

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

DAVID GROCHOCINSKI, not individually)
but solely in his capacity as the Chapter 7)
Trustee for the bankruptcy estate of)
CMGT, INC.,)

Plaintiff,)

v.)

MAYER BROWN ROWE & MAW LLP and)
RONALD B. GIVEN,)

Defendants.)

No. 06 C 5486

Judge Virginia M. Kendall

Magistrate Judge Morton Denlow

**DEFENDANTS' APPENDIX OF EXHIBITS IN SUPPORT OF THEIR MOTION
FOR SUMMARY JUDGMENT BASED ON THEIR UNCLEAN HANDS DEFENSES**

VOLUME IV

Exhibit

Description

K Deposition Transcript of Robert Gerard Spehar, dated January 21, 2009,
without exhibits because they have not been cited by Defendants.

Stephen Novack
Mitchell L. Marinello
Steven J. Ciszewski
Novack and Macey LLP
100 N. Riverside Plaza
Chicago, IL 60606
(312) 419-6900

EXHIBIT K

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

DAVID GROCHOCINKSI, not)
individually, but solely in)
his capacity as the Chapter 7)
Trustee for the bankruptcy)
estate of CMGT, INC.,)
Plaintiff,)

vs.) Case No. 06 C 5486

MAYER BROWN ROWE & MAW LLP,)
RONALD B. GIVEN and CHARLES W.)
TRAUTNER,)
Defendants.)

ORIGINAL

The deposition of ROBERT GERARD
SPEHAR, called for examination, taken pursuant to
the Federal Rules of Civil Procedure of the
United States District Courts pertaining to the
taking of depositions, taken before SHARYN A.
EVERMAN, CSR No. 84-2315, a Notary Public within
and for the County of DuPage, State of Illinois,
and a Certified Shorthand Reporter of said state,
at 124 A South County Farm Road, Wheaton,
Illinois, on the 21st day of January, A.D. 2009,

ROBERT GERARD SPEHAR, JANUARY 21, 2009

1 at 8:59 a.m.

2 PRESENT:

3 EDWARD T. JOYCE & ASSOCIATES, P.C.,
4 (Eleven South LaSalle Street, 1600,
5 Chicago, Illinois 60603-1304,
6 312-641-2600), by:

7 MR. ROBERT D. CARROLL,

8 appeared on behalf of the Plaintiff;

9 NOVACK AND MACEY LLP,

10 (100 North Riverside Plaza,
11 Chicago, Illinois 60606-1501,
12 312-419-6900), by:

13 MR. STEVEN J. CISZEWSKI,

14 appeared on behalf of the Defendants;

15 O'BRIEN LAW OFFICES, P.C.,

16 (124A South County Farm Road,
17 Wheaton, Illinois 60187,
18 630-871-9400), by:

19 MR. MICHAEL A. O'BRIEN,

20 appeared on behalf of the Deponent.

21

22 REPORTED BY: SHARYN A. EVERMAN, C.S.R.

23 CERTIFICATE NO. 84-2315.

24

ROBERT GERARD SPEHAR, JANUARY 21, 2009

1 (WHEREUPON, the witness was duly
2 sworn.)

3 ROBERT GERARD SPEHAR,
4 called as a witness herein, having been first
5 duly sworn, was examined and testified as
6 follows:

7 EXAMINATION

8 BY MR. CISZEWSKI:

9 Q. Good morning, sir. Can you state and
10 spell your name, please?

11 A. I'm Robert Gerard Spehar, but I go by
12 Gerry, G-e-r-r-y, S-p-e-h-a-r.

13 Q. Okay. Mr. Spehar, you agreed to
14 appear here in Illinois voluntarily if we paid
15 your travel costs?

16 A. That is correct.

17 Q. Okay. And are you represented by
18 counsel here this morning?

19 A. I am represented by counsel, Michael
20 O'Brien.

21 Q. And Mr. O'Brien advised me that your
22 travel costs were \$762.35, and he submitted
23 documentation for most of that and then estimated
24 the cab fare, so I'm handing you a check that we

1 have made out to Spehar Capital LLC for \$762.35.

2 A. Thank you.

3 Q. And do you agree that that discharges
4 any obligation that my firm or my client had to
5 pay for your travel expenses to come here?

6 A. I do.

7 Q. Okay. Now, what is Spehar Capital
8 LLC?

9 A. It is a California limited liability
10 corporation.

11 Q. And what does it do?

12 A. It was formed initially as a trading
13 enterprise -- I came out of the securities
14 industry -- but also it helps advise -- not
15 advise, but actually consults with clients to
16 help them raise venture capital.

17 Q. And is Spehar Capital LLC still
18 operating?

19 A. Yes, it is.

20 Q. For the same functions that you just
21 mentioned?

22 A. Yes.

23 Q. And what's your role at Spehar
24 Capital?

ROBERT GERARD SPEHAR, JANUARY 21, 2009

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

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

6 A. I do, yes.

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

9 A. No.

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

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

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

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

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

6 Q. Okay. When was Spehar Capital formed?

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

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

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

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

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

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

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

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

13 A. For the four clients?

14 Q. Um-hum.

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

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

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

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

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

5 A. No.

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

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

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

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

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

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

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

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

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

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

7 Q. Hold on a second.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

15 A. Yes.

16 Q. And did he approach you?

17 A. Yes.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

8 A. Yes.

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

11 A. No.

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

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

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

24 And I realized that they didn't have

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

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

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

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

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

17 A. Yeah, I can't recall.

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

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

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

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

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

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

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

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

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1 that were presented to you?

2 A. Oh, yeah, a lot.

3 Q. Okay.

4 A. I wanted to be very selective from
5 what I was doing. Initially I didn't want to do
6 this; and then my financial situation changed, so
7 that was a bit of a driver, too.

8 But I was very selective about the
9 opportunities I wanted to be involved in, and I
10 saw great opportunity in CMGT and the MOIC, so
11 that's where I devoted my time.

12 Q. And while you were working with CMGT,
13 though, were there other opportunities that
14 presented themselves that you would have liked to
15 have gotten involved with?

16 A. Yes.

17 Q. But you couldn't because of the time
18 spent with CMGT?

19 A. Yeah, it was part of that.

20 Q. Now, you know who Ron Given is, right?

21 A. I sure do.

22 Q. And do you know for what reason he was
23 retained by CMGT?

24 A. I believe in reading his engagement

1 letter it was to -- I think initially Mayer Brown
2 was retained to help CMGT with the acquisition of
3 TouchSpeed, and then there was also, I believe,
4 some -- I don't know if they were actively trying
5 to raise funds. Ron kind of deferred to me once
6 I came on board on that, but I believe there was
7 a component of the engagement that had to do with
8 that as well.

9 Q. Do you know what Ron's background is
10 or what his area of expertise is?

11 A. I knew him as a commercial -- his
12 involvement with CMGT mostly on the business
13 side, but Ron was -- you know, the way he dealt
14 with CMGT, he was the lawyer for absolutely
15 everything they did.

16 Q. Okay. But you know that Mr. Given
17 doesn't have a litigation background, right?

18 A. I didn't know that for certain. I
19 didn't know what his background was. I knew his
20 involvement with CMGT was mostly focused on the
21 business side, but, again, he did everything for
22 them. He was their own lawyer.

23 Q. Now, when CMGT approached you about
24 trying to locate financing for it, did you have

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1 an understanding that this financing was
2 essential for CMGT to succeed as a business?

3 A. Yes.

4 Q. And if it didn't get this financing,
5 CMGT was probably going to fail; isn't that a
6 fair statement?

7 A. Yes. If they didn't get financed,
8 that they did need some financing.

9 Q. I want to talk about a couple
10 documents here.

11 MR. CISZEWSKI: Let's mark this as Spehar 1.

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

16 BY MR. CISZEWSKI:

17 Q. Now, sir, you've been handed what we
18 have marked as Spehar Deposition Exhibit No. 1.

19 Do you recognize this document?

20 A. I do.

21 Q. Okay. And what do you recognize it to
22 be?

23 A. One of the documents that CMGT put
24 together to explain to potential investors,

1 prospective investors, its position, market
2 position.

3 Q. Okay. Did you prepare this document?

4 A. I probably worked on this document
5 with Lou Franco jointly. He and I worked
6 together on most of these jointly.

7 Q. Okay. I want to direct your attention
8 to the third page of this document; and after the
9 end of the bullet point list, you see the
10 paragraph that starts, "This tracking
11 illustrates"?

12 A. Correct.

13 Q. Okay. At the very end of the third
14 line, there's a sentence that says, "Also CMGT
15 was generating both substantial RFP activity,"
16 and I want to stop there.

17 What is RFP activity?

18 A. Request for proposal.

19 Q. What does that mean?

20 A. That's an insurance term. CMGT was
21 piggybacking on the insurance experience of all
22 of its principals, including some of its major
23 investors, like Wayne Baliga; and in the
24 insurance business, Hartford, Cigna, Liberty

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

4 Q. Okay.

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

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

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

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

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

24 I may have those names mixed up a

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

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

5 A. Yes. That would be eBay.

6 Q. Anybody else?

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

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

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

21 A. Correct.

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

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1 A. Yes.

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

5 Can you explain what that sentence
6 means?

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

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

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

24 Q. And what was the basis for your belief

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

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

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

10 A. Yes.

11 Q. Do you recall when that was?

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

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

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

24 I know they were still in the mix and

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

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

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

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

17 Q. Did those discussions lead to
18 anything?

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

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

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

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

7 A. Correct.

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

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

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

24 Q. What was the nature of the strategic

1 relationship with Jackson Lewis?

2 A. Michael Lotito and, I think, Frank
3 Alvarez were the two partners who were dealing
4 with that. Their business was workplace issues.

5 CMGT was a very -- they viewed CMGT as
6 a very strong component of an overall strategy
7 they were going to put in place to deal with
8 workplace issues for their clients.

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

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

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

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

24 A. Greg Perez I believe was the fellow

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

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

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

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

22 Is there any other business that
23 CMGT --

24 A. Got from Aon?

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1 Q. Yes.

2 A. That's a question for Lou. I don't
3 know.

4 Q. And what about Marsh? Can you explain
5 the nature of that relationship?

6 A. Same thing there. Dawn Darmore I
7 believe is the lady's name there at Marsh who was
8 running that side of the business for Marsh. She
9 was a proponent of CMGT. She wrote a letter of
10 recommendation to Sealaska.

11 And the same as Aon, basically, they
12 viewed CMGT as the premier provider, and she was
13 referring clients; but, again, she wanted to
14 only -- she wanted to know CMGT was funded before
15 she would really go great guns with that.

16 Q. Do you know how many clients were
17 referred?

18 A. I do not. Lou would know that.

19 Q. And what about ICS? What was the
20 nature of that relationship?

21 A. They were a more formal partner in the
22 sense -- Lou might have even had a formal written
23 agreement with them. I'm not sure if he did or
24 not.

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1 But they referred -- if I recall, I
2 think Lou might have gotten eBay and ZILOG
3 through them. They were working on the
4 California school systems also.

5 Q. Now, do you know if ICS had any
6 hesitation about referrals because of the lack of
7 financing?

8 A. ICS was better about that. They were
9 not as reluctant as the others, although they did
10 have concerns.

11 Q. Okay. So there was some reluctance;
12 just not as much as others?

13 A. Yes, they still referred.

14 MR. CISZEWSKI: Go ahead and mark this as
15 Exhibit No. 2.

16 (WHEREUPON, a certain document
17 was marked Spehar Exhibit
18 No. 2, for identification, as of
19 1/21/09.)

20 BY MR. CISZEWSKI:

21 Q. Mr. Spehar, you've been handed what we
22 marked as Exhibit No. 2.

23 A. Yes.

24 Q. Are you able to identify what this is?

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1 A. Yes.

2 Q. And what is it?

3 A. This looks like an e-mail that was
4 from Lou to Tom Rogers of Odin Capital, a copy to
5 me about -- we were working with -- we were
6 trying to get Odin Capital to fund us at that
7 point in time.

8 Q. I think we've said Lou a couple of
9 time, both of us.

10 We are both referring to Lou Franco,
11 is that right?

12 A. Correct.

13 Q. And we have been throughout the
14 whole --

15 A. Yes, yes.

16 Q. Can you read the paragraph starting
17 with "Active Clients" -- it's the third
18 paragraph -- and ending with "Client Totals"?

19 A. "We have 7 active --"

20 Q. You don't have to -- just read it to
21 yourself.

22 A. Okay.

23 (Short pause.)

24 BY THE WITNESS:

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1 A. Okay.

2 BY MR. CISZEWSKI:

3 Q. And does this to the best of your
4 recollection accurately reflect the client base
5 that CMGT had at this time, which was about
6 February of 2002?

7 A. I believe so, yes.

8 Q. Okay. That's all the questions I've
9 got about that document.

10 (WHEREUPON, a certain document
11 was marked Spehar Exhibit
12 No. 3, for identification, as of
13 1/21/09.)

14 BY MR. CISZEWSKI:

15 Q. We have handed you what's been marked
16 as Deposition Exhibit No. 3.

17 A. Um-hum.

18 Q. Can you identify this document?

19 A. Yes, I can.

20 Q. What is this?

21 A. This appears to be an e-mail from me
22 to Andrea Davis, who was the liaison with
23 Siemens.

24 Q. Okay. And were you working on a

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1 potential financing transaction with Siemens?

2 A. Yes, and it was -- Siemens was being a
3 liaison to the Washoe tribe.

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

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

10 (Short pause.)

11 BY THE WITNESS:

12 A. Okay.

13 BY MR. CISZEWSKI:

14 Q. You wrote this paragraph, right?

15 A. Yes, I believe I did.

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

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

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

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1 before it went out?

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

4 Q. Okay.

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

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

13 A. Yes.

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

16 A. Definitely, yes.

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

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

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

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

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

5 A. Yes.

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

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

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

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

20 A. I had been told that, yes.

21 Q. Who were you told that by?

22 A. Lou Franco.

23 Q. When did he tell you that?

24 A. Several times.

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

3 A. No, I don't.

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

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

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

14 A. With Lou.

15 Q. Okay.

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

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

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

24 Q. Did you ever see any documentation of

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1 Lou's assertion to you that the officers were
2 charging things on their personal credit cards?

3 A. No.

4 Q. Did you have any reason to doubt what
5 he said about that?

6 A. No. I was very assiduous with him
7 telling him that I wanted to represent honestly
8 to clients, and so that's what I represented.

9 Q. So you believed him?

10 A. Yes.

11 Q. And would you say at this point in
12 time, which this e-mail is in July of 2003, that
13 CMGT was in a desperate financial condition?

14 A. Yes.

15 Q. And that was because they hadn't
16 gotten funding, is that right?

17 A. Correct.

18 MR. CISZEWSKI: This will be No. 4.

19 (WHEREUPON, a certain document
20 was marked Spehar Exhibit
21 No. 4, for identification, as of
22 1/21/09.)

23 BY MR. CISZEWSKI:

24 Q. Sir, we have handed you what's been

1 marked as Spehar Deposition Exhibit No. 4.

2 Are you able to identify this
3 document?

4 A. Yes.

5 Q. What is it?

6 A. It's an e-mail that went to someone at
7 Warburg Pincus from me, copied to Lou Franco.

8 Q. And if you look towards the bottom of
9 Page 1, it looks like it has the same or very
10 similar "We currently service 4 clients"
11 paragraph --

12 A. Um-hum.

13 Q. -- that we saw from the last e-mail,
14 is that right?

15 A. It looks like it, yes.

16 Q. And so CMGT's financial condition
17 didn't improve between July and August of 2003,
18 is that right?

19 A. No.

20 Q. And no financing was obtained during
21 that time period?

22 A. No.

23 MR. O'BRIEN: I'm sorry. Can we just read
24 that question and answer back? I think there was

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1 a double negative that doesn't sound right.

2 MR. CISZEWSKI: Okay. Let me just ask a
3 different question.

4 BY MR. CISZEWSKI:

5 Q. Was any financing obtained by CMGT
6 between July and August of 2003?

7 A. During the month of August?

8 Q. Right.

9 A. No, not that I'm aware of.

10 THE WITNESS: Thank you.

11 MR. O'BRIEN: Sure.

12 MR. CISZEWSKI: Let's go ahead and mark this
13 as Exhibit No. 5, please.

14 (WHEREUPON, a certain document
15 was marked Spehar Exhibit
16 No. 5, for identification, as of
17 1/21/09.)

18 BY MR. CISZEWSKI:

19 Q. We have handed you what's been marked
20 as Spehar Deposition Exhibit No. 5.

21 Are you able to identify this
22 document?

23 A. Yes, I am.

24 Q. And what is it?

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1 A. This is an e-mail from myself to Lou
2 Franco copied to a couple of shareholders.

3 Q. And what was the involvement of
4 Warburg Pincus at this time?

5 A. This was 2003. We were now 2 years
6 post-9/11, and the venture capital market was
7 beginning to come back.

8 Warburg Pincus is perhaps the
9 premier -- one of the premier venture capitalists
10 in this country. They were looking seriously at
11 the absence management business as a potential
12 investment, and they out of the blue contacted
13 CMGT -- I think on reference from perhaps Marsh
14 or Aon -- and asked us to send them some
15 information so they could evaluate a potential
16 investment.

17 Q. When did Warburg Pincus contact CMGT?

18 A. Best of my recollection, it would have
19 been sometime maybe July, early August, somewhere
20 in there; late July or early August. I'm
21 guessing.

22 Q. Of 2003?

23 A. Correct. It was a surprise call.

24 Q. And did CMGT ever provide

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

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

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

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

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

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

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

20 Q. Okay.

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

22 Q. And was Salman Niaz --

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

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1 Q. Was that someone at Warburg Pincus?

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

5 Q. Great.

6 MR. CISZEWSKI: Mark this as Exhibit No. 6.

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

11 BY MR. CISZEWSKI:

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

17 A. Okay.

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

20 A. Okay.

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

23 A. Yes, I can.

24 Q. What is it?

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

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

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

10 Q. And how do you know that?

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

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

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

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

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

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

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

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

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

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

22 A. Yes.

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

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1 A. Yes.

2 MR. O'BRIEN: I'm sorry. Which paragraph?

3 MR. CISZEWSKI: Paragraph 45, first
4 sentence.

5 BY THE WITNESS:

6 A. I see that.

7 BY MR. CISZEWSKI:

8 Q. And that sentence isn't true, is it?

9 A. They never did deliver a signed letter
10 of intent, no, they did not. They did commit to
11 delivering one.

12 When they actually put it on their
13 letterhead, the chairman wanted to send it to
14 CMGT to sign first; and so there became a
15 disconnect there between what they had committed
16 to and what they actually ended up doing.

17 But, no, they ended up not signing it,
18 again because they expected CMGT to sign it
19 first.

20 Q. Okay. So these last three words,
21 "which they did," those are false, right?

22 A. They are a mistake.

23 Q. Okay. You've talked to the trustee in
24 this case, David Grochocinski, right?

1 A. I have, yes.

2 Q. Did he ever ask you if the Washoe
3 signed this letter of intent?

4 A. I can't recall. I don't believe so,
5 but I can't recall.

6 Q. And you've talked to the trustee's
7 counsel in this case?

8 A. Yes.

9 Q. Did they ever ask you if the Washoe
10 signed the letter of intent?

11 A. Again, I can't recall specifically.

12 Q. Can you recall it at all?

13 You said you can't recall it
14 specifically, so I don't want there to be any
15 confusion.

16 A. I don't believe -- I don't know. I
17 cannot recall if they ever specifically asked me.

18 I mean, there is no signed letter of
19 intent that I know of; put it this way. I
20 believe this would be an inadvertent mistake.

21 Q. Okay.

22 A. The mistake would be that they are --
23 go ahead.

24 Q. Okay. But as you sit here today, you

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1 don't recall any instance in which either the
2 trustee or his counsel asked you if the Washoe
3 signed a letter of intent?

4 A. Specifically that, no, I do not.

5 Q. And the Washoe deal didn't close, is
6 that fair?

7 A. That is true.

8 Q. Okay. And in your opinion, what are
9 the reasons that the Washoe didn't close?

10 A. The reason it did not close was
11 because Ron Given changed the terms that you see
12 in that Exhibit 6 here to more onerous terms that
13 the Washoe could not live with.

14 Specifically he redlined this and sent
15 it back to them stating that they would have to
16 have their due diligence done, A, by
17 September 30th, and, B, CMGT -- so they were not
18 going to have any sort of extension of
19 October 15th, which they had expected; and, B,
20 that CMGT could close its Newco deal at any point
21 prior to September 30th, which would obviate
22 their due diligence.

23 So the Washoe could not live with
24 that, Ron was adamant about that, and that's why

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1 the deal walked.

2 Q. Why do you say that the Washoe thought
3 that they would be able to get an extension until
4 October 15th?

5 A. Because if you look at -- I can't
6 recall the exact document, but there is -- CMGT
7 had the ability -- and I believe it's in the
8 Newco LOI, but I'm not sure; we'd have to look at
9 this -- to extend the closing period for Newco
10 to, I believe it was, October 17th maybe even.

11 I spoke with Lou Franco about giving
12 the Washoe that extra leeway to do due diligence
13 so they'd have at least 45 days, and he agreed
14 that that would be a wise thing.

15 That's what I told the Washoe they
16 could have. That's where Lou came back later --
17 you were referring to something he had a
18 disagreement with me over.

19 He specifically authorized that. I
20 told the Washoe they could have that amount of
21 time for due diligence. Ron was adamant that
22 they could not once Lou went to him, and that's
23 how it happened.

24 Q. So I just want to make sure I get the

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1 sequence of events right.

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

4 A. Yes.

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

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

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

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

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

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1 Ron to try and get something done besides Newco.

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

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

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

24 Q. Did the Washoe ever tell you why it

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

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

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

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

17 A. Why they were late?

18 Q. Why it took 2 weeks.

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

24 Q. Was it Garrett?

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1 A. Yes, Garrett Furuichi.

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

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

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

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

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

15 A. Okay. Thank you.

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

19 A. My apologies.

20 Q. That's all right.

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

1 Lou said you shouldn't have done that?

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

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

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

10 Q. Okay.

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

13 Q. And when did that start?

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

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

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

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

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

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

15 A. Yes.

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

18 A. Yes.

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

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

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

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

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

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

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

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

24 Q. And did you tell anybody at the Washoe

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

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

5 Q. And only Garrett?

6 A. Yes.

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

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

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

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

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

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

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

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

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

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

11 Q. Okay.

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

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

18 A. Director?

19 Q. Directly.

20 A. Directly? Yes, he did.

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

23 A. That's correct. I refused.

24 Q. Why did you refuse?

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

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

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

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

14 A. No.

15 Q. -- involved in the conversation?

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

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

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

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

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

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

6 A. Yes, we did.

7 Q. When did that take place?

8 A. I believe September 4th.

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

11 A. Who said what? It was not that long.
12 It was all centered on the ability to -- to
13 extend the contract so that there would be
14 adequate time for due diligence.

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

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

24 Q. So the Washoe were essentially asking

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1 for two more weeks? Is that --

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

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

10 Q. Okay.

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

14 MR. CISZEWSKI: Mark this as No. 7.

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

19 BY MR. CISZEWSKI:

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

22 A. Okay.

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

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

5 A. Yes.

6 Q. Great.

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

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

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

17 BY MR. CISZEWSKI:

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

20 Can you identify this document?

21 A. Yes.

22 Q. What is it?

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

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

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

6 A. Okay.

7 (Short pause.)

8 BY THE WITNESS:

9 A. Okay.

10 BY MR. CISZEWSKI:

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

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

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

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

1 was enough time.

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

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

6 Q. Did you think that was enough time?

7 A. No.

8 Q. Why not?

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

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

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

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

10 No, they needed more time.

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

15 BY MR. CISZEWSKI:

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

18 Do you recognize this document?

19 A. I do, yes.

20 Q. Okay. And what is this?

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

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

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1 A. I'm done.

2 Q. Okay. And in the second sentence he
3 says that -- his statement is that you had acted
4 without his authority in the past and released an
5 LOI draft that he had asked you to provide only
6 to Ron and himself.

7 Do you know what draft of the LOI he's
8 talking about?

9 A. I believe he was talking about a draft
10 of the LOI that I had put together after speaking
11 to Lou that allowed for the extension of 15 days.

12 Q. So this was something -- the initial
13 draft was sent on August 14th.

14 A. Yes. This was something that was done
15 after the Washoe came back. This is not
16 referring to the initial August 14th draft.

17 Q. Okay. And did you send a draft after
18 the initial draft?

19 A. Yes, yes, I did.

20 Q. And that draft that you sent allowed
21 for the extension to October 15th?

22 A. Yes.

23 Q. Did you have Lou's authority to send
24 that draft to the Washoe?

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1 A. Yes.

2 Q. And why do you believe you had his
3 authority?

4 A. Because we spoke about it.

5 MR. CISZEWSKI: Do you want to just take a
6 minute or two to take a short break?

7 MR. O'BRIEN: Fine.

8 (WHEREUPON, a recess was had.)

9 (WHEREUPON, a certain document
10 was marked Spehar Exhibit
11 No. 10, for identification, as of
12 1/21/09.)

13 BY MR. CISZEWSKI:

14 Q. All right. We are back on the record,
15 and we have tendered to you what's been marked as
16 Spehar Deposition Exhibit No. 10.

17 Can you identify this document?

18 A. Yes. It looks like an e-mail trail
19 from me to Rob Carroll.

20 Q. Okay. And if you look at, reading the
21 numbers now in the lower right-hand corner,
22 03505 --

23 A. Okay.

24 Q. -- can you identify what this document

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1 is?

2 A. Well, not right offhand. Let's see.

3 Q. You'll maybe want to look at the
4 preceding page.

5 A. It appears to be the August 14th --
6 let's see. I'm not sure if this was an
7 attachment. What was this?

8 It looks like this was back on -- that
9 last document may have been attached to an
10 August 13th or 14th e-mail. This might be, I
11 guess, the original August 14th LOI.

12 Q. And did you draft this?

13 A. Yes, I initially drafted it.

14 Q. And so with the LOI that you drafted
15 dated August 14, 2003, under Paragraph 1 there,
16 the due diligence period was contemplated that it
17 would be completed by September 30th?

18 A. Correct.

19 Q. Did you think that was enough time to
20 get the due diligence done when you drafted this?

21 A. I apparently did. Again, we are at
22 August 14th right now, and we were anticipating
23 that this might go very quickly, so we are
24 looking at 45 days or longer.

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1 Q. So if the Washoe would have
2 immediately responded to this LOI, then there
3 would have been enough time for them to do the
4 due diligence?

5 A. I would have hoped so, but there was
6 also the ability to extend if we needed it. I
7 just -- basically I wanted to get the ball
8 rolling as fast as we could and get these guys
9 into it and doing it so there could be a sense of
10 them actually closing the deal.

11 Q. Had you talked to the Washoe prior to
12 drafting this letter about what type of due
13 diligence period they would need?

14 A. No. I think at that point in time we
15 were going off of Siemens/Andrea Davis
16 conversation. I don't believe at that point in
17 time I had been connected with Garrett Furuichi
18 yet.

19 Q. And what was it based on your
20 conversations with Andrea at Siemens about due
21 diligence?

22 Let me strike that question.

23 Did you talk with Andrea at Siemens
24 about the due diligence period that the Washoe

1 might require?

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

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

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

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

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

16 A. Correct.

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

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

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

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

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

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

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

20 A. Yes, I am.

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

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

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

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

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

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

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