

ROBERT GERARD SPEHAR, JANUARY 21, 2009

1 of those people were holding back for funding.

2 I think if you look there, you'll see
3 even reaching the 2 million employees by year-end
4 2006 required only 1-1/2 percent of the market,
5 and that's -- civilian employees in the United
6 States. It's not a stretch.

7 (WHEREUPON, certain documents
8 were marked Spehar Exhibit
9 Nos. 35 and 36, for
10 identification, as of
11 1/21/09.)

12 BY MR. CISZEWSKI:

13 Q. Now, Mr. Spehar, I'm showing you
14 what's been marked as Deposition Exhibit Nos. 35
15 and 36.

16 A. Okay.

17 Q. And these are two Sealaska term sheets
18 dated May 1, 2003, that were both produced by the
19 trustee in this case. And I guess -- they appear
20 to be different to me.

21 I'm just wondering if you have any
22 explanation for why two different term sheets may
23 have been sent to Mr. Franco on this day.

24 A. I'd have to look through these

ROBERT GERARD SPEHAR, JANUARY 21, 2009

1 carefully. I know at that point in time the
2 start of the whole negotiation was May 1st and
3 there was a term sheet that came from Sealaska
4 and from that point forward there were several
5 iterations of the term sheet that went back and
6 forth between Sealaska and CMGT.

7 Which ones these are, I would have to
8 dig in here and try and find out.

9 Q. That's okay. We don't have to spend
10 the time doing that now.

11 (WHEREUPON, a certain document
12 was marked Spehar Exhibit
13 No. 37, for identification, as of
14 1/21/09.)

15 BY MR. CISZEWSKI:

16 Q. Now, this is Spehar Deposition Exhibit
17 No. 37, and it's a -- there's a fax cover page
18 and then there's a Sealaska letter dated May 28,
19 2003.

20 A. Correct.

21 Q. Can you identify what that May 28,
22 2003 letter is?

23 A. After the deal had terminated, we
24 had -- I believe Lou demanded the documents that

ROBERT GERARD SPEHAR, JANUARY 21, 2009

1 Sealaska had back from them, and those included
2 MOIC documents as well as the CMGT documents.

3 Q. So the negotiations with Sealaska were
4 ultimately unsuccessful, is that fair to say?

5 A. The negotiations were successful in a
6 sense that we did have a deal in place. It was
7 not accepted by either party -- I mean, the
8 Sealaska deal was not accepted by CMGT and so we
9 couldn't come to agreement and Sealaska walked
10 away.

11 Q. Okay. And that occurred sometime in
12 May of 2003, the walk-away?

13 A. Yes; May 13th, I believe.

14 Q. And did you or anyone else on behalf
15 of CMGT ever contact Sealaska again about
16 potential financing?

17 A. I believe I tried. It was a rather
18 uncomfortable situation. It wasn't a happy
19 ending, so it was not something that was going to
20 happen. They -- it wasn't going to happen.

21 Q. So it's fair to say that after the
22 May 13th termination there was no possibility of
23 any deal with Sealaska?

24 A. It would have been difficult. I don't

ROBERT GERARD SPEHAR, JANUARY 21, 2009

1 know if "no possibility" is the correct term, but
2 it would have been difficult.

3 Q. Now, in your meeting that you had in
4 Denver, did anybody from Mr. Joyce's firm talk to
5 you about what happened with the Sealaska deal?

6 A. I can't specifically recall. You
7 know, I would imagine it was on the agenda, yes,
8 but -- I know we talked about a comparison of a
9 lot of deals, so, yes, I believe that we did, now
10 that I think about it.

11 Q. Well, did you talk about why the
12 Sealaska deal failed?

13 A. You know, it's -- I can't specifically
14 recall, Steve.

15 Q. And did you talk about what we just
16 talked about a few minutes ago with your thoughts
17 that it was extremely unlikely that there could
18 be any successful deal with Sealaska after
19 May 13th of 2003?

20 A. I can't recall.

21 Q. Did you ever talk about that subject
22 with the trustee himself at any time?

23 A. Sealaska? Yes.

24 Q. What about the fact that you thought

ROBERT GERARD SPEHAR, JANUARY 21, 2009

1 there was almost no chance of any deal with
2 Sealaska after May 13th of 2003?

3 A. The fact that it would be difficult?

4 Q. Yes.

5 A. Yes, I may have. I'm not sure.

6 Q. Did you talk about that with the
7 trustee's counsel?

8 A. I may have. I'm not sure.

9 Q. Do you know -- I want to talk for a
10 second about the fax cover sheet.

11 Do you know who this law firm is in
12 Juneau, Alaska, that this came from?

13 A. Bud Simpson was on the -- I believe
14 it's Simpson Tillinghast. Yes, it's up at the
15 top. They represented Sealaska.

16 Q. Okay. And do you know who Jennifer
17 MacDougall is?

18 A. I believe she is in Rob's firm.

19 THE WITNESS: Isn't that right?

20 MR. CARROLL: I'm not here to answer
21 questions.

22 BY MR. CISZEWSKI:

23 Q. Your thought is she is at Ed Joyce's
24 firm?

ROBERT GERARD SPEHAR, JANUARY 21, 2009

1 A. I believe --

2 MR. CISZEWSKI: I think Mr. Joyce would
3 object to it being referred to as Rob's firm.

4 MR. CARROLL: I personally do not object to
5 that.

6 MR. CISZEWSKI: Make sure a copy of this is
7 sent directly to Mr. Joyce.

8 BY THE WITNESS:

9 A. I believe so.

10 MR. O'BRIEN: Joyce, Carroll, and
11 MacDougall; I'm starting to sense a pattern here
12 that's not offensive to me.

13 MR. CISZEWSKI: Why don't we take 3 or
14 4 minutes. I just want to look through a couple
15 other things, and I'm probably within 15 or
16 20 minutes of being done.

17 MR. O'BRIEN: Okay.

18 MR. CISZEWSKI: So then we can -- I'll wrap
19 up and turn it over to Rob.

20 (WHEREUPON, a recess was had.)

21 BY MR. CISZEWSKI:

22 Q. Mr. Spehar, I just have a few other
23 questions I wanted to ask about the complaint,
24 which is Exhibit 6.

ROBERT GERARD SPEHAR, JANUARY 21, 2009

1 A. All right.

2 Q. Can you turn to Paragraph 51 on Page
3 14?

4 Why don't you read 51 and 52 to
5 yourself, and then we will talk about those a
6 little bit.

7 (Short pause.)

8 BY THE WITNESS:

9 A. Okay.

10 BY MR. CISZEWSKI:

11 Q. Let's talk about Paragraph 51 for a
12 second.

13 Do you agree with what it says there?

14 A. Yes.

15 Q. Okay. And did you talk about any
16 efforts to settle the dispute you had with CMGT
17 with the trustee or his counsel?

18 A. Yes.

19 Q. Okay. And is this what you told them?

20 A. Yes.

21 Q. And what about Paragraph 52? Is that
22 accurate?

23 A. Yes, it is.

24 Q. And, again, is this information that

ROBERT GERARD SPEHAR, JANUARY 21, 2009

1 you told the trustee and his counsel?

2 A. Yes, and it's in my e-mails, too. I
3 didn't have to tell them. It's on the record.

4 Q. But you did also tell them this?

5 A. Yes.

6 Q. Now, when was this telephone call that
7 Given said inappropriate things?

8 A. August 19th.

9 Q. Okay. And who placed that call? You
10 made that call?

11 A. No. That call was made to me. On
12 August 15th, the letter went out to CMGT
13 shareholders asking them to vote on the Newco
14 deal.

15 Prior to that, Lou Franco called me
16 and I -- he told me that basically Ron Given was
17 running the show, that we needed to talk to Ron
18 if there was going to be any sort of settlement;
19 and I said, fine, let's do that.

20 It took me -- Ron did not want to talk
21 to me. I insisted that I didn't want to -- he
22 didn't want to talk to Lou and I together. I
23 insisted that that happen, so it took a few days
24 to put that together, and August 19th is when we

1 had the call.

2 Q. Was Mr. Franco also on the call?

3 A. Yes, he was.

4 Q. Okay. And what threats did Mr. Given
5 make during that call?

6 A. I started the call by saying,
7 "Gentlemen, you know me. You know from our
8 Sealaska negotiations that I'm willing to work on
9 a settlement here. We have to start from the
10 basis of my contract being valid."

11 Excuse my language. Mr. Given
12 immediately said to me, "You motherfucker. You
13 son of a bitch. You don't know anybody but a
14 bunch of Indians and Mexicans."

15 And he threatened to make me poor with
16 18 shareholder lawsuits, and we went on from
17 there.

18 Q. Okay. Is there any other way in which
19 Mr. Given threatened or insulted you during that
20 call?

21 A. To top that, no.

22 Q. Okay. And when you say that he
23 steadfastly refused to negotiate any settlement
24 with SC, what did he say about the possibility of

1 settlement or working out some deal?

2 A. He said that he would -- he didn't
3 offer anything. He said he was absolutely not
4 going to recognize the contract and that, you
5 know, I would -- if I persisted, I was going to
6 be made poor.

7 Q. How did you respond?

8 A. How did I respond? I was very proud
9 of myself in the sense that I didn't blow up. I
10 told him I had heard similar things from my
11 teenage daughters and I was going to try and act
12 accordingly, but I wanted to try and get
13 something accomplished.

14 And I -- there was nothing to do. You
15 know, right at the end of the conversation, as I
16 recall, I asked -- Lou sat there quite silently,
17 and I said, "Lou, this is your company. What are
18 you doing here? Say something," and nothing came
19 out of Lou. He just basically sat there and that
20 was really the end of the conversation. It was
21 just all threats.

22 Q. Okay. Can you turn now to Paragraph
23 62 on Page 17?

24 A. Yes.

ROBERT GERARD SPEHAR, JANUARY 21, 2009

1 Q. You can go ahead and read that one to
2 yourself.

3 (Short pause.)

4 BY THE WITNESS:

5 A. Okay.

6 BY MR. CISZEWSKI:

7 Q. Do you believe that Paragraph 62 is
8 accurate?

9 A. I do.

10 Q. And did you talk -- let me back up.
11 The second sentence indicates that
12 CMGT did not appear and defend the preliminary
13 hearing because of the negligent advice provided
14 by Given.

15 Did you talk about the reasons that
16 CMGT did not appear and defend at the preliminary
17 injunction hearing with the trustee and his
18 counsel?

19 A. Yes.

20 Q. And what did you tell them about that?

21 A. It's pretty much all contained in -- I
22 don't know what your exhibit number is, but the
23 memo that you labeled that was Trustee's
24 Exhibit 19, the September 24th memo.

ROBERT GERARD SPEHAR, JANUARY 21, 2009

1 There were known to me at that time --
2 subsequent to that I know a lot more that I could
3 add to this; but known to me at that time were
4 two pieces of information, one of which was --
5 that were not in the complaint here really fully.

6 One was the October 2nd e-mail that
7 came from Ron Given to all shareholders that said
8 that the subject matter of Gerry Spehar's lawsuit
9 no longer exists, I believe, and that was the day
10 before the preliminary injunction.

11 Hearing that from a law firm of the
12 prestigious nature of Mayer Brown to the
13 shareholders and depending on them for all of
14 their legal counsel I believe would make those
15 shareholders in that instance believe they didn't
16 have to show up.

17 There was also a declaration by Lou
18 Franco in his deposition that outright stated
19 that had they had legal counsel -- they were
20 relying on a legal reason given to them by Ron
21 Given that only he could tell me, my lawyers, in
22 not showing up.

23 Q. And Paragraph 63 ends the same way,
24 that CMGT did not appear in defense of Spehar's

1 amended lawsuit because of the negligent advice
2 provided by Given.

3 A. Yes.

4 Q. Is that something you talked about
5 with the trustee and his counsel?

6 A. Yes.

7 Q. And is it the same reasons why you
8 think they didn't show up at the amended -- to
9 defend against the amended lawsuit?

10 A. Yes. Now, the actual reasons versus
11 the reasons he would have given may be different,
12 but yes.

13 Q. Isn't it possible that CMGT just
14 didn't have any money to hire a California
15 lawyer?

16 A. Well, in the first place, that
17 presumes that Mayer Brown wasn't their attorney,
18 which the judge doesn't seem to think was the
19 case and which she hasn't even begun to see the
20 evidence in that regard; so I think Mayer Brown
21 was still their attorney and should have shown
22 up.

23 Secondly, the shareholders should have
24 been told that they needed another attorney prior

ROBERT GERARD SPEHAR, JANUARY 21, 2009

1 to the TRO before all of this started, and that
2 absolutely did not happen, to the best of my
3 knowledge.

4 And, thirdly, why -- in this instance,
5 when you have a firm of the stature of Mayer
6 Brown that you have worked with for 3, 4,
7 5 years, whatever that was, telling you that
8 there is no substance here, why would you hire
9 someone to go?

10 Q. Do you know that the shareholders
11 tried to hire a California lawyer after the TRO
12 was entered?

13 A. I don't know that. Particularly at
14 this time I did not know that.

15 Q. Do you know that now?

16 A. I've reviewed some information from
17 your e-mails, from Mayer Brown's e-mail files,
18 that indicate there may have been some
19 discussions.

20 Q. And from reviewing those documents,
21 have you come to a conclusion about why CMGT
22 didn't hire an attorney after the TRO was
23 entered?

24 A. No, I haven't, anything different than

ROBERT GERARD SPEHAR, JANUARY 21, 2009

1 what I've already told you.

2 Q. When did you get the e-mails that you
3 reviewed that you're talking about indicate --

4 A. The Mayer Brown e-mails?

5 Q. Yes.

6 A. Probably sometime in the middle of --
7 mid-July, let's say, 2006. I didn't have time to
8 look at them, though. They were in a format that
9 I couldn't really bring up on my computer, so I
10 didn't really review them until after the
11 complaint.

12 Q. Who did you get them from?

13 A. The trustee.

14 Q. But you're certain you got before the
15 malpractice complaint was file?

16 A. I got them before the malpractice
17 complaint was filed. I did not have an ability
18 to get them on my computer until after the
19 malpractice complaint was filed, so I did not
20 have a chance to review them.

21 Q. Okay. And you don't know one way or
22 the other whether the trustee took the time to
23 review those before the complaint was filed, do
24 you?

1 A. I do not.

2 MR. CISZEWSKI: Subject to the privilege
3 question we have with respect to Exhibit No. --
4 what was it?

5 MR. O'BRIEN: 27.

6 MR. CISZEWSKI: Yes, 27, I don't have any
7 more questions.

8 MR. O'BRIEN: Okay.

9 MR. CARROLL: I just need a few minutes.

10 (Short pause.)

11 MR. CARROLL: Okay. We can go on the
12 record.

13 EXAMINATION

14 BY MR. CARROLL:

15 Q. During the examination this morning,
16 early on in the testimony, you testified about
17 some projections that you prepared for CMGT once
18 you started doing work for CMGT, is that correct?

19 A. Yes.

20 Q. Now, did you do that alone, or did you
21 do that with the involvement of anybody else?

22 A. I did that with the involvement of Lou
23 Franco.

24 Q. Was there anybody else involved other

1 than Lou Franco?

2 A. No. I had -- well, let me qualify
3 that.

4 There were pieces of information that
5 we needed to gather to put those together along
6 the way that came from other people. For
7 instance, Jim Wong supplied a lot of information
8 with regards to the financials of CMGT, with
9 regards to the actual sales projections. I think
10 in December, 2002, before the Sealaska deal,
11 Mayer Brown did a lot of research for us on the
12 FMLA law and the applicability of the FMLA law to
13 U.S. government agencies and employees.

14 Q. And how were those projections used
15 after they were prepared?

16 A. They were used -- they were put
17 together with the primary purpose and used for
18 primarily articulating CMGT's business and its
19 investment case to investors, so that was the
20 primary purpose.

21 They were robust enough that they
22 actually became a management tool for CMGT in the
23 business itself.

24 Q. Do you know whether Ron Given ever saw

1 any of the projections that were prepared by you
2 and Lou Franco ar CMGT?

3 A. He saw them regularly. Ron, Lou, and
4 I were the triumvirate. Jim Wong occasionally
5 came in, but the three of us primarily were
6 involved in pitching the deals to serious
7 investors; so whenever anything got serious, at
8 least at that stage Ron always got everything.
9 That included the projections.

10 In particular, in the Sealaska deal,
11 towards the end of the deal I was out of the loop
12 because they were having a problem with my
13 contract, so it became Lou and Ron who were
14 pitching the deal and constructing all of the
15 responses. The projections at that point in time
16 became actually incorporated into the term sheets
17 that Ron was passing back and forth and writing
18 and drafting for Sealaska, and, yes, he was
19 involved in.

20 Q. Did Mr. Given ever -- did you ever
21 have any discussions with Mr. Given regarding the
22 projections?

23 A. Yes. We -- in particular, I think
24 maybe I first really got them into shape to

ROBERT GERARD SPEHAR, JANUARY 21, 2009

1 present to investors when it was probably in the
2 January/February, 2002 range when we were having
3 discussions with Lyric Capital; and as part of
4 those discussions when I was first putting them
5 together, we had some detailed discussions about
6 them.

7 Q. Are you able to summarize some of the
8 things that Mr. Given said regarding the
9 projections?

10 In other words, was he making changes
11 to them about things he didn't like about them
12 and telling you you had to make a change here,
13 make a change there?

14 What was the nature of the discussion
15 you had with him regarding the projections?

16 A. With regard to --

17 MR. CISZEWSKI: Object to the form of the
18 question.

19 BY MR. CARROLL:

20 Q. Let me rephrase.

21 What did you say about the
22 projections?

23 A. The two areas, I guess, that I would
24 go to there would be the FMLA projections as they

ROBERT GERARD SPEHAR, JANUARY 21, 2009

1 applied to -- were they realistic, were they not
2 realistic with regards to did they apply to
3 government employees.

4 Lou Franco when we got involved with
5 Sealaska and they were going to their board with
6 the deal in December of 2002 specifically asked
7 Ron to help -- to have someone at Mayer Brown
8 help research the FMLA law for our projections so
9 we could see how they -- if it did apply to the
10 projections, if Sealaska could actually help us
11 sell the FMLA service to U.S. government agency
12 employees.

13 So there was a series of e-mails that
14 went back and forth and some conclusions that
15 were drawn by Mayer Brown for the projections for
16 the FMLA.

17 When we went forward with that deal
18 and I was out of the loop, in the -- in May of
19 2003 there, I had to take the projections and cut
20 them out into an addendum that was to incorporate
21 portions of the projections into the term sheet
22 that Ron was preparing for Sealaska. He directed
23 me on that.

24 And there were two or three letters

1 that actually talked about the -- in the course
2 of -- once Sealaska put forth the \$950,000 deal,
3 we kind of knew that was coming. And I don't
4 know exactly if we knew the exact number, but we
5 started to know that was coming in April of 2003
6 from conversation or a letter that Patrick Duke
7 had sent Franco.

8 There was a couple of responses to
9 that offer that specifically referenced the
10 projections and the viability of the projections
11 that was drafted by Lou, run by Ron and approved
12 by Ron, and then cc'd to him when it was sent to
13 Sealaska.

14 Q. Did Mr. Given ever tell you that he
15 thought the projections that you prepared were
16 unrealistic?

17 A. Never.

18 Q. Do you know if those projections --
19 well, let me back up.

20 Were the projections updated over time
21 over the years as CMGT sought financing?

22 A. They were updated as often as we
23 possibly could, meaning we tried to keep them
24 current to when we expected the funding to

1 happen.

2 So, for instance, with Sealaska we --
3 in February I think I updated the projections for
4 them and tried to -- they were dependent on the
5 number of months that it took to break even.
6 They were projecting all that going forward, so
7 you had to be specific to the date that the
8 funding actually arrived at the company.

9 So as the deal went from February to
10 May, I would again update the projections to show
11 May funding.

12 Q. Okay. And earlier today in direct
13 examination or during Mr. Ciszewski's
14 examination, you testified that you received
15 the -- if I'm correct, the information that you
16 used to prepare the projections you received from
17 Lou Franco, is that right?

18 A. Lou Franco was the most knowledgeable
19 person on all of CMGT's operations and clients,
20 and so, yes, I always interfaced with him on
21 anything that was an input.

22 Q. Can you tell me what the information
23 was that you used to prepare the projections?

24 A. What it was? It was all of

ROBERT GERARD SPEHAR, JANUARY 21, 2009

1 the requests for proposal, for instance, that we
2 were -- had in the works or that CMGT had in the
3 works with all of its different clients, people
4 like Hartford, Cigna, Liberty Mutual.

5 That was something that was looked at
6 to try and make the sales projections at the top
7 of the projections realistic, so we would
8 constantly be looking at the viability of all of
9 the clients that we had in the works -- when were
10 they likely to come in, what type of service were
11 they likely to actually engage in with us.

12 And from there there was a section of
13 all of the expenses of CMGT, some of which were
14 fixed costs, some of which were variable costs.

15 So, for instance, CMGT's metrics
16 dictated that if you had 10,000 -- you roughly
17 needed one RN, an official nurse, for roughly
18 every 10,000 employees that you were going to
19 service for the client.

20 That didn't mean that she had to
21 actually handle that many employees. That meant
22 that of those 10,000, if 2 percent of them were
23 sick at any one point in time, she'd be able to
24 handled that.

1 So those types of variable costs were
2 automated in the projections, and so I had to go
3 through all of that stuff with them and build
4 them into the projections so that you could
5 project out 4 years and have the sales drive all
6 of the costs and come up with an accurate number.

7 Q. Did Mr. Given ever tell you that the
8 information used to prepare the projections was
9 too speculative to form realistic projections?

10 A. No. He himself, in fact, used those
11 projections to do the Sealaska deal.

12 Q. And were the projections that were
13 prepared for CMGT, to your knowledge, ever given
14 to Chuck Trautner or anybody in his investor
15 group in connection with the Newco deal?

16 A. They definitely were. Well, first of
17 all, they were given to Harlan Smith and Chuck
18 Trautner directly before the conversation in
19 January.

20 Secondly, they were handed off, I
21 believe, in the packages that were sent in late
22 July to Trautner and Harlan Smith as part of the
23 Newco packages that Franco and Given delivered to
24 them.

1 Q. Okay.

2 A. Certainly Trautner was one of the
3 major investors of CMGT that was, again, one of
4 the two people who Lou looked to for savior
5 capital, as he called it, so he was constantly
6 kept in the loop on everything that was going on.
7 If anything changed in the projections, he was
8 given an update.

9 Q. Okay. I'm going to switch gears just
10 a little bit.

11 You testified this morning in response
12 to some questions by Mr. Ciszewski about the
13 amount of time that you devoted to CMGT once you
14 got involved in the company.

15 A. Yes.

16 Q. I just want to explore that a little
17 bit more.

18 About how many hours per day on
19 average, if you can estimate, did you spend
20 working on CMGT in connection with your agreement
21 with CMGT?

22 A. That would vary. I would -- it was a
23 full-time job, I'll put it that way. It was
24 absolutely a full-time job, if not more.

ROBERT GERARD SPEHAR, JANUARY 21, 2009

1 Q. By "full-time job," would you consider
2 a full-time job to be 40 hours a week or more?

3 A. I would consider I spent at least --
4 on average I would say at least 40, maybe
5 60 hours a week.

6 Q. And at that time, what was your
7 financial situation like?

8 A. My financial situation was going from
9 worse to worser. It was -- I had an investment
10 in a stock called Authorizer in March of 2000
11 that was worth \$16 million. I think I explained
12 it earlier. It was an Internet security firm.

13 It was worth roughly \$600,000 by the
14 fall of -- by December of 2000 when I came on
15 board with CMGT. They still had a lot of money
16 in the bank, but they were beginning to struggle.
17 The stock wasn't doing very well.

18 I had introduced Authorizer to CMGT to
19 try and -- because Authorizer had a
20 state-of-the-art at that time, they thought,
21 Internet security setup; so we were trying to
22 peddle them along with CMGT to some of CMGT's
23 partners, like Hartford. Franco and Given became
24 aware of Authorizer through that.

ROBERT GERARD SPEHAR, JANUARY 21, 2009

1 As the years went on with CMGT, the
2 stock basically went to nothing; and that coupled
3 with the fact that I was devoting all of my time
4 to contingency work essentially with CMGT put me
5 in tough financial straits.

6 Q. And what was -- this is maybe the
7 question I should have asked.

8 What was Spehar Capital's financial
9 situation like? Was it any different?

10 A. No. It was exactly the same.

11 Q. Would you say that your financial --
12 Spehar Capital's financial future at that time
13 was tied to CMGT obtaining financing and becoming
14 a successful company?

15 A. Yes. As I testified earlier, I tried
16 to be selective about what I got involved in. I
17 was very comfortable with the cast of characters
18 and business that was involved in CMGT and the
19 MOIC, so I dedicated myself to that.

20 Q. And part of the reason that Spehar
21 Capital's financial future was so closely tied to
22 CMGT was because part of the compensation set
23 forth in Spehar Capital's agreement with CMGT was
24 that Spehar Capital was to be paid at least

1 partially in stock, is that correct?

2 A. Absolutely. That was exactly why I
3 was there.

4 Q. I want to go to Exhibit 6, which is
5 the complaint, and if you'd turn to Exhibit 1 of
6 Exhibit 6.

7 A. Okay.

8 Q. Then if you turn to the second page of
9 that document and go down to Paragraph 5,
10 numbered Paragraph 5 -- is everybody there?

11 A. Okay.

12 Q. Can you read that paragraph just to
13 yourself?

14 A. Are we on Exhibit 1?

15 Q. Am I on the wrong one?

16 MR. O'BRIEN: Exhibit 2.

17 BY MR. CARROLL:

18 Q. I'm sorry, the second page of
19 Exhibit 2, numbered Paragraph 5.

20 A. Okay.

21 MR. CARROLL: Just so it's clear for the
22 record where we are at, we are on Spehar
23 Deposition Exhibit No. 6, which is the complaint
24 in the malpractice case, and we are looking at

1 Exhibit 2 to that complaint.

2 We are on the second page, and I've
3 directed the witness to read numbered paragraph 5
4 to himself.

5 BY THE WITNESS:

6 A. Yes.

7 BY MR. CARROLL:

8 Q. Just let me know when you're done
9 reading it.

10 A. Okay. I got it.

11 Q. What is your understanding of the
12 purpose of that provision?

13 A. This is specifically to address a
14 situation like Newco where a company comes in and
15 buys the assets of CMGT but does not invest in
16 CMGT, and that's the type of situation that's
17 exactly what happened to me with CMGT.

18 They were supposed to -- this
19 paragraph was supposed to make my agreement tag
20 along with the purchaser of the assets, so my
21 agreement should have been made a part of Newco
22 and should have been made an obligation of Newco.

23 Q. Okay. And was at least one of the
24 aspects of what we have been calling the

ROBERT GERARD SPEHAR, JANUARY 21, 2009

1 California lawsuit to try to enforce that
2 provision that CMGT had agreed to?

3 A. Yes. That's what put me behind the
4 eight ball. If my agreement had been an
5 obligation of Newco, I would have had the ability
6 to sue Newco.

7 Q. And was another part of that lawsuit,
8 that California lawsuit, to try to get a judicial
9 determination as to whether Charles Trautner
10 should be added to Exhibit A of your agreement?

11 A. Yes. Franco was refusing to do
12 that -- or at least I demanded he do that, and
13 the correspondence I got back mostly from Given
14 refused to do that.

15 So, yes, I wanted an acknowledgment
16 that Trautner was under my agreement.

17 Q. Talking about the California lawsuit,
18 what was your reaction when CMGT did not file an
19 appearance and defend that action upon you filing
20 it and serving it upon CMGT?

21 A. Absolute disbelief and surprise.

22 Q. So at the time Spehar Capital filed
23 its lawsuit against CMGT, you did not expect that
24 CMGT would sit back and do nothing in response to

1 that lawsuit?

2 A. Absolutely not.

3 Q. And why is that?

4 A. I had no reason to expect that they
5 would. I mean, everything that Ron Given had
6 said up to that point was that I had a meritless
7 action and that there was no reason to worry
8 about it. That led me to believe he would show
9 up and say that in court.

10 I, for the record, wanted to go into
11 court.

12 Q. Now, at the time that you filed your
13 claim -- and I don't want to get into any
14 conversations that you had with your attorneys --
15 but did you personally believe that the claim
16 that you filed against CMGT in California seeking
17 to be -- seeking for Spehar Capital to be
18 compensated in connection with the Newco deal,
19 did you think that that claim had merit?

20 A. Absolutely.

21 Q. Why is that?

22 MR. O'BRIEN: I'm going to object to the
23 extent that it calls for a legal conclusion; but
24 subject to that, you can answer.

1 BY MR. CARROLL:

2 Q. I'm just seeking your own personal
3 understanding absent any advice of counsel.

4 A. Because the -- Chuck Trautner was
5 under my contract; and once Chuck Trautner was
6 under my contract, any deal that Chuck Trautner
7 did was under my contract.

8 I've subsequently come to know that
9 Harlan Smith was also a part of that deal. He
10 was also under my contract. At the time, I was
11 basing it on Trautner.

12 Q. You testified earlier today that your
13 agreement with CMGT contemplated that Exhibit A
14 would be updated as, for example, Lou Franco
15 asked you to perform some kind of work with a
16 potential funding source, is that right?

17 A. Right.

18 Q. If you could go to Spehar Deposition
19 Exhibit No. 13 and if you'd turn to the last page
20 of that exhibit; it's the letter from you -- from
21 Gerry Spehar to Lou Franco, or maybe it's an
22 e-mail from Gerry Spehar to Lou Franco.

23 A. I got it.

24 Q. Dated August 8, 2003.

ROBERT GERARD SPEHAR, JANUARY 21, 2009

1 A. Correct.

2 Q. All right. If you'd turn to the last
3 page of this document, can you please read the
4 top two paragraphs to yourself and just let me
5 know once you've read them.

6 (Short pause.)

7 BY THE WITNESS:

8 A. Okay.

9 BY MR. CARROLL:

10 Q. What were you -- can you explain what
11 you were attempting to do here, what you were
12 asking Lou to do here?

13 A. It had become obvious to me at this
14 point that I couldn't trust Franco to put -- to
15 go along with any sort of an oral understanding
16 for things to be done in the future, so I was
17 trying to at least get him to acknowledge
18 Trautner and then this other individual from
19 FlexBen Corporation that he had just introduced
20 me to as part of Exhibit A.

21 Q. So you were seeking to have Exhibit A
22 updated?

23 A. Yes, I was.

24 Q. Earlier today, you testified -- I

ROBERT GERARD SPEHAR, JANUARY 21, 2009

1 believe I'm going to paraphrase this correctly, I
2 hope -- that at the time that you filed the
3 lawsuit in California, you thought that it might
4 be difficult to obtain injunctive relief, but
5 that because of the way -- I'll just stop right
6 there.

7 You thought it might be difficult to
8 obtain injunctive relief?

9 A. Yes.

10 Q. Does that accurately summarize your
11 testimony?

12 A. Yes, that is very accurate.

13 Q. Now, although you believed that it may
14 have been difficult to obtain injunctive relief,
15 did you think that it was unethical to request
16 that relief?

17 A. No. I had no reason to know that it
18 was unethical or incorrect for me to do that. I
19 just -- I thought from discussions I had had that
20 it might be a very difficult thing to achieve,
21 not that it was unethical; just difficult to
22 achieve.

23 Q. Did you think it was inappropriate to
24 request that kind of relief?

ROBERT GERARD SPEHAR, JANUARY 21, 2009

1 A. No, not at all.

2 Q. Did you think it was fraudulent to ask
3 for that relief?

4 A. Absolutely not. It was -- you know, I
5 was protecting myself. My contract, again, had a
6 provision that you pointed out there that should
7 have -- CMGT was obligated to make my contract a
8 contract with Newco. They had not done that.

9 Q. I don't know if you're going to be
10 able to answer this questions without disclosing
11 attorney/client communication that I'm about to
12 ask. If you can't, just tell me.

13 A. Okay.

14 Q. But if you can go ahead and try to
15 answer it.

16 Can you explain any of the reasons why
17 you thought it might have been difficult to
18 obtain injunctive relief?

19 MR. O'BRIEN: Well, I'm going to object
20 both -- to the extent, as counsel noted, that it
21 involves communications that are attorney/client
22 privileged, don't disclose those.

23 Second, I object that, to the extent
24 that it calls for a legal conclusion, he's not

ROBERT GERARD SPEHAR, JANUARY 21, 2009

1 qualified to give one.

2 But subject to those objections, you
3 can answer the question if you're able to.

4 BY THE WITNESS:

5 A. That's difficult to answer without
6 disclosing attorney/client privilege.

7 BY MR. CARROLL:

8 Q. That's fine. That's why I had the
9 long preface to the question.

10 MR. O'BRIEN: I appreciate that.

11 BY MR. CARROLL:

12 Q. Now, at some point in time in the
13 California action you amended the Spehar Capital
14 complaint, is that right -- or Spehar Capital
15 amended its complaint, is that right?

16 A. Yes.

17 Q. And the amendment -- let me back up.

18 Did the original complaint seek
19 monetary damages?

20 A. It did not.

21 Q. And was one of the amendments that was
22 made to the complaint to seek monetary damages?

23 A. Correct.

24 Q. Would you have amended that complaint

ROBERT GERARD SPEHAR, JANUARY 21, 2009

1 to seek monetary damages if CMGT had appeared in
2 California, defended the request for injunctive
3 relief, and successfully defeated Spehar
4 Capital's request for injunctive relief?

5 MR. O'BRIEN: I'm going to object again on
6 the same two bases; but to the extent that you
7 can answer that subject to those objections and
8 concerns, you can answer the question.

9 MR. CISZEWSKI: I'd like to also object to
10 the form of the question as calling for
11 speculation.

12 BY THE WITNESS:

13 A. And the question is would I have --

14 MR. CARROLL: Can you just read it back?

15 (WHEREUPON, the record was
16 read by the reporter.)

17 BY THE WITNESS:

18 A. I can answer to this extent. I did
19 not have the ability to pursue a contested action
20 at that point in time.

21 I don't know how that ties into your
22 specific question about amending the complaint or
23 not. If I couldn't pursue a contested action, I
24 didn't have the ability to do that, and that

ROBERT GERARD SPEHAR, JANUARY 21, 2009

1 means that I wouldn't have filed any further
2 complaints, then the answer is yes.

3 BY MR. CARROLL:

4 Q. Well, let me ask you this: Earlier I
5 asked if you had -- if you were surprised -- I
6 don't remember my exact question, but you gave an
7 answer; and I'll paraphrase it, and if anybody
8 objects, go ahead.

9 You were surprised when CMGT did not
10 appear and defend in the California case?

11 A. Yes.

12 Q. Okay. If that surprised you, then why
13 would you file a case that could -- that you
14 expected would be contested if you could not
15 afford to be involved in litigation that's
16 contested?

17 Do you understand the question?

18 A. I don't know that I do.

19 Q. Okay. Earlier in my line of
20 questioning you gave an answer that stated
21 essentially that you were surprised when CMGT did
22 not appear and defend.

23 A. Um-hum.

24 Q. And maybe I'm just misunderstanding

ROBERT GERARD SPEHAR, JANUARY 21, 2009

1 one of your answers.

2 Just now in response to a question
3 that I had asked, you said that -- you gave an
4 answer that reflected that you didn't have the
5 financial ability to pursue contested litigation.

6 A. Um-hum.

7 Q. Based on your answer that you were
8 surprised that CMGT did not appear, I'm inferring
9 from that that you expected them to appear and
10 contest that action.

11 So my question is: If you had an
12 expectation that CMGT was going to appear and
13 defend -- in other words, contest the action --
14 given your financial situation in your answer
15 that you couldn't afford contested litigation,
16 why did you file the case?

17 A. This is difficult to answer. I'm
18 going to try and answer it without getting into
19 legal advice here.

20 But at that point in time, I felt I
21 had no choice. I had no options. My only chance
22 of recovery here was -- because I could not
23 afford a contested, long-term action was to try
24 to get a TRO, no matter how difficult that might

ROBERT GERARD SPEHAR, JANUARY 21, 2009

1 be. That was my only option, and that was to
2 protect myself.

3 If I was successful in getting the TRO
4 and whatever the odds of that were, again that
5 was a very -- no matter how difficult, that was
6 really about the only thing I had. That was what
7 I had to do.

8 Q. And why do you feel like in you were
9 in that position?

10 A. Because I had no money, first of all,
11 to pursue a long-term action, so injunctive
12 relief, if I could get it, would stop the deal
13 and hopefully force them to come to terms, some
14 sort of a settlement with me, bring them to the
15 table.

16 Q. Let me ask it in a different way, if I
17 can.

18 Was the response that you were getting
19 from CMGT to your letters and correspondence
20 before you filed the complaint regarding your
21 claim on your contract -- was the response or
22 nonresponse that you were getting from CMGT --
23 strike all that. Let me try this again.

24 Why did you file a lawsuit at all?

ROBERT GERARD SPEHAR, JANUARY 21, 2009

1 Forget about the type of relief you
2 were seeking.

3 Why did you eventually file the
4 lawsuit?

5 MR. O'BRIEN: I'm going to object again to
6 the extent that your answer would necessarily
7 require communications with your attorney and to
8 the extent that it calls for a legal conclusion;
9 but subject to those, you can answer.

10 BY THE WITNESS:

11 A. You're talking about my initial
12 California action?

13 BY MR. CARROLL:

14 Q. Correct.

15 A. I filed that because CMGT breached my
16 contract and because I needed to -- I put 2 years
17 of my life into it and I was also -- I was
18 seeking justice, and I was seeking recovery.

19 Q. Well, did you try to settle with CMGT
20 before you filed the case?

21 A. Yes. I -- first of all, my
22 communications initially were directed -- you can
23 see my communications with Given here; but with
24 Franco, I talked his ear off and he always kept

ROBERT GERARD SPEHAR, JANUARY 21, 2009

1 referring back to Given and said he couldn't do
2 anything; this was based on a legal assessment
3 that he couldn't talk about; he was under
4 confidentiality with Given; therefore, I had to
5 talk with Given.

6 Then we finally had the August 19th
7 call that blew up in my face, and Given refused
8 to talk to me beyond that.

9 These gentlemen both knew that I would
10 settle and that I would settle for less. They
11 had been -- they had lived through the Sealaska
12 experience. All you have to do is go back and
13 look at what went on there.

14 You know, there's a response, I think,
15 on May 2nd from Lou Franco to Ron Given talking
16 about Sealaska pushing the buttons on me legally
17 in which he says, "Why don't they just try to
18 settle with Gerry? They know he's reasonable."
19 That's what those guys knew about me. They knew
20 I would have done that.

21 So, yes, I did try that, and I cannot
22 tell you why they didn't do that. That's beyond
23 me.

24 Q. So was one of the reasons that you

ROBERT GERARD SPEHAR, JANUARY 21, 2009

1 filed the complaint in California because they
2 refused to negotiate a settlement with you?

3 A. Absolutely. That was the primary
4 reason. It was to try and bring them to the
5 table so that they would have more of an impetus
6 to settle.

7 I couldn't understand how someone who
8 had a \$2-1/2 million deal in hand wouldn't take
9 that step, wouldn't -- particularly if a TRO was
10 in place, because my TRO, remember, said it only
11 restricted them from doing deals that violated my
12 contract.

13 Q. Now, what kind of time and money have
14 you devoted to try and collect on your judgment?

15 A. I am probably into this -- to
16 collecting on the judgment as opposed to getting
17 it?

18 Q. Collecting on the judgment. We will
19 just stick with that for now.

20 A. I'm guessing here, but I'm going to
21 say \$400,000 on straight fees. On time, you
22 know, if you value my time, which I do, at 250
23 bucks an hour, we are up into a million dollars.

24 Q. Now, would you have preferred to work

ROBERT GERARD SPEHAR, JANUARY 21, 2009

1 out a deal, a settlement, with CMGT before
2 receiving a judgment than to be in this
3 collection process that you're currently in?

4 A. Absolutely, absolutely.

5 Q. And if CMGT had been willing to settle
6 with you before you filed the California action,
7 would you have settled for something less than
8 100 percent of your compensation?

9 A. Absolutely. The deal that I had in
10 front of Sealaska was that I was giving up my
11 investment banking rights -- this is what I
12 offered to Given and Franco -- for a slice of
13 revenue.

14 So I would be riding the deal for a
15 small piece of revenue. I would have worked on
16 something like that.

17 Q. And would you have done that after you
18 filed the California action, but before you
19 received a judgment?

20 A. Absolutely. I had -- you know, the
21 e-mail trails are very clear. Every time I did
22 anything in court, I immediately came out of
23 court and wrote an e-mail to Ron and Lou saying,
24 okay, now let's settle.

ROBERT GERARD SPEHAR, JANUARY 21, 2009

1 Q. Would you have done that deal after
2 you got your judgment?

3 A. I would have had to have seen the
4 condition of the company. I didn't know the
5 condition of the company at that point in time.
6 I'd have to know what I was getting into.

7 Q. All right. Now, I think you've said
8 it during this deposition, but how many years
9 were you working on CMGT?

10 A. I started working on them in June of
11 2001, so by the time -- over 2 years.

12 Q. And you devoted basically all of your
13 working time?

14 A. Yes, between that -- MOIC didn't
15 really come on the horizon -- we threw it out
16 there, but it didn't really become anything that
17 I worked on solidly until the meeting we had
18 in -- in Given's office on August 1, 2003; so
19 2 years prior to that CMGT was pretty much it for
20 me.

21 I had one other company that popped up
22 that I spent some time with, but CMGT was it.

23 Q. And during that time you worked for
24 CMGT, did you develop -- what was your

ROBERT GERARD SPEHAR, JANUARY 21, 2009

1 relationship like with Lou Franco?

2 A. I'll put it in his words. He said we
3 were brothers, so we had a -- we had a great
4 relationship, I thought, and I thought I had a
5 great relationship with Ron Given.

6 I had no reason to suspect any of this
7 would happen. In fact, I was floored.

8 Q. And in terms of CMGT, setting aside
9 the time that you put into working on trying to
10 find financing for CMGT and the other
11 opportunities that you didn't pursue while you
12 were working for CMGT, were you personally
13 invested in terms of -- did you have a personal
14 desire to see CMGT succeed?

15 A. Absolutely. I mean, I got to know the
16 company very well. I respected the fact that the
17 shareholders were sticking with it the way they
18 were. The business plan was stunning as far as
19 anything that I've seen. It was basically the
20 contracts were structured as two-year annuities.
21 It was a beautiful company.

22 It would have done very well as an IPO
23 because of that. It had very recurrent, very
24 steady, very strong revenue. Their after-tax

ROBERT GERARD SPEHAR, JANUARY 21, 2009

1 margins were something like 30 percent. You
2 don't see that kind of thing.

3 Q. Now, earlier today you were asked some
4 questions about the software that you purchased
5 from the trustee. I believe it was the absence
6 management software that CMGT owned.

7 A. Yes.

8 Q. And I think you were asked some
9 questions regarding the value of that software.

10 Now, if somebody owns that software
11 and that person or company doesn't have a call
12 center, doesn't have relationships with entities
13 to whom it can foster absence management
14 business, and doesn't have any business model to
15 pursue absence management business, is that
16 software very particularly valuable or useful --
17 I'll say valuable to the person who owns it?

18 A. No.

19 MR. CISZEWSKI: I'll just object to the form
20 of the question.

21 BY MR. CARROLL:

22 Q. That's okay. You can answer.

23 A. The software is specific to the
24 absence management business. The software is one

ROBERT GERARD SPEHAR, JANUARY 21, 2009

1 of the reasons that CMGT paid \$450,000 for
2 TouchSpeed.

3 They got Rob Crandall with that, who
4 developed the software, and CMGT was the only
5 company out there that I'm aware of that actually
6 had a call center model and the ability to
7 integrate all of these different HR and
8 disability softwares of the other firms they were
9 working with; so it was very, very important to
10 the company.

11 They had -- at the time that they were
12 running the business with it, everybody wanted a
13 license to it, a lot of people did, and Lou
14 wouldn't give a license to it.

15 Now is it worth that much money? I
16 don't know. I mean, I don't know what's been
17 done to duplicate that software. I suspect a
18 couple things in a couple places. I don't know
19 how much the business has grown up around that
20 software, so it's difficult to stick a value on
21 it now.

22 But it was part of running the
23 business, what was really valuable. You can't
24 take the software as an isolated item, place a

ROBERT GERARD SPEHAR, JANUARY 21, 2009

1 value on it, and somehow extrapolate that as a
2 value of CMGT. The value of CMGT was the
3 business that they generated using that software.

4 Q. You said during your initial testimony
5 here today that your bond limit was \$40,000?

6 A. Yes.

7 Q. And this is going back to talking
8 about the California lawsuit?

9 A. Yes.

10 Q. Did Ron Given know that -- did Ron
11 Given know what your financial situation was?

12 A. He knew my financial situation. He
13 didn't know that was my bond limit. That came
14 after the action started.

15 But, yes, I mean -- and the reason I
16 say that is Ron Given and Lou Franco and I worked
17 very, very closely for 2 years; and part of that
18 working together was working with Authorizer for
19 a time, meaning that they were very well aware of
20 my financial situation. A lot of the money I had
21 was based on Authorizer, and it all went away.

22 And then on top of that, I was working
23 for 2 years on a contingency basis for them, so,
24 yes, they were aware. They had asked me to

ROBERT GERARD SPEHAR, JANUARY 21, 2009

1 invest, in fact, and I couldn't.

2 Q. Prior to filing the California
3 lawsuit, did you have any thoughts of CMGT suing
4 Mayer Brown for legal malpractice as a result of
5 a case that you might file against CMGT?

6 A. Prior to the California action?

7 Q. Actually being filed, did you ever --
8 let me try and phrase it in a better way.

9 Around the time -- around the time
10 when you were deciding to file the California
11 action, did you have any thoughts of eventually
12 ending up in a situation where CMGT is suing
13 Mayer Brown for malpractice to collect on a
14 judgment that you might receive?

15 MR. O'BRIEN: I'm going to object for the
16 same reasons as before.

17 If your answer requires disclosure of
18 communications you had with your attorney
19 regarding the California action, don't disclose
20 that.

21 And to the extent it calls for a legal
22 conclusion, he's not qualified to give one.

23 Subject to that, you can answer the
24 question if you're able to.

ROBERT GERARD SPEHAR, JANUARY 21, 2009

1 BY MR. CARROLL:

2 Q. Do you remember the question?

3 A. I do remember it.

4 MR. O'BRIEN: You're accusing me of being
5 long-winded? Sorry.

6 BY THE WITNESS:

7 A. Prior to the California action, I had
8 never been in court in my life for any sort of an
9 action, civil or criminal, defendant or
10 plaintiff; so I didn't know what an attorney was,
11 to tell you the truth.

12 And I had no clue about bankruptcy
13 whatsoever. I had no thoughts of collection. I
14 had no thoughts of anything but trying to get
15 through that first phase.

16 BY MR. CARROLL:

17 Q. Okay. In response to a question that
18 you were asked by Mr. Ciszewski, you made the
19 comment David wasn't interested in doing any
20 work, and the question that you were asked
21 related to attempts to find a malpractice
22 attorney to investigate and possibly pursue the
23 current malpractice claim.

24 I just want to go back to that

ROBERT GERARD SPEHAR, JANUARY 21, 2009

1 testimony to clarify it.

2 When you said that phrase, "David
3 wasn't interested in doing any work," what were
4 you referring to?

5 A. I'm referring to when I first set up
6 the -- I put CMGT into bankruptcy with the idea
7 of pursuing this collection action, I understood
8 that I had to come to David with pretty much a
9 template of how this was going to be
10 accomplished; that he wasn't going to be doing
11 that himself.

12 So that meant me going out and
13 soliciting a malpractice attorney and lining up
14 special counsel for him. I went so far as to
15 throw out a special counsel template of a deal.

16 And also in that respect it means that
17 David was not going to be investing any money in
18 this. There was no money in the estate. I had
19 to do all of that. I had to finance it.

20 So it was with regards to those types
21 of things I was talking about.

22 When it came down to the actual
23 investigation of the malpractice action, that
24 sort of thing, I assume he got involved.

ROBERT GERARD SPEHAR, JANUARY 21, 2009

1 Q. Okay. Now, after the malpractice
2 complaint was filed -- so we are not talking
3 about the California action now; we are talking
4 about the malpractice case against Mayer Brown.

5 After the malpractice complaint was
6 filed, did you review a copy of that complaint?

7 A. After it was filed?

8 Q. After it was filed.

9 A. Yes.

10 Q. So the filed copy of the complaint you
11 reviewed?

12 A. Yes.

13 Q. And do you recall having a discussion
14 with me about that complaint after it was filed,
15 shortly after it was filed?

16 A. I recall having a discussion in
17 which --

18 Q. Just do you recall having a
19 discussion?

20 A. Yes, yes.

21 Q. Okay. And do you recall that during
22 that discussion you went through the complaint
23 with me and pointed out some mistakes that had
24 been made?

ROBERT GERARD SPEHAR, JANUARY 21, 2009

1 A. Yes.

2 Q. And to the best of your recollection,
3 were any of those mistakes material?

4 And by "material," what I mean is they
5 would change whether the case was meritorious or
6 not?

7 A. Well, the --

8 Q. Change whether colorable claims were
9 stated or not.

10 A. No, the claims were meritorious.

11 Q. Okay.

12 A. I don't think there was anything in
13 there that would change that.

14 I mean, with regards to Steve's
15 earlier question about the Washoe signing the
16 LOI, I think I may have pointed that out to you.

17 Q. Let's go to Spehar Deposition Exhibit
18 No. 25.

19 Can you look at the paragraph that
20 immediately precedes the No. 2 on the first page?
21 It starts off FYI.

22 A. Yes.

23 Q. Can you just read that out loud?

24 A. "FYI: I have also suggested to Rob

1 that the filed complaint needs to be amended at
2 some point re Given's changes to the Washoe LOI
3 (as well as a few other items)."

4 Q. Now, is that paragraph referring to
5 the conversation that we had?

6 A. Yes.

7 Q. So it was your expectation that at
8 some point in time the complaint would be amended
9 to address some mistakes that were discovered
10 after it was filed, is that right?

11 A. That is correct.

12 Q. Okay. Now, can you look at Exhibit
13 No. 26, please? If you go to the last page of
14 that document --

15 A. Okay.

16 Q. This document, this last page of
17 Spehar Deposition Exhibit No. 26, at the top
18 seems to be entitled "Sharing Agreement Between
19 CMGT TTEE and Spehar Capital LLC."

20 Do you know who the primary
21 beneficiaries of this agreement were supposed to
22 be?

23 A. The primary beneficiaries?

24 Q. Yes, if you understand my question.

ROBERT GERARD SPEHAR, JANUARY 21, 2009

1 MR. O'BRIEN: I'm going to object to the
2 extent it calls for a legal conclusion.

3 BY THE WITNESS:

4 A. I don't know that I do understand. I
5 mean, the estate --

6 BY MR. CARROLL:

7 Q. Let me ask it another way.

8 What's your understanding of what the
9 purpose of this agreement was?

10 A. The purpose of this agreement is to
11 set in place a definitive sharing arrangement
12 between the unsecured creditors -- the estate and
13 Spehar Capital, and the estate is to take care of
14 its business from that point forward, which would
15 mean paying the unsecured creditors and paying
16 the trustee.

17 Q. Okay. So let's assume that this
18 agreement doesn't exist.

19 A. Okay.

20 Q. It doesn't exist. And I know that
21 there has been a -- there was an adversary
22 proceeding between you and the trustee that went
23 to trial recently.

24 A. Yes.

1 Q. And one of the issues in that
2 adversary proceeding, if I'm correct, is your
3 secured status?

4 A. Yes.

5 Q. So let's assume for a second -- set
6 that dispute aside and assume for a second that
7 you are secured.

8 A. Okay.

9 Q. And this agreement doesn't exist.

10 A. Okay.

11 Q. What understanding do you have of what
12 the unsecured creditors would get if there's a
13 settlement or judgment in the legal malpractice
14 case against Mayer Brown?

15 MR. CISZEWSKI: Objection.

16 MR. O'BRIEN: I'm going to object again to
17 the extent it calls for a legal conclusion.

18 Also I think it -- I know you're
19 trying to create a hypothetical. It does
20 mischaracterize earlier testimony. As I think
21 he's made clear, there would not have been a
22 malpractice action had there not been those
23 prerequisites.

24 So if you want to add that as another

ROBERT GERARD SPEHAR, JANUARY 21, 2009

1 layer of it, then I think he can answer to the
2 extent he's able to.

3 BY THE WITNESS:

4 A. Well, I -- if I have and I do have a
5 secured claim, my secured claim is in the amount
6 of \$17 million. I get the first \$17 million that
7 the estate gets, absent paying the Joyce firm to
8 get that; so the creditors until I am paid that
9 full amount would have gotten nothing.

10 BY MR. CARROLL:

11 Q. So was it your understanding that this
12 agreement benefitted the unsecured creditors?

13 A. Absolutely. That was my -- in many
14 ways, I think this action benefitted the
15 unsecured creditors because, whether they know it
16 or not, I believe they have been duped here and I
17 don't think they would have gotten a penny here
18 except for my stepping in and doing what I've
19 done.

20 Q. I think I have about two more
21 questions.

22 Can you go to Exhibit 29, Spehar
23 Deposition Exhibit 29?

24 A. May I add something to that last

1 answer or not?

2 Q. Sure.

3 A. I would note that all of the
4 proceedings in the bankruptcy filing, including
5 this agreement, were noticed to all creditors,
6 and that included Mayer Brown.

7 So if any objections should have been
8 made, I guess there was an appropriate forum to
9 do that.

10 Q. Okay. Spehar Deposition Exhibit
11 No. 29 is a letter from your lawyers to the
12 trustee dated July 26th, '07, is that right?

13 A. Okay, yes.

14 Q. Was this letter conveying a settlement
15 proposal relating to the adversary proceeding?

16 A. Yes, it was.

17 Q. And was a settlement ever entered
18 into?

19 A. No.

20 Q. Were any of the proposals in this
21 letter ever accepted by the trustee?

22 A. No.

23 Q. Did he ever -- did the trustee ever
24 respond to this letter?

ROBERT GERARD SPEHAR, JANUARY 21, 2009

1 A. He responded in an e-mail basically
2 saying he wasn't going to do anything about it.

3 Q. Okay.

4 A. I believe. I'd have to -- I'm
5 paraphrasing.

6 MR. O'BRIEN: I'm sorry. Could we read that
7 last question and answer back?

8 (WHEREUPON, the record was
9 read by the reporter.)

10 MR. O'BRIEN: I should have presented this
11 at the time.

12 Are you talking in the time frame of
13 when this letter was written in July of '07 as
14 opposed to any discussions we had about
15 settlement prior to the trial in the adversarial
16 proceeding?

17 MR. CARROLL: Which question are you asking
18 about?

19 MR. O'BRIEN: You asked him if any of the
20 proposals in this letter were responded to by the
21 trustee or agreed to by the trustee; I forget
22 which phrase you used.

23 MR. CARROLL: Well, the first question that
24 I asked, if I remember correct, was were any of

ROBERT GERARD SPEHAR, JANUARY 21, 2009

1 the proposals ever accepted.

2 BY THE WITNESS:

3 A. In this letter?

4 BY MR. CARROLL:

5 Q. In this letter.

6 A. No.

7 Q. And then I ask if this particular
8 letter was ever responded to.

9 A. Okay.

10 Q. That's the question.

11 MR. O'BRIEN: Okay.

12 BY MR. CARROLL:

13 Q. I want to go back to one of the first
14 questions asked in this lawsuit -- in this
15 deposition.

16 You were asked a question -- I don't
17 remember exactly what it was, but it was
18 something along the lines of, you know, what are
19 you doing these days, what is Spehar Capital
20 doing these days or something like that; and you
21 answered write briefs and lawsuits -- I think
22 somewhat jokingly, maybe somewhat seriously.

23 I just want to make sure that the
24 record is clear.

ROBERT GERARD SPEHAR, JANUARY 21, 2009

1 You haven't written any briefs in the
2 legal malpractice case against Mayer Brown?

3 A. No, absolutely not.

4 Q. You were referring to the adversary
5 proceeding with the trustee, right?

6 A. And I haven't even written briefs in
7 that case.

8 Q. Okay.

9 A. Being a layman, mouthing off, I write
10 memos and my lawyers write briefs.

11 Q. That's fine. I just wanted to make
12 sure the record is clear.

13 MR. CARROLL: Okay. That's it. I'm done.

14 MR. CISZEWSKI: I have one question on
15 redirect.

16 EXAMINATION

17 BY MR. CISZEWSKI:

18 Q. Can you pull out the complaint? It's
19 Exhibit No. 6.

20 Can you tell me everything in here
21 that you told Mr. Carroll is wrong or inaccurate?

22 A. Do you want me to go through it?

23 Q. Yes, please.

24 (Short pause.)

ROBERT GERARD SPEHAR, JANUARY 21, 2009

1 MR. O'BRIEN: Don't mark on the original,
2 please.

3 Steve, would you mind if we go off the
4 record while he reviews the complaint?

5 MR. CISZEWSKI: That's fine.

6 (WHEREUPON, a recess was had.)

7 MR. CISZEWSKI: Back on the record.

8 BY THE WITNESS:

9 A. Page 11, "The next day Franco sent
10 CMGT shareholders a letter stating that there
11 were no alternatives."

12 There was actually the letter that --
13 it was the -- there was an August 15th letter
14 that was sent. The letter that actually stated
15 there were no alternatives was the August 7th
16 letter, which was also attached to the
17 August 15th letter.

18 So if you wanted to be explicit about
19 it, he did include that second letter there that
20 restated that.

21 Paragraph 45, the Washoe did not sign
22 a letter of intent, I think we clarified that.
23 "Which they would sign," I would say, once signed
24 by CMGT.

ROBERT GERARD SPEHAR, JANUARY 21, 2009

1 Paragraph 46, I don't think Rob has
2 clearly stated in here one of probably the most
3 important things, which is that Given also
4 altered the letter of intent so that CMGT could
5 close Newco at any time. They didn't have to
6 wait until September 30th or September 29th. So
7 we had that discussion.

8 I did not -- Paragraph 52, I did not
9 make a settlement call to Given. He actually
10 made the call to me, he and Franco, but it was
11 upon my insistence.

12 Paragraphs 58 and 59, I think -- I
13 don't know what the reasons were that he didn't
14 show up, if it was jurisdictional or whatever it
15 was he gave, the legal reasons. We talked about
16 that a little bit, but it's anybody's guess.

17 BY MR. CISZEWSKI:

18 Q. Say that again.

19 A. Paragraphs 58 and 59 state that on
20 information and belief it was California
21 jurisdiction that kept Mayer Brown out of
22 California.

23 I honestly don't know what it was. I
24 mean, he may have stated that to my attorneys. I

ROBERT GERARD SPEHAR, JANUARY 21, 2009

1 don't know.

2 And in his -- I believe in his
3 September 19th e-mail he did mention
4 jurisdiction, so that could be the reason.

5 MR. CARROLL: I just want to clarify the
6 question.

7 The question that you're answering is
8 what mistakes were pointed out to me in a phone
9 conversation that we had immediately after the
10 complaint was filed.

11 THE WITNESS: Okay. All right.

12 BY THE WITNESS:

13 A. I think Paragraph 61 I pointed out to
14 Rob that the October 2nd e-mail went quite a bit
15 beyond just telling shareholders that Newco had
16 terminated the letter of intent.

17 In fact, it's better summed up in my
18 PX 19, which also states to the shareholders that
19 the subject matter of Gerry Spehar's lawsuit no
20 longer exists, which is important.

21 Paragraph 63, my amended complaint I
22 believe was filed on November 24th, not
23 December 1st; no big deal.

24 If the question is what we discussed,

ROBERT GERARD SPEHAR, JANUARY 21, 2009

1 I'm not certain that we discussed these next two
2 things I was going to mention.

3 Page 19 may be just semantics. I'm
4 not certain, F, that we had to offer any more
5 favorable terms than Newco's. I think Newco's
6 terms would have been fine given the downside of
7 doing Newco -- in fact, even something less than
8 Newco's terms given that downside.

9 And then Exhibit 2 for some reason is
10 a markup of my contract which is also unsigned.
11 I do have a signed copy.

12 BY MR. CISZEWSKI:

13 Q. Okay. And that's everything you told
14 Mr. Carroll during that --

15 A. That's what I -- on a quick reading
16 right now, yes, that's what I'm catching.

17 Q. Okay. I think you had also marked
18 Paragraph 64, and you mentioned that you didn't
19 talk about it with Mr. Carroll, but there was
20 some --

21 A. There's a couple more here.

22 No. 37, there's a mention in there of
23 reducing Mayer Brown's accrued attorneys' fees by
24 half. I'm not sure that that's not correct. It

ROBERT GERARD SPEHAR, JANUARY 21, 2009

1 may be correct. I would have to -- if I'm going
2 to opine right now on whether that's correct or
3 not, I'd have to actually review that. It may
4 be.

5 I'm sorry. I had skipped that one.
6 Go ahead.

7 Q. Okay. Paragraph 64 --

8 A. Um-hum.

9 Q. -- that's not something that you
10 discussed with Rob during the telephone call, is
11 that correct?

12 A. No, we didn't.

13 Q. Okay. Upon reading it now, is there
14 something that you question in there?

15 A. No, that's fine.

16 Q. Okay.

17 MR. CISZEWSKI: Okay. That's all the
18 questions I have.

19 MR. O'BRIEN: We will reserve signature.

20 FURTHER DEPONENT SAITH NOT.

21

22

23

24

ROBERT GERARD SPEHAR, JANUARY 21, 2009

1 IN THE UNITED STATES DISTRICT COURT
 2 NORTHERN DISTRICT OF ILLINOIS
 3 EASTERN DIVISION
 4 DAVID GROCHOCINKSI, etc.,)
 5 et al.,)
 6 Plaintiff,)
 7 vs.) Case No. 06 C 5486
 8 MAYER BROWN ROWE & MAW LLP,)
 9 et al.,)
 10 Defendants.)

11

12 I hereby certify that I have read the
 13 foregoing transcript of my deposition given at
 14 the time and place aforesaid, consisting of Pages
 15 1 to 292, inclusive, and I do again subscribe and
 16 make oath that the same is a true, correct and
 17 complete transcript of my deposition so given as
 18 aforesaid, and includes changes, if any, so made
 19 by me.

20

ROBERT GERARD SPEHAR

21

SUBSCRIBED AND SWORN TO before me

22

this day of , A.D. 200 .

23

24

Notary Public

1 STATE OF ILLINOIS)

2) SS:

3 COUNTY OF DU PAGE)

4 I, SHARYN A. EVERMAN, a Notary Public
5 within and for the County of DuPage, State of
6 Illinois, and a Certified Shorthand Reporter of
7 said state, do hereby certify:

8 That previous to the commencement of
9 the examination of the witness, the witness was
10 duly sworn to testify the whole truth concerning
11 the matters herein;

12 That the foregoing deposition
13 transcript was reported stenographically by me,
14 was thereafter reduced to typewriting under my
15 personal direction and constitutes a true record
16 of the testimony given and the proceedings had;

17 That the said deposition was taken
18 before me at the time and place specified;

19 That I am not a relative or employee
20 or attorney or counsel, nor a relative or
21 employee of such attorney or counsel for any of
22 the parties hereto, nor interested directly or
23 indirectly in the outcome of this action.

24 IN WITNESS WHEREOF, I do hereunto set

ROBERT GERARD SPEHAR, JANUARY 21, 2009

1 my hand and affix my seal of office at Chicago,
2 Illinois, this 29th day of January, 2009.

3

4

Sharyn A. Everman

5

Notary Public, DuPage County,

6

Illinois.

7

My commission expires 6/18/11.

8

9 C.S.R. Certificate No. 84-2315.

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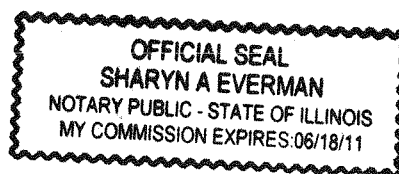
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ROBERT GERARD SPEHAR, JANUARY 21, 2009

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I N D E X

WITNESS	EXAMINATION
ROBERT GERARD SPEHAR	
By Mr. Ciszewski	3,
	287
By Mr. Carroll	241

E X H I B I T S

MARKED	PAGE	LINE
Spehar Deposition Exhibit		
No. 1	23	14
No. 2	34	18
No. 3	36	12
No. 4	41	21
No. 5	43	16
No. 6	46	9
No. 7	64	17
No. 8	65	15
No. 9	68	13
No. 10	70	11
No. 11	79	20
No. 12	81	8
No. 13	83	7
No. 14	98	11

ROBERT GERARD SPEHAR, JANUARY 21, 2009

	E X H I B I T S		
	MARKED	PAGE	LINE
1			
2			
3	Spehar Deposition Exhibit		
4	No. 15	102	8
5	No. 16	103	17
6	No. 17	107	24
7	No. 18	121	7
8	No. 19	131	20
9	No. 20	150	17
10	No. 21	155	21
11	No. 22	163	23
12	No. 23	165	15
13	No. 24	171	16
14	No. 25	180	4
15	No. 26	191	9
16	No. 27	192	4
17	No. 28	197	16
18	No. 29	199	17
19	No. 30	203	21
20	No. 31	209	14
21	No. 32	210	24
22	No. 33	213	21
23	No. 34	222	5
24	No. 35	226	9

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E X H I B I T S

MARKED	PAGE	LINE
Spehar Deposition Exhibit		
No. 36	226	9
No. 37	227	13