

EXHIBIT 28

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

IN RE:)
)
CMGT, Inc.) Bankruptcy No. 04B 31669
) Chapter 7
Debtor) Judge John H. Squires (Wheaton)
)

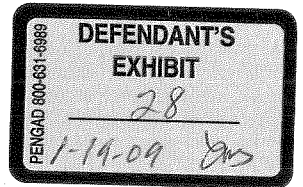
NOTICE OF MOTION

TO: SEE ATTACHED SERVICE LIST

Please take notice that on **November 18, 2005**, I will appear before the Honorable Judge Squires or before any Judge sitting in his place and stead in **Courtroom 2000** the room usually occupied by said Judge in the DuPage County Courthouse, 505 N. County Farm Road, Wheaton, Illinois at the hour of **9:30 a. m.** and then and there present the attached **Application to Employ Special Counsel**, at which time you may appear if you see fit.

/s/ David E. Grochocinski
David E. Grochocinski

STATE OF ILLINOIS)
) SS
COUNTY OF COOK)



David E. Grochocinski, on oath, certifies that he is the Trustee of the Estate and that he mailed a copy of this Notice and Motion to the listed parties from 1900 Ravinia Place, Orland Park, IL 60462 with proper postage prepaid on November 7, 2005, before the hour of 5:00 o'clock p.m.

/s/ David E. Grochocinski
DAVID E. GROCHOCINSKI
David P. Lloyd
Arthur W. Rummler
Grochocinski, Grochocinski & Lloyd, Ltd.
1900 Ravinia Place
Orland Park, IL 60462 (708) 226-2700

PL 02578

CMGT, Inc.

Case No. 04B 31669

SERVICE LIST

Spehar Capital, LLC
c/o Steven A. Klenda
1600 Broadway
Suite 2600
Denver, CO 80202

L. Judson Todhunter
Defrees & Fiske, LLC
200 South Michigan Avenue
Suite 1100
Chicago, IL 60604

U. S. Trustee
227 West Monroe Street
Suite 3350
Chicago, IL 60606

Spehar Capital, LLC
1625 Grandview Avenue
Glendale, CA 91201

Louis Franco
25647 White Birch Lane
Wheaton, IL 60187

Ronald Given
Mayer, Brown, Rowe & Maw, LLP
190 South LaSalle Street
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Chicago, IL 60603

Linda Holman
Ron Holman, Ph. D.
c/o The Holman Group
21050 Vanowen Street
Canoga Park, CA 91303

R. Leonard Carroll, M. D.
P. O. Box 1350
James Town, TN 38556
Lee M. Rask

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Suite 101N
Clackamas, OR 97015

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James M. Wong
21 W. 760 Glen Crest Drive
Glen Ellyn, IL 60137

Kim and Robert Quarles
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Richard M. Ross
c/o Louis Franco
25647 White Birch Lane
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Jan Levine
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c/o Louis Franco
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Charles Troutner
c/o Louis Franco
25647 White Birch Lane
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Wayne Baligier
c/o Louis Franco

PL 02579

25647 White Birch Lane
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Reed-Egly, Inc.
c/o Louis Franco
25647 White Birch Lane
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John Ross
c/o Louis Franco
25647 White Birch Lane
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Kevin Regan
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Melvin Spaith
c/o Louis Franco
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Catherine Garner
c/o Louis Franco
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William Walker
c/o Louis Franco
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Deborah D. Benedette
c/o Louis Franco
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Craig Jackson
c/o Louis Franco
25647 White Birch Lane
Wheaton, IL 60187
Robert Crandall

c/o Louis Franco
25647 White Birch Lane
Wheaton, IL 60187

Robert Fishman
Shaw, Gussis, Fishman, Glantz, Wolfson &
Towbin, LLC
321 North Clark Street
Suite 800
Chicago, IL 60610

Edward T. Joyce
Edward T. Joyce & Associates, P. C.
11 South LaSalle Street
Suite 1600
Chicago, IL 60603

David E. Grochocinski
David P. Lloyd
Arthur Rummier
Grochocinski, Grochocinski & Lloyd
1900 Ravinia Place
Orland Park, IL 60462
(708) 226-2700
Attorneys for Trustee

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

In re:) Case No.: 04 B 31669
CMGT, Inc.,)
Debtor.) Application to Employ Special Counsel
_____)

Comes now David E. Grochocinski, chapter 7 trustee for the estate of CMGT, Inc., by his attorneys, Grochocinski, Grochocinski & Lloyd, Ltd. and in moving this court for an order authorizing the trustee to employ special counsel states as follows:

- 1) Applicant is the appointed chapter 7 trustee for the within named debtor.
- 2) A review of some documents and other information indicates that a cause of action may exist in favor of the estate as to some professionals employed by the debtor on a prepetition basis and /or as to some members of the board of directors of said corporation or to certain officers of the debtor.
- 3) In order to fully explore the possible actions if any, the trustee desires to employ Edward T. Joyce and the firm of Edward T. Joyce & Associates, P. C.
- 4) The trustee has discussed the issues with Edward T. Joyce and believes that proposed special counsel is well able to undertake the investigation and prosecution of such actions in the event the same is warranted.
- 5) Mr. Joyce and his firm have agreed to undertake such representation of the trustee on a contingent fee basis of 30% of any settlement amount in the event a cause of action is determined to exist and is settled prior to trial and for the sum of 40% of an award in favor of the estate if the matter proceeds to trial plus expenses as set forth in the

Contingency Fee Agreement. However, in addition to the award and or settlement, payment of the fees is wholly dependent upon collection of the settlement or award by the estate so that in the event other moneys are obtained by the estate from other sources none of those other sources of funds would be liable for payment to special counsel. Mr. Joyce and his firm are limited in their payment to funds received from any cause of action that is initiated by his firm at and with the consent of the trustee.

- 6) Despite the contingent fee arrangement, the trustee has advised Edward T. Joyce and his firm that the court will require that time expended on this matter be maintained so as to comply with the Court's eventual inquiry as to reasonableness of compensation. Special Counsel understands that despite the contingency fee no fee can be paid unless an application therefore has been filed and notice given to creditors with appropriate review by the Court.
- 7) Attached hereto is the declaration of Edward T. Joyce and based on same the trustee believes that he and the firm of Edward T. Joyce & Associates, P. C. are able to act as special counsel to the trustee in this matter.
- 8) Proposed special counsel understands that no settlement is able to be finalized nor is any settlement valid until and unless an application to do so has been filed with and approved by the court.

Wherefore, David E. Grochocinski, trustee, by his attorneys, prays that this court enter an order authorizing the trustee to employ Edward T. Joyce and the firm of Edward T. Joyce & Associates, P. C. to act as special counsel to the trustee or for such other and different relief as the Court deems just and equitable.

David E. Grochocinski, trustee

By: /s/ David E. Grochocinski

One of his attorneys

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE NORTHER DISTRICT OF ILLINOIS
EASTERN DIVISION

IN RE:)
) Bankruptcy No. 04B 31669
CMGT, Inc.) Chapter 7
)
Debtor) Judge John H. Squires
)
)

DECLARATION OF EDWARD T. JOYCE

I, Edward T. Joyce, declare:

- 1) I am an attorney licensed to practice by the Supreme Court of the State of Illinois and a partner or principal with the firm of Edward T. Joyce & Associates, P.C.
- 2) I and the, shareholders, staff attorneys and employees of Edward T. Joyce & Associates, P.C., are experienced in negotiating, resolving, and litigating professional and corporate negligence or malpractice claims.
- 3) Edward T. Joyce & Associates, P.C. is willing to accept employment by the trustee, on the basis set forth in the annexed application. To the best of my knowledge, upon information and belief, I and the staff attorneys and employees have the following contacts with the debtor and its creditors:

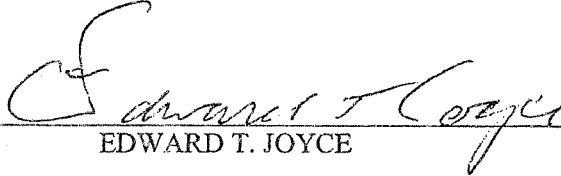
Except for meetings with the trustee, counsel for creditor, Spehar Capital and Gary Spehar, and limited review of some documents, no contacts.
- 4) Defendant has read the application to employ specific counsel and the contingent fee agreement and agrees on behalf of himself and the firm of Edward T. Joyce & Associates, P.C. to the terms and conditions thereof.

PL 02583

- 5) No person in the Office of the U.S. Trustee nor the U.S. Trustee is a relation of affiant or the employees of Edward T. Joyce & Associates, P.C., as set forth in 11 USC 101 (45). Applicant does not represent or hold any interest adverse to the debtor or the estate with respect to the subject claim.

I declare, under penalty of perjury, that the foregoing is true and correct.

EXECUTED THIS 3rd DAY OF November, 2005


EDWARD T. JOYCE

PL 02584

CONTINGENCY FEE AGREEMENT

ENGAGEMENT

1. The estate of CMGT, Inc., (the "Client"), hereby retains Edward T. Joyce & Associates, P.C., attorneys at law (the "Law Firm"), to provide professional legal services to the Client to investigate and prosecute the claims that Client has against professionals, officers, directors, insiders, or other parties, including but not limited to, Mayer Brown Rowe & Maw, which arise out of or relate to the following: (a) legal services provided by Mayer Brown Rowe & Maw to CMGT, Inc., (b) attempts by any professionals, directors, insiders, or other parties, such as Mayer Brown Rowe & Maw, to secure financing for CMGT, Inc., and/or (c) the action captioned *Spehar Capital, LLC v. CMGT Inc.*, No. 03 MR 1209 (the "Claims").

PROSECUTION OF CLIENT'S CLAIMS

2. Law Firm, upon receipt of an executed copy of this Agreement, shall diligently investigate and prosecute the Claims. Law Firm's obligation under this Agreement shall terminate upon the final settlement of the Claims or the entry of a final award. Law Firm is not obligated to initiate or defend any post-litigation motions or appeals unless Law Firm specifically agrees in writing to do so.

3. Law Firm is only obligated to defend Client against counterclaims, third-party claims or independent lawsuits filed against Client which are reasonably related to the Claims.

4. Client acknowledges that Law Firm has not warranted and cannot predict results.

CLIENT'S DUTIES AND REPRESENTATIONS

5. Client shall cooperate with and assist Law Firm in the investigation and prosecution of the Claims including but not limited to: consulting with Law Firm when requested; answering written interrogatories; producing or procuring documents; giving

depositions; attending hearings; and providing all other assistance reasonably requested. Law Firm understands and acknowledges that Client is the Chapter 7 Trustee of CMGT, Inc. and may be limited in his knowledge of information and/or documents relating to the Claims. Client shall make a diligent effort to obtain any and all documents reasonably requested by Law Firm from third parties within Client's control, including but not limited to Mayer Brown Rowe and Maw. In the event that the third party asserts a privilege, Client shall demand that the third party provide a detailed privilege log listing the type of document withheld, the date of the document, the parties to the document (e.g., sender and recipient), and the basis for the privilege. At Law Firm's request, Client will waive attorney/client privilege with respect to Mayer Brown Rowe and Maw.

6. Client has delivered or will promptly make available to Law Firm all relevant documents. In addition, Client represents and warrants to Law Firm that the facts that Client has communicated or may hereafter communicate to Law Firm are true, to the best of Client's knowledge, information and belief.

7. Client represents and warrants to Law Firm that Client has not assigned or transferred all or part of Claims to any person and that Client has not signed any other contingency fee agreement with any other lawyer or law firm with respect to the Claims. If Client, in the future, assigns, transfers, or grants a security interest in or in any way encumbers all or any part of the Claims, Client shall notify Law Firm prior to such assignment, transfer, grant or encumbrance, and such assignment, transfer, grant or encumbrance shall be junior in security interest to Law Firm's lien on any judgment or award resulting from prosecution of the Claims (as described in Item 8), and shall in no way affect the rights or obligations of Law Firm and/or Client as described in this Contingency Fee Agreement, nor shall it affect any terms of the

Contingency Fee Agreement.

LEGAL FEE AND SCOPE OF REPRESENTATION

8. In consideration of this Agreement, Law Firm shall receive a fee equal to thirty percent (30%) of any and all money or other benefits recovered on the Claims (a "Recovery") pursuant to a settlement agreement entered into before trial commences, or forty percent (40%) of any Recovery once a trial on the merits commences. To secure Law Firm's fee as provided hereinabove (the "Fee"), Client hereby grants to Law Firm a lien on any judgment, award or Recovery resulting from prosecution of the Claims.

9. In the event of a Recovery, all funds therefrom shall be disbursed to Client. Law Firm shall be entitled to receive its Fee from the Recovery, and, in addition, reimbursement of any of the unreimbursed costs and expenses advanced by Law Firm (the "Expenses"). Both the Fee and the Expenses shall be subject to the approval by the Bankruptcy Court pursuant to applicable law. In the event of a proposed settlement of the Claims, the Motion filed by Client to authorize such settlement shall include a request for the Bankruptcy Court to authorize payment of the Fee and reimbursement of the Expenses at the time of the consummation of the settlement.

10. If no Recovery is obtained, Client is not obligated to pay Law Firm any fee for its services, except as otherwise provided in this Agreement.

COSTS AND EXPENSES

11. The payment of costs and expenses shall be in addition to any fee paid to Law Firm. The payment of such costs and expenses shall be contingent upon a Recovery being obtained and shall be payable to the Law Firm by the Estate only after review and approval of such costs and expenses by the Bankruptcy Court. The Law Firm's fee shall be calculated on the

basis of the gross Recovery -- *i.e.*, the total amount of the Recovery before any costs and expenses are subtracted.

12. Costs and expenses include, but are not limited to, the following:

- a. Court costs (actual cost);
- b. Witness fees (actual cost);
- c. Court reporter fees (actual cost);
- d. Other outside services (e.g., investigators, outside messenger services, process servers, equipment rental, temporary personnel, Federal Express or equivalent, printing, bulk copying, litigation support, photography, etc.) (actual cost);
- e. Travel expenses (actual cost including meals and lodging while traveling on client business);
- f. Internal copy expenses, including word processing (\$.15 per page);
- g. Binding charges (\$3.00 per 50 pages);
- h. Facsimile charges (\$1.00 per page);
- i. Long distance telephone charges (approximate actual cost);
- j. Postage (only excess of \$1.00 per mailing);
- k. Internal messengers (\$3.00 per delivery);
- l. Lexis/Westlaw charges (approximate actual cost);
- m. Secretarial overtime (\$30.00 per hour);
- n. Docket maintenance (\$3.00 per month)

13. The Law Firm and Client hereby acknowledge that the Client has entered into an agreement with Spehar Capital LLC ("Spehar"), which is attached hereto as Exhibit A and incorporated herein by reference, through which Spehar has agreed to advance up to \$18,500.00 for the funding of the costs and expenses of the administration of the estate not relating to the

Claims ("Estate Costs").

14. The Law Firm and Client further acknowledge that the Law Firm and Spehar have entered into an Expense Sharing Agreement, which is attached hereto as Exhibit B and incorporated herein by reference. Pursuant to the Expense Sharing Agreement, Spehar will either reimburse Law Firm for the first \$5,000 of costs paid by Law Firm respecting the prosecution of the Claims or pay such expenses (limited to \$5,000) directly to the appropriate third party if submitted to Spehar for payment ("Prosecution Costs")

15. The Law Firm and Client acknowledge that Spehar is entitled to be reimbursed up to \$18,500.00 for its advancement of funds in connection with Estate Costs, but solely from the proceeds of any Recovery resulting from the Claims prior to the Law Firm receiving its Fee from the proceeds of any Recovery. The \$5,000.00 provided for in Paragraph 14 hereof shall be reimbursed to Spehar by Law Firm.

16. After Spehar has been reimbursed up to, but not more than, \$23,500.00, the Law Firm shall be paid its fee out of the proceeds of any Recovery resulting from the Claims.

17. After the Law Firm's fee has been paid, any unreimbursed costs and/or expenses that have been advanced by the Law Firm and/or Spehar shall be paid to the Law Firm and/or Spehar on a pro rata basis out of the proceeds of any recovery resulting from the Claims.

18. If it becomes necessary for the prosecution of the Claims for the Client to retain an expert witness, the Client, the Law Firm and Spehar must all mutually agree on the selection of the expert witness. However, the Client, the Law Firm, and Spehar cannot refuse to permit the Client to retain an expert witness without reasonable cause for such refusal and without a detailed statement of the reason for the refusal. If, after a good faith effort, the Law Firm, the Client and Spehar cannot agree on an expert witness to retain, the Client shall promptly file a

Motion with the Bankruptcy Court seeking authority to retain the expert selected by Law Firm, subject to applicable notice and an opportunity for hearing.

SETTLEMENT

19. No settlement or compromise of the Claims shall be made without Client's prior, written consent. Any settlement of the Claims is expressly subject to authorization from the Bankruptcy Court after appropriate notice and an opportunity for hearing. Client represents and warrants that he shall use his best efforts to obtain such authorization from the Bankruptcy Court as to any proposed settlement to which Client has so consented.

OTHER LAWYERS

20. If it becomes necessary to hire lawyers outside of Cook County, Illinois, to provide ministerial assistance to Law Firm such as the subpoenaing of witnesses or documents, or to act as "local counsel" in any related proceedings commenced outside of Cook County, Illinois, then the fees, costs and expenses of such lawyers shall be regarded as costs and expenses which shall be paid or reimbursed as provided above. If Client deems it necessary or appropriate, such retention shall be subject to authorization from the Bankruptcy Court.

TERMINATION BY CLIENT

21. Client retains the right to terminate this Agreement at any time, without cause. Client also retains the right to direct Law Firm to terminate any lawsuit being prosecuted on behalf of Client. Client acknowledges that termination of the lawsuit may require permission of the Bankruptcy Court and the payment by Client of costs to the opposing party and that any counterclaims, third party claims or independent lawsuits filed by an opposing party may not be terminated. Absent gross negligence or intentional misconduct, neither Spehar or Law Firm shall be liable for any such costs. If a final determination is made that Spehar, but not Law Firm

was grossly negligent or engaged in intentional misconduct, then only Spehar shall be liable for such costs. If a final determination is made that Law Firm, but not Spehar, was grossly negligent or engaged in intentional misconduct, then only Law Firm shall be liable for such costs.

22. If Client terminates this Agreement without terminating any lawsuit then being prosecuted on behalf of Client, Law Firm will seek to withdraw from the lawsuit. If the Bankruptcy Court refuses to permit Law Firm to withdraw from the lawsuit, then this Agreement shall remain in effect, notwithstanding the provisions of the previous paragraph.

23. If Client terminates this Agreement or directs the Law Firm to terminate any lawsuit being prosecuted by Law Firm on behalf of Client before a recovery is received, for any reason, Client shall pay Law Firm a fee based upon the standard hourly rates charged by Law Firm for non-contingent services as of the date of termination, plus any unpaid or unreimbursed costs and expenses. If however, Client and Law Firm mutually agree that a lawsuit or claim should not be pursued, Client may direct Law Firm to seek to dismiss that lawsuit or claim and if dismissed, Law Firm agrees that it will not seek legal fees or costs for work done in pursuing that lawsuit or claim.

TERMINATION BY LAW FIRM

24. If Law Firm shall determine, after making a reasonable investigation, that the Claims are not meritorious, or that the Claims are subject to a meritorious defense, or that the Claims are substantially offset by a meritorious counterclaim, intervening claim or third party claim, or that the value of the Claims is insufficient to justify the effort required to prosecute it, or that any judgment that could be entered on the Claims is not reasonably collectible, then Law Firm shall have the right to terminate this Agreement upon written notice to Client. For purposes of this paragraph, a "meritorious defense" shall be any defense that has a valid legal and factual

basis upon which a defendant is more likely than not to prevail.

25. If Law Firm terminates this Agreement pursuant to the previous paragraph, Client shall not owe Law Firm any fee or costs for its services.

26. Law Firm also has the right to terminate this Agreement for cause if Client fails to perform any of the duties of Client described herein in paragraph 5, or if any of Client's representations and warranties described in paragraphs 6 and 7 should prove to be untrue. Law Firm shall advise Client of its intent to terminate this Agreement and the reasons therefore. Client shall have a reasonable amount of time to cure any problems or perform its duties pursuant to this Agreement.

27. If Client fails to cure any defects pertaining to Client's performance under this Agreement and Law Firm terminates this Agreement pursuant to the provisions of this Agreement, then Client shall pay Law Firm a fee based upon the standard hourly rates charged by Law Firm for non-contingent services as of the date of termination, plus any unpaid or unreimbursed costs and expenses.

RESOLUTION OF DISPUTES

28. All claims relating in any way to the interpretation or application of this Agreement or arising out of this Agreement shall be resolved by the Bankruptcy Court.

NO OTHER AGREEMENTS

29. This Agreement is the only agreement between Client and Law Firm relating to the Claims. This Agreement supersedes any prior understanding or agreement between Client and Law Firm with respect to the Claims. This Agreement may be modified or amended only by a written document signed by both Client and Law Firm.

RECEIPT

30. Client acknowledges receipt of a fully executed copy of this Agreement.

Dated:

Edward T. Joyce & Associates, P.C.

By: _____

Accepted and Agreed to by:

**David Grochocinski, interim trustee
Estate of CMGT, Inc.**

Dated: _____, 2005

EXHIBIT A

600 DEARBORN ST., SUITE 300
DENVER, CO 80203

STEVEN A. KLEMDA, LLC

(303) 514-3179
FAX: (303) 851-1777

June 14, 2005

VIA FACSIMILE AND EMAIL

David Grochocinski, Esq.
Grochocinski, Grochocinski & Lloyd, Ltd.
1900 Ravinia Place
Orland Park, IL 60462

Re: Agreement re: Post-Petition Financing Application.

Dear David:

This letter formalizes the agreements that Spehar Capital, LLC ("Spehar") and you, as the chapter 7 Trustee for CMGT, Inc. in Case No. 04 B-31669, which is pending before the United States Bankruptcy Court for the Northern District of Illinois, Eastern Division, have reached with respect to your Application of the Trustee to Enter into Post-Petition Secured Financing and Other Relief ("Post-Petition Financing Application"). We have agreed that:

1. The Post-Petition Financing Application will be submitted to the Court simultaneously with your Application to employ Spellmire & Sommer as special counsel.

2. The proposed order for the Post-Petition Financing Application ("Proposed Order") will not be submitted until Spehar and you have both formally approved its form, as indicated by my signature as counsel for Spehar, and you signature as chapter 7 Trustee, on the proposed order. We have also agreed that prudence dictates that some terms of our agreement not be specified in the proposed order, but will, nevertheless be binding. Specifically:

a. In addition to the terms that the Proposed Order specifies, Spehar agrees that it is obligated to pay you \$1,500 for all of the Estate's right, title and interest in and to or derived from the Estate's software and intangibles, including, but not limited to, CMGT's proprietary "Absence Expert" and "Poster" software, within twenty days after the completion of your reasonable efforts to obtain this software. For the purpose of this agreement, "reasonable efforts" shall mean your sending a demand to turnover "certain software and intangibles of the Debtor, including but not limited to a working copy and computer code of the version of CMGT's proprietary "Absence Expert" and "Poster" software that CMGT last used to service its customers as of August 1, 2003, to Lou Franco, Jim Wong and Rob Crandall because it is property of the estate, and that your demand shall include appropriate excerpts and references to CMGT documents/policies that show that these persons should have a copy of the software. Spehar will provide the appropriate

[Handwritten signature]
6/24/05 to 6/24/05

David Grochocinski, Esq.
June 14, 2005
Page 2 of 2

references to CMGT documents/policies to be included in the letter, which shall also demand that the software be returned before the 20 day "reasonable efforts" deadline expires.

b. You will take all necessary or appropriate actions to void the UCC-1 financing statements or other liens that CMGT's shareholders or persons otherwise affiliated filed with the IL Secretary of State Illinois on or about 12/18/2003 *10/29/05*

attest to JV SK
c. You will obtain all documents that Mayer-Brown has set aside for you per its November 29, 2004, letter to you and provide Spehar with a copy of the CD-ROM that you have obtained from Mayer-Brown within 10 business days of your receipt of the initial \$5,000 advance from Spehar.

Our respective signatures below indicate our agreement to the above.

STEVEN A. KLENDA, LLC

DAVID E. GROCHOCINSKI

Steven A. Klenda 14 June 2005

David E. Grochocinski 6/24/05

Steven A. Klenda, Esq.
1600 Broadway, Suite 2600
Denver, CO 80202
Phone: (303) 832-1800
Fax: (303) 832-1800

Date

David E. Grochocinski
1900 Ravinia Place
Orland Park, IL 60462
Phone: (708) 226-2700
Fax: (708) 226-9030

Date

ATTORNEY FOR
SPEHAR CAPITAL, LLC

CHAPTER 7 TRUSTEE

EXHIBIT B

PL 02597

EXPENSE SHARING AGREEMENT

Whereas, the estate of CMGT, Inc., (the "Client"), has retained Edward T. Joyce & Associates, P.C., attorneys at law (the "Law Firm"), to provide professional legal services to the Client to investigate and prosecute the claims that Client has against professionals, officers, directors, insiders, or other parties, including but not limited to, Mayer Brown Rowe & Maw, which arise out of or relate to the following: (a) legal services provided by Mayer Brown Rowe & Maw to CMGT, Inc., (b) attempts by any professionals, directors, insiders, or other parties, such as Mayer Brown Rowe & Maw, to secure financing for CMGT, Inc., and/or (c) the action captioned *Spehar Capital, LLC v. CMGT Inc.*, No. 03 MR 1209, pending in the 18th Judicial Circuit, DuPage County, Illinois (the "Claims");

Whereas, Spehar Capital LLC ("Spehar") and the Client entered into an agreement on or about June 24, 2005 (the "Spehar Agreement") regarding the submission of a "Post Petition Financing Application" by the Client to the United States Bankruptcy Court for the Northern District of Illinois, Eastern Division;

Whereas, pursuant to the Post Petition Financing Application, which will be heard by the Court on or about September 2, 2005, Spehar Capital, LLC agreed, *inter alia*, to, (a) advance to the Client the sum of \$5,000 for the payment of certain costs and expenses of the administration of the estate ("Estate Costs") upon the Client's submission of the Post Petition Financing Application, and (b) advance additional amounts for Estate Costs as set forth in the Spehar Agreement;

Whereas, the "Post Petition Financing Application" further provides that any and all advances by Spehar to or on behalf of the Client shall be collateralized by the Client's recovery

resulting from the prosecution of the Claims and that Spehar has a valid and perfected lien on the proceeds of any such recovery; and,

Whereas, Spehar and the Law Firm desire to enter into an agreement pursuant to which they will share the expenses of the prosecution of the Claims (this "Agreement").

NOW, THEREFORE, for good and valuable consideration, the receipt and sufficiency of which is acknowledged, including the Law Firm's agreement to be retained to prosecute the Claims, the undersigned parties agree as follows:

EXPENSE SHARING

1. Spehar shall advance \$5,000.00 to the Client upon the filing by the Client of the Post Petition Financing Application, as set forth in the Spehar Agreement, which is attached hereto as Exhibit A and incorporated herein by reference as though fully set forth herein.
2. Spehar shall advance to the Client additional amounts of up to, but no more than \$18,500, for Estate Costs as set forth in the Spehar Agreement.
3. In addition to Spehar's advance of up to \$18,500 to the Client for Estate Costs, Spehar shall pay the first \$5,000 in costs related to the prosecution of the Claims. After Spehar has advanced at least, but no more than, \$5,000.00 on behalf of the Client in connection with the prosecution of the Claims ("Prosecution Costs"), the Law Firm and Spehar shall thereafter share the costs and expenses of the prosecution of the Claims equally.
4. Spehar shall be reimbursed for his advancement of money to or on behalf of the Client in connection with Estate Costs and the Prosecution Costs up to \$23,500.00 from the proceeds of any recovery that results from the prosecution of the Claims prior to the disbursement of the proceeds of any recovery to the Law Firm for payment of the Law Firm's fee.

GOVERNING LAW

9. This Agreement shall be governed by Illinois law.

NO OTHER AGREEMENTS

10. This Agreement is the only agreement between Spehar and Law Firm relating to the Claims. This Agreement supersedes any prior understanding or agreement between Spehar and Law Firm with respect to the Claims. This Agreement may be modified or amended only by a written document signed by both Spehar and Law Firm.

RECEIPT

11. Spehar acknowledges receipt of a fully executed copy of this Agreement.

Dated: 8/31/05

Edward T. Joyce & Associates, P.C.

By: [Signature]

Accepted and Agreed to by:

Gerry Spehar
Spehar Capital, LLC

[Signature]

Dated: _____, 2005

1 David E. Grochocinski
2 David P. Lloyd
3 Arthur Rummler
4 Grochocinski, Grochocinski & Lloyd
5 1900 Ravinia Place
6 Orland Park, IL. 60462
7 (708) 226-2700
8 Attorneys for Trustee

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IN THE UNITED STATES BANKRUPTCY COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

In re:) Case No.: 04 B 31669
CMGT, Inc.,)
Debtor.) Order Authorizing Employment of Special
Counsel

AT WHEATON, IL BEFORE THE HONORABLE JOHN SQUIRES, US BANKRUPTCY JUDGE
THIS 18TH DAY OF NOVEMBER 2005.

This matter coming before the Court on the application of the trustee to employ special
counsel, due notice having been given and the Court being otherwise advised in the premises:

IT IS HEREBY ORDERED:

- 1) The application of the trustee to employ Edward T. Joyce and the firm of Edward T. Joyce & Associates, P. C. as special counsel to investigate and if appropriate prosecute such actions against professionals, officers and directors of the debtor for malpractice or other like causes of action on behalf of the estate and trustee.
- 2) Compensation shall be paid on a contingent fee basis with the amount of 30% of any amount paid to the estate on account of said cause of action or alleged cause of action prior to trial and the sum of 40% if a matter proceeds to trial and a verdict is found in favor of the estate, plus court costs as set forth in the Contingency Fee Agreement. No fee shall be paid nor costs reimbursed to special counsel unless funds from the cause of action are awarded and paid to the estate or the trustee.

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3) Special counsel shall maintain time records to justify any compensation request and no amount shall be paid to special counsel unless and until an application therefore has been filed with and approved by this court.

4) No settlement of any action nor other resolution shall be effective until an order approving same has been entered by this court in accordance with Rule.

Enter:

United States Bankruptcy Judge

18 NOV 2005

File a Motion:
04-31669 CMGT Inc

U.S. Bankruptcy Court
Northern District of Illinois

Notice of Electronic Filing

The following transaction was received from Grochocinski, David E entered on 11/7/2005 at 4:24 PM CST and filed on 11/7/2005

Case Name: CMGT Inc

Case Number: 04-31669

Document Number: 21

Docket Text:

Notice of Motion and Application to Employ Edward T. Joyce & Associates, P. C. as Special Counsel Filed by David E Grochocinski on behalf of David E Grochocinski. Hearing scheduled for 11/18/2005 at 09:30 AM at DuPage Courthouse, 505 N County Farm Road, Rm 2000, Wheaton, Illinois 60187. (Attachments: # (1) Exhibit # (2) Exhibit # (3) Exhibit # (4) Proposed Order) (Grochocinski, David)

The following document(s) are associated with this transaction:

Document description:Main Document

Original filename:U:\Grice\ECFDocs\CMGT Emp Joyce-Motion.pdf

Electronic document Stamp:

[STAMP bkecfStamp_ID=1017686655 [Date=11/7/2005] [FileNumber=12885771-0] [b34de7231bd97492e6176579cfdcfcb799d72c820d9b690c01b9bf356b5950dbb05297af44abd5f5daa05911fbc2cbeed1c087ec950c9fa79bb3e5f3c20817fa]]

Document description:Exhibit

Original filename:u:\grice\ECFDocs\CMGT Emp Joyce-DEC.pdf

Electronic document Stamp:

[STAMP bkecfStamp_ID=1017686655 [Date=11/7/2005] [FileNumber=12885771-1] [4b686e7ba0beb72cbfad502d47054d7b0f3de5f25c895a1e956327f2b3e7f54840d8d0abd63ea22ab6a4a53a297067cb3d012bf1413bd39708d95c6e64e335c4]]

Document description:Exhibit

Original filename:u:\grice\ECFDocs\CMGT Emp Joyce-Agreement01.pdf

Electronic document Stamp:

[STAMP bkecfStamp_ID=1017686655 [Date=11/7/2005] [FileNumber=12885771-2] [7496c2998ccd08e43519cfb653c0d967365c747bc60afba9463fc460e8465abd78f696ff961c88b188bd45d9a2befa6dd9d989035955d7e8c0754468422d03a9]]

Document description:Exhibit

Original filename:u:\grice\ECFDocs\CMGT Emp Joyce-Agreement02.pdf

Electronic document Stamp:

[STAMP bkecfStamp_ID=1017686655 [Date=11/7/2005] [FileNumber=12885771-3] [ac17c7f86875d56ac57648ab7ba87b5df45ec3e2c82359ff6fe1ca163f0ee0bb9f49a355bb183e99d6bd9141f9a6e5f9534ccaef3d57715b68e1c2930992ba2a]]

Document description:Proposed Order

Original filename:u:\grice\ECFDocs\CMGT Emp Joyce-Order.pdf

PL 02603

Electronic document Stamp:

[STAMP bkecfStamp_ID=1017686655 [Date=11/7/2005] [FileNumber=12885771-4] [aa0dce11b754464842741da88d142a16385ee161c8442d95b7b29e953eb8913072a13f807c4e635c7b404fdd7969fde7d0583940163f57c2ddfffb14d1da0125]]

04-31669 Notice will be electronically mailed to:

Ira Bodenstein USTPRegion11.ES.ECF@usdoj.gov

David E Grochocinski dgrochocinski@ggl-law.com, IL22@ecfcbis.com

David P Lloyd dlloyd@ggl-law.com,

Arthur W Rummler arummler@ggl-law.com, artrummler@juno.com

04-31669 Notice will not be electronically mailed to:

Grochocinski Grochocinski & Lloyd Ltd
1900 Ravinia Place
Orland Park, IL 60462

Steven A Klenda
1600 Broadway St Suite 2600
Denver, CO 80202

PL 02604

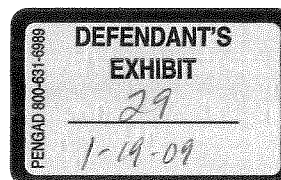
EXHIBIT 29

Subject: Why it will be impossible to find & sign a new Special Counsel at this late date
From: "Gerry Spehar" <gspehar1@earthlink.net>
Date: Wed, 26 Jul 2006 14:37:27 -0700
To: "David Grochocinski" <dgrochocinski@ggl-law.com>
CC: "L. JUDSON TODHUNTER" <ljtodhun@defrees.com>, "Gerry Spehar" <gspehar1@earthlink.net>

David,

I'm sure you've thought of all this already, but just in case, here's a laundry list of why it will be impossible to find a new Special Counsel at this late date in my estimation.

1. There are 300+ pages of just my memos to read and assimilate...probably more from Joyce. These will help, but no one is going to simply trust those...they will need their own independent review of all information.
2. In January I categorized & gave Joyce roughly 1,000 emails & docs for review. A new Special Counsel will requires an independent review of this information to satisfy merit, let alone damages.
3. He will then need to receive & review all the subpoenaed info...some of which we may not even have by the filing deadline.
4. Additionally, he should also subpoena Franco, Trautner, Wong & Baliga's communications.
5. Then he will need to depose people:
 - Did Given tout or endorse the Projections?: Franco, Trautner, Wong, Given, MB higher ups, Terry Temescue, Sealaska
 - Were shareholders misled and/or not fully informed: Robert Spaeth, Dick Ross, then Franco, Wong, Baliga, Trautner & Given
 - Franco/CMGT's reliance on MB advice. MB's duty: Franco
6. Then, new counsel will need to write up a filing, which means he really has only two weeks to complete all of the above before he has to write it up so as to meet the 8/24 (?) filing deadline.
7. All this presupposes that new counsel is not too tied up with other cases & trials to immediately assign a bunch of horsepower to this case, not to mention summer vacations.
8. Economics: Even if someone were to agree to take this on, we'd probably have to hammer out a new agreement. Given our desperate situation, the short deadline, all the above workload and the fact that Joyce would have just declined, new counsel would most likely propose onerous adjustments & we'd be at their mercy.



2683

This is really an impossible scenario, don't you agree? Truthfully, it is most likely no one else will sign on at this juncture if they have to face all that. I feel Joyce simple has to file & prosecute per the terms he agreed to.

Thanks,

Gerry
Spehar Capital, LLC
(818) 247-1987

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EXHIBIT 30

Lawyers

From: "Gerry Spehar" <gspehar1@earthlink.net>
To: "David Grochocinski" <dgrochocinski@ggl-law.com>
Cc: "L. JUDSON TODHUNTER" <ljtodhun@defrees.com>; "Gerry Spehar" <gspehar1@earthlink.net>
Sent: Friday, July 28, 2006 5:41 PM
Subject: Last minute depositions

David,

A final note to, if necessary, preclude an unwise last minute scramble by Ed Joyce to quickly depose key witnesses before he is adequately prepared. I am absolutely certain Ed is much too ethical to conduct a last-minute "reasonable investigation" solely to terminate his agreement with you, but I can see him honestly and ethically trying to quickly "make up for lost time" ...so it's wise to be vigilant. Such an effort at this late date could do great harm to the case. I know these potential witnesses and, as my prior communications with Joyce and you have stated, great care must be taken in how we approach & depose these people if we are to extract maximum value and their cooperation.

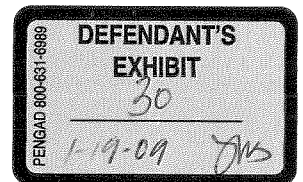
From my March 6 memo:

"I don't think we have the luxury anymore of approaching this chain of people with anything less than full conviction and commitment to the case on your part. These are all astute people who know the score time wise. If they sense continued hesitation at this late date, that will not bode well for lining them up and getting them committed to the case...and we all know how helpful they could be once on board." Franco, Wong & Baliga are all Chicago businessmen who have no interest in alienating Ron Given & Mayer Brown if they don't have to. They are smart enough to know that we are now facing the filing deadline and they may even be in contact with Given (certainly a possibility with Franco) and being coached by him. They will smell a last-minute & ill-prepared deposition scramble coming, and all it will do is better prepare them to collude in the future. We need real fear on our side in dealing with these people...once we file and leave the door open to going after them, they will clearly know we are serious and it will be a different ball game.

I'm sorry we're here, but this current dilemma is Joyce's fault.

From my recent Filings 7-26-06 DG memo to you:

"In March I warned Joyce that time was short and we would be facing the exact situation that we are currently facing if they didn't get subpoenas out immediately. I told Joyce then that reviewing subpoenaed information was just the first step; armed with that information, we would then have to depose many individuals in a suggested order to get optimum value from them. I said then that the longer we wait, the less likely these individuals will be cooperative because they will know we are up against a filing deadline.



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"To my knowledge, no one has been deposed under oath and Joyce had only one conversation (with Wayne Baliga) as of last week. I have suggested to Joyce, as I have to you, that there is an order to how all this should be done in order to optimize our information gathering. Again, my suggested "most-effective" order to follow in preparing to depose these key witnesses:

- a) gather and review all subpoenaed information for evidence that helps lost profits, estoppel and other arguments,
- b) decide which additional subpoenas are needed (e.g. Franco & Wong or Franco & Trautner communications),
- c) question Robert Spaeth & Dick Ross (neither of whom are friends of Given and neither of whom voted to approve Newco) re how informed they really were at critical junctures (e.g. when they were asked to approve Newco & thereafter), then, armed with all the above,
- d) depose Franco, Trautner, Wong, Baliga & Given (in that order). Franco knows he's vulnerable and he knows everything Given did. If you read his deposition testimony, you'll see a very worried man who is ready to talk. We haven't even approached him yet, and it would not be wise to do so without setting it all up properly per the above.

David, I must reiterate: it is simply too late now to get all of this properly done by the filing deadline, and it will be impossible for a new special counsel to even get up to speed, let alone investigate, depose & file before the filing deadline. And this case & CMGT's creditors will not be done justice until and unless all of the above is done.

There's simply no way anyone but Joyce can get do all this by August 24th. Hopefully it won't come to this, but if it does, Joyce should not be allowed to terminate; Joyce should be held to his agreement, made to file and properly investigate this case.

Once we get by the statute of limitations and Joyce conducts a proper investigation, he should become more comfortable. If not, we'll at least have adequate time to approach Mike Cherry or someone else of his caliber & courage to take the case."

David, I am asking you to please be vigilant and not allow such an unwise and surely harmful last minute scramble by Joyce at this point. Depositions are appropriate only after Joyce has done his homework and is adequately prepared. Once Ed receives and properly reviews the current subpoenas, issues additional subpoenas (e.g. Franco, Wong & Trautner's communications), and scares these gentlemen

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by filing the case...then he'll be ready to extract some real value.

I also believe that I could offer valuable insight as to how best to question these gentlemen - I know them, their conduct and their vulnerable points better than anyone involved. After we file, I will make myself available as always.

I would suggest we now concentrate on compiling and reviewing the pre-dep information, file the case, and then depose after Ed's properly prepared and they will know he has filed, is serious and is potentially going after them. Their testimony is much too important to the case to do anything else.

Did Joyce get back to you today as promised?

Thanks,

Gerry
Spehar Capital, LLC
(818) 247-5533

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PL 02266

7/31/2006

EXHIBIT 31

Lawyers

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

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

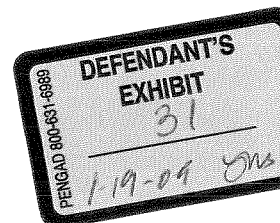
On Jul 31, 2006, at 2:49 PM, David Grochocinski wrote:

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

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

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

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

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

Three possible choices:

Barry Cappello is a top tier CA (Santa Barbara) plaintiff's atty who initially suggested CMGT suing MB via BK rather than my firm.? Barry had sent me a retainer agreement which we were negotiating when George Spellmire came on board...I chose George since he's in IL & was more agreeable on terms.

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

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

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handling it.

Gerry

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??

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

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

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

From: Gerry Spehar
To: David Grochocinski
Cc: L. JUDSON TODHUNTER ; Gerry Spehar
Sent: Monday, July 31, 2006 2:18 PM
Subject: Re: cmgt

David,

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

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

PL 02222

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

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

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

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

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

Thanks,

Gerry
Spehar Capital, LLC
(818) 247-5533

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

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

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

PL 02223

8/1/2006

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

> I understand your position. As a creditor the you are owed a
> fiduciary duty even if you were the smallest creditor, but his

PL 02224

8/1/2006

> contract does give him the ability to exit if he feels that the
> case is not a good one or the collectibility is bad. Naturally he
> has to have arrived at that decision via good faith and
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>

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> ----- Original Message -----

> From: Gerry Spehar
> To: David Grochocinski
> Cc: L. JUDSON TODHUNTER ; Gerry Spehar
> Sent: Monday, July 31, 2006 2:18 PM
> Subject: Re: cmgt

>

> David,

>

> I understand your position. Spehar Capital's position is this: I
> am asking that Mr. Joyce, should he decide to do so, not be allowed
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> this point; I have spent substantial sums in doing so. My sharing
> agreement with the estate and my expense agreement with Joyce were
> both made a part of Joyce's contingency agreement with you...this
> is all one big agreement, David, and I believe both the estate and
> Mr. Joyce owe me a fiduciary duty. I expect to be treated fairly
> here, as I am sure all other CMGT creditors expect.

>

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

PL 02225

8/1/2006

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

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

>
> Thanks,

>
> Gerry
> Spehar Capital, LLC
> (818) 247-5533

>
> CONFIDENTIALITY NOTICE: This e-mail transmission, and any documents,
> files, or previous e-mail messages attached to it, may contain
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> attachments. Thank you in advance for your cooperation.

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

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

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

>>
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>
>

PL 02227

8/1/2006

EXHIBIT 32

July 24, 2006

MB's duty to appear at SC's 2/26/04 Default Judgment Hearing

A. Given established a MB responsibility for, and duty to take care of (i.e. litigate, if necessary), Newco & SC's legal action over Newco.

1. Given will claim that he was only CMGT's "transactional" counsel and MB had no duty to litigate v SC. The evidence says otherwise:

a) MB's January 31, 2000 engagement letter:

- MB was to provide legal services "in connection with its [CMGT's] initial capitalization, formative acquisition [buying TouchSpeed] and general corporate activities."
- CMGT could "expand the scope of our representation at any time" by mutual consent.
- CMGT was obligated to pay 125% of Given's usual \$350 fee in exchange for Mayer Brown's agreement to defer payment until CMGT was funded,
- Mayer Brown agreed that it would not be paid if CMGT were not funded,
- MB could terminate the engagement if CMGT's unpaid fees exceeded \$50,000,
- MB could terminate if CMGT had not received at least \$1mm funding by May 2000.

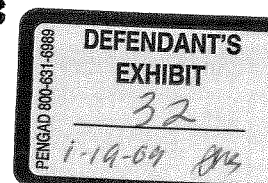
However, by mid-August 2003 MB had not terminated its engagement, CMGT owed MB roughly \$400,000, and Given had unquestionably expanded the scope of MB's representation from "providing legal services" to lone-wolf & self-serving Newco deal-doing and advising CMGT on SC's subsequent potential litigation over Newco.

Given's self-serving motive is thoroughly explained & supported in CMGT v MB 5-29-06 and subsequent memos.

▪ Given's 8/8 email to SC (emphasis added):

"Although your attachment is to Lou, I would like to address it. As Lou's situation continued (and continues) to become more desperate, I have kept a separate channel of communication on behalf of CMGT with Chuck [Trautner]. The LOI [Newco] is a consequence of those separate and distinct communications. Lou did not initiate or orchestrate the LOI. On the contrary, Lou's input prior to yesterday's circulation has primarily been in a fine tuning of the proposal; for example, making sure that CMGT can continue with your current prospects. As to the proposed LOI deal itself, your assistance is not required nor requested at this time. If a role opens for you, either in putting the deal together or post closing, you will hear directly from Lou or Chuck. You obviously know that Lou and I are big fans of what you bring to the table.

0768



Lou has his hands full. As to his pending matters with you, as well as to the MOIC matter, I encourage the both of you to continue your positive work. As to the proposed LOI transaction, to avoid distractions, I would ask Lou to simply refer any questions you might have to me."

- I doubt that any expansion of MB's scope or representation was ever agreed to by written mutual consent. However, this 8/8 email and other Given communications (noted below) that clearly & freely advise on SC's potential litigation, establish that Given did, of his own accord, agree to expand the scope of his representation to include doing Newco on his own with Trautner & advising CMGT on SC's all-but-certain litigation over Newco.
- b) From SC's first written objection to Newco on 8/8 (and certainly before), Given repeatedly advised CMGT and Newco about SC's claim and potential legal action at every opportunity. Given consistently gave advice that he knew to be wrong & that risked material harm to CMGT: SC's claim was meritless, SC's claim would have no effect on Newco, and Newco would close despite SC.

- Franco's 8/15 call with SC (emphasis added):
Spehar: "Why is this happening and why are you going along with it?"

Franco: "Ron [Given] is giving me a rationale that actually makes sense, and it's legal. I wish I could tell you more, but I can't. There's a very good legal reason why he's taking this position. I have no choice...I have to go along with it."

- Given's 8/19 email to SC (emphasis added):
"I very much regret, Gerry, that from my lawyer's perspective it seems you have always focused so much on yourself and churning words that you have forgotten that your job was to raise money. You have never been in a better position to actually do your job (go out and get someone to beat the LOI for heavens sakes!), but you choose to squander your energy spending all your time on nonsense like this.

I will discuss our conversations with Chuck and repeat to him my view that your claim is without merit and that, in any event, any claim you may have is against CMGT. And of course, Gerry, Lou and I are not preventing you from directly dealing with Chuck. I realize that is less dramatic than playing this snake in the grass game, but you seem to think you have a relationship with him and your threats might have affect whether or not there is legal substance. I believe from a legal point of view this will set you up for claims against you by the CMGT investors, but you seem intent on causing harm to everyone (including yourself)."

- Franco's 8/26 Letter to Shareholders, drafted by & cc'd to Given (emphasis added):
"Gerry Spehar/Spehar Capital has claimed that he is entitled to compensation as a result of the Newco transaction under a contract he has with CMGT, Inc. Your management and legal counsel strongly disagree with this contention. Unfortunately, our numerous conversations on this topic with Gerry have not been productive.

The Spehar/Ross/CC-1 claims [Former Chairman Dick Ross had also challenged the capitalization schedule used for the Newco vote] should not be allowed to delay or in any way hinder the proposed transaction. Even if their claims were deemed to have

merit, the appropriate venue for the resolution of those claims will be in the winding up of CMGT. That is not before us today.

I am confident that any claims against the transaction will not succeed and, as a practical matter, the only substantive effect we will be facing is additional documentation complexity and a delay in the winding up of CMGT, Inc."

- Note: This passage clearly indicates that Given had anticipated SC's TRO and specifically set Newco up to make a TRO legally inappropriate
- Be that as it may, a court (obviously) had discretion to grant a TRO if it saw fit. Therefore, it was incumbent upon Given, as CMGT's only counsel, to either appear and make the appropriate arguments (see Given's 9/19 post-TRO email arguments) at SC's TRO hearing or advise CMGT that it needed to seek other counsel who would appear and make these arguments.

"We have satisfied the notice and voting requirements to consummate the Newco transaction and have provided answers to shareholders questions in my letters to you. I'm now putting my full efforts into the completion of definitive documentation and meeting our target closing date of September 30th"

- Franco's 9/1 internal CMGT memo, Substantive Potential Claims/Litigation Issues:
 - Rated the "Degree of Risk" of SC legal action "High",
 - Said that there was "no curative action required",
 - Called SC's claim "Meritless" and
 - Noted "All issues subject to legal opinion of Mayer, Brown, Rowe & Maw (Legal counsel for CMGT, Inc.)."
- Given's 9/19 email to CMGT shareholders (emphasis added):
 - Gerry Spehar asserted that his contract applied to the NEWCO transaction, an assertion that...counsel strongly believe(s) has absolutely no substantive basis.
 - We believed, and continue to believe, that Gerry Spehar's claim is absolutely spurious.

2. Given knew from Newco's inception that:

- a) CMGT's officers (and, by extension, its shareholders) would rely on and act on his advice about the merit & effect of SC's potential legal action, and indeed they did.
- b) His conduct & advice had clearly established a "reasonable belief" in CMGT's shareholders that MB would defend CMGT/Newco v SC if necessary:
 - Given was giving advice as CMGT's only lawyer, and one who had always acted in CMGT's behalf on virtually all legal matters in the past. CMGT was very much conditioned by past experience to expect he would act v SC, and Given knew that.
 - It's worth noting that the only piece of advice Given that did not give at the appropriate time was the most important piece of advice: i.e. MB will not represent you v SC, therefore, you need to seek other counsel because it is in your best interest to do so.
 - Franco's 5/7/04 deposition testimony (pg. 57):
"You should pick up the phone, talk to Ron Given, talk lawyer to lawyer, and he will tell you what I am telling you. We could not set foot - couldn't set foot in a California court for legal reasons, and Ron can explain that, and we have no attorney

to represent ourselves. Otherwise, we would show up in court way back when, and this matter would have resolved, because it would be established that there was no funding. Therefore, there wasn't a basis for Gerry's lawsuit and that would have been that."

- Re knowledge, if Given didn't recognize that this "reasonable belief" existed in CMGT & it's shareholders, then why did Given feel compelled to send his 9/17 email ("MB has not been retained to deal with this matter, and we do not expect to be")?
- c) Even though he had anticipated SC's TRO & set up Newco so that a TRO was legally inappropriate, again, that did not guarantee success and a court could still grant SC's TRO. In fact, the chances of that happening were greatly increased if CMGT would not even bother to appear to contest it.
- Given's post-TRO 9/19 email to CMGT shareholders (as to why a TRO was inappropriate):
 - "Gerry Spehar knows that he was entitled to assert his claim against CMGT, in the same way that each of you are entitled to assert your claims, after the NEWCO transaction occurred and when CMGT would finally have something of value that is worth anyone's time and effort to argue about, namely shares of NEWCO stock.
 - It seems obvious that there is no jurisdictional basis for Gary Spehar to bring his lawsuit in Los Angeles.
 - Moreover, injunctions are only appropriate if regular "legal" remedies are inadequate. In this case it is hard to imagine that even Gerry Spehar feels he is entitled to more than the 20% of NEWCO stock that we had hoped to get to CMGT.
 - Injunctive action is also clearly inappropriate if, as seems likely, all Gerry Spehar is really seeking is money."
- d) CMGT would be harmed by SC's TRO; Newco/Trautner would not pay SC, so CMGT would lose its Newco deal.
- SC's 8/16 email to its counsel, Steve Klenda, recapping Franco's 8/15 call with SC (emphasis added):

"Steve, The attached letter [Franco's 8/15 letter to shareholders] evidences the transaction moving along...Lou has agreed to an employment contract - he says they agreed to "every one of my unreasonable demands". With regards to my situation, he has set up a call with Ron Given on Monday and suggested I need to strongly voice my position to Ron and tell him I will sue unless they honor my contract and it's application to this investment - ostensibly to give Lou/Ron the necessary ammo/backbone to stand up to the investor group on my behalf. He said they have insisted it apply and the group walked and had to be drug back. He says Ron feels there are good legal reasons the contract doesn't apply - he won't be specific - but that both he and Ron would be in a better position to defend me if I say the words "I will sue". I told him to go ahead with the call, that I had spoken with counsel and it is accurate to indicate I will take legal action."
 - Franco's 5/7 deposition testimony (pg. 78):

"SC counsel: So you were aware that a lawsuit was filed against you in California?

Franco: Oh yes. That's what caused the funders to leave."

0771

3. There is no evidence that, prior to SC's TRO hearings on 9/10 & 9/12, Given ever:
- a) Told CMGT that MB would not defend its Newco deal v SC.
 - Again, if Given had already, prior to his 9/17 email, informed CMGT that MB would not represent CMGT v SC litigation, then why did he need to send his 9/17 email?
 - Given had clearly not informed Franco of this material fact as late as 9/1, otherwise Franco would not have noted "no curative action is required" in his 9/1 internal memo.
 - Had Given properly advised Franco, Franco would have sought alternate counsel and gone to court v SC.
 - Franco's 5/7/04 deposition testimony (pg. 57):
 "You should pick up the phone, talk to Ron Given, talk lawyer to lawyer, and he will tell you what I am telling you. We could not set foot - couldn't set foot in a California court for legal reasons, and Ron can explain that, and we have no attorney to represent ourselves. Otherwise, we would show up in court way back when, and this matter would have resolved, because it would be established that there was no funding. Therefore, there wasn't a basis for Gerry's lawsuit and that would have been that."
 - On 9/19 minority shareholder Robert Spaeth called SC to say that:
 - Steve Klenda's (SC's counsel) 9/19 email response to Given's 9/19 email was the first he had heard of the Washoe deal,
 - He was also not aware of SC's potential action or the fact that MB would not defend Newco/CMGT when he was asked to vote for Newco, and
 - He felt that Newco was a "fraudulent conveyance" by Given.
 - (FYI, neither Spaeth nor Dick Ross voted to approve Newco)
 - b) Advised CMGT that it should retain other counsel & appear v SC because SC's TRO was beatable. In fact, Franco testified that Given strongly advised CMGT against appearing sometime before SC's 10/3 PI hearing:
 - Franco's 5/7/04 deposition testimony (pg. 57):
"You should pick up the phone, talk to Ron Given, talk lawyer to lawyer, and he will tell you what I am telling you. We could not set foot - couldn't set foot in a California court for legal reasons, and Ron can explain that, and we have no attorney to represent ourselves. Otherwise, we would show up in court way back when, and this matter would have resolved, because it would be established that there was no funding. Therefore, there wasn't a basis for Gerry's lawsuit and that would have been that."
 - See CMGT v MB: Damages Summary-7-6-06 (pg. 4) which argues Given intended to defraud shareholders; his "legal reasons" that Franco referenced above cannot be something simple & plausible, like jurisdiction.
 - c) Made a serious attempt to revive Newco after SC's TRO was granted on 9/12, but before Newco walked away on 10/2.
 - Given's 9/19 (post-TRO) email to shareholders:
 "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."
 - SC counsel's 9/19 response to Given:
 "If, as Mr. Given states, NEWCO "would very much like to do the transaction that it proposed to you," then there may be ways that NEWCO could do so while still

protecting Spehar Capital's rights. Instead of pursuing these options, CMGT apparently has decided to just pull the plug. It is arguable whether such a course of action fulfills CMGT's and Mr. Franco's duties to CMGT's current shareholders and other investors. It is much less arguable whether CMGT's actions qualify as - to paraphrase Mr. Given - the right thing to do."

- SC continued its efforts to settle with CMGT and Newco, enlisting Wayne Baliga, CMGT's largest shareholder. Baliga attempted to broker a Newco solution and discuss other funding alternatives that might benefit from a Washoe take-out at a later date, but Baliga was rebuffed.
 - Baliga's 9/26 email to SC:
"Gerry: I would recommend discussions with Ron and Lou. I discussed the previous proposal with these gentlemen and they want all CMGT proposals to go through them. This is appropriate since they represent CMGT management."
- SC 9/28 email to Franco:
Ron Given, my attorney, Steve Klenda, and I spoke today and thought it wise for all to at least review the business and investment - with Spehar Capital's contract fully paid - before proceeding or walking away. Attached is an updated (October funding) 100% projections spreadsheet for your review.

Washoe take-out interest & other positives: While obviously still subject to due diligence, I spoke with the tribe this week to verify their continued interest in CMGT. When asked "are you still interested?", the answer was "you bet". They expect to have their call center up and running and fully tested about 120 days from now and want revenue producers & equity.

This should give Chuck Trautner's group comfort as they could build the business to breakeven in the interim and potentially sell 51% of CMGT to the tribe in 6 months or strike a partnership arrangement to achieve minority marketing power. If they keep more than 51% ownership in this deal, they could still retain some % of CMGT and go forward with the Washoe as a minority shareholder in the enterprise. The tribe's Director of Development who has been spearheading the project is happy to speak with you and corroborate what I've just relayed.

We still have Council Tree/Madison Dearborn willing to work towards a combined MOIC/CMGT funding.

In short, I can't see a good business reason to walk over my contract - it has no material business effect. If emotions are kept out of this, the deal still makes almost the same amount of sense as it did without me.

I believe these projections are correct and honor our discussions, but am happy to adjust any elements of the spreadsheets if necessary. I am available to participate in any discussions as you see fit.

- Given's 10/1 email to Klenda:
Pardon my delay. Newco counsel info: John Politan; 480-991-9711.
- SC counsel's 10/1 response to Given:
Thank you. I assume that Mr. Politan and the Newco investors have received the information that CMGT was to provide to them? As Newco and Mr. Politan by now should have both my contact info. and this information, I will gladly address any questions that they might have.

0773

- Given's 10/1 response to SC counsel:
I asked Lou the status this morning. He has passed on Gerry's info to the group's business representative (not Chuck). He is returning today from a trip and Lou will follow-up with him.
- Given's 10/2 email to shareholders:
"Lou Franco is currently experiencing problems with his computer and asked that I relay this message to you. You should feel free to direct any questions or comments that you might have directly to Lou.

1. Because Gerry Spehar has not withdrawn his lawsuit, representatives of Newco have advised us that they have terminated their July 31, 2003 Letter of Intent with CMGT. The subject matter of Gerry Spehar's lawsuit no longer exists.

4. In light of all the above, MB had a duty to appear v SC's legal action at TRO.
5. Counsel for CMGT did not appear at SC's 9/10 or 9/12 TRO hearings. Therefore, SC obtained a TRO stopping Newco unless SC was paid. MB was noticed of SC's granted TRO on 9/16.
6. Only then, on 9/17, did MB finally notice CMGT that it would not appear v SC.

Summary:

- MB had a duty to appear v SC's TRO
 - MB & CMGT could expand the scope of MB's engagement by mutual consent, and it can be shown that Given had to have consented to expand the scope to include doing Newco & SC's litigation over Newco.
 - Given admittedly masterminded Newco of his own accord
 - Given freely & repeatedly advised about SC's action of his own accord
 - Given (MB) caused SC's legal action v CMGT by the way he constructed & conducted Newco.
 - Knowingly constructing Newco to exclude SC & breach SC's contract
 - Doing Newco in secret from SC (& CMGT?), which removed any possibility of agreement with SC
 - Refusing meaningful negotiations with SC once Newco was revealed
 - Insisting that SC's claim was meritless & would have no effect on Newco
 - Failing to inform shareholders of the Washoe – an alternative that would have solved the Newco dispute
 - MB repeatedly gave knowingly bad advice to CMGT's shareholders about SC's legal action prior to TRO:
 - SC's claim is "meritless" and/or "spurious",
 - SC's action will have no effect on Newco,
 - Newco will close despite SC's claim.
- CMGT & its innocent non-insider shareholders relied on MB's knowingly bad advice (Franco's 9/1 internal memo).
- CMGT shareholders reasonably believed that MB would appear v SC at TRO.
- Prior to TRO, MB never told shareholders that it would not appear at TRO.

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- MB never advised CMGT that it should seek other counsel and appear because it would beat SC's TRO if it did,
 - Given's 9/19 email explains why, but well after the TRO was granted. (Again, the big question is: Why didn't Given advise CMGT to seek other counsel to plead this sound advice re the inappropriateness of granting SC's TRO?)
- MB had a duty to appear v SC's TRO.
- MB failed it's duty to appear v SC's TRO.
- SC was granted its TRO solely because no one appeared for CMGT
 - The judge tried to help; he even re-scheduled the TRO hearing for 9/12 and required another notice when CMGT failed to appear at the first 9/10 hearing.
- CMGT was harmed when SC was granted its TRO stopping Newco.

B. The doctrine of estoppel by silence estops MB from now claiming it ever noticed CMGT (post TRO) that it would not represent CMGT v SC.

1. MB had a duty to inform shareholders of all known material facts:
 - When Franco & MB induced shareholders to vote for Newco on 8/15,
 - Before shareholders votes were counted on 8/22, and
 - Over the following several weeks before harm was actually done to CMGT.
2. Harm was done when:
 - The Washoe walked away on 9/4,
 - SC's TRO was granted on 9/12 and
 - Newco walked away on 10/2 or before (per Given's 10/2 email).
3. MB first informed CMGT about SC's objection to Newco on 8/27. This was:
 - 12 days after Franco & Given had solicited their approval of Newco (8/15)
 - 5 days after shareholders had approved Newco (8/22) and given Franco their proxies to vote on 9/1.
4. MB first informed shareholders it would not appear v SC on 9/17. This was:
 - 33 days after Franco & Given had solicited their approval of Newco (8/15),
 - 26 days after they had approved Newco (8/22) and given Franco their proxies to vote on 9/1,
 - 16 days after Franco actually voted shareholder proxies to approve Newco (9/1)
 - 13 days after the Washoe walked away (9/4),
 - 5 days after SC's TRO was granted (9/12).
5. MB never advised shareholders that it was in their best interest to seek other counsel and appear v SC. To the contrary, on at least four occasions after his 9/17 notice of non-representation, Given misled and tricked (defrauded) shareholders to keep them from appearing v SC:
 - See Given's 9/19 email to shareholders
 - See Franco's 5/7/04 Deposition (pg 57) re Given's pre-PI advice that CMGT could not set foot in a California court
 - See Given's 10/2 email to shareholders
 - See Franco & Given's filing of bogus UCC's on 12/18

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6. CMGT's innocent non-insider shareholders cannot be blamed. They never had a chance to correct the situation before harm was done:

- SC tried to enlist Baliga to negotiate a settlement, but Given & Franco insisted on handling everything themselves.

Baliga's 9/26 email to SC:

"Gerry: I would recommend discussions with Ron [Given] and Lou [Franco]. I discussed the previous proposal with these gentlemen and they want all CMGT proposals to go through them. This is appropriate since they represent CMGT management."

- Newco walked away sometime before 10/2, i.e. the day before SC's next proceeding, the 10/3 PI hearing. So, shareholders cannot be blamed; they never had an opportunity to appear v SC before all three elements of harm (Washoe, TRO, Newco) were done.

Given's 10/2 email to shareholders:

"Lou Franco is currently experiencing problems with his computer and asked that I relay this message to you. You should feel free to direct any questions or comments that you might have directly to Lou.

1. Because Gerry Spehar has not withdrawn his lawsuit, representatives of Newco have advised us that they have terminated their July 31, 2003 Letter of Intent with CMGT. The subject matter of Gerry Spehar's lawsuit no longer exists.
 2. Representatives of two of CMGT's four clients have advised us that, as a result of the Gerry Spehar lawsuit, they may seek to terminate their business with CMGT.
 3. Gerry Spehar's contract with CMGT expired yesterday. Gerry Spehar no longer has any association whatsoever with CMGT."
- o Given tried to disguise this 10/2 email as Franco talking, but Franco testified on 5/7/04 that it was really from Given.

Franco's 5/7/04 deposition testimony (pg. 53):

Referring to Exhibit 10 which is Given's 10/2 email: "This is just a letter I sent to all the CMGT investors, my last official act. Basically indicated that on September (sic), Ron informed everybody that I resigned. And what I did is I sent copies of the Citations to Discover Assets and the e-mail from Ron Given and the UCC Financing Statement, and I provided that to all the shareholders. That's the letter that did that. You can have a copy of that."

7. In CMGT v MB, the required elements for estoppel by silence under IL law are met:

- Vaughn v. Speaker, 126 Ill. 2d 150, 162-63 (1988). To establish equitable estoppel, the party claiming estoppel must demonstrate that: (1) the other person misrepresented or concealed material facts; (2) the other person knew at the time he or she made the representations that they were untrue; (3) the party claiming estoppel did not know that the representations were untrue when they were made and when they were acted upon; (4) the other person intended or reasonably expected that the party claiming estoppel would act upon the representations; (5) the party claiming estoppel reasonably relied upon the representations in good faith to his or her detriment; and (6) the party claiming

estoppel would be prejudiced by his or her reliance on the representations if the other person is permitted to deny the truth thereof.

- Bondy, 333 Ill. at 546. "Estoppel may arise from silence as well as words. It may arise where there is a duty to speak and the party on whom the duty rests has an opportunity to speak, and, knowing the circumstances, keeps silent. [Citations.] It is the duty of a person having a right, and seeing another about to commit an act infringing upon it, to assert his right. He cannot by his silence induce or encourage the commission of the act and then be heard to complain."
 - Quoting Rick Hammond's IDC Quarterly article (cited in CMGT v MB, 5-29-06):
 - Under the common law of Illinois, the doctrine of equitable estoppel may be invoked only in cases where the words or conduct by the party against whom the estoppel is asserted amounts to a misrepresentation or concealment of a material fact, where the truth respecting those representations is unknown to the party claiming the benefit of the estoppel, and where the party claiming the benefit of the estoppel actually relies on those representations. *Whaley v. American Nat'l Ins. Co.*, 30 Ill. App. 3d 32, 331 N.E.2d 571 (4th Dist. 1975).
 - Thus, an insurer may be estopped by its silence where it had the duty and opportunity to speak, and where it can be shown that the insurer intentionally or negligently disregarded such duty. *Resolute Ins. Co. v. Mississippi*, 290 So.2d 599 (1974).
 - In CMGT v MB:
 - Given had a duty to tell CMGT's innocent shareholders that MB would not defend Newco/CMGT v SC when he solicited their approval of Newco & during the weeks thereafter prior to their being harmed.
 - Given both misrepresented and concealed material facts from CMGT's innocent non-insider shareholders when he induced them to approve Newco and maintain that approval,
 - Given knew he was misleading shareholders,
 - Shareholders were unaware of the truth when they acted on Given's misrepresentations and silence in approving Newco & sticking with that approval,
 - Given intended that CMGT shareholders act as they did on his misrepresentations and silence,
 - CMGT's innocent non-insider shareholders reasonably relied upon Given's misrepresentations & silence in good faith and to their detriment,
 - CMGT's innocent shareholders would be prejudiced by their reliance on Given's misrepresentations & silence if Given is now allowed to rely on its 9/17 notice to CMGT, after material harm (that could have easily been avoided) was done, that MB did not have a duty to represent CMGT v SC's legal action.
8. Injustice would result in allowing MB to assert, after SC's TRO was granted and material harm was done, that it had no duty to defend CMGT/Newco v SC:
- Under IL law, MB can be estopped by silence from entering into evidence Given's 9/17 notice of non-representation to CMGT. For the purposes of CMGT v MB, MB never sent it's 9/17 notice.
 - MB can be estopped by silence from relying on any other post-9/12 (post-TRO) notice of non-representation that it may seek to invoke.

- C. The question of whether CMGT shareholders had a duty to seek alternate counsel to appear for them after MB's 9/17 notice, and failed that duty, is immaterial.

It may be very helpful for a jury to hear about Given's subsequent self-serving campaign of misrepresentation and fraud to keep CMGT's innocent non-insider shareholders from appearing at SC's 10/3 PI & 2/26/04 Default Judgment hearings, solely because he thought that was the safest course of action for MB. However, proving this is not a necessary element to establishing a MB duty to appear at SC's Default Judgment hearing.

It is very important to keep this in mind:

- a) MB very clearly established a duty to represent CMGT at SC's TRO,
- b) Harm was done when the Washoe walked away and SC's TRO was granted.
- c) Newco withdrew it's funding (10/2) before CMGT's shareholder's ever had a chance to go to the next legal proceeding (SC's 10/3 PI hearing) to try to salvage Newco. Therefore, how can anyone blame shareholders for not appearing at subsequent proceedings or for any part of this mess? Material damage was done before they ever had a shot.
- d) As far as SC's \$17mm default judgment itself goes, MB is now estopped by silence from claiming it ever noticed CMGT at any point after TRO. Therefore, for the purposes of CMGT v MB, MB did not notice CMGT & MB's duty to appear v SC extended through SC's Default Judgment hearing on 2/26/04.

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