

ROBERT GERARD SPEHAR, JANUARY 21, 2009

1 appropriate template of questions.

2 Q. So, in other words, it was a template
3 that the operator could draw upon when an
4 employee called in the call center?

5 A. Um-hum, and it was worked over on an
6 individual basis with particular clients, so
7 their HR department would sign off on that.

8 And then it would -- again, it's very
9 important to note it integrated all of the
10 different softwares of the different providers.
11 That's why Hartford and those people liked it,
12 because it required setting up on their end and
13 it was a communication interface between them and
14 the HR and payroll systems of the employer
15 itself.

16 Q. Okay. So it was -- do you consider
17 this software to be a key component of CMGT's
18 value?

19 A. Yes, it was at the time.

20 Q. I mean, do you think it was CMGT's
21 most valuable asset?

22 A. I think it was a component of it. I
23 think the model that they had, the relationships
24 that they had, all of that stuff was very

1 valuable.

2 Q. Now, as part of your agreement with
3 the trustee in this case, did you acquire that
4 software?

5 A. I did.

6 Q. Okay. How much did pay for it?

7 A. \$1,500.

8 Q. And how was that purchase price
9 decided?

10 A. It was -- I had, if I recall
11 correctly, come to an agreement with the trustee
12 that I would fund the estate to the tune of
13 \$20,000, and it was just a slice of that that was
14 cut off.

15 And it could have been really any
16 amount of that, but it was also reflective of the
17 fact that Lou Franco had stated at his deposition
18 on May 7, 2004, that the marketplace -- because
19 of the fact that this software, I believe, had
20 been out there now and time had run on it, that
21 it may not be quite as valuable as it was when
22 they had it as proprietary software.

23 Q. Okay. And did you pay the trustee the
24 \$1,500?

1 A. I did.

2 Q. Did the trustee cash or deposit your
3 check?

4 A. He did.

5 Q. And did the trustee ultimately provide
6 the software to you?

7 A. Yes, but this all took place -- I just
8 got this last December, so, again, we are now in
9 2008 and the software was very valuable in 2003.
10 I haven't had a chance to really check its value
11 out now.

12 Q. So you obtained the software when?

13 A. In December of 2008, much to my
14 chagrin; very late.

15 Q. And is it a fully functioning version
16 of the software?

17 A. I have not had a chance to check it
18 out. I've been embroiled in a lawsuit with the
19 trustee and haven't had a chance. It's supposed
20 to be.

21 Q. So you haven't done anything about the
22 software? It's sitting in a drawer or on a
23 computer somewhere?

24 A. For the time being, yes.

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1 Q. Do you intend to do something with it?

2 A. Yes, I do.

3 Q. What do you intend to do?

4 A. I don't know that that's --

5 THE WITNESS: Is that relevant to this?

6 MR. O'BRIEN: You can answer if you have --
7 if you have any present intentions.

8 BY THE WITNESS:

9 A. I really don't have any present
10 intentions right now. I will check out who has
11 been using it, if it has been -- if there have
12 been licenses acquired appropriately or not,
13 because that will be my first step in terms of
14 determining its value. I'll probably have
15 someone review it.

16 BY MR. CISZEWSKI:

17 Q. Okay.

18 (WHEREUPON, a certain document
19 was marked Spehar Exhibit
20 No. 11, for identification, as of
21 1/21/09.)

22 BY MR. CISZEWSKI:

23 Q. I'm going to show you what we have
24 marked as Spehar Deposition Exhibit No. 11.

1 Mr. Spehar, are you able to identify
2 this document?

3 A. Yes, I am.

4 Q. And what is it?

5 A. This is a letter, an e-mail, from me
6 to David Grochocinski.

7 Q. Okay.

8 A. Dated November 16, 2006.

9 Q. I want to have you take a look at the
10 last paragraph there.

11 A. Okay.

12 Q. And if you could just read that to
13 yourself, and I'll ask you a couple questions
14 about it.

15 (Short pause.)

16 BY THE WITNESS:

17 A. Okay.

18 BY MR. CISZEWSKI:

19 Q. In the first sentence you reference
20 the remaining market value CMGT's software may
21 have.

22 Did you know what the remaining market
23 value was at that time?

24 A. No, I have no clue.

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1 Q. Okay. Do you know if it was more or
2 less than \$1,500?

3 A. No, I don't, actually. That's why I
4 was so frustrated not getting it in a timely
5 fashion.

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

10 BY MR. CISZEWSKI:

11 Q. I'm going to show you what we have
12 marked now as Spehar Deposition Exhibit No. 12.

13 Do you recognize this document?

14 A. Yes, I do.

15 Q. What is it?

16 A. This looks like the actual transfer to
17 me of the software.

18 Q. Okay.

19 A. It looks like I misspoke. It was done
20 on November 27th.

21 Q. Okay.

22 MR. O'BRIEN: I'm sorry, counsel. My notes
23 indicate that he testified earlier that it was
24 September, 2008, that he received it. I marked

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1 it because I thought his testimony was incorrect;
2 if this helps to clear up this confusion.

3 BY THE WITNESS:

4 A. Yes, it is correct.

5 BY MR. CISZEWSKI:

6 Q. Does this document refresh your
7 recollection as to when you --

8 A. Yes, it does. The time frame was more
9 December, 2007, rather than 2008.

10 Q. And did Spehar Capital execute the
11 quitclaim bill of sale that's the second page of
12 this document?

13 A. Yes, I did.

14 Q. And is this -- so this was the
15 transmission of what you believe is the fully
16 functioning version of the software?

17 A. What I hope is, yes.

18 Q. Okay. Great.

19 A. And that, by way of parentheses here,
20 I would let you know that the software was a
21 highly sought-after item. People were trying to
22 license it while CMGT was in business, major
23 companies, and CMGT refused to give licenses
24 because they thought it was a valuable asset to

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1 them.

2 Q. Okay. Did CMGT ever put a number on
3 the value of the software?

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

5 (WHEREUPON, a certain document
6 was marked Spehar Exhibit
7 No. 13, for identification, as of
8 1/21/09.)

9 BY MR. CISZEWSKI:

10 Q. Mr. Spehar, we have handed you what's
11 been marked as Deposition Exhibit No. 13.

12 Can you identify what this is?

13 A. This is a letter that I -- an e-mail
14 attaching a letter that I wrote to Lou Franco the
15 day after I found out that I was going to be
16 excluded from the Newco deal.

17 Q. When did you first find out about the
18 Newco deal at all?

19 A. Sitting in a parking lot on August 7th
20 at about 1:00 in the afternoon in Mesquite,
21 Nevada, driving home from my vacation.

22 Q. Who called you?

23 A. Lou Franco.

24 MR. O'BRIEN: Could you be more specific?

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1 THE WITNESS: Would you like to speak to my
2 wife about that one?

3 BY MR. CISZEWSKI:

4 Q. What did he tell you about the deal
5 during that telephone call?

6 A. He said, "Are you sitting down,
7 Gerry?" I said yes, and he said that Chuck
8 Trautner had come up with a Newco deal and that I
9 was not going to be a part of it.

10 And I told him that's not correct,
11 that Chuck Trautner was under my contract, and he
12 was -- it was a -- as much out of the blue
13 conversation that I've ever had in my life. I
14 was totally surprised by it.

15 Q. How long did this conversation last?

16 A. You know, it's all a cloud after the
17 first words, Steve, but I would imagine it lasted
18 not very long; maybe 5, 10 minutes. I went home
19 and told him I was going to respond.

20 Q. Was anybody else on the telephone
21 besides you and Lou Franco?

22 A. My wife was sitting there, but she
23 wasn't on the telephone, no.

24 Q. Ron Given was not on the call?

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1 A. No.

2 Q. And is this the response that you
3 prepared after that phone call?

4 A. Yes, it is.

5 Q. Okay. And you, in fact, transmitted
6 this document by e-mail to Mr. Franco and
7 Mr. Given?

8 A. I did.

9 Q. And it's Friday, August 8, 2003?

10 A. Yes.

11 Q. Who drafted this document?

12 A. I did.

13 Q. Did you have an attorney review it
14 before it went out?

15 A. No.

16 Q. At the time that you prepared this
17 document, had you retained an attorney relating
18 to your --

19 A. No.

20 Q. Okay. Let me just finish the question
21 so that the record is clear.

22 A. I'm sorry.

23 Q. Had you retained an attorney relating
24 to your compensation agreement with CMGT?

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1 A. No.

2 Q. When did you first retain an attorney
3 to represent you in connection with the dispute
4 about whether you would get paid as part of the
5 Newco deal?

6 A. I can't tell you the exact date, but
7 it was sometime fairly shortly after this I
8 retained Steve Klenda.

9 Q. When you say "fairly shortly," do you
10 mean days?

11 A. I assume I -- you know, looking back
12 on it, again it's all a blur; but I called Steve
13 fairly quickly -- meaning within days probably --
14 and began discussing it with him.

15 When I actually retained him, I can't
16 tell you; but I had discussions fairly quickly,
17 meaning within days.

18 Q. And then you also ultimately retained
19 Ken Franklin, is that right?

20 A. That's correct.

21 Q. And when did that take place?

22 A. When we had decided -- you know, our
23 initial strategy was to try and effect some sort
24 of a settlement; so when it became evident that

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1 that wasn't going to take place -- Ron Given
2 really dug in his heels and refused to talk about
3 anything that made any sense whatsoever; in fact,
4 talk about anything -- it was roughly
5 August 19th.

6 I think from that point forward we
7 probably had decided that it was going to have to
8 involve some sort of legal action if it was going
9 to even work out in a settlement, so sometime
10 after August 19th was when I began looking for
11 California counsel, which would be Ken Franklin.

12 Q. And does this letter set forth all of
13 the reasons that you thought you were entitled to
14 compensation for the Newco deal?

15 A. All of the reasons? I would have to
16 read it carefully to know -- if it puts them all
17 in there. I'm sure it sets forth a bunch of
18 them.

19 Q. It's only two pages, so can you take a
20 minute to read it and see if you can think of
21 anything that's missing?

22 A. Okay.

23 (Short pause.)

24 BY THE WITNESS:

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1 A. I think it's pretty comprehensive,
2 yes.

3 BY MR. CISZEWSKI:

4 Q. Okay. And you would -- I mean, you
5 don't deny that Mr. Trautner is not listed on
6 Exhibit A of your agreement?

7 A. No, I do not; but you've noticed, of
8 course, that Exhibit A is to be updated from time
9 to time.

10 Q. Sure. Now, let's assume for a second
11 that Trautner is on Exhibit A and that you would
12 be entitled to compensation for Newco.

13 A. Okay.

14 Q. Didn't CMGT actually have to get
15 funded in order for you to be entitled to
16 compensation?

17 A. No. In terms of the cash
18 compensation, yes, I couldn't get any cash.

19 CMGT, if you look at the contract, had
20 to accept a commitment for me to get my stock and
21 my investment banking rights and exclusivity; so
22 once they accepted a commitment, which they did,
23 that all vested.

24 Q. Okay. So what are the different

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1 components of your -- of the compensation that
2 you're entitled to?

3 A. The first contract started out with a
4 cash compensation of 6 percent; stock
5 compensation of 6 percent of the stock;
6 investment banking rights, which gave me the
7 right to do all of their future investment
8 banking activities, which went hand-in-hand with
9 the exclusivity clause.

10 The second contract recognized the
11 fact that I had done things outside of the scope
12 of what I was supposed to do -- namely, putting
13 together all the projections which became the
14 foundation of CMGT -- so there was also a
15 management -- I think it was a management
16 consulting fee in there of a hundred thousand
17 dollars that was added to the second contract.

18 Q. So which one of those do you contend
19 that you were entitled to once CMGT accepted a
20 deal?

21 A. Once they accepted the deal? I would
22 have to -- I know for certain -- I'd have to
23 review the contract to be sure of this, but what
24 I contend right now, what I understand and

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1 remember right now, is that the acceptance
2 triggered the stock compensation, triggered the
3 investment banking rights, triggered the
4 exclusivity.

5 It probably also triggered the cash
6 compensation; but until they actually received
7 their money, I couldn't get paid.

8 And there were two components of cash
9 compensation. One was the finder's fee, if you
10 will, and the second was the management
11 consulting fee.

12 Q. Other than Newco and the Washoe, were
13 there any other potential financing deals that
14 were out there for CMGT in August of 2003?

15 A. The minority-owned insurance company
16 co-financing, yes.

17 Q. Anything else?

18 A. I can't think of anything that was
19 that far along as those, no. I mean, there were
20 other overtures out there for sure.

21 Q. But nothing that would be something
22 that could close in a month's time?

23 A. It would have surprised me.

24 Q. And what was the MOIC concept?

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1 A. Minority-owned insurance company --
2 again, this was all predicated on minority
3 ownership, which gives the very valuable minority
4 entree into all entities in this country that
5 were either public entities or do business with
6 public entities. So that's a huge sales tool.

7 And the -- I have a friend, Steve
8 Hillard, who does business with Madison Dearborn.
9 They have several deals called Council Tree
10 Communications deals that they have done with him
11 mostly in the area of communications, but Steve
12 was interested in branching out with his ANC
13 cohorts into looking at insurance.

14 So we put together a package because
15 we had Wayne Baliga and Lou Franco and Jim Wong
16 on board, who were all insurance executives, that
17 would start the nation's first minority-owned
18 insurance company. It was going to be a PC
19 company. Wayne was going to run it and Jim was
20 going to run it and I was a partner in that, but
21 I was there mostly to raise the money.

22 Q. Okay. And would MOIC be out CMGT, or
23 how would that work?

24 A. No. It was presented as a joint

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1 financing of the two. As with Warburg Pincus and
2 some other people, CMGT was too small of a
3 investment for them as a stand-alone investment.

4 So Madison Dearborn wouldn't look at
5 \$2 million. That doesn't even get on the radar
6 screen for them. A hundred million dollars,
7 which was what the MOIC funding was, does.

8 There were tremendous synergies
9 between the two deals. Not only did they have
10 the same management, but they both used an
11 insurance industry model. They both -- they
12 offered a lot of business synergies to each
13 other.

14 So the two deals were packaged as a
15 joint \$102 million financing and pitched that
16 way, and that was initially done in Mayer Brown's
17 offices on August 1st.

18 Q. Of what year?

19 A. 2003.

20 Q. And what was done in Mayer Brown's
21 office that day?

22 A. There was a meeting between Ron Given,
23 Lou Franco, Wayne Baliga, Jim Wong, and myself
24 representing MOIC; and at that meeting there were

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1 representatives of Madison Dearborn Partners and
2 Council Tree Communications. And at that meeting
3 we pitched both CMGT and the MOIC to those two
4 investors.

5 And that was, I would note, a day
6 after the Newco letter of intent had been signed
7 effectively taking CMGT off the table, but
8 nothing was mentioned to me about that.

9 Q. What was the result of that meeting?

10 A. Madison Dearborn was essentially the
11 money behind the deal, so they wanted to walk --
12 to step back and do some initial due diligence on
13 the deals; so they took both and had a look at
14 them.

15 Q. Did they complete their initial due
16 diligence?

17 A. They never did, no. We walked down
18 the road in trying to -- eventually on the MOIC,
19 Madison Dearborn wanted to bring into -- they
20 liked the deal. They said they would be
21 interested in funding it, but they wanted to
22 bring in a more experienced venture capitalist in
23 insurance.

24 So they charged us with and introduced

1 us to several venture capital firms or at least
2 one venture capital firm that they thought would
3 be good for them, and we began the process with
4 them.

5 And prior to that happening, the
6 partnership expired and the deal went by the
7 boards.

8 Q. What do you mean, the partnership
9 expired?

10 A. April of 2004, Ron and Jim and Wayne
11 and Lou informed me that they were pulling out of
12 the partnership. It was a one-year partnership
13 initially that had to be renewed.

14 Q. Did that partnership have a name?

15 A. Millennium Partners, I believe, and
16 Ron was our attorney on that as well.

17 Q. Okay. And so did anybody complete due
18 diligence, even an initial due diligence, with
19 respect to funding the MOIC and CMGT?

20 A. Initial due diligence, yes, Madison
21 Dearborn. We went through quite a bit of initial
22 due diligence with them, and they got to the
23 point of saying they would do the deal if we
24 could bring in a venture capitalist who was more

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1 experienced in insurance.

2 Q. Okay. Now, at some point in time
3 Spehar Capital sued CMGT in California state
4 court, is that right?

5 A. Correct.

6 Q. And I take it you are familiar with
7 that lawsuit?

8 A. I am.

9 Q. And just for abbreviation's sake, I
10 kind of do it when I talk about it, so is it okay
11 if we refer to that as the California action?

12 A. Yes.

13 Q. When it was filed, what did Spehar
14 Capital hope to accomplish by filing the
15 California action?

16 A. I guess, first of all, it was very
17 obvious to me that I would be so far behind the
18 eight ball that there were -- first, there was no
19 attempt at settlement. I couldn't even begin to
20 discuss settlement with Ron, so, you know, that
21 was an issue.

22 I thought and believed that if the
23 deal were to close, there was absolutely no way
24 that I was going to get anything out of it; so it

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1 was an attempt to, first of all, protect myself
2 from that happening and, secondly, to hopefully
3 bring the parties to the table to discuss
4 settlement.

5 Q. And the California -- Spehar Capital's
6 California action prevented CMGT from closing the
7 Newco deal, isn't that right?

8 A. Correct.

9 Q. And was that one of Spehar Capital's
10 goals in filing the action?

11 A. Was it one of my goals? If they were
12 not going to conform to my contract, yes. If
13 they were going to conform to my contract, no.

14 Q. Why couldn't Spehar Capital just wait
15 for the Newco deal to close and then sue for
16 damages to recover its compensation?

17 MR. O'BRIEN: I'm going to object to the
18 extent it calls for a legal opinion, but you can
19 answer.

20 BY THE WITNESS:

21 A. Okay. The Newco deal as agreed to by
22 the shareholders, they picked the option that
23 there was no cash involved and there was only
24 20 percent of Newco involved. And CMGT -- so

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1 what CMGT would have was 20 percent of Newco and
2 all of the debt left there, which at that point
3 in time I believe would have amounted to a
4 million dollars or so, and then they would also
5 have 24 angry deluded -- not deluded; what's the
6 word? Misled.

7 MR. O'BRIEN: Watered down?

8 BY THE WITNESS:

9 A. Misled shareholders who were angry at
10 me pooling their resources to fight me.

11 I didn't have any money at that point
12 in time. By that point in time, my major asset,
13 which was Authorizer, was pennies on the dollar
14 thanks to some wonderful management there.

15 This was all known to the Lou and Ron.
16 I believe it was part of their strategy or
17 whoever was running that strategy. I actually
18 put that on Ron more than I do Lou, but I could
19 not have afforded nor could I have gotten counsel
20 to actually go to trial. There is no way a
21 contingency attorney would take a trial against
22 CMGT.

23 Ken Franklin -- I guess I can't really
24 say anything, but I know he would have wanted at

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1 least something like a hundred thousand dollar
2 retainer to go to trial. I couldn't do that. I
3 couldn't afford it.

4 This was my only really effective way
5 of trying to bring justice to the table here.

6 By the way, my bond insurance at that
7 point in time was \$25,000. I had a \$40,000
8 limit.

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

13 BY MR. CISZEWSKI:

14 Q. Sir, we have handed you what's been
15 marked as Deposition Exhibit No. 14.

16 Do you recognize this document?

17 A. Yes.

18 Q. What is it?

19 A. It's an e-mail I sent to Rob Carroll
20 in August of 2005.

21 Q. Okay. And in the second paragraph
22 there, the second sentence, it says, "My TRO was
23 really an attempt to force CMGT and Newco to the
24 table so that we could resolve this and get CMGT

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1 funded."

2 Can you explain what you meant by
3 that?

4 A. Yeah. I could not understand from a
5 business perspective the intransigence on Ron
6 Given's part to negotiate. Ron had understood
7 that we had been through the Sealaska deal. I
8 had already offered to -- Sealaska had -- you
9 know, any funder, when it gets down to it, real
10 estate broker, anybody, the broker is going to be
11 the last guy they want to pay, so I knew that
12 going in.

13 When it came down to having somewhat
14 similar problems with Sealaska, Ron and Lou
15 defended my contract; and I also offered to
16 mitigate some of the -- like the investment
17 banking rights portion of it by just taking a
18 slice of revenue going forward and settling it
19 that way.

20 So Ron knew that I was amenable to
21 that. Lou had even communicated with him and
22 told him that I was reasonable in that regard. I
23 could not understand why he was not trying to
24 talk about -- willing to talk about settlement.

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1 When I butted up against that
2 intransigence, I thought a TRO might actually
3 bring him to the table. If they really wanted to
4 do the deal and they thought it was a good deal,
5 which it was, this would bring them to the table.

6 Q. Okay. And you understood, though,
7 that because you got a TRO that CMGT wouldn't be
8 able to close any financing transaction, right?

9 A. I could always give up the TRO. I
10 mean, why does that mean that we can't continue
11 negotiations?

12 Q. But as long as the TRO was in place,
13 you understood that CMGT couldn't close any
14 financing?

15 A. As long as the TRO was in place, they
16 couldn't close any financings that had anything
17 to do with Spehar Capital; and at that point in
18 time, I believe I had notified them that my
19 contract was exclusive, so, yes, they had to
20 agree that Spehar Capital's contract would be
21 honored and then they could close financings.

22 Q. So you wanted to use that as leverage
23 to get them to the table to negotiate a
24 settlement?

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1 A. That was one of the goals along with
2 protecting myself.

3 Q. And you needed to protect yourself
4 because you couldn't afford or find an attorney
5 that would take a case for damages?

6 A. There was no way in my financial
7 situation at that point in time that I could have
8 done anything. I was even -- doing a default
9 action was difficult for me, put it that way.

10 Q. Okay.

11 A. So difficult that I -- well, we will
12 leave it at that.

13 Q. And is that the reason why your
14 initial complaint didn't seek damages; it just
15 sought the injunctive relief?

16 A. No. The initial complaint was -- this
17 deal was put together in secrecy from me and
18 thrown at me at the last minute, as we have
19 talked about, on August 7th.

20 Getting all of this together to even
21 file a TRO was a difficult process. The fact
22 that damages weren't there was more a function of
23 just having to scramble at that point in time.

24 Q. So you thought you had a claim for

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1 damages; you just didn't have time to get it
2 together?

3 A. Yes, correct.

4 MR. CISZEWSKI: Let's mark this as Exhibit
5 No. 15.

6 (WHEREUPON, a certain document
7 was marked Spehar Exhibit
8 No. 15, for identification, as of
9 1/21/09.)

10 BY MR. CISZEWSKI:

11 Q. Do you recognize this document,
12 Mr. Spehar?

13 A. I do.

14 Q. What is it?

15 A. This is an e-mail, again the same
16 date, August 1, 2005, sent to Rob Carroll from
17 me.

18 Q. Okay. I want to direct your attention
19 to Page 3215.

20 A. Okay.

21 Q. It looks like -- it looks to me like
22 this begins a six-page document that was attached
23 to this e-mail.

24 Is that accurate?

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1 A. Yes.

2 Q. Okay. And what is -- what is this
3 six-page attachment here that begins on 3215?

4 A. It looks to be a memo from me
5 explaining proof of damages.

6 Q. And this was a -- when did you draft
7 this -- did you draft this document?

8 A. I did.

9 Q. And when did you draft it?

10 A. This would have been sometime around
11 the time of -- around February of 2004 when I was
12 going -- when I had to prove up damages at the
13 default hearing.

14 Q. Great.

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

19 BY MR. CISZEWSKI:

20 Q. And, sir, do you recognize this
21 document?

22 A. Again, it appears to be an e-mail to
23 Rob Carroll from me on roughly the same date that
24 we have been talking about, August 1st.

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1 MR. CARROLL: Can I just correct the record?
2 You're inadvertently saying -- you did that on
3 the last one -- from Rob Carroll to me.

4 THE WITNESS: From me to Rob Carroll. I
5 don't know why it says Mike.

6 BY MR. CISZEWSKI:

7 Q. Why it says what?

8 A. It's addressed to Mike, but -- it's
9 addressed to Rob, but it starts out Mike.

10 Q. Okay. I want to direct your attention
11 to Page 3227.

12 A. Okay.

13 Q. And this appears to be the order
14 granting your preliminary injunction on
15 August 3rd, 2003?

16 A. Correct.

17 Q. And the third page of this order at
18 the very bottom says, "Spehar shall post a bond
19 of \$25,000 within 5 days of this order"?

20 A. Yes.

21 Q. Was that bond, in fact, posted?

22 A. Yes, it was.

23 Q. And was that the situation that you
24 said the max you could have posted was 40,000?

ROBERT GERARD SPEHAR, JANUARY 21, 2009

1 A. Correct.

2 Q. Why was the maximum 40,000?

3 A. Because the bonding company limited --
4 put a limit on me of that given my financial
5 situation at that point in time.

6 Q. Now, do you think -- I know you're
7 going to object that I'm calling for a legal
8 conclusion; I just want what your personal
9 opinion is -- that Spehar Capital would have
10 succeeded in its California action if Mayer Brown
11 had appeared to defend -- I'm sorry. I want to
12 ask that question differently.

13 Do you think that Spehar Capital would
14 have succeeded on its California action even if
15 Mayer Brown had appeared to defend CMGT?

16 MR. O'BRIEN: I'm going to object to the
17 extent it calls for a legal conclusion; but
18 subject to that objection, you can answer.

19 BY THE WITNESS:

20 A. At what stage?

21 BY MR. CISZEWSKI:

22 Q. Well, let's start with the TRO.

23 A. I was told --

24 THE WITNESS: Am I not getting into --

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1 MR. O'BRIEN: Your answer should not cover
2 any communications with your attorney regarding
3 the California action.

4 BY THE WITNESS:

5 A. I believed at the time that temporary
6 restraining orders are extremely difficult to
7 get, extremely difficult to the point that it was
8 probably pointless for me to try; but I figured
9 that was my only option at that point in time,
10 and so we tried.

11 At that point in time, I believe we
12 were all extremely surprised that Mayer Brown or
13 CMGT did not show up. The judge, in fact, made
14 us renotice, which we did, and there was a second
15 hearing. Again, we were very surprised they
16 didn't show up.

17 I believed there was a good chance at
18 that stage, at the injunction stage, that we
19 would not have gotten the injunction. And I
20 particularly believed that about the preliminary
21 injunction stage because I think a bond could
22 have been required in a much larger amount. It
23 would have been required in a much larger amount.

24 BY MR. CISZEWSKI:

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1 Q. What about the money damages award
2 that you got after the default judgment was
3 entered?

4 MR. O'BRIEN: Same objection.

5 BY THE WITNESS:

6 A. I proved to the satisfaction of that
7 Court that the damages were reasonably certain.
8 I have no reason to think, you know, that I
9 couldn't have proved the same thing to any court,
10 so I would stand by that.

11 I know you have another opinion on
12 that, but --

13 BY MR. CISZEWSKI:

14 Q. So I just want to make sure it's
15 clear.

16 You think that you would have obtained
17 your \$17 million judgment even had Mayer Brown
18 appeared to defend CMGT?

19 A. I have no reason to believe otherwise.

20 Q. I want to want to show you another
21 document. It's No. 17, I guess.

22 (WHEREUPON, a certain document
23 was marked Spehar Exhibit
24 No. 17, for identification, as of

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1 1/21/09.)

2 BY MR. CISZEWSKI:

3 Q. Are you able to identify this
4 document?

5 A. Yes. This is from my bankruptcy
6 counsel, an e-mail to me, attaching what looks to
7 be like a letter from me to David Grochocinski.

8 Q. And this attachment that's on Spehar
9 Capital letterhead, was that ever sent to
10 Mr. Grochocinski?

11 A. I believe it was.

12 Q. Okay. Who drafted this letter that's
13 on the Spehar Capital letterhead?

14 A. I would have drafted it.

15 Q. Okay. Now, can you take a look at
16 Page 2 of the letter on Spehar Capital
17 letterhead? You'll see in the middle of the
18 document there are three bullet points.

19 Do you see that?

20 A. Yes.

21 Q. Can you read the second bullet point
22 to yourself? And then I'll ask you a question
23 about it.

24 A. Okay.

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1 Q. When it says that SC has arranged this
2 collection process, what did you mean by that?

3 A. What I meant by that was it came to be
4 known to me in the middle of the summer of 2004,
5 roughly July, that perhaps the best action here
6 against Mayer Brown would be as its actual
7 client's -- CMGT -- action.

8 I had a judgment against CMGT. I
9 needed to collect that judgment. I wanted to
10 collect that judgment, so I -- that's what I
11 meant by that. By putting CMGT into bankruptcy
12 to collect my judgment, that also allowed perhaps
13 a process to be put in place that we have today.
14 The bankruptcy estate itself became a plaintiff
15 and sued CMGT.

16 Q. So Spehar Capital put CMGT into
17 involuntary bankruptcy, right?

18 A. Yes.

19 Q. And you viewed that involuntary
20 bankruptcy filing as part of Spehar Capital's
21 efforts to collect on its judgment?

22 A. Yes.

23 Q. Okay. And do you view the trustee's
24 malpractice action against Mayer Brown as a step

1 in the collection process for Spehar Capital's
2 judgment?

3 A. Yes.

4 Q. Now, when you obtained the \$17 million
5 default judgment, you knew that there was no way
6 for CMGT to pay that, right?

7 A. I -- at that point in time, I knew not
8 what was going on with CMGT. I could get no
9 answers.

10 I had -- the information I had at that
11 point in time was that I made a couple of calls I
12 believe up to the call center. They wouldn't
13 talk to me, but they did answer the phone.

14 I don't know what was going on with
15 CMGT. Were they able to -- you know, how they
16 were doing business-wise, what had people done
17 behind the scenes, I had no idea.

18 Q. Now, when Spehar Capital filed the
19 involuntary bankruptcy proceeding against CMGT,
20 did you at that time intend to approach the
21 trustee about filing a malpractice claim against
22 Mayer Brown?

23 A. At the time that --

24 Q. The involuntary was filed.

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1 A. Yes.

2 Q. So it was your intention from the
3 get-go to use the bankruptcy filing to try to
4 collect on your judgment?

5 A. Depends on how you define "get-go."
6 From the filing of the -- if the "get-go" means
7 the initiation of the bankruptcy proceeding, yes.

8 Q. Well, what was the get-go? When was
9 the first time that you made the decision to use
10 an involuntary bankruptcy filing as a way to
11 collect Spehar Capital's judgment?

12 MR. O'BRIEN: I'm going to object to the
13 extent that it calls for any communications
14 between he and his attorneys in formulating that
15 decision; but if he can answer without disclosing
16 those communications, he can answer the question.

17 BY THE WITNESS:

18 A. July, 2004.

19 BY MR. CISZEWSKI:

20 Q. And was that decision based on
21 communications with an attorney?

22 MR. O'BRIEN: You can answer yes or no to
23 that.

24 BY THE WITNESS:

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1 A. Yes.

2 BY MR. CISZEWSKI:

3 Q. Who was the attorney?

4 MR. O'BRIEN: You can answer that.

5 BY THE WITNESS:

6 A. Barry Capello.

7 Q. And what firm is he with?

8 A. Capello & Noel.

9 Q. Where is that?

10 A. They are in Santa Barbara.

11 Q. Who did Mr. Capello represent at that
12 time?

13 A. Who --

14 Q. Did he represent Spehar Capital? Did
15 he represent you individually?

16 I'm just trying to --

17 A. He was my attorney. I was approaching
18 him as Spehar Capital.

19 Q. Okay.

20 MR. CISZEWSKI: Can we go off the record for
21 a second?

22 (WHEREUPON, discussion was had
23 off the record.)

24 BY MR. CISZEWSKI:

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1 Q. Now, Mr. Spehar, I wanted to talk a
2 little bit about the trustee in this case, David
3 Grochocinski.

4 You know who that is?

5 A. I do.

6 Q. And from time to time you've
7 communicated directly with David, right?

8 A. Yes.

9 Q. Okay. Have you ever had any
10 face-to-face meetings with him?

11 A. I've had -- I had one meeting
12 mostly -- in court. That's it.

13 Q. And that was at --

14 A. Adversary actions against me.

15 Q. That was at the most recent trial?

16 A. At the most recent trial and then at
17 the -- there was another adversary action that
18 involved the UCC liens that were filed and I met
19 him at that hearing.

20 MR. O'BRIEN: May I -- I think your question
21 went to direct communications, not episodes where
22 they were in the same room together?

23 MR. CISZEWSKI: I just want to know if he
24 had any face-to-face meetings.

1 BY THE WITNESS:

2 A. That was it.

3 BY MR. CISZEWSKI:

4 Q. Had you ever met Mr. Grochocinski
5 before the malpractice action was filed?

6 A. No.

7 Q. So I take it you did not have any
8 face-to-face meetings with him then before the
9 malpractice action was filed?

10 A. No.

11 Q. And you've also communicated with
12 people in Ed Joyce's office, is that right?

13 A. Correct.

14 Q. Who are -- who have you communicated
15 with in Ed Joyce's offices?

16 A. Primarily Rob Carroll; very
17 occasionally Art Aufmann and Ed Joyce himself.

18 Q. Okay. And did you have any
19 face-to-face meetings with anyone from
20 Mr. Joyce's office before the malpractice action
21 was filed?

22 A. Yes.

23 Q. With whom?

24 A. Had a face-to-face meeting with Rob

1 and Art Aufmann.

2 Q. So it was one meeting and both of them
3 were present?

4 A. I believe that was the only meeting
5 that we had prior to the filing of the
6 malpractice action, correct.

7 Q. Where did that meeting take place?

8 A. In Denver.

9 Q. Was it at Mr. Klenda's office?

10 A. Yes.

11 Q. So I take it in the room were
12 yourself, Mr. Klenda, Mr. Carroll, Mr. Aufmann.

13 Was there anybody else?

14 A. That was it.

15 Q. How long did the meeting last?

16 A. All day, as I recall, from -- I can't
17 give you specific hours, but it was a long
18 meeting.

19 Q. Okay. Now I want to go back to the
20 trustee, Mr. Grochocinski.

21 When was the first time that you
22 communicated with him about a possible
23 malpractice claim against Mayer Brown?

24 A. He came on board, I recall, somewhere

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1 around the middle to late September. It would
2 have been fairly soon after that.

3 Q. Okay. And this is all 2004?

4 A. 2004, correct. So he was picked
5 however they do it from the pool, and we began
6 communicating.

7 Q. Okay. And during the time period
8 before the malpractice action was filed, did you
9 communicate with him -- what was the form of your
10 communication?

11 A. Very rarely actual phone calls,
12 usually e-mails or -- usually e-mails and
13 almost -- after we actually started negotiating,
14 almost exclusively through counsel.

15 In fact, I would qualify that to say
16 that absolutely by far and away the majority of
17 my communications with him would have been
18 through counsel. That's how he preferred to
19 communicate.

20 Q. Now, when was -- let me back up for a
21 second.

22 What did you say to Mr. Grochocinski
23 about a possible malpractice action the first
24 time that you personally talked to him?

1 A. What did I say? That's a long time
2 ago, much to my chagrin.

3 I am certain that I explained what I
4 understood to be the situation, both in terms of
5 the merit of the malpractice action and in terms
6 of the -- how we might proceed in terms of
7 actually effecting an action.

8 Q. And did you talk with him at all at
9 that time about why Spehar Capital filed the
10 involuntary bankruptcy proceeding?

11 A. Did I talk with him about that? Let's
12 see. Yeah, I probably did.

13 Q. Okay. And did you tell him that one
14 of the reasons that Spehar Capital was interested
15 in a malpractice action was so that it could
16 collect on its judgment?

17 A. Yes.

18 Q. How did the trustee respond when you
19 first presented the idea of a malpractice action?

20 A. He had requirements. First of all, he
21 wanted to make sure -- he knew nothing about
22 malpractice. He wanted to make sure it was
23 properly investigated and correct and a valid
24 action to file.

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1 He was concerned that there was -- it
2 was an estate that looked to have no assets other
3 than the malpractice action; and, therefore,
4 someone was going to have to finance both the
5 estate and the action.

6 And he was concerned that the
7 unsecured creditors, which were his primary
8 charge, would get some sort of recovery from it;
9 so he required a carve-out from my secured claim.

10 Q. Now, did you agree with
11 Mr. Grochocinski that other than a possible
12 malpractice claim against Mayer Brown the CMGT
13 bankruptcy estate had no assets?

14 A. Based on his representations, yes, it
15 appeared to me and based on our -- the deposition
16 that we had on Franco and the discovery we had
17 done at that point in time, yes, that all became
18 fairly clear.

19 Q. Okay. And has that view changed at
20 all since that time?

21 A. No.

22 Q. Is it fair to say that Spehar Capital
23 was the first to suggest to the trustee that
24 there was a possible malpractice action against

1 Mayer Brown?

2 A. Yes.

3 Q. How do you know that?

4 A. I lived it.

5 Q. Did the trustee indicate to you during
6 the first conversation you had with him that it
7 was the first time he was hearing about it?

8 A. That would be supposition on my part.
9 I can't actually recall.

10 Q. Now, did the trustee ever indicate to
11 you that he thought your default judgment could
12 possibly be vacated?

13 A. I don't recall any conversations in
14 that regard. I know that -- you know, I'm not
15 going to get into counsel discussion, but that
16 was something that was on the radar screen.

17 Q. Okay. And that was on the radar
18 screen because of communications you had with
19 your own counsel or because of communications you
20 had with somebody else?

21 A. My own counsel.

22 Q. Did you ever talk with the trustee
23 about the validity of your default judgment?

24 A. My default judgment?

1 Q. Yes.

2 A. I'm certain I probably did. I can't
3 recall exact conversations, but I'm certain that
4 I represented to him that I understood it to be
5 absolutely valid.

6 Q. And did you ever talk with the trustee
7 about the question of whether your default
8 judgment could be attacked by the trustee?

9 A. That would have been a communication
10 with my counsel more than me.

11 Q. Now, you mentioned a moment ago that
12 the concept of the default judgment being vacated
13 was something that was on your radar screen
14 because of a discussion you had with counsel.

15 I don't want to know what was said. I
16 just want to know who is the counsel that you had
17 a communication with that led this to be on your
18 radar screen.

19 A. It was -- you know, I had two counsel,
20 Ken Franklin and Steve Klenda. Between the two
21 of them, I don't know who it was.

22 My general understanding was that
23 there were time limits. The judge had mentioned
24 something about this in the actual judgment

1 order, as you well know, so that's how it came to
2 be on the radar screen; so we, as I understand
3 it, tried to conform to whatever deadlines there
4 were with regards to that.

5 (WHEREUPON, a certain document
6 was marked Spehar Exhibit
7 No. 18, for identification, as of
8 1/21/09.)

9 BY MR. CISZEWSKI:

10 Q. Now I'm showing you what's been marked
11 as Deposition Exhibit No. 18.

12 Can you identify what this document
13 is?

14 A. An e-mail from myself to David
15 Grochocinski, November 30, 2004.

16 Q. Okay. And starting on the fourth line
17 there in the first paragraph, it says, "When I
18 last spoke with George, he did say that Mayer
19 Brown might have a large deductible -- \$1 mm or
20 so -- but they are not self-insured (as you
21 thought they might be). Hopefully, this allays
22 some of your expense concerns."

23 Does George -- is that referring to
24 George Spellmire?

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1 A. It is, yes.

2 Q. And why were you interested in Mayer
3 Brown's insurance?

4 A. I think on David's part there was a --
5 he just mentioned the concept that he thought
6 Mayer Brown was self-insured.

7 I had had meetings with Spellmire in
8 trying to line him up before where he mentioned,
9 I believe, the opposite; so that came up in that
10 context.

11 Q. What exactly did David tell you about
12 his thought that Mayer Brown might be
13 self-insured?

14 A. I don't recall, Steve. I think it was
15 just a comment in passing. I'm not sure that it
16 was -- what the import of it was, to tell you the
17 truth.

18 I myself have been trying to learn and
19 decipher all the issues involved in this case as
20 we go along. I don't recall it as being that big
21 of a deal, but it was something he brought up.

22 Q. And do you recall what his concerns
23 were about expenses?

24 A. Yeah. The concerns about expenses

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1 were covering the expenses. Since this is a
2 no-asset, quote, estate, somebody had to pay for
3 the expenses of both the estate, the
4 administrative expenses, and the malpractice
5 expenses.

6 I had discussed an agreement with
7 George Spellmire under which I had understood he
8 would be covering 50 percent of both of those.
9 It was incorrect. He couldn't cover actually any
10 part of the estate, the actual administrative
11 expenses. That was a no-no.

12 I didn't realize that at the time, so
13 we were trying to get that squared away.

14 Q. And how would Mayer Brown's insurance
15 affect David's concerns about the expenses?

16 A. I honestly don't know. My view was
17 that Mayer Brown was -- it really didn't matter
18 whether they were insured or not. They were a
19 large enough law firm to cover it.

20 I can't tell you. That's more of a
21 question for David.

22 Q. You're quite certain that David raised
23 the issue of Mayer Brown's insurance?

24 A. Yes.

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1 Q. Other than Exhibit No. 18, do you
2 recall any other communications you had with
3 David about Mayer Brown's insurance?

4 A. You know, other than if he brought it
5 up in some conversation prior to this that I was
6 responding to here, no.

7 Q. Okay. Do you know what steps the
8 trustee himself, David himself or someone in his
9 office, took to investigate the malpractice claim
10 against Mayer Brown before it was filed?

11 A. No, I don't have chapter and verse on
12 that. I know he had the files. I know we had
13 delivered all of CMGT's files that we had
14 received at deposition to him. I had given all
15 the information that I could on it.

16 In terms of how much he relied on
17 Joyce versus what he did himself, I couldn't tell
18 you. That's more of their discussion.

19 Q. Okay. Well, did David ever tell you
20 anything else about the investigation that he or
21 his office did prior to filing the malpractice
22 action?

23 A. No. He mostly -- you know, my
24 recollections, best recollections, are that he

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1 was relying on Joyce.

2 Q. Did he tell you that?

3 A. Did he tell me that? I believe he
4 did. As a general statement of who was really
5 going to be doing at least the majority and the
6 bulk of the investigation, yes, he did. Did he
7 exclude himself? No.

8 Q. Now, you mentioned before that when
9 you first approached David with the idea of this
10 malpractice action, he wanted to make sure it was
11 a valid malpractice claim?

12 A. Correct.

13 Q. And that the unsecured creditors
14 obtained some type of benefit from the filing, is
15 that right?

16 A. That's correct.

17 Q. Other than those two conditions, did
18 David ever express to you any reservations about
19 filing the malpractice action?

20 A. It's been a long time. I don't know.
21 I don't know how to answer that.

22 Q. Can you recall anything that he said
23 he was worried about the filing of the
24 malpractice action?

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1 A. Mostly just -- no. His concerns were
2 the funding, the general unsecured creditors
3 getting paid, and that it be a valid action that
4 was something he could get behind.

5 Q. Okay. Now, you mentioned that in the
6 first meeting you had with David about this you
7 told him about the merit of the malpractice
8 action as you believed it and the best way to
9 proceed with it, is that right?

10 A. Correct.

11 Q. What other substantive topics did you
12 talk with David about the malpractice action?

13 A. Substantive topics? Well, the
14 documents that we've been going over here, I
15 probably delivered to him the same stuff that
16 I've delivered to Rob; so we may have discussed
17 some of that.

18 There was another concern that I had
19 that I haven't mentioned was that the bogus UCC
20 liens that Lou Franco and Ron Given filed
21 together would be invalidated so that they would
22 not get in the way of my recovery, so that was
23 discussed.

24 It was probably -- it was all just

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1 centered, if you look at the e-mail record of the
2 documents I sent him, on discussions of those
3 documents if we had any.

4 David, I really didn't have in-depth
5 conversations with him about this that much. He
6 more or less held his own counsel; and when we
7 started the negotiations, he immediately reverted
8 to talking to me through counsel, so this wasn't
9 an area we explored in great detail.

10 Q. Okay. And eventually you did enter an
11 agreement with David to finance part of this
12 malpractice action and to find a malpractice
13 attorney who would be willing to file it, is that
14 right?

15 A. Correct. We thought we had a
16 malpractice attorney lined up already in George
17 Spellmire, but the financing took so long that we
18 ended up having to switch. George got busy, and
19 Ed thankfully stepped up.

20 Q. What did Spehar Capital do to look for
21 a malpractice attorney?

22 A. I met with them and explained what I
23 thought was the merit of the case to them and
24 also explained what I thought was a fair deal,

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1 contingency deal.

2 David wasn't interested in doing any
3 work on that aspect of it.

4 Q. Now, when did your search begin to try
5 to find a malpractice attorney?

6 A. Well, as Spehar Capital for myself, it
7 began immediately after the judgment; but, again,
8 that was all for myself, a direct action.

9 Q. Okay. And what was your understanding
10 of what type of direct action you could bring?

11 A. I'm not going to get into attorney
12 communications, but my understanding personally
13 was that California law allows a third party in
14 egregious circumstances to sue an attorney for
15 interference with contract, breach of contract,
16 interference with prospective economic advantage,
17 unlike Illinois law, which does not.

18 Q. Okay. So, in other words, you were
19 contemplating some type of suit under California
20 law that would allow Spehar Capital to sue Mayer
21 Brown directly?

22 A. Correct. That was my initial thought.

23 Q. Okay. And did you consult only with
24 California lawyers about that?

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1 A. Initially, yes.

2 Q. Did you ultimately consult with
3 lawyers elsewhere about a direct action?

4 A. Yes, and that all happened after July.
5 After I spoke with Barry Capello, we spoke about
6 that.

7 Q. Now, once a decision was made to go
8 through with the involuntary bankruptcy filing
9 and trying to collect the judgment through the
10 bankruptcy and malpractice action, when did the
11 search begin for the malpractice attorney who
12 would file the malpractice action against Mayer
13 Brown?

14 A. Roughly in July, but that search was
15 also a joint search in case there would be
16 anything there for myself; and I was also
17 searching for a second action that involved the
18 MOIC, so it was kind of all jumbled up in the
19 same discussion.

20 Q. How many attorneys were contacted
21 about the possibility of filing the malpractice
22 action by CMGT against Mayer Brown?

23 A. I would say if you count the initial
24 introductions -- and I'm going to forget people

1 that weren't interest in doing it themselves;
2 just the people that actually expressed an
3 interest or that would have been probable
4 attorneys for the case -- I would say maybe
5 somewhere in the neighborhood of six, of which
6 three wanted the case or expressed a strong
7 interest in it, put it that way.

8 Q. And who are they?

9 A. The people that expressed the strong
10 interest would be George Spellmire -- and, again,
11 these are all contingent upon doing an
12 investigation and making sure that they would do
13 it -- Ed Joyce and Mike Cherry.

14 Q. Okay. And how many lawyers were
15 contacted and weren't interested or just didn't
16 fit the bill?

17 A. I'd say roughly three, and they just
18 didn't either have time or, you know, it
19 wasn't -- I can't recall exactly what their
20 reasonings were, but they never got into an
21 investigation actually.

22 Q. And do you know exactly why
23 Mr. Spellmire bowed out after a while?

24 A. No, I don't exactly. I know the

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1 reasons he gave us.

2 Q. Okay.

3 A. Which were that we had taken so long
4 to negotiate the deal that he had had to get busy
5 on other cases and he didn't have time. He's a
6 small shop.

7 Q. So it was taking too long to negotiate
8 his contingency deal?

9 A. No, too long to negotiate the
10 financing deal with the trustee. That was
11 something that I would have hoped and thought
12 could be done in a couple days and it ended up
13 taking 8 months, 9 months and George got busy.

14 David would not -- didn't want to
15 proceed with an investigation until we had our
16 financing deal in place.

17 Q. Okay.

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

22 BY MR. CISZEWSKI:

23 Q. Now, Mr. Spehar, we have handed to you
24 what's been marked as Exhibit No. 19.

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1 Are you able to identify this
2 document?

3 A. Yes, I am.

4 Q. What is it?

5 A. This is a letter from my counsel,
6 Steve Klenda, to George Spellmire in the summer
7 of 2005 after we had pretty much finished our
8 financing deal and we were going back to him to
9 see if we could keep him on board as the
10 malpractice attorney.

11 Q. Okay. And he declined at that point?

12 A. Yes.

13 Q. Now, was Mr. Joyce's firm involved at
14 all before this time?

15 A. No.

16 Q. Had you even had an initial
17 consultation with Mr. Joyce?

18 A. No. I had thought Spellmire was our
19 guy.

20 Q. And so when was the first time that --
21 well, how did Mr. Joyce come into the picture
22 then?

23 A. I was scrambling. Once Spellmire said
24 he wasn't going to do it, that's when I called Ed

1 Joyce and Mike Cherry. I can't remember exactly
2 who referred them to me. I believe perhaps Frank
3 Pasquesi, who is a lawyer at -- I can't remember
4 the firm right now, but he helped me figure out a
5 couple other guys to call.

6 So I called Ed and Mike and both were
7 interested. Mike had some conditions. He wanted
8 to speak to Franco first. I didn't want to -- I
9 didn't think that was appropriate.

10 And Ed was interested, so I chose Ed
11 to the extent that I could, because it was really
12 the trustee's decision; but I presented Ed to the
13 trustee.

14 Q. Okay. Why didn't you think it was
15 appropriate for Mr. Cherry to speak to Franco
16 first?

17 A. I just wanted the -- I believed it was
18 more appropriate to have the discussions be held
19 with the trustee first and everything lined up
20 properly before he did that.

21 And it's also just a feeling, I guess,
22 about the two attorneys. I was a little more
23 comfortable with Ed.

24 Q. And did Mr. Joyce have any conditions

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1 before he wanted to pursue it further?

2 A. Only that he would not fully commit
3 until he had done a full investigation, but he
4 would commit to do that.

5 Q. And when did you first talk to
6 Mr. Joyce, do you recall?

7 A. It would be in August of 2005;
8 immediately after this, somewhere in there. I
9 can't tell you the exact date.

10 Q. Now, did Mr. Joyce's office eventually
11 do the investigation that he had talked about
12 wanting to do?

13 A. Yes.

14 Q. And did he agree to proceed with the
15 case at the end of that investigation?

16 A. Yes.

17 Q. Now, at some time in 2006, did
18 Mr. Joyce's firm indicate to you that they were
19 having some reservations about going forward with
20 the case?

21 A. Yes.

22 Q. What was the nature of the
23 reservations they were having about the case?

24 A. Joyce's general statement to me from

1 an initial investigation forward was they had
2 absolutely no problem with merit of the case.
3 They thought merit was great.

4 They were playing devil's advocate
5 very strongly -- let's put it that way -- with
6 regard to some of the damage elements; so we had
7 to bat that around a little bit and particularly
8 with regards to the whole issue of the judgment
9 standing as damages that's been litigated.

10 Q. So there was some question about
11 whether the judgment itself could constitute
12 damages?

13 A. Yes. You know, we talked about some
14 of the cases that were involved and the whole
15 collectibility aspect that has been litigated.

16 Eventually we came to an agreement
17 that Illinois law said that it stood as damages.

18 Q. That a judgment that had not been
19 collected upon is still damages?

20 A. A judgment against a defendant as
21 opposed to a plaintiff that was caused by
22 attorney malpractice stood as damages; the
23 collectibility rule did not apply.

24 Q. Now, who did you talk to in

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1 Mr. Joyce's office about that issue?

2 A. Who did I talk to? I mean, it's
3 mostly memos, you know, the stuff that we have
4 been through in discovery. It was -- I do a lot
5 of voluminous memo writing, as Rob knows.

6 Q. And did you draft any memos about this
7 collectibility issue?

8 A. I probably did, yes.

9 Q. Okay. And did Mr. Joyce or someone
10 from his office draft memos or communications
11 back to you about it?

12 A. Most likely. I mean, I'd have to
13 review them.

14 Q. Okay. Was there any other aspect on
15 the damages part of the case that anyone from
16 Mr. Joyce's firm expressed any reservation or
17 concerns about?

18 A. We talked about lost profits aspects
19 of it.

20 Q. Can you explain what you mean by that?

21 A. Just the issue of CMGT's viability as
22 a development-stage company as opposed to a
23 start-up company, which it is not; under Illinois
24 law, could you establish damages for lost

1 profits.

2 And we came to the understanding that
3 that was -- at the stage of the market, at the
4 stage of the development of CMGT, that you could.

5 Q. And that was because you didn't
6 consider CMGT to be a start-up company?

7 A. They are not a start-up company
8 under -- there's fairly well-defined definitions
9 in venture capital what start-up is, and they did
10 not fit it.

11 You know, if you look at the
12 third-party due diligence done by Sealaska, you
13 will see that it's consistently called a
14 development-stage business. If you look at Jim
15 Wong's financials, you'll see he calls it a
16 development-stage business.

17 As soon as they had an established
18 market, they were making revenue. They were not
19 profitable, but that's not in my understanding
20 what's required under Illinois law. What's
21 required is an established market and an
22 established company, which they were.

23 MR. CISZEWSKI: We can break now.

24 (WHEREUPON, a lunch recess was

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1 had.)

2 MR. CISZEWSKI: Let's go back on the record.

3 BY MR. CISZEWSKI:

4 Q. Okay. Mr. Spehar, before lunch we had
5 talked a little bit about two issues or
6 misgivings that were raised by Mr. Joyce's
7 office, and they were that the judgment -- the
8 question of whether there were damages if the
9 underlying judgment is not collected on and the
10 question of whether you could have lost
11 profits -- prove lost profits in the case of
12 CMGT.

13 A. Right.

14 Q. Were there any other issues or
15 misgivings or concerns about the malpractice case
16 that Mr. Joyce's office raised with you?

17 A. I mean, early on it was a -- like I
18 said, there was a lot of devil's advocate
19 playing, so we walked through a lot of the
20 questions you've had and other questions about
21 just my role with CMGT, everything.

22 But that stuff got settled. They felt
23 comfortable with the merit in those regards early
24 on was my understanding.

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1 Q. Okay.

2 A. But there were questions about it.

3 Q. Now, did you typically communicate
4 with Mr. Joyce's office verbally or by e-mail?

5 A. Mostly by e-mail; I would say, you
6 know, occasionally verbally, but mostly by
7 e-mail.

8 Q. Okay. Other than what we have talked
9 about already, can you recall anything else that
10 you had an oral conversation with anybody at
11 Mr. Joyce's office about regarding this
12 malpractice case?

13 A. I'm sure knowing me there were several
14 proddings to move it along.

15 THE WITNESS: Right, Rob?

16 BY THE WITNESS:

17 A. But other than that, that's I think
18 the most of it. I mean, it was a thorough
19 investigation. There were a lot of issues where
20 they -- we had that one meeting in Denver. It
21 was a particularly probing meeting, I think, and
22 I think we have covered everything.

23 BY MR. CISZEWSKI:

24 Q. Okay. Do you recall when that meeting

1 in Denver was?

2 A. Yes. It was late November of 2005.

3 Q. Okay. Now, did you personally do your
4 own research about the damages questions that
5 Mr. Joyce's office raised?

6 A. I did some research, yes.

7 Q. Okay. And what did you find -- what
8 did you conclude or find out as a result of that
9 research?

10 A. I concluded -- I mean, I've looked
11 at -- I have never done any law myself. I'm a
12 layman, but this is meaningful enough to me that
13 I did learn what I learned.

14 And I concluded in looking at the case
15 law that in California that it appeared to me --
16 excuse me, in Illinois that the collectibility
17 issue, as we said, didn't apply in cases like
18 this where you have a damage judgment caused
19 against a defendant by lawyer malpractice.

20 Q. And did you provide that case law to
21 Mr. Joyce's office?

22 A. I think they may have had it already.
23 I'm not sure.

24 Q. Did you discuss it with them?

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1 A. In the memos, yes, I did.

2 Q. Were there any oral discussions about
3 it?

4 A. I believe it was mostly in memos.

5 Q. Okay. So you don't recall what was
6 said during any oral conversations, if there were
7 any?

8 A. No, I don't specifically. If we would
9 have had conversations about it, it would have
10 all been short conversations basically saying
11 there's a memo coming on it.

12 Q. Okay. Did you ever talk with the
13 trustee, Mr. Grochocinski, about the damages
14 questions that had been raised?

15 A. Yes.

16 Q. And you personally talked to David
17 about it?

18 A. Again, it would have been -- it's a
19 situation where, yes, I would have personally
20 talked to him about it, but they would have been
21 short conversations saying there's memos coming.

22 Q. Did you ever talk about the substance
23 or the research that you had done with David?

24 A. On the --

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1 Q. About the damages question.

2 A. About the damages question? I -- yes,
3 I probably did have conversations about that.
4 I'm not sure how in-depth they were. I mean,
5 it's all wrapped up in -- again, I had written
6 those memos for Joyce mostly. At the time that I
7 was discussing with David, I was passing memos on
8 to him.

9 And so I would have been referring to
10 the memos for the most part as opposed to having
11 substantial discussions about it.

12 Q. Do you recall anything that was said
13 during any of the conversations with the trustee?

14 A. Not -- I don't have particular
15 recollections of it, no.

16 Q. Okay. Did you have communications
17 with anyone else about these damages questions
18 that had been raised?

19 MR. O'BRIEN: I'm going to object to the
20 extent it calls for communications with his own
21 counsel.

22 Beyond that, you can answer if you
23 know.

24 BY THE WITNESS:

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1 A. No, not beyond my own counsel.

2 BY MR. CISZEWSKI:

3 Q. You did have communications with your
4 counsel, though?

5 A. You can answer yes or no.

6 A. I'm probably not going to answer that
7 question.

8 MR. O'BRIEN: You can answer yes or no.

9 That's all he's going to ask you.

10 BY THE WITNESS:

11 A. I probably did, yes.

12 BY MR. CISZEWSKI:

13 Q. And do you recall which counsel it
14 was?

15 A. It may have been -- no, I don't. It
16 would have either been Todhunter or Klenda, one
17 of those guys.

18 Q. Okay. I want to shift gears here. I
19 just want to ask you: Why do you think that the
20 Trautner Newco deal was covered by your Exhibit A
21 to your agreement with CMGT?

22 A. Because the Exhibit A -- first of all,
23 the agreement specifically says the people that
24 are covered -- and these are not deals; these are

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1 people, individuals, investors -- are people that
2 I bring in to CMGT and then people with whom CMGT
3 authorizes me and asks me to interact, to hold
4 discussions with and to share information with.

5 That took place with Trautner and that
6 took place with Trautner's investors such as
7 Harlan Smith.

8 And then also the Exhibit A is to be
9 updated from time to time. The writing that you
10 have of that was not ever intended to be the
11 final writing.

12 Q. And when did CMGT authorize you to
13 communicate with Trautner -- and I forget the
14 name of the other --

15 A. Harlan Smith.

16 Q. -- investor you mentioned.

17 A. CMGT, the minute I came on board in --
18 well, not the minute I came on board.

19 After September 11, 2001, there was a
20 dislocation in all of the capital markets and it
21 particularly affected insurance. There was a big
22 question mark about were insurers going to be
23 going under because of their liabilities on that.
24 Hartford was one of the major players that was

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1 called into question in the markets. Their stock
2 dropped tremendously.

3 I had a relationship with an
4 international fund that was trying to take
5 advantage of that situation and wanted to buy
6 debt of insurers to offer capital to insurers, so
7 I put together a potential deal for Hartford
8 since we were actually working with them at the
9 time.

10 And Lou and I were working on that
11 deal. Trautner was a major investor at that
12 point in time, and he wanted to know about it.
13 That was the first instance that I remember of
14 Lou actually bringing Chuck into discussions with
15 me, and we had substantial discussions about that
16 deal and CMGT and what my role was going to be
17 with CMGT.

18 And from that point forward there were
19 many conversations with Chuck over the course of
20 the next year or so. And then specifically on
21 January 27, 2003, there was a conference call
22 called by Franco that involved Trautner, Ron
23 Given, myself, and Lou Franco -- those four
24 parties -- specifically called to vet what Chuck

1 called Newco.

2 And I was to be on that conference
3 call because Lou was a little sensitive about
4 offending Chuck and he wanted me to ask the hard
5 questions about Newco and so I did.

6 And at the end of the day, at the end
7 of that conversation, Lou told Chuck he was not
8 going to do that deal, that it was too onerous
9 for his shareholders, creditors, and that we were
10 involved with Sealaska. At that point in time,
11 we thought that was going to happen.

12 Q. Now, was the Newco proposal that was
13 discussed in that January 27, 2003 telephone call
14 the same Newco proposal that was being pursued in
15 August?

16 A. Based on the actual parameters of the
17 deal, yes, it was.

18 Q. Okay. And what parameters are those?

19 A. 80/20 split for all of the debt
20 being -- it was an asset purchase deal, meaning
21 Newco bought the assets of CMGT. They left all
22 the debt behind with CMGT. They gave CMGT
23 20 percent of the stock, and they kept
24 80 percent.

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1 Those specific percentages I recall
2 may have been discussed; but if they weren't
3 those specific percentages, they were very, very
4 close.

5 Q. Okay. Now, did you ever have any
6 discussions with anyone about Trautner's Newco
7 deal in between the conference call on
8 January 27, 2003, and that telephone call you got
9 on your cell phone in August of 2003 when Franco
10 asked if you were sitting down and proceeded to
11 talk about it?

12 A. Only with Franco immediately after the
13 telephone call with the conference call. We
14 discussed what went on in the call and his
15 reasons for declining and how he felt about the
16 deal.

17 Q. The same day?

18 A. It would have been shortly thereafter,
19 within days after. There may have been a couple
20 of calls within a couple days after that.

21 Again, Chuck and Wayne Baliga were the
22 two guys that were putting in what Lou called
23 savior capital, so they were sensitive investors,
24 people that he wanted to keep on board -- he

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1 didn't want to alienate them -- but by the same
2 token couldn't do that deal; so he was walking
3 that fine line.

4 Q. So then there were no
5 communications -- you had a couple follow-ups
6 with Lou after the January 27, 2003 meeting; then
7 nothing --

8 A. Right.

9 Q. -- until Lou's cell phone call?

10 A. Correct, nothing.

11 Q. And with respect to the Newco deal
12 that Chuck discussed during that January 27th
13 conference call, did you take part at all in
14 preparing the terms of that deal?

15 A. No, I didn't prepare the terms of the
16 deal. I just discussed the terms from CMGT's
17 perspective with Chuck, and I was more there as a
18 representative of CMGT to vet that deal.

19 Q. Okay. Had you had any involvement in
20 that proposal prior to that conference call?

21 A. Just discussions with Lou Franco about
22 what he thought was coming, because he had had
23 discussions with Chuck, so he prepped me on it.

24 Q. So that was immediately prior to the

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1 call, more or less preparation for the call?

2 A. Yes. It was in the month prior to
3 that because Chuck was -- he was trying to avoid
4 Chuck's call and discussion of that.

5 And I'm trying to recall. I may have
6 actually even had a phone call with Chuck
7 sometime in December about that a little bit.

8 Q. Okay.

9 A. Then just prior to the call, I'll also
10 say that one of the primary investors that Chuck
11 had -- in fact, maybe the primary investor -- was
12 a fellow named Harlan Smith.

13 And I think it was on January 23rd Lou
14 asked me to send him all of CMGT's business plan,
15 the financials, hold a discussion with him, which
16 I did, and get a nondisclosure agreement from
17 him, which I did.

18 Q. Did you have any involvement in the
19 Newco deal that Chuck presented during that
20 January 27th call other than specific tasks that
21 Lou asked you to perform?

22 A. On the January 27th call?

23 Q. Um-hum.

24 A. No, no. Again, I was there as a

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1 representative from CMGT to vet that from CMGT's
2 angle, and I presented -- to Harlan Smith I
3 presented all of CMGT's business information and
4 told him the story of CMGT so he could come up to
5 speed on it.

6 His involvement in Newco I wasn't
7 aware of at that time.

8 Q. Okay. And you did that pursuant to
9 Lou's --

10 A. Specific authorization, yes. He
11 actually asked me to.

12 Q. Okay. Great.

13 A. And he's copied on all my e-mails to
14 Harlan.

15 (WHEREUPON, a certain document
16 was marked Spehar Exhibit
17 No. 20, for identification, as of
18 1/21/09.)

19 BY MR. CISZEWSKI:

20 Q. Now, Mr. Spehar, we have handed you
21 what's been marked as Deposition Exhibit No. 20.

22 Can you identify what this document
23 is?

24 A. It's again another August 1, 2005