

ROBERT GERARD SPEHAR, JANUARY 21, 2009

1 e-mail from myself to Rob Carroll.

2 Q. Okay. And this appears to
3 reference --

4 MR. O'BRIEN: How many e-mails did you send
5 that day?

6 THE WITNESS: Tell him, Rob.

7 MR. O'BRIEN: My goodness. I'm sorry.

8 MR. CISZEWSKI: Poor Rob.

9 THE WITNESS: Do you understand now why we
10 don't need conversations?

11 MR. CARROLL: Did we get the "poor Rob" on
12 the record?

13 MR. CISZEWSKI: We'll stipulate to that.

14 MR. O'BRIEN: I'm sorry, Steve.

15 BY MR. CISZEWSKI:

16 Q. Mr. Spehar, this e-mail appears to
17 reference a conversation that you had with Robert
18 Spaeth?

19 A. Yes.

20 Q. Who is Robert Spaeth?

21 A. He is a, if not a shareholder -- he
22 may be a shareholder personally, but for sure his
23 father, Melvin, is a shareholder of CMGT, and
24 Robert is either a shareholder or Melvin's

1 representative, his son.

2 Q. Okay. In the second paragraph there
3 it says, "They have a very low opinion of Franco,
4 Given, and Trautner."

5 Did they express to you why they hold
6 a low opinion of those three gentlemen?

7 A. Did they express to me? I know that
8 the Spaeths voted against Newco. I know that
9 Robert called me.

10 I was very wary of making outgoing
11 phone calls to CMGT shareholders. I was under
12 the impression that that might actually -- I was
13 actually warned by Ron Given that that might put
14 me at risk, so I dealt only with management.

15 After we filed the TRO, I actually
16 received a call out of the blue, having never
17 spoken with him before, from Robert Spaeth
18 essentially congratulating me on my lawyer's
19 response to Ron Given and saying that he felt
20 Newco was a fraudulent conveyance.

21 Q. I want to talk a little bit about the
22 bullet points that are there about a third of the
23 way down the page.

24 A. Sure.

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1 Q. It says that Robert confirmed that
2 CMGT had no knowledge of SC's dispute with CMGT
3 over Newco when they voted on Newco.

4 And the SC there refers to Spehar
5 Capital, I take it?

6 A. Correct.

7 Q. Can you recall what Mr. Spaeth told
8 you about that subject during your call?

9 A. He told me they had never -- that they
10 were unaware at the time they voted that I had a
11 dispute with CMGT over Newco.

12 Q. Okay. Had you heard that from anybody
13 else?

14 A. I don't believe so. I don't know, no.

15 Q. Okay. And the next one says that CMGT
16 shareholders were never told about the Washoe
17 deal until SC informed them well after the fact.

18 A. That refers to my e-mail -- Steve
19 Klenda's e-mail that informed everyone, and they
20 were included on that list.

21 MR. O'BRIEN: Let him ask his question
22 before you give an answer, please.

23 THE WITNESS: Thank you.

24 BY MR. CISZEWSKI:

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1 Q. Had you heard that from any other CMGT
2 shareholder?

3 A. You know, with regards to that
4 question for both of these bullet points, I don't
5 know if -- I can't specifically recall. I had
6 conversations -- Wayne Baliga and I were fairly
7 close in the sense that we were still on the MOIC
8 after this went down, and I had enlisted Wayne to
9 be a go-between to try and settle after the TRO.

10 So I had conversations with Wayne. I
11 can't specifically recall. He would have been
12 the other one that may have told me that.

13 Q. Okay.

14 A. But I can't specifically recall
15 specific instances.

16 Q. Okay. And so there's no shareholders
17 other than Mr. Spaeth and possibly Wayne Baliga
18 who would have told you either of the things
19 listed in those first two bullet points?

20 A. Not to my recollection, no.

21 Q. And what about the third one? Did you
22 hear that from any shareholders other than --
23 well, we don't know that Robert Spaeth is a
24 shareholder, but did you hear that from anybody

1 other than Robert Spaeth?

2 A. No, and that bullet point refers to
3 also my reading of the letters that went back and
4 forth between Ron Given and Lou Franco and the
5 shareholders in which there is no information
6 about this sort of stuff when they voted.

7 Q. And what about the fourth bullet
8 point? Did you obtain that information from
9 anybody other than Robert Spaeth?

10 A. No.

11 Q. Okay. And so you never talked to, for
12 instance, Lou Franco about any of those four
13 bullet point?

14 A. Franco would not talk to me at that
15 point in time about anything but the MOIC deal.
16 I had no relationship with other shareholders at
17 that point in time. They were all pretty mad at
18 me.

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

23 BY MR. CISZEWSKI:

24 Q. Now, sir, we have handed you what's

1 been marked as Deposition Exhibit No. 21.

2 A. Okay.

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

5 A. Yes.

6 Q. And what is it?

7 A. It's a July 26th e-mail from myself to
8 David Grochocinski.

9 Q. Okay. And was there some discussion
10 at this point in time that Mr. Joyce and his firm
11 may not pursue the malpractice case on behalf of
12 the estate?

13 A. Yes, there was. Excuse me.

14 (Short pause.)

15 MR. O'BRIEN: Could we just have the
16 question read back to him?

17 MR. CISZEWSKI: Sure.

18 (WHEREUPON, the record was
19 read by the reporter.)

20 BY THE WITNESS:

21 A. Yes, there was.

22 BY MR. CISZEWSKI:

23 Q. Okay. And when did that discussion
24 first begin?

1 A. Sometime -- I'm trying to recall; just
2 right around this time.

3 Q. Okay. And was there a reason given
4 for why Mr. Joyce's firm may not pursue the case?

5 A. If I recall correctly, we were still
6 having those discussions about the damages
7 issues.

8 Q. Now, as of this time, July 26, 2006,
9 did you believe that Mr. Joyce's firm had fully
10 investigated the basis for the malpractice case?

11 A. I believed -- as strongly as I believe
12 in the malpractice action, yes, I did.

13 To the extent that they could have
14 done more to convince themselves if they were
15 having this kind of trepidation about it, I would
16 have hoped that they would have done more; but,
17 you know, in terms of adequate investigation with
18 what they did with me, yes, absolutely.

19 Q. Let's take a look at numbered
20 paragraph 4 in this exhibit.

21 Why did you think that Mr. Joyce's
22 firm should subpoena Franco, Trautner, Wong, and
23 Baliga's communications?

24 A. Because, again, to the extent that

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1 there were any concerns that they had for
2 whatever reasons going forward to file this
3 thing, I thought at that point in time we were
4 under, as I understood, some sort of special
5 bankruptcy rule where you could subpoena people,
6 and I believe these guys could offer some
7 information.

8 Q. Okay. So you think all four of those
9 individuals had information that would be
10 relevant to the malpractice case?

11 A. I think the first three would be very
12 biased individuals. I don't know that you'd get
13 anything but a song and dance out of them
14 frankly.

15 But, yes, to the extent you could
16 break through that, I think they might be; and
17 Baliga, I'm not sure.

18 Q. Okay. And do you know if Mr. Joyce's
19 office spoke with Mr. Franco at any time before
20 filing the malpractice action?

21 A. I do not know that they did, no.

22 Q. Did they ever tell you that they did?

23 A. No.

24 Q. Did you ever get a report of any such

1 communication?

2 A. Let me rephrase that. They did have a
3 conversation, I believe, with him at one point or
4 his attorneys that they told me about, but I'm
5 not sure what was involved in that. I don't
6 believe they ever subpoenaed him.

7 Q. Did you find out what happened during
8 whatever conversation they had with Mr. Franco or
9 his attorneys?

10 A. No, I did not.

11 Q. And what about Mr. Trautner? Do you
12 know if Mr. Joyce's firm contacted him before the
13 malpractice action was filed?

14 A. I doubt very seriously. He was very
15 difficult to reach, and they couldn't even
16 subpoena him.

17 Q. And I take it you never received any
18 report or feedback about any such communication?

19 A. No.

20 Q. And do you know if Mr. Joyce's firm
21 contacted Mr. Wong before the malpractice action
22 was filed?

23 A. I do not know.

24 Q. Did you receive any report or

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1 information from Mr. Joyce's office indicating
2 that any such communications had taken place?

3 A. No, not that I recall.

4 Q. Okay. And Mr. Baliga, do you know if
5 Mr. Joyce's firm contacted him before filing the
6 case?

7 A. I believe they did, yes.

8 Q. What's the basis for that belief?

9 A. I believe I was told they had a
10 meeting with Wayne.

11 Q. What were you told about that meeting?

12 A. What was I told? I'm trying to
13 recall.

14 MR. O'BRIEN: And, again, to the extent that
15 this references communications you had with your
16 own counsel, you don't have to answer that. To
17 the extent it's someone else, you should answer.

18 BY THE WITNESS:

19 A. Right. I'm trying to recall exactly
20 how it was phrased. My take-away from the
21 conversation that I had was that there was
22 nothing of -- to disprove anything that we had
23 alleged coming out of Wayne, and I don't know
24 that there was anything of great value coming out

1 of him either.

2 BY MR. CISZEWSKI:

3 Q. Okay. Do you know if there was
4 anything to support what was being said in the
5 malpractice action?

6 A. I can't recall the conversation, to
7 tell you the truth.

8 Q. Do you know when this meeting that
9 Mr. Joyce's office had with Mr. Baliga took
10 place?

11 A. No, I don't. I know it would have
12 been in the time frame of the investigation,
13 which was from November, 2005, through August,
14 2006. I believe it would have been sometime
15 perhaps in, just guessing, the spring of 2006.

16 Q. Do you know if Mr. Joyce's firm spoke
17 or met with Robert Spaeth prior to the filing of
18 the malpractice case?

19 A. I don't know, no.

20 Q. And what about Dick Ross? Do you know
21 if there was any meeting?

22 A. I don't know. I don't even know that
23 Dick Ross is still alive, to tell you the truth.

24 Q. Was he a shareholder?

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1 A. He was the former chairman. He was
2 the first chairman before Franco.

3 Q. I see.

4 A. And a shareholder.

5 Q. Now, the first bullet under numbered
6 paragraph 5 there has a reference to Terry
7 Temescue?

8 A. Temescue.

9 Q. Who is that?

10 A. He is a principal or a partner in --
11 it's a venture capital firm that had a deal with
12 CMGT, Lyric Capital.

13 Q. And what was the time -- was the Lyric
14 deal early?

15 A. The Lyric deal was put together right
16 before I came on board in, I think, roughly
17 February of 2001. It was contingent -- it was a
18 deal that was kind of tied up with the Hartford.
19 Hartford was semi-dependending on Lyric to come
20 through; and after September 11th happened,
21 Lyric's funding went away.

22 But at the same time that was there,
23 he hired me also to look.

24 Q. Okay. Do you know if Mr. Joyce's

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1 office had any contact with anybody on behalf of
2 Sealaska before the malpractice action was filed?

3 A. I believe they subpoenaed information
4 from Sealaska. In the course of that, did they
5 discuss with people? I don't know. I'm not
6 sure.

7 Q. I take it you never got a report or
8 any feedback about any such communications?

9 A. No.

10 Q. And what about the Washoe? Did
11 Mr. Joyce's office have any communications with
12 the Washoe before --

13 A. I'm not sure. I know there was an
14 attempt to set up something with Garrett, and I'm
15 not sure how that followed through.

16 Q. Just a reminder to let me finish.

17 A. I'm sorry.

18 Q. I know you're anxious.

19 Now, before we leave this -- well,
20 that's okay.

21 (WHEREUPON, a certain document
22 was marked Spehar Exhibit
23 No. 22, for identification, as of
24 1/21/09.)

1 BY MR. CISZEWSKI:

2 Q. Sir, we have handed you what's been
3 marked as Deposition Exhibit No. 22.

4 Do you recognize this document?

5 A. I do.

6 Q. What is it?

7 A. It's an e-mail from myself to David
8 Grochocinski, July 28, 2006.

9 Q. Okay. I want to look at the very top
10 of Page 2.

11 A. Um-hum.

12 Q. And I believe that the top of this
13 page is quoting a memo that you had sent to David
14 Grochocinski. It says, "To my knowledge, no one
15 has been deposed under oath and Joyce had only
16 one conversation (with Wayne Baliga) as of last
17 week."

18 A. Okay.

19 Q. So does this indicate that it was your
20 understanding that the only witness relating to
21 the malpractice case that Mr. Joyce's office had
22 spoken to as of this time was Mr. Baliga?

23 A. Outside of myself.

24 Q. And do you know if he ever spoke with

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1 anybody other than you and Mr. Baliga prior to
2 filing a malpractice action?

3 A. I do not; but I do know that the
4 trustee, now that I've been through an action
5 with him, has received several letters from
6 shareholders indicating that they were
7 displeased. And that's to be expected.

8 In my estimation, I don't know what
9 value Joyce would have gotten from a lot of the
10 shareholders because they were completely misled
11 in my estimation.

12 Q. Okay.

13 (WHEREUPON, a certain document
14 was marked Spehar Exhibit
15 No. 23, for identification, as of
16 1/21/09.)

17 BY MR. CISZEWSKI:

18 Q. Now, Mr. Spehar, I've handed you
19 what's been marked as Deposition Exhibit No. 23.

20 Do you recognize what this is?

21 A. I do.

22 Q. What is it?

23 A. An e-mail from myself to David
24 Grochocinski, July 31, 2006.

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1 Q. Okay. And it looks like there's an
2 e-mail history here that went back --

3 A. Um-hum.

4 Q. -- earlier in the day. I want to talk
5 about the e-mail on the bottom of Page 2.

6 A. Okay.

7 Q. It indicates from yourself to David
8 Grochocinski and Mr. Todhunter, Monday, July 31,
9 2006, at 2:18 p.m.

10 A. Okay.

11 Q. The second sentence there of the
12 second paragraph says, "It is my strong opinion
13 that Mr. Joyce, should he attempt to terminate,
14 has not complied with the 'reasonable
15 investigation' requirement of the termination
16 clause in his agreement with you and will not be
17 able to do so before the statute of limitations
18 expires on this case."

19 A. Okay.

20 Q. In what way do you think that
21 Mr. Joyce had not complied with the reasonable
22 investigation requirement in his agreement?

23 A. First of all, I would read that with
24 the "should he attempt to terminate."

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1 I think Joyce did a reasonable
2 investigation. From the outset of very early on
3 after the initial meeting in Denver with me and
4 the grilling that they did of me, I think
5 everyone was fairly convinced -- in fact, very
6 convinced -- that there were merit here.

7 And I was operating on that
8 supposition all the way through here, that we
9 were really only dealing with damage issues. So
10 all these questions with regards to the other
11 shareholders, I don't know what value there would
12 eventually come out of that, because, like I
13 said, they were all very biased against me.

14 But should Joyce attempt to terminate,
15 I would have wished that he would have done that,
16 because, if there was some question -- I had
17 understood at this point in time that we had kind
18 of resolved or were getting close to resolving
19 the damage issues; that there was really no issue
20 about merit, and that's where these guys came in
21 was merit.

22 So if there was now some issue in
23 Joyce's mind about merit, I would have hoped that
24 he would have investigated it further. I don't

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1 think there was.

2 MR. CARROLL: I just make to make sure the
3 record is clear.

4 At the beginning of that answer, you
5 said something about -- you referred to George,
6 George's investigation?

7 MR. CISZEWSKI: I think he said Joyce.

8 THE WITNESS: Joyce.

9 MR. CARROLL: Oh, I'm sorry. I misheard.

10 BY THE WITNESS:

11 A. So that's -- that's where we were at.

12 BY MR. CISZEWSKI:

13 Q. And what additional investigation do
14 you think Mr. Joyce would have been required to
15 do had he attempted to terminate the agreement?

16 A. That would depend on what he was going
17 to terminate based on. If it was a determination
18 based on merit, like I said, this should have
19 been done then. I would have hoped he would have
20 investigated a lot more people if he had serious
21 questions about merit. It was my understanding
22 he did not.

23 But at this point in time, I wasn't
24 really fully aware of the reasons for termination

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1 if it was going to happen; or if it was going to
2 happen, I was just getting at that point in time
3 some bad feelings about the potential for it.

4 Q. When you had this meeting in Denver,
5 the day-long meeting, were you shown any
6 documents during that meeting?

7 A. Was I shown any documents during that
8 meeting? I can't recall. I know I was grilled.
9 Art did a pretty good job of that.

10 Q. And did Mr. Joyce's office have all of
11 the files at that point in time?

12 A. They should have. They should have
13 had -- well, the trustee had them, I'll put it
14 that way. I had sent -- my attorneys had sent to
15 the trustee CMGT's documents, and I had sent
16 Joyce and the trustee my own files.

17 Q. And you don't recall Art or Rob or
18 anybody putting a document in front of you and
19 saying, "What does his mean"?

20 A. Well, they had some questions, very,
21 very specific questions, I'll put it that way.
22 It was obvious that they had read the documents,
23 I'll put it that way.

24 Q. But you can't recall them actually

1 showing you any of the documents?

2 A. No, I can't.

3 Q. Okay. And was it after that meeting
4 that you thought the issue of liability was a
5 done deal?

6 A. You mean merit?

7 Q. Merit, yes.

8 A. No, it went on for some point after
9 that. I mean, this is on the face of it a
10 strange case, as the judge noted, so there's a
11 lot to, I think, mostly get comfortable with me
12 about. You know, it's how I react to questions,
13 what the truth of what I'm saying is. To me that
14 is an awful lot of this case.

15 So this -- just the same sort of
16 grilling that you're doing here I was getting
17 from Joyce, and it took a little bit of that for
18 them to get comfortable.

19 I don't know exactly when I felt or
20 when I was told that they were comfortable with
21 the merit aspects of it, but it was sometime
22 early on after a few months at least.

23 Q. Why do you think this is a strange
24 case?

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1 A. Why do I think it's a strange case?
2 Because it appears to be strange to the judge.
3 She has articulated that, that on the face of it
4 it looks -- the types of accusation you're making
5 here about, you know, your pleadings, those types
6 of things, the appearance of -- that you need to
7 get beneath the surface of those things to really
8 understand what's going on. That's what we are
9 here to do.

10 Q. Okay.

11 A. Appearances can be deceiving.

12 MR. O'BRIEN: Wait for the next question.

13 THE WITNESS: Okay.

14 (WHEREUPON, a certain document
15 was marked Spehar Exhibit
16 No. 24, for identification, as of
17 1/21/09.)

18 BY MR. CISZEWSKI:

19 Q. Okay, sir. We have handed you what's
20 been marked as Deposition Exhibit No. 24.

21 Are you able to identify this
22 document?

23 A. This appears to be an August 15, 2006
24 note from myself to Rob Carroll.

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1 Q. Okay. And do you recall sending it at
2 that time?

3 A. Yes.

4 Q. All right. I want to take a look at
5 Paragraph 2.

6 A. Okay.

7 Q. And it says, "I don't believe you have
8 the full physical damages prove-up I submitted on
9 2/26/04."

10 What information was contained in this
11 damages prove-up?

12 A. It was the actual presentation that we
13 did to the Court. It should be in the Court
14 documents.

15 Q. Okay.

16 A. So --

17 Q. And was the issue of -- so I take it
18 the issue of damages was still something that was
19 being discussed at this time?

20 A. No, I don't think so. I think it
21 was -- we were done then. I think by this time
22 Ed had decided he was going to file. We had a
23 conference call at some point where he said he
24 was going to file.

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1 Q. Okay. When was that?

2 A. Sometime right in here, the early part
3 of August; I'm not sure.

4 Q. Who else was on that call?

5 A. David Grochocinski, myself, Ed, and I
6 believe Rob might have been on it.

7 Q. Okay. And do you recall what
8 Mr. Joyce said during that call?

9 A. Yes, I do very clearly. He said, "We
10 will file a complaint by August 26th," and that's
11 how he opened the call and that was --

12 Q. Did anybody else -- I'm sorry. I
13 didn't mean to cut you off.

14 A. That's okay.

15 Q. Did anybody else say anything during
16 the call?

17 A. Yes. We discussed a little bit of
18 just the different facets of the case. I recall
19 we talked about the venture capital environment
20 at that point in time when all of this -- the
21 malpractice occurred, some aspects of the case
22 like that.

23 Q. Okay. Did the trustee have any
24 questions or ask anything of Mr. Joyce about his

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1 investigation?

2 MR. O'BRIEN: During that conference call?

3 MR. CISZEWSKI: Yes.

4 BY THE WITNESS:

5 A. I know the trustee spoke. Yes, he was
6 involved. Did he specifically -- what he
7 specifically asked, I can't tell you.

8 It's all -- I know what the
9 discussions vaguely entailed, which would have
10 again been issues like what was going on in the
11 venture capital environment, why it was so
12 difficult to raise money; some of the same
13 questions that you have.

14 BY MR. CISZEWSKI:

15 Q. Okay.

16 A. And the trustee was involved in those
17 questions a little bit, too, yes.

18 Q. And why was that relevant to the
19 issues that were on the table at that point?

20 A. Again, it's a devil's advocate
21 question. I'm sure you know a good attorney
22 probably looks at it from the other party's point
23 of view, and that's what I took away from that;
24 they were looking at some of those questions.

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1 Q. Now, Paragraph No. 3 here talks about
2 Ed's questions re why Trautner should have been
3 but was not listed on Exhibit A.

4 A. Um-hum.

5 Q. Do you recall what Ed's questions were
6 about the Trautner Exhibit A issue?

7 A. I don't specifically, no. I mean, I
8 know that was something that we discussed just
9 like you're asking it here; but his specific
10 questions, no.

11 Q. Okay. Did he indicate that that was
12 an item of concern for them?

13 A. No. It was just a question. It was
14 again, you know, explain yourself.

15 Q. Okay. Now, what was the plan here --
16 referring to Paragraph 4, what was the plan with
17 respect to enlisting Franco's and Wong's
18 cooperation?

19 A. Where are we here?

20 Q. No. 4.

21 A. The discussion with regards to Franco,
22 there was always a question in my mind as to
23 Franco's involvement in all this, and I was
24 interested -- one of the reasons that I thought

1 it might be helpful to depose Franco was to get
2 to the bottom of what he knew versus what Given
3 knew at the time that all of the whole Newco deal
4 went down. That was with regards to that
5 question.

6 Q. Do you know if those questions were
7 ever asked of Mr. Franco?

8 A. I don't.

9 Q. Well, did you ever get any report or
10 any feedback on any such conversations?

11 A. No, I didn't.

12 Q. So, to the best of your knowledge,
13 that type of conversation with Mr. Franco has
14 never occurred?

15 A. It may not have.

16 Q. What about Mr. Wong? What was his --

17 A. I have no idea what Jim Wong's
18 involvement is. In fact, I've no idea what Lou
19 Franco's involvement in all of this is. I don't
20 know that any conversations took place with him.
21 I do know that both of these gentlemen
22 were assiduously following Ron Given's advice at
23 that point in time from my reading of the
24 documents and from my knowledge of them.

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1 Q. Okay. Now, Paragraph No. 5 talks
2 about a possible call between Garrett Furuichi
3 and Ed about the Washoe.

4 Do you know if that call ever took
5 place?

6 A. I do not.

7 Q. Have you ever received any report from
8 Ed about any conversation that his office had
9 with Mr. Furuichi?

10 A. No, I have not.

11 Q. Did Mr. Joyce have questions about the
12 Sealaska deal?

13 A. Yes.

14 Q. What do you recall him questioning
15 about that?

16 A. The timing of the Sealaska deal and
17 the Newco deal; the fact that the Newco deal --
18 how that all fit together; the reasons why
19 Sealaska didn't happen and the question of
20 whether Newco's terms should have been offered to
21 Sealaska prior to them actually walking away,
22 because they were a very serious funder who had
23 actually offered a term sheet that value-wise
24 says they would have done the Newco terms had

1 they been offered to them; so those types of
2 questions.

3 Q. And why do you say that value-wise the
4 Sealaska term sheet shows they would have done
5 the Newco deal?

6 A. Because if you look at the financial
7 terms and you extrapolate them out to the cost
8 per percentage of CMGT, that Sealaska would have
9 done the deal and they would have owned
10 80 percent.

11 Sealaska -- again, these native
12 American corporations are all about exercising
13 their minority advantage, which requires them to
14 own at least 51 percent; and in their eyes, the
15 more, the merrier. They would have loved to have
16 owned 80 percent of CMGT. That would have been
17 attractive to them.

18 Q. I want to talk a little bit more about
19 that Denver meeting for a moment --

20 A. Okay.

21 Q. -- that you had with Mr. Aufmann,
22 Mr. Carroll, and Mr. Klenda.

23 A. All right.

24 Q. During that meeting, did you go

1 through the whole history of your California
2 action and the involuntary bankruptcy filing and
3 that procedure?

4 A. We concentrated more, I believe, on
5 the California action, all of the events leading
6 up to the bankruptcy, more so than the bankruptcy
7 itself.

8 Q. Did you talk about in that meeting the
9 reasons that Spehar Capital filed the involuntary
10 bankruptcy petition?

11 A. I can't recall.

12 Q. And did you mention in that meeting
13 that, as you mentioned to others, the
14 malpractice -- that Spehar Capital viewed the
15 malpractice action as part of the collection
16 process on its judgment against CMGT?

17 A. Well, I don't know that I did, but
18 that is how I viewed it.

19 Q. And you think that was made clear to
20 the participants of that meeting?

21 A. I don't know. I don't know that it
22 was brought up. As I recall that meeting, it was
23 more focused on the actual malpractice action.

24 Q. Okay.

1 A. The merits of that.
2 (WHEREUPON, a certain document
3 was marked Spehar Exhibit
4 No. 25, for identification, as of
5 1/21/09.)

6 BY MR. CISZEWSKI:

7 Q. Mr. Spehar, we have handed you what's
8 been marked as Deposition Exhibit No. 25.

9 A. Okay.

10 Q. Can you identify this document for us?

11 A. An e-mail from me to Ed Joyce,
12 September 6, 2006.

13 Q. Okay. And September 6, 2006, is after
14 the malpractice action was filed, isn't that
15 right?

16 A. Correct.

17 Q. And does this document refresh your
18 recollection as to whether Mr. Joyce's office
19 spoke with Garrett Furuichi before the
20 malpractice action was filed?

21 A. I don't see anything in here that says
22 one way or the other.

23 Is there? I mean --

24 Q. Why don't you read numbered paragraph

1 1 there at the top.

2 A. Okay; no response yet.

3 Q. Does that refresh your recollection as
4 to whether or not --

5 A. It appears he did not speak with him,
6 yes.

7 MR. O'BRIEN: Let him get his whole question
8 out, please.

9 MR. CISZEWSKI: We're going to set up a
10 shock machine so every time he starts to answer
11 it stops him.

12 THE WITNESS: Just don't give my wife a
13 button.

14 BY MR. CISZEWSKI:

15 Q. I want to go back and talk for a few
16 minutes about the complaint which we marked
17 earlier today, if you can pull that back out.

18 Did you see any drafts of the
19 complaint before it was filed?

20 A. I believe I did, yes.

21 Q. Okay. And who did you receive those
22 drafts from?

23 A. From Joyce's firm; from Rob probably.

24 Q. Did you provide comments on those

1 drafts?

2 A. If I received a draft, yes, I probably
3 did.

4 Q. Okay. Do you remember how many drafts
5 you saw before the complaint was filed?

6 A. It was a very quick process. I think
7 they decided late, so I -- I can't recall, but --
8 no, I can't, but it probably was not more than
9 one, two.

10 Q. And do you recall the date of the
11 conference call when Mr. Joyce announced that the
12 complaint would be filed?

13 A. I do not. I know it was in early
14 August sometime.

15 Q. Had you seen any drafts of the
16 complaint prior to that time?

17 A. No.

18 Q. So the first time you saw a draft was
19 sometime in between that call and the filing of
20 the complaint?

21 A. Yes.

22 Q. Can you take a look at Paragraph 27?

23 A. Okay.

24 MR. O'BRIEN: Page 7.

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1 THE WITNESS: Thank you.

2 BY MR. CISZEWSKI:

3 Q. If you want to read that paragraph to
4 yourself, and I'll ask you the questions that I
5 have.

6 (Short pause.)

7 BY THE WITNESS:

8 A. Okay.

9 BY MR. CISZEWSKI:

10 Q. Do you agree that it was the regular
11 course of dealing to orally add third parties to
12 the Exhibit A?

13 A. Yes.

14 Q. What is that based on?

15 A. What is that based on?

16 Q. Yes.

17 A. Lou Franco -- an understanding between
18 Lou Franco and I. The agreement allowed updating
19 from time to time.

20 All this "oral updating" means is we
21 are going to do that at some point in the future.
22 We agree that this guy belongs on it. We are not
23 doing it right now, but we will do it.

24 Q. Did you ever agree with Mr. Franco

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1 that Chuck Trautner would be added to Exhibit A?

2 A. I did. The history of the
3 agreement -- I'll give a brief history here so
4 you understand.

5 You will find in your e-mail files
6 probably an Exhibit 2 to the original agreement
7 that is dated sometime pre this agreement, pre
8 the second agreement, so that would be in the
9 summer of 2002; and it's an Exhibit 2 that Ron
10 and Lou wanted added to my original agreement,
11 which basically stated that I was not to be
12 allowed -- that shareholders did not fall under
13 my agreement.

14 I refused to sign it. I said that is
15 not the deal, and I'm not going to sign that.

16 The accommodation to that, as I
17 recall, as we went forward and signed a second
18 agreement was that the threshold -- I'm not sure
19 exactly what the first agreement says, but
20 basically the second agreement says I have to
21 come up with at least a million bucks from
22 somebody. There's a million dollar threshold
23 before I fall under the contract.

24 Chuck Trautner, Wayne Baliga, Lee

1 Rask, a few other people were putting in amounts
2 like \$50,000. I didn't want to interfere with
3 that, so that's why we had that million dollar
4 threshold in there.

5 If it came to a point where Chuck
6 Trautner was actually doing a million-dollar-plus
7 deal, yes, we had an agreement he was going to
8 fall on Exhibit A.

9 Q. Okay. And that was an agreement you
10 reached with who?

11 A. Franco. It was understood with
12 everybody. When I refused to sign Exhibit 2, the
13 understanding was that I am not excluding
14 shareholders from my agreement; but here is what
15 I will do to accommodate that -- smaller amounts
16 of savior money, as Franco called it, I have no
17 interest in. I don't want to interfere.

18 If it gets to be -- if you've enlisted
19 me with these people to help you raise large
20 amounts of money, serious funding, like a million
21 dollars or higher, then they fall under my
22 agreement.

23 Q. And who on behalf of CMGT had that
24 understanding? Anybody other than Franco?

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1 A. The contract says it. If you --
2 again, go back and look at Exhibit 2, which I did
3 not sign, which I refused. I believe there's
4 e-mails that say I refused it. You will see that
5 I clearly said I am not excluding shareholders.
6 And then subsequent to that we signed the current
7 agreement, so it's clear in the record.

8 Q. Can you turn to Paragraph No. 43?
9 It's Page 11.

10 Why don't you go ahead and read that
11 to yourself.

12 (Short pause.)

13 BY THE WITNESS:

14 A. Okay.

15 BY MR. CISZEWSKI:

16 Q. Now, do you agree with that first
17 sentence?

18 A. Yes.

19 Q. Why?

20 A. Because if you look at the -- do a
21 breakdown of the Sealaska -- every deal that we
22 did absent Newco, every deal we tried to do,
23 investors had difficulty paying out advisors'
24 fees to myself, Jim Wong, Ron Given, to even the

1 obligors, the debt-holders. They wanted those to
2 be paid out usually somewhat over time, somewhat
3 contingent upon performance of the deal going
4 forward.

5 That's the way the Sealaska deal was.
6 It was -- nobody was getting anything for free in
7 that one up front.

8 Contrast that with the Newco deal,
9 which is the only deal I know of that is like
10 that, where there is actually -- it looks to me
11 anyway, my reading of it -- Mayer Brown, Lou
12 Franco, and Jim Wong are pretty much given veto
13 rights over that deal if they don't get what --
14 if the deal doesn't conform to their liking.

15 And Mayer Brown is specifically broken
16 out in that deal to be paid up front its fees.
17 That contrasts sharply with the reading of the
18 Sealaska deal.

19 Q. Okay. What other potential investors
20 do you think would have agreed to that term if
21 offered?

22 A. Of Newco's? You know, everybody that
23 we were showing this deal to -- I mean, it was a
24 drastically different deal than anything we were

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1 showing around, and I was completely unaware that
2 they would do that.

3 And he, in fact, said he would not do
4 that on the conference call. That's why I
5 believe Ron pressured him into it.

6 Q. Did you talk about your belief that
7 Mr. Given pressured him into it with the trustee?

8 A. As opposed to the trustee's counsel or
9 the trustee's counsel, too?

10 Q. Well, either one of them.

11 A. Either one of them? Yes, I'm sure I
12 did.

13 Q. Do you recall whether it was the
14 trustee or the trustee's counsel?

15 A. I do not. I mean, we are going back
16 now a couple of years.

17 May I get some water?

18 Q. Sure. Absolutely.

19 (Short pause.)

20 BY THE WITNESS:

21 A. I would have been --

22 MR. O'BRIEN: Wait for his question.

23 BY MR. CISZEWSKI:

24 Q. Did you want to clarify your last

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1 answer or --

2 A. I will clarify it, yes.

3 I would -- I can't recall if it was
4 either of them, but I would have said that to
5 both of them had they asked.

6 Q. Okay.

7 A. I agree with that.

8 The deal -- and I'm going to clarify
9 something further. The Newco deal was -- think
10 about it. It's 80 percent. If it's 20 percent
11 to CMGT, the buyer gets 80 percent. They carry
12 none of the debt. And they are buying for the
13 same amount of money that Sealaska was buying
14 51 percent with all of the debts. It's a
15 different deal.

16 Q. I thought Sealaska was offering
17 \$950,000.

18 A. Yes. At the end of the day they were,
19 but they were also committing themselves to their
20 share of the debt, which was roughly \$700,000;
21 and they also had it built into there a -- that
22 they would put more money in as an 8 percent loan
23 if it needed it.

24 So there was potential for it to be a

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1 bigger deal. There was also the potential --
2 they were definitely covering the debt.

3 Q. Okay. And then that second sentence
4 there in Paragraph 43 that "on information and
5 belief Given failed to give Franco this advice
6 because the Newco deal ensured that MBRM's
7 accrued fees would be paid," the Newco deal
8 didn't say how much of Mayer Brown's fees would
9 be paid, did it?

10 A. No. It said a percentage of them, but
11 that could be a hundred percent. It could be
12 2 percent, I guess, but it also, I think,
13 prefaced that by saying this deal will not be
14 done unless these terms are met, which basically
15 puts the leverage in Mayer Brown's hands and
16 Franco's and Wong's.

17 Q. Do you agree with that sentence?

18 A. I do agree with it, yes.

19 Q. And did you talk about that with the
20 trustee or his counsel?

21 A. I can't recall specifically, but I
22 would have talked about it with both of them.

23 Q. And, if asked, you would have said
24 that this is correct?

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1 A. Yes, I would have; that it would be my
2 belief, yes.

3 Q. We can come back to the complaint.
4 Let's talk about a couple other things first. I
5 want to show you what we are going to mark as
6 Exhibit No. 26.

7 (WHEREUPON, a certain document
8 was marked Spehar Exhibit
9 No. 26, for identification, as of
10 1/21/09.)

11 BY MR. CISZEWSKI:

12 Q. Mr. Spehar, do you recognize
13 Exhibit 26?

14 A. Yes, I do.

15 Q. What is it?

16 A. This is the final court order in the
17 bankruptcy ruling that put our financing deal in
18 place.

19 Q. Okay. And this represents the
20 agreement between you and the trustee about
21 how -- what recovery you could get as a result of
22 the malpractice action, is that right?

23 A. Correct, and what recovery the estate
24 would get.

1 Q. Okay.

2 (WHEREUPON, a certain document
3 was marked Spehar Exhibit
4 No. 27, for identification, as of
5 1/21/09.)

6 BY MR. CISZEWSKI:

7 Q. Mr. Spehar, showing you what's
8 been marked as Exhibit No. 27, do you recognize
9 this document?

10 A. Yes.

11 Q. What is it?

12 A. This is a memo from myself to Rob --
13 to Joyce and a few other attorneys.

14 MR. O'BRIEN: Counsel, I just want to
15 interpose that we are going to object on the
16 basis of any questions regarding the memo.

17 Our position is that Spehar Capital
18 was seeking legal advice in a client capacity
19 from the Joyce firm relative to this memo.

20 I understand that it was produced by
21 the Joyce firm in the course of this litigation.
22 That was done without the permission or the
23 knowing voluntary waiver of the privilege by
24 Spehar Capital.

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1 Spehar's attorney has made demands to
2 have that recalled and has asserted that
3 privilege; and despite Joyce's production of it,
4 we are still contending that that is a product of
5 attorney/client privilege.

6 MR. CISZEWSKI: Okay. So are you
7 instructing the witness not to answer any other
8 questions about this memo?

9 MR. O'BRIEN: I will, if you're going to get
10 into the merits of the memo.

11 I allowed the preliminary questions
12 identifying it and the date and such, but we are
13 not -- I'm going to instruct him not to answer
14 questions regarding the substance of it.

15 MR. CISZEWSKI: Okay. Let me ask a couple
16 of other what I think are background questions,
17 and we will see where we go.

18 MR. O'BRIEN: Okay. Thank you.

19 BY MR. CISZEWSKI:

20 Q. The first page of this document, 4543,
21 did you draft that?

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

23 BY THE WITNESS:

24 A. Yes, I did.

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1 BY MR. CISZEWSKI:

2 Q. Okay. And did you draft the 79-page
3 memo that's attached, 4544 through 4622?

4 THE WITNESS: Is that fine?

5 MR. O'BRIEN: That's fine.

6 BY THE WITNESS:

7 A. Yes.

8 BY MR. CISZEWSKI:

9 Q. And you provided this to Mr. Joyce's
10 firm on June 29 of 2006, is that right?

11 A. Thereabouts.

12 Q. Have you ever retained Mr. Joyce's
13 firm?

14 MR. O'BRIEN: Well, I'm going to object. He
15 sought advise from them, which I think is where
16 the privilege kicks in.

17 Whether they accepted an engagement
18 and formalized it doesn't obviate the fact that
19 this communication fell within the seeking of
20 advice of a client or prospective client from an
21 attorney.

22 BY MR. CISZEWSKI:

23 Q. Is there an engagement letter between
24 Spehar Capital and Joyce's firm?

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1 A. No, there is not.

2 Q. Is there an engagement letter between
3 yourself individually and Mr. Joyce's firm?

4 A. No, there is not.

5 MR. CISZEWSKI: The other questions I have
6 are about the substance of the memo, so given --
7 as I understand it, you would instruct him not to
8 answer any of those questions?

9 MR. O'BRIEN: That's correct.

10 MR. CISZEWSKI: So I don't intend to go
11 through them individually unless you want to make
12 me do it.

13 MR. O'BRIEN: I have no -- I have no
14 pleasure in that. I think we have staked out our
15 positions.

16 If it needs to be debated further with
17 the Court, we can do that; but I don't see the
18 need to go through the exercise.

19 MR. CISZEWSKI: Okay. Let me just ask
20 Mr. Spehar a few other background questions.

21 BY MR. CISZEWSKI:

22 Q. When did you discover that this
23 document had been produced to our law firm?

24 MR. O'BRIEN: If you know.

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1 BY THE WITNESS:

2 A. Sometime during the discovery process;
3 I'm not sure exactly when. It would have been in
4 the spring of 2007 when this discovery was going
5 on.

6 BY MR. CISZEWSKI:

7 Q. So in the spring of -- spring of 2008?

8 A. Is that when it would be?

9 Q. We issued our subpoena in January of
10 2008 to --

11 A. Okay. Then it would be 2008.

12 MR. CARROLL: I don't think -- I'm not being
13 deposed; but just as a matter of record, I think
14 they were produced in maybe January or February
15 of 2008.

16 BY THE WITNESS:

17 A. Okay. Then it would have been spring
18 of 2008.

19 BY MR. CISZEWSKI:

20 Q. And when did you or your counsel make
21 a request of Mr. Joyce's firm to call this
22 document back or assert a privilege?

23 A. Sometime fairly quickly thereafter
24 since we discovered it.

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1 Q. And to this point Mr. Joyce's office
2 has refused to do?

3 A. I have no idea. I've left it alone.

4 Q. Okay. Well, given that your counsel
5 has indicated he's going to instruct you not to
6 answer any questions about the substance of the
7 memo, I'm not going to ask you any more questions
8 about it because all the questions I have
9 remaining are about the substance.

10 I do have questions about it, and we
11 will just reserve our right to have that issue
12 resolved by the Court if need be.

13 MR. O'BRIEN: Thank you, counsel.

14 (WHEREUPON, a certain document
15 was marked Spehar Exhibit
16 No. 28, for identification, as of
17 1/21/09.)

18 BY MR. CISZEWSKI:

19 Q. Now, Mr. Spehar, are you able to
20 identify what's been marked as Spehar Deposition
21 Exhibit No. 28?

22 A. Yes.

23 Q. What is this?

24 A. This is a memo that I wrote to Ed

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1 Joyce about a month prior to the filing of the
2 malpractice action.

3 Q. Okay. And what was the purpose of
4 this memo?

5 A. Just, I think, a clarification towards
6 the end of the day of some of the arguments I had
7 been putting forth and applying what I knew to be
8 the facts to them.

9 Q. Okay. Did Mr. Joyce ask you to
10 prepare such a memo?

11 A. Yes.

12 Q. What specifically did he ask you to
13 do?

14 A. One of the attorneys there -- I can't
15 remember which -- would have asked me -- again,
16 we are going back 2 years ago -- would have asked
17 me to put my thoughts into as clear a format as I
18 could at that late stage of the game.

19 I had done numerous memos, as you
20 know, prior to this, and they were all evolving.
21 This is kind of a final evolution.

22 MR. O'BRIEN: Just in case this comes up on
23 the record, this document was identified as
24 Plaintiff's Exhibit 19 at our trial in the

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1 bankruptcy case.

2 So if in the course of questioning and
3 answering he should refer to it as PX 19, I just
4 want the record to be clear that he's referring
5 to this document that you've marked as Spehar 28.

6 MR. CISZEWSKI: Okay. Old habits never die.

7 MR. O'BRIEN: Yes.

8 BY MR. CISZEWSKI:

9 Q. Did you provide this memo to anyone
10 other than Mr. Joyce's office?

11 A. I provided it to the trustee as well,
12 I believe.

13 Q. All right. I really don't have any
14 other questions about this one at this time.

15 (WHEREUPON, a certain document
16 was marked Spehar Exhibit
17 No. 29, for identification, as of
18 1/21/09.)

19 BY MR. CISZEWSKI:

20 Q. Mr. Spehar, are you able to identify
21 the document that's been marked as Exhibit 29?

22 A. This appears to be a letter from my
23 counsel at Defrees & Fiske to David Grochocinski.

24 Q. Okay. I want to direct your attention

1 to Page 2. There's a numbered paragraph 4; if
2 you could read that to yourself.

3 A. "That you and your special counsel
4 Joyce would --"

5 Q. You can read it to yourself.

6 A. Okay.

7 (Short pause.)

8 BY THE WITNESS:

9 A. Okay.

10 BY MR. CISZEWSKI:

11 Q. And can you explain what this
12 paragraph is requesting from the trustee?

13 MR. O'BRIEN: I'm going to object that it's
14 dealing with indemnification and calls for a
15 legal opinion; but subject to that, you can
16 answer.

17 BY THE WITNESS:

18 A. What it's referring to?

19 BY MR. CISZEWSKI:

20 Q. Yes. What's your understanding of
21 what is being requested on Spehar Capital's
22 behalf of the trustee?

23 A. That if there was a settlement or even
24 in a trial award, I guess, with Mayer Brown that

1 whatever agreements are normal in those types of
2 situations or he's going to get to not pursue any
3 actions against the trustee, I would get the same
4 protections.

5 Q. Okay.

6 A. I have no idea what those are.

7 Q. Did you have some concern at this time
8 that Mayer Brown, Trautner, and/or Given might
9 try to bring legal action against Spehar Capital?

10 A. Not in particular. I wouldn't put it
11 past them, let's put it that way, but I don't
12 know that there's cause for it. I don't believe
13 there is.

14 Q. Did you ever discuss any of that
15 possibility with the trustee?

16 A. No.

17 Q. What about with Mr. Joyce's --

18 A. No, I don't believe I did.

19 Q. Okay. Can we turn back to that
20 exhibit? One more area of questioning.

21 Go ahead and read numbered paragraph 3
22 on Page 2 to yourself.

23 A. Okay.

24 (Short pause.)

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1 BY THE WITNESS:

2 A. Okay.

3 BY MR. CISZEWSKI:

4 Q. And can you explain the basis for any
5 agreement that your accountants would designate
6 the first \$11,253,627 plus interest paid to
7 Spehar Capital to be stock compensation?

8 A. If you look at my judgment that I got,
9 that is the amount that was designated as stock
10 compensation in the judgment.

11 Q. In the default judgment?

12 A. In the default judgment. From a tax
13 perspective, that's treated under capital gains;
14 and then all of this is in consideration of
15 raising the cap.

16 Q. Had the trustee indicated that he
17 might object to that designation?

18 A. No, he's never said anything about it.
19 I've been offering to raise the cap to the
20 estate; so taking a little more money out of
21 this, and in consideration for that, I've been
22 looking at this. He has not responded.

23 Q. Have you ever talked to the trustee
24 about the tax treatment of the default judgment

1 award?

2 A. No, I have not directly.

3 Q. Have you indirectly?

4 A. No, other than this letter.

5 Q. Okay.

6 A. If you consider this indirect, this
7 letter.

8 Q. Were there any communications with the
9 trustee through your counsel?

10 A. Well --

11 Q. Other than the letter?

12 A. Not that I'm aware of, no.

13 Q. Okay. Do you know who Sung Lee is?

14 A. Sung Lee? The name rings a bell. Why
15 does it ring a bell?

16 Q. Well, let me show you a document and
17 then we can see if there's anything to talk
18 about.

19 (WHEREUPON, a certain document
20 was marked Spehar Exhibit
21 No. 30, for identification, as of
22 1/21/09.)

23 BY MR. CISZEWSKI:

24 Q. I show you what's been marked as

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1 Deposition Exhibit No. 30, which appears to be an
2 e-mail from you to someone named Sung Lee.

3 Does this document refresh your
4 recollection as to who that is?

5 A. I think -- I'm not sure here. I think
6 in the production of the documents there was
7 some -- my firm in L.A., Ken Franklin, there was
8 some -- something happened in copying the
9 documents and I was asked to resend some and I
10 might have resent them to this person at L.A.
11 Legal. I believe that was the copy firm they
12 were using to make sure you guys got all the
13 documents.

14 Q. I see. Thank you.

15 A. That's my best recollection of that.

16 Q. Now, within this e-mail, there's
17 another e-mail from yourself to Rob Carroll on
18 August 1st of 2005. It says, "Given was aware
19 that Franco had authorized SC to tell the Washoe
20 they could have up until October 15 to conduct
21 due diligence."

22 What's the basis for your belief that
23 Given was aware of that?

24 A. My discussions with Franco.

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1 Q. Did you ever talk about that with
2 Given?

3 A. I may have. I'm not -- I can't tell
4 you specifically; but when Rob and I actually
5 started talking to each other prior to that
6 Washoe call, I believe we had a couple of heated
7 discussions. I'm not sure if that was part of
8 it.

9 Q. Did Melvin or Robert Spaeth ever bring
10 any possible financing opportunities to you?

11 A. No.

12 Q. What about Dick Ross? Did he bring
13 any?

14 A. To me?

15 Q. Yes.

16 A. No.

17 Q. And did either -- did either of the
18 Spaeths suggest possible funding sources for
19 CMGT?

20 A. To me?

21 Q. Yes.

22 A. No.

23 Q. What about Mr. Ross?

24 A. No, not to me.

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1 Q. Okay. Have you talked to Lou Franco
2 since the involuntary bankruptcy was filed?

3 A. Since it was filed? I said hi to him
4 in court the other day. We subpoenaed him as a
5 witness. That was about it, I think.

6 Q. Okay. What about Jim Wong? Have you
7 had any communications with him since the
8 bankruptcy was filed?

9 A. No.

10 Q. How about Mr. Baliga?

11 A. No.

12 Q. Melvin Spaeth?

13 A. No.

14 Q. And what about Robert Spaeth?

15 A. No.

16 Q. I want to go back. One of the things
17 we talked about off and on today was Sealaska,
18 and I wanted to go back and explore that
19 potential funding source a little bit.

20 A. Okay.

21 Q. Can you explain what the benefits are
22 that Sealaska brought to the table as a potential
23 investor in CMGT?

24 A. Yes. In the mid-'70s, the Alaska

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1 native communities did a settlement with the
2 United States government that created
3 corporations. They were given land. They were
4 given all sorts of resources and some money, and
5 for that they settled their aboriginal claims
6 with the United States.

7 Unlike any other native community in
8 the United States, they are, therefore, set up as
9 corporations, not as tribal entities, and that
10 allows them great business advantages; so you can
11 do business with them without having to deal with
12 tribal sovereignty issues, which is a huge
13 advantage.

14 Also, the until recently ranking
15 senior senator was Ted Stevens. Ted Stevens ran
16 the appropriations committee. Coincidentally or
17 not, the Alaska native community had a
18 top-of-the-line set of minority benefits. They
19 could do -- they had minority benefits that
20 exceeded any other even native group.

21 So these corporations are basically --
22 there's maybe four, five, six of the major
23 ones -- Cook Inlet, Sealaska, a couple of
24 others -- are very astute politically. They are

1 very politically connected.

2 Their business is to mine their
3 minority advantage, and they way they do that is
4 by owning businesses at least 51 percent so they
5 become minority businesses and then trying to
6 help those businesses do business with major
7 corporations that need to fulfill their minority
8 quotas to do business with the U.S. government.

9 And so they have inordinate leverage
10 to get business done with people like the U.S.
11 Postal Service, for instance, all governmental
12 agencies, all private contractors of the U.S.
13 government.

14 They can do sole source contracting
15 under the 8A provision, which means that they
16 sometimes just don't have competition for
17 contracts if they can justify it.

18 MR. O'BRIEN: Excuse me. Did you need him
19 to name those corporations again?

20 THE COURT REPORTER: No, no.

21 BY THE WITNESS:

22 A. They are sizable. They are --
23 Sealaska is a billion dollar corporation. Cook
24 Inlet is as well and very profitable.

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1 BY MR. CISZEWSKI:

2 Q. Okay. Now, who on behalf of CMGT
3 first contacted Sealaska about a potential
4 investment?

5 A. I did.

6 Q. When was that?

7 A. I believe I did that the minute I
8 became on board in June, 2001.

9 Q. Okay.

10 A. I contacted roughly 6 or 7 of those
11 corporations.

12 (WHEREUPON, a certain document
13 was marked Spehar Exhibit
14 No. 31, for identification, as of
15 1/21/09.)

16 BY MR. CISZEWSKI:

17 Q. I've handed you what's been marked as
18 Spehar Deposition Exhibit No. 31.

19 A. Um-hum.

20 Q. Are you able to identify what this
21 document is?

22 A. We are going a ways back.

23 Well, I know these people. Do I know
24 what this document is? It looks like -- yes. It

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1 looks like a communication between myself and
2 William Strafford from Sealaska.

3 Q. Well, did -- you first contacted
4 Sealaska in July of 2001, is that right?

5 A. Yes.

6 Q. And what happened as a result of that
7 contact?

8 A. They -- initially I don't recall them
9 being interested. It took quite a while to get
10 them interested. These are slow moving
11 corporations and they work on trust a lot, so it
12 took until -- they, I think, carried through
13 until roughly -- actually they were interested in
14 the first iteration; and, as I recall now, in
15 January of 2002, they declined saying that they
16 actually did have an interest, but their
17 financial situation didn't allow them to invest
18 right then.

19 We picked back up with them in roughly
20 August of 2002, and they had squared away their
21 bank financing and stepped back into the game.

22 (WHEREUPON, a certain document
23 was marked Spehar Exhibit

24 No. 32, for identification, as of

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1 1/21/09.)

2 BY MR. CISZEWSKI:

3 Q. We have handed you what's been marked
4 as Spehar Deposition Exhibit No. 32.

5 Do you recognize this document?

6 A. I do.

7 Q. And what is this?

8 A. This looks like a decline from Bill
9 Strafford in August of 2001.

10 Q. Okay. And you mentioned in your last
11 answer that you thought they declined in January
12 of 2002.

13 Is that --

14 A. This refreshes me, that they did --
15 actually, if you go back through the documents,
16 you'll find they came back a couple times. I
17 believe in January of 2002 they stepped back into
18 the game and then they declined again because of
19 financing and then they came back in again and we
20 went through due diligence.

21 Q. How many times did they come back in?

22 A. Well, from my remembrance having seen
23 this, I would say three.

24 Q. Okay. So you first talked to them in

1 June of '01?

2 A. Correct.

3 Q. They declined in August, 2001, and
4 that's Exhibit 32?

5 A. Um-hum.

6 Q. And then they approached you in
7 January or you approached them?

8 A. I don't recall, Steve. Knowing me, I
9 probably approached them.

10 Q. Okay.

11 A. But they -- they considered it
12 strongly and then, as I recall, were going to
13 take it to the board.

14 And then Strafford said their
15 financial situation -- they were having some
16 trouble with financing from banks at that point
17 in time and they needed to resolve that first, so
18 we tabled it until roughly August of 2002.

19 And then that's when we started doing
20 the memorandum of understanding and then a letter
21 of intent and the due diligence.

22 Q. Okay. So when there was a
23 reconnection there in January of 2002, that was
24 short-lived?

1 A. Whenever that reconnection happened --
2 it might have happened before that -- but, yes,
3 it was fairly short-lived.

4 Q. Okay. Now, was Bill Strafford the
5 only person at Sealaska that you dealt with on
6 this?

7 A. No.

8 Q. Who else did you deal with?

9 A. Strafford was the CFO. The treasurer,
10 Patrick --

11 MR. O'BRIEN: Duke.

12 THE WITNESS: Thank you.

13 BY THE WITNESS:

14 A. Patrick Duke was the main person
15 charged with the due diligence on CMGT.

16 Bob Wysocki was another -- he was the
17 controller. Those were the two main contacts for
18 CMGT.

19 (WHEREUPON, a certain document
20 was marked Spehar Exhibit
21 No. 33, for identification, as of
22 1/21/09.)

23 BY MR. CISZEWSKI:

24 Q. I've handed you what's been marked as

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1 Deposition Exhibit No. 33.

2 Can you identify this document for us?

3 A. This is an e-mail from myself to
4 Franco, Lou Franco, September 16, 2002.

5 And it looks like I am forwarding an
6 e-mail from Strafford or Lou is forwarding it to
7 me -- what is this? No, I'm forwarding it to
8 Lou, I guess.

9 Q. And it looks from Lou's e-mails as if
10 he was skeptical about whether this was going to
11 materialize into anything?

12 A. Where are you seeing that?

13 Q. Well, your first e-mail says, "You're
14 so negative." It continues, and then right below
15 that appears to be Lou's e-mail to you that says,
16 "Looks like this deal is dead."

17 A. Well, again, this is September, 2002.

18 Q. Um-hum.

19 A. We went ahead in December and Sealaska
20 put it to the board. The board approved it.
21 There was an LOI. They did 3 months of due
22 diligence. They gave us a term sheet.

23 So whatever they were saying here, it
24 materialized that they actually became

1 interested.

2 Q. Now, were the terms of the deal that
3 CMGT was suggesting to Sealaska in September of
4 2002 the same that had been suggested in August
5 of 2001 and January of 2002?

6 A. I don't know in August of 2001 or
7 January that we got that far, that we actually --
8 I don't think we actually gave them a memorandum
9 of understanding or anything like that. I think
10 it was more initial conceptual stages, trying to
11 gather their interest at that point in time.

12 Q. Okay.

13 A. Having said that, I could be wrong;
14 might have to look back there and see.

15 Q. And so Sealaska ultimately did move
16 forward with a memorandum of understanding in
17 September of 2002, is that right?

18 A. As I recall, October of 2002 we did a
19 memorandum of understanding. December of 2002
20 they put it to the board. The board approved
21 moving forward with due diligence, and they gave
22 us a letter of intent in February that spelled
23 out how they were going to move forward and
24 started doing due diligence -- actually began due

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1 diligence in January even before that LOI and did
2 roughly 5 months of due diligence, 4 months of
3 due diligence, until sometime in April Patrick
4 Duke wrote up a recommendation to his chairman
5 and the board to do the deal and they went
6 forward with it; gave us a term sheet.

7 Q. And then what happened?

8 A. They gave us a term sheet that had
9 sliced the deal back considerably from what we
10 had agreed on, and the fireworks started. It
11 was --

12 Q. What was initially agreed upon?

13 A. The letter of intent was, I believe, a
14 \$2 million investment from Sealaska with another
15 \$500,000 coming from Grand Junction, Colorado,
16 where we were going to locate the deal. Sealaska
17 did not want to locate there, and so that got cut
18 out.

19 They also cut their investment back to
20 an initial cash investment of roughly \$950,000
21 with the potential for putting more money in
22 later and some milestones for the deal to
23 progress for that money to come in and assumed
24 their part of the debt, which was roughly, I

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1 think, in our spreadsheets something like
2 \$700,000.

3 Q. Were they going to assume debt under
4 the terms of the LOI?

5 A. Yes.

6 Q. So the terms of the LOI would have
7 been 2 million from Sealaska plus assumption of
8 \$700,000 debt?

9 A. They would own 51 percent of the
10 company, the whole kit and caboodle, so the debt
11 included, yes.

12 Q. Okay. And the terms that Sealaska
13 eventually came back with board approval,
14 president approval, was 950,000 for 51 percent of
15 CMGT?

16 A. Yes, with milestones, and the -- they
17 had a tiered -- they had a tiered prioritization
18 of payouts to people that, if I recall correctly,
19 put people like myself and Mayer Brown and some
20 of the other advisors in the third priority
21 category, which is why I was explaining to you it
22 was vastly different than the Newco deal.

23 Q. Now, would Spehar Capital have been
24 entitled to compensation under its letter

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1 agreement with CMGT since the deal Sealaska was
2 proposing wasn't for a million dollars or more?

3 A. Yes.

4 Q. Why is that?

5 A. They specifically agreed to the cash
6 compensation portion of that, Sealaska did, and
7 there's actually an e-mail to that effect.

8 Rightly or wrongly, I think they
9 probably kept the investment under the million
10 dollar threshold to raise some sort of question
11 about whether I was owed the 6 percent or not. I
12 would have to refresh myself on the contract, but
13 I believe there was a clause in there that
14 protects me from that sort of -- what I call
15 gaming the contract behavior.

16 Q. And so regardless of the terms of the
17 agreement, Sealaska was willing to pay the cash
18 compensation to Spehar Capital?

19 A. Yes, they were. They actually sent an
20 e-mail -- there were discussions about that, and
21 they sent an e-mail to Franco and Given saying
22 they would.

23 Q. Okay. Now, what was CMGT's reaction
24 when Sealaska came back at 950,000?

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1 A. They didn't like it. They pushed very
2 strongly for the \$2 million, at least arguing
3 Hartford needed to see that much. Sealaska's
4 argument was you don't need Hartford; you've got
5 us. When Hartford sees our connections on the
6 Hill, they are going to jump right back in the
7 saddle anyway. So that was the argument.

8 I was not involved in the later
9 discussions because my contract became an issue,
10 so Ron and Lou handled all of the discussions.
11 There was a period from roughly May 1st I believe
12 is when we got the term sheet to roughly May 13th
13 when there were several term sheets that went
14 back and forth.

15 I was on the sidelines working with
16 them. They came to me to redo projections so
17 that they could include them in the term sheets
18 and they batted that around and sometime in that
19 time frame I believe Chuck Trautner surfaced with
20 his Newco deal and they went that way.

21 Q. Okay. Did you -- did you ever make a
22 recommendation to Lou that CMGT move forward with
23 the Sealaska deal even though it wasn't what the
24 initial terms were agreed to?

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1 A. I don't know that I did. We were all
2 caught up in the discussion of how this was going
3 to play out with Hartford at the time.

4 Had I been aware of Newco and that
5 they were willing to go that route, I definitely
6 would have recommended the deal; but I wasn't
7 aware of that.

8 I thought at that point in time and
9 all I ever knew was that the type of deal that we
10 were presenting to all the venture capital firms
11 and investors at that point in time was going to
12 be the 51 percent, \$2-1/2 million deal. That's
13 what I knew, so I don't know that I did.

14 Q. Okay. Well, do you think -- if the
15 only two choices were Sealaska at \$950,000,
16 51 percent ownership interest, and the Newco
17 deal, which one would you have recommended?

18 A. Which one would I have recommended? I
19 think they are roughly equivalent. I'd
20 probably -- I would have recommended the Sealaska
21 deal because the shareholders would have kept
22 43 percent and I believed in the upside of the
23 company, as opposed to the Newco deal and
24 20 percent; and also because the credit-holders

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1 didn't get stiffed as they did in the Newco deal.

2 So I think I would have recommended
3 them getting more stock, the shareholders, and
4 taking the Sealaska deal. I think with Sealaska
5 on board as the marketer that they were and the
6 powerhouse marketer, that company would have
7 succeeded.

8 And I think once Sealaska would have
9 come on board and been in bed with the company,
10 they would have also continued to fund. They
11 were very, very high on the deal.

12 Q. But you would agree that someone --
13 that that's kind of a topic of debate because you
14 did say that they were roughly equivalent?

15 A. I say that in the sense that I believe
16 Sealaska would have invested under either set of
17 terms, either their \$95,000,000 set of terms,
18 which they obviously would have invested under,
19 or under Newco's deal.

20 If they had known about Newco and they
21 looked at it and analyzed it, they would have
22 jumped at that deal.

23 Q. How do you know that?

24 A. My understanding of both my financial

1 analysis of the cost of the deal and my
2 understanding of Sealaska.

3 (WHEREUPON, a certain document
4 was marked Spehar Exhibit
5 No. 34, for identification, as of
6 1/21/09.)

7 BY MR. CISZEWSKI:

8 Q. Sir, we are showing you what's been
9 marked as Deposition Exhibit No. 34.

10 Are you able to identify this document
11 for us?

12 A. Yes.

13 Q. What is this?

14 A. This is an e-mail from myself to
15 Irving Bailey of Chrysalis Ventures, April 17,
16 2003.

17 Q. Okay. You see in the first paragraph
18 about halfway down you make a reference to an
19 Alaska native corporation and being concerned
20 that they have become, quote, "penny-wise and
21 pound-foolish"? Do you see that?

22 A. Um-hum.

23 Q. I take it you're referring to
24 Sealaska?

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1 A. Yes, although after Sealaska -- the
2 penny-wise and pound-foolish, yes, it looks like
3 I'm referring to Sealaska.

4 Q. Okay.

5 A. There was another corporation that was
6 looking at it after that, however, too.

7 Q. Okay. And why did you think they were
8 becoming penny-wise and pound-foolish?

9 A. It because I thought the company
10 was -- I believe the \$2 million was an
11 appropriate investment amount for the company.

12 Q. Okay. Now, what --

13 A. And they were passing on a great deal
14 by not stepping up to the plate.

15 Q. Now, what were you saying about there
16 being another?

17 A. There was another corporation we went
18 to after that. I believe it was called Huna,
19 H-u-n-a. I can't recall the name exactly.

20 Q. Did anything materialize?

21 A. No, no. They were smaller. They
22 didn't have the wherewithal to really do it on
23 their own.

24 Q. Okay. Now, if you look down at the

1 fifth paragraph -- I'm sorry, the fourth
2 paragraph.

3 A. Okay.

4 Q. "We currently service 4 clients," and
5 it continues.

6 I take it that that's information you
7 either got or cleared with Lou Franco?

8 A. Yes.

9 Q. And so that was an accurate reflection
10 of the --

11 A. To the best of my knowledge, yes, I
12 tried to clear everything with Lou.

13 Q. Okay. And if you look at the third
14 paragraph above there, "to make our projections,"
15 did you view these as realistic projections?

16 A. Oh, yes.

17 Q. Why is that?

18 A. Why?

19 Q. Well, I mean, the reason I ask is
20 there's -- I mean, it would be a dramatic
21 increase over what was happening.

22 I mean, for instance, it says -- you
23 know, the fourth paragraph says, "We are
24 currently serving 4 clients with 9,000

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1 employees." Then in the third paragraph, the
2 projection says that "we need to cover 210,000
3 employees by year-end 2003."

4 A. Right. Providence Health Systems,
5 38,000 employees, was ready to sign as soon as we
6 were funded. There were several of those in the
7 pipeline already, and their only trepidation was
8 we didn't have funding.

9 So if you look at -- you should take a
10 good solid look at Sealaska's due diligence.
11 There's a study that was done by Marsh-McLennan
12 every year of the absence management trends. You
13 can see that the business was growing like crazy;
14 that one of the primary services, the starter
15 services, that CMGT offered was FMLA tracking,
16 which allowed firms to off-load their compliance
17 problems that they had with the FMLA as well as
18 begin to get their hands around the whole absence
19 problem.

20 That was a huge concern. 51 percent
21 of the HR executives in the United States said it
22 was their major concern, so there was a very big
23 market demand for this. CMGT was recognized by
24 absolutely everyone as the primary provider. All