

I

Lawyers

From: "Gerry Spehar" <gspehar1@earthlink.net>
To: "David Grochocinski" <dgrochocinski@ggl-law.com>
Cc: "L. JUDSON TODHUNTER" <ljtodhun@defrees.com>; "Gerry Spehar" <gspehar1@earthlink.net>
Sent: Monday, July 31, 2006 4:42 PM
Subject: Re: cmgt

I honestly don't know how to approach them at this point, David...Joyce hasn't said if he's going to file or not & we still don't know for sure what his problems are, if any. What do I say to people if they ask those questions or want to speak with Joyce or you? Not being able to speak in an official capacity or in a definitive manner at this late date makes for a very tough conversation.

On Jul 31, 2006, at 2:49 PM, David Grochocinski wrote:

If you wanted to explore this matter with any of those attorneys I do not see why that would not be acceptable provided you were doing so as a private individual not as my representative. I have counsel in Ed Joyce but it was the estate who hired him not you directly. you probably need to speak to Jud on this but just in case another view is required. maybe better for you to be prepared?

DEG

Grochocinski, Grochocinski, & Lloyd, Ltd.
 1900 Ravinia Place
 Orland Park, IL 60462
 Telephone: (708) 226-2700
 Facsimile: (708) 226-9030

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----- Original Message -----

From: Gerry Spehar
To: David Grochocinski
Cc: L. JUDSON TODHUNTER ; Gerry Spehar
Sent: Monday, July 31, 2006 3:55 PM
Subject: Re: cmgt

OK...re time & fairness, though, keep this in mind.? While I do believe it is way too late to enlist another atty who would agree to the same deal and be able to file in time, who knows?? The longer Joyce dithers, the less time we have to find someone else.??

Three possible choices:

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Myron Cherry was interested at the same time I was speaking with Joyce last year.? Both seemed equally interested and aggressive, per their representations.? Cherry wanted to speak with Franco before signing, Joyce was ready to sign as is.? I didn't think it wise to give Franco a free pass to questioning when he wasn't under oath, so I chose Joyce.? ?Cherry later sent me the attached article re his malpractice win v Sullivan & Cromwell early this year.

With Joyce's permission, I recently vetted SC's case v MB with Robert F. Coleman & Assoc.? Coleman specializes in atty malpractice & asked me if the CMGT case was available...I told them no, Joyce was

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handling it.

Gerry

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On Jul 31, 2006, at 1:25 PM, David Grochocinski wrote:

I understand your position. As a creditor the you are owed a fiduciary duty even if you were the smallest creditor, but his contract does give him the ability to exit if he feels that the case is not a good one or the collectibility is bad. Naturally he has to have arrived at that decision via good faith and investigation. But I do not want to trade one law suit for another. We still have a little time and we will give him a chance to respond.

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----- Original Message -----

From: Gerry Spehar

To: David Grochocinski

Cc: L. JUDSON TODHUNTER ; Gerry Spehar

Sent: Monday, July 31, 2006 2:18 PM

Subject: Re: cmgt

David,

I understand your position. Spehar Capital's position is this: I am asking that Mr. Joyce, should he decide to do so, not be allowed to terminate his contingency agreement with you without fully complying with the termination requirements of that agreement.??

While it is true that I did seek out & recommend Mr. Joyce, I did so based upon his representations and expecting his full compliance with that agreement. It is my strong opinion that Mr. Joyce, should he attempt to terminate, has not complied with the "reasonable investigation" requirement of the Termination clause in his agreement with

PL 02222

8/1/2006

you, and will not be able to do so before the statute of limitations expires on this case.? Simply put, Mr. Joyce has not done his homework as defined by his own 12/9/05 internal memo.? My suggested additions to that memo's list make it all the more evident that he has not done his homework; it is now too late to do the required homework before the filing deadline.?

It is also true that I have a financial interest in this case: I am the estate's largest unsecured creditor, as well as its only legitimate secured creditor.? Furthermore, I have been single-handedly financing the estate and the investigation of this case to this point; I have spent substantial sums in doing so.? My sharing agreement with the estate and my expense agreement with Joyce were both made a part of Joyce's contingency agreement with you...this is all one big agreement, David, and I believe both the estate and Mr. Joyce owe me a fiduciary duty.? I expect to be treated fairly here, as I am sure all other CMGT creditors expect.

I expect Mr. Joyce to perform a "full" reasonable investigation" (as defined in my prior email to you today) before he comes to a decision...if he gives you a decision to terminate before he has done that, I would not consider his analysis of the facts and the law a "fair" analysis and I would not consider his decision to be a "fair" decision.

I also do not believe Mr. Joyce can demonstrate, as required by his agreement, that MB is "more likely than not to prevail" in light of the many positive arguments we've discussed.

Lastly, the value of the claims is certainly "sufficient to justify the effort required to prosecute them".? The value of this case has only increased since Joyce signed on...if he wanted it then, he should want it now.

Thanks,

Gerry
Spehar Capital, LLC
(818) 247-5533

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On Jul 31, 2006, at 9:26 AM, David Grochocinski wrote:

Mr. Joyce is the estate's special counsel.? he has great leeway in obtaining information to prosecute the case if one exists.? I am not going to tell him how to run the case or substitute my opinions or suggestions.? If that was my intent then I would have hired my own firm to do the case but I did not because I am simply not schooled in this area of the law.? you are not an attorney either.? Frankly, I hired Joyce's firm on your recommendation and you have consulted with the attorneys from his firm far more often than me.? You are not an attorney and while you have produced some very interesting information on this matter and have gathered facts admirably you still do not have the legal background to make a full analysis.? Also, your financial interest in the case has to be considered when I read your mails.? I am not suggesting that you should not advocate for your position I am only letting you know that I will give discretion to my special counsel in making a decision on this matter.? Whatever his choice I will consider the reasons and deal with the result the best that I can under the circumstances.? That is my job as a trustee.? Hopefully Mr. Joyce will come to a decision that is based on a fair analysis of the facts and the law.? That is all we can expect because that's why he was retained.

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>> hired my own firm to do the case but I did not because I am simply
>> not schooled in this area of the law. you are not an attorney
>> either. Frankly, I hired Joyce's firm on your recommendation and
>> you have consulted with the attorneys from his firm far more often
>> than me. You are not an attorney and while you have produced some
>> very interesting information on this matter and have gathered
>> facts admirably you still do not have the legal background to make
>> a full analysis. Also, your financial interest in the case has to
>> be considered when I read your mails. I am not suggesting that
>> you should not advocate for your position I am only letting you
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