problematic.

6 But, yes, that was the understanding  
7 was that, at the very least, CMGT had the ability  
8 under the Newco deal to extend to -- I believe it  
9 was October 17th.

10 Q. Okay.

11 A. Whether they could have gone beyond  
12 that or not to accommodate the Washoe, I think  
13 they could have also.

14 MR. CISZEWSKI: Mark this as No. 7.  
15 (WHEREUPON, a certain document  
16 was marked Spehar Exhibit  
17 No. 7, for identification, as of  
18 1/21/09.)

19 BY MR. CISZEWSKI:

20 Q. Mr. Spehar, I've handed you what's  
21 been marked as your Deposition Exhibit No. 7.

22 A. Okay.

23 Q. I think we kind of talked about all of  
24 this already. I just wanted to confirm that this

1 is a copy of an e-mail string during this period  
2 of time that we just talked about dealing with  
3 the phone call, that follow-up phone call, that  
4 you and Ron had with Garrett.

5 A. Yes.

6 Q. Great.

7 A. The thing that I would say about this  
8 is I don't see anywhere in here where Lou Franco  
9 directs me not to talk to them. I see Ron Given  
10 saying that, but I don't see Lou Franco.

11 Q. Okay. That's really all the questions  
12 I have about that exhibit.

13 (WHEREUPON, a certain document  
14 was marked Spehar Exhibit  
15 No. 8, for identification, as of  
16 1/21/09.)

17 BY MR. CISZEWSKI:

18 Q. Mr. Spehar, we have handed you what's  
19 been marked as Deposition Exhibit No. 8.

20 Can you identify this document?

21 A. Yes.

22 Q. What is it?

23 A. It's an e-mail subsequent to the  
24 Washoe call -- which it looks like was on

1 was enough time.

2 Q. Who didn't feel it was enough time,  
3 the Washoe or the law firm?

4 A. The Washoe; and whether that reflected  
5 the law firm's, I can't tell you.

6 Q. Did you think that was enough time?

7 A. No.

8 Q. Why not?

9 A. Because they didn't. You know, we are  
10 2 years into this in the worst venture capital  
11 market in the world; and these types of  
12 investors, the native American community, is  
13 particularly skittish. They are careful. You  
14 need to accommodate that. You need to  
15 accommodate their feelings and needs.

16 And 2 weeks or whatever it is here to  
17 do this due diligence -- looking back at  
18 Sealaska, they did it in the space of 3 months,  
19 4 months. We were going to be handing them that  
20 material, but they had to verify a lot of this;  
21 so, no, it was not enough time.

22 Q. I mean, do you think other investors  
23 could have gotten it done in 24 days or whatever  
24 this would have been?

1 September 5th, not September 4th -- from me to  
2 Lou Franco.

3 Q. Now, I wanted to take a second to look  
4 at the second sentence. You can read that to  
5 yourself.

6 A. Okay.

7 (Short pause.)

8 BY THE WITNESS:

9 A. Okay.

10 BY MR. CISZEWSKI:

11 Q. So as I understand it, Mr. Given said  
12 during the phone call with Garrett that he  
13 thought the 29th was enough time to complete due  
14 diligence given the materials that the Washoe  
15 already had and that CMGT had ready to hand over?

16 A. Yes, and they didn't agree.

17 Q. The Washoe disagreed. Did they give  
18 any specific reason why they felt they couldn't  
19 comply with the 29th?

20 A. No, just a general statement that that  
21 wasn't enough time. I believe they had  
22 engaged -- if I recall correctly, Garrett had  
23 told me that they had engaged a law firm, they  
24 were ready to do it, but they didn't feel that

1 A. You, again, are relying on -- the only  
2 way you could do that is through complete  
3 reliance on the Sealaska due diligence materials,  
4 but investors aren't going to do that. They are  
5 going to take a letter from Howard Hughes Medical  
6 Institute and call that person, and it may take a  
7 week or two to connect with them. And you've got  
8 15, 20 of those types of calls, more, to verify  
9 plus the market to verify.

10 No, they needed more time.

11 (WHEREUPON, a certain document  
12 was marked Spehar Exhibit  
13 No. 9, for identification, as of  
14 1/21/09.)

15 BY MR. CISZEWSKI:

16 Q. Mr. Spehar, we have handed you what's  
17 been marked as Deposition Exhibit No. 9.

18 Do you recognize this document?

19 A. I do, yes.

20 Q. Okay. And what is this?

21 A. This is, it looks like, a response  
22 back to me from Lou.

23 Q. Okay. And -- I'm sorry. Were you  
24 done?

1 A. I'm done.  
 2 Q. Okay. And in the second sentence he  
 3 says that -- his statement is that you had acted  
 4 without his authority in the past and released an  
 5 LOI draft that he had asked you to provide only  
 6 to Ron and himself.  
 7 Do you know what draft of the LOI he's  
 8 talking about?  
 9 A. I believe he was talking about a draft  
 10 of the LOI that I had put together after speaking  
 11 to Lou that allowed for the extension of 15 days.  
 12 Q. So this was something -- the initial  
 13 draft was sent on August 14th.  
 14 A. Yes. This was something that was done  
 15 after the Washoe came back. This is not  
 16 referring to the initial August 14th draft.  
 17 Q. Okay. And did you send a draft after  
 18 the initial draft?  
 19 A. Yes, yes, I did.  
 20 Q. And that draft that you sent allowed  
 21 for the extension to October 15th?  
 22 A. Yes.  
 23 Q. Did you have Lou's authority to send  
 24 that draft to the Washoe?

1 A. Yes.  
 2 Q. And why do you believe you had his  
 3 authority?  
 4 A. Because we spoke about it.  
 5 MR. CISZEWSKI: Do you want to just take a  
 6 minute or two to take a short break?  
 7 MR. O'BRIEN: Fine.  
 8 (WHEREUPON, a recess was had.)  
 9 (WHEREUPON, a certain document  
 10 was marked Spehar Exhibit  
 11 No. 10, for identification, as of  
 12 1/21/09.)  
 13 BY MR. CISZEWSKI:  
 14 Q. All right. We are back on the record,  
 15 and we have tendered to you what's been marked as  
 16 Spehar Deposition Exhibit No. 10.  
 17 Can you identify this document?  
 18 A. Yes. It looks like an e-mail trail  
 19 from me to Rob Carroll.  
 20 Q. Okay. And if you look at, reading the  
 21 numbers now in the lower right-hand corner,  
 22 03505 --  
 23 A. Okay.  
 24 Q. -- can you identify what this document

1 is?  
 2 A. Well, not right offhand. Let's see.  
 3 Q. You'll maybe want to look at the  
 4 preceding page.  
 5 A. It appears to be the August 14th --  
 6 let's see. I'm not sure if this was an  
 7 attachment. What was this?  
 8 It looks like this was back on -- that  
 9 last document may have been attached to an  
 10 August 13th or 14th e-mail. This might be, I  
 11 guess, the original August 14th LOI.  
 12 Q. And did you draft this?  
 13 A. Yes, I initially drafted it.  
 14 Q. And so with the LOI that you drafted  
 15 dated August 14, 2003, under Paragraph 1 there,  
 16 the due diligence period was contemplated that it  
 17 would be completed by September 30th?  
 18 A. Correct.  
 19 Q. Did you think that was enough time to  
 20 get the due diligence done when you drafted this?  
 21 A. I apparently did. Again, we are at  
 22 August 14th right now, and we were anticipating  
 23 that this might go very quickly, so we are  
 24 looking at 45 days or longer.

1 Q. So if the Washoe would have  
 2 immediately responded to this LOI, then there  
 3 would have been enough time for them to do the  
 4 due diligence?  
 5 A. I would have hoped so, but there was  
 6 also the ability to extend if we needed it. I  
 7 just -- basically I wanted to get the ball  
 8 rolling as fast as we could and get these guys  
 9 into it and doing it so there could be a sense of  
 10 them actually closing the deal.  
 11 Q. Had you talked to the Washoe prior to  
 12 drafting this letter about what type of due  
 13 diligence period they would need?  
 14 A. No. I think at that point in time we  
 15 were going off of Siemens/Andrea Davis  
 16 conversation. I don't believe at that point in  
 17 time I had been connected with Garrett Faruichi  
 18 yet.  
 19 Q. And what was it based on your  
 20 conversations with Andrea at Siemens about due  
 21 diligence?  
 22 Let me strike that question.  
 23 Did you talk with Andrea at Siemens  
 24 about the due diligence period that the Washoe

1 might require?

2 A. I can't specifically recall, Steve. I  
3 don't know.

4 Q. Okay. Let's just for the sake of  
5 argument assume for a minute that the Washoe were  
6 given enough time to complete due diligence.

7 There was still no guarantee that they  
8 were going to go ahead with the funding  
9 commitment, isn't that right?

10 A. Well, if they found due diligence not  
11 to be adequate, that's true.

12 Q. Okay. So there were things that could  
13 have happened during the due diligence period  
14 that would have caused the Washoe not to go  
15 forward?

16 A. Correct.

17 Q. And it's also possible that through  
18 due diligence or through negotiations the Washoe  
19 would have requested or demanded terms that would  
20 not be acceptable to CMGT, isn't that right?

21 A. Yes. It's also possible they could  
22 have done the deal.

23 Q. But it was just a possibility that the  
24 deal could get done, right?

1 unique in that respect, so they offered an  
2 interface, what they called an intake system for  
3 absences that was unique in the industry and it  
4 was one of their primary attractions to clients.

5 The software was another primary  
6 attraction. What it did was provided templates,  
7 first of all, for the operators to run -- when  
8 the business was -- what the business was was any  
9 absence that was generated at a client, any  
10 particular individual who was going to be absent,  
11 would call in to our call center, CMGT's call  
12 center, not to their supervisor once CMGT was in  
13 place; and then all of that was handled by CMGT.

14 The software interfaced the disability  
15 carriers' disability software with the HR and  
16 payroll software of the employer.

17 That was part of the problem here that  
18 people were having was the integration of all of  
19 these processes so that the employee was well  
20 serviced and happy and also so that there was  
21 less redundancy and things didn't slip through  
22 the cracks.

23 So the software accomplished that as  
24 well as keeping operators on track with an

1 A. It was a very interested party who  
2 understood at that point in time, unlike most,  
3 that they were up against some competition that  
4 was already set to do the deal. For them to step  
5 in under those circumstances indicates an  
6 extremely strong interest.

7 Q. Okay. Now, as part of getting to know  
8 CMGT, you know, and representing them in these  
9 financing activities, did you become familiar  
10 with the proprietary software that the company  
11 owned?

12 A. Familiar enough to understand what it  
13 was -- what its benefits were in the marketplace.  
14 I didn't know the ins and outs of it in terms of  
15 programming. I had never run it. I had actually  
16 never sat down in front of it and run it.

17 Q. Okay. And so do the software titles  
18 Absence, Expert, and Poster -- you're familiar  
19 with those software titles?

20 A. Yes, I am.

21 Q. And what was your understanding of  
22 what that software did?

23 A. The software -- CMGT's business model  
24 was a call center operated model. They were

1 appropriate template of questions.

2 Q. So, in other words, it was a template  
3 that the operator could draw upon when an  
4 employee called in the call center?

5 A. Um-hum, and it was worked over on an  
6 individual basis with particular clients, so  
7 their HR department would sign off on that.

8 And then it would -- again, it's very  
9 important to note it integrated all of the  
10 different softwares of the different providers.  
11 That's why Hartford and those people liked it,  
12 because it required setting up on their end and  
13 it was a communication interface between them and  
14 the HR and payroll systems of the employer  
15 itself.

16 Q. Okay. So it was -- do you consider  
17 this software to be a key component of CMGT's  
18 value?

19 A. Yes, it was at the time.

20 Q. I mean, do you think it was CMGT's  
21 most valuable asset?

22 A. I think it was a component of it. I  
23 think the model that they had, the relationships  
24 that they had, all of that stuff was very

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1 valuable.  
 2 Q. Now, as part of your agreement with  
 3 the trustee in this case, did you acquire that  
 4 software?  
 5 A. I did.  
 6 Q. Okay. How much did pay for it?  
 7 A. \$1,500.  
 8 Q. And how was that purchase price  
 9 decided?  
 10 A. It was -- I had, if I recall  
 11 correctly, come to an agreement with the trustee  
 12 that I would fund the estate to the tune of  
 13 \$20,000, and it was just a slice of that that was  
 14 cut off.  
 15 And it could have been really any  
 16 amount of that, but it was also reflective of the  
 17 fact that Lou Franco had stated at his deposition  
 18 on May 7, 2004, that the marketplace -- because  
 19 of the fact that this software, I believe, had  
 20 been out there now and time had run on it, that  
 21 it may not be quite as valuable as it was when  
 22 they had it as proprietary software.  
 23 Q. Okay. And did you pay the trustee the  
 24 \$1,500?

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1 A. I did.  
 2 Q. Did the trustee cash or deposit your  
 3 check?  
 4 A. He did.  
 5 Q. And did the trustee ultimately provide  
 6 the software to you?  
 7 A. Yes, but this all took place -- I just  
 8 got this last December, so, again, we are now in  
 9 2008 and the software was very valuable in 2003.  
 10 I haven't had a chance to really check its value  
 11 out now.  
 12 Q. So you obtained the software when?  
 13 A. In December of 2008, much to my  
 14 chagrin; very late.  
 15 Q. And is it a fully functioning version  
 16 of the software?  
 17 A. I have not had a chance to check it  
 18 out. I've been embroiled in a lawsuit with the  
 19 trustee and haven't had a chance. It's supposed  
 20 to be.  
 21 Q. So you haven't done anything about the  
 22 software? It's sitting in a drawer or on a  
 23 computer somewhere?  
 24 A. For the time being, yes.

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1 Q. Do you intend to do something with it?  
 2 A. Yes, I do.  
 3 Q. What do you intend to do?  
 4 A. I don't know that that's --  
 5 THE WITNESS: Is that relevant to this?  
 6 MR. O'BRIEN: You can answer if you have --  
 7 if you have any present intentions.  
 8 BY THE WITNESS:  
 9 A. I really don't have any present  
 10 intentions right now. I will check out who has  
 11 been using it, if it has been -- if there have  
 12 been licenses acquired appropriately or not,  
 13 because that will be my first step in terms of  
 14 determining its value. I'll probably have  
 15 someone review it.  
 16 BY MR. CISZEWSKI:  
 17 Q. Okay.  
 18 (WHEREUPON, a certain document  
 19 was marked Spehar Exhibit  
 20 No. 11, for identification, as of  
 21 1/21/09.)  
 22 BY MR. CISZEWSKI:  
 23 Q. I'm going to show you what we have  
 24 marked as Spehar Deposition Exhibit No. 11.

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1 Mr. Spehar, are you able to identify  
 2 this document?  
 3 A. Yes, I am.  
 4 Q. And what is it?  
 5 A. This is a letter, an e-mail, from me  
 6 to David Grochocinski.  
 7 Q. Okay.  
 8 A. Dated November 16, 2006.  
 9 Q. I want to have you take a look at the  
 10 last paragraph there.  
 11 A. Okay.  
 12 Q. And if you could just read that to  
 13 yourself, and I'll ask you a couple questions  
 14 about it.  
 15 (Short pause.)  
 16 BY THE WITNESS:  
 17 A. Okay.  
 18 BY MR. CISZEWSKI:  
 19 Q. In the first sentence you reference  
 20 the remaining market value CMGT's software may  
 21 have.  
 22 Did you know what the remaining market  
 23 value was at that time?  
 24 A. No, I have no clue.

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1 Q. Okay. Do you know if it was more or  
 2 less than \$1,500?  
 3 A. No, I don't, actually. That's why I  
 4 was so frustrated not getting it in a timely  
 5 fashion.  
 6 (WHEREUPON, a certain document  
 7 was marked Spehar Exhibit  
 8 No. 12, for identification, as of  
 9 1/21/09.)  
 10 BY MR. CISZEWSKI:  
 11 Q. I'm going to show you what we have  
 12 marked now as Spehar Deposition Exhibit No. 12.  
 13 Do you recognize this document?  
 14 A. Yes, I do.  
 15 Q. What is it?  
 16 A. This looks like the actual transfer to  
 17 me of the software.  
 18 Q. Okay.  
 19 A. It looks like I misspoke. It was done  
 20 on November 27th.  
 21 Q. Okay.  
 22 MR. O'BRIEN: I'm sorry, counsel. My notes  
 23 indicate that he testified earlier that it was  
 24 September, 2008, that he received it. I marked

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1 it because I thought his testimony was incorrect;  
 2 if this helps to clear up this confusion.  
 3 BY THE WITNESS:  
 4 A. Yes, it is correct.  
 5 BY MR. CISZEWSKI:  
 6 Q. Does this document refresh your  
 7 recollection as to when you --  
 8 A. Yes, it does. The time frame was more  
 9 December, 2007, rather than 2008.  
 10 Q. And did Spehar Capital execute the  
 11 quitclaim bill of sale that's the second page of  
 12 this document?  
 13 A. Yes, I did.  
 14 Q. And is this -- so this was the  
 15 transmission of what you believe is the fully  
 16 functioning version of the software?  
 17 A. What I hope is, yes.  
 18 Q. Okay. Great.  
 19 A. And that, by way of parentheses here,  
 20 I would let you know that the software was a  
 21 highly sought-after item. People were trying to  
 22 license it while CMGT was in business, major  
 23 companies, and CMGT refused to give licenses  
 24 because they thought it was a valuable asset to

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1 them.  
 2 Q. Okay. Did CMGT ever put a number on  
 3 the value of the software?  
 4 A. No, not that I'm aware of.  
 5 (WHEREUPON, a certain document  
 6 was marked Spehar Exhibit  
 7 No. 13, for identification, as of  
 8 1/21/09.)  
 9 BY MR. CISZEWSKI:  
 10 Q. Mr. Spehar, we have handed you what's  
 11 been marked as Deposition Exhibit No. 13.  
 12 Can you identify what this is?  
 13 A. This is a letter that I -- an e-mail  
 14 attaching a letter that I wrote to Lou Franco the  
 15 day after I found out that I was going to be  
 16 excluded from the Newco deal.  
 17 Q. When did you first find out about the  
 18 Newco deal at all?  
 19 A. Sitting in a parking lot on August 7th  
 20 at about 1:00 in the afternoon in Mesquite,  
 21 Nevada, driving home from my vacation.  
 22 Q. Who called you?  
 23 A. Lou Franco.  
 24 MR. O'BRIEN: Could you be more specific?

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1 THE WITNESS: Would you like to speak to my  
 2 wife about that one?  
 3 BY MR. CISZEWSKI:  
 4 Q. What did he tell you about the deal  
 5 during that telephone call?  
 6 A. He said, "Are you sitting down,  
 7 Gerry?" I said yes, and he said that Chuck  
 8 Trautner had come up with a Newco deal and that I  
 9 was not going to be a part of it.  
 10 And I told him that's not correct,  
 11 that Chuck Trautner was under my contract, and he  
 12 was -- it was a -- as much out of the blue  
 13 conversation that I've ever had in my life. I  
 14 was totally surprised by it.  
 15 Q. How long did this conversation last?  
 16 A. You know, it's all a cloud after the  
 17 first words, Steve, but I would imagine it lasted  
 18 not very long; maybe 5, 10 minutes. I went home  
 19 and told him I was going to respond.  
 20 Q. Was anybody else on the telephone  
 21 besides you and Lou Franco?  
 22 A. My wife was sitting there, but she  
 23 wasn't on the telephone, no.  
 24 Q. Ron Given was not on the call?

1 A. No.

2 Q. And is this the response that you  
3 prepared after that phone call?

4 A. Yes, it is.

5 Q. Okay. And you, in fact, transmitted  
6 this document by e-mail to Mr. Franco and  
7 Mr. Given?

8 A. I did.

9 Q. And it's Friday, August 8, 2003?

10 A. Yes.

11 Q. Who drafted this document?

12 A. I did.

13 Q. Did you have an attorney review it  
14 before it went out?

15 A. No.

16 Q. At the time that you prepared this  
17 document, had you retained an attorney relating  
18 to your --

19 A. No.

20 Q. Okay. Let me just finish the question  
21 so that the record is clear.

22 A. I'm sorry.

23 Q. Had you retained an attorney relating  
24 to your compensation agreement with CMGT?

1 that wasn't going to take place -- Ron Given  
2 really dug in his heels and refused to talk about  
3 anything that made any sense whatsoever; in fact,  
4 talk about anything -- it was roughly  
5 August 19th.

6 I think from that point forward we  
7 probably had decided that it was going to have to  
8 involve some sort of legal action if it was going  
9 to even work out in a settlement, so sometime  
10 after August 19th was when I began looking for  
11 California counsel, which would be Ken Franklin.

12 Q. And does this letter set forth all of  
13 the reasons that you thought you were entitled to  
14 compensation for the Newco deal?

15 A. All of the reasons? I would have to  
16 read it carefully to know -- if it puts them all  
17 in there. I'm sure it sets forth a bunch of  
18 them.

19 Q. It's only two pages, so can you take a  
20 minute to read it and see if you can think of  
21 anything that's missing?

22 A. Okay.

23 (Short pause.)

24 BY THE WITNESS:

1 A. No.

2 Q. When did you first retain an attorney  
3 to represent you in connection with the dispute  
4 about whether you would get paid as part of the  
5 Newco deal?

6 A. I can't tell you the exact date, but  
7 it was sometime fairly shortly after this I  
8 retained Steve Kleonda.

9 Q. When you say "fairly shortly," do you  
10 mean days?

11 A. I assume I -- you know, looking back  
12 on it, again it's all a blur; but I called Steve  
13 fairly quickly -- meaning within days probably --  
14 and began discussing it with him.

15 When I actually retained him, I can't  
16 tell you; but I had discussions fairly quickly,  
17 meaning within days.

18 Q. And then you also ultimately retained  
19 Ken Franklin, is that right?

20 A. That's correct.

21 Q. And when did that take place?

22 A. When we had decided -- you know, our  
23 initial strategy was to try and effect some sort  
24 of a settlement; so when it became evident that

1 A. I think it's pretty comprehensive.  
2 yes.

3 BY MR. CISZEWSKI:

4 Q. Okay. And you would -- I mean, you  
5 don't deny that Mr. Trautner is not listed on  
6 Exhibit A of your agreement?

7 A. No, I do not; but you've noticed, of  
8 course, that Exhibit A is to be updated from time  
9 to time.

10 Q. Sure. Now, let's assume for a second  
11 that Trautner is on Exhibit A and that you would  
12 be entitled to compensation for Newco.

13 A. Okay.

14 Q. Didn't CMGT actually have to get  
15 funded in order for you to be entitled to  
16 compensation?

17 A. No. In terms of the cash  
18 compensation, yes, I couldn't get any cash.  
19 CMGT, if you look at the contract, had  
20 to accept a commitment for me to get my stock and  
21 my investment banking rights and exclusivity; so  
22 once they accepted a commitment, which they did,  
23 that all vested.

24 Q. Okay. So what are the different

1 components of your -- of the compensation that  
2 you're entitled to?

3 A. The first contract started out with a  
4 cash compensation of 6 percent; stock  
5 compensation of 6 percent of the stock;  
6 investment banking rights, which gave me the  
7 right to do all of their future investment  
8 banking activities, which went hand-in-hand with  
9 the exclusivity clause.

10 The second contract recognized the  
11 fact that I had done things outside of the scope  
12 of what I was supposed to do -- namely, putting  
13 together all the projections which became the  
14 foundation of CMGT -- so there was also a  
15 management -- I think it was a management  
16 consulting fee in there of a hundred thousand  
17 dollars that was added to the second contract.

18 Q. So which one of those do you contend  
19 that you were entitled to once CMGT accepted a  
20 deal?

21 A. Once they accepted the deal? I would  
22 have to -- I know for certain -- I'd have to  
23 review the contract to be sure of this, but what  
24 I contend right now, what I understand and

1 A. Minority-owned insurance company --  
2 again, this was all predicated on minority  
3 ownership, which gives the very valuable minority  
4 entree into all entities in this country that  
5 were either public entities or do business with  
6 public entities. So that's a huge sales tool.

7 And the -- I have a friend, Steve  
8 Hillard, who does business with Madison Dearborn.  
9 They have several deals called Council Tree  
10 Communications deals that they have done with him  
11 mostly in the area of communications, but Steve  
12 was interested in branching out with his ANC  
13 cohorts into looking at insurance.

14 So we put together a package because  
15 we had Wayne Baliga and Lou Franco and Jim Wong  
16 on board, who were all insurance executives, that  
17 would start the nation's first minority-owned  
18 insurance company. It was going to be a PC  
19 company. Wayne was going to run it and Jim was  
20 going to run it and I was a partner in that, but  
21 I was there mostly to raise the money.

22 Q. Okay. And would MOIC be out CMGT, or  
23 how would that work?

24 A. No. It was presented as a joint

1 remember right now, is that the acceptance  
2 triggered the stock compensation, triggered the  
3 investment banking rights, triggered the  
4 exclusivity.

5 It probably also triggered the cash  
6 compensation; but until they actually received  
7 their money, I couldn't get paid.

8 And there were two components of cash  
9 compensation. One was the finder's fee, if you  
10 will, and the second was the management  
11 consulting fee.

12 Q. Other than Newco and the Washoe, were  
13 there any other potential financing deals that  
14 were out there for CMGT in August of 2003?

15 A. The minority-owned insurance company  
16 co-financing, yes.

17 Q. Anything else?

18 A. I can't think of anything that was  
19 that far along as those, no. I mean, there were  
20 other overtures out there for sure.

21 Q. But nothing that would be something  
22 that could close in a month's time?

23 A. It would have surprised me.

24 Q. And what was the MOIC concept?

1 financing of the two. As with Warburg Pincus and  
2 some other people, CMGT was too small of a  
3 investment for them as a stand-alone investment.

4 So Madison Dearborn wouldn't look at  
5 \$2 million. That doesn't even get on the radar  
6 screen for them. A hundred million dollars,  
7 which was what the MOIC funding was, does.

8 There were tremendous synergies  
9 between the two deals. Not only did they have  
10 the same management, but they both used an  
11 insurance industry model. They both -- they  
12 offered a lot of business synergies to each  
13 other.

14 So the two deals were packaged as a  
15 joint \$102 million financing and pitched that  
16 way, and that was initially done in Mayer Brown's  
17 offices on August 1st.

18 Q. Of what year?

19 A. 2003.

20 Q. And what was done in Mayer Brown's  
21 office that day?

22 A. There was a meeting between Ron Given,  
23 Lou Franco, Wayne Baliga, Jim Wong, and myself  
24 representing MOIC; and at that meeting there were



1 representatives of Madison Dearborn Partners and  
2 Council Tree Communications. And at that meeting  
3 we pitched both CMGT and the MOIC to those two  
4 investors.

5 And that was, I would note, a day  
6 after the Newco letter of intent had been signed  
7 effectively taking CMGT off the table, but  
8 nothing was mentioned to me about that.

9 Q. What was the result of that meeting?

10 A. Madison Dearborn was essentially the  
11 money behind the deal, so they wanted to walk --  
12 to step back and do some initial due diligence on  
13 the deals; so they took both and had a look at  
14 them.

15 Q. Did they complete their initial due  
16 diligence?

17 A. They never did, no. We walked down  
18 the road in trying to -- eventually on the MOIC,  
19 Madison Dearborn wanted to bring into -- they  
20 liked the deal. They said they would be  
21 interested in funding it, but they wanted to  
22 bring in a more experienced venture capitalist in  
23 insurance.

24 So they charged us with and introduced

1 us to several venture capital firms or at least  
2 one venture capital firm that they thought would  
3 be good for them, and we began the process with  
4 them.

5 And prior to that happening, the  
6 partnership expired and the deal went by the  
7 boards.

8 Q. What do you mean, the partnership  
9 expired?

10 A. April of 2004, Ron and Jim and Wayne  
11 and Lou informed me that they were pulling out of  
12 the partnership. It was a one-year partnership  
13 initially that had to be renewed.

14 Q. Did that partnership have a name?

15 A. Millennium Partners, I believe, and  
16 Ron was our attorney on that as well.

17 Q. Okay. And so did anybody complete due  
18 diligence, even an initial due diligence, with  
19 respect to funding the MOIC and CMGT?

20 A. Initial due diligence, yes, Madison  
21 Dearborn. We went through quite a bit of initial  
22 due diligence with them, and they got to the  
23 point of saying they would do the deal if we  
24 could bring in a venture capitalist who was more

1 experienced in insurance.

2 Q. Okay. Now, at some point in time  
3 Spehar Capital sued CMGT in California state  
4 court, is that right?

5 A. Correct.

6 Q. And I take it you are familiar with  
7 that lawsuit?

8 A. I am.

9 Q. And just for abbreviation's sake, I  
10 kind of do it when I talk about it, so is it okay  
11 if we refer to that as the California action?

12 A. Yes.

13 Q. When it was filed, what did Spehar  
14 Capital hope to accomplish by filing the  
15 California action?

16 A. I guess, first of all, it was very  
17 obvious to me that I would be so far behind the  
18 eight ball that there were -- first, there was no  
19 attempt at settlement. I couldn't even begin to  
20 discuss settlement with Ron, so, you know, that  
21 was an issue.

22 I thought and believed that if the  
23 deal were to close, there was absolutely no way  
24 that I was going to get anything out of it; so it

1 was an attempt to, first of all, protect myself  
2 from that happening and, secondly, to hopefully  
3 bring the parties to the table to discuss  
4 settlement.

5 Q. And the California -- Spehar Capital's  
6 California action prevented CMGT from closing the  
7 Newco deal, isn't that right?

8 A. Correct.

9 Q. And was that one of Spehar Capital's  
10 goals in filing the action?

11 A. Was it one of my goals? If they were  
12 not going to conform to my contract, yes. If  
13 they were going to conform to my contract, no.

14 Q. Why couldn't Spehar Capital just wait  
15 for the Newco deal to close and then sue for  
16 damages to recover its compensation?

17 MR. O'BRIEN: I'm going to object to the  
18 extent it calls for a legal opinion, but you can  
19 answer.

20 BY THE WITNESS:

21 A. Okay. The Newco deal as agreed to by  
22 the shareholders, they picked the option that  
23 there was no cash involved and there was only  
24 20 percent of Newco involved. And CMGT -- so

1 what CMGT would have was 20 percent of Newco and  
2 all of the debt left there, which at that point  
3 in time I believe would have amounted to a  
4 million dollars or so, and then they would also  
5 have 24 angry deluded -- not deluded; what's the  
6 word? Misled.

7 MR. O'BRIEN: Watered down?

8 BY THE WITNESS:

9 A. Misled shareholders who were angry at  
10 me pooling their resources to fight me.

11 I didn't have any money at that point  
12 in time. By that point in time, my major asset,  
13 which was Authorizer, was pennies on the dollar  
14 thanks to some wonderful management there.

15 This was all known to the Lou and Ron.  
16 I believe it was part of their strategy or  
17 whoever was running that strategy. I actually  
18 put that on Ron more than I do Lou, but I could  
19 not have afforded nor could I have gotten counsel  
20 to actually go to trial. There is no way a  
21 contingency attorney would take a trial against  
22 CMGT.

23 Ken Franklin -- I guess I can't really  
24 say anything, but I know he would have wanted at

1 funded."

2 Can you explain what you meant by  
3 that?

4 A. Yeah. I could not understand from a  
5 business perspective the intransigence on Ron  
6 Given's part to negotiate. Ron had understood  
7 that we had been through the Sealaska deal. I  
8 had already offered to -- Sealaska had -- you  
9 know, any funder, when it gets down to it, real  
10 estate broker, anybody, the broker is going to be  
11 the last guy they want to pay, so I knew that  
12 going in.

13 When it came down to having somewhat  
14 similar problems with Sealaska, Ron and Lou  
15 defended my contract; and I also offered to  
16 mitigate some of the -- like the investment  
17 banking rights portion of it by just taking a  
18 slice of revenue going forward and settling it  
19 that way.

20 So Ron knew that I was amenable to  
21 that. Lou had even communicated with him and  
22 told him that I was reasonable in that regard. I  
23 could not understand why he was not trying to  
24 talk about -- willing to talk about settlement.

1 least something like a hundred thousand dollar  
2 retainer to go to trial. I couldn't do that. I  
3 couldn't afford it.

4 This was my only really effective way  
5 of trying to bring justice to the table here.

6 By the way, my bond insurance at that  
7 point in time was \$25,000. I had a \$40,000  
8 limit.

9 (WHEREUPON, a certain document  
10 was marked Spehar Exhibit

11 No. 14, for identification, as of  
12 1/21/09.)

13 BY MR. CISZEWSKI:

14 Q. Sir, we have handed you what's been  
15 marked as Deposition Exhibit No. 14.

16 Do you recognize this document?

17 A. Yes.

18 Q. What is it?

19 A. It's an e-mail I sent to Rob Carroll  
20 in August of 2005.

21 Q. Okay. And in the second paragraph  
22 there, the second sentence, it says, "My TRO was  
23 really an attempt to force CMGT and Newco to the  
24 table so that we could resolve this and get CMGT

1 When I butted up against that  
2 intransigence, I thought a TRO might actually  
3 bring him to the table. If they really wanted to  
4 do the deal and they thought it was a good deal,  
5 which it was, this would bring them to the table.

6 Q. Okay. And you understood, though,  
7 that because you got a TRO that CMGT wouldn't be  
8 able to close any financing transaction, right?

9 A. I could always give up the TRO. I  
10 mean, why does that mean that we can't continue  
11 negotiations?

12 Q. But as long as the TRO was in place,  
13 you understood that CMGT couldn't close any  
14 financing?

15 A. As long as the TRO was in place, they  
16 couldn't close any financings that had anything  
17 to do with Spehar Capital; and at that point in  
18 time, I believe I had notified them that my  
19 contract was exclusive, so, yes, they had to  
20 agree that Spehar Capital's contract would be  
21 honored and then they could close financings.

22 Q. So you wanted to use that as leverage  
23 to get them to the table to negotiate a  
24 settlement?

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1 A. That was one of the goals along with  
 2 protecting myself.  
 3 Q. And you needed to protect yourself  
 4 because you couldn't afford or find an attorney  
 5 that would take a case for damages?  
 6 A. There was no way in my financial  
 7 situation at that point in time that I could have  
 8 done anything. I was even -- doing a default  
 9 action was difficult for me, put it that way.  
 10 Q. Okay.  
 11 A. So difficult that I -- well, we will  
 12 leave it at that.  
 13 Q. And is that the reason why your  
 14 initial complaint didn't seek damages; it just  
 15 sought the injunctive relief?  
 16 A. No. The initial complaint was -- this  
 17 deal was put together in secrecy from me and  
 18 shown at me at the last minute, as we have  
 19 talked about, on August 7th.  
 20 Getting all of this together to even  
 21 file a TRO was a difficult process. The fact  
 22 that damages weren't there was more a function of  
 23 just having to scramble at that point in time.  
 24 Q. So you thought you had a claim for

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1 damages; you just didn't have time to get it  
 2 together?  
 3 A. Yes, correct.  
 4 MR. CISZEWSKI: Let's mark this as Exhibit  
 5 No. 15.  
 6 (WHEREUPON, a certain document  
 7 was marked Spehar Exhibit  
 8 No. 15, for identification, as of  
 9 1/21/09.)  
 10 BY MR. CISZEWSKI:  
 11 Q. Do you recognize this document,  
 12 Mr. Spehar?  
 13 A. I do.  
 14 Q. What is it?  
 15 A. This is an e-mail, again the same  
 16 date, August 1, 2005, sent to Rob Carroll from  
 17 me.  
 18 Q. Okay. I want to direct your attention  
 19 to Page 3215.  
 20 A. Okay.  
 21 Q. It looks like -- it looks to me like  
 22 this begins a six-page document that was attached  
 23 to this e-mail.  
 24 Is that accurate?

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1 A. Yes.  
 2 Q. Okay. And what is -- what is this  
 3 six-page attachment here that begins on 3215?  
 4 A. It looks to be a memo from me  
 5 explaining proof of damages.  
 6 Q. And this was a -- when did you draft  
 7 this -- did you draft this document?  
 8 A. I did.  
 9 Q. And when did you draft it?  
 10 A. This would have been sometime around  
 11 the time of -- around February of 2004 when I was  
 12 going -- when I had to prove up damages at the  
 13 default hearing.  
 14 Q. Great.  
 15 (WHEREUPON, a certain document  
 16 was marked Spehar Exhibit  
 17 No. 16, for identification, as of  
 18 1/21/09.)  
 19 BY MR. CISZEWSKI:  
 20 Q. And, sir, do you recognize this  
 21 document?  
 22 A. Again, it appears to be an e-mail to  
 23 Rob Carroll from me on roughly the same date that  
 24 we have been talking about, August 1st.

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1 MR. CARROLL: Can I just correct the record?  
 2 You're inadvertently saying -- you did that on  
 3 the last one -- from Rob Carroll to me.  
 4 THE WITNESS: From me to Rob Carroll. I  
 5 don't know why it says Mike.  
 6 BY MR. CISZEWSKI:  
 7 Q. Why it says what?  
 8 A. It's addressed to Mike, but -- it's  
 9 addressed to Rob, but it starts out Mike.  
 10 Q. Okay. I want to direct your attention  
 11 to Page 3227.  
 12 A. Okay.  
 13 Q. And this appears to be the order  
 14 granting your preliminary injunction on  
 15 August 3rd, 2003?  
 16 A. Correct.  
 17 Q. And the third page of this order at  
 18 the very bottom says, "Spehar shall post a bond  
 19 of \$25,000 within 5 days of this order"?  
 20 A. Yes.  
 21 Q. Was that bond, in fact, posted?  
 22 A. Yes, it was.  
 23 Q. And was that the situation that you  
 24 said the max you could have posted was 40,000?

1 A. Correct.  
 2 Q. Why was the maximum 40,000?  
 3 A. Because the bonding company limited --  
 4 put a limit on me of that given my financial  
 5 situation at that point in time.  
 6 Q. Now, do you think -- I know you're  
 7 going to object that I'm calling for a legal  
 8 conclusion; I just want what your personal  
 9 opinion is -- that Spehar Capital would have  
 10 succeeded in its California action if Mayer Brown  
 11 had appeared to defend -- I'm sorry. I want to  
 12 ask that question differently.  
 13 Do you think that Spehar Capital would  
 14 have succeeded on its California action even if  
 15 Mayer Brown had appeared to defend CMGT?  
 16 MR. O'BRIEN: I'm going to object to the  
 17 extent it calls for a legal conclusion; but  
 18 subject to that objection, you can answer.  
 19 BY THE WITNESS:  
 20 A. At what stage?  
 21 BY MR. CISZEWSKI:  
 22 Q. Well, let's start with the TRO.  
 23 A. I was told --  
 24 THE WITNESS: Am I not getting into --

1 Q. What about the money damages award  
 2 that you got after the default judgment was  
 3 entered?  
 4 MR. O'BRIEN: Same objection.  
 5 BY THE WITNESS:  
 6 A. I proved to the satisfaction of that  
 7 Court that the damages were reasonably certain.  
 8 I have no reason to think, you know, that I  
 9 couldn't have proved the same thing to any court,  
 10 so I would stand by that.  
 11 I know you have another opinion on  
 12 that, but --  
 13 BY MR. CISZEWSKI:  
 14 Q. So I just want to make sure it's  
 15 clear.  
 16 You think that you would have obtained  
 17 your \$17 million judgment even had Mayer Brown  
 18 appeared to defend CMGT?  
 19 A. I have no reason to believe otherwise.  
 20 Q. I want to want to show you another  
 21 document. It's No. 17, I guess.  
 22 (WHEREUPON, a certain document  
 23 was marked Spehar Exhibit  
 24 No. 17, for identification, as of

1 MR. O'BRIEN: Your answer should not cover  
 2 any communications with your attorney regarding  
 3 the California action.  
 4 BY THE WITNESS:  
 5 A. I believed at the time that temporary  
 6 restraining orders are extremely difficult to  
 7 get, extremely difficult to the point that it was  
 8 probably pointless for me to try; but I figured  
 9 that was my only option at that point in time,  
 10 and so we tried.  
 11 At that point in time, I believe we  
 12 were all extremely surprised that Mayer Brown or  
 13 CMGT did not show up. The judge, in fact, made  
 14 us renotece, which we did, and there was a second  
 15 hearing. Again, we were very surprised they  
 16 didn't show up.  
 17 I believed there was a good chance at  
 18 that stage, at the injunction stage, that we  
 19 would not have gotten the injunction. And I  
 20 particularly believed that about the preliminary  
 21 injunction stage because I think a bond could  
 22 have been required in a much larger amount. It  
 23 would have been required in a much larger amount.  
 24 BY MR. CISZEWSKI:

1 1/21/09.)  
 2 BY MR. CISZEWSKI:  
 3 Q. Are you able to identify this  
 4 document?  
 5 A. Yes. This is from my bankruptcy  
 6 counsel, an e-mail to me, attaching what looks to  
 7 be like a letter from me to David Grochocinski.  
 8 Q. And this attachment that's on Spehar  
 9 Capital letterhead, was that ever sent to  
 10 Mr. Grochocinski?  
 11 A. I believe it was.  
 12 Q. Okay. Who drafted this letter that's  
 13 on the Spehar Capital letterhead?  
 14 A. I would have drafted it.  
 15 Q. Okay. Now, can you take a look at  
 16 Page 2 of the letter on Spehar Capital  
 17 letterhead? You'll see in the middle of the  
 18 document there are three bullet points.  
 19 Do you see that?  
 20 A. Yes.  
 21 Q. Can you read the second bullet point  
 22 to yourself? And then I'll ask you a question  
 23 about it.  
 24 A. Okay.

1 Q. When it says that SC has arranged this  
2 collection process, what did you mean by that?

3 A. What I meant by that was it came to be  
4 known to me in the middle of the summer of 2004,  
5 roughly July, that perhaps the best action here  
6 against Mayer Brown would be as its actual  
7 client's -- CMGT -- action.

8 I had a judgment against CMGT. I  
9 needed to collect that judgment. I wanted to  
10 collect that judgment, so I -- that's what I  
11 meant by that. By putting CMGT into bankruptcy  
12 to collect my judgment, that also allowed perhaps  
13 a process to be put in place that we have today.  
14 The bankruptcy estate itself became a plaintiff  
15 and sued CMGT.

16 Q. So Spehar Capital put CMGT into  
17 involuntary bankruptcy, right?

18 A. Yes.

19 Q. And you viewed that involuntary  
20 bankruptcy filing as part of Spehar Capital's  
21 efforts to collect on its judgment?

22 A. Yes.

23 Q. Okay. And do you view the trustee's  
24 malpractice action against Mayer Brown as a step

1 A. Yes.

2 Q. So it was your intention from the  
3 get-go to use the bankruptcy filing to try to  
4 collect on your judgment?

5 A. Depends on how you define "get-go."  
6 From the filing of the -- if the "get-go" means  
7 the initiation of the bankruptcy proceeding, yes.

8 Q. Well, what was the get-go? When was  
9 the first time that you made the decision to use  
10 an involuntary bankruptcy filing as a way to  
11 collect Spehar Capital's judgment?

12 MR. O'BRIEN: I'm going to object to the  
13 extent that it calls for any communications  
14 between he and his attorneys in formulating that  
15 decision; but if he can answer without disclosing  
16 those communications, he can answer the question.

17 BY THE WITNESS:

18 A. July, 2004.

19 BY MR. CISZEWSKI:

20 Q. And was that decision based on  
21 communications with an attorney?

22 MR. O'BRIEN: You can answer yes or no to  
23 that.

24 BY THE WITNESS:

1 in the collection process for Spehar Capital's  
2 judgment?

3 A. Yes.

4 Q. Now, when you obtained the \$17 million  
5 default judgment, you knew that there was no way  
6 for CMGT to pay that, right?

7 A. I -- at that point in time, I knew not  
8 what was going on with CMGT. I could get no  
9 answers.

10 I had -- the information I had at that  
11 point in time was that I made a couple of calls I  
12 believe up to the call center. They wouldn't  
13 talk to me, but they did answer the phone.

14 I don't know what was going on with  
15 CMGT. Were they able to -- you know, how they  
16 were doing business-wise, what had people done  
17 behind the scenes, I had no idea.

18 Q. Now, when Spehar Capital filed the  
19 involuntary bankruptcy proceeding against CMGT,  
20 did you at that time intend to approach the  
21 trustee about filing a malpractice claim against  
22 Mayer Brown?

23 A. At the time that --

24 Q. The involuntary was filed.

1 A. Yes.

2 BY MR. CISZEWSKI:

3 Q. Who was the attorney?

4 MR. O'BRIEN: You can answer that.

5 BY THE WITNESS:

6 A. Barry Capello.

7 Q. And what firm is he with?

8 A. Capello & Noel.

9 Q. Where is that?

10 A. They are in Santa Barbara.

11 Q. Who did Mr. Capello represent at that  
12 time?

13 A. Who --

14 Q. Did he represent Spehar Capital? Did  
15 he represent you individually?

16 I'm just trying to --

17 A. He was my attorney. I was approaching  
18 him as Spehar Capital.

19 Q. Okay.

20 MR. CISZEWSKI: Can we go off the record for  
21 a second?

22 (WHEREUPON, discussion was had  
23 off the record.)

24 BY MR. CISZEWSKI:

1 Q. Now, Mr. Spehar, I wanted to talk a  
2 little bit about the trustee in this case, David  
3 Grochocinski.

4 You know who that is?

5 A. I do.

6 Q. And from time to time you've  
7 communicated directly with David, right?

8 A. Yes.

9 Q. Okay. Have you ever had any  
10 face-to-face meetings with him?

11 A. I've had -- I had one meeting  
12 mostly -- in court. That's it.

13 Q. And that was at --

14 A. Adversary actions against me.

15 Q. That was at the most recent trial?

16 A. At the most recent trial and then at  
17 the -- there was another adversary action that  
18 involved the UCC liens that were filed and I met  
19 him at that hearing.

20 MR. O'BRIEN: May I -- I think your question  
21 went to direct communications, not episodes where  
22 they were in the same room together?

23 MR. CISZEWSKI: I just want to know if he  
24 had any face-to-face meetings.

1 and Art Aufmann.

2 Q. So it was one meeting and both of them  
3 were present?

4 A. I believe that was the only meeting  
5 that we had prior to the filing of the  
6 malpractice action, correct.

7 Q. Where did that meeting take place?

8 A. In Denver.

9 Q. Was it at Mr. Klenda's office?

10 A. Yes.

11 Q. So I take it in the room were  
12 yourself, Mr. Klenda, Mr. Carroll, Mr. Aufmann.

13 Was there anybody else?

14 A. That was it.

15 Q. How long did the meeting last?

16 A. All day, as I recall, from -- I can't  
17 give you specific hours, but it was a long  
18 meeting.

19 Q. Okay. Now I want to go back to the  
20 trustee, Mr. Grochocinski.

21 When was the first time that you  
22 communicated with him about a possible  
23 malpractice claim against Mayer Brown?

24 A. He came on board, I recall, somewhere

1 BY THE WITNESS:

2 A. That was it.

3 BY MR. CISZEWSKI:

4 Q. Had you ever met Mr. Grochocinski  
5 before the malpractice action was filed?

6 A. No.

7 Q. So I take it you did not have any  
8 face-to-face meetings with him then before the  
9 malpractice action was filed?

10 A. No.

11 Q. And you've also communicated with  
12 people in Ed Joyce's office, is that right?

13 A. Correct.

14 Q. Who are -- who have you communicated  
15 with in Ed Joyce's offices?

16 A. Primarily Rob Carroll; very  
17 occasionally Art Aufmann and Ed Joyce himself.

18 Q. Okay. And did you have any  
19 face-to-face meetings with anyone from  
20 Mr. Joyce's office before the malpractice action  
21 was filed?

22 A. Yes.

23 Q. With whom?

24 A. Had a face-to-face meeting with Rob

1 around the middle to late September. It would  
2 have been fairly soon after that.

3 Q. Okay. And this is all 2004?

4 A. 2004, correct. So he was picked  
5 however they do it from the pool, and we began  
6 communicating.

7 Q. Okay. And during the time period  
8 before the malpractice action was filed, did you  
9 communicate with him -- what was the form of your  
10 communication?

11 A. Very rarely actual phone calls,  
12 usually e-mails or -- usually e-mails and  
13 almost -- after we actually started negotiating,  
14 almost exclusively through counsel.

15 In fact, I would qualify that to say  
16 that absolutely by far and away the majority of  
17 my communications with him would have been  
18 through counsel. That's how he preferred to  
19 communicate.

20 Q. Now, when was -- let me back up for a  
21 second.

22 What did you say to Mr. Grochocinski  
23 about a possible malpractice action the first  
24 time that you personally talked to him?

1 A. What did I say? That's a long time  
2 ago, much to my chagrin.  
3 I am certain that I explained what I  
4 understood to be the situation, both in terms of  
5 the merit of the malpractice action and in terms  
6 of the -- how we might proceed in terms of  
7 actually effecting an action.

8 Q. And did you talk with him at all at  
9 that time about why Spehar Capital filed the  
10 involuntary bankruptcy proceeding?

11 A. Did I talk with him about that? Let's  
12 see. Yeah, I probably did.

13 Q. Okay. And did you tell him that one  
14 of the reasons that Spehar Capital was interested  
15 in a malpractice action was so that it could  
16 collect on its judgment?

17 A. Yes.

18 Q. How did the trustee respond when you  
19 first presented the idea of a malpractice action?

20 A. He had requirements. First of all, he  
21 wanted to make sure -- he knew nothing about  
22 malpractice. He wanted to make sure it was  
23 properly investigated and correct and a valid  
24 action to file.

1 Mayer Brown?

2 A. Yes.

3 Q. How do you know that?

4 A. I lived it.

5 Q. Did the trustee indicate to you during  
6 the first conversation you had with him that it  
7 was the first time he was hearing about it?

8 A. That would be supposition on my part.  
9 I can't actually recall.

10 Q. Now, did the trustee ever indicate to  
11 you that he thought your default judgment could  
12 possibly be vacated?

13 A. I don't recall any conversations in  
14 that regard. I know that -- you know, I'm not  
15 going to get into counsel discussion, but that  
16 was something that was on the radar screen.

17 Q. Okay. And that was on the radar  
18 screen because of communications you had with  
19 your own counsel or because of communications you  
20 had with somebody else?

21 A. My own counsel.

22 Q. Did you ever talk with the trustee  
23 about the validity of your default judgment?

24 A. My default judgment?

1 He was concerned that there was -- it  
2 was an estate that looked to have no assets other  
3 than the malpractice action; and, therefore,  
4 someone was going to have to finance both the  
5 estate and the action.

6 And he was concerned that the  
7 unsecured creditors, which were his primary  
8 charge, would get some sort of recovery from it;  
9 so he required a carve-out from my secured claim.

10 Q. Now, did you agree with  
11 Mr. Grochocinski that other than a possible  
12 malpractice claim against Mayer Brown the CMGT  
13 bankruptcy estate had no assets?

14 A. Based on his representations, yes, it  
15 appeared to me and based on our -- the deposition  
16 that we had on Franco and the discovery we had  
17 done at that point in time, yes, that all became  
18 fairly clear.

19 Q. Okay. And has that view changed at  
20 all since that time?

21 A. No.

22 Q. Is it fair to say that Spehar Capital  
23 was the first to suggest to the trustee that  
24 there was a possible malpractice action against

1 Q. Yes.

2 A. I'm certain I probably did. I can't  
3 recall exact conversations, but I'm certain that  
4 I represented to him that I understood it to be  
5 absolutely valid.

6 Q. And did you ever talk with the trustee  
7 about the question of whether your default  
8 judgment could be attacked by the trustee?

9 A. That would have been a communication  
10 with my counsel more than me.

11 Q. Now, you mentioned a moment ago that  
12 the concept of the default judgment being vacated  
13 was something that was on your radar screen  
14 because of a discussion you had with counsel.

15 I don't want to know what was said. I  
16 just want to know who is the counsel that you had  
17 a communication with that led this to be on your  
18 radar screen.

19 A. It was -- you know, I had two counsel,  
20 Ken Franklin and Steve Klenda. Between the two  
21 of them, I don't know who it was.

22 My general understanding was that  
23 there were time limits. The judge had mentioned  
24 something about this in the actual judgment

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1 order, as you well know, so that's how it came to  
 2 be on the radar screen; so we, as I understand  
 3 it, tried to conform to whatever deadlines there  
 4 were with regards to that.  
 5 (WHEREUPON, a certain document  
 6 was marked Spehar Exhibit  
 7 No. 18, for identification, as of  
 8 1/21/09.)  
 9 BY MR. CISZEWSKI:  
 10 Q. Now I'm showing you what's been marked  
 11 as Deposition Exhibit No. 18.  
 12 Can you identify what this document  
 13 is?  
 14 A. An e-mail from myself to David  
 15 Grochocinski, November 30, 2004.  
 16 Q. Okay. And starting on the fourth line  
 17 there in the first paragraph, it says, "When I  
 18 last spoke with George, he did say that Mayer  
 19 Brown might have a large deductible -- \$1 mm or  
 20 so -- but they are not self-insured (as you  
 21 thought they might be). Hopefully, this allays  
 22 some of your expense concerns."  
 23 Does George -- is that referring to  
 24 George Spellmire?

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1 A. It is, yes.  
 2 Q. And why were you interested in Mayer  
 3 Brown's insurance?  
 4 A. I think on David's part there was a --  
 5 he just mentioned the concept that he thought  
 6 Mayer Brown was self-insured.  
 7 I had had meetings with Spellmire in  
 8 trying to line him up before where he mentioned,  
 9 I believe, the opposite; so that came up in that  
 10 context.  
 11 Q. What exactly did David tell you about  
 12 his thought that Mayer Brown might be  
 13 self-insured?  
 14 A. I don't recall, Steve. I think it was  
 15 just a comment in passing. I'm not sure that it  
 16 was -- what the import of it was, to tell you the  
 17 truth.  
 18 I myself have been trying to learn and  
 19 decipher all the issues involved in this case as  
 20 we go along. I don't recall it as being that big  
 21 of a deal, but it was something he brought up.  
 22 Q. And do you recall what his concerns  
 23 were about expenses?  
 24 A. Yeah. The concerns about expenses

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1 were covering the expenses. Since this is a  
 2 no-asset, quote, estate, somebody had to pay for  
 3 the expenses of both the estate, the  
 4 administrative expenses, and the malpractice  
 5 expenses.  
 6 I had discussed an agreement with  
 7 George Spellmire under which I had understood he  
 8 would be covering 50 percent of both of those.  
 9 It was incorrect. He couldn't cover actually any  
 10 part of the estate, the actual administrative  
 11 expenses. That was a no-no.  
 12 I didn't realize that at the time, so  
 13 we were trying to get that squared away.  
 14 Q. And how would Mayer Brown's insurance  
 15 affect David's concerns about the expenses?  
 16 A. I honestly don't know. My view was  
 17 that Mayer Brown was -- it really didn't matter  
 18 whether they were insured or not. They were a  
 19 large enough law firm to cover it.  
 20 I can't tell you. That's more of a  
 21 question for David.  
 22 Q. You're quite certain that David raised  
 23 the issue of Mayer Brown's insurance?  
 24 A. Yes.

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1 Q. Other than Exhibit No. 18, do you  
 2 recall any other communications you had with  
 3 David about Mayer Brown's insurance?  
 4 A. You know, other than if he brought it  
 5 up in some conversation prior to this that I was  
 6 responding to here, no.  
 7 Q. Okay. Do you know what steps the  
 8 trustee himself, David himself or someone in his  
 9 office, took to investigate the malpractice claim  
 10 against Mayer Brown before it was filed?  
 11 A. No, I don't have chapter and verse on  
 12 that. I know he had the files. I know we had  
 13 delivered all of CMGT's files that we had  
 14 received at deposition to him. I had given all  
 15 the information that I could on it.  
 16 In terms of how much he relied on  
 17 Joyce versus what he did himself, I couldn't tell  
 18 you. That's more of their discussion.  
 19 Q. Okay. Well, did David ever tell you  
 20 anything else about the investigation that he or  
 21 his office did prior to filing the malpractice  
 22 action?  
 23 A. No. He mostly -- you know, my  
 24 recollections, best recollections, are that he



1 was relying on Joyce.

2 Q. Did he tell you that?

3 A. Did he tell me that? I believe he  
4 did. As a general statement of who was really  
5 going to be doing at least the majority and the  
6 bulk of the investigation, yes, he did. Did he  
7 exclude himself? No.

8 Q. Now, you mentioned before that when  
9 you first approached David with the idea of this  
10 malpractice action, he wanted to make sure it was  
11 a valid malpractice claim?

12 A. Correct.

13 Q. And that the unsecured creditors  
14 obtained some type of benefit from the filing, is  
15 that right?

16 A. That's correct.

17 Q. Other than those two conditions, did  
18 David ever express to you any reservations about  
19 filing the malpractice action?

20 A. It's been a long time. I don't know.  
21 I don't know how to answer that.

22 Q. Can you recall anything that he said  
23 he was worried about the filing of the  
24 malpractice action?

1 centered, if you look at the e-mail record of the  
2 documents I sent him, on discussions of those  
3 documents if we had any.

4 David, I really didn't have in-depth  
5 conversations with him about this that much. He  
6 more or less held his own counsel; and when we  
7 started the negotiations, he immediately reverted  
8 to talking to me through counsel, so this wasn't  
9 an area we explored in great detail.

10 Q. Okay. And eventually you did enter an  
11 agreement with David to finance part of this  
12 malpractice action and to find a malpractice  
13 attorney who would be willing to file it, is that  
14 right?

15 A. Correct. We thought we had a  
16 malpractice attorney lined up already in George  
17 Spellmire, but the financing took so long that we  
18 ended up having to switch. George got busy, and  
19 Ed thankfully stepped up.

20 Q. What did Spehar Capital do to look for  
21 a malpractice attorney?

22 A. I met with them and explained what I  
23 thought was the merit of the case to them and  
24 also explained what I thought was a fair deal.

1 A. Mostly just -- no. His concerns were  
2 the funding, the general unsecured creditors  
3 getting paid, and that it be a valid action that  
4 was something he could get behind.

5 Q. Okay. Now, you mentioned that in the  
6 first meeting you had with David about this you  
7 told him about the merit of the malpractice  
8 action as you believed it and the best way to  
9 proceed with it, is that right?

10 A. Correct.

11 Q. What other substantive topics did you  
12 talk with David about the malpractice action?

13 A. Substantive topics? Well, the  
14 documents that we've been going over here, I  
15 probably delivered to him the same stuff that  
16 I've delivered to Rob; so we may have discussed  
17 some of that.

18 There was another concern that I had  
19 that I haven't mentioned was that the bogus UCC  
20 liens that Lou Franco and Ron Given filed  
21 together would be invalidated so that they would  
22 not get in the way of my recovery, so that was  
23 discussed.

24 It was probably -- it was all just

1 contingency deal.

2 David wasn't interested in doing any  
3 work on that aspect of it.

4 Q. Now, when did your search begin to try  
5 to find a malpractice attorney?

6 A. Well, as Spehar Capital for myself, it  
7 began immediately after the judgment; but, again,  
8 that was all for myself, a direct action.

9 Q. Okay. And what was your understanding  
10 of what type of direct action you could bring?

11 A. I'm not going to get into attorney  
12 communications, but my understanding personally  
13 was that California law allows a third party in  
14 egregious circumstances to sue an attorney for  
15 interference with contract, breach of contract,  
16 interference with prospective economic advantage,  
17 unlike Illinois law, which does not.

18 Q. Okay. So, in other words, you were  
19 contemplating some type of suit under California  
20 law that would allow Spehar Capital to sue Mayer  
21 Brown directly?

22 A. Correct. That was my initial thought.

23 Q. Okay. And did you consult only with  
24 California lawyers about that?

1 A. Initially, yes.

2 Q. Did you ultimately consult with  
3 lawyers elsewhere about a direct action?

4 A. Yes, and that all happened after July.  
5 After I spoke with Barry Capello, we spoke about  
6 that.

7 Q. Now, once a decision was made to go  
8 through with the involuntary bankruptcy filing  
9 and trying to collect the judgment through the  
10 bankruptcy and malpractice action, when did the  
11 search begin for the malpractice attorney who  
12 would file the malpractice action against Mayer  
13 Brown?

14 A. Roughly in July, but that search was  
15 also a joint search in case there would be  
16 anything there for myself; and I was also  
17 searching for a second action that involved the  
18 MOIC, so it was kind of all jumbled up in the  
19 same discussion.

20 Q. How many attorneys were contacted  
21 about the possibility of filing the malpractice  
22 action by CMGT against Mayer Brown?

23 A. I would say if you count the initial  
24 introductions -- and I'm going to forget people

1 reasons he gave us.

2 Q. Okay.

3 A. Which were that we had taken so long  
4 to negotiate the deal that he had had to get busy  
5 on other cases and he didn't have time. He's a  
6 small shop.

7 Q. So it was taking too long to negotiate  
8 his contingency deal?

9 A. No, too long to negotiate the  
10 financing deal with the trustee. That was  
11 something that I would have hoped and thought  
12 could be done in a couple days and it ended up  
13 taking 8 months, 9 months and George got busy.

14 David would not -- didn't want to  
15 proceed with an investigation until we had our  
16 financing deal in place.

17 Q. Okay.

18 (WHEREUPON, a certain document  
19 was marked Spehar Exhibit  
20 No. 19, for identification, as of  
21 1/21/09.)

22 BY MR. CISZEWSKI:

23 Q. Now, Mr. Spehar, we have handed to you  
24 what's been marked as Exhibit No. 19.

1 that weren't interest in doing it themselves;  
2 just the people that actually expressed an  
3 interest or that would have been probable  
4 attorneys for the case -- I would say maybe  
5 somewhere in the neighborhood of six, of which  
6 three wanted the case or expressed a strong  
7 interest in it, put it that way.

8 Q. And who are they?

9 A. The people that expressed the strong  
10 interest would be George Spellmire -- and, again,  
11 these are all contingent upon doing an  
12 investigation and making sure that they would do  
13 it -- Ed Joyce and Mike Cherry.

14 Q. Okay. And how many lawyers were  
15 contacted and weren't interested or just didn't  
16 fit the bill?

17 A. I'd say roughly three, and they just  
18 didn't either have time or, you know, it  
19 wasn't -- I can't recall exactly what their  
20 reasonings were, but they never got into an  
21 investigation actually.

22 Q. And do you know exactly why  
23 Mr. Spellmire bowed out after a while?

24 A. No, I don't exactly. I know the

1 Are you able to identify this  
2 document?

3 A. Yes, I am.

4 Q. What is it?

5 A. This is a letter from my counsel,  
6 Steve Klenda, to George Spellmire in the summer  
7 of 2005 after we had pretty much finished our  
8 financing deal and we were going back to him to  
9 see if we could keep him on board as the  
10 malpractice attorney.

11 Q. Okay. And he declined at that point?

12 A. Yes.

13 Q. Now, was Mr. Joyce's firm involved at  
14 all before this time?

15 A. No.

16 Q. Had you even had an initial  
17 consultation with Mr. Joyce?

18 A. No. I had thought Spellmire was our  
19 guy.

20 Q. And so when was the first time that --  
21 well, how did Mr. Joyce come into the picture  
22 then?

23 A. I was scrambling. Once Spellmire said  
24 he wasn't going to do it, that's when I called Ed

1 Joyce and Mike Cherry. I can't remember exactly  
2 who referred them to me. I believe perhaps Frank  
3 Pasquesi, who is a lawyer at -- I can't remember  
4 the firm right now, but he helped me figure out a  
5 couple other guys to call.

6 So I called Ed and Mike and both were  
7 interested. Mike had some conditions. He wanted  
8 to speak to Franco first. I didn't want to -- I  
9 didn't think that was appropriate.

10 And Ed was interested, so I chose Ed  
11 to the extent that I could, because it was really  
12 the trustee's decision; but I presented Ed to the  
13 trustee.

14 Q. Okay. Why didn't you think it was  
15 appropriate for Mr. Cherry to speak to Franco  
16 first?

17 A. I just wanted the -- I believed it was  
18 more appropriate to have the discussions be held  
19 with the trustee first and everything lined up  
20 properly before he did that.

21 And it's also just a feeling, I guess,  
22 about the two attorneys. I was a little more  
23 comfortable with Ed.

24 Q. And did Mr. Joyce have any conditions

1 an initial investigation forward was they had  
2 absolutely no problem with merit of the case.  
3 They thought merit was great.

4 They were playing devil's advocate  
5 very strongly -- let's put it that way -- with  
6 regard to some of the damage elements; so we had  
7 to bat that around a little bit and particularly  
8 with regards to the whole issue of the judgment  
9 standing as damages that's been litigated.

10 Q. So there was some question about  
11 whether the judgment itself could constitute  
12 damages?

13 A. Yes. You know, we talked about some  
14 of the cases that were involved and the whole  
15 collectibility aspect that has been litigated.

16 Eventually we came to an agreement  
17 that Illinois law said that it stood as damages.

18 Q. That a judgment that had not been  
19 collected upon is still damages?

20 A. A judgment against a defendant as  
21 opposed to a plaintiff that was caused by  
22 attorney malpractice stood as damages; the  
23 collectibility rule did not apply.

24 Q. Now, who did you talk to in

1 before he wanted to pursue it further?

2 A. Only that he would not fully commit  
3 until he had done a full investigation, but he  
4 would commit to do that.

5 Q. And when did you first talk to  
6 Mr. Joyce, do you recall?

7 A. It would be in August of 2005;  
8 immediately after this, somewhere in there. I  
9 can't tell you the exact date.

10 Q. Now, did Mr. Joyce's office eventually  
11 do the investigation that he had talked about  
12 wanting to do?

13 A. Yes.

14 Q. And did he agree to proceed with the  
15 case at the end of that investigation?

16 A. Yes.

17 Q. Now, at some time in 2006, did  
18 Mr. Joyce's firm indicate to you that they were  
19 having some reservations about going forward with  
20 the case?

21 A. Yes.

22 Q. What was the nature of the  
23 reservations they were having about the case?

24 A. Joyce's general statement to me from

1 Mr. Joyce's office about that issue?

2 A. Who did I talk to? I mean, it's  
3 mostly memos, you know, the stuff that we have  
4 been through in discovery. It was -- I do a lot  
5 of voluminous memo writing, as Rob knows.

6 Q. And did you draft any memos about this  
7 collectibility issue?

8 A. I probably did, yes.

9 Q. Okay. And did Mr. Joyce or someone  
10 from his office draft memos or communications  
11 back to you about it?

12 A. Most likely. I mean, I'd have to  
13 review them.

14 Q. Okay. Was there any other aspect on  
15 the damages part of the case that anyone from  
16 Mr. Joyce's firm expressed any reservation or  
17 concerns about?

18 A. We talked about lost profits aspects  
19 of it.

20 Q. Can you explain what you mean by that?

21 A. Just the issue of CMGT's viability as  
22 a development-stage company as opposed to a  
23 start-up company, which it is not; under Illinois  
24 law, could you establish damages for lost

1 profits.  
 2 And we came to the understanding that  
 3 that was -- at the stage of the market, at the  
 4 stage of the development of CMGT, that you could.  
 5 Q. And that was because you didn't  
 6 consider CMGT to be a start-up company?  
 7 A. They are not a start-up company  
 8 under -- there's fairly well-defined definitions  
 9 in venture capital what start-up is, and they did  
 10 not fit it.  
 11 You know, if you look at the  
 12 third-party due diligence done by Sealaska, you  
 13 will see that it's consistently called a  
 14 development-stage business. If you look at Jim  
 15 Wong's financials, you'll see he calls it a  
 16 development-stage business.  
 17 As soon as they had an established  
 18 market, they were making revenue. They were not  
 19 profitable, but that's not in my understanding  
 20 what's required under Illinois law. What's  
 21 required is an established market and an  
 22 established company, which they were.  
 23 MR. CISZEWSKI: We can break now.  
 24 (WHEREUPON, a lunch recess was

1 Q. Okay.  
 2 A. But there were questions about it.  
 3 Q. Now, did you typically communicate  
 4 with Mr. Joyce's office verbally or by e-mail?  
 5 A. Mostly by e-mail; I would say, you  
 6 know, occasionally verbally, but mostly by  
 7 e-mail.  
 8 Q. Okay. Other than what we have talked  
 9 about already, can you recall anything else that  
 10 you had an oral conversation with anybody at  
 11 Mr. Joyce's office about regarding this  
 12 malpractice case?  
 13 A. I'm sure knowing me there were several  
 14 proddings to move it along.  
 15 THE WITNESS: Right, Rob?  
 16 BY THE WITNESS:  
 17 A. But other than that, that's I think  
 18 the most of it. I mean, it was a thorough  
 19 investigation. There were a lot of issues where  
 20 they -- we had that one meeting in Denver. It  
 21 was a particularly probing meeting, I think, and  
 22 I think we have covered everything.  
 23 BY MR. CISZEWSKI:  
 24 Q. Okay. Do you recall when that meeting

1 had.)  
 2 MR. CISZEWSKI: Let's go back on the record.  
 3 BY MR. CISZEWSKI:  
 4 Q. Okay. Mr. Spehar, before lunch we had  
 5 talked a little bit about two issues or  
 6 misgivings that were raised by Mr. Joyce's  
 7 office, and they were that the judgment -- the  
 8 question of whether there were damages if the  
 9 underlying judgment is not collected on and the  
 10 question of whether you could have lost  
 11 profits -- prove lost profits in the case of  
 12 CMGT.  
 13 A. Right.  
 14 Q. Were there any other issues or  
 15 misgivings or concerns about the malpractice case  
 16 that Mr. Joyce's office raised with you?  
 17 A. I mean, early on it was a -- like I  
 18 said, there was a lot of devil's advocate  
 19 playing, so we walked through a lot of the  
 20 questions you've had and other questions about  
 21 just my role with CMGT, everything.  
 22 But that stuff got scuttled. They felt  
 23 comfortable with the merit in those regards early  
 24 on was my understanding.

1 in Denver was?  
 2 A. Yes. It was late November of 2005.  
 3 Q. Okay. Now, did you personally do your  
 4 own research about the damages questions that  
 5 Mr. Joyce's office raised?  
 6 A. I did some research, yes.  
 7 Q. Okay. And what did you find -- what  
 8 did you conclude or find out as a result of that  
 9 research?  
 10 A. I concluded -- I mean, I've looked  
 11 at -- I have never done any law myself. I'm a  
 12 layman, but this is meaningful enough to me that  
 13 I did learn what I learned.  
 14 And I concluded in looking at the case  
 15 law that in California that it appeared to me --  
 16 excuse me, in Illinois that the collectibility  
 17 issue, as we said, didn't apply in cases like  
 18 this where you have a damage judgment caused  
 19 against a defendant by lawyer malpractice.  
 20 Q. And did you provide that case law to  
 21 Mr. Joyce's office?  
 22 A. I think they may have had it already.  
 23 I'm not sure.  
 24 Q. Did you discuss it with them?

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1 A. In the memos, yes, I did.  
 2 Q. Were there any oral discussions about  
 3 it?  
 4 A. I believe it was mostly in memos.  
 5 Q. Okay. So you don't recall what was  
 6 said during any oral conversations, if there were  
 7 any?  
 8 A. No, I don't specifically. If we would  
 9 have had conversations about it, it would have  
 10 all been short conversations basically saying  
 11 there's a memo coming on it.  
 12 Q. Okay. Did you ever talk with the  
 13 trustee, Mr. Grochocinski, about the damages  
 14 questions that had been raised?  
 15 A. Yes.  
 16 Q. And you personally talked to David  
 17 about it?  
 18 A. Again, it would have been -- it's a  
 19 situation where, yes, I would have personally  
 20 talked to him about it, but they would have been  
 21 short conversations saying there's memos coming.  
 22 Q. Did you ever talk about the substance  
 23 or the research that you had done with David?  
 24 A. On the --

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1 Q. About the damages question.  
 2 A. About the damages question? I -- yes,  
 3 I probably did have conversations about that.  
 4 I'm not sure how in-depth they were. I mean,  
 5 it's all wrapped up in -- again, I had written  
 6 those memos for Joyce mostly. At the time that I  
 7 was discussing with David, I was passing memos on  
 8 to him.  
 9 And so I would have been referring to  
 10 the memos for the most part as opposed to having  
 11 substantial discussions about it.  
 12 Q. Do you recall anything that was said  
 13 during any of the conversations with the trustee?  
 14 A. Not -- I don't have particular  
 15 recollections of it, no.  
 16 Q. Okay. Did you have communications  
 17 with anyone else about these damages questions  
 18 that had been raised?  
 19 MR. O'BRIEN: I'm going to object to the  
 20 extent it calls for communications with his own  
 21 counsel.  
 22 Beyond that, you can answer if you  
 23 know.  
 24 BY THE WITNESS:

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1 A. No, not beyond my own counsel.  
 2 BY MR. CISZEWSKI:  
 3 Q. You did have communications with your  
 4 counsel, though?  
 5 You can answer yes or no.  
 6 A. I'm probably not going to answer that  
 7 question.  
 8 MR. O'BRIEN: You can answer yes or no.  
 9 That's all he's going to ask you.  
 10 BY THE WITNESS:  
 11 A. I probably did, yes.  
 12 BY MR. CISZEWSKI:  
 13 Q. And do you recall which counsel it  
 14 was?  
 15 A. It may have been -- no, I don't. It  
 16 would have either been Todhunter or Klenda, one  
 17 of those guys.  
 18 Q. Okay. I want to shift gears here. I  
 19 just want to ask you: Why do you think that the  
 20 Trautner Newco deal was covered by your Exhibit A  
 21 to your agreement with CMGT?  
 22 A. Because the Exhibit A -- first of all,  
 23 the agreement specifically says the people that  
 24 are covered -- and these are not deals; these are

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1 people, individuals, investors -- are people that  
 2 I bring in to CMGT and then people with whom CMGT  
 3 authorizes me and asks me to interact, to hold  
 4 discussions with and to share information with.  
 5 That took place with Trautner and that  
 6 took place with Trautner's investors such as  
 7 Harlan Smith.  
 8 And then also the Exhibit A is to be  
 9 updated from time to time. The writing that you  
 10 have of that was not ever intended to be the  
 11 final writing.  
 12 Q. And when did CMGT authorize you to  
 13 communicate with Trautner -- and I forget the  
 14 name of the other --  
 15 A. Harlan Smith.  
 16 Q. -- investor you mentioned.  
 17 A. CMGT, the minute I came on board in --  
 18 well, not the minute I came on board.  
 19 After September 11, 2001, there was a  
 20 dislocation in all of the capital markets and it  
 21 particularly affected insurance. There was a big  
 22 question mark about were insurers going to be  
 23 going under because of their liabilities on that.  
 24 Hartford was one of the major players that was

1 called into question in the markets. Their stock  
2 dropped tremendously.

3 I had a relationship with an  
4 international fund that was trying to take  
5 advantage of that situation and wanted to buy  
6 debt of insurers to offer capital to insurers, so  
7 I put together a potential deal for Hartford  
8 since we were actually working with them at the  
9 time.

10 And Lou and I were working on that  
11 deal. Trautner was a major investor at that  
12 point in time, and he wanted to know about it.  
13 That was the first instance that I remember of  
14 Lou actually bringing Chuck into discussions with  
15 me, and we had substantial discussions about that  
16 deal and CMGT and what my role was going to be  
17 with CMGT.

18 And from that point forward there were  
19 many conversations with Chuck over the course of  
20 the next year or so. And then specifically on  
21 January 27, 2003, there was a conference call  
22 called by Franco that involved Trautner, Ron  
23 Given, myself, and Lou Franco -- those four  
24 parties -- specifically called to vet what Chuck

1 Those specific percentages I recall  
2 may have been discussed; but if they weren't  
3 those specific percentages, they were very, very  
4 close.

5 Q. Okay. Now, did you ever have any  
6 discussions with anyone about Trautner's Newco  
7 deal in between the conference call on  
8 January 27, 2003, and that telephone call you got  
9 on your cell phone in August of 2003 when Franco  
10 asked if you were sitting down and proceeded to  
11 talk about it?

12 A. Only with Franco immediately after the  
13 telephone call with the conference call. We  
14 discussed what went on in the call and his  
15 reasons for declining and how he felt about the  
16 deal.

17 Q. The same day?

18 A. It would have been shortly thereafter,  
19 within days after. There may have been a couple  
20 of calls within a couple days after that.

21 Again, Chuck and Wayne Baliga were the  
22 two guys that were putting in what Lou called  
23 savior capital, so they were sensitive investors,  
24 people that he wanted to keep on board -- he

1 called Newco.

2 And I was to be on that conference  
3 call because Lou was a little sensitive about  
4 offending Chuck and he wanted me to ask the hard  
5 questions about Newco and so I did.

6 And at the end of the day, at the end  
7 of that conversation, Lou told Chuck he was not  
8 going to do that deal, that it was too onerous  
9 for his shareholders, creditors, and that we were  
10 involved with Sealaska. At that point in time,  
11 we thought that was going to happen.

12 Q. Now, was the Newco proposal that was  
13 discussed in that January 27, 2003 telephone call  
14 the same Newco proposal that was being pursued in  
15 August?

16 A. Based on the actual parameters of the  
17 deal, yes, it was.

18 Q. Okay. And what parameters are those?

19 A. 80/20 split for all of the debt  
20 being -- it was an asset purchase deal, meaning  
21 Newco bought the assets of CMGT. They left all  
22 the debt behind with CMGT. They gave CMGT  
23 20 percent of the stock, and they kept  
24 80 percent.

1 didn't want to alienate them -- but by the same  
2 token couldn't do that deal; so he was walking  
3 that fine line.

4 Q. So then there were no  
5 communications -- you had a couple follow-ups  
6 with Lou after the January 27, 2003 meeting; then  
7 nothing --

8 A. Right.

9 Q. -- until Lou's cell phone call?

10 A. Correct, nothing.

11 Q. And with respect to the Newco deal  
12 that Chuck discussed during that January 27th  
13 conference call, did you take part at all in  
14 preparing the terms of that deal?

15 A. No, I didn't prepare the terms of the  
16 deal. I just discussed the terms from CMGT's  
17 perspective with Chuck, and I was more there as a  
18 representative of CMGT to vet that deal.

19 Q. Okay. Had you had any involvement in  
20 that proposal prior to that conference call?

21 A. Just discussions with Lou Franco about  
22 what he thought was coming, because he had had  
23 discussions with Chuck, so he prepped me on it.

24 Q. So that was immediately prior to the

1 call, more or less preparation for the call?

2 A. Yes. It was in the month prior to  
3 that because Chuck was -- he was trying to avoid  
4 Chuck's call and discussion of that.

5 And I'm trying to recall. I may have  
6 actually even had a phone call with Chuck  
7 sometime in December about that a little bit.

8 Q. Okay.

9 A. Then just prior to the call, I'll also  
10 say that one of the primary investors that Chuck  
11 had -- in fact, maybe the primary investor -- was  
12 a fellow named Harlan Smith.

13 And I think it was on January 23rd Lou  
14 asked me to send him all of CMGT's business plan,  
15 the financials, hold a discussion with him, which  
16 I did, and get a nondisclosure agreement from  
17 him, which I did.

18 Q. Did you have any involvement in the  
19 Newco deal that Chuck presented during that  
20 January 27th call other than specific tasks that  
21 Lou asked you to perform?

22 A. On the January 27th call?

23 Q. Um-hum.

24 A. No, no. Again, I was there as a

1 e-mail from myself to Rob Carroll.

2 Q. Okay. And this appears to  
3 reference --

4 MR. O'BRIEN: How many e-mails did you send  
5 that day?

6 THE WITNESS: Tell him, Rob.

7 MR. O'BRIEN: My goodness. I'm sorry.

8 MR. CISZEWSKI: Poor Rob.

9 THE WITNESS: Do you understand now why we  
10 don't need conversations?

11 MR. CARROLL: Did we get the "poor Rob" on  
12 the record?

13 MR. CISZEWSKI: We'll stipulate to that.

14 MR. O'BRIEN: I'm sorry, Steve.

15 BY MR. CISZEWSKI:

16 Q. Mr. Spehar, this e-mail appears to  
17 reference a conversation that you had with Robert  
18 Spaeth?

19 A. Yes.

20 Q. Who is Robert Spaeth?

21 A. He is a, if not a shareholder -- he  
22 may be a shareholder personally, but for sure his  
23 father, Melvin, is a shareholder of CMGT, and  
24 Robert is either a shareholder or Melvin's

1 representative from CMGT to vet that from CMGT's  
2 angle, and I presented -- to Harlan Smith I  
3 presented all of CMGT's business information and  
4 told him the story of CMGT so he could come up to  
5 speed on it.

6 His involvement in Newco I wasn't  
7 aware of at that time.

8 Q. Okay. And you did that pursuant to  
9 Lou's --

10 A. Specific authorization, yes. He  
11 actually asked me to.

12 Q. Okay. Great.

13 A. And he's copied on all my e-mails to  
14 Harlan.

15 (WHEREUPON, a certain document  
16 was marked Spehar Exhibit  
17 No. 20, for identification, as of  
18 1/21/09.)

19 BY MR. CISZEWSKI:

20 Q. Now, Mr. Spehar, we have handed you  
21 what's been marked as Deposition Exhibit No. 20.

22 Can you identify what this document  
23 is?

24 A. It's again another August 1, 2005

1 representative, his son.

2 Q. Okay. In the second paragraph there  
3 it says, "They have a very low opinion of Franco,  
4 Given, and Trautner."

5 Did they express to you why they hold  
6 a low opinion of those three gentlemen?

7 A. Did they express to me? I know that  
8 the Spaeths voted against Newco. I know that  
9 Robert called me.

10 I was very wary of making outgoing  
11 phone calls to CMGT shareholders. I was under  
12 the impression that that might actually -- I was  
13 actually warned by Ron Given that that might put  
14 me at risk, so I dealt only with management.

15 After we filed the TRO, I actually  
16 received a call out of the blue, having never  
17 spoken with him before, from Robert Spaeth  
18 essentially congratulating me on my lawyer's  
19 response to Ron Given and saying that he felt  
20 Newco was a fraudulent conveyance.

21 Q. I want to talk a little bit about the  
22 bullet points that are there about a third of the  
23 way down the page.

24 A. Sure.

1 Q. It says that Robert confirmed that  
2 CMGT had no knowledge of SC's dispute with CMGT  
3 over Newco when they voted on Newco.

4 And the SC there refers to Spehar  
5 Capital, I take it?

6 A. Correct.

7 Q. Can you recall what Mr. Spaeth told  
8 you about that subject during your call?

9 A. He told me they had never -- that they  
10 were unaware at the time they voted that I had a  
11 dispute with CMGT over Newco.

12 Q. Okay. Had you heard that from anybody  
13 else?

14 A. I don't believe so. I don't know, no.

15 Q. Okay. And the next one says that CMGT  
16 shareholders were never told about the Washoe  
17 deal until SC informed them well after the fact.

18 A. That refers to my e-mail -- Steve  
19 Klenda's e-mail that informed everyone, and they  
20 were included on that list.

21 MR. O'BRIEN: Let him ask his question  
22 before you give an answer, please.

23 THE WITNESS: Thank you.

24 BY MR. CISZEWSKI:

1 other than Robert Spaeth?

2 A. No, and that bullet point refers to  
3 also my reading of the letters that went back and  
4 forth between Ron Given and Lou Franco and the  
5 shareholders in which there is no information  
6 about this sort of stuff when they voted.

7 Q. And what about the fourth bullet  
8 point? Did you obtain that information from  
9 anybody other than Robert Spaeth?

10 A. No.

11 Q. Okay. And so you never talked to, for  
12 instance, Lou Franco about any of those four  
13 bullet point?

14 A. Franco would not talk to me at that  
15 point in time about anything but the MOIC deal.  
16 I had no relationship with other shareholders at  
17 that point in time. They were all pretty mad at  
18 me.

19 (WHEREUPON, a certain document  
20 was marked Spehar Exhibit  
21 No. 21, for identification, as of  
22 1/21/09.)

23 BY MR. CISZEWSKI:

24 Q. Now, sir, we have handed you what's

1 Q. Had you heard that from any other CMGT  
2 shareholder?

3 A. You know, with regards to that  
4 question for both of these bullet points, I don't  
5 know if -- I can't specifically recall. I had  
6 conversations -- Wayne Baliga and I were fairly  
7 close in the sense that we were still on the MOIC  
8 after this went down, and I had enlisted Wayne to  
9 be a go-between to try and settle after the TRO.

10 So I had conversations with Wayne. I  
11 can't specifically recall. He would have been  
12 the other one that may have told me that.

13 Q. Okay.

14 A. But I can't specifically recall  
15 specific instances.

16 Q. Okay. And so there's no shareholders  
17 other than Mr. Spaeth and possibly Wayne Baliga  
18 who would have told you either of the things  
19 listed in those first two bullet points?

20 A. Not to my recollection, no.

21 Q. And what about the third one? Did you  
22 hear that from any shareholders other than --  
23 well, we don't know that Robert Spaeth is a  
24 shareholder, but did you hear that from anybody

1 been marked as Deposition Exhibit No. 21.

2 A. Okay.

3 Q. Are you able to identify this  
4 document?

5 A. Yes.

6 Q. And what is it?

7 A. It's a July 26th e-mail from myself to  
8 David Grochocinski.

9 Q. Okay. And was there some discussion  
10 at this point in time that Mr. Joyce and his firm  
11 may not pursue the malpractice case on behalf of  
12 the estate?

13 A. Yes, there was. Excuse me.

14 (Short pause.)

15 MR. O'BRIEN: Could we just have the  
16 question read back to him?

17 MR. CISZEWSKI: Sure.

18 (WHEREUPON, the record was  
19 read by the reporter.)

20 BY THE WITNESS:

21 A. Yes, there was.

22 BY MR. CISZEWSKI:

23 Q. Okay. And when did that discussion  
24 first begin?



1 A. Sometime -- I'm trying to recall; just  
2 right around this time.

3 Q. Okay. And was there a reason given  
4 for why Mr. Joyce's firm may not pursue the case?

5 A. If I recall correctly, we were still  
6 having those discussions about the damages  
7 issues.

8 Q. Now, as of this time, July 26, 2006,  
9 did you believe that Mr. Joyce's firm had fully  
10 investigated the basis for the malpractice case?

11 A. I believed -- as strongly as I believe  
12 in the malpractice action, yes, I did.

13 To the extent that they could have  
14 done more to convince themselves if they were  
15 having this kind of trepidation about it, I would  
16 have hoped that they would have done more; but,  
17 you know, in terms of adequate investigation with  
18 what they did with me, yes, absolutely.

19 Q. Let's take a look at numbered  
20 paragraph 4 in this exhibit.

21 Why did you think that Mr. Joyce's  
22 firm should subpoena Franco, Trautner, Wong, and  
23 Baliga's communications?

24 A. Because, again, to the extent that

1 communication?

2 A. Let me rephrase that. They did have a  
3 conversation, I believe, with him at one point or  
4 his attorneys that they told me about, but I'm  
5 not sure what was involved in that. I don't  
6 believe they ever subpoenaed him.

7 Q. Did you find out what happened during  
8 whatever conversation they had with Mr. Franco or  
9 his attorneys?

10 A. No, I did not.

11 Q. And what about Mr. Trautner? Do you  
12 know if Mr. Joyce's firm contacted him before the  
13 malpractice action was filed?

14 A. I doubt very seriously. He was very  
15 difficult to reach, and they couldn't even  
16 subpoena him.

17 Q. And I take it you never received any  
18 report or feedback about any such communication?

19 A. No.

20 Q. And do you know if Mr. Joyce's firm  
21 contacted Mr. Wong before the malpractice action  
22 was filed?

23 A. I do not know.

24 Q. Did you receive any report or

1 there were any concerns that they had for  
2 whatever reasons going forward to file this  
3 thing, I thought at that point in time we were  
4 under, as I understood, some sort of special  
5 bankruptcy rule where you could subpoena people,  
6 and I believe these guys could offer some  
7 information.

8 Q. Okay. So you think all four of those  
9 individuals had information that would be  
10 relevant to the malpractice case?

11 A. I think the first three would be very  
12 biased individuals. I don't know that you'd get  
13 anything but a song and dance out of them  
14 frankly.

15 But, yes, to the extent you could  
16 break through that, I think they might be; and  
17 Baliga, I'm not sure.

18 Q. Okay. And do you know if Mr. Joyce's  
19 office spoke with Mr. Franco at any time before  
20 filing the malpractice action?

21 A. I do not know that they did, no.

22 Q. Did they ever tell you that they did?

23 A. No.

24 Q. Did you ever get a report of any such

1 information from Mr. Joyce's office indicating  
2 that any such communications had taken place?

3 A. No, not that I recall.

4 Q. Okay. And Mr. Baliga, do you know if  
5 Mr. Joyce's firm contacted him before filing the  
6 case?

7 A. I believe they did, yes.

8 Q. What's the basis for that belief?

9 A. I believe I was told they had a  
10 meeting with Wayne.

11 Q. What were you told about that meeting?

12 A. What was I told? I'm trying to  
13 recall.

14 MR. O'BRIEN: And, again, to the extent that  
15 this references communications you had with your  
16 own counsel, you don't have to answer that. To  
17 the extent it's someone else, you should answer.  
18 BY THE WITNESS:

19 A. Right. I'm trying to recall exactly  
20 how it was phrased. My take-away from the  
21 conversation that I had was that there was  
22 nothing of -- to disprove anything that we had  
23 alleged coming out of Wayne, and I don't know  
24 that there was anything of great value coming out

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1 of him either.  
 2 BY MR. CISZEWSKI:  
 3 Q. Okay. Do you know if there was  
 4 anything to support what was being said in the  
 5 malpractice action?  
 6 A. I can't recall the conversation, to  
 7 tell you the truth.  
 8 Q. Do you know when this meeting that  
 9 Mr. Joyce's office had with Mr. Baliga took  
 10 place?  
 11 A. No, I don't. I know it would have  
 12 been in the time frame of the investigation,  
 13 which was from November, 2005, through August,  
 14 2006. I believe it would have been sometime  
 15 perhaps in, just guessing, the spring of 2006.  
 16 Q. Do you know if Mr. Joyce's firm spoke  
 17 or met with Robert Spaeth prior to the filing of  
 18 the malpractice case?  
 19 A. I don't know, no.  
 20 Q. And what about Dick Ross? Do you know  
 21 if there was any meeting?  
 22 A. I don't know. I don't even know that  
 23 Dick Ross is still alive, to tell you the truth.  
 24 Q. Was he a shareholder?

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1 A. He was the former chairman. He was  
 2 the first chairman before Franco.  
 3 Q. I see.  
 4 A. And a shareholder.  
 5 Q. Now, the first bullet under numbered  
 6 paragraph 5 there has a reference to Terry  
 7 Temescue?  
 8 A. Temescue.  
 9 Q. Who is that?  
 10 A. He is a principal or a partner in --  
 11 it's a venture capital firm that had a deal with  
 12 CMGT, Lyric Capital.  
 13 Q. And what was the time -- was the Lyric  
 14 deal early?  
 15 A. The Lyric deal was put together right  
 16 before I came on board in, I think, roughly  
 17 February of 2001. It was contingent -- it was a  
 18 deal that was kind of tied up with the Hartford.  
 19 Hartford was semi-dependending on Lyric to come  
 20 through; and after September 11th happened,  
 21 Lyric's funding went away.  
 22 But at the same time that was there,  
 23 he hired me also to look.  
 24 Q. Okay. Do you know if Mr. Joyce's

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1 office had any contact with anybody on behalf of  
 2 Sealaska before the malpractice action was filed?  
 3 A. I believe they subpoenaed information  
 4 from Sealaska. In the course of that, did they  
 5 discuss with people? I don't know. I'm not  
 6 sure.  
 7 Q. I take it you never got a report or  
 8 any feedback about any such communications?  
 9 A. No.  
 10 Q. And what about the Washoe? Did  
 11 Mr. Joyce's office have any communications with  
 12 the Washoe before --  
 13 A. I'm not sure. I know there was an  
 14 attempt to set up something with Garrett, and I'm  
 15 not sure how that followed through.  
 16 Q. Just a reminder to let me finish.  
 17 A. I'm sorry.  
 18 Q. I know you're anxious.  
 19 Now, before we leave this -- well,  
 20 that's okay.  
 21 (WHEREUPON, a certain document  
 22 was marked Spenar Exhibit  
 23 No. 22, for identification, as of  
 24 1/21/09.)

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1 BY MR. CISZEWSKI:  
 2 Q. Sir, we have handed you what's been  
 3 marked as Deposition Exhibit No. 22.  
 4 Do you recognize this document?  
 5 A. I do.  
 6 Q. What is it?  
 7 A. It's an e-mail from myself to David  
 8 Grochocinski, July 28, 2006.  
 9 Q. Okay. I want to look at the very top  
 10 of Page 2.  
 11 A. Um-hum.  
 12 Q. And I believe that the top of this  
 13 page is quoting a memo that you had sent to David  
 14 Grochocinski. It says, "To my knowledge, no one  
 15 has been deposed under oath and Joyce had only  
 16 one conversation (with Wayne Baliga) as of last  
 17 week."  
 18 A. Okay.  
 19 Q. So does this indicate that it was your  
 20 understanding that the only witness relating to  
 21 the malpractice case that Mr. Joyce's office had  
 22 spoken to as of this time was Mr. Baliga?  
 23 A. Outside of myself.  
 24 Q. And do you know if he ever spoke with

1 anybody other than you and Mr. Baliga prior to  
2 filing a malpractice action?

3 A. I do not; but I do know that the  
4 trustee, now that I've been through an action  
5 with him, has received several letters from  
6 shareholders indicating that they were  
7 displeased. And that's to be expected.

8 In my estimation, I don't know what  
9 value Joyce would have gotten from a lot of the  
10 shareholders because they were completely misled  
11 in my estimation.

12 Q. Okay.  
13 (WHEREUPON, a certain document  
14 was marked Spehar Exhibit  
15 No. 23, for identification, as of  
16 1/21/09.)

17 BY MR. CISZEWSKI:

18 Q. Now, Mr. Spehar, I've handed you  
19 what's been marked as Deposition Exhibit No. 23.  
20 Do you recognize what this is?

21 A. I do.

22 Q. What is it?

23 A. An e-mail from myself to David  
24 Grochocinski, July 31, 2006.

1 I think Joyce did a reasonable  
2 investigation. From the outset of very early on  
3 after the initial meeting in Denver with me and  
4 the grilling that they did of me, I think  
5 everyone was fairly convinced -- in fact, very  
6 convinced -- that there were merit here.

7 And I was operating on that  
8 supposition all the way through here, that we  
9 were really only dealing with damage issues. So  
10 all these questions with regards to the other  
11 shareholders, I don't know what value there would  
12 eventually come out of that, because, like I  
13 said, they were all very biased against me.

14 But should Joyce attempt to terminate,  
15 I would have wished that he would have done that,  
16 because, if there was some question -- I had  
17 understood at this point in time that we had kind  
18 of resolved or were getting close to resolving  
19 the damage issues; that there was really no issue  
20 about merit, and that's where these guys came in  
21 was merit.

22 So if there was now some issue in  
23 Joyce's mind about merit, I would have hoped that  
24 he would have investigated it further. I don't

1 Q. Okay. And it looks like there's an  
2 e-mail history here that went back --

3 A. Um-hum.

4 Q. -- earlier in the day. I want to talk  
5 about the e-mail on the bottom of Page 2.

6 A. Okay.

7 Q. It indicates from yourself to David  
8 Grochocinski and Mr. Tothunter, Monday, July 31,  
9 2006, at 2:18 p.m.

10 A. Okay.

11 Q. The second sentence there of the  
12 second paragraph says, "It is my strong opinion  
13 that Mr. Joyce, should he attempt to terminate,  
14 has not complied with the 'reasonable  
15 investigation' requirement of the termination  
16 clause in his agreement with you and will not be  
17 able to do so before the statute of limitations  
18 expires on this case."

19 A. Okay.

20 Q. In what way do you think that  
21 Mr. Joyce had not complied with the reasonable  
22 investigation requirement in his agreement?

23 A. First of all, I would read that with  
24 the, "should he attempt to terminate."

1 think there was.

2 MR. CARROLL: I just make to make sure the  
3 record is clear.

4 At the beginning of that answer, you  
5 said something about -- you referred to George,  
6 George's investigation?

7 MR. CISZEWSKI: I think he said Joyce.

8 THE WITNESS: Joyce.

9 MR. CARROLL: Oh, I'm sorry. I misheard.

10 BY THE WITNESS:

11 A. So that's -- that's where we were at.

12 BY MR. CISZEWSKI:

13 Q. And what additional investigation do  
14 you think Mr. Joyce would have been required to  
15 do had he attempted to terminate the agreement?

16 A. That would depend on what he was going  
17 to terminate based on. If it was a determination  
18 based on merit, like I said, this should have  
19 been done then. I would have hoped he would have  
20 investigated a lot more people if he had serious  
21 questions about merit. It was my understanding  
22 he did not.

23 But at this point in time, I wasn't  
24 really fully aware of the reasons for termination

1 if it was going to happen; or if it was going to  
2 happen, I was just getting at that point in time  
3 some bad feelings about the potential for it,

4 Q. When you had this meeting in Denver,  
5 the day-long meeting, were you shown any  
6 documents during that meeting?

7 A. Was I shown any documents during that  
8 meeting? I can't recall. I know I was grilled.  
9 Art did a pretty good job of that.

10 Q. And did Mr. Joyce's office have all of  
11 the files at that point in time?

12 A. They should have. They should have  
13 had -- well, the trustee had them, I'll put it  
14 that way. I had sent -- my attorneys had sent to  
15 the trustee CMGT's documents, and I had sent  
16 Joyce and the trustee my own files.

17 Q. And you don't recall Art or Rob or  
18 anybody putting a document in front of you and  
19 saying, "What does his mean"?

20 A. Well, they had some questions, very,  
21 very specific questions, I'll put it that way.  
22 It was obvious that they had read the documents,  
23 I'll put it that way.

24 Q. But you can't recall them actually

1 A. Why do I think it's a strange case? ...

2 Because it appears to be strange to the judge.

3 She has articulated that, that on the face of it

4 it looks -- the types of accusation you're making

5 here about, you know, your pleadings, those types

6 of things, the appearance of -- that you need to

7 get beneath the surface of those things to really

8 understand what's going on. That's what we are

9 here to do.

10 Q. Okay.

11 A. Appearances can be deceiving.

12 MR. O'BRIEN: Wait for the next question.

13 THE WITNESS: Okay.

14 (WHEREUPON, a certain document

15 was marked Spehar Exhibit

16 No. 24, for identification, as of

17 1/21/09.)

18 BY MR. CISZEWSKI:

19 Q. Okay, sir. We have handed you what's

20 been marked as Deposition Exhibit No. 24.

21 Are you able to identify this

22 document?

23 A. This appears to be an August 15, 2006

24 note from myself to Rob Carroll.

1 showing you any of the documents?

2 A. No, I can't.

3 Q. Okay. And was it after that meeting  
4 that you thought the issue of liability was a  
5 done deal?

6 A. You mean merit?

7 Q. Merit, yes.

8 A. No, it went on for some point after  
9 that. I mean, this is on the face of it a  
10 strange case, as the judge noted, so there's a  
11 lot to, I think, mostly get comfortable with me  
12 about. You know, it's how I react to questions,  
13 what the truth of what I'm saying is. To me that  
14 is an awful lot of this case.

15 So this -- just the same sort of  
16 grilling that you're doing here I was getting  
17 from Joyce, and it took a little bit of that for  
18 them to get comfortable.

19 I don't know exactly when I felt or  
20 when I was told that they were comfortable with  
21 the merit aspects of it, but it was sometime  
22 early on after a few months at least.

23 Q. Why do you think this is a strange  
24 case?

1 Q. Okay. And do you recall sending it at  
2 that time?

3 A. Yes.

4 Q. All right. I want to take a look at

5 Paragraph 2.

6 A. Okay.

7 Q. And it says, "I don't believe you have  
8 the full physical damages prove-up I submitted on  
9 2/26/04."

10 What information was contained in this  
11 damages prove-up?

12 A. It was the actual presentation that we  
13 did to the Court. It should be in the Court  
14 documents.

15 Q. Okay.

16 A. So --

17 Q. And was the issue of -- so I take it  
18 the issue of damages was still something that was  
19 being discussed at this time?

20 A. No, I don't think so. I think it  
21 was -- we were done then. I think by this time  
22 Ed had decided he was going to file. We had a  
23 conference call at some point where he said he  
24 was going to file.

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1 Q. Okay. When was that?  
 2 A. Sometime right in here, the early part  
 3 of August; I'm not sure.  
 4 Q. Who else was on that call?  
 5 A. David Grochocinski, myself, Ed, and I  
 6 believe Rob might have been on it.  
 7 Q. Okay. And do you recall what  
 8 Mr. Joyce said during that call?  
 9 A. Yes, I do very clearly. He said, "We  
 10 will file a complaint by August 26th," and that's  
 11 how he opened the call and that was --  
 12 Q. Did anybody else -- I'm sorry. I  
 13 didn't mean to cut you off.  
 14 A. That's okay.  
 15 Q. Did anybody else say anything during  
 16 the call?  
 17 A. Yes. We discussed a little bit of  
 18 just the different facets of the case. I recall  
 19 we talked about the venture capital environment  
 20 at that point in time when all of this -- the  
 21 malpractice occurred, some aspects of the case  
 22 like that.  
 23 Q. Okay. Did the trustee have any  
 24 questions or ask anything of Mr. Joyce about his

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1 investigation?  
 2 MR. O'BRIEN: During that conference call?  
 3 MR. CISZEWSKI: Yes.  
 4 BY THE WITNESS:  
 5 A. I know the trustee spoke. Yes, he was  
 6 involved. Did he specifically -- what he  
 7 specifically asked, I can't tell you.  
 8 It's all -- I know what the  
 9 discussions vaguely entailed, which would have  
 10 again been issues like what was going on in the  
 11 venture capital environment, why it was so  
 12 difficult to raise money; some of the same  
 13 questions that you have.  
 14 BY MR. CISZEWSKI:  
 15 Q. Okay.  
 16 A. And the trustee was involved in those  
 17 questions a little bit, too, yes.  
 18 Q. And why was that relevant to the  
 19 issues that were on the table at that point?  
 20 A. Again, it's a devil's advocate  
 21 question. I'm sure you know a good attorney  
 22 probably looks at it from the other party's point  
 23 of view, and that's what I took away from that;  
 24 they were looking at some of those questions.

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1 Q. Now, Paragraph No. 3 here talks about  
 2 Ed's questions re why Trautner should have been  
 3 but was not listed on Exhibit A.  
 4 A. Um-hum.  
 5 Q. Do you recall what Ed's questions were  
 6 about the Trautner Exhibit A issue?  
 7 A. I don't specifically, no. I mean, I  
 8 know that was something that we discussed just  
 9 like you're asking it here; but his specific  
 10 questions, no.  
 11 Q. Okay. Did he indicate that that was  
 12 an item of concern for them?  
 13 A. No. It was just a question. It was  
 14 again, you know, explain yourself.  
 15 Q. Okay. Now, what was the plan here --  
 16 referring to Paragraph 4, what was the plan with  
 17 respect to enlisting Franco's and Wong's  
 18 cooperation?  
 19 A. Where are we here?  
 20 Q. No. 4.  
 21 A. The discussion with regards to Franco,  
 22 there was always a question in my mind as to  
 23 Franco's involvement in all this, and I was  
 24 interested -- one of the reasons that I thought

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1 it might be helpful to depose Franco was to get  
 2 to the bottom of what he knew versus what Given  
 3 knew at the time that all of the whole Newco deal  
 4 went down. That was with regards to that  
 5 question.  
 6 Q. Do you know if those questions were  
 7 ever asked of Mr. Franco?  
 8 A. I don't.  
 9 Q. Well, did you ever get any report or  
 10 any feedback on any such conversations?  
 11 A. No, I didn't.  
 12 Q. So, to the best of your knowledge,  
 13 that type of conversation with Mr. Franco has  
 14 never occurred?  
 15 A. It may not have.  
 16 Q. What about Mr. Wong? What was his --  
 17 A. I have no idea what Jim Wong's  
 18 involvement is. In fact, I've no idea what Lou  
 19 Franco's involvement in all of this is. I don't  
 20 know that any conversations took place with him.  
 21 I do know that both of these gentlemen  
 22 were assiduously following Ron Given's advice at  
 23 that point in time from my reading of the  
 24 documents and from my knowledge of them.

1 Q. Okay. Now, Paragraph No. 5 talks  
2 about a possible call between Garrett Furuichi  
3 and Ed about the Washoc.

4 Do you know if that call ever took  
5 place?

6 A. I do not.

7 Q. Have you ever received any report from  
8 Ed about any conversation that his office had  
9 with Mr. Furuichi?

10 A. No, I have not.

11 Q. Did Mr. Joyce have questions about the  
12 Scalaska deal?

13 A. Yes.

14 Q. What do you recall him questioning  
15 about that?

16 A. The timing of the Scalaska deal and  
17 the Newco deal; the fact that the Newco deal --  
18 how that all fit together; the reasons why  
19 Scalaska didn't happen and the question of  
20 whether Newco's terms should have been offered to  
21 Scalaska prior to them actually walking away,  
22 because they were a very serious funder who had  
23 actually offered a term sheet that value-wise  
24 says they would have done the Newco terms had

1 through the whole history of your California  
2 action and the involuntary bankruptcy filing and  
3 that procedure?

4 A. We concentrated more, I believe, on  
5 the California action, all of the events leading  
6 up to the bankruptcy, more so than the bankruptcy  
7 itself.

8 Q. Did you talk about in that meeting the  
9 reasons that Spehar Capital filed the involuntary  
10 bankruptcy petition?

11 A. I can't recall.

12 Q. And did you mention in that meeting  
13 that, as you mentioned to others, the  
14 malpractice -- that Spehar Capital viewed the  
15 malpractice action as part of the collection  
16 process on its judgment against CMGT?

17 A. Well, I don't know that I did, but  
18 that is how I viewed it.

19 Q. And you think that was made clear to  
20 the participants of that meeting?

21 A. I don't know. I don't know that it  
22 was brought up. As I recall that meeting, it was  
23 more focused on the actual malpractice action.

24 Q. Okay.

1 they been offered to them; so those types of  
2 questions.

3 Q. And why do you say that value-wise the  
4 Scalaska term sheet shows they would have done  
5 the Newco deal?

6 A. Because if you look at the financial  
7 terms and you extrapolate them out to the cost  
8 per percentage of CMGT, that Scalaska would have  
9 done the deal and they would have owned  
10 80 percent.

11 Scalaska -- again, these native  
12 American corporations are all about exercising  
13 their minority advantage, which requires them to  
14 own at least 51 percent; and in their eyes, the  
15 more, the merrier. They would have loved to have  
16 owned 80 percent of CMGT. That would have been  
17 attractive to them.

18 Q. I want to talk a little bit more about  
19 that Denver meeting for a moment --

20 A. Okay.

21 Q. -- that you had with Mr. Aufmann,  
22 Mr. Carroll, and Mr. Klenda.

23 A. All right.

24 Q. During that meeting, did you go

1 A. The merits of that,  
2 (WHEREUPON, a certain document  
3 was marked Spehar Exhibit  
4 No. 25, for identification, as of  
5 1/21/09.)

6 BY MR. CISZEWSKI:

7 Q. Mr. Spehar, we have handed you what's  
8 been marked as Deposition Exhibit No. 25.

9 A. Okay.

10 Q. Can you identify this document for us?

11 A. An e-mail from me to Ed Joyce,  
12 September 6, 2006.

13 Q. Okay. And September 6, 2006, is after  
14 the malpractice action was filed, isn't that  
15 right?

16 A. Correct.

17 Q. And does this document refresh your  
18 recollection as to whether Mr. Joyce's office  
19 spoke with Garrett Furuichi before the  
20 malpractice action was filed?

21 A. I don't see anything in here that says  
22 one way or the other.

23 Is there? I mean --

24 Q. Why don't you read numbered paragraph

1 I there at the top.  
 2 A. Okay; no response yet.  
 3 Q. Does that refresh your recollection as  
 4 to whether or not --  
 5 A. It appears he did not speak with him,  
 6 yes.  
 7 MR. O'BRIEN: Let him get his whole question  
 8 out, please.  
 9 MR. CISZEWSKI: We're going to set up a  
 10 shock machine so every time he starts to answer  
 11 it stops him.  
 12 THE WITNESS: Just don't give my wife a  
 13 button.  
 14 BY MR. CISZEWSKI:  
 15 Q. I want to go back and talk for a few  
 16 minutes about the complaint which we marked  
 17 earlier today, if you can pull that back out.  
 18 Did you see any drafts of the  
 19 complaint before it was filed?  
 20 A. I believe I did, yes.  
 21 Q. Okay. And who did you receive those  
 22 drafts from?  
 23 A. From Joyce's firm; from Rob probably.  
 24 Q. Did you provide comments on those

1 THE WITNESS: Thank you.  
 2 BY MR. CISZEWSKI:  
 3 Q. If you want to read that paragraph to  
 4 yourself, and I'll ask you the questions that I  
 5 have.  
 6 (Short pause.)  
 7 BY THE WITNESS:  
 8 A. Okay.  
 9 BY MR. CISZEWSKI:  
 10 Q. Do you agree that it was the regular  
 11 course of dealing to orally add third parties to  
 12 the Exhibit A?  
 13 A. Yes.  
 14 Q. What is that based on?  
 15 A. What is that based on?  
 16 Q. Yes.  
 17 A. Lou Franco -- an understanding between  
 18 Lou Franco and I. The agreement allowed updating  
 19 from time to time.  
 20 All this "oral updating" means is we  
 21 are going to do that at some point in the future.  
 22 We agree that this guy belongs on it. We are not  
 23 doing it right now, but we will do it.  
 24 Q. Did you ever agree with Mr. Franco

1 drafts?  
 2 A. If I received a draft, yes, I probably  
 3 did.  
 4 Q. Okay. Do you remember how many drafts  
 5 you saw before the complaint was filed?  
 6 A. It was a very quick process. I think  
 7 they decided late, so I -- I can't recall, but --  
 8 no, I can't, but it probably was not more than  
 9 one, two.  
 10 Q. And do you recall the date of the  
 11 conference call when Mr. Joyce announced that the  
 12 complaint would be filed?  
 13 A. I do not. I know it was in early  
 14 August sometime.  
 15 Q. Had you seen any drafts of the  
 16 complaint prior to that time?  
 17 A. No.  
 18 Q. So the first time you saw a draft was  
 19 sometime in between that call and the filing of  
 20 the complaint?  
 21 A. Yes.  
 22 Q. Can you take a look at Paragraph 27?  
 23 A. Okay.  
 24 MR. O'BRIEN: Page 7.

1 that Chuck Trautner would be added to Exhibit A?  
 2 A. I did. The history of the  
 3 agreement -- I'll give a brief history here so  
 4 you understand.  
 5 You will find in your e-mail files  
 6 probably an Exhibit 2 to the original agreement  
 7 that is dated sometime pre this agreement, pre  
 8 the second agreement, so that would be in the  
 9 summer of 2002; and it's an Exhibit 2 that Ron  
 10 and Lou wanted added to my original agreement,  
 11 which basically stated that I was not to be  
 12 allowed -- that shareholders did not fall under  
 13 my agreement.  
 14 I refused to sign it. I said that is  
 15 not the deal, and I'm not going to sign that.  
 16 The accommodation to that, as I  
 17 recall, as we went forward and signed a second  
 18 agreement was that the threshold -- I'm not sure  
 19 exactly what the first agreement says, but  
 20 basically the second agreement says I have to  
 21 come up with at least a million bucks from  
 22 somebody. There's a million dollar threshold  
 23 before I fall under the contract.  
 24 Chuck Trautner, Wayne Baliga, Lee

1 Rask, a few other people were putting in amounts  
2 like \$50,000. I didn't want to interfere with  
3 that, so that's why we had that million dollar  
4 threshold in there.

5 If it came to a point where Chuck  
6 Trautner was actually doing a million-dollar-plus  
7 deal, yes, we had an agreement he was going to  
8 fall on Exhibit A.

9 Q. Okay. And that was an agreement you  
10 reached with who?

11 A. Franco. It was understood with  
12 everybody. When I refused to sign Exhibit 2, the  
13 understanding was that I am not excluding  
14 shareholders from my agreement; but here is what  
15 I will do to accommodate that -- smaller amounts  
16 of savior money, as Franco called it, I have no  
17 interest in. I don't want to interfere.

18 If it gets to be -- if you've enlisted  
19 me with these people to help you raise large  
20 amounts of money, serious funding, like a million  
21 dollars or higher, then they fall under my  
22 agreement.

23 Q. And who on behalf of CMGT had that  
24 understanding? Anybody other than Franco?

1 obligors, the debt-holders. They wanted those to  
2 be paid out usually somewhat over time, somewhat  
3 contingent upon performance of the deal going  
4 forward.

5 That's the way the Scalaska deal was.  
6 It was -- nobody was getting anything for free in  
7 that one up front.

8 Contrast that with the Newco deal,  
9 which is the only deal I know of that is like  
10 that, where there is actually -- it looks to me  
11 anyway, my reading of it -- Mayer Brown, Lou  
12 Franco, and Jim Wong are pretty much given veto  
13 rights over that deal if they don't get what --  
14 if the deal doesn't conform to their liking.

15 And Mayer Brown is specifically broken  
16 out in that deal to be paid up front its fees.  
17 That contrasts sharply with the reading of the  
18 Scalaska deal.

19 Q. Okay. What other potential investors  
20 do you think would have agreed to that term if  
21 offered?

22 A. Of Newco's? You know, everybody that  
23 we were showing this deal to -- I mean, it was a  
24 drastically different deal than anything we were

1 A. The contract says it. If you --  
2 again, go back and look at Exhibit 2, which I did  
3 not sign, which I refused. I believe there's  
4 e-mails that say I refused it. You will see that  
5 I clearly said I am not excluding shareholders.  
6 And then subsequent to that we signed the current  
7 agreement, so it's clear in the record.

8 Q. Can you turn to Paragraph No. 43?  
9 It's Page 11.

10 Why don't you go ahead and read that  
11 to yourself.

12 (Short pause.)

13 BY THE WITNESS:

14 A. Okay.

15 BY MR. CISZEWSKI:

16 Q. Now, do you agree with that first  
17 sentence?

18 A. Yes.

19 Q. Why?

20 A. Because if you look at the -- do a  
21 breakdown of the Scalaska -- every deal that we  
22 did absent Newco, every deal we tried to do,  
23 investors had difficulty paying out advisors'  
24 fees to myself, Jim Wong, Ron Given, to even the

1 showing around, and I was completely unaware that  
2 they would do that.

3 And he, in fact, said he would not do  
4 that on the conference call. That's why I  
5 believe Ron pressured him into it.

6 Q. Did you talk about your belief that  
7 Mr. Given pressured him into it with the trustee?

8 A. As opposed to the trustee's counsel or  
9 the trustee's counsel, too?

10 Q. Well, either one of them.

11 A. Either one of them? Yes, I'm sure I  
12 did.

13 Q. Do you recall whether it was the  
14 trustee or the trustee's counsel?

15 A. I do not. I mean, we are going back  
16 now a couple of years.

17 May I get some water?

18 Q. Sure. Absolutely.

19 (Short pause.)

20 BY THE WITNESS:

21 A. I would have been --

22 MR. O'BRIEN: Wait for his question.

23 BY MR. CISZEWSKI:

24 Q. Did you want to clarify your last



1 answer or --  
 2 A. I will clarify it, yes.  
 3 I would -- I can't recall if it was  
 4 either of them, but I would have said that to  
 5 both of them had they asked.  
 6 Q. Okay.  
 7 A. I agree with that.  
 8 The deal -- and I'm going to clarify  
 9 something further. The Newco deal was -- think  
 10 about it. It's 80 percent. If it's 20 percent  
 11 to CMGT, the buyer gets 80 percent. They carry  
 12 none of the debt. And they are buying for the  
 13 same amount of money that Sealaska was buying  
 14 51 percent with all of the debts. It's a  
 15 different deal.  
 16 Q. I thought Sealaska was offering  
 17 \$950,000.  
 18 A. Yes. At the end of the day they were,  
 19 but they were also committing themselves to their  
 20 share of the debt, which was roughly \$700,000;  
 21 and they also had it built into there a -- that  
 22 they would put more money in as an 8 percent loan  
 23 if it needed it.  
 24 So there was potential for it to be a

1 A. Yes, I would have; that it would be my  
 2 belief, yes.  
 3 Q. We can come back to the complaint.  
 4 Let's talk about a couple other things first. I  
 5 want to show you what we are going to mark as  
 6 Exhibit No. 26.  
 7 (WHEREUPON, a certain document  
 8 was marked Spehar Exhibit  
 9 No. 26, for identification, as of  
 10 1/21/09.)  
 11 BY MR. CISZEWSKI:  
 12 Q. Mr. Spehar, do you recognize  
 13 Exhibit 26?  
 14 A. Yes, I do.  
 15 Q. What is it?  
 16 A. This is the final court order in the  
 17 bankruptcy ruling that put our financing deal in  
 18 place.  
 19 Q. Okay. And this represents the  
 20 agreement between you and the trustee about  
 21 how -- what recovery you could get as a result of  
 22 the malpractice action, is that right?  
 23 A. Correct, and what recovery the estate  
 24 would get.

1 bigger deal. There was also the potential --  
 2 they were definitely covering the debt.  
 3 Q. Okay. And then that second sentence  
 4 there in Paragraph 43 that "on information and  
 5 belief Given failed to give Franco this advice  
 6 because the Newco deal ensured that MBRM's  
 7 accrued fees would be paid," the Newco deal  
 8 didn't say how much of Mayer Brown's fees would  
 9 be paid, did it?  
 10 A. No. It said a percentage of them, but  
 11 that could be a hundred percent. It could be  
 12 2 percent, I guess, but it also, I think,  
 13 prefaced that by saying this deal will not be  
 14 done unless these terms are met, which basically  
 15 puts the leverage in Mayer Brown's hands and  
 16 Franco's and Wong's.  
 17 Q. Do you agree with that sentence?  
 18 A. I do agree with it, yes.  
 19 Q. And did you talk about that with the  
 20 trustee or his counsel?  
 21 A. I can't recall specifically, but I  
 22 would have talked about it with both of them.  
 23 Q. And, if asked, you would have said  
 24 that this is correct?

1 Q. Okay.  
 2 (WHEREUPON, a certain document  
 3 was marked Spehar Exhibit  
 4 No. 27, for identification, as of  
 5 1/21/09.)  
 6 BY MR. CISZEWSKI:  
 7 Q. Mr. Spehar, showing you what's  
 8 been marked as Exhibit No. 27, do you recognize  
 9 this document?  
 10 A. Yes.  
 11 Q. What is it?  
 12 A. This is a memo from myself to Rob --  
 13 to Joyce and a few other attorneys.  
 14 MR. O'BRIEN: Counsel, I just want to  
 15 interpose that we are going to object on the  
 16 basis of any questions regarding the memo.  
 17 Our position is that Spehar Capital  
 18 was seeking legal advice in a client capacity  
 19 from the Joyce firm relative to this memo.  
 20 I understand that it was produced by  
 21 the Joyce firm in the course of this litigation.  
 22 That was done without the permission or the  
 23 knowing voluntary waiver of the privilege by  
 24 Spehar Capital.

1 Spehar's attorney has made demands to  
2 have that recalled and has asserted that  
3 privilege; and despite Joyce's production of it,  
4 we are still contending that that is a product of  
5 attorney/client privilege.

6 MR. CISZEWSKI: Okay. So are you  
7 instructing the witness not to answer any other  
8 questions about this memo?

9 MR. O'BRIEN: I will, if you're going to get  
10 into the merits of the memo.

11 I allowed the preliminary questions  
12 identifying it and the date and such, but we are  
13 not -- I'm going to instruct him not to answer  
14 questions regarding the substance of it.

15 MR. CISZEWSKI: Okay. Let me ask a couple  
16 of other what I think are background questions,  
17 and we will see where we go.

18 MR. O'BRIEN: Okay. Thank you.

19 BY MR. CISZEWSKI:

20 Q. The first page of this document, 4543,  
21 did you draft that?

22 MR. O'BRIEN: You can answer that.

23 BY THE WITNESS:

24 A. Yes, I did.

1 A. No, there is not.

2 Q. Is there an engagement letter between  
3 yourself individually and Mr. Joyce's firm?

4 A. No, there is not.

5 MR. CISZEWSKI: The other questions I have  
6 are about the substance of the memo, so given --  
7 as I understand it, you would instruct him not to  
8 answer any of those questions?

9 MR. O'BRIEN: That's correct.

10 MR. CISZEWSKI: So I don't intend to go  
11 through them individually unless you want to make  
12 me do it.

13 MR. O'BRIEN: I have no -- I have no  
14 pleasure in that. I think we have staked out our  
15 positions.

16 If it needs to be debated further with  
17 the Court, we can do that; but I don't see the  
18 need to go through the exercise.

19 MR. CISZEWSKI: Okay. Let me just ask  
20 Mr. Spehar a few other background questions.

21 BY MR. CISZEWSKI:

22 Q. When did you discover that this  
23 document had been produced to our law firm?

24 MR. O'BRIEN: If you know.

1 BY MR. CISZEWSKI:

2 Q. Okay. And did you draft the 79-page  
3 memo that's attached, 4544 through 4622?

4 THE WITNESS: Is that fine?

5 MR. O'BRIEN: That's fine.

6 BY THE WITNESS:

7 A. Yes.

8 BY MR. CISZEWSKI:

9 Q. And you provided this to Mr. Joyce's  
10 firm on June 29 of 2006, is that right?

11 A. Thereabouts.

12 Q. Have you ever retained Mr. Joyce's  
13 firm?

14 MR. O'BRIEN: Well, I'm going to object. He  
15 sought advise from them, which I think is where  
16 the privilege kicks in.

17 Whether they accepted an engagement  
18 and formalized it doesn't obviate the fact that  
19 this communication fell within the seeking of  
20 advice of a client or prospective client from an  
21 attorney.

22 BY MR. CISZEWSKI:

23 Q. Is there an engagement letter between  
24 Spehar Capital and Joyce's firm?

1 BY THE WITNESS:

2 A. Sometime during the discovery process;  
3 I'm not sure exactly when. It would have been in  
4 the spring of 2007 when this discovery was going  
5 on.

6 BY MR. CISZEWSKI:

7 Q. So in the spring of -- spring of 2008?

8 A. Is that when it would be?

9 Q. We issued our subpoena in January of  
10 2008 to --

11 A. Okay. Then it would be 2008.

12 MR. CARROLL: I don't think -- I'm not being  
13 deposed; but just as a matter of record, I think  
14 they were produced in maybe January or February  
15 of 2008.

16 BY THE WITNESS:

17 A. Okay. Then it would have been spring  
18 of 2008.

19 BY MR. CISZEWSKI:

20 Q. And when did you or your counsel make  
21 a request of Mr. Joyce's firm to call this  
22 document back or assert a privilege?

23 A. Sometime fairly quickly thereafter  
24 since we discovered it.

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1 Q. And to this point Mr. Joyce's office  
 2 has refused to do?  
 3 A. I have no idea. I've left it alone.  
 4 Q. Okay. Well, given that your counsel  
 5 has indicated he's going to instruct you not to  
 6 answer any questions about the substance of the  
 7 memo, I'm not going to ask you any more questions  
 8 about it because all the questions I have  
 9 remaining are about the substance.  
 10 I do have questions about it, and we  
 11 will just reserve our right to have that issue  
 12 resolved by the Court if need be.  
 13 MR. O'BRIEN: Thank you, counsel.  
 14 (WHEREUPON, a certain document  
 15 was marked Spehar Exhibit  
 16 No. 28, for identification, as of  
 17 1/21/09.)  
 18 BY MR. CISZEWSKI:  
 19 Q. Now, Mr. Spehar, are you able to  
 20 identify what's been marked as Spehar Deposition  
 21 Exhibit No. 28?  
 22 A. Yes.  
 23 Q. What is this?  
 24 A. This is a memo that I wrote to Ed

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1 Joyce about a month prior to the filing of the  
 2 malpractice action.  
 3 Q. Okay. And what was the purpose of  
 4 this memo?  
 5 A. Just, I think, a clarification towards  
 6 the end of the day of some of the arguments I had  
 7 been putting forth and applying what I knew to be  
 8 the facts to them.  
 9 Q. Okay. Did Mr. Joyce ask you to  
 10 prepare such a memo?  
 11 A. Yes.  
 12 Q. What specifically did he ask you to  
 13 do?  
 14 A. One of the attorneys there -- I can't  
 15 remember which -- would have asked me -- again,  
 16 we are going back 2 years ago -- would have asked  
 17 me to put my thoughts into as clear a format as I  
 18 could at that late stage of the game.  
 19 I had done numerous memos, as you  
 20 know, prior to this, and they were all evolving.  
 21 This is kind of a final evolution.  
 22 MR. O'BRIEN: Just in case this comes up on  
 23 the record, this document was identified as  
 24 Plaintiff's Exhibit 19 at our trial in the

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1 bankruptcy case.  
 2 So if in the course of questioning and  
 3 answering he should refer to it as PX 19, I just  
 4 want the record to be clear that he's referring  
 5 to this document that you've marked as Spehar 28.  
 6 MR. CISZEWSKI: Okay. Old habits never die.  
 7 MR. O'BRIEN: Yes.  
 8 BY MR. CISZEWSKI:  
 9 Q. Did you provide this memo to anyone  
 10 other than Mr. Joyce's office?  
 11 A. I provided it to the trustee as well,  
 12 I believe.  
 13 Q. All right. I really don't have any  
 14 other questions about this one at this time.  
 15 (WHEREUPON, a certain document  
 16 was marked Spehar Exhibit  
 17 No. 29, for identification, as of  
 18 1/21/09.)  
 19 BY MR. CISZEWSKI:  
 20 Q. Mr. Spehar, are you able to identify  
 21 the document that's been marked as Exhibit 29?  
 22 A. This appears to be a letter from my  
 23 counsel at Defrees & Fiske to David Grochocinski.  
 24 Q. Okay. I want to direct your attention

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1 to Page 2. There's a numbered paragraph 4; if  
 2 you could read that to yourself.  
 3 A. "That you and your special counsel  
 4 Joyce would --"  
 5 Q. You can read it to yourself.  
 6 A. Okay.  
 7 (Short pause.)  
 8 BY THE WITNESS:  
 9 A. Okay.  
 10 BY MR. CISZEWSKI:  
 11 Q. And can you explain what this  
 12 paragraph is requesting from the trustee?  
 13 MR. O'BRIEN: I'm going to object that it's  
 14 dealing with indemnification and calls for a  
 15 legal opinion; but subject to that, you can  
 16 answer.  
 17 BY THE WITNESS:  
 18 A. What it's referring to?  
 19 BY MR. CISZEWSKI:  
 20 Q. Yes. What's your understanding of  
 21 what is being requested on Spehar Capital's  
 22 behalf of the trustee?  
 23 A. That if there was a settlement or even  
 24 in a trial award, I guess, with Mayer Brown that

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1 whatever agreements are normal in those types of  
 2 situations or he's going to get to not pursue any  
 3 actions against the trustee, I would get the same  
 4 protections.  
 5 Q. Okay.  
 6 A. I have no idea what those are.  
 7 Q. Did you have some concern at this time  
 8 that Mayer Brown, Trautner, and/or Given might  
 9 try to bring legal action against Spehar Capital?  
 10 A. Not in particular. I wouldn't put it  
 11 past them, let's put it that way, but I don't  
 12 know that there's cause for it. I don't believe  
 13 there is.  
 14 Q. Did you ever discuss any of that  
 15 possibility with the trustee?  
 16 A. No.  
 17 Q. What about with Mr. Joyce's --  
 18 A. No, I don't believe I did.  
 19 Q. Okay. Can we turn back to that  
 20 exhibit? One more area of questioning.  
 21 Go ahead and read numbered paragraph 3  
 22 on Page 2 to yourself.  
 23 A. Okay.  
 24 (Short pause.)

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1 BY THE WITNESS:  
 2 A. Okay.  
 3 BY MR. CISZEWSKI:  
 4 Q. And can you explain the basis for any  
 5 agreement that your accountants would designate  
 6 the first \$11,253,627 plus interest paid to  
 7 Spehar Capital to be stock compensation?  
 8 A. If you look at my judgment that I got,  
 9 that is the amount that was designated as stock  
 10 compensation in the judgment.  
 11 Q. In the default judgment?  
 12 A. In the default judgment. From a tax  
 13 perspective, that's treated under capital gains;  
 14 and then all of this is in consideration of  
 15 raising the cap.  
 16 Q. Had the trustee indicated that he  
 17 might object to that designation?  
 18 A. No, he's never said anything about it.  
 19 I've been offering to raise the cap to the  
 20 estate, so taking a little more money out of  
 21 this, and in consideration for that, I've been  
 22 looking at this. He has not responded.  
 23 Q. Have you ever talked to the trustee  
 24 about the tax treatment of the default judgment

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1 award?  
 2 A. No, I have not directly.  
 3 Q. Have you indirectly?  
 4 A. No, other than this letter.  
 5 Q. Okay.  
 6 A. If you consider this indirect, this  
 7 letter.  
 8 Q. Were there any communications with the  
 9 trustee through your counsel?  
 10 A. Well --  
 11 Q. Other than the letter?  
 12 A. Not that I'm aware of, no.  
 13 Q. Okay. Do you know who Sung Lee is?  
 14 A. Sung Lee? The name rings a bell. Why  
 15 does it ring a bell?  
 16 Q. Well, let me show you a document and  
 17 then we can see if there's anything to talk  
 18 about.  
 19 (WHEREUPON, a certain document  
 20 was marked Spehar Exhibit  
 21 No. 30, for identification, as of  
 22 1/21/09.)  
 23 BY MR. CISZEWSKI:  
 24 Q. I show you what's been marked as

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1 Deposition Exhibit No. 30, which appears to be an  
 2 e-mail from you to someone named Sung Lee.  
 3 Does this document refresh your  
 4 recollection as to who that is?  
 5 A. I think -- I'm not sure here. I think  
 6 in the production of the documents there was  
 7 some -- my firm in L.A., Ken Franklin, there was  
 8 some -- something happened in copying the  
 9 documents and I was asked to resend some and I  
 10 might have resent them to this person at L.A.  
 11 Legal. I believe that was the copy firm they  
 12 were using to make sure you guys got all the  
 13 documents.  
 14 Q. I see. Thank you.  
 15 A. That's my best recollection of that.  
 16 Q. Now, within this e-mail, there's  
 17 another e-mail from yourself to Rob Carroll on  
 18 August 1st of 2005. It says, "Given was aware  
 19 that Franco had authorized SC to tell the Washoe  
 20 they could have up until October 15 to conduct  
 21 due diligence."  
 22 What's the basis for your belief that  
 23 Given was aware of that?  
 24 A. My discussions with Franco.

1 Q. Did you ever talk about that with  
2 Given?

3 A. I may have. I'm not -- I can't tell  
4 you specifically; but when Rob and I actually  
5 started talking to each other prior to that  
6 Washoe call, I believe we had a couple of heated  
7 discussions. I'm not sure if that was part of  
8 it.

9 Q. Did Melvin or Robert Spaeth ever bring  
10 any possible financing opportunities to you?

11 A. No.

12 Q. What about Dick Ross? Did he bring  
13 any?

14 A. To me?

15 Q. Yes.

16 A. No.

17 Q. And did either -- did either of the  
18 Spaeths suggest possible funding sources for  
19 CMGT?

20 A. To me?

21 Q. Yes.

22 A. No.

23 Q. What about Mr. Ross?

24 A. No, not to me.

1 native communities did a settlement with the  
2 United States government that created  
3 corporations. They were given land. They were  
4 given all sorts of resources and some money, and  
5 for that they settled their aboriginal claims  
6 with the United States.

7 Unlike any other native community in  
8 the United States, they are, therefore, set up as  
9 corporations, not as tribal entities, and that  
10 allows them great business advantages; so you can  
11 do business with them without having to deal with  
12 tribal sovereignty issues, which is a huge  
13 advantage.

14 Also, the until recently ranking  
15 senior senator was Ted Stevens. Ted Stevens ran  
16 the appropriations committee. Coincidentally or  
17 not, the Alaska native community had a  
18 top-of-the-line set of minority benefits. They  
19 could do -- they had minority benefits that  
20 exceeded any other even native group.

21 So these corporations are basically --  
22 there's maybe four, five, six of the major  
23 ones -- Cook Inlet, Sealaska, a couple of  
24 others -- are very astute politically. They are

1 Q. Okay. Have you talked to Lou Franco  
2 since the involuntary bankruptcy was filed?

3 A. Since it was filed? I said hi to him  
4 in court the other day. We subpoenaed him as a  
5 witness. That was about it, I think.

6 Q. Okay. What about Jim Wong? Have you  
7 had any communications with him since the  
8 bankruptcy was filed?

9 A. No.

10 Q. How about Mr. Baliga?

11 A. No.

12 Q. Melvin Spaeth?

13 A. No.

14 Q. And what about Robert Spaeth?

15 A. No.

16 Q. I want to go back. One of the things  
17 we talked about off and on today was Sealaska,  
18 and I wanted to go back and explore that  
19 potential funding source a little bit.

20 A. Okay.

21 Q. Can you explain what the benefits are  
22 that Sealaska brought to the table as a potential  
23 investor in CMGT?

24 A. Yes. In the mid-'70s, the Alaska

1 very politically connected.

2 Their business is to mine their  
3 minority advantage, and they way they do that is  
4 by owning businesses at least 51 percent so they  
5 become minority businesses and then trying to  
6 help those businesses do business with major  
7 corporations that need to fulfill their minority  
8 quotas to do business with the U.S. government.

9 And so they have inordinate leverage  
10 to get business done with people like the U.S.  
11 Postal Service, for instance, all governmental  
12 agencies, all private contractors of the U.S.  
13 government.

14 They can do sole source contracting  
15 under the 8A provision, which means that they  
16 sometimes just don't have competition for  
17 contracts if they can justify it.

18 MR. O'BRIEN: Excuse me. Did you need him  
19 to name those corporations again?

20 THE COURT REPORTER: No, no.

21 BY THE WITNESS:

22 A. They are sizable. They are --  
23 Sealaska is a billion dollar corporation. Cook  
24 Inlet is as well and very profitable.

1 BY MR. CISZEWSKI:

2 Q. Okay. Now, who on behalf of CMGT  
3 first contacted Sealaska about a potential  
4 investment?

5 A. I did.

6 Q. When was that?

7 A. I believe I did that the minute I  
8 became on board in June, 2001.

9 Q. Okay.

10 A. I contacted roughly 6 or 7 of those  
11 corporations.

12 (WHEREUPON, a certain document  
13 was marked Spehar Exhibit  
14 No. 31, for identification, as of  
15 1/21/09.)

16 BY MR. CISZEWSKI:

17 Q. I've handed you what's been marked as  
18 Spehar Deposition Exhibit No. 31.

19 A. Um-hum.

20 Q. Are you able to identify what this  
21 document is?

22 A. We are going a ways back.

23 Well, I know these people. Do I know  
24 what this document is? It looks like -- yes. It

1 1/21/09.)

2 BY MR. CISZEWSKI:

3 Q. We have handed you what's been marked  
4 as Spehar Deposition Exhibit No. 32.

5 Do you recognize this document?

6 A. I do.

7 Q. And what is this?

8 A. This looks like a decline from Bill  
9 Strafford in August of 2001.

10 Q. Okay. And you mentioned in your last  
11 answer that you thought they declined in January  
12 of 2002.

13 Is that --

14 A. This refreshes me, that they did --  
15 actually, if you go back through the documents,  
16 you'll find they came back a couple times. I  
17 believe in January of 2002 they stepped back into  
18 the game and then they declined again because of  
19 financing and then they came back in again and we  
20 went through due diligence.

21 Q. How many times did they come back in?

22 A. Well, from my remembrance having seen  
23 this, I would say three.

24 Q. Okay. So you first talked to them in

1 looks like a communication between myself and  
2 William Strafford from Sealaska.

3 Q. Well, did -- you first contacted  
4 Sealaska in July of 2001, is that right?

5 A. Yes.

6 Q. And what happened as a result of that  
7 contact?

8 A. They -- initially I don't recall them  
9 being interested. It took quite a while to get  
10 them interested. These are slow moving  
11 corporations and they work on trust a lot, so it  
12 took until -- they, I think, carried through  
13 until roughly -- actually they were interested in  
14 the first iteration; and, as I recall now, in  
15 January of 2002, they declined saying that they  
16 actually did have an interest, but their  
17 financial situation didn't allow them to invest  
18 right then.

19 We picked back up with them in roughly  
20 August of 2002, and they had squared away their  
21 bank financing and stepped back into the game.

22 (WHEREUPON, a certain document  
23 was marked Spehar Exhibit  
24 No. 32, for identification, as of

1 June of '01?

2 A. Correct.

3 Q. They declined in August, 2001, and  
4 that's Exhibit 32?

5 A. Um-hum.

6 Q. And then they approached you in  
7 January or you approached them?

8 A. I don't recall, Steve. Knowing me, I  
9 probably approached them.

10 Q. Okay.

11 A. But they -- they considered it  
12 strongly and then, as I recall, were going to  
13 take it to the board.

14 And then Strafford said their  
15 financial situation -- they were having some  
16 trouble with financing from banks at that point  
17 in time and they needed to resolve that first, so  
18 we tabled it until roughly August of 2002.

19 And then that's when we started doing  
20 the memorandum of understanding and then a letter  
21 of intent and the due diligence.

22 Q. Okay. So when there was a  
23 reconnection there in January of 2002, that was  
24 short-lived?

1 A. Whenever that reconnection happened --  
2 it might have happened before that -- but, yes,  
3 it was fairly short-lived.

4 Q. Okay. Now, was Bill Strafford the  
5 only person at Sealaska that you dealt with on  
6 this?

7 A. No.

8 Q. Who else did you deal with?

9 A. Strafford was the CFO. The treasurer,  
10 Patrick --

11 MR. O'BRIEN: Duke.

12 THE WITNESS: Thank you.

13 BY THE WITNESS:

14 A. Patrick Duke was the main person  
15 charged with the due diligence on CMGT.

16 Bob Wysocki was another -- he was the  
17 controller. Those were the two main contacts for  
18 CMGT.

19 (WHEREUPON, a certain document  
20 was marked Spehar Exhibit  
21 No. 33, for identification, as of  
22 1/21/09.)

23 BY MR. CISZEWSKI:

24 Q. I've handed you what's been marked as

1 interested.

2 Q. Now, were the terms of the deal that  
3 CMGT was suggesting to Sealaska in September of  
4 2002 the same that had been suggested in August  
5 of 2001 and January of 2002?

6 A. I don't know in August of 2001 or  
7 January that we got that far, that we actually --  
8 I don't think we actually gave them a memorandum  
9 of understanding or anything like that. I think  
10 it was more initial conceptual stages, trying to  
11 gather their interest at that point in time.

12 Q. Okay.

13 A. Having said that, I could be wrong;  
14 might have to look back there and see.

15 Q. And so Sealaska ultimately did move  
16 forward with a memorandum of understanding in  
17 September of 2002, is that right?

18 A. As I recall, October of 2002 we did a  
19 memorandum of understanding. December of 2002  
20 they put it to the board. The board approved  
21 moving forward with due diligence, and they gave  
22 us a letter of intent in February that spelled  
23 out how they were going to move forward and  
24 started doing due diligence -- actually began due

1 Deposition Exhibit No. 33:

2 Can you identify this document for us?

3 A. This is an e-mail from myself to  
4 Franco, Lou Franco, September 16, 2002.

5 And it looks like I am forwarding an  
6 e-mail from Strafford or Lou is forwarding it to  
7 me -- what is this? No, I'm forwarding it to  
8 Lou, I guess.

9 Q. And it looks from Lou's e-mails as if  
10 he was skeptical about whether this was going to  
11 materialize into anything?

12 A. Where are you seeing that?

13 Q. Well, your first e-mail says, "You're  
14 so negative." It continues, and then right below  
15 that appears to be Lou's e-mail to you that says,  
16 "Looks like this deal is dead."

17 A. Well, again, this is September, 2002.

18 Q. Um-hum.

19 A. We went ahead in December and Sealaska  
20 put it to the board. The board approved it.  
21 There was an LOI. They did 3 months of due  
22 diligence. They gave us a term sheet.

23 So whatever they were saying here, it  
24 materialized that they actually became

1 diligence in January even before that LOI and did  
2 roughly 5 months of due diligence, 4 months of  
3 due diligence, until sometime in April Patrick  
4 Duke wrote up a recommendation to his chairman  
5 and the board to do the deal and they went  
6 forward with it; gave us a term sheet.

7 Q. And then what happened?

8 A. They gave us a term sheet that had  
9 sliced the deal back considerably from what we  
10 had agreed on, and the fireworks started. It  
11 was --

12 Q. What was initially agreed upon?

13 A. The letter of intent was, I believe, a  
14 \$2 million investment from Sealaska with another  
15 \$500,000 coming from Grand Junction, Colorado,  
16 where we were going to locate the deal. Sealaska  
17 did not want to locate there, and so that got cut  
18 out.

19 They also cut their investment back to  
20 an initial cash investment of roughly \$950,000  
21 with the potential for putting more money in  
22 later and some milestones for the deal to  
23 progress for that money to come in and assumed  
24 their part of the debt, which was roughly, I

1 think, in our spreadsheets something like  
2 \$700,000.

3 Q. Were they going to assume debt under  
4 the terms of the LOI?

5 A. Yes.

6 Q. So the terms of the LOI would have  
7 been 2 million from Sealaska plus assumption of  
8 \$700,000 debt?

9 A. They would own 51 percent of the  
10 company, the whole kit and caboodle, so the debt  
11 included, yes.

12 Q. Okay. And the terms that Sealaska  
13 eventually came back with board approval,  
14 president approval, was 950,000 for 51 percent of  
15 CMGT?

16 A. Yes, with milestones, and the -- they  
17 had a tiered -- they had a tiered prioritization  
18 of payouts to people that, if I recall correctly,  
19 put people like myself and Mayer Brown and some  
20 of the other advisors in the third priority  
21 category, which is why I was explaining to you it  
22 was vastly different than the Newco deal.

23 Q. Now, would Spchar Capital have been  
24 entitled to compensation under its letter

1 A. They didn't like it. They pushed very  
2 strongly for the \$2 million, at least arguing  
3 Hartford needed to see that much. Sealaska's  
4 argument was you don't need Hartford; you've got  
5 us. When Hartford sees our connections on the  
6 Hill, they are going to jump right back in the  
7 saddle anyway. So that was the argument.

8 I was not involved in the later  
9 discussions because my contract became an issue,  
10 so Ron and Lou handled all of the discussions.  
11 There was a period from roughly May 1st I believe  
12 in when we got the term sheet to roughly May 13th  
13 when there were several term sheets that went  
14 back and forth.

15 I was on the sidelines working with  
16 them. They came to me to redo projections so  
17 that they could include them in the term sheets  
18 and they batted that around and sometime in that  
19 time frame I believe Chuck Trautner surfaced with  
20 his Newco deal and they went that way.

21 Q. Okay. Did you -- did you ever make a  
22 recommendation to Lou that CMGT move forward with  
23 the Sealaska deal even though it wasn't what the  
24 initial terms were agreed to?

1 agreement with CMGT since the deal Sealaska was  
2 proposing wasn't for a million dollars or more?

3 A. Yes.

4 Q. Why is that?

5 A. They specifically agreed to the cash  
6 compensation portion of that, Sealaska did, and  
7 there's actually an e-mail to that effect.

8 Rightly or wrongly, I think they  
9 probably kept the investment under the million  
10 dollar threshold to raise some sort of question  
11 about whether I was owed the 6 percent or not. I  
12 would have to refresh myself on the contract, but  
13 I believe there was a clause in there that  
14 protects me from that sort of -- what I call  
15 gaming the contract behavior.

16 Q. And so regardless of the terms of the  
17 agreement, Sealaska was willing to pay the cash  
18 compensation to Spchar Capital?

19 A. Yes, they were. They actually sent an  
20 e-mail -- there were discussions about that, and  
21 they sent an e-mail to Franco and Given saying  
22 they would.

23 Q. Okay. Now, what was CMGT's reaction  
24 when Sealaska came back at 950,000?

1 A. I don't know that I did. We were all  
2 caught up in the discussion of how this was going  
3 to play out with Hartford at the time.

4 Had I been aware of Newco and that  
5 they were willing to go that route, I definitely  
6 would have recommended the deal; but I wasn't  
7 aware of that.

8 I thought at that point in time and  
9 all I ever knew was that the type of deal that we  
10 were presenting to all the venture capital firms  
11 and investors at that point in time was going to  
12 be the 51 percent, \$2-1/2 million deal. That's  
13 what I knew, so I don't know that I did.

14 Q. Okay. Well, do you think -- if the  
15 only two choices were Sealaska at \$950,000,  
16 51 percent ownership interest, and the Newco  
17 deal, which one would you have recommended?

18 A. Which one would I have recommended? I  
19 think they are roughly equivalent. I'd  
20 probably -- I would have recommended the Sealaska  
21 deal because the shareholders would have kept  
22 43 percent and I believed in the upside of the  
23 company, as opposed to the Newco deal and  
24 20 percent; and also because the credit-holders



1 didn't get stuffed as they did in the Newco deal.  
2 So I think I would have recommended  
3 them getting more stock, the shareholders, and  
4 taking the Sealaska deal. I think with Sealaska  
5 on board as the marketer that they were and the  
6 powerhouse marketer, that company would have  
7 succeeded.

8 And I think once Sealaska would have  
9 come on board and been in bed with the company,  
10 they would have also continued to fund. They  
11 were very, very high on the deal.

12 Q. But you would agree that someone --  
13 that that's kind of a topic of debate because you  
14 did say that they were roughly equivalent?

15 A. I say that in the sense that I believe  
16 Sealaska would have invested under either set of  
17 terms, either their \$95,000,000 set of terms,  
18 which they obviously would have invested under,  
19 or under Newco's deal.

20 If they had known about Newco and they  
21 looked at it and analyzed it, they would have  
22 jumped at that deal.

23 Q. How do you know that?

24 A. My understanding of both my financial

1 A. Yes, although after Sealaska -- the  
2 penny-wise and pound-foolish, yes, it looks like  
3 I'm referring to Sealaska.

4 Q. Okay.

5 A. There was another corporation that was  
6 looking at it after that, however, too.

7 Q. Okay. And why did you think they were  
8 becoming penny-wise and pound-foolish?

9 A. It because I thought the company  
10 was -- I believe the \$2 million was an  
11 appropriate investment amount for the company.

12 Q. Okay. Now, what --

13 A. And they were passing on a great deal  
14 by not stepping up to the plate.

15 Q. Now, what were you saying about there  
16 being another?

17 A. There was another corporation we went  
18 to after that. I believe it was called Huna,  
19 H-u-n-a. I can't recall the name exactly.

20 Q. Did anything materialize?

21 A. No, no. They were smaller. They  
22 didn't have the wherewithal to really do it on  
23 their own.

24 Q. Okay. Now, if you look down at the

1 analysis of the cost of the deal and my  
2 understanding of Sealaska.  
3 (WHEREUPON, a certain document  
4 was marked Spehar Exhibit  
5 No. 34, for identification, as of  
6 1/21/09.)

7 BY MR. CISZEWSKI:

8 Q. Sir, we are showing you what's been  
9 marked as Deposition Exhibit No. 34.

10 Are you able to identify this document  
11 for us?

12 A. Yes.

13 Q. What is this?

14 A. This is an e-mail from myself to  
15 Irving Bailey of Chrysalis Ventures, April 17,  
16 2003.

17 Q. Okay. You see in the first paragraph  
18 about halfway down you make a reference to an  
19 Alaska native corporation and being concerned  
20 that they have become, quote, "penny-wise and  
21 pound-foolish"? Do you see that?

22 A. Um-hum.

23 Q. I take it you're referring to  
24 Sealaska?

1 fifth paragraph -- I'm sorry, the fourth  
2 paragraph.

3 A. Okay.

4 Q. "We currently service 4 clients," and  
5 it continues.

6 I take it that that's information you  
7 either got or cleared with Lou Franco?

8 A. Yes.

9 Q. And so that was an accurate reflection  
10 of the --

11 A. To the best of my knowledge, yes, I  
12 tried to clear everything with Lou.

13 Q. Okay. And if you look at the third  
14 paragraph above there, "to make our projections,"  
15 did you view these as realistic projections?

16 A. Oh, yes.

17 Q. Why is that?

18 A. Why?

19 Q. Well, I mean, the reason I ask is  
20 there's -- I mean, it would be a dramatic  
21 increase over what was happening.

22 I mean, for instance, it says -- you  
23 know, the fourth paragraph says, "We are  
24 currently serving 4 clients with 9,000

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1 employees." Then in the third paragraph, the  
 2 projection says that "we need to cover 210,000  
 3 employees by year-end 2003."  
 4 A. Right. Providence Health Systems,  
 5 38,000 employees, was ready to sign as soon as we  
 6 were funded. There were several of those in the  
 7 pipeline already, and their only trepidation was  
 8 we didn't have funding.  
 9 So if you look at -- you should take a  
 10 good solid look at Sealaska's due diligence.  
 11 There's a study that was done by Marsh-McLennan  
 12 every year of the absence management trends. You  
 13 can see that the business was growing like crazy;  
 14 that one of the primary services, the starter  
 15 services, that CMGT offered was FMLA tracking,  
 16 which allowed firms to off-load their compliance  
 17 problems that they had with the FMLA as well as  
 18 begin to get their hands around the whole absence  
 19 problem.  
 20 That was a huge concern. 51 percent  
 21 of the HR executives in the United States said it  
 22 was their major concern, so there was a very big  
 23 market demand for this. CMGT was recognized by  
 24 absolutely everyone as the primary provider. All

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1 of those people were holding back for funding.  
 2 I think if you look there, you'll see  
 3 even reaching the 2 million employees by year-end  
 4 2006 required only 1-1/2 percent of the market,  
 5 and that's -- civilian employees in the United  
 6 States. It's not a stretch.  
 7 (WHEREUPON, certain documents  
 8 were marked Spehar Exhibit  
 9 Nos. 35 and 36, for  
 10 identification, as of  
 11 1/21/09.)  
 12 BY MR. CISZEWSKI:  
 13 Q. Now, Mr. Spehar, I'm showing you  
 14 what's been marked as Deposition Exhibit Nos. 35  
 15 and 36.  
 16 A. Okay.  
 17 Q. And these are two Sealaska term sheets  
 18 dated May 1, 2003, that were both produced by the  
 19 trustee in this case. And I guess -- they appear  
 20 to be different to me.  
 21 I'm just wondering if you have any  
 22 explanation for why two different term sheets may  
 23 have been sent to Mr. Franco on this day.  
 24 A. I'd have to look through these

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1 carefully. I know at that point in time the  
 2 start of the whole negotiation was May 1st and  
 3 there was a term sheet that came from Sealaska  
 4 and from that point forward there were several  
 5 iterations of the term sheet that went back and  
 6 forth between Sealaska and CMGT.  
 7 Which ones these are, I would have to  
 8 dig in here and try and find out.  
 9 Q. That's okay. We don't have to spend  
 10 the time doing that now.  
 11 (WHEREUPON, a certain document  
 12 was marked Spehar Exhibit  
 13 No. 37, for identification, as of  
 14 1/21/09.)  
 15 BY MR. CISZEWSKI:  
 16 Q. Now, this is Spehar Deposition Exhibit  
 17 No. 37, and it's a -- there's a fax cover page  
 18 and then there's a Sealaska letter dated May 28,  
 19 2003.  
 20 A. Correct.  
 21 Q. Can you identify what that May 28,  
 22 2003 letter is?  
 23 A. After the deal had terminated, we  
 24 had -- I believe Lou demanded the documents that

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1 Sealaska had back from them, and those included  
 2 MOIC documents as well as the CMGT documents.  
 3 Q. So the negotiations with Sealaska were  
 4 ultimately unsuccessful, is that fair to say?  
 5 A. The negotiations were successful in a  
 6 sense that we did have a deal in place. It was  
 7 not accepted by either party -- I mean, the  
 8 Sealaska deal was not accepted by CMGT and so we  
 9 couldn't come to agreement and Sealaska walked  
 10 away.  
 11 Q. Okay. And that occurred sometime in  
 12 May of 2003, the walk-away?  
 13 A. Yes; May 13th, I believe.  
 14 Q. And did you or anyone else on behalf  
 15 of CMGT ever contact Sealaska again about  
 16 potential financing?  
 17 A. I believe I tried. It was a rather  
 18 uncomfortable situation. It wasn't a happy  
 19 ending, so it was not something that was going to  
 20 happen. They -- it wasn't going to happen.  
 21 Q. So it's fair to say that after the  
 22 May 13th termination there was no possibility of  
 23 any deal with Sealaska?  
 24 A. It would have been difficult. I don't

1 know if "no possibility" is the correct term, but  
 2 it would have been difficult.  
 3 Q. Now, in your meeting that you had in  
 4 Denver, did anybody from Mr. Joyce's firm talk to  
 5 you about what happened with the Sealaska deal?  
 6 A. I can't specifically recall. You  
 7 know, I would imagine it was on the agenda, yes,  
 8 but -- I know we talked about a comparison of a  
 9 lot of deals, so, yes, I believe that we did, now  
 10 that I think about it.  
 11 Q. Well, did you talk about why the  
 12 Sealaska deal failed?  
 13 A. You know, it's -- I can't specifically  
 14 recall, Steve.  
 15 Q. And did you talk about what we just  
 16 talked about a few minutes ago with your thoughts  
 17 that it was extremely unlikely that there could  
 18 be any successful deal with Sealaska after  
 19 May 13th of 2003?  
 20 A. I can't recall.  
 21 Q. Did you ever talk about that subject  
 22 with the trustee himself at any time?  
 23 A. Sealaska? Yes.  
 24 Q. What about the fact that you thought

1 A. I believe --  
 2 MR. CISZEWSKI: I think Mr. Joyce would  
 3 object to it being referred to as Rob's firm.  
 4 MR. CARROLL: I personally do not object to  
 5 that.  
 6 MR. CISZEWSKI: Make sure a copy of this is  
 7 sent directly to Mr. Joyce.  
 8 BY THE WITNESS:  
 9 A. I believe so.  
 10 MR. O'BRIEN: Joyce, Carroll, and  
 11 MacDougall; I'm starting to sense a pattern here  
 12 that's not offensive to me.  
 13 MR. CISZEWSKI: Why don't we take 3 or  
 14 4 minutes. I just want to look through a couple  
 15 other things, and I'm probably within 15 or  
 16 20 minutes of being done.  
 17 MR. O'BRIEN: Okay.  
 18 MR. CISZEWSKI: So then we can -- I'll wrap  
 19 up and turn it over to Rob.  
 20 (WHEREUPON, a recess was had.)  
 21 BY MR. CISZEWSKI:  
 22 Q. Mr. Spehar, I just have a few other  
 23 questions I wanted to ask about the complaint,  
 24 which is Exhibit 6.

1 there was almost no chance of any deal with  
 2 Sealaska after May 13th of 2003?  
 3 A. The fact that it would be difficult?  
 4 Q. Yes.  
 5 A. Yes, I may have. I'm not sure.  
 6 Q. Did you talk about that with the  
 7 trustee's counsel?  
 8 A. I may have. I'm not sure.  
 9 Q. Do you know -- I want to talk for a  
 10 second about the fax cover sheet.  
 11 Do you know who this law firm is in  
 12 Juneau, Alaska, that this came from?  
 13 A. Bud Simpson was on the -- I believe  
 14 it's Simpson Tillinghast. Yes, it's up at the  
 15 top. They represented Sealaska.  
 16 Q. Okay. And do you know who Jennifer  
 17 MacDougall is?  
 18 A. I believe she is in Rob's firm.  
 19 THE WITNESS: Isn't that right?  
 20 MR. CARROLL: I'm not here to answer  
 21 questions.  
 22 BY MR. CISZEWSKI:  
 23 Q. Your thought is she is at Ed Joyce's  
 24 firm?

1 A. All right.  
 2 Q. Can you turn to Paragraph 51 on Page  
 3 14?  
 4 Why don't you read 51 and 52 to  
 5 yourself, and then we will talk about those a  
 6 little bit.  
 7 (Short pause.)  
 8 BY THE WITNESS:  
 9 A. Okay.  
 10 BY MR. CISZEWSKI:  
 11 Q. Let's talk about Paragraph 51 for a  
 12 second.  
 13 Do you agree with what it says there?  
 14 A. Yes.  
 15 Q. Okay. And did you talk about any  
 16 efforts to settle the dispute you had with CMGT  
 17 with the trustee or his counsel?  
 18 A. Yes.  
 19 Q. Okay. And is this what you told them?  
 20 A. Yes.  
 21 Q. And what about Paragraph 52? Is that  
 22 accurate?  
 23 A. Yes, it is.  
 24 Q. And, again, is this information that

1 you told the trustee and his counsel?  
 2 A. Yes, and it's in my e-mails, too. I  
 3 didn't have to tell them. It's on the record.  
 4 Q. But you did also tell them this?  
 5 A. Yes.  
 6 Q. Now, when was this telephone call that  
 7 Given said inappropriate things?  
 8 A. August 19th.  
 9 Q. Okay. And who placed that call? You  
 10 made that call?  
 11 A. No. That call was made to me. On  
 12 August 15th, the letter went out to CMGT  
 13 shareholders asking them to vote on the Newco  
 14 deal.  
 15 Prior to that, Lou Franco called me  
 16 and I -- he told me that basically Ron Given was  
 17 running the show, that we needed to talk to Ron  
 18 if there was going to be any sort of settlement;  
 19 and I said, fine, let's do that.  
 20 It took me -- Ron did not want to talk  
 21 to me. I insisted that I didn't want to -- he  
 22 didn't want to talk to Lou and I together. I  
 23 insisted that that happen, so it took a few days  
 24 to put that together, and August 19th is when we

1 settlement or working out some deal?  
 2 A. He said that he would -- he didn't  
 3 offer anything. He said he was absolutely not  
 4 going to recognize the contract and that, you  
 5 know, I would -- if I persisted, I was going to  
 6 be made poor.  
 7 Q. How did you respond?  
 8 A. How did I respond? I was very proud  
 9 of myself in the sense that I didn't blow up. I  
 10 told him I had heard similar things from my  
 11 teenage daughters and I was going to try and act  
 12 accordingly, but I wanted to try and get  
 13 something accomplished.  
 14 And I -- there was nothing to do. You  
 15 know, right at the end of the conversation, as I  
 16 recall, I asked -- Lou sat there quite silently,  
 17 and I said, "Lou, this is your company. What are  
 18 you doing here? Say something," and nothing came  
 19 out of Lou. He just basically sat there and that  
 20 was really the end of the conversation. It was  
 21 just all threats.  
 22 Q. Okay. Can you turn now to Paragraph  
 23 62 on Page 17?  
 24 A. Yes.

1 had the call.  
 2 Q. Was Mr. Franco also on the call?  
 3 A. Yes, he was.  
 4 Q. Okay. And what threats did Mr. Given  
 5 make during that call?  
 6 A. I started the call by saying,  
 7 "Gentlemen, you know me. You know from our  
 8 Sealaska negotiations that I'm willing to work on  
 9 a settlement here. We have to start from the  
 10 basis of my contract being valid."  
 11 Excuse my language. Mr. Given  
 12 immediately said to me, "You motherfucker. You  
 13 son of a bitch. You don't know anybody but a  
 14 bunch of Indians and Mexicans."  
 15 And he threatened to make me poor with  
 16 18 shareholder lawsuits, and we went on from  
 17 there.  
 18 Q. Okay. Is there any other way in which  
 19 Mr. Given threatened or insulted you during that  
 20 call?  
 21 A. To top that, no.  
 22 Q. Okay. And when you say that he  
 23 steadfastly refused to negotiate any settlement  
 24 with SC, what did he say about the possibility of

1 Q. You can go ahead and read that one to  
 2 yourself.  
 3 (Short pause.)  
 4 BY THE WITNESS:  
 5 A. Okay.  
 6 BY MR. CISZEWSKI:  
 7 Q. Do you believe that Paragraph 62 is  
 8 accurate?  
 9 A. I do.  
 10 Q. And did you talk -- let me back up.  
 11 The second sentence indicates that  
 12 CMGT did not appear and defend the preliminary  
 13 hearing because of the negligent advice provided  
 14 by Given.  
 15 Did you talk about the reasons that  
 16 CMGT did not appear and defend at the preliminary  
 17 injunction hearing with the trustee and his  
 18 counsel?  
 19 A. Yes.  
 20 Q. And what did you tell them about that?  
 21 A. It's pretty much all contained in -- I  
 22 don't know what your exhibit number is, but the  
 23 memo that you labeled that was Trustee's  
 24 Exhibit 19, the September 24th memo.

1 There were known to me at that time --  
2 subsequent to that I know a lot more that I could  
3 add to this; but known to me at that time were  
4 two pieces of information, one of which was --  
5 that were not in the complaint here really fully.

6 One was the October 2nd e-mail that  
7 came from Ron Given to all shareholders that said  
8 that the subject matter of Gerry Spehar's lawsuit  
9 no longer exists, I believe, and that was the day  
10 before the preliminary injunction.

11 Hearing that from a law firm of the  
12 prestigious nature of Mayer Brown to the  
13 shareholders and depending on them for all of  
14 their legal counsel I believe would make those  
15 shareholders in that instance believe they didn't  
16 have to show up.

17 There was also a declaration by Lou  
18 Franco in his deposition that outright stated  
19 that had they had legal counsel -- they were  
20 relying on a legal reason given to them by Ron  
21 Given that only he could tell me, my lawyers, in  
22 not showing up.

23 Q. And Paragraph 63 ends the same way,  
24 that CMGT did not appear in defense of Spehar's

1 to the TRO before all of this started, and that  
2 absolutely did not happen, to the best of my  
3 knowledge.

4 And, thirdly, why -- in this instance,  
5 when you have a firm of the stature of Mayer  
6 Brown that you have worked with for 3, 4,  
7 5 years, whatever that was, telling you that  
8 there is no substance here, why would you hire  
9 someone to go?

10 Q. Do you know that the shareholders  
11 tried to hire a California lawyer after the TRO  
12 was entered?

13 A. I don't know that. Particularly at  
14 this time I did not know that.

15 Q. Do you know that now?

16 A. I've reviewed some information from  
17 your e-mails, from Mayer Brown's e-mail files,  
18 that indicate there may have been some  
19 discussions.

20 Q. And from reviewing those documents,  
21 have you come to a conclusion about why CMGT  
22 didn't hire an attorney after the TRO was  
23 entered?

24 A. No, I haven't, anything different than

1 amended lawsuit because of the negligent advice  
2 provided by Given.

3 A. Yes.

4 Q. Is that something you talked about  
5 with the trustee and his counsel?

6 A. Yes.

7 Q. And is it the same reasons why you  
8 think they didn't show up at the amended -- to  
9 defend against the amended lawsuit?

10 A. Yes. Now, the actual reasons versus  
11 the reasons he would have given may be different,  
12 but yes.

13 Q. Isn't it possible that CMGT just  
14 didn't have any money to hire a California  
15 lawyer?

16 A. Well, in the first place, that  
17 presumes that Mayer Brown wasn't their attorney,  
18 which the judge doesn't seem to think was the  
19 case and which she hasn't even begun to see the  
20 evidence in that regard; so I think Mayer Brown  
21 was still their attorney and should have shown  
22 up.

23 Secondly, the shareholders should have  
24 been told that they needed another attorney prior

1 what I've already told you.

2 Q. When did you get the e-mails that you  
3 reviewed that you're talking about indicate --

4 A. The Mayer Brown e-mails?

5 Q. Yes.

6 A. Probably sometime in the middle of --  
7 mid-July, let's say, 2006. I didn't have time to  
8 look at them, though. They were in a format that  
9 I couldn't really bring up on my computer, so I  
10 didn't really review them until after the  
11 complaint.

12 Q. Who did you get them from?

13 A. The trustee.

14 Q. But you're certain you got before the  
15 malpractice complaint was filed?

16 A. I got them before the malpractice  
17 complaint was filed. I did not have an ability  
18 to get them on my computer until after the  
19 malpractice complaint was filed, so I did not  
20 have a chance to review them.

21 Q. Okay. And you don't know one way or  
22 the other whether the trustee took the time to  
23 review those before the complaint was filed, do  
24 you?

1 A. I do not.  
 2 MR. CISZEWSKI: Subject to the privilege  
 3 question we have with respect to Exhibit No. --  
 4 what was it?  
 5 MR. O'BRIEN: 27.  
 6 MR. CISZEWSKI: Yes, 27, I don't have any  
 7 more questions.  
 8 MR. O'BRIEN: Okay.  
 9 MR. CARROLL: I just need a few minutes.  
 10 (Short pause.)  
 11 MR. CARROLL: Okay. We can go on the  
 12 record.

## EXAMINATION

BY MR. CARROLL:

15 Q. During the examination this morning,  
 16 early on in the testimony, you testified about  
 17 some projections that you prepared for CMGT once  
 18 you started doing work for CMGT, is that correct?  
 19 A. Yes.  
 20 Q. Now, did you do that alone, or did you  
 21 do that with the involvement of anybody else?  
 22 A. I did that with the involvement of Lou  
 23 Franco.  
 24 Q. Was there anybody else involved other

1 any of the projections that were prepared by you  
 2 and Lou Franco at CMGT?

3 A. He saw them regularly. Ron, Lou, and  
 4 I were the triumvirate. Jim Wong occasionally  
 5 came in, but the three of us primarily were  
 6 involved in pitching the deals to serious  
 7 investors; so whenever anything got serious, at  
 8 least at that stage Ron always got everything.  
 9 That included the projections.

10 In particular, in the Sealaska deal,  
 11 towards the end of the deal I was out of the loop  
 12 because they were having a problem with my  
 13 contract, so it became Lou and Ron who were  
 14 pitching the deal and constructing all of the  
 15 responses. The projections at that point in time  
 16 became actually incorporated into the term sheets  
 17 that Ron was passing back and forth and writing  
 18 and drafting for Sealaska, and, yes, he was  
 19 involved in.

20 Q. Did Mr. Given ever -- did you ever  
 21 have any discussions with Mr. Given regarding the  
 22 projections?

23 A. Yes. We -- in particular, I think  
 24 maybe I first really got them into shape to

1 than Lou Franco?  
 2 A. No. I had -- well, let me qualify  
 3 that.  
 4 There were pieces of information that  
 5 we needed to gather to put those together along  
 6 the way that came from other people. For  
 7 instance, Jim Wong supplied a lot of information  
 8 with regards to the financials of CMGT, with  
 9 regards to the actual sales projections. I think  
 10 in December, 2002, before the Sealaska deal,  
 11 Mayer Brown did a lot of research for us on the  
 12 FMLA law and the applicability of the FMLA law to  
 13 U.S. government agencies and employees.  
 14 Q. And how were those projections used  
 15 after they were prepared?  
 16 A. They were used -- they were put  
 17 together with the primary purpose and used for  
 18 primarily articulating CMGT's business and its  
 19 investment case to investors, so that was the  
 20 primary purpose.  
 21 They were robust enough that they  
 22 actually became a management tool for CMGT in the  
 23 business itself.  
 24 Q. Do you know whether Ron Given ever saw

1 present to investors when it was probably in the  
 2 January/February, 2002 range when we were having  
 3 discussions with Lyric Capital; and as part of  
 4 those discussions when I was first putting them  
 5 together, we had some detailed discussions about  
 6 them.

7 Q. Are you able to summarize some of the  
 8 things that Mr. Given said regarding the  
 9 projections?

10 In other words, was he making changes  
 11 to them about things he didn't like about them  
 12 and telling you you had to make a change here,  
 13 make a change there?

14 What was the nature of the discussion  
 15 you had with him regarding the projections?

16 A. With regard to --

17 MR. CISZEWSKI: Object to the form of the  
 18 question.

19 BY MR. CARROLL:

20 Q. Let me rephrase.

21 What did you say about the  
 22 projections?

23 A. The two areas, I guess, that I would  
 24 go to there would be the FMLA projections as they

1 applied to -- were they realistic, were they not  
2 realistic with regards to did they apply to  
3 government employees.

4 Lou Franco when we got involved with  
5 Sealaska and they were going to their board with  
6 the deal in December of 2002 specifically asked  
7 Ron to help -- to have someone at Mayer Brown  
8 help research the FMLA law for our projections so  
9 we could see how they -- if it did apply to the  
10 projections, if Sealaska could actually help us  
11 sell the FMLA service to U.S. government agency  
12 employees.

13 So there was a series of e-mails that  
14 went back and forth and some conclusions that  
15 were drawn by Mayer Brown for the projections for  
16 the FMLA.

17 When we went forward with that deal  
18 and I was out of the loop, in the -- in May of  
19 2003 there, I had to take the projections and cut  
20 them out into an addendum that was to incorporate  
21 portions of the projections into the term sheet  
22 that Ron was preparing for Sealaska. He directed  
23 me on that.

24 And there were two or three letters

1 happen.

2 So, for instance, with Sealaska we --  
3 in February I think I updated the projections for  
4 them and tried to -- they were dependent on the  
5 number of months that it took to break even.  
6 They were projecting all that going forward, so  
7 you had to be specific to the date that the  
8 funding actually arrived at the company.

9 So as the deal went from February to  
10 May, I would again update the projections to show  
11 May funding.

12 Q. Okay. And earlier today in direct  
13 examination or during Mr. Ciszewski's  
14 examination, you testified that you received  
15 the -- if I'm correct, the information that you  
16 used to prepare the projections you received from  
17 Lou Franco, is that right?

18 A. Lou Franco was the most knowledgeable  
19 person on all of CMGT's operations and clients,  
20 and so, yes, I always interfaced with him on  
21 anything that was an input.

22 Q. Can you tell me what the information  
23 was that you used to prepare the projections?

24 A. What it was? It was all of

1 that actually talked about the -- in the course  
2 of -- once Sealaska put forth the \$950,000 deal,  
3 we kind of knew that was coming. And I don't  
4 know exactly if we know the exact number, but we  
5 started to know that was coming in April of 2003  
6 from conversation or a letter that Patrick Duke  
7 had sent Franco.

8 There was a couple of responses to  
9 that offer that specifically referenced the  
10 projections and the viability of the projections  
11 that was drafted by Lou, run by Ron and approved  
12 by Ron, and then cc'd to him when it was sent to  
13 Sealaska.

14 Q. Did Mr. Given ever tell you that he  
15 thought the projections that you prepared were  
16 unrealistic?

17 A. Never.

18 Q. Do you know if those projections --  
19 well, let me back up.

20 Were the projections updated over time  
21 over the years as CMGT sought financing?

22 A. They were updated as often as we  
23 possibly could, meaning we tried to keep them  
24 current to when we expected the funding to

1 the requests for proposal, for instance, that we  
2 were -- had in the works or that CMGT had in the  
3 works with all of its different clients, people  
4 like Hartford, Cigna, Liberty Mutual.

5 That was something that was looked at  
6 to try and make the sales projections at the top  
7 of the projections realistic, so we would  
8 constantly be looking at the viability of all of  
9 the clients that we had in the works -- when were  
10 they likely to come in, what type of service were  
11 they likely to actually engage in with us.

12 And from there there was a section of  
13 all of the expenses of CMGT, some of which were  
14 fixed costs, some of which were variable costs.

15 So, for instance, CMGT's metrics  
16 dictated that if you had 10,000 -- you roughly  
17 needed one RN, an official nurse, for roughly  
18 every 10,000 employees that you were going to  
19 service for the client.

20 That didn't mean that she had to  
21 actually handle that many employees. That meant  
22 that of those 10,000, if 2 percent of them were  
23 sick at any one point in time, she'd be able to  
24 handled that.

1 So those types of variable costs were  
2 automated in the projections, and so I had to go  
3 through all of that stuff with them and build  
4 them into the projections so that you could  
5 project out 4 years and have the sales drive all  
6 of the costs and come up with an accurate number.

7 Q. Did Mr. Given ever tell you that the  
8 information used to prepare the projections was  
9 too speculative to form realistic projections?

10 A. No. He himself, in fact, used those  
11 projections to do the Sealaska deal.

12 Q. And were the projections that were  
13 prepared for CMGT, to your knowledge, ever given  
14 to Chuck Trautner or anybody in his investor  
15 group in connection with the Newco deal?

16 A. They definitely were. Well, first of  
17 all, they were given to Harlan Smith and Chuck  
18 Trautner directly before the conversation in  
19 January.

20 Secondly, they were handed off, I  
21 believe, in the packages that were sent in late  
22 July to Trautner and Harlan Smith as part of the  
23 Newco packages that Franco and Given delivered to  
24 them.

1 Q. By "full-time job," would you consider  
2 a full-time job to be 40 hours a week or more?

3 A. I would consider I spent at least --  
4 on average I would say at least 40, maybe  
5 60 hours a week.

6 Q. And at that time, what was your  
7 financial situation like?

8 A. My financial situation was going from  
9 worse to worser. It was -- I had an investment  
10 in a stock called Authorizer in March of 2000  
11 that was worth \$16 million. I think I explained  
12 it earlier. It was an Internet security firm.

13 It was worth roughly \$600,000 by the  
14 fall of -- by December of 2000 when I came on  
15 board with CMGT. They still had a lot of money  
16 in the bank, but they were beginning to struggle.  
17 The stock wasn't doing very well.

18 I had introduced Authorizer to CMGT to  
19 try and -- because Authorizer had a  
20 state-of-the-art at that time, they thought  
21 Internet security setup; so we were trying to  
22 peddle them along with CMGT to some of CMGT's  
23 partners, like Hartford. Franco and Given became  
24 aware of Authorizer through that.

1 Q. Okay.

2 A. Certainly Trautner was one of the  
3 major investors of CMGT that was, again, one of  
4 the two people who Lou looked to for savior  
5 capital, as he called it, so he was constantly  
6 kept in the loop on everything that was going on.  
7 If anything changed in the projections, he was  
8 given an update.

9 Q. Okay. I'm going to switch gears just  
10 a little bit.

11 You testified this morning in response  
12 to some questions by Mr. Ciszewski about the  
13 amount of time that you devoted to CMGT once you  
14 got involved in the company.

15 A. Yes.

16 Q. I just want to explore that a little  
17 bit more.

18 About how many hours per day on  
19 average, if you can estimate, did you spend  
20 working on CMGT in connection with your agreement  
21 with CMGT?

22 A. That would vary. I would -- it was a  
23 full-time job, I'll put it that way. It was  
24 absolutely a full-time job, if not more.

1 As the years went on with CMGT, the  
2 stock basically went to nothing; and that coupled  
3 with the fact that I was devoting all of my time  
4 to contingency work essentially with CMGT put me  
5 in tough financial straits.

6 Q. And what was -- this is maybe the  
7 question I should have asked.

8 What was Spehar Capital's financial  
9 situation like? Was it any different?

10 A. No. It was exactly the same.

11 Q. Would you say that your financial --  
12 Spehar Capital's financial future at that time  
13 was tied to CMGT obtaining financing and becoming  
14 a successful company?

15 A. Yes. As I testified earlier, I tried  
16 to be selective about what I got involved in. I  
17 was very comfortable with the cast of characters  
18 and business that was involved in CMGT and the  
19 MOIC, so I dedicated myself to that.

20 Q. And part of the reason that Spehar  
21 Capital's financial future was so closely tied to  
22 CMGT was because part of the compensation set  
23 forth in Spehar Capital's agreement with CMGT was  
24 that Spehar Capital was to be paid at least



1 partially in stock, is that correct?  
 2 A. Absolutely. That was exactly why I  
 3 was there.  
 4 Q. I want to go to Exhibit 6, which is  
 5 the complaint, and if you'd turn to Exhibit 1 of  
 6 Exhibit 6.  
 7 A. Okay.  
 8 Q. Then if you turn to the second page of  
 9 that document and go down to Paragraph 5,  
 10 numbered Paragraph 5 -- is everybody there?  
 11 A. Okay.  
 12 Q. Can you read that paragraph just to  
 13 yourself?  
 14 A. Are we on Exhibit 1?  
 15 Q. Am I on the wrong one?  
 16 MR. O'BRIEN: Exhibit 2.  
 17 BY MR. CARROLL:  
 18 Q. I'm sorry, the second page of  
 19 Exhibit 2, numbered Paragraph 5.  
 20 A. Okay.  
 21 MR. CARROLL: Just so it's clear for the  
 22 record where we are at, we are on Spehar  
 23 Deposition Exhibit No. 6, which is the complaint  
 24 in the malpractice case, and we are looking at

1 California lawsuit to try to enforce that  
 2 provision that CMGT had agreed to?  
 3 A. Yes. That's what put me behind the  
 4 eight ball. If my agreement had been an  
 5 obligation of Newco, I would have had the ability  
 6 to sue Newco.  
 7 Q. And was another part of that lawsuit,  
 8 that California lawsuit, to try to get a judicial  
 9 determination as to whether Charles Trautner  
 10 should be added to Exhibit A of your agreement?  
 11 A. Yes. Franco was refusing to do  
 12 that -- or at least I demanded he do that, and  
 13 the correspondence I got back mostly from Given  
 14 refused to do that.  
 15 So, yes, I wanted an acknowledgment  
 16 that Trautner was under my agreement.  
 17 Q. Talking about the California lawsuit,  
 18 what was your reaction when CMGT did not file an  
 19 appearance and defend that action upon you filing  
 20 it and serving it upon CMGT?  
 21 A. Absolute disbelief and surprise.  
 22 Q. So at the time Spehar Capital filed  
 23 its lawsuit against CMGT, you did not expect that  
 24 CMGT would sit back and do nothing in response to

1 Exhibit 2 to that complaint.  
 2 We are on the second page, and I've  
 3 directed the witness to read numbered paragraph 5  
 4 to himself.  
 5 BY THE WITNESS:  
 6 A. Yes.  
 7 BY MR. CARROLL:  
 8 Q. Just let me know when you're done  
 9 reading it.  
 10 A. Okay. I got it.  
 11 Q. What is your understanding of the  
 12 purpose of that provision?  
 13 A. This is specifically to address a  
 14 situation like Newco where a company comes in and  
 15 buys the assets of CMGT but does not invest in  
 16 CMGT, and that's the type of situation that's  
 17 exactly what happened to me with CMGT.  
 18 They were supposed to -- this  
 19 paragraph was supposed to make my agreement tag  
 20 along with the purchaser of the assets, so my  
 21 agreement should have been made a part of Newco  
 22 and should have been made an obligation of Newco.  
 23 Q. Okay. And was at least one of the  
 24 aspects of what we have been calling the

1 that lawsuit?  
 2 A. Absolutely not.  
 3 Q. And why is that?  
 4 A. I had no reason to expect that they  
 5 would. I mean, everything that Ron Given had  
 6 said up to that point was that I had a meritless  
 7 action and that there was no reason to worry  
 8 about it. That led me to believe he would show  
 9 up and say that in court.  
 10 I, for the record, wanted to go into  
 11 court.  
 12 Q. Now, at the time that you filed your  
 13 claim -- and I don't want to get into any  
 14 conversations that you had with your attorneys --  
 15 but did you personally believe that the claim  
 16 that you filed against CMGT in California seeking  
 17 to be -- seeking for Spehar Capital to be  
 18 compensated in connection with the Newco deal,  
 19 did you think that that claim had merit?  
 20 A. Absolutely.  
 21 Q. Why is that?  
 22 MR. O'BRIEN: I'm going to object to the  
 23 extent that it calls for a legal conclusion; but  
 24 subject to that, you can answer.

1 BY MR. CARROLL:  
 2 Q. I'm just seeking your own personal  
 3 understanding absent any advice of counsel.  
 4 A. Because the -- Chuck Trautner was  
 5 under my contract; and once Chuck Trautner was  
 6 under my contract, any deal that Chuck Trautner  
 7 did was under my contract.  
 8 I've subsequently come to know that  
 9 Harlan Smith was also a part of that deal. He  
 10 was also under my contract. At the time, I was  
 11 basing it on Trautner.  
 12 Q. You testified earlier today that your  
 13 agreement with CMGT contemplated that Exhibit A  
 14 would be updated as, for example, Lou Franco  
 15 asked you to perform some kind of work with a  
 16 potential funding source, is that right?  
 17 A. Right.  
 18 Q. If you could go to Spehar Deposition  
 19 Exhibit No. 13 and if you'd turn to the last page  
 20 of that exhibit; it's the letter from you -- from  
 21 Gerry Spehar to Lou Franco, or maybe it's an  
 22 e-mail from Gerry Spehar to Lou Franco.  
 23 A. I got it.  
 24 Q. Dated August 8, 2003.

1 believe I'm going to paraphrase this correctly, I  
 2 hope -- that at the time that you filed the  
 3 lawsuit in California, you thought that it might  
 4 be difficult to obtain injunctive relief, but  
 5 that because of the way -- I'll just stop right  
 6 there.  
 7 You thought it might be difficult to  
 8 obtain injunctive relief?  
 9 A. Yes.  
 10 Q. Does that accurately summarize your  
 11 testimony?  
 12 A. Yes, that is very accurate.  
 13 Q. Now, although you believed that it may  
 14 have been difficult to obtain injunctive relief,  
 15 did you think that it was unethical to request  
 16 that relief?  
 17 A. No. I had no reason to know that it  
 18 was unethical or incorrect for me to do that. I  
 19 just -- I thought from discussions I had had that  
 20 it might be a very difficult thing to achieve,  
 21 not that it was unethical; just difficult to  
 22 achieve.  
 23 Q. Did you think it was inappropriate to  
 24 request that kind of relief?

1 A. Correct.  
 2 Q. All right. If you'd turn to the last  
 3 page of this document, can you please read the  
 4 top two paragraphs to yourself and just let me  
 5 know once you've read them.  
 6 (Short pause.)  
 7 BY THE WITNESS:  
 8 A. Okay.  
 9 BY MR. CARROLL:  
 10 Q. What were you -- can you explain what  
 11 you were attempting to do here, what you were  
 12 asking Lou to do here?  
 13 A. It had become obvious to me at this  
 14 point that I couldn't trust Franco to put -- to  
 15 go along with any sort of an oral understanding  
 16 for things to be done in the future, so I was  
 17 trying to at least get him to acknowledge  
 18 Trautner and then this other individual from  
 19 FlexBen Corporation that he had just introduced  
 20 me to as part of Exhibit A.  
 21 Q. So you were seeking to have Exhibit A  
 22 updated?  
 23 A. Yes, I was.  
 24 Q. Earlier today, you testified -- I

1 A. No, not at all.  
 2 Q. Did you think it was fraudulent to ask  
 3 for that relief?  
 4 A. Absolutely not. It was -- you know, I  
 5 was protecting myself. My contract, again, had a  
 6 provision that you pointed out there that should  
 7 have -- CMGT was obligated to make my contract a  
 8 contract with Newco. They had not done that.  
 9 Q. I don't know if you're going to be  
 10 able to answer this questions without disclosing  
 11 attorney/client communication that I'm about to  
 12 ask. If you can't, just tell me.  
 13 A. Okay.  
 14 Q. But if you can go ahead and try to  
 15 answer it.  
 16 Can you explain any of the reasons why  
 17 you thought it might have been difficult to  
 18 obtain injunctive relief?  
 19 MR. O'BRIEN: Well, I'm going to object  
 20 both -- to the extent, as counsel noted, that it  
 21 involves communications that are attorney/client  
 22 privileged, don't disclose those.  
 23 Second, I object that, to the extent  
 24 that it calls for a legal conclusion, he's not

1 qualified to give one.

2 But subject to those objections, you  
3 can answer the question if you're able to.

4 BY THE WITNESS:

5 A. That's difficult to answer without  
6 disclosing attorney/client privilege.

7 BY MR. CARROLL:

8 Q. That's fine. That's why I had the  
9 long preface to the question.

10 MR. O'BRIEN: I appreciate that.

11 BY MR. CARROLL:

12 Q. Now, at some point in time in the  
13 California action you amended the Spehar Capital  
14 complaint, is that right -- or Spehar Capital  
15 amended its complaint, is that right?

16 A. Yes.

17 Q. And the amendment -- let me back up.

18 Did the original complaint seek  
19 monetary damages?

20 A. It did not.

21 Q. And was one of the amendments that was  
22 made to the complaint to seek monetary damages?

23 A. Correct.

24 Q. Would you have amended that complaint

1 means that I wouldn't have filed any further  
2 complaints, then the answer is yes.

3 BY MR. CARROLL:

4 Q. Well, let me ask you this: Earlier I  
5 asked if you had -- if you were surprised -- I  
6 don't remember my exact question, but you gave an  
7 answer, and I'll paraphrase it, and if anybody  
8 objects, go ahead.

9 You were surprised when CMGT did not  
10 appear and defend in the California case?

11 A. Yes.

12 Q. Okay. If that surprised you, then why  
13 would you file a case that could -- that you  
14 expected would be contested if you could not  
15 afford to be involved in litigation that's  
16 contested?

17 Do you understand the question?

18 A. I don't know that I do.

19 Q. Okay. Earlier in my line of  
20 questioning you gave an answer that stated  
21 essentially that you were surprised when CMGT did  
22 not appear and defend.

23 A. Um-hum.

24 Q. And maybe I'm just misunderstanding

1 to seek monetary damages if CMGT had appeared in  
2 California, defended the request for injunctive  
3 relief, and successfully defeated Spehar  
4 Capital's request for injunctive relief?

5 MR. O'BRIEN: I'm going to object again on  
6 the same two bases; but to the extent that you  
7 can answer that subject to those objections and  
8 concerns, you can answer the question.

9 MR. CISZEWSKI: I'd like to also object to  
10 the form of the question as calling for  
11 speculation.

12 BY THE WITNESS:

13 A. And the question is would I have --

14 MR. CARROLL: Can you just read it back?  
15 (WHEREUPON, the record was  
16 read by the reporter.)

17 BY THE WITNESS:

18 A. I can answer to this extent. I did  
19 not have the ability to pursue a contested action  
20 at that point in time.

21 I don't know how that ties into your  
22 specific question about amending the complaint or  
23 not. If I couldn't pursue a contested action, I  
24 didn't have the ability to do that, and that

1 one of your answers.

2 Just now in response to a question  
3 that I had asked, you said that -- you gave an  
4 answer that reflected that you didn't have the  
5 financial ability to pursue contested litigation.

6 A. Um-hum.

7 Q. Based on your answer that you were  
8 surprised that CMGT did not appear, I'm inferring  
9 from that that you expected them to appear and  
10 contest that action.

11 So my question is: If you had an  
12 expectation that CMGT was going to appear and  
13 defend -- in other words, contest the action --  
14 given your financial situation in your answer  
15 that you couldn't afford contested litigation,  
16 why did you file the case?

17 A. This is difficult to answer. I'm  
18 going to try and answer it without getting into  
19 legal advice here.

20 But at that point in time, I felt I  
21 had no choice. I had no options. My only chance  
22 of recovery here was -- because I could not  
23 afford a contested, long-term action was to try  
24 to get a TRO, no matter how difficult that might

1 be. That was my only option, and that was to  
2 protect myself.

3 If I was successful in getting the TRO  
4 and whatever the odds of that were, again that  
5 was a very -- no matter how difficult, that was  
6 really about the only thing I had. That was what  
7 I had to do.

8 Q. And why do you feel like in you were  
9 in that position?

10 A. Because I had no money, first of all,  
11 to pursue a long-term action, so injunctive  
12 relief, if I could get it, would stop the deal  
13 and hopefully force them to come to terms, some  
14 sort of a settlement with me, bring them to the  
15 table.

16 Q. Let me ask it in a different way, if I  
17 can.

18 Was the response that you were getting  
19 from CMGT to your letters and correspondence  
20 before you filed the complaint regarding your  
21 claim on your contract -- was the response or  
22 nonresponse that you were getting from CMGT --  
23 strike all that. Let me try this again.

24 Why did you file a lawsuit at all?

1 referring back to Given and said he couldn't do  
2 anything; this was based on a legal assessment  
3 that he couldn't talk about; he was under  
4 confidentiality with Given; therefore, I had to  
5 talk with Given.

6 Then we finally had the August 19th  
7 call that blew up in my face, and Given refused  
8 to talk to me beyond that.

9 These gentlemen both knew that I would  
10 settle and that I would settle for less. They  
11 had been -- they had lived through the Sealaska  
12 experience. All you have to do is go back and  
13 look at what went on there.

14 You know, there's a response, I think,  
15 on May 2nd from Lou Franco to Ron Given talking  
16 about Sealaska pushing the buttons on me legally  
17 in which he says, "Why don't they just try to  
18 settle with Gerry? They know he's reasonable."  
19 That's what those guys knew about me. They knew  
20 I would have done that.

21 So, yes, I did try that, and I cannot  
22 tell you why they didn't do that. That's beyond  
23 me.

24 Q. So was one of the reasons that you

1 Forget about the type of relief you  
2 were seeking.

3 Why did you eventually file the  
4 lawsuit?

5 MR. O'BRIEN: I'm going to object again to  
6 the extent that your answer would necessarily  
7 require communications with your attorney and to  
8 the extent that it calls for a legal conclusion;  
9 but subject to those, you can answer.

10 BY THE WITNESS:

11 A. You're talking about my initial  
12 California action?

13 BY MR. CARROLL:

14 Q. Correct.

15 A. I filed that because CMGT breached my  
16 contract and because I needed to -- I put 2 years  
17 of my life into it and I was also -- I was  
18 seeking justice, and I was seeking recovery.

19 Q. Well, did you try to settle with CMGT  
20 before you filed the case?

21 A. Yes, I -- first of all, my  
22 communications initially were directed -- you can  
23 see my communications with Given here; but with  
24 Franco, I talked his ear off and he always kept

1 filed the complaint in California because they  
2 refused to negotiate a settlement with you?

3 A. Absolutely. That was the primary  
4 reason. It was to try and bring them to the  
5 table so that they would have more of an impetus  
6 to settle.

7 I couldn't understand how someone who  
8 had a \$2-1/2 million deal in hand wouldn't take  
9 that step, wouldn't -- particularly if a TRO was  
10 in place, because my TRO, remember, said it only  
11 restricted them from doing deals that violated my  
12 contract.

13 Q. Now, what kind of time and money have  
14 you devoted to try and collect on your judgment?

15 A. I am probably into this -- to  
16 collecting on the judgment as opposed to getting  
17 it?

18 Q. Collecting on the judgment. We will  
19 just stick with that for now.

20 A. I'm guessing here, but I'm going to  
21 say \$400,000 on straight fees. On time, you  
22 know, if you value my time, which I do, at 250  
23 bucks an hour, we are up into a million dollars.

24 Q. Now, would you have preferred to work

1 out a deal, a settlement, with CMGT before  
2 receiving a judgment than to be in this  
3 collection process that you're currently in?

4 A. Absolutely, absolutely.

5 Q. And if CMGT had been willing to settle  
6 with you before you filed the California action,  
7 would you have settled for something less than  
8 100 percent of your compensation?

9 A. Absolutely. The deal that I had in  
10 front of Sealaska was that I was giving up my  
11 investment banking rights -- this is what I  
12 offered to Given and Franco -- for a slice of  
13 revenue.

14 So I would be riding the deal for a  
15 small piece of revenue. I would have worked on  
16 something like that.

17 Q. And would you have done that after you  
18 filed the California action, but before you  
19 received a judgment?

20 A. Absolutely. I had -- you know, the  
21 e-mail trails are very clear. Every time I did  
22 anything in court, I immediately came out of  
23 court and wrote an e-mail to Ron and Lou saying,  
24 okay, now let's settle.

1 relationship like with Lou Franco?

2 A. I'll put it in his words. He said we  
3 were brothers, so we had a -- we had a great  
4 relationship, I thought, and I thought I had a  
5 great relationship with Ron Given.

6 I had no reason to suspect any of this  
7 would happen. In fact, I was floored.

8 Q. And in terms of CMGT, setting aside  
9 the time that you put into working on trying to  
10 find financing for CMGT and the other  
11 opportunities that you didn't pursue while you  
12 were working for CMGT, were you personally  
13 invested in terms of -- did you have a personal  
14 desire to see CMGT succeed?

15 A. Absolutely. I mean, I got to know the  
16 company very well. I respected the fact that the  
17 shareholders were sticking with it the way they  
18 were. The business plan was stunning as far as  
19 anything that I've seen. It was basically the  
20 contracts were structured as two-year annuities.  
21 It was a beautiful company.

22 It would have done very well as an IPO  
23 because of that. It had very recurrent, very  
24 steady, very strong revenue. Their after-tax

1 Q. Would you have done that deal after  
2 you got your judgment?

3 A. I would have had to have seen the  
4 condition of the company. I didn't know the  
5 condition of the company at that point in time.  
6 I'd have to know what I was getting into.

7 Q. All right. Now, I think you've said  
8 it during this deposition, but how many years  
9 were you working on CMGT?

10 A. I started working on them in June of  
11 2001, so by the time -- over 2 years.

12 Q. And you devoted basically all of your  
13 working time?

14 A. Yes, between that -- MOIC didn't  
15 really come on the horizon -- we threw it out  
16 there, but it didn't really become anything that  
17 I worked on solidly until the meeting we had  
18 in -- in Given's office on August 1, 2003; so  
19 2 years prior to that CMGT was pretty much it for  
20 me.

21 I had one other company that popped up  
22 that I spent some time with, but CMGT was it.

23 Q. And during that time you worked for  
24 CMGT, did you develop -- what was your

1 margins were something like 30 percent. You  
2 don't see that kind of thing.

3 Q. Now, earlier today you were asked some  
4 questions about the software that you purchased  
5 from the trustee. I believe it was the absence  
6 management software that CMGT owned.

7 A. Yes.

8 Q. And I think you were asked some  
9 questions regarding the value of that software.

10 Now, if somebody owns that software  
11 and that person or company doesn't have a call  
12 center, doesn't have relationships with entities  
13 to whom it can foster absence management  
14 business, and doesn't have any business model to  
15 pursue absence management business, is that  
16 software very particularly valuable or useful --  
17 I'll say valuable to the person who owns it?

18 A. No.

19 MR. CISZEWSKI: I'll just object to the form  
20 of the question.

21 BY MR. CARROLL:

22 Q. That's okay. You can answer.

23 A. The software is specific to the  
24 absence management business. The software is one

1 of the reasons that CMGT paid \$450,000 for  
2 TouchSpeed.

3 They got Rob Crandall with that, who  
4 developed the software, and CMGT was the only  
5 company out there that I'm aware of that actually  
6 had a call center model and the ability to  
7 integrate all of these different HR and  
8 disability softwares of the other firms they were  
9 working with; so it was very, very important to  
10 the company.

11 They had -- at the time that they were  
12 running the business with it, everybody wanted a  
13 license to it, a lot of people did, and Lou  
14 wouldn't give a license to it.

15 Now is it worth that much money? I  
16 don't know. I mean, I don't know what's been  
17 done to duplicate that software. I suspect a  
18 couple things in a couple places. I don't know  
19 how much the business has grown up around that  
20 software, so it's difficult to stick a value on  
21 it now.

22 But it was part of running the  
23 business, what was really valuable. You can't  
24 take the software as an isolated item, place a

1 invest, in fact, and I couldn't.

2 Q. Prior to filing the California  
3 lawsuit, did you have any thoughts of CMGT suing  
4 Mayer Brown for legal malpractice as a result of  
5 a case that you might file against CMGT?

6 A. Prior to the California action?

7 Q. Actually being filed, did you ever --  
8 let me try and phrase it in a better way.

9 Around the time -- around the time  
10 when you were deciding to file the California  
11 action, did you have any thoughts of eventually  
12 ending up in a situation where CMGT is suing  
13 Mayer Brown for malpractice to collect on a  
14 judgment that you might receive?

15 MR. O'BRIEN: I'm going to object for the  
16 same reasons as before.

17 If your answer requires disclosure of  
18 communications you had with your attorney  
19 regarding the California action, don't disclose  
20 that.

21 And to the extent it calls for a legal  
22 conclusion, he's not qualified to give one.

23 Subject to that, you can answer the  
24 question if you're able to.

1 value on it, and somehow extrapolate that as a  
2 value of CMGT. The value of CMGT was the  
3 business that they generated using that software.

4 Q. You said during your initial testimony  
5 here today that your bond limit was \$40,000?

6 A. Yes.

7 Q. And this is going back to talking  
8 about the California lawsuit?

9 A. Yes.

10 Q. Did Ron Given know that -- did Ron  
11 Given know what your financial situation was?

12 A. He knew my financial situation. He  
13 didn't know that was my bond limit. That came  
14 after the action started.

15 But, yes, I mean -- and the reason I  
16 say that is Ron Given and Lou Franco and I worked  
17 very, very closely for 2 years; and part of that  
18 working together was working with Authorizer for  
19 a time, meaning that they were very well aware of  
20 my financial situation. A lot of the money I had  
21 was based on Authorizer, and it all went away.

22 And then on top of that, I was working  
23 for 2 years on a contingency basis for them, so,  
24 yes, they were aware. They had asked me to

1 BY MR. CARROLL:

2 Q. Do you remember the question?

3 A. I do remember it.

4 MR. O'BRIEN: You're accusing me of being  
5 long-winded? Sorry.

6 BY THE WITNESS:

7 A. Prior to the California action, I had  
8 never been in court in my life for any sort of an  
9 action, civil or criminal, defendant or  
10 plaintiff; so I didn't know what an attorney was,  
11 to tell you the truth.

12 And I had no clue about bankruptcy  
13 whatsoever. I had no thoughts of collection. I  
14 had no thoughts of anything but trying to get  
15 through that first phase.

16 BY MR. CARROLL:

17 Q. Okay. In response to a question that  
18 you were asked by Mr. Ciszewski, you made the  
19 comment David wasn't interested in doing any  
20 work, and the question that you were asked  
21 related to attempts to find a malpractice  
22 attorney to investigate and possibly pursue the  
23 current malpractice claim.

24 I just want to go back to that

1 testimony to clarify it.

2 When you said that phrase, "David  
3 wasn't interested in doing any work," what were  
4 you referring to?

5 A. I'm referring to when I first set up  
6 the -- I put CMGT into bankruptcy with the idea  
7 of pursuing this collection action, I understood  
8 that I had to come to David with pretty much a  
9 template of how this was going to be  
10 accomplished; that he wasn't going to be doing  
11 that himself.

12 So that meant me going out and  
13 soliciting a malpractice attorney and lining up  
14 special counsel for him. I went so far as to  
15 throw out a special counsel template of a deal.

16 And also in that respect it means that  
17 David was not going to be investing any money in  
18 this. There was no money in the estate. I had  
19 to do all of that. I had to finance it.

20 So it was with regards to those types  
21 of things I was talking about.

22 When it came down to the actual  
23 investigation of the malpractice action, that  
24 sort of thing, I assume he got involved.

1 A. Yes.

2 Q. And to the best of your recollection,  
3 were any of those mistakes material?

4 And by "material," what I mean is they  
5 would change whether the case was meritorious or  
6 not?

7 A. Well, the --

8 Q. Change whether colorable claims were  
9 stated or not.

10 A. No, the claims were meritorious.

11 Q. Okay.

12 A. I don't think there was anything in  
13 there that would change that.

14 I mean, with regards to Steve's  
15 earlier question about the Washoe signing the  
16 LOI, I think I may have pointed that out to you.

17 Q. Let's go to Spehar Deposition Exhibit  
18 No. 25.

19 Can you look at the paragraph that  
20 immediately precedes the No. 2 on the first page?  
21 It starts off FYI.

22 A. Yes.

23 Q. Can you just read that out loud?

24 A. "FYI: I have also suggested to Rob

1 Q. Okay. Now, after the malpractice  
2 complaint was filed -- so we are not talking  
3 about the California action now; we are talking  
4 about the malpractice case against Mayer Brown.

5 After the malpractice complaint was  
6 filed, did you review a copy of that complaint?

7 A. After it was filed?

8 Q. After it was filed.

9 A. Yes.

10 Q. So the filed copy of the complaint you  
11 reviewed?

12 A. Yes.

13 Q. And do you recall having a discussion  
14 with me about that complaint after it was filed,  
15 shortly after it was filed?

16 A. I recall having a discussion in  
17 which --

18 Q. Just do you recall having a  
19 discussion?

20 A. Yes, yes.

21 Q. Okay. And do you recall that during  
22 that discussion you went through the complaint  
23 with me and pointed out some mistakes that had  
24 been made?

1 that the filed complaint needs to be amended at  
2 some point to Given's changes to the Washoe LOI  
3 (as well as a few other items)."

4 Q. Now, is that paragraph referring to  
5 the conversation that we had?

6 A. Yes.

7 Q. So it was your expectation that at  
8 some point in time the complaint would be amended  
9 to address some mistakes that were discovered  
10 after it was filed, is that right?

11 A. That is correct.

12 Q. Okay. Now, can you look at Exhibit  
13 No. 26, please? If you go to the last page of  
14 that document --

15 A. Okay.

16 Q. This document, this last page of  
17 Spehar Deposition Exhibit No. 26, at the top  
18 seems to be entitled "Sharing Agreement Between  
19 CMGT TREE and Spehar Capital LLC."

20 Do you know who the primary  
21 beneficiaries of this agreement were supposed to  
22 be?

23 A. The primary beneficiaries?

24 Q. Yes, if you understand my question.

1 MR. O'BRIEN: I'm going to object to the  
 2 extent it calls for a legal conclusion.  
 3 BY THE WITNESS:  
 4 A. - I don't know that I do understand. I  
 5 mean, the estate --  
 6 BY MR. CARROLL:  
 7 Q. Let me ask it another way.  
 8 What's your understanding of what the  
 9 purpose of this agreement was?  
 10 A. The purpose of this agreement is to  
 11 set in place a definitive sharing arrangement  
 12 between the unsecured creditors -- the estate and  
 13 Spehar Capital, and the estate is to take care of  
 14 its business from that point forward, which would  
 15 mean paying the unsecured creditors and paying  
 16 the trustee.  
 17 Q. Okay. So let's assume that this  
 18 agreement doesn't exist.  
 19 A. Okay.  
 20 Q. It doesn't exist. And I know that  
 21 there has been a -- there was an adversary  
 22 proceeding between you and the trustee that went  
 23 to trial recently.  
 24 A. Yes.

1 layer of it, then I think he can answer to the  
 2 extent he's able to.  
 3 BY THE WITNESS:  
 4 A. Well, I -- if I have and I do have a  
 5 secured claim, my secured claim is in the amount  
 6 of \$17 million. I get the first \$17 million that  
 7 the estate gets, absent paying the Joyce firm to  
 8 get that; so the creditors until I am paid that  
 9 full amount would have gotten nothing.  
 10 BY MR. CARROLL:  
 11 Q. So was it your understanding that this  
 12 agreement benefitted the unsecured creditors?  
 13 A. Absolutely. That was my -- in many  
 14 ways, I think this action benefitted the  
 15 unsecured creditors because, whether they know it  
 16 or not, I believe they have been duped here and I  
 17 don't think they would have gotten a penny here  
 18 except for my stepping in and doing what I've  
 19 done.  
 20 Q. I think I have about two more  
 21 questions.  
 22 Can you go to Exhibit 29, Spehar  
 23 Deposition Exhibit 29?  
 24 A. May I add something to that last

1 Q. And one of the issues in that  
 2 adversary proceeding, if I'm correct, is your  
 3 secured status?  
 4 A. Yes.  
 5 Q. So let's assume for a second -- set  
 6 that dispute aside and assume for a second that  
 7 you are secured.  
 8 A. Okay.  
 9 Q. And this agreement doesn't exist.  
 10 A. Okay.  
 11 Q. What understanding do you have of what  
 12 the unsecured creditors would get if there's a  
 13 settlement or judgment in the legal malpractice  
 14 case against Mayer Brown?  
 15 MR. CISZEWSKI: Objection.  
 16 MR. O'BRIEN: I'm going to object again to  
 17 the extent it calls for a legal conclusion.  
 18 Also I think it -- I know you're  
 19 trying to create a hypothetical. It does  
 20 mischaracterize earlier testimony. As I think  
 21 he's made clear, there would not have been a  
 22 malpractice action had there not been those  
 23 prerequisites.  
 24 So if you want to add that as another

1 answer or not?  
 2 Q. Sure.  
 3 A. I would note that all of the  
 4 proceedings in the bankruptcy filing, including  
 5 this agreement, were noticed to all creditors,  
 6 and that included Mayer Brown.  
 7 So if any objections should have been  
 8 made, I guess there was an appropriate forum to  
 9 do that.  
 10 Q. Okay. Spehar Deposition Exhibit  
 11 No. 29 is a letter from your lawyers to the  
 12 trustee dated July 26th, '07, is that right?  
 13 A. Okay, yes.  
 14 Q. Was this letter conveying a settlement  
 15 proposal relating to the adversary proceeding?  
 16 A. Yes, it was.  
 17 Q. And was a settlement ever entered  
 18 into?  
 19 A. No.  
 20 Q. Were any of the proposals in this  
 21 letter ever accepted by the trustee?  
 22 A. No.  
 23 Q. Did he ever -- did the trustee ever  
 24 respond to this letter?



1 A. He responded in an e-mail basically  
2 saying he wasn't going to do anything about it.  
3 Q. Okay.  
4 A. I believe, I'd have to -- I'm  
5 paraphrasing.  
6 MR. O'BRIEN: I'm sorry. Could we read that  
7 last question and answer back?  
8 (WHEREUPON, the record was  
9 read by the reporter.)  
10 MR. O'BRIEN: I should have presented this  
11 at the time.  
12 Are you talking in the time frame of  
13 when this letter was written in July of '07 as  
14 opposed to any discussions we had about  
15 settlement prior to the trial in the adversarial  
16 proceeding?  
17 MR. CARROLL: Which question are you asking  
18 about?  
19 MR. O'BRIEN: You asked him if any of the  
20 proposals in this letter were responded to by the  
21 trustee or agreed to by the trustee; I forget  
22 which phrase you used.  
23 MR. CARROLL: Well, the first question that  
24 I asked, if I remember correct, was were any of

1 You haven't written any briefs in the  
2 legal malpractice case against Mayer Brown?  
3 A. No, absolutely not.  
4 Q. You were referring to the adversary  
5 proceeding with the trustee, right?  
6 A. And I haven't even written briefs in  
7 that case.  
8 Q. Okay.  
9 A. Being a layman, mouthing off, I write  
10 memos and my lawyers write briefs.  
11 Q. That's fine. I just wanted to make  
12 sure the record is clear.  
13 MR. CARROLL: Okay. That's it. I'm done.  
14 MR. CISZEWSKI: I have one question on  
15 redirect.  
16 EXAMINATION  
17 BY MR. CISZEWSKI:  
18 Q. Can you pull out the complaint? It's  
19 Exhibit No. 6.  
20 Can you tell me everything in here  
21 that you told Mr. Carroll is wrong or inaccurate?  
22 A. Do you want me to go through it?  
23 Q. Yes, please.  
24 (Short pause.)

1 the proposals ever accepted.  
2 BY THE WITNESS:  
3 A. In this letter?  
4 BY MR. CARROLL:  
5 Q. In this letter.  
6 A. No.  
7 Q. And then I ask if this particular  
8 letter was ever responded to.  
9 A. Okay.  
10 Q. That's the question.  
11 MR. O'BRIEN: Okay.  
12 BY MR. CARROLL:  
13 Q. I want to go back to one of the first  
14 questions asked in this lawsuit -- in this  
15 deposition.  
16 You were asked a question -- I don't  
17 remember exactly what it was, but it was  
18 something along the lines of, you know, what are  
19 you doing these days, what is Spehar Capital  
20 doing these days or something like that; and you  
21 answered write briefs and lawsuits -- I think  
22 somewhat jokingly, maybe somewhat seriously.  
23 I just want to make sure that the  
24 record is clear.

1 MR. O'BRIEN: Don't mark on the original,  
2 please.  
3 Steve, would you mind if we go off the  
4 record while he reviews the complaint?  
5 MR. CISZEWSKI: That's fine.  
6 (WHEREUPON, a recess was had.)  
7 MR. CISZEWSKI: Back on the record.  
8 BY THE WITNESS:  
9 A. Page 11, "The next day Franco sent  
10 CMGT shareholders a letter stating that there  
11 were no alternatives."  
12 There was actually the letter that --  
13 it was the -- there was an August 15th letter  
14 that was sent. The letter that actually stated  
15 there were no alternatives was the August 7th  
16 letter, which was also attached to the  
17 August 15th letter.  
18 So if you wanted to be explicit about  
19 it, he did include that second letter there that  
20 restated that.  
21 Paragraph 45, the Washoe did not sign  
22 a letter of intent, I think we clarified that.  
23 "Which they would sign," I would say, once signed  
24 by CMGT.

1 Paragraph 46, I don't think Rob has  
2 clearly stated in here one of probably the most  
3 important things, which is that Given also  
4 altered the letter of intent so that CMGT could  
5 close Newco at any time. They didn't have to  
6 wait until September 30th or September 29th. So  
7 we had that discussion.

8 I did not -- Paragraph 52, I did not  
9 make a settlement call to Given. He actually  
10 made the call to me, he and Franco, but it was  
11 upon my insistence.

12 Paragraphs 58 and 59, I think -- I  
13 don't know what the reasons were that he didn't  
14 show up, if it was jurisdictional or whatever it  
15 was he gave, the legal reasons. We talked about  
16 that a little bit, but it's anybody's guess.

17 BY MR. CISZEWSKI:

18 Q. Say that again.

19 A. Paragraphs 58 and 59 state that on  
20 information and belief it was California  
21 jurisdiction that kept Mayer Brown out of  
22 California.

23 I honestly don't know what it was. I  
24 mean, he may have stated that to my attorneys. I

1 I'm not certain that we discussed these next two  
2 things I was going to mention.

3 Page 19 may be just semantics. I'm  
4 not certain, F, that we had to offer any more  
5 favorable terms than Newco's. I think Newco's  
6 terms would have been fine given the downside of  
7 doing Newco -- in fact, even something less than  
8 Newco's terms given that downside.

9 And then Exhibit 2 for some reason is  
10 a markup of my contract which is also unsigned.  
11 I do have a signed copy.

12 BY MR. CISZEWSKI:

13 Q. Okay. And that's everything you told  
14 Mr. Carroll during that --

15 A. That's what I -- on a quick reading  
16 right now, yes, that's what I'm catching.

17 Q. Okay. I think you had also marked  
18 Paragraph 64, and you mentioned that you didn't  
19 talk about it with Mr. Carroll, but there was  
20 some --

21 A. There's a couple more here.

22 No. 37, there's a mention in there of  
23 reducing Mayer Brown's accrued attorneys' fees by  
24 half. I'm not sure that that's not correct. It

1 don't know.

2 And in his -- I believe in his  
3 September 19th e-mail he did mention  
4 jurisdiction, so that could be the reason.

5 MR. CARROLL: I just want to clarify the  
6 question.

7 The question that you're answering is  
8 what mistakes were pointed out to me in a phone  
9 conversation that we had immediately after the  
10 complaint was filed.

11 THE WITNESS: Okay. All right.

12 BY THE WITNESS:

13 A. I think Paragraph 61 I pointed out to  
14 Rob that the October 2nd e-mail went quite a bit  
15 beyond just telling shareholders that Newco had  
16 terminated the letter of intent.

17 In fact, it's better summed up in my  
18 PX 19, which also states to the shareholders that  
19 the subject matter of Gerry Spehar's lawsuit no  
20 longer exists, which is important.

21 Paragraph 63, my amended complaint I  
22 believe was filed on November 24th, not  
23 December 1st; no big deal.

24 If the question is what we discussed,

1 may be correct. I would have to -- if I'm going  
2 to opine right now on whether that's correct or  
3 not, I'd have to actually review that. It may  
4 be.

5 I'm sorry. I had skipped that one.  
6 Go ahead.

7 Q. Okay. Paragraph 64 --

8 A. Um-hum.

9 Q. -- that's not something that you  
10 discussed with Rob during the telephone call, is  
11 that correct?

12 A. No, we didn't.

13 Q. Okay. Upon reading it now, is there  
14 something that you question in there?

15 A. No, that's fine.

16 Q. Okay.

17 MR. CISZEWSKI: Okay. That's all the  
18 questions I have.

19 MR. O'BRIEN: We will 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 GROCHOCINKSI, etc., )  
 5 et al., )  
 6 Plaintiff, )  
 7 vs. ) Case No. 06 C 5486  
 8 MAYER BROWN ROWE & MAW LLP, )  
 9 et al., )  
 10 Defendants. )  
 11  
 12 I hereby certify that I have read the  
 13 foregoing transcript of my deposition given at  
 14 the time and place aforesaid, consisting of Pages  
 15 1 to 292, inclusive, and I do again subscribe and  
 16 make oath that the same is a true, correct and  
 17 complete transcript of my deposition so given as  
 18 aforesaid, and includes changes, if any, so made  
 19 by me.  
 20 ROBERT GERARD SPEHAR  
 21 SUBSCRIBED AND SWORN TO before me  
 22 this day of , A.D. 200 .  
 23  
 24 Notary Public

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1 my hand and affix my seal of office at Chicago,  
 2 Illinois, this 29th day of January, 2009.  
 3  
 4  
 5 Notary Public, DuPage County,  
 6 Illinois.  
 7 My commission expires 6/18/11.  
 8  
 9 C.S.R. Certificate No. 84-2315.  
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1 STATE OF ILLINOIS )  
 2 ) SS:  
 3 COUNTY OF DU PAGE )  
 4 I, SHARYN A. EVERMAN, 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  
 9 the examination of the witness, the witness was  
 10 duly sworn to testify the whole truth concerning  
 11 the matters herein:  
 12 That the foregoing deposition  
 13 transcript was reported stenographically by me,  
 14 was thereafter reduced to typewriting under my  
 15 personal direction and constitutes a true record  
 16 of the testimony 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  
 20 or attorney or counsel, nor a relative or  
 21 employe of such attorney or counsel for any of  
 22 the parties hereto, nor interested directly or  
 23 indirectly in the outcome of this action.  
 24 IN WITNESS WHEREOF, I do hereunto set

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