

On a surprisingly angry supposed "settlement" call with SC arranged by Franco, Given berated & baited SC and threatened legal action by 18 CMGT shareholders & insolvency if SC disputed Newco SC while Franco listened. Given was SC's MP counsel at the time. Prior to this call Franco was still trying to work with SC & the Washoe & still trying to find a solution to the SC/CMGT dispute (see Franco 8/13 email to Given & SC 8/16 email to Klenda). I believe Given made Franco pick sides after this call.

- 8/21 SC email to Franco recapping the 8/19 "settlement" call:

I must say, Ron's belligerence on Tuesday's call was an eye-opener. In order of appearance: calling me a 'Sonofabitch', a 'Motherfucker', deriding me as a 'whiney investment banker' who knows no one of substance, only 'a bunch of Indians and Mexicans'...need I continue?

And so, I waited over a week to listen to Ron Given throw a tantrum and rant at any mention of my contract. There was no constructive effort of any sort on your/Ron's part...just name calling and threats to 'make me poor', hurt my business, remove me from all CMGT & MOIC efforts, etc., etc. It was clear to me - and I'm sure to you - that Ron was baiting me and didn't intend this to be a productive call. I'm not angry, just more confused as to why you, Lou, were leading me towards this strange discussion for the prior ten days. What a waste of time...what were your intentions or do they matter? Who runs CMGT, Lou, you or Ron Given?

In that same email to Franco, SC still tried to settle.

- 8/21 SC email to Franco:

I remain agreeable to further legitimate attempts to resolve this dispute amicably. As stated on our call, however, your delays and the pace of events are quickly forcing my hand. Lou, I asked you & Ron to respond by today (Thursday)...there is precious little time left. If you'd like to talk, we should do so immediately and we should deal directly - more name calling and threats would not be constructive.

I know it's hard for you to argue with Ron's professional stature and your long relationship, but, in my humble opinion, you are buying into some very bad advice. Please seek a second legal opinion and reconsider - you run CMGT, not Ron Given. No matter what anyone is telling you, I'm still on your side and I remain a staunch supporter of CMGT.

There was never another attempt by Franco or Given to settle the dispute. But there was this from Franco in response to SC's overture.

- 8/21 Franco email to SC

Gerry: Just got back & got your voicemail & e-mail. It's late so I'm just sending this to let you know I agree that you should follow up with Andrea on the Tribe's/Siemen's NDA & the Tribe's LOI so we can try to develop an offer to fund CMGT that beats the LOI that's in place now, provided you have not retained counsel/are not taking an adversarial position re: CMGT.

CMGT shareholders were asked to approve Newco on 8/15; on 8/22 votes were counted approving Newco and giving Franco majority proxies to vote for Newco at CMGT's 9/1 shareholders' meeting.

5. August 23, 2003: MP Partners join Given in their first coordinated stall of MOIC funding.

The day after Newco's approval, all of SC's MP partners joined in Given's effort to hold MOIC hostage from SC until Newco closed. Responding to SC's email that Cook Inlet Regional Corp. (CIRI) was interested in MOIC and wanted to sign an NDA & review the Business Plan, Baliga emailed SC that he, Franco & Wong had decided to suspend all MOIC efforts until after CMGT/Newco closed. No partnership meeting of all partners, no vote of all partners, no discussion at all with their partner SC. Baliga, Franco & Wong (& Given? (discovery) simply decided this on their own, even though CIRI had just asked SC to send an MOIC NDA ASAP to get the ball rolling.

- Baliga 8/23 email

Gerry: Sorry for the delay in getting back to you. Friday afternoon got pretty busy. After speaking with Jim and Lou, the consensus is that we should first wrap up the CMGT deal and then move on to the MOIC. As I understand the progress being made on CMGT, this should be a short-term delay while that deal closes. While I believe everyone is still interested in the MOIC, it is imperative for CMGT to get funding sooner rather than later and all current efforts are concentrated on this task.

Baliga, Franco & Wong backed down on this stance after SC confronted them, and on an 8/26 MP conference call approved sending our normal NDA (slightly adjusted by CIRI) to CIRI.

▪ Baliga 8/27 email to SC:

Gerry: Pursuant to our discussion, please move forward with CIRI with the NDA changes outlined below. Also, as we discussed, we can remove CMGT from the MOIC proposal and present the proposal as a stand alone MOIC opportunity. As we also discussed, I will be the point person on the MOIC as Lou and Jim are focused on CMGT.

This proved to be a tease, however.

▪ Franco 8/28 email to SC:

Gerry: Hold your horses - as we discussed last night, it's still with Ron Given and it's coming. Ron's MBR&M e-mail is down & will be up shortly.

Given then emailed that MP needed a 1-year non-compete even though everyone knew that CIRI had already refused to sign a non-compete.

▪ Franco 8/28 email & Given email about CIRI NDA:

Gerry: Here's Ron's recommendation & rationale, below, that I agree with because MP/MOIC requires some level of protection re: the MOIC concept - this will not keep them from investing in the insurance industry, only in an "MOIC" for 1 year, in which case they need to collaborate with MP - right? Let's discuss your concerns that CIRI won't sign this because Hicks Muse, a possible co-investor with CIRI, is already investing in the insurance industry with Ron - maybe I am missing something here!

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

From: RGiven@mayerbrownrowe.com [mailto:RGiven@mayerbrownrowe.com]

Sent: Wednesday, August 27, 2003 5:02 PM

To: Lou Franco

Subject: Fwd: MOIC/CIRI NDA

"Pardon my delay. I have no problem with any of the changes other than (z). I agree you need some protection, particularly since they have considered the idea. I think the best approach would be to change the prohibition period to one year. It keeps things clean and offers you some protection. As a practical matter it would take a year for a deal to ramp up so they should not care."

As we already knew they would, CIRI refused a non-compete clause and MOIC was in effect held hostage while SC argued with its MP partners over the need for an NDA non-compete clause.

It is important to note that at this time Given & Franco also knew that: a) SC had retained counsel v CMGT/Newco and b) SC was cultivating the Washoe as an alternative to Newco. On 8/29 the Washoe committed to sign a CMGT-approved LOI for a more attractive funding for CMGT.

▪ Washoe 8/29 email to SC (forwarded to Franco):

Here is the note you requested. We are very interested in this opportunity. We are just unable to coordinate everyone's schedules with the Holiday and timezone differences. Hopefully, we will be able to discuss this with all parties over the long weekend. I will commit to you to have a signed LOI on Tuesday September 2 if not sooner.

Accepting the Washoe deal would have removed the Newco dispute and repaired MP partner relations before real damage was done. But that would mean Given, Franco & Wong would lose their sweetheart Newco payments. So, Given & Franco simply ignored the Washoe's 8/29 commitment and on 9/1 Franco voted shareholder proxies & accepted Newco.

On 9/2 the Washoe delivered their LOI as promised, but Given & Franco then subverted their deal in favor of Newco's more certain personal payday (see CMGT memo). CMGT's other shareholders were never informed of the Washoe LOI and given a chance to choose it over Newco even though its terms were much better for CMGT and, unlike Newco, it was not encumbered by a dispute with SC.

Wong (discovery) & Baliga also knew of the Washoe interest in CMGT & MOIC. In fact, SC personally kept Baliga informed of Washoe developments in several emails (see CMGT memo: Timeline of Facts).

On 9/4 Given succeeded in making the Washoe walk away. Newco's only competition was now gone & Newco seemed safe from SC (scheduled to close by 9/30 or before).

On 9/5 SC received & relayed a final NDA counter from CIRI:

- SC 9/5 email to MP partners:
Gents: CIRI's counsel countered our offer of 1 year exclusivity with the attached - he added a proviso clause to our (z). Again, yellow highlights are CIRI's deletions from our original, and pink highlights are CIRI's additions. They will sign this today...otherwise we have to wait until Monday to get the Chairman's approval on 1 year exclusivity and "he's not prone to changing his mind". Let me know.

Now that the Washoe were gone and Newco appeared safe, Given immediately approved the CIRI NDA, without the 1-year non-compete clause that he had previously deemed so important; Baliga, Franco & Wong immediately fell in line:

- Given 9/5 email:
I think this is good enough. RBG
- Baliga 9/5 email:
Good by me. WJB
- Franco 9/5 email:
Sorry I was off the grid this afternoon, so I am just reviewing this and agree this will work for us.
- Wong 9/5 email:
Let's send it out, it's good.

SC's TRO & its immediate effect

During the Washoe battle Given had signaled his intent to close Newco ASAP before 9/30 (see CMGT memo). Consequently, SC was forced to protect itself and quickly seek a TRO against Newco. On September 12, 2003 in Burbank CA Superior Court, SC was granted a TRO stopping Newco unless SC was paid on the deal. Given/MB and Franco were noticed twice and had two chances to appear v SC's TRO (on 9/10 & again on 9/12). No one appeared for CMGT.

MP partner relations immediately took a noticeable turn for the worse. On 9/11 Franco & SC exchanged the following emails:

- Franco email re SC's MOIC activities:
Please consider the following comments from me and lets talk as a group about this in the next day or two - I submit sometime Saturday AM might be best to dial into ConferenceCall.com:
Gerry, I do not like your take charge attitude and feel it will cause a problem in dealing with CIRI unless we act as a team. I do not want anything else sent to CIRI unless we all proof it and agree to

send it. Gerry, you are not running the show and I want you to show respect for our collective equal partner status and immediately stop rushing the document production/response to CIRI unless there is unanimous Partner consensus and the benefit of our Partner's collective insurance industry experience is leveraged. I want Jim and I to participate in all future telephone contacts with CIRI, unless we all agree Gerry should make a call as an individual.

▪ SC response to Franco:

I have been going out of my way to get everyone's involvement and approval. Lou...witness the way I handled the NDA. I am not trying to take over...my emails are shared with all partners as always. This is why I'm part of this partnership, to carry the ball right now and try to bring solid investors to the table. We have been collectively pushing the need to move quickly while the hard market and consequent investor interest is there, so I'm trying to keep the ball rolling. I'm just doing my job, Lou, to the best of my ability and for the benefit of all of us. I realize this is a difficult time for all of us, but, as we discussed before, let's not let the CMGT situation bleed into MOIC. There is no reason to "throw out the baby with the bath water."

▪ Franco response:

Gerry: I stand by my comments and disagree with your spin control, solipsistic viewpoint on the affect of *lis pendens*, and we'll discuss the MOIC matters at hand when we telecon as all four Partners. Attached is the revised MOIC Business Plan in PDF format with the 80% / 20% shown correctly. Unfortunately I sent the wrong version out, but this is a good example of what would have been caught by us collectively if it was circulated before being sent. By Cc of this E-mail I am sharing this with the team and suggest we defer further comment until we talk as a group. Regards, Lou

6. September 16, 2003: Franco threatens SC.

Franco attempted to avoid service of SC's TRO notice, so on 9/16 SC served TRO notice on Given/MB by fax. That same day Franco called SC (his MP partner) at home and threatened "You hit my family, man. I'm coming to get you". Franco is ex-Special Forces in Viet Nam. Glendale CA police spoke with Franco and a police report was filed.

7. September 19, 2003: Given attacks & defames SC to shareholders (including MP partners).

In a 9/19 email to all CMGT shareholders (including MP partners Franco, Baliga & Wong), Given followed through on his 8/19 threats to "make you poor" by defaming Spehar and inciting CMGT shareholders to sue Spehar personally (as opposed to Spehar's LLC, SC). SC (Gerry Spehar) was an MP partner and Given's client at the time.

▪ Given's 9/19 email to shareholders:

We believed, and continue to believe, that Gerry Spehar's claim is absolutely spurious.

You are aware that Gerry Spehar chose to try to serve Debbie Franco with notice of his purported TRO last Saturday morning at home. [CMGT's corporate office] This is simply going too far. Although NEWCO would very much like to do the transaction that it proposed to you, a transaction that you approved in an overwhelming and enthusiastic fashion, no one should expect it or any other third-party to go forward in the face of these despicable tactics.

Many have questioned how it is that an individual who does not seem to have done anything for CMGT can inflict such direct and intentional harm on those whose contributions are beyond dispute. The answer may simply be that CMGT has run out of time and can no longer act on your behalf to protect your interests from Gerry Spehar.

Note the obvious references to Gerry Spehar, the individual, as opposed to SC, the LLC entity that had actually taken legal action v CMGT. Given, obviously, knew better; there was malicious intent behind these references: incite shareholders to sue Gerry Spehar, personally.

8. October 12, 2003: SC attempts to remove Given as MOIC counsel.

After CIRI's initial review of the MOIC Business Plan, all MP partners & CIRI held a conference call in early October to discuss MOIC. The call went well and it appeared we might move forward with CIRI, so SC addressed several lingering issues, including Given's continuing role as MOIC counsel:

- SC 10/12 email to partners:

Now that we are getting to the stage of collective interaction with CIRI, there are several sensitivities we should address so that we're all on the same page when interacting with CIRI.

Ron Given and Mayer Brown: Before anyone suggests Ron as our MOIC counsel, we should discuss this issue. I have problems with Ron representing us, both as Spehar Capital and as a partner approaching a minority enterprise. In my view, using Ron would introduce unnecessary controversy into the CIRI equation.

- Baliga 10/15 email response:

Once again, there are some residual issues from CMGT that enter into this issue. I've tried to remain pragmatic on CMGT because I believe that is the only way it will get funded. Therefore, I'll be consistent and pragmatic on this issue also. Pragmatically, Ron has represented CMGT and the MOIC without payment. If we replaced Ron, and I raise this only as a hypothetical option, we will need to hire business counsel at \$300 to \$400 per hour. Frankly, I'm a bit tapped out based on my recent investment experience. Therefore, before we replace Ron, I'd like to hear an alternative that is as good as Ron and will defer billing until funding. Of course, we should probably also speak with Ron. He may be tired of carrying CMGT/MOIC as a client, and may need \$\$\$ soon to continue the relationship.

- Franco 10/15 email response:

Nice try - On several occasions, (including discussions occurring on 10/28/2002 and again on 11/15/2002) all Millennium Partnership General Partners discussed and agreed, unanimously, to combine the MOIC and P&C Insurer concepts and have Ron Given represent Millennium Partnership and the MOIC and have Lou coordinate matters with Ron. It is indisputable that Ron is and has been our legal counsel, so, this decision has been made by all us Partners and there's no question as to his representation or the fact that he agreed, on behalf of Mayer, Brown, Rowe & Maw to defer billing until funding is secured. I am certain there is no controversy to be introduced to anybody unless you, Gerry, elect to initiate a controversy.

Despite his obvious bias against SC & my stated discomfort with him, Given stayed on as MP's attorney. Going forward, I am certain that discovery will show many instances of Given colluding with my partners against me.

SC's 10/12 email also noted that it might be time to formalize our agreement and convert our General Partnership to an LLC as we had earlier agreed to do. Franco reacted strongly to that suggestion as well.

- SC 10/12 email to partners:

My counsel has suggested that we consider an entity other than a general partnership arrangement (Millennium Partnership) to insulate us individually from potential liability - perhaps an LLC or limited liability partnership. I am not fully aware of the tax and other ramifications, but we should consider and discuss another approach before formalizing our partnership agreement and contract with Spehar Capital as Wayne suggested.

- Baliga 10/15 email response:
As we previously discussed, I have no problem formalizing an agreement on the MOIC that reflects our previous memorandum agreement.
- Franco 10/15 email response:
Gerry, this concept is nothing new to us! All us Partners have already considered and agreed with Ron Given in 2002 that a Limited Liability Company structure (versus a "C" Corp. "S" Corp. or other legal structure) would ultimately be appropriate when a real deal is on the table, not before - our existing general partnership format is just an interim structure.

BTW, in the spirit of full disclosure, who is "your counsel" that made such suggestions on MOIC matters? Please confirm to us that the MOIC and/or Millennium Partnership have not been committed to any engagement with any of your attorney(ies) or law firm(s). The Partners did not agree to engage or consult with any other attorney(ies) other than Ron Given on any Partnership or MOIC matters.

9. Late October: The beginning of Franco & Wong's MOIC due diligence stall.

By late October CIRI had completed its review of MOIC and concluded that the minority angle needed to be fleshed out in the MOIC Business Plan before CIRI would invest. Both CIRI and later MDP/CT said they wanted to see more substantive market R&D to prove the viability of the minority angle before funding MOIC as an insurance startup. This R&D requirement sparked a major internal battle with Franco & Wong. They argued our existing Business Plan was adequate & didn't need any more work. So Baliga and SC conducted almost all of the R&D that eventually satisfied CT/MD. (see R&D Summary)

It should be emphasized that investor's due diligence requests were very reasonable; MOIC's Business Plan did not adequately explain the application of MOIC's minority advantage to insurance markets so as to support its projected revenue. But Franco & Wong resisted, refused to participate, and even outright prevented MP from conducting further due diligence over the next few months. SC took the due diligence lead and Baliga was very helpful; our minority angel R&D eventually convinced CT/MDP in January 2004 to back off of its "big brother" or "structured exit" requirement & pursue MOIC as a startup.

- SC 10/24 email to partners:
I'm back in the office, so here's a report to all on Keith Sanders' [CIRI General Counsel] call to me late Tuesday. Since Wayne, Lou & I spoke Wednesday morning, this will bring Jim up to speed.

The MOIC had received a thorough vetting with COO Mark Kroloff and other high level executives at CIRI, and they had decided at this juncture not to proceed with the MOIC. He was very complimentary of the BP and management, but talked about these remaining concerns with the BP and insurance:

1. Focus on hard market vs minority status: CIRI thought the BP was more "fleshed out" on the hard market side than it was on the minority status side. . The minority aspect is very important to CIRI, and to them the BP seemed more focused on the hard market elements. I assured him that we viewed minority status as MOIC's overriding long term advantage - as evidenced by the three-pronged approach in the BP - and the current hard market as a fortuitous & rare occurrence to be taken advantage of short term to get us out of the blocks quickly & in the best shape. I explained how we had melded the two concepts through a blending of Wayne's hard market P&C BP with the MOIC concept Lou and I had developed, and said any perceived emphasis of hard market over minority advantage was unintended.

2. The advantage of minority status in insurance markets: Keith said they weren't as convinced as we seemed to be that "if we build it, they will come".

So, under our preferred startup approach, we need to put some more work in if we want to pursue this with CIRI - and probably with others. It seems worth the effort to me...I wouldn't write CIRI off yet

and, in any case, these issues will probably need to be addressed in more depth before we'll get serious interest from others in the "startup" concept we're pushing. If we don't want to put in the additional effort, how does everyone feel about the Council Tree/Artic Slope/Madison Dearborn interest? Council Tree remains ready to move with us under their "big brother" approach, but I should let them know soon whether we want to run with them or not.

▪ Franco 10/27 email response:

I suggest Gerry send the three articles (formatted and PDF'd, attached) to Keith at CIRI today and ask for a telecon ASAP this week between all of us to discuss whether or not we are on the right track for CIRI to reconsider their decision to turn down the MOIC concept for funding. If we are, and if Keith can confirm that CIRI's Board has lifted their moratorium on investments, then let's continue to research and obtain more hard data. If it's not, then we thank CIRI for their consideration, ask them to confirm their decision to decline consideration of the MOIC as an investment opportunity to us in writing and formally request that all our confidential MOIC/Millennium Partnership materials be returned to us, as required in the NDA.

Council Tree/Madison Dearborn Partners were crystal clear and firm to all of us when we met in Chicago/Ron Given's office in that they stated they must have a "big brother" to take them out of any MOIC investment. It is, clearly, a waste of time going back to them to try and change their mind - we already vetted several potential insurance industry big brothers and concluded this would not work for various reasons - nothing has changed.

We cannot risk jeopardizing Wayne's employment at Aon by risking contact with the people mentioned in the e-mails. Similarly, contacting anyone at Marsh is too risky because I am in employment discussions with them.

▪ SC 10/27 email response:

Again, the moratorium Lou refers to is inferred from a document that is almost a year old...it was written "as we head into 2003" and we are now heading into 2004. Near its end are these words: "Just as these investment firms and other distinguished companies throughout the nation will not hold back forever from investing, neither will CIRI." In our first conversations last month, COO Mark Kroloff already addressed this issue by saying CIRI is actively looking for its next big investment play. This is evidenced by their interest in and time spent reviewing the MOIC.

Secondly, Keith did not completely close the door or "decline consideration of the MOIC as an investment opportunity". Rather, he listed areas of concern that were not addressed to CIRI's satisfaction in our BP and said these concerns were substantial enough to keep them from investing in the BP as is. When asked, he specifically said CIRI was open to hearing back from us if we chose to further address their concerns, while also saying they couldn't commit to anything until they had a chance to review our findings - if we chose to address their concerns. Translation: they have not shut the door and are willing to be convinced if we are up to the task. They must at least like the investment area, basic concept and the management team...CIRI most certainly would have shut the door completely if any of those were of concern. So, we have a runner in scoring position...are we going to forfeit or go to bat?

In my opinion, sending these docs and calling CIRI first is premature and serves no good purpose while running the risk of looking whiney in their eyes. Common sense says we are unlikely to get definitive answers anyway. If pushed, any investor is going to respond that they will invest when they find the right deal. I suggest we try to be that "right deal" and go back to CIRI with additional ammo, i.e. interest from Marsh and answers to some of their concerns/questions if we can get them. Why put the cart before the horse and push CIRI for commitments they are unwilling or unable to give at this point? We risk pushing them into a definitive "no". Let's just do the bit of extra work it takes to convince CIRI or some other investor. In Marsh and/or Bowman we have potentially found a way to address the market concerns CIRI (and Council Tree et al by implication) expressed.

I'm wondering why we are resisting further defining our BP and answering concerns that any investor will have. All information gathered can only help the BP, so why not put in a little extra effort that benefits us anyway? We asked if CIRI & Council Tree are risk takers...what about us? Are we willing to risk a little more work for the potential of millions? Seems like a good risk/reward trade-off to me.

[Re CT & MDP] What's changed is the potential to snag Marsh as a "big brother" on the broker side. While Marsh is not an operating insurance company "big brother", it is an absolutely top drawer player that, I believe, would bring enough name recognition, market definition, access & answers and marketing power to the table as a partner/broker that we may be able to turn some heads in the CT group and change the equation. If we could snag Marsh, startup concerns should drastically fade. Will this change their investment paradigm? I don't know, but why not try? Should we try to get upfront commitments from CT & MD before approaching Marsh? Why? Again, let's just do a little more work and try to make it happen. No one said it would be easy to attract \$100 million to your idea when you're asking investors to carry your 20%. We've got two premier entities with the credentials and money to make this happen. We shouldn't be so resistant to a little extra work. I say let's continue to work creatively and proactively to see if we can turn this into what we all want.

We've successfully protected Wayne and would, of course, do the same for you. We can be creative and construct an entree to Marsh that won't compromise anyone. I can make the call with Wayne - if he's willing - or without if he feels its a problem. Again, he can decide. Either way, in the initial stages you need not be mentioned or implicated in any way unless you care to be.

Again, in mid-August, after reviewing the MOIC BP and meeting with MP on August 1, CT/MDP had told us they liked the concept & management but did not have adequate in-house insurance expertise to feel comfortable funding a start-up. However, they did agree to fund MOIC under a "structured exit" approach that would require finding an industry partner willing to partner with MOIC & make an upfront commitment to buy out MDP's investment in MOIC in 3-5 years.

MP argued for a normal VC "startup" funding approach, but at that time MDP wasn't comfortable with that approach. However, CT/MDP had graciously agreed to remain on hold while MP vetted CIRI interest. On 10/31, SC called CT's President, Steve Hillard, to revisit CT/MDP's interest in MOIC.

▪ SC 10/31 email report to partners:

Steve started the conversation by saying he was just talking about us with George [CT partner]...saying "now, there's a deal that deserves to happen". I went through the Marsh description above and asked Steve if Marsh would suffice as a big brother. His answer was yes. I then asked if it would be possible to do away with the "hard put" exit requirement with Marsh on board. He said that it was a possibility and we could explore other ways to address exit, but said he'd like to table that discussion until after meeting with Marsh. He was excited and without prompting asked when we were meeting with Marsh and offered to go with us to help present the idea. I told him we were caucusing this weekend on future strategy and I'd call him next week.

Given the premier players (CT, Artic Slope, Madison Dearborn and other premier VCs), strong interest, ok on Marsh as a big brother, indications of flexibility and willingness to help sell the concept, I'd suggest moving forward with Council Tree and getting a meeting with Marsh. CT's participation will certainly enhance our credibility and ability to articulate the superior ANC minority advantages and political access in a meeting with Marsh. If we can get Marsh on board we are then much better positioned to argue the right deal with CT's group...it will be much harder for them to walk away from our deal. If it doesn't work out with them, we are still in a better position to approach CIRI or other minority investor, if necessary. I think we should take Steve up on his offer and see if we can take this to the next level.

I am now fine to talk Saturday morning as well.

10. November: CMGT is pulled from the CT/MDP deal; SC files its Amended Complaint v CMGT

On 11/1 MP partners conferenced and decided to pick back up with CT/MDP. During the first weeks of November we began lining up potential insurance broker partners that CT/MDP might accept for a structured exit funding and started the minority angle & hard market R&D that both CIRI & CT said we needed to do for the start-up route. We also needed to decide whether to keep CMGT as part of the MOIC funding package since CT/MDP still only knew the joint CMGT/MOIC deal and had not yet been made aware of SC's legal action v CMGT. SC argued for leaving CMGT in the package to see if we could get it funded along with MOIC, but said fairness dictated that we inform CT/MDP one way or the other. Franco & Wong refused to even discuss CMGT with SC and Baliga was caught in the middle. (Recall that on 10/12 Baliga had said he remained "pragmatic" on CMGT getting funded.)

SC pushed Franco, as CMGT's last known CEO & President to decide CMGT's status or confirm that had resigned and no longer had decision-making authority. Franco refused.

Franco 11/19 email to SC:

If there are any matters that need to be brought to the attention of Council Tree they are only things for which you alone are responsible and are uniquely qualified to address on your own, namely, that you sued CMGT and as a result, among other things, the President and CEO of CMGT has announced that he will be leaving to pursue other opportunities; As to my personal situation, it is simply none of your business; and as to any other CMGT matters, you can have your lawyer call Ron Given.

SC persisted and Baliga suggested a call to discuss CMGT. Wong & Franco refused and Franco also refused to say if he was still an officer of CMGT. Baliga finally got an answer out of Franco & Wong.

Baliga 11/21 email to SC:

Gerry: In the process of trying to set up the call, I ended up speaking with everyone on this topic. The consensus is that for a variety of business reasons, CMGT should not be in the plan. Therefore, we should only present MOIC revenue, income and ROI.

Facing no possibility of settlement with CMGT, fearing CMGT might file for bankruptcy and knowing it was unlikely CMGT would contest its litigation, SC continued its legal action towards a Default Judgment.

On 11/26 SC filed its First Amended Complaint against CMGT that now sought \$17 million in damages, included new allegations re the Washoe and alleged intentional torts against all defendants (reflecting the findings of Klenda's 10/29 Memo: Assess Potential Claims against Given - Maver Brown). As officers of CMGT, Franco & Wong were potential defendants; Given & MB were obvious targets of SC's action.

SC's Amended Complaint was served by certified mail on 11/26 and signed for by Franco on 12/1.

11. December: Given & Franco file bogus UCCs; MP meets again with CT/MDP.

On 12/1 Franco signed a Security Agreement (as CMGT's President & CEO) for UCCs that Given was to later file (on 12/18). The UCCs purported to give CMGT shareholders a lien on CMGT's assets that would pre-date SC's expected judgment. However, this was an intentional fraud on shareholders; the UCCs were patently bogus because Franco & Given both knew that Franco was no longer an officer of CMGT and no longer had authority to sign for CMGT.

On 5/7/04 Franco testified under oath on at least five occasions that he had resigned as an officer of CMGT via Given's 9/19/03 email to shareholders, and that he had no official role with CMGT thereafter. (see CMGT 5/29/06 memo: ppg. 36-38)

Franco also testified twice that Given filed the bogus UCCs on 12/18, thereby participating in defrauding CMGT shareholders & simultaneously violating SC's standing Pl. The intent of this fraud was to dupe shareholders into feeling their recovery was protected so as to keep anyone from CMGT from appearing at SC's upcoming damages hearing. Appearing would have acknowledged CA jurisdiction & law over

CMGT and its DOES 1-100 co-defendants (Given, Franco & Wong). Therefore, it was in Given & Franco's best interest to keep CMGT out of CA courts; they reasoned that shareholders would feel their recovery was protected by the UCCs, hence they would feel no need to appear v SC. (see CMGT memo)

Franco also testified on 5/7/04 that he was aware of SC's TRO & PI. In fact, Given & Franco were both noticed and both knew SC's PI was in effect and that it enjoined and restrained CMGT officers, agents, representatives, etc. from "selling, transferring, pledging or encumbering any of CMGT's assets or property, other than in the ordinary course of business".

Finally, in his 9/17 email to CMGT shareholders advising them of SC's TRO Given had said:

I attach a fax I received yesterday. Mayer Brown has not been retained to deal with this matter, and we do not expect to be.

Per this email Given & MB no longer represented CMGT with respect to SC's action in December 2003, but Given did represent MP partner SC. Taking all of the above together, when Given filed the bogus CMGT UCCs on 12/18:

- He knew Franco had no authority to sign the underlying Security Agreement,
- He knew he was acting without authority from a CMGT officer when he filed the UCCs,
- He knew he no longer represented CMGT with respect to SC's action,
- He knew the UCCs did nothing to protect CMGT shareholders' recovery,
- He knew that shareholders would be fooled, however, & likely not appear v SC's judgment,
- He knew shareholders' recovery would be harmed by SC's judgment,
- He also knew he was SC's MP counsel & Franco was SC's MP partner,
- He knew that if the UCCs were to somehow stand, they would harm SC's recovery, and
- He knew he was violating SC's standing PI & acting in contempt of Court.

Given & Franco conspired to intentionally defraud shareholders so as to keep themselves (& Wong) safe from SC legal action. Alternatively, they conspired to intentionally & maliciously harm their client & partner SC. Either way, they showed contempt for SC's standing PI. No matter the final resolution of the UCC's validity, this intentionally fraudulent conduct was sure to violate their fiduciary duty to someone.

On 12/12, MP partners held a conference call with CT and decided to meet with CT/MDP and other insurance industry and minority participants in Chicago on 12/22 to vet our R&D progress, potential industry partners & the minority angle.

On 12/18 Given filed UCCs against CMGT assets in Illinois & Delaware for all CMGT shareholders.

On 12/22 all MP partners, Given, CT/MDP and several insurance industry participants met again in MB's Chicago office to discuss CT/MDP's prospective MOIC investment. Attendees: all MP partners, Given, George Laub of CT, Michael Cole of MDP, Joe Flanagan of Hub International (Joe is a friend of Baliga as well as Paul Finnegan of MDP) and senior executives of Employer's Re (GE's reinsurer) and Blackwell Igbanugo (the nation's 2nd largest minority law firm).

Franco passed out his CMGT business card (as President & CEO) to participants. I arrived a few minutes late; Baliga was gracious, shook my hand and introduced me; Wong & Franco would not even look at me and Given did not acknowledge me. All MP partners participated in the meeting and I don't believe partnership rancor was obvious to other participants. We continued to push our "startup" funding approach, discussed R&D progress, Hub as a potential industry partner for CT/MDP's "structured exit" approach, the universal phenomenal success of other recent P&C startups (see MP/MOIC Damages) and next steps. CT/MDP outlined further R&D they'd like us to conduct and suggested a follow up call to review it.

SC was not told of the CMGT UCC filings.