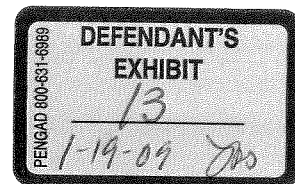


EXHIBIT 13



6-29-06

Rob,

Here's the SC v MB et al memo that Sean Crotty of Robert F. Coleman & Asscc. (312-444-1000) is reviewing. Sean also has the initial CMGT memo & the CMGT 5-29-06 memo that you are reviewing, and I have given him your name.

I've provided Word versions of the CMGT 5-29-06 memo as well as all the supporting SC v MB evidence referenced in the SC memo. Sean has all of this, so you can compare notes if/when you talk.

Sean is supposed to call me mid next wk re his interest in SC v MB.

The SC memo should be a valuable read for you in that it provides new insight into Jim Wong's (& Wayne Baliga's) complicity in conduct that is the subject matter of both the CMGT & SC cases. Like Given & Franco, Wong was favored in Newco's LOI and he & Baliga were both involved in trying to hold MOIC hostage to Newco around the time of the Washoe LOI. I believe discovery will show that both of them knew about Newco well before it was revealed to shareholders & SC.

As a CMGT officer favored in the Newco LOI, Wong was also a potential DOES 1-100 defendant along with Franco & Given. So, later in the game while SC was proceeding towards its CMGT judgment, Given, Franco & Wong all had motive to keep CMGT out of CA courts; discovery may show that Wong participated in Franco & Given's December UCC filings and other bad Newco conduct.

Wong certainly worked with Franco to stall MOIC funding so as to keep SC from earning MOIC funding fees with which it could pursue them in court.

Baliga had his CMGT/Newco moments as well and became a full partner in crime in Franco & Wong's MOIC stall in Feb 2004. All of them refused to allow SC to call 4 out of 6 potential MOIC lead investors, participated in an NDA scam to keep an interested MOIC lead investor from receiving MOIC's Business Plan, and all of them conspired with Given to terminate their MP partnership with SC.

Hope all's well with the baby. I know you're busy, but I'd like to get your thoughts after reading all this. If Coleman is interested in the SC case, it seems the combined horsepower of the two firms would make life easier on everyone.

Gerry

Rob, Be AWARE of "comments" inserted in the SC v MB 6-29-06 memo.

The Gerry

PL 04543

June 29, 2006

Memo

Spehar Capital, LLC v Mayer Brown et al

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Parts of this memo rely on facts that are more completely set forth in Memo: CMGT v MB, May 29, 2006; it should be read in conjunction with that memo.

A. Definitions

ANC Alaska Native Corporations
Sealaska Sealaska Corporation, an ANC
CIRI Cook Inlet Regional Corp., an ANC
ASRC Artic Slope Regional Corp., an ANC
CT Council Tree Communications
MDP Madison Dearborn Partners
MB Mayer Brown
SC Spehar Capital (unless otherwise noted)
MP Millennium Partnership
MOIC Minority Owned Insurance Company

B. Players

Gerry Spehar Owner Spehar Capital LLC (SC), Partner in Millennium Partnership (MP)
Lou Franco Chairman, President & CEO of CMGT, Inc., Partner in MP
Jim Wong CMGT accountant & shareholder, Partner in MP
Wayne Baliga CMGT's largest shareholder; Partner in MP. EVP of Aon's Virginia Surety;
Ron Given Senior Partner at Mayer, Brown, Rowe & Maw (MB), counsel for both CMGT & MP
Chuck Trautner CMGT's 2nd largest shareholder. Newco Principle. Former head of Northern Trust's VC in Chicago.

Franco, Baliga, Wong and Given all live in Chicago and were friends and/or business colleagues before meeting SC. Given & Franco were especially tight and Given was CMGT counsel from January 2000 through at least December 2003. CMGT may have owed Given/MB as much as \$400,000 by July 2003.

From mid 2001 (Franco & SC) and/or April 2003 (Franco, SC, Baliga & Wong) through April 2004 Given was also legal counsel to MP & MOIC. In early summer 2003 Trautner & Given secretly put together their sweetheart Newco funding for CMGT and on August 1, 2003 Franco signed Newco's LOI that breached SC's contract with CMGT by refusing to pay SC. Newco caused the demise of both CMGT & MP/MOIC.

C. Deals

CMGT Development stage Absence Management company headed by Franco. In June 2001 SC first contracted to help CMGT raise about \$2.5 million expansion capital. In August 2003 Franco signed Given & Trautner's sweetheart Newco LOI that would cause the demise of both CMGT & MP/MOIC.

MOIC (MP) MOIC stands for Minority Owned Insurance Company. SC originally sought CMGT funding from Alaska Native Corporations (ANCs) and other minority investors because of the powerful marketing advantages ANC minority status would provide. Beginning

in 2001 SC & Franco also marketed MOIC as a joint offering with CMGT to various ANCs & their VC partners. We did this as Millennium Partnership LLC. On April 8, 2003 Baliga & Wong joined Franco & SC and combined Baliga's P&C insurance Business Plan with MOIC. The four of us formed MP (a general partnership) to pursue a \$100 million funding of MOIC (and/or a \$102.5 million joint funding of CMGT & MOIC). Baliga was slated to be Chairman & CEO of MOIC, Franco, COO and Wong CFO. SC was to raise initial funding and play an ongoing investment banking role, but no operational role post funding.

D. Fiduciary relationships with SC

Beginning in April, 2003 MP was a general partnership with four equal partners: Franco, Wong, Baliga & SC. Franco, Wong & Baliga also played important roles with CMGT: Franco was CMGT's President, CEO & Chairman; Wong was CMGT's accountant, Controller and Disaster Recovery Site Manager; and Baliga was CMGT's largest shareholder. In addition to being an MP partner, SC had a contract with both CMGT & MP to raise capital.

Given & MB represented both CMGT & MP/MOIC and Given helped market both CMGT & MOIC (individually & as a packaged deal) before, during and after he did the Newco deal that caused SC's dispute with CMGT. Given represented CMGT when SC signed its 10/1/01 & 9/30/02 contracts with CMGT. Given represented both MP & SC (as an MP partner) when MP executed its 4/8/03 email Partnership Agreement. That Agreement also served as SC's contract with MP to raise capital for MOIC.

Sometime during the next few months, Given & Trautner put together Newco's 7/31 LOI that Franco (MP partner & CMGT President) signed for CMGT on 8/1; Given conspired with Trautner & Franco against SC in doing Newco. To a lesser extent Wong & even Baliga may have participated in the conspiracy as well.

After SC's legal action v CMGT/Newco and Newco's demise in September 2003, Given conspired with MP partners Franco & Wong (and Baliga towards the end) to stall MOIC funding and oust SC from MP on 4/1/04. Given improperly drafted biased MP Termination Letters for Franco, Wong & Baliga to send SC.

Finally, on 8/31/03 SC noticed CMGT & MB that it had become a 6% CMGT shareholder. From that point forward, Given (as counsel for CMGT) and Franco & Wong (as officers of CMGT) arguably also had a fiduciary duty to SC as a CMGT shareholder.

E. Potential Actions

Plaintiff: SC

Defendants: 1. MB & Ron Given, counsel for MP (SC) & CMGT

▪ Re MP:

- Malpractice: Self-dealing & conspiracy with Franco (CMGT President & SC's MP Partner) to do Newco knowing that resultant Newco anger would certainly harm MP/MOIC & SC as a partner & fundraiser. Partner rancor & infighting eventually caused MOIC's & MP's demise.
- During Newco:
 - Given intentionally deceived & harmed MP (& CMGT) by knowingly giving bad advice about SC's CMGT contract & Newco.
 - Collusion with Franco (CMGT President & MP Partner) to intimidate SC into accepting Newco by threatening SC with removal from both CMGT & MOIC involvement if SC challenged Newco. This was intentional & malicious interference with SC's MOIC (& CMGT) fundraising contract & SC's

- prospective economic advantage as an MP partner. (see Important Events, 1 – 5)
 - After CMGT shareholders approved Newco, MP partners Baliga & Wong joined Given in his intimidation effort (see Important Events, 5).
 - After CMGT was pulled from the MOIC package:
 - Collusion with Franco, Wong & Baliga to kill SC's MOIC funding & oust SC from MP (see Important Events, 9 - 15)
 - Why? To protect themselves from SC litigation (see The Big Question);
 - Intentional & malicious interference with SC's MOIC fund raising contract & SC's prospective economic advantage as an MP partner;
 - Breach of fiduciary duty to SC by conspiring with and favoring a subset of partners (Franco, Wong & Baliga) to SC's detriment when Given knowingly & improperly drafted biased Termination Letters for them (see Important Events, 15).
 - Using tortious means (deceit) to conceal the fact that he drafted & sent those letters to SC's partners during the term of the partnership.
 - Re CMGT:
 - Under CA law: By SC as a MP client *or non-client* (see Klenda Memo)
 - Intentional & malicious interference with SC's CMGT contract & prospective economic advantage,
 - Using tortious means (deceit);
 - Conspiracy/collusion with Trautner, Franco, Wong & Baliga in this effort.
 - Punitive damages allowed in CA?
 - Under IL law: By SC as a MP client
 - Intentional & malicious interference with SC's CMGT fundraising contract & prospective economic advantage,
 - Using tortious means (deceit, lying about SC's contract & Trautner),
 - Conspiracy/collusion with Franco & Wong (MP partners & CMGT officers), Baliga (MP partner & CMGT shareholder) & Trautner (CMGT shareholder) in this effort.
 - By SC as a CMGT shareholder after 8/31 notice
 - Malpractice if Chap. 7 BK extension of the statute of limitations applies to SC as an individual shareholder;
 - Intentional interference with SC's CMGT & MOIC contracts & prospective economic advantage using tortious means (deceit); conspiracy/collusion with Franco & Wong (CMGT officers) & Baliga & Trautner (CMGT shareholders) in this effort.
2. Franco, Wong & Baliga - MP partners
- By SC as MP partner:
 - Breach of fiduciary duty to SC as partners
 - Intentional interference with SC's prospective economic advantage as an MP partner;
 - By SC as MOIC fund-raiser:
 - Intentional interference with SC's MOIC fundraising contract with MP & prospective economic advantage
 - Conspiracy/collusion with Given
 - By SC as CMGT fund-raiser:
 - Intentional interference with SC's CMGT fundraising contract & prospective economic advantage
 - Conspiracy/collusion with Given
 - Franco & Wong (& Given) collectively negotiated SC's CMGT contract & knew it covered Trautner/Newco
 - By SC as CMGT shareholder v Franco & Wong as a CMGT officers:

- o Breach of fiduciary duty to SC after SC's 8/31 notice that it was a CMGT shareholder
 - o Conspiracy/collusion with Given
3. Chuck Trautner and the "Newco" investors for whom he was agent
- By SC as CMGT fund-raiser
 - o Intentional interference with SC's CMGT contract and prospective economic advantage,
 - o Conspiracy/collusion with Given & Franco.
 - By SC as CMGT shareholder after 8/31 notice: ???

F. Damages

1. MP/MOIC Damages Summary (see MP/MOIC Damages - pg 62)

Assuming MOIC's \$100 million CT/MDP funding had closed: a) \$6 million value to SC at closing: b) substantially more (~~\$40 million~~) with proof of future lost profits.

CT was leading the CT/MDP funding of MOIC. I believe CT's President, Steve Hillard, would testify that CT's MOIC deal was reasonably certain to have closed had my partners allowed MP to follow through with the list of approved lead investors CT provided us in January 2004. Had MP completed that \$100 million MOIC deal, SC would have received a \$1 million cash fee as fund-raiser, and SC would have owned 5% of MOIC as an MP partner. 5% x \$100mm MOIC value at closing = \$5 million, therefore, SC's immediate lost value at closing would have been \$6 million.

A \$40 million damage claim would be based on the reasonable certainty of MOIC executing its Business Plan post funding. While harder to prove, lost profits would be supported by the uniform outstanding performance & capital market success of several very similar contemporaneous start-up insurance deals (Axis, Endurance, etc.) - none of which enjoyed MOIC's minority status and consequent superior marketing advantage (see MP/MOIC Damages, Summary of Business Advantages & R&D Summary).

2. CMGT damages

SC's \$17mm default judgment was against CMGT (not MB) for breaching SC's fund-raising contract with CMGT. SC is now owed that judgment + 9% interest (from 3/18/04) and SC has priority as CMGT's only secured creditor. CMGT's Chap. 7 BK Estate will sue MB for malpractice to recover SC's judgment + interest, and perhaps the value of lost profits CMGT would have received per its 20% ownership of Newco. A Sharing Agreement defines how any recovery from the Estate's action v MB is split between SC, the Estate & Special Counsel to the Estate; the Estate is capped at \$1.6mm. While SC would recover a portion of its default judgment+interest under this arrangement, a \$25mm overall recovery at trial would result in only a \$13.4mm recovery to SC per the Sharing Agreement, leaving a substantial shortfall to SC.

As a CMGT fundraiser:

- Can SC sue MB directly to recover any shortfall paid to the estate and its Special Counsel?
- Can SC file a separate tort action v MB?
- Can SC sue MB in CA where punitive damages may apply?
- Can SC sue Franco, Wong & Baliga as MP partners for violating their fiduciary duty to SC when they conspired with Given to breach SC's CMGT contract?

As a CMGT shareholder at the time of Given's fraud on shareholders (post SC notice on 8/31/03):

- Does the 2-year BK extension of the malpractice statute of limitations apply to an SC action?
- Can SC file its own malpractice or tort action v MB independent of the Estate's action?
- Can SC sue MB in CA, and if so, would punitive damages apply?
- Can SC sue Trautner, Franco or Wong?

Favorable factors:

- a) Re CMGT Projections being Speculative: The “reasonable certainty” of CMGT’s Projections was established on 2/26/04 when the Court granted SC’s Default Judgment and all allegations in SC’s First Amended Complaint were deemed confessed. MB had a duty to appear and did not appear, so MB should be estopped by silence from now arguing CMGT’s Projections are speculative. MB also failed its duty to challenge SC’s judgment to have it set aside. (see CMGT 5/29/06 memo)
- b) MB had a fiduciary duty to SC as an MP partner & CMGT shareholder;
- c) The MOIC & CMGT deals were so closely related as to be the same deal, i.e. what affected one, necessarily affected the other;
 - Same players (Franco, Wong, Baliga, SC),
 - Common officers (Franco & Wong); Baliga was also an officer of MOIC & major CMGT shareholder,
 - Packaged & marketed together as one deal (with Given’s participation in MB offices),
 - Operating & investment synergies made both better businesses & investments as a package deal,
 - Same attorney (Given) who’s improper conduct specifically linked MOIC & CMGT,
 - The same Given misconduct simultaneously fatally harmed both deals.
- d) In doing Newco, Given conspired with Franco as both a CMGT officer & MP partner against SC’s CMGT contract, and may have conspired with Wong & Baliga as well.
- e) Given’s conduct was egregious: he intentionally & maliciously harmed SC (as well as CMGT) in doing Newco.

G. General Facts/Story Summary: (see CMGT 5/29/06 memo)

SC is a single member CA LLC established in 2001 to help young companies raise startup & expansion capital. In June 2001, SC contracted to help CMGT raise \$2.5 million. Lou Franco & Jim Wong were officers & shareholders of CMGT & Wayne Baliga was CMGT’s largest shareholder; Franco, Wong & Baliga were close friends. SC was also a partner with Franco, Wong & Baliga in MP, a general partnership formed on April 8, 2003 to pursue the nation’s first MOIC. SC also contracted with MP to help raise \$100 million for MOIC. Ron Given & MB represented both CMGT & MP. Given & Franco had a longstanding business relationship & friendship, and Franco was the primary (almost exclusive) interface with Given for both CMGT & MP affairs.

Given was CMGT counsel from January 2000 & simultaneously acted as MP counsel from about June 2001 through April 2004. MP consisted of only Franco & SC until April 8, 2003 when Baliga & Wong joined MP & an informal email Partnership Agreement was consummated with Given’s advice, review & approval.

Given, Franco & Wong were all intimately familiar with SC’s 9/30/02 contract with CMGT because they collectively negotiated, reviewed & approved that contract for CMGT.

In late spring/early summer 2003, Trautner & Given secretly conspired to put together a “Newco” financing for CMGT that breached SC’s contract with CMGT by refusing to pay SC. Franco signed Newco’s 7/31/03 LOI for CMGT on 8/1/03. At the time, CMGT may have owed MB around \$400,000 in back fees. MB, Franco & Wong were favored in the Newco LOI: MB was the only advisor to be paid & Newco agreed to a generous 5-year employment agreement with Franco as President & CEO. Franco said Newco “agreed to all of my unreasonable demands”. Newco could not close without agreeing to a “transition services agreement” with Wong.

Trautner (and therefore, Newco) was clearly covered by SC's contract and Given, Franco & Wong all knew that. However, Given maintained SC's claim to compensation was without merit, but he refused to divulge or explain his (obviously bogus) reasoning to SC. If Given's legal reasoning had merit, explaining his stance would have solved the dispute before it evolved to legal action: SC would have had no choice but to accept solid legal reasoning from MB.

SC explicitly challenged Given & Franco on this point (see 8/8, 8/9 & 8/21 emails); Franco always deferred to Given & Given always maintained his silence. Franco said Given told him there were valid "legal reasons" that SC's contract did not cover Trautner, but he was "under NDA" & could not disclose them (see SC 8/16 email to Klenda). On another occasion Franco told SC that Given said Newco was not covered by SC's contract because Newco would not require due diligence.

In July 2002, Franco & Given had submitted an Addendum 2 to SC's original contract that would have excluded legacy shareholders like Trautner from SC's contract; SC refused to sign this Addendum 2 and this "legacy shareholder" exclusion was not made a part of SC's subsequent 9/30/02 contract. Subsequent to (& before) that, SC had many Franco-authorized interactions with Trautner that clearly put Trautner under SC's contract. (see SC's Verified Complaint)

Trautner also knew that he was covered by SC's contract because Franco had always (prior to Newco) required him to route all of his CMGT funding efforts through SC. Trautner disliked SC for this very reason and refused to pay SC in his Newco deal. Like Franco, Trautner will probably contend he relied on Given's advice that SC's claim was meritless & Newco did not breach SC's contract. (discovery)

Given's Newco conduct materially harmed every one of his clients:

- It cost CMGT Newco, the Washoe & any hope of funding, as well as SC's judgment;
- It cost SC its CMGT & MOIC fundraising deals & its 5% MOIC participation as an MP partner;
- It cost MP its MOIC funding & SC as a fundraiser.

Newco pined SC against its MP partners who were all CMGT officers or shareholders. By doing Newco in secret with Trautner & Franco and then refusing to explain his reasoning, Given removed any possibility of negotiation and an amicable solution with SC.

Given acted out of self-interest and he was very resourceful in the service of his own economic & other interests:

- To curry favor with Trautner and to avoid sharing his preferential Newco payments with SC, he told Trautner that there were legitimate legal grounds to cut SC out of Newco when he knew there were none.
- He & Trautner kept both CMGT & SC in the dark as long as possible while formulating Newco so as to minimize SC's ability to react in time to stop Newco.
- Given & Trautner co-opted Franco (& Wong) with lucrative incentives built into Newco, and then Given conspired with Franco to keep CMGT's innocent shareholders/creditors in the dark about SC's legal threat to Newco so that they would approve Newco.
- Given also conspired with Franco to keep secret & chase away the better Washoe deal; Given & Franco (& Wong) never informed shareholders that there was an alternative to Newco.
- During this entire period, Given and Franco refused many SC overtures to settle and never legitimately attempted to negotiate or settle with SC.
- Finally, After SC sued CMGT, Given & Franco conspired to keep CMGT out of CA courts to save MB & themselves from SC's action (see CMGT memo). I believe Franco also did this because he was personally at risk to SC's action and he owed Given for having acted as his personal attorney during CMGT.

It was unquestionably in CMGT's best interest to appear v SC so it could stop SC's TRO or PI, close the Newco funding, and also avoid SC's judgment. MB needed to stay out of CA courts where SC could sue it for breach of contract, but there was no valid legal reason that CMGT could not have appeared v SC in CA. Although SC's claim had merit, had CMGT simply appeared at SC's TRO, PI or Default hearings it would have easily prevailed at each hearing for various technical reasons (see CMGT 5/29/06 memo).

Given tried to intimidate his MP client, SC, into accepting Newco's LOI – which was, obviously, not in SC's best interest. Given threatened SC with loss of CMGT & MOIC as clients & summarily dismissed or rebuffed all SC attempts to settle. Franco certainly, and Wong & Baliga to a lesser extent, participated in this effort. Given, Franco, Wong and (at the end) Baliga also stalled a prospective MOIC funding so that they could terminate their partnership with SC and seek other funding without SC.

H. The MP/MOIC Story

SC pursued ANC funding for CMGT because of the substantial business advantages provided by ANC minority status and SC's relationships with ANC sources. From the outset of SC's CMGT engagement in June 2001, as an added incentive to fund CMGT, Franco and SC also co-marketed the MOIC idea to Sealaska and other ANC investors as a complementary deal. We acted as Millennium Partnership LLC, but had no written partnership agreement. Given acted as our counsel. MOIC was very attractive to ANCs because of its larger size (\$100 million capital), large & established insurance markets with no minority players, and very attractive long-term growth/expansion potential. The post 9/11 "hard" market in insurance added impetus to MOIC since it was the best insurance market in decades. Sealaska, in particular, expressed an early interest in MOIC.

In early 2003, when it appeared Sealaska was ready to fund CMGT, Baliga & Wong joined the MOIC effort and we formed a new MP. The new MOIC Business Plan combined the long-term minority advantages of the MOIC idea with Baliga's specialty P&C Business Plan designed to take advantage of the very favorable hard market in insurance. The two plans were melded together in late 2002, early 2003. Baliga was a P&C industry star executive slated as MOIC's President & CEO and Wong was a respected insurance industry forensic accountant slated as MOIC's CFO. Franco would be MOIC's COO in addition to running CMGT. SC would raise capital and was also an equal partner in MP, but would have no operational role in MOIC. Franco, Baliga & Wong were close friends and important CMGT players and Franco & Wong both qualified as minority managers for MOIC. CMGT & MOIC were very complementary businesses with important management, marketing and operational synergies. (see Addendum 3)

Given began advising Franco & SC re MOIC in 2001. After Baliga & Wong joined the effort, the four partners executed an informal email Partnership Agreement on 4/8/03 (see Addendum 1) that was suggested, reviewed & approved by Given. Given & MB agreed to defer payment until funding as they had with CMGT. This same Agreement also served as a fund raising contract between SC & MP and Given knew SC did not have other counsel at the time. Given was MP's counsel with a fiduciary duty to MP and its four general partners, but Given did *not* sign an engagement letter with MP, leaving the scope of his duty to individual MP partners and SC as a fund-raiser open to debate.

CMGT & MOIC were under LOI with Sealaska at that time. CMGT was to be funded as a first step, but Sealaska wanted MOIC as well.

- Sealaska 5/1/03 Term Sheet to Acquire Majority Interest of CMGT, Inc.
CMGT, as an added inducement to SC [Sealaska Corporation] to invest into this enterprise, will also partner, under an exclusive relationship, with SC [Sealaska Corporation] to review and analyze the opportunities in the minority owned insurance holding company industry, recognizing that SC [Sealaska Corporation] will make an investment into such enterprise at its sole discretion.

After the 4/8/03 MP Partnership Agreement was signed, SC immediately introduced MOIC & CMGT to Council Tree Communications (CT) & Madison Dearborn Partners (MDP) in April 2003. CT partners with Artic Slope Regional Corp. (ASRC) for ANC minority status, and MDP for majority funding, to do minority-advantaged deals; these deals were some of the most successful in MDP's portfolio at the time. MOIC & CMGT were packaged as a joint \$102.5 million investment and we were deep into discussions with CT/MDP when Newco transpired. Because its size (\$100mm) was appealing to MDP, MOIC was the

lead deal, but for only \$2.5 million more CMGT contributed 14% extra expected ROI to the overall investment (43% vs 57%). In fact, CMGT & MOIC were very synergistic deals that were especially attractive as a package: operating synergies & common management helped both deals; CMGT became part of a \$100mm+ funding and now met investment thresholds for larger VCs; MOIC gained a tremendous ROI kicker & built in diversification in CMGT. (See Addendum 3: CMGT extract from MOIC Biz Plan.) It was a very attractive & viable package.

Newco changed everything.

I. The effect of Given's Newco conduct on MP & MOIC

On 8/1, SC, Franco, Wong, Baliga met with CT & MDP in MB's Chicago office with Given hosting the meeting. Sometime before SC, MDP & CT arrived for that meeting, Franco (almost certainly in the presence of Wong & Baliga) secretly signed Given's Newco LOI - effectively funding CMGT and taking it off the table as part of the MOIC/CMGT funding package. Given & Franco did not disclose this to SC and CT/MDP at that meeting, even though it was material to the discussion. We discussed & vetted the joint CMGT/MOIC funding proposal as if nothing had happened.

In mid-August, after reviewing the MOIC/CMGT deal, MDP told MP they liked the concept & management but did not have adequate in-house insurance expertise to feel comfortable funding an insurance start-up. However, MDP said it would fund the MOIC package under a "big brother" or "structured exit" approach they had used in previous CT deals. This approach required finding a significant insurance player willing to partner with MOIC & commit to taking CT/MDP out of the investment after MOIC was established for a pre-determined ROI to CT/MDP. After take-out, CT's ANC partner, ASRC, would stay involved so MOIC would maintain its ANC minority status going forward.

Baliga, Franco & Wong felt this "big brother" approach was too onerous and would be difficult to arrange, so CT/MDP graciously agreed to remain "on hold" while SC spoke with another large ANC, Cook Inlet Regional Corp. (CIRI) about funding MOIC as a "start-up" investment. By this time (mid August), however, Newco had been disclosed to SC & CMGT shareholders. Consequently, CMGT had to be pulled from the MOIC offering to CIRI because: a) Newco had already effectively funded CMGT and b) everyone knew that SC might sue CMGT over Newco.

The CMGT/Newco deal was toxic for MP's partner relations and for MOIC funding prospects. Prior to Newco, Franco & I were "like brothers" (Franco's own words - see SC 8/21 email to Franco) and Franco had asked me to be President of CMGT once it was funded. My relationship with Baliga was great & I had a normal business relationship with Wong. After Newco, CMGT was pulled from the MOIC package and Franco & Wong could barely tolerate SC. The result was terminal infighting & inefficiency in trying to execute even minor MP/MOIC tasks and eventually an outright stall campaign designed to get rid of SC and its investors.

Through January 2004 Baliga remained pragmatic, tried to work with SC on investors' due diligence requests and had even tried to keep CMGT a part of the MOIC offering to CT/MDP after Newco's demise. But Franco & Wong would have none of it. Over SC's strong objection, CMGT was formally withdrawn from the CT/MDP financing package on 11/21 (see Important Events, 10) even though CMGT was unfunded and ostensibly still viable.

After reviewing the MOIC Business Plan (BP), CIRI & CT/MDP both asked us to do some market R&D to support the BP projections. Franco & Wong refused to help and even lobbied against Baliga & I doing R&D. Later, they prevented SC from calling four of the six lead investors CT/MPD suggested for the MOIC deal, took one interested lead investor (MMC) off the table, and prevented the other interested lead investor (Cap Z) from receiving MOIC's BP for review. Given's advice was key (see Franco's 2/25/04 email, pg 43) in Franco & Wong's stall. Baliga eventually joined Given, Franco & Wong in killing CT/MDP's MOIC funding in late February (see Important Events, 13) and terminating the MP partnership

on April 1, 2004. The CT/MDP deal was still viable at the time and SC lobbied to extend MP for 6 months to allow the deal to play out, but to no avail.

At the time it surprised me that Franco & Wong would kill CT/MDP and CIRI MOIC funding; it seemed self-destructive and I could only attribute it to irrational anger. While anger played a huge role, I now also understand what they understood then: Given, Franco & Wong all knew their Newco conduct had made them potential defendants in SC's CMGT/Newco action (see The Big Question below). The last thing they wanted was SC funded by \$1mm MOIC fees and more able to go after CMGT & them in court. It was in their best interest to kill CT/MDP's MOIC deal, wash their hands of SC and the whole Newco affair, and then seek MOIC funding on their own. Besides, that approach served their anger as well.

A review of partner communications clearly shows that Newco was the event that introduced fatal acrimony into MP partner relations. That Newco would prove fatal for MOIC & MP was no surprise to Given or his conspirators, and it could have easily been prevented by open discussion & negotiation of Newco from the outset. Given, by his own admission (see his 8/8 email), was responsible for orchestrating Newco in secret with Chuck Trautner, and Newco caused SC's legal action v CMGT. Given's conduct (secrecy, bad advice about SC's contact & claim, refusal to explain his advice or legitimately negotiate with SC) caused SC's legal action v CMGT, and SC's legal action caused debilitating & insurmountable anger and distrust between SC and its MP partners. Given also chased away the Washoe when they presented a better LOI than Newco that could have solved SC's dispute with CMGT. He never even informed shareholders that they had an alternative to Newco. SC was a CMGT shareholder (after 8/31) when he did this.

Driven solely by self-interest, Given intentionally violated his fiduciary duty to MP & its individual partners by keeping Newco secret and refusing meaningful discussions or negotiation with SC once Newco became an open problem. Given's conduct removed any chance of an amicable solution between SC & CMGT and drove an insurmountable wedge between SC & its MP partners. Franco & Wong (and Baliga to some extent) all participated, but Given was the mastermind and the leader of the pack upon who's absolutely critical legal advice everyone else relied. It did not have to happen this way and, but for Given, I don't believe it would have.

To wit: Like Newco, Sealaska didn't want to pay SC, either; but in that instance SC's contract was a point of open & inclusive discussion; Sealaska eventually backed down and agreed to pay SC after Given & Franco stood up for SC's contract in April 2003.

- Patrick Duke, Sealaska Treasurer, 4/14/03 email:

On the subject of Gary, Sealaska will pay the 6% of funding he is owed on the \$950K. This is a contract that you entered into with him and we will honor that.

Why was Newco different? See CMGT 5/29/06 Memo, Motive, which compares Newco's favored treatment of Given and Franco to Sealaska's 5/1/03 Term Sheet. (also see The Big Question below re how Newco favored Wong)

The SC/CMGT dispute over Newco pitted SC against its MP partners, Franco, Wong & Baliga, badly poisoned their relationship and fatally impeded SC's fundraising efforts for both MOIC & CMGT. Pre-Newco, the MOIC/CMGT package was attracting great interest. Despite the failure of Sealaska's deal in mid-May 2003, SC had several CMGT funding initiatives in the works and was about to receive a \$2.5 million LOI from the Washoe Tribe (who were also interested in MOIC - see Franco 8/13 email to Given). The investment environment was coming out of the post-9/11 doldrums and VCs were again putting capital to work. The market environment for insurance (MOIC's business) was the best it had been in decades and the market for Absence Management (CMGT's business) was vastly improved and had just been reviewed and validated by Warburg Pincus (see SC 9/28 email to Franco).

Given laid all this to waste when he conspired with Trautner and Franco (& Wong?) to do Newco. Although conflicted & feeling guilty, Franco helped Given attempt to dupe & intimidate SC into acquiescing to a Newco deal that breached SC's contract with CMGT.

Given was MP's attorney and Franco was SC's MP partner when they did this. Given knew he was advising CMGT & Newco to improperly breach SC's contract and he knew this would pit SC against Franco, Wong and Baliga and materially harm MP partner relations and MOIC funding prospects going forward. In fact, that's one reason Given & his conspirators kept SC & CMGT's innocent shareholders/creditors out of the Newco loop until the last possible moment – so they would not discern the truth and protest. (Secrecy also impeded SC's ability to take CMGT to court *before* Newco could close.)

A review of MP partner post-Newco communications from August 2003 (Newco) through April 2004 (MP termination) clearly demonstrates the escalating & debilitating strain in partner relations (see Important Events). Franco & Wong's corrosive anger coupled with their need to protect themselves from SC litigation a) caused CMGT to be pulled from both the CIRI & CT/MDP deals and b) seriously inhibited MOIC funding efforts at many junctures along the way. It was Franco & Wong's blatant & coordinated stall campaign in Jan/Feb/March 2004, in collusion with Given (see Franco's 2/25 email, pg 43) & eventually Baliga (see Important Events, 13), that finally killed the CT/MDP funding, delaying it long enough to allow all three partners to terminate MP on April 1, 2004.

Both CT/MDP & their lead investor, Cap Z, sent late March emails saying they were still interested in MOIC. SC lobbied hard to extend MP for 6 months to let the deal play out, but on 4/1 Baliga, Wong & Franco all terminated the MP partnership with identical Termination Letters drafted for them by Given. These Termination Letters were intentionally biased against SC & likely drafted & sent by Given before MP's 4/1 termination date. (see Important Events, 15, & Addendum 2)

J. The Big Question

Why would Franco, Wong & Baliga impede imminent MOIC funding & terminate MP? This would seem to be against their best interest, and anger towards SC would seem to be an inadequate explanation for such irrational conduct by such astute businessmen.

Answer: Legal liability + extreme & growing anger. SC's 9/8 Verified Complaint & 11/24 First Amended Complaint named CMGT officers & agents as members of DOES 1-100.

- SC's 9/8 Verified Complaint v CMGT & DOES 1 - 100:
Plaintiff is informed and believes, and on that basis alleges, that defendant, CMGT and DOES 1 through 100, inclusive are, and at all relevant times herein were, the agents, servants, employees, associates, partners, officers, joint venturers, shareholders and alter egos of each other and in doing the things hereinafter alleged were acting within the course and scope of such agency or other relationship, and with the consent of its/his/her co-defendants.
- SC's 11/24 First Amended Complaint v CMGT & DOES 1 - 100:
DOES 1 through 100, inclusive are, and at all relevant times herein were, the agents, servants, employees, associates, partners, officers, joint venturers, shareholders and alter egos of each other and in doing the things hereinafter alleged were acting within the course and scope of such agency or other relationship, and with the consent of its/his/her co-defendants.

Given, Franco & Wong knew that, as CMGT officers and/or agents, their Newco conduct left them vulnerable to SC's CMGT action *as well as* a potential second SC action against them as MP partners & fiduciaries. "Certain Conditions Precedent" in Newco's LOI *required* that Franco, Wong & Given be paid before Newco could close, and SC's contract with CMGT was improperly breached by "Brokers" in that same LOI. Given constructed that LOI and Franco & Wong agreed to it *in secret from SC* while they all

had a fiduciary duty to SC as MP counsel and partners. And they all then conspired to cram the Newco LOI down SC's throat (see Important Events, 1-5).

▪ Newco 7/31/03 LOI:

4. Certain Conditions Precedent:

(a) Louis J. Franco must enter into an employment agreement with Newco. This agreement will provide for cash compensation, stock in Newco and other benefits as will be negotiated to the satisfaction of both Louis J. Franco and Newco. (discovery)

(b) A transition services agreement must be successfully negotiated by Newco with Rob Crandall and the Toronto staff, as well as with Wong & Knowles (discovery), so as to assure that the obligations under the purchased client contracts continue to be serviced during the period of time (which is estimated to be about 90 days) that it will take Newco to get its own operations up and running.

(c) Because of Mayer, Brown, Rowe & Maw's familiarity with Oldco [CMGT], Newco requires that they document the proposed transaction. Such work will be paid for by Newco on an hourly basis plus an agreement to also reimburse a certain percentage of legal fees that are currently unpaid, all as agreed to between Mayer, Brown, Rowe & Maw and Newco. (discovery)

8. Brokers:

Oldco [CMGT] has not retained or used, and will not retain or use, the services of any broker or finder [SC] which would result in the imposition of a fee upon the Assets or Newco should the transactions contemplated by this letter be consummated. Newco has not retained or used, and will not retain or use, the services of any broker or finder which would result in the imposition of a fee upon Oldco should the transactions contemplated by this letter be consummated.

Note the language re Franco, Wong & Given: "must", "requires". Newco could not close until Franco, Wong & Given were satisfied with their "agreements". On 8/15 Franco told SC Newco "every one of my unreasonable demands". (see 8/16 SC email to Klenda recapping this conversation). One can only assume Newco did the same for Wong & Given. (discovery)

Franco, Wong & Baliga also knew there were alternative MOIC funding sources independent of SC. Pre-MOIC, Wong was already very familiar with the substantial business advantages enjoyed by minority-owned enterprises; Wong & Knowles is a minority-owned enterprise and Wong had said he might have his own sources of MOIC funding. Then, in February 2004 in the middle of heated friction between SC & its partners over Franco & Wong's stall of CT/MDP, Baliga uncovered another Native American source for MOIC funding that was independent of SC.

▪ Baliga 2/4/04 email:

I found out today that the Native American deal mentioned in my last e-mail is coming out soon. It is capitalized at \$300mm by a consortium of California Casino's. The deal was done quickly with what constitutes one month's revenue for these casinos. So, it appears someone else believes this is a great idea and is willing to put considerable capital behind it on a fairly quick basis.

Baliga is an interesting case. Looking back on the evolution of his conduct, he seemed to be acting in good faith and trying to uphold his end of the bargain until about the time of his Cap Z NDA conduct (see Important Events, 13: Baliga joins the stall). Although he had to have known that Given, Franco & Wong were favored in Newco's LOI (all shareholders received that LOI on 8/7), Baliga himself was not a CMGT officer and he played no role in constructing Newco's LOI. Furthermore, he would not have known whether Newco breached SC's CMGT contract or not; he may have been honestly duped by Given's bogus legal rationale.

Franco & Wong, on the other hand, had both negotiated & approved SC's 9/30/02 contract with CMGT along with Given. They knew better. Franco & Wong *knew* that their safest course of action was to completely rid themselves of SC & the whole affair and not let SC build a \$1mm legal war chest with its MOIC fees. Given certainly knew that SC's CMGT action targeted MB, and it was very much in his best interest to convince Franco & Wong that they were in the same boat - vulnerable as conspirators - so that Franco and Wong would terminate SC *before* MOIC was funded & SC earned \$1mm to go after MB. Survival trumped immediate greed: Ridding themselves of SC was priority one. Besides, MOIC could rise again from the ashes once SC was out of the picture - assuming Given drafted their Termination Letters to allow that possibility.

In Baliga's defense, he was in a difficult position in the beginning (with Newco) *and* again towards the end (with MOIC).

When Newco came into play on August 1, 2003, Baliga had been carrying CMGT on his own for about the prior year and had become CMGT's largest investor (\$200k) as a result. He needed to recover his substantial investment; although he probably knew about it, unlike Franco & Wong he was not favored in Newco's LOI and he was likely duped by Given's bogus legal reasoning re SC's contract. As Newco progressed, however, it seems he did participate in trying to intimidate SC into accepting Newco by holding MOIC'S CIRI NDA hostage until Newco appeared safe. (see Important Events, 5: MP Partners & Given Stall MOIC/CIRI, pg 18)

Towards the end of MOIC & MP (in late February 2004), despite his honest efforts to help SC bring the CT/MDP MOIC deal to fruition up to that point, Baliga realized that Franco & Wong were never going to yield (although he may or may not have understood why) and that MOIC was going nowhere with SC in the picture.

This does not excuse his conduct. Sometime in mid/late February he finally capitulated, joined Given, Franco & Wong's final stall of Cap Z's NDA, and terminated the partnership along with them on April 1, 2004. I firmly believe, and the evidence shows, that Baliga did collude with the others towards the end and, like them, did *intentionally* violate his fiduciary duty to MP & partner SC. (see Important Events: 13-15)

Based on Given's improperly biased Termination Letters, once SC was out of the partnership, the three of them could pursue MOIC on their own. (discovery) *All four of them*, Baliga included, unquestionably knew that their Termination Letters did not honor the intent of our 4/8/03 Partnership Agreement.

K. Important events: Examples of Impropriety & Harmful Effects on MP & SC

As their final act (January through March 2004), MP partners and Given colluded to pull the plug on the \$100 million CT/MDP deal SC had arranged - deliberately impeding SC's efforts and stalling CT/MDP & their lead investor, Cap Z, running out the clock & terminating our MP partnership. All MP partners and MB owed a clear fiduciary duty to MP, and SC as a partner, to try and get the CT/MDP deal done and they all violated that duty. In this final instance malpractice occurred when Given colluded with a subset of partners against MOIC's CT/MP deal, thereby damaging SC as a partner & as a fundraiser for MOIC.

Backtracking, from spring/summer 2003 on there is a chain of conflict, malice, collusion and other actionable conduct that leads to this final unraveling of the CT/MDP deal and MP. The following instances of malpractice, conflict, malice, collusion and intentional interference are more fully supported by the full body of emails & other communications. (Available upon request)

1. Pre-August 1, 2003: Given & Trautner (Franco & Wong?) do Newco in secret.

In his 8/8/03 email to SC Given admits that he secretly colluded with Chuck Trautner to do Newco. Both Given and Franco also verbally told me that Franco and other CMGT officers were unaware of Newco until its very late stages. (discovery) Given's lack of disclosure, inclusion and CMGT authorization is a matter between MB & CMGT that is addressed by CMGT Estate's pending action v MB.

But Given also had a direct fiduciary duty to his other CMGT-related client, MP & its partner SC, to disclose and discuss Newco and to try and negotiate an amicable Newco resolution (or at least allow the possibility of discussions) with SC because:

- All MP partners were significant CMGT stakeholders or principals and it was obvious that this was a very dangerous and inter-related situation.
- If Given didn't try to somehow defuse the situation, the Newco LOI, as written or approved by Given, was certain to cause legal action by SC and consequent serious conflict between SC & its MP partners.
- The Newco dispute was certain to have devastating consequences for MP's MOIC deal. Given even acknowledged as much in writing:
 - Given 8/9 email to SC:
There is nothing left to be said regarding the LOI, in my view. If you wish to pursue it, you will be in an adversarial position and should deal with us through counsel. You have the right to do that, of course, but if you do I believe all your activities on behalf of CMGT should cease (as well as your MOIC involvement)...

The only logical reason Given would suggest SC withdraw from MOIC is Newco's potential negative impact on MOIC, i.e. Given basically admitted that he knew from the outset (8/9) that Newco v SC was a serious problem for MOIC as well as CMGT. Ironically, had SC withdrawn from MOIC as Given suggested, this would have also harmed MOIC by removing MOIC's best bets for funding - SC's introductions, CT, MDP & CIRI.

- In spite of this knowledge, Given kept Newco secret from clients MP & SC and later refused to explain his position or negotiate with SC, thereby denying MP & SC the potential to avoid the devastating effects of Newco.
- Given's secrecy served self-interest. He knew his \$400,000 back-fee recovery would be best served by cutting SC out of Newco's LOI, and he knew he would ingratiate himself with Trautner and his investors by pulling off Newco without paying SC. Secrecy was the best way to accomplish this.
- Conclusions:
 - a) Given knew from the outset that Newco was bad for all of his clients (CMGT, MP & SC), but he did it anyway solely to protect his sweetheart Newco payments.

- b) Given knew that he was giving bad advice to all of his clients when he suggested on 8/9 that SC cease all CMGT activities & MOIC involvement, but he did it anyway solely to protect his sweetheart Newco payments.
 - At some point pre 8/1, Franco (and probably Wong & Baliga) became aware of Newco and conspired with Given against SC to get Newco done. (discovery)
 - Franco & Wong also chose financial Newco self-interest over their duty to MP (& CMGT) and continued to do so even after the SC/CMGT Newco dispute and its devastating consequences were evident.

2. August 1, 2003: Franco & Given sign Newco in secret.

On 8/1 both of MB's clients (MP & CMGT) and Given met in MB's Chicago office with CT and MDP to discuss a \$102.5 million joint funding of MOIC and CMGT. Given's dual representation of MP & CMGT resulted in a conflict and clear breach of his duty to SC as an MP partner.

Before the meeting Franco, unbeknownst to SC & its investors, signed the Newco LOI that effectively funded CMGT, thereby effectively removing it from the joint deal. Given & Franco had a duty to disclose this material fact to SC and CT/MDP. Yet they conducted the joint financing meeting with no mention of Newco to SC (MP partner & CMGT/MOIC fund-raiser) or the investors SC had brought to the table to vet the CMGT/MOIC deal.

Why deceive & misrepresent at that meeting? Solely to maximize leverage over SC by keeping SC in the dark while allowing Newco (& MOIC) to progress as far as possible before raising Newco with SC. SC was not made aware of Newco until the August 7 letter was sent to CMGT shareholders notifying them of the deal.

The other two MP partners, Baliga & Wong, were already present with Given & Franco before SC and its investors arrived for the meeting; they were most likely there when Franco signed Newco's LOI and participated in Given & Franco's deceit.

Even before this meeting Wong almost certainly, and Baliga probably, knew of Newco. Wong was CMGT's accountant and had to have been aware of Newco prior to its signing; Baliga was a close friend of Franco & Wong, CMGT's largest shareholder and its savior funder of last resort over the past year - he, too, must have been informed before the August 1 meeting. (discovery)

SC was likely the only MP partner out of the loop: if so, Given conspired & colluded with all of SC's MP partners to deceive SC & to harm SC by doing Newco without paying SC.

3. August 9, 2003: Given threatens SC with loss of CMGT & MOIC.

On 8/9 Given responded to SC's 8/9 email challenging his rationale for excluding SC in his Newco LOI:

- Given 8/9 email to SC:
There is nothing left to be said regarding the LOI, in my view. If you wish to pursue it, you will be in an adversarial position and should deal with us through counsel. You have the right to do that, of course, but if you do I believe all your activities on behalf of CMGT should cease (as well as your MOIC involvement)...*emphasis added*

Even as CMGT's counsel it was inappropriate for Given to suggest SC's activities on behalf of CMGT should cease, and it was *clearly* inappropriate for Given to threaten SC with cessation of its MOIC involvement (presumably as both MP partner & fundraiser) solely to benefit his/CMGT's Newco deal.

At the time, Given was MP's counsel, SC was a general partner in MP and SC was also representing MP to raise \$100 million from CT/MDP. The CT/MDP deal was active and Given had just hosted MOIC's

funding meeting August 1. In fact, CT/MDP would inform us on August 11 that they would be willing to fund MOIC under a "structured exit" or "big brother" format.

So, a) SC was Given's client and his advice threatened SC's fund raising business, and b) if SC ceased activity on behalf of MOIC & CMGT as Given suggested, this would harm MP (and *all* of its partners) because it would remove MOIC's only active prospective investor, CT/MDP. SC had brought CT & MDP to the table, and Given knew that SC would not allow them to fund MOIC without SC involvement & payment. So, by suggesting SC should cease MOIC involvement, Given:

- Inappropriately mixed his representations of CMGT & MP
- Inappropriately suggested the removal of MOIC's best funding source
- Inappropriately threatened a client's (SC) livelihood solely to benefit his Newco deal and his own financial self-interest in that deal.
 - Given's veiled threat was designed to intimidate SC into accepting Newco... in addition to owning 5% of MOIC as an equal MP partner, SC was slated to make \$1mm for raising \$100mm MOIC capital. Given improperly attempted to leverage potential loss of MOIC earnings against SC to the advantage of MB, Franco, Wong, Trautner and CMGT.

Given was driven by his & MB's financial self-interest written into Newco's LOI:

- Mayer Brown was the only advisor specifically slated to recover back fees (perhaps as much as \$400,000)
- Mayer Brown was slated to earn more fees by representing Newco in the deal and going forward
- Given was also ingratiating himself to Trautner & his investors by cutting SC out of the Newco deal. According to Franco, Given had been told that Trautner's investor group included "CEO's of Fortune 500 corporations" and Given undoubtedly saw future potential in this group. Given was independently speaking directly with business representatives of these investors (as well as Trautner).

There was no valid ethical or legal reason to suggest that SC should end even its CMGT activities, *let alone its MOIC activities*, if SC simply sought legal advice about CMGT & Newco breaching its contract. SC had every right to investigate and protect its contractual rights and seeking counsel in no way impaired its professional performance for CMGT or MOIC. This was simply intimidation by Given and entirely inappropriate and unethical: a disguised threat against one client (SC) in favor of his own best interest, other clients (Franco, Wong & CMGT), and a non-client (Newco).

In fact, once Given knew SC had, in fact, sought counsel (see his 8/19 email), he never followed through and actually demanded that SC step aside as a CMGT or MOIC advisor. If his 8/9 suggestion had a valid basis, why not follow through & demand SC cease its CMGT & MOIC activities once he knew SC had counsel?

Despite its dispute with CMGT, SC continued to work for both CMGT & MOIC in an ethical and highly effective manner; witness SC's success in bringing the Washoe to the table with an alternative \$2.5mm LOI for CMGT on 9/2 (the Washoe were also interested in MOIC), and witness SC bringing CIRI to the table for MOIC in late August.

Given was right in one sense: Newco was an ethical conflict, but it was Given who was conflicted, not SC. Despite his implication that SC was conflicted, Given never acknowledged his own conflict of interest and he continued as both CMGT & MP (SC) counsel. Yet, his obvious anger & personal bias against SC, and his need to protect himself & MB from SC litigation, would lead him to continuously denigrate SC to its partners (who received all of Given's communications to CMGT shareholders) and lead him to advise a sub-set of MP's partners (Franco, Wong & Baliga) against SC to MP's detriment and SC's detriment.

4. August 19, 2003: Given attacks SC in front of MP partner Franco.