

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

DAVID GROCHOCINSKI, not individually)	
but solely in his capacity as the Chapter 7)	
Trustee for the bankruptcy estate of)	
CMGT, INC.,)	
)	
Plaintiff,)	
)	No. 06 C 5486
v.)	
)	Judge Virginia M. Kendall
MAYER BROWN ROWE & MAW LLP and)	
RONALD B. GIVEN,)	Magistrate Judge Morton Denlow
)	
Defendants.)	

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

VOLUME II

<u>Exhibit</u>	<u>Description</u>
J	Deposition Transcript of David Grochocinski, dated January 19, 2009 (Exhibits thereof are in Volume III).

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

EXHIBIT J

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

DAVID GROCHOCINSKI, not)
individually but solely in his)
capacity as the Chapter 7)
Trustee for the bankruptcy)
estate of CMGT, INC.,)
Plaintiff,) No. 06 C 5486

-vs-

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

ORIGINAL

The videotaped deposition of DAVID
GROCHOCINSKI, called for examination, taken
pursuant to the Federal Rules of Civil Procedure of
the United States District Courts pertaining to the
taking of depositions, taken before LINDA M.
STRATTON, CSR No. 84-2613, a Notary Public within
and for the County of DuPage, State of Illinois,
and a Certified Shorthand Reporter of said state,
at the offices of Novack and Macey LLP, 100 North
Riverside Plaza, Suite 1500, Chicago, Illinois, on
January 19, 2009, at 9:21 a.m.

1 PRESENT:

2

3

EDWARD T. JOYCE & ASSOCIATES, P.C.,
(11 South LaSalle Street, Suite 1600,
Chicago, Illinois 60603,
312-641-2600), by:

6

7

MR. EDWARD T. JOYCE,

8

appeared on behalf of the Plaintiff;

9

10

NOVACK AND MACEY LLP,

11

(100 North Riverside Plaza, Suite 1500,
Chicago, Illinois 60606,

12

13

312-419-6900), by:

14

MITCHELL L. MARINELLO,

15

MR. STEVEN J. CISZEWSKI,

16

appeared on behalf of the Defendants.

17

18 ALSO PRESENT:

19

MR. KEVIN DAILEY, Legal Videographer,
Esquire Deposition Services.

20

21

22

23

REPORTED BY: LINDA M. STRATTON, CSR, RPR, CRR

24

CSR Certificate No. 84-2613

1 THE VIDEOGRAPHER: Good morning. We're going
2 on the video record at 9:21 a.m.

3 My name is Kevin Dailey, and I'm a legal
4 videographer in association with Esquire Deposition
5 Services. Our address is 311 West Monroe, Chicago,
6 Illinois. The court reporter today is Linda
7 Stratton, also of Esquire Deposition Services.

8 Here begins the videotaped deposition of
9 David Grochocinski taking place at 100 North
10 Riverside Plaza, Chicago, Illinois. Today's date
11 is January 19th, 2009.

12 This deposition is being taken in the
13 matter of David Grochocinski versus Mayer, Brown,
14 Rowe & Maw, LLP, in the United States District
15 Court, Northern District of Illinois.

16 Will counsel please state their names
17 for the record.

18 MR. JOYCE: My name is Ed Joyce, J-O-Y-C-E.

19 MR. MARINELLO: My name is Mitchell Marinello.

20 MR. CISZEWSKI: And Steven Ciszewski.

21 THE VIDEOGRAPHER: Will the reporter now swear
22 in witness, please.

23 (WHEREUPON, the witness was duly
24 sworn.)

DAVID GROCHOCINSKI, JANUARY 19, 2009

1 DAVID GROCHOCINSKI,
2 called as a witness herein, having been first duly
3 sworn, was examined and testified as follows:

4 EXAMINATION

5 BY MR. MARINELLO:

6 Q. Good morning. You are the trustee for
7 CMGT?

8 A. I am.

9 Q. All right. And we're taking your
10 deposition pursuant to a notice which I'm going to
11 ask the court reporter to mark as Exhibit 1 just
12 for the record.

13 (WHEREUPON, a certain document was
14 marked Defendant's Exhibit No. 1,
15 for identification, as of
16 01/19/2009.)

17 BY MR. MARINELLO:

18 Q. Mr. Grochocinski, is it -- is it -- may
19 I refer to you as David sometimes?

20 A. Sure.

21 Q. All right, great. Isn't it true that
22 your compensation as a trustee for CMGT is largely
23 based on -- on how much money you bring into the
24 estate?

1 A. Yes. I -- I'm not compensated on an
2 hourly basis. It's based on commissions under
3 11 USC 326.

4 Q. And is it true that the Bankruptcy Court
5 has to approve your fees as reasonable?

6 A. Yes.

7 Q. Do you keep records of how much time you
8 spend working on the estate?

9 A. For the most part.

10 Q. And do you also keep a record of what
11 you do for the estate?

12 A. Yes.

13 Q. All right. What form do you keep those
14 records in?

15 A. Time slips generally.

16 Q. I -- do you still have those time slips?

17 A. I would assume.

18 Q. Okay. I -- I just want to say that I --
19 I believe those time slips are responsive to our
20 document request, and I'd request that they be
21 produced in -- in the case.

22 A. Okay. Now, I should supplement that
23 that some of the -- some of the time that I have is
24 taken on a pen basis or on a hand basis, and we

DAVID GROCHOCINSKI, JANUARY 19, 2009

1 only put that -- that into time slips from time to
2 time in trustee cases.

3 Q. So how do you keep a record of that
4 time?

5 A. Well, sometimes I'll notate times on
6 various sheets. If I sent an e-mail, it might have
7 a -- a time listed on it. We don't usually put
8 that into time slips until I'm ready to ask for
9 compensation, especially in a case that has few or,
10 if any, assets in it.

11 Q. All right.

12 A. So --

13 Q. But you have -- you have the records of
14 those things you --

15 A. It would be a monumental task for me to
16 input that data and give it to you at this time. I
17 mean, I -- I suppose I could do that, but it would
18 be very, very difficult.

19 Q. Am I correct that you have some time
20 slips to this point?

21 A. There may be. I have to go back and
22 look. I -- it's not necessary for me to look at
23 it, because I'm nowhere near compensation in this
24 matter.

1 Q. Um-hum. All right. And you have the
2 actual records that -- that -- that have your notes
3 of time on them?

4 A. Yeah, I -- I assume I do somewhere in
5 there, yeah.

6 Q. Okay. On -- on August 25th, 2004, an
7 involuntary petition was filed against CMGT by
8 Spehar Capital, is that right?

9 A. I don't remember the exact date. But I
10 do know that they filed an involuntary, right.

11 Q. Okay. As Exhibit 2 I've marked a copy
12 of what I believe to be the involuntary petition.
13 Let me ask you if you can identify that.

14 MR. JOYCE: She's going to give you the
15 official exhibit.

16 (WHEREUPON, a certain document was
17 marked Defendant's Exhibit No. 2,
18 for identification, as of
19 01/19/2009.)

20 BY THE WITNESS:

21 A. That looks like the involuntary petition
22 that was filed in the case, yes.

23 BY MR. MARINELLO:

24 Q. Okay. That petition is signed by Jerry

1 Spehar on behalf of Spehar Capital?

2 A. That's what it says, right.

3 Q. And he's the owner of Spehar Capital, is
4 that correct?

5 A. To the best of my knowledge.

6 Q. And is he also the sole shareholder of
7 the company?

8 A. I don't know that to be the case, but I
9 think so.

10 Q. All right. And he's the president of
11 the company?

12 A. To the best of my knowledge, I think so,
13 but I don't know for sure.

14 Q. Is -- is there any other officer OF the
15 company that you are aware of other than him?

16 A. I'm not aware of anyone else.

17 Q. Okay. And is he the sole employee of
18 Spehar Capital?

19 A. I don't know that to be the case.

20 Q. Are you aware of any other employees of
21 Spehar Capital besides him?

22 A. I am not, but I've never asked the
23 question, so I don't know.

24 Q. All right. On September 21st, 2004,

DAVID GROCHOCINSKI, JANUARY 19, 2009

1 about a month after Mr. Spehar filed the petition,
2 you were appointed the Chapter 7 bankruptcy trustee
3 for CMGT, correct?

4 A. That's about right.

5 Q. All right. Had you ever heard of CMGT
6 prior to your appointment?

7 A. No.

8 Q. Had you had any contact with any of the
9 shareholders or officers of CMGT before then?

10 A. No.

11 Q. Okay. And had you had any contact with
12 Mr. Spehar or with his company before then?

13 A. No.

14 Q. Prior to the filing of the involuntary
15 petition, had you had any contact with any of
16 Mr. Spehar's attorneys?

17 A. Oh, I've talked to Mr. Todhunter on a --
18 not in -- not regarding CMGT.

19 MR. JOYCE: He said prior to.

20 THE WITNESS: Prior to --

21 MR. JOYCE: The filing.

22 THE WITNESS: But I thought he meant do I
23 know any --

24

1 BY THE WITNESS:

2 A. I -- I'm sorry. I misunderstood.

3 Maybe --

4 BY MR. MARINELLO:

5 Q. Do you know Mr. Todhunter?

6 A. Oh, sure. We've been -- I think we went
7 to law school together, so...

8 Q. And what's your relationship been with
9 him over the years?

10 A. Just -- I mean, we're friends. I mean,
11 law school acquaintances.

12 Q. Are -- do you see him socially?

13 A. Once in a great while.

14 Q. Would you describe him as a friend?

15 A. An acquaintance.

16 Q. Have you done work with him
17 professionally besides the CMGT case?

18 A. I think I've hired his firm when he was
19 with Holleb & Coff in another case that I had, and
20 then we've had contact over the years. I mean,
21 it's -- yeah.

22 Q. Okay. How about Mr. Klenda; do you have
23 any prior relationship with him?

24 A. No.

DAVID GROCHOCINSKI, JANUARY 19, 2009

1 Q. Prior to the filing of the petition, had
2 you had any contact with Mr. Given?

3 A. No.

4 Q. And how about with Mayer Brown?

5 A. Only in relation to bankruptcy cases
6 that I might have either filed and -- I believe
7 that one of Mayer Brown's partners is a trustee.

8 Q. Who would that be?

9 A. You know what? I'm sorry. I don't
10 remember offhand.

11 Q. Okay.

12 A. But there's a trustee on their staff,
13 and I've -- I've obviously appeared before him on
14 occasion.

15 Q. Okay. Let me show you -- I'm going to
16 ask the court reporter to mark this as Exhibit 3.
17 This is a copy of Schedule F, Creditors Holding
18 Unsecured Nonpriority Claims.

19 (WHEREUPON, a certain document was
20 marked Defendant's Exhibit No. 3,
21 for identification, as of
22 01/19/2009.)

23 BY MR. MARINELLO:

24 Q. Is that a true and correct copy of

1 Schedule F listing creditors holding unsecured
2 claims of CMGT?

3 A. I assume. I mean, I don't -- I haven't
4 seen this in a long time, but --

5 MR. JOYCE: If you don't know, just tell him.

6 BY THE WITNESS:

7 A. I -- I'm just going to presume that it
8 is, but -- fine, okay.

9 BY MR. MARINELLO:

10 Q. Did you --

11 A. I've seen --

12 Q. Did you file this?

13 A. Yes, I did.

14 Q. Did you prepare the list?

15 A. I did.

16 Q. What do you understand to be the
17 function of Exhibit F?

18 A. It's a listing of unsecured creditors of
19 CMGT to the best of my investigation based on
20 documents that had been provided to me.

21 So I prepared the best list I could --
22 well, this was an involuntary case, no creditors --
23 no creditor list had been filed in this case
24 before, and in order to send out appropriate

DAVID GROCHOCINSKI, JANUARY 19, 2009

1 notices and -- and let creditors know that CMGT
2 filed, I prepared and filed --

3 Q. Um-hum.

4 A. -- Schedule F as one of my functions as
5 trustee.

6 Q. The record shows that you filed this
7 approximately on March 10th, 2006. Does that sound
8 about right?

9 A. Could be.

10 Q. That's --

11 A. I -- I don't know offhand. I don't
12 remember what the docket says, but if you say so,
13 okay.

14 Q. And I notice many of the creditors have
15 the word "unknown" written under the amount of
16 their claim. Do you have a more updated list than
17 this?

18 A. I have not bothered to look at an amount
19 that is actually due.

20 Q. Have you -- and why is that?

21 A. Not necessary.

22 Q. Why is it not necessary?

23 A. I'm not making a distribution yet. The
24 most important thing is to let the creditors know

1 their obligation is to file a proof claim if they
2 choose to do so.

3 When it comes time, if it ever comes
4 time to do a distribution, then I can look further
5 at CMGT records and make a further inquiry as to
6 their -- the validity of their claim, the amount of
7 their claim or the like. It's not necessary yet.

8 Q. Okay. So as it stands today, you don't
9 really have more information about the amount of
10 these people's claims?

11 A. I -- I haven't bothered to look for more
12 information.

13 Q. All right. And do you know if these
14 people are -- are truly creditors of CMGT?

15 A. Well, I found them in the records of --
16 of -- of CMGT that were turned over to me by
17 Mr. Franco, so I assume that they had some -- some
18 information.

19 They may have been paid prior. They may
20 no longer have a claim, but to the best of my
21 knowledge at the time, they were people that needed
22 to at least be given notice they have potential
23 claim.

24 Q. But it's possible that some of these

1 people are not actually creditors at the present
2 time of --

3 A. It's --

4 Q. -- CMGT?

5 A. -- always conceivable.

6 Q. Let me show you what I'm going to have
7 the court reporter mark as the next exhibit. This
8 is Schedule D, Creditors -- Creditors Holding
9 Secured Claims.

10 (WHEREUPON, a certain document was
11 marked Defendant's Exhibit No. 4,
12 for identification, as of
13 01/19/2009.)

14 BY MR. MARINELLO:

15 Q. Is that a copy of the schedule of
16 secured claims that you prepared for this case?

17 A. Looks like it.

18 Q. Okay. And I -- I -- I have on record
19 that you filed this on March 10th of 2006 also.
20 Does that sound about right to you?

21 A. Sounds about right.

22 Q. Okay. And also here you'll see that --
23 under the amount of claim, it -- it states
24 "unknown" under most of these.

DAVID GROCHOCINSKI, JANUARY 19, 2009

1 A. That's right.

2 Q. Do you have any additional information
3 as to the amount of the claim, if any, that these
4 creditors have?

5 A. Only if these individuals, which are --
6 look to be all shareholders, over the course of the
7 case, they filed proofs of claim, and during the
8 course of some litigation involving these people,
9 they alleged certain amounts.

10 I've not updated this. It's not
11 necessary at this time. Their claims, if any, are
12 shown in subsequent Court Orders.

13 And it's -- really was for -- again, for
14 notice purposes, because I wanted them to know that
15 the case had been filed and they would get notice,
16 then, of any bar date for claims or the like.

17 Q. Um-hum. Now, you mentioned that these
18 people are all shareholders of --

19 A. Well, for the most --

20 Q. -- CMGT?

21 A. They were. It looks --

22 Q. Okay.

23 A. -- like at least -- to the best my
24 knowledge, that's what it looks like, just briefly

DAVID GROCHOCINSKI, JANUARY 19, 2009

1 looking through these.

2 Q. Um-hum. Now, my -- my question to you
3 is, if they are shareholders of CMGT, do you know
4 whether they are also legitimate creditors or
5 whether -- whether they have asserted claims for
6 the investment that they made in the company?

7 A. There's multiple questions there, so
8 maybe you can back up and ask again.

9 Q. Okay. Do you know for a fact that these
10 people have actual claims as creditors?

11 A. Well, they've all filed -- or I
12 shouldn't say all. A -- a good many of them have
13 filed proofs of claim. They were based on notes
14 that originally were given by CMGT on moneys that
15 they had lent.

16 Some of their loans were allegedly
17 converted into shares, but it appears that there
18 may have been a failure of CMGT to properly convert
19 the notes into shares.

20 So these people may have -- have claims.
21 They may not have, but there's a settlement
22 agreement that resolved much of these claims later
23 on in the case that admitted these claims as part
24 of a settlement.

DAVID GROCHOCINSKI, JANUARY 19, 2009

1 So while they may have started out being
2 listed as this, the case subsequently has converted
3 into -- a good many of these people into claimants,
4 allowed claimants.

5 Q. Okay. Thank you.

6 A. I hope that -- the best I can do with
7 that.

8 Q. Um-hum.

9 MR. MARINELLO: Would you mark that as the
10 next exhibit, please. Is that 5?

11 THE COURT REPORTER: Yes.

12 (WHEREUPON, a certain document was
13 marked Defendant's Exhibit No. 5,
14 for identification, as of
15 01/19/2009.)

16 BY MR. MARINELLO:

17 Q. As Exhibit 5 --

18 MR. MARINELLO: Oops, sorry.

19 THE COURT REPORTER: Want this?

20 MR. MARINELLO: I've got one.

21 MR. JOYCE: I need one.

22 BY MR. MARINELLO:

23 Q. As Exhibit 5, I'm showing you a list
24 of -- an investor shareholder list as of 6/30/2003.

DAVID GROCHOCINSKI, JANUARY 19, 2009

1 Can you identify that as a list of CMGT
2 shareholders as of date that?

3 A. Off the top of my head, I don't know.
4 Looks like a document that I've seen before, but I
5 don't -- it is whatever it is. It was in --
6 contained within the CMGT files.

7 Q. Okay. Do you have -- do you recognize
8 this as a document that you -- you produced in this
9 litigation?

10 A. I believe I did.

11 Q. And you've now been in litigation with
12 some of these shareholders. Do you recognize a lot
13 of names on this list as shareholders of CMGT?

14 A. I do.

15 Q. Do you have any reason to doubt that any
16 of the people that are listed on this list are --
17 are not shareholders of CMGT?

18 A. Well, again, some of these people's
19 claims where they allege to be shareholders were
20 converted into loans, and so some of the people
21 that -- what I call shareholder may actually be
22 simply creditors.

23 But just qualifying what you said, I
24 recognize these people as either -- either being

DAVID GROCHOCINSKI, JANUARY 19, 2009

1 lenders or shareholders.

2 CMGT never -- it doesn't look like they
3 ever converted these properly into -- into shares,
4 so I'm trying to be as -- as straightforward as I
5 can with -- with respect to your answer, but I do
6 recognize these people as alleging to be
7 shareholders.

8 Q. All right. Is it true that, apart from
9 CMGT's alleged malpractice claim against
10 Mayer Brown and Ron Given, CMGT has no assets?

11 MR. JOYCE: Can I have that question read
12 back.

13 (WHEREUPON, the record was read by
14 the reporter.)

15 BY THE WITNESS:

16 A. I did sell some software, which was in
17 possession of one of the shareholders or investors.
18 I think his name was Mr. Holman, and Mr. Spehar
19 purchased that.

20 I think it was for 1,500 or 2,000,
21 something of that sort. I have not been able to
22 determine any other liquidatable assets in the
23 estate other than that.

24 Q. All right. Are you aware of any

DAVID GROCHOCINSKI, JANUARY 19, 2009

1 preferential payments that have been made by CMGT?

2 A. Not that I'm aware of, other than the
3 shareholders who were granted liens on whatever
4 assets at CMGT, but those shareholders were avoided
5 in an adversary complaint that I filed against each
6 one of them.

7 Q. Okay. So there are no other
8 preferential payments that you're aware of?

9 A. To the best of my knowledge, no.

10 Q. Are there any alleged fraudulent
11 transfers that you're aware of?

12 A. Not that I'm aware of.

13 Q. Are there any improper payments of any
14 kind by CMGT that you're aware of?

15 A. Not that I'm aware of.

16 Q. Are you aware of any fraud or improper
17 conduct by CMGT?

18 A. By CMGT?

19 Q. Yes.

20 A. It's not been brought to my attention,
21 so if it exists, I'm not aware of it.

22 Q. Are you aware of any fraud or improper
23 conduct by any of CMGT's shareholders in connection
24 with CMGT?

DAVID GROCHOCINSKI, JANUARY 19, 2009

1 A. No, not that I'm aware of. I may have
2 objections to a claim yet from Mr. Franco who filed
3 one for a -- oh, I think in excess of \$10 million,
4 and I may have a -- an objection to that claim.

5 I'm not -- have not gotten there yet,
6 because it's not necessary to do anything. There's
7 no distribution yet, so...

8 Q. Well, I'm not asking about claims at
9 this point. I'm asking you about something a
10 little more specific. Are you aware of any fraud
11 or --

12 A. Not that I'm aware of.

13 Q. -- improper conduct by -- by CMGT's --
14 any of CMGT's officers?

15 A. Not that I'm aware of that hasn't
16 already been resolved in some fashion or another.

17 Q. Okay. Are you aware of any fraud or
18 improper conduct by any of C -- CMGT's employees?

19 A. Not that I'm aware of.

20 Q. Okay. Now, shortly after you were
21 appointed trustee of CMGT, Mr. Spehar approached
22 you and told you that he wanted you to bring legal
23 malpractice claims against Ronald Given and
24 Mayer Brown, correct?

DAVID GROCHOCINSKI, JANUARY 19, 2009

1 A. Actually, I think his counsel contacted
2 me after I was appointed.

3 Q. Who was that?

4 A. I believe it was Mr. Todhunter initially
5 who contacted me after my appointment.

6 Q. Okay. And how soon was it after your
7 appointment that he contacted you?

8 A. I -- I don't remember. It -- probably
9 within ten days or so.

10 Q. Okay. What did he tell you?

11 A. He indicated to me that his client,
12 Spehar Capital, had a judgment that was entered in
13 California for 15 or \$16 million or thereabouts,
14 that the judgment had been registered in DuPage
15 County, that a citation to discover assets had
16 issued, that Mr. Franco had appeared at a citation
17 to discover assets, and that they believed after
18 discussions with Mr. Franco and -- must have been
19 other information that they had, that perhaps a --
20 a cause of action might exist against Mayer Brown
21 arising out of the California litigation.

22 Q. Okay. Did -- did they explain to you
23 what the basis for the cause -- for the cause of
24 action might be?

DAVID GROCHOCINSKI, JANUARY 19, 2009

1 A. I'm trying to remember. I think he said
2 it was a -- that they failed to appear and defend a
3 case based on -- on a -- a -- some type of a
4 financing or brokerage financing arrangement that
5 Spehar Capital had with CMGT, and that's about the
6 best I remember.

7 Q. Okay. Now, was anybody on this phone
8 call other than Mr. Todhunter?

9 A. I don't think so.

10 Q. Okay. And as you best recall, his
11 belief was that -- well, his statement to you was
12 that Mayer Brown may have committed malpractice by
13 not appearing to defend the lawsuit that his client
14 had brought against CMGT?

15 A. I -- I think he said that in brief,
16 right.

17 Q. Okay. What's the -- who is the next
18 person you spoke with about this claim?

19 A. Well, I think I asked him to the send me
20 the deposition transcript of -- the citation
21 transcript of Mr. Franco, and I think I asked him
22 to send me whatever other information that he had
23 relative to the entry of the judgment.

24 And I don't really think I spoke to

1 anybody again then for probably another ten days or
2 so.

3 Q. Let me interrupt you there for a second.
4 Did you receive the materials from Mr. Todhunter?

5 A. I received --

6 Q. -- that you requested?

7 A. -- the deposition transcript. That's
8 essentially what I received.

9 Q. Did you get a copy of the default
10 judgment?

11 A. Only if it was attached in the -- as an
12 exhibit to the deposition -- to the citation
13 transcript. I didn't receive anything else other
14 than the packet.

15 Q. Did Mr. Todhunter tell you that the
16 reason that the involuntary petition had been
17 brought against CMGT was to put CMGT in a position
18 to bring a malpractice claim against
19 Mayer Brown and --

20 A. No.

21 Q. -- Ronald Given?

22 Did Mr. Spehar ever tell you that?

23 A. No.

24 MR. MARINELLO: Would you mark this as the

DAVID GROCHOCINSKI, JANUARY 19, 2009

1 next exhibit, please.

2 (WHEREUPON, a certain document was
3 marked Defendant's Exhibit No. 6,
4 for identification, as of
5 01/19/2009.)

6 BY MR. MARINELLO:

7 Q. All right. I have placed in front of
8 you a -- what we've marked as Exhibit 6. It's a
9 letter from Steven Klenda to you dated February 24,
10 2005.

11 Can you identify that as a letter that
12 you received from him on or about that date.

13 A. It's not signed by anybody on Page 2,
14 but it appears that I've seen this before.

15 Q. And you received it on or about
16 February 24th, 2005?

17 A. I -- I have to assume so. I don't
18 recall offhand, but I -- I assume that it was sent
19 about that time. Looks like it -- it might have
20 been faxed --

21 Q. Yes.

22 A. -- so...

23 Q. If you would look down in the third
24 paragraph of that letter --

1 A. Okay.

2 Q. -- the second sentence.

3 A. "Obtaining it's judgment -- "

4 Q. Would you read that out loud, please.

5 A. "Obtaining its judgment, positioning
6 CMGT to be able to recover against Mayer Brown by
7 putting it in Chapter 7, and lining up
8 Mr. Spellmire were not small feats."

9 Q. Okay. Is -- do you understand that
10 language to be Mr. Spehar's counsel telling you
11 that Mr. Spehar deserved some consideration from
12 you because he had done these things?

13 A. No.

14 Q. What do you understand that to mean?

15 A. Just a statement that CMGT obtained a
16 judgment and that, subsequent to the judgment,
17 since nobody came in to defend, they put it into a
18 Chapter 7, and they wanted to consider whatever
19 action there might be against Mayer Brown for --
20 for that action.

21 Q. Well, doesn't the language of the letter
22 read, "Positioning CMGT to be able to recover
23 against Mayer Brown by putting it into Chapter 7"?

24 A. Well, once the judgment was entered --

DAVID GROCHOCINSKI, JANUARY 19, 2009

1 MR. JOYCE: Hold on.

2 BY MR. MARINELLO:

3 Q. First --

4 MR. JOYCE: He's asking you if it -- if it
5 says that.

6 BY MR. MARINELLO:

7 Q. I asked you a specific question --

8 A. Oh.

9 Q. -- so let's answer that first.

10 Doesn't the document that you received
11 say that Mr. -- that Spehar positioned CMGT to be
12 able to recover against Mayer Brown by putting it
13 into Chapter 7?

14 A. That's what the words say. You asked me
15 what I believed it to mean. That's what I thought
16 you said. You said what did --

17 Q. Is that --

18 A. -- you believe what it said -- I thought
19 that's what you said.

20 Q. My last question was, is that what the
21 words mean -- is that the words say?

22 A. The word says what it says, "Obtaining
23 its judgment, positioning CMGT to be able to
24 recover against Mayer Brown by putting it into

1 Chapter 7, and lining up Mr. Spellmire's services
2 were not small feats," period.

3 Q. Okay. And Mr. Spellmire was who?

4 A. Is a -- an attorney in Chicago that I
5 consulted respecting a -- a potential action
6 against Mayer Brown.

7 Q. And is it true that Mr. Spehar is the
8 person who lined up Mr. Spellmire's services?

9 A. Well, lined up, I'm not sure -- well --

10 MR. JOYCE: Objection to the use of the word
11 "lined up." It's vague.

12 BY THE WITNESS:

13 A. Yeah, I --

14 BY MR. MARINELLO:

15 Q. Well, did Mr. -- did Mr. Spehar find
16 Mr. Spellmire?

17 A. He did, because I asked his counsel to
18 do so.

19 Q. Did you specifically know Mr. Spellmire?

20 A. No.

21 Q. So you asked -- you asked Mr. --
22 Mr. Spehar's counsel to find an attorney to talk to
23 you about the -- to talk about the attorney -- I'm
24 sorry, the attorney malpractice claim?

DAVID GROCHOCINSKI, JANUARY 19, 2009

1 A. Yes.

2 Q. And they came back to you with
3 Mr. Spellmire as a suggestion?

4 A. Yes.

5 Q. Okay. And did Mr. Spehar talk to
6 Mr. Spellmire before you did about the possibility
7 of Mr. Spellmire representing CMGT in a malpractice
8 claim against Mayer Brown?

9 A. I have no idea.

10 Q. When you spoke with Mr. Spellmire, you
11 couldn't tell whether or not he had already spoken
12 to Mr. Spehar?

13 A. Honestly, I don't recall.

14 Q. Okay. Now, you were starting to say
15 that after you spoke to Mr. Todhunter, there came a
16 time when you spoke to someone else about this
17 malpractice claim. Who was that?

18 A. I did speak to Mr. Spehar with his
19 counsel on the phone, and I eventually did speak to
20 Mr. Klenda.

21 Q. Now, when you say "with his counsel on
22 the phone," who was his counsel?

23 A. It was either Judson Todhunter or
24 Mr. Klenda, from time to time. Sometimes both.

DAVID GROCHOCINSKI, JANUARY 19, 2009

1 Q. Okay. And -- and what did you learn --
2 well, what was said during that second telephone
3 conversation?

4 A. I don't really recall.

5 Q. Do you recall any additional information
6 being given to you with respect to the alleged
7 malpractice claim?

8 A. I'm sorry. I don't recall.

9 Q. Wasn't Mr. Spehar interested in having
10 you, as the trustee of CMGT, bring that legal
11 malpractice claim so that Spehar Capital could
12 collect on its \$17 million default judgment?

13 A. I think Mr. Spehar was interested in
14 seeing that CMGT would recover assets for
15 distribution to creditors. Since Mr. Spehar had a
16 large judgment, I assume he would be very
17 interested in finding moneys to be able to pay the
18 judgment.

19 Q. Did Mr. Spehar tell you that he was
20 interested, very interested, in having you collect
21 on a legal malpractice claim so that he could
22 collect on his judgment?

23 A. It's -- yes.

24 Q. Okay. Now, you -- did there come a

DAVID GROCHOCINSKI, JANUARY 19, 2009

1 point in time when you -- when is the next time you
2 spoke to anybody representing Mr. Spehar or to
3 Mr. Spehar himself?

4 A. You know what? I don't know. I -- I
5 had multiple conversations with -- with Mr.
6 Todhunter, with Mr. Klenda, with Mr. Spehar, with
7 the two of them over a period of time on this
8 matter. This was not a -- I wouldn't be able to
9 tell you the next time that I spoke to him. It was
10 just multiples.

11 Q. Okay. Can you estimate how many
12 conversations that you had with Mr. Spehar or one
13 of his attorneys prior to the time that you filed
14 the legal malpractice claim?

15 A. I don't think that I can even give a --
16 a good estimate. A hundred? 200? I don't know.
17 It's hard to tell. Sometimes we talked several
18 times during the day. Sometimes there would be
19 weeks when we wouldn't talk. I -- no way of
20 knowing.

21 MR. MARINELLO: Okay. Would you mark that as
22 the next exhibit, please.

23 (WHEREUPON, a certain document was
24 marked Defendant's Exhibit No. 7,

DAVID GROCHOCINSKI, JANUARY 19, 2009

1 for identification, as of
2 01/19/2009.)

3 BY MR. MARINELLO:

4 Q. Okay. As Exhibit 7 I've marked a -- an
5 e-mail chain. The one -- the e-mail at the very
6 top is an e-mail from you to Steve Tisdale dated
7 February 25, 2005 -- I'm sorry, steve@tisdalelaw.
8 Excuse me.

9 Can you identify that as an e-mail that
10 you sent on or about February 25th, 2005?

11 A. Yes.

12 Q. And who is Steve -- the Steve that
13 you're referring to there? Is that Steve Klenda?

14 A. Yes.

15 Q. All right. That's one of Mr. Spehar's
16 counsel, correct?

17 A. Yes -- well, Spehar Capital's counsel,
18 right.

19 Q. Did you -- did you know Mr. Spellmire
20 prior to the time that Mr. Spehar mentioned him to
21 you?

22 A. No.

23 Q. So you'd never had any dealings with him
24 or met him or anything like that?

DAVID GROCHOCINSKI, JANUARY 19, 2009

1 A. No.

2 Q. Okay. Did you interview Mr. Spellmire?

3 A. Yes.

4 Q. When?

5 A. I don't remember the day.

6 Q. Approximately when was it?

7 A. I don't know if it was in January or
8 February of '05.

9 Q. Did you --

10 A. It was cold, I know, so --

11 Q. Did you make any determination at that
12 time as to whether you were willing to hire
13 Mr. Spellmire to represent you with respect to the
14 alleged malpractice claims?

15 A. I don't think we had -- I had gotten
16 that far. I think I explained what I believed to
17 be the essential, I guess, facts, to the best that
18 I can explain those as facts, relative to the cause
19 of action, and asked if he was interested and he
20 was going to get back to me.

21 Q. Um-hum. Was --

22 A. Took about an hour maybe.

23 Q. Was anybody there besides you?

24 A. I believe Mr. Todhunter was there, I

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1 think. And I don't recall anything else offhand.

2 Q. Um-hum. What facts did you tell
3 Mr. Spellmire?

4 A. Essentially, the same facts that came
5 out of the deposition transcript from Mr. Franco.

6 Q. And what were those?

7 A. As I said, the -- the judgment entered
8 in California based on a brokerage contract that
9 was entered into between CMGT and Spehar Capital,
10 the nonappearance in the lawsuit filed by Spehar
11 Capital in California.

12 I believe Mr. Franco had indicated that
13 he had been appropriately served, had discussed the
14 matter with Mr. Given. Mr. Given opted not to
15 appear or otherwise defend.

16 A judgment was entered and not vacated
17 or set aside and resulting in a \$15 or so million
18 judgment against CMGT.

19 Q. So the active malpractice that you --
20 the fact of malpractice, as you understood it, was
21 the failure to appear in -- in the -- in the case
22 and not to have --

23 A. Well, I'm not a malpractice guy, so I
24 don't --

DAVID GROCHOCINSKI, JANUARY 19, 2009

1 Q. Well, let me finish my --

2 A. Okay.

3 Q. -- question --

4 A. Sure.

5 Q. -- okay?

6 A. I'm sorry.

7 Q. Whether you're a malpractice lawyer or
8 not, I'm interested in the facts that you gave to
9 Mr. Spellmire.

10 A. Okay.

11 Q. And my question is, when you spoke to
12 Mr. Spellmire about what you viewed as the facts of
13 the alleged malpractice, what -- the facts that you
14 told him were that Mayer Brown had not appeared in
15 the litigation that Spehar brought in California?

16 A. Yeah.

17 Q. Was there any other fact that you gave
18 him with respect to malpractice?

19 A. Probably because that's the only facts
20 that I was aware of at the time.

21 Q. So that's the only one you're aware of?

22 A. Well, that I was aware of at the time.

23 Q. All right. Did Mr. Spellmire conduct
24 any -- did he ever get back to you as to whether he

1 was interested or not?

2 A. He indicated to me that he was either
3 too busy or other matters came up and he was not
4 interested in proceeding.

5 Q. And when did he tell you that?

6 A. You know, and I don't remember offhand.
7 I'm sorry.

8 Q. Isn't it -- isn't it the case that he
9 agreed to take on the representation prior to the
10 time that he told you he was too busy?

11 A. I don't remember.

12 Q. Did Mr. Spehar tell you that he was
13 surprised that Mr. Spellmire was declining to take
14 the representation because Mr. Spellmire had
15 previously assured Mr. Spehar that he was going to
16 do it?

17 A. I don't remember. If there's some
18 documentation to that effect, I would be happy to
19 take a look at it, but I -- you're acting -- asking
20 for my memory, and I don't remember.

21 Q. Do you know if Mr. Spellmire interviewed
22 anyone about the alleged malpractice claims?

23 A. No, I don't know.

24 Q. Do you know if he did any investigation

DAVID GROCHOCINSKI, JANUARY 19, 2009

1 into the alleged malpractice claims?

2 A. I do not know.

3 Q. Okay.

4 MR. MARINELLO: Okay. If you would mark this
5 as the next exhibit, please.

6 (WHEREUPON, a certain document was
7 marked Defendant's Exhibit No. 8,
8 for identification, as of
9 01/19/2009.)

10 BY MR. MARINELLO:

11 Q. As Exhibit 8 I've marked a -- an e-mail
12 from Mr. Todhunter to Gary Spehar with a copy --
13 and to you also dated January 7, 2005.

14 A. Um-hum.

15 Q. Did you receive this e-mail and -- and
16 its attachment on or about that date?

17 A. It was directed to me. I usually
18 receive my e-mails, so I assume I did.

19 Q. Okay. I'm not going to have any
20 questions about that document right now, sir. You
21 can put that aside.

22 MR. MARINELLO: Would you mark this as
23 Exhibit 9, please.

24 MR. JOYCE: You got one more?

DAVID GROCHOCINSKI, JANUARY 19, 2009

1 MR. MARINELLO: Yeah.

2 MR. JOYCE: Thanks.

3 MR. MARINELLO: Um-hum.

4 (WHEREUPON, a certain document was
5 marked Defendant's Exhibit No. 9,
6 for identification, as of
7 01/19/2009.)

8 BY MR. MARINELLO:

9 Q. Now, is this an e-mail dated -- I -- as
10 Exhibit 9 I have marked an e-mail dated July 19,
11 2005, from Mr. Klenda to you with a copy to Gerry
12 Spehar. Did you receive this from Mr. Klenda on or
13 about the date it bears?

14 A. I assume I did.

15 Q. Okay. And this e-mail in the second
16 paragraph refers to George Spellmire saying he's
17 too busy to do the case, correct?

18 A. That's what it says.

19 Q. And he says, "This was quite a shock
20 given that Spehar Capital relied on
21 Spellmire & Sommer's commitment to take the case"?

22 A. That's what it says.

23 Q. Did you ever determine whether or not
24 that was true?

DAVID GROCHOCINSKI, JANUARY 19, 2009

1 A. I really didn't go beyond that to ask.

2 Q. Okay. Hadn't you in fact filed a
3 post-petition financing motion that specifically
4 mentioned Mr. Spellmire as being -- going -- as
5 going to be your counsel?

6 A. I think I did.

7 Q. Okay. So you expected Mr. Spellmire to
8 be your counsel?

9 A. I did.

10 Q. And does that refresh your recollection
11 that Mr. Spellmire told you that he was interested
12 in pursuing the matter --

13 A. Well, I --

14 Q. -- at least at some point?

15 A. I -- I guess, yeah, because if -- I had
16 not heard one way or another, to the best of my
17 knowledge, but I was relying on the fact that
18 Mr. Spellmire was going forward. He had not told
19 me up to that point in time that he had not --

20 Q. Um-hum.

21 A. -- so...

22 Q. Okay. So Mr. -- did you ever ask
23 Mr. Spellmire any questions about why it is he had
24 decided not to take the case?

DAVID GROCHOCINSKI, JANUARY 19, 2009

1 A. I don't recall a conversation offhand.
2 I think I just simply accepted his letter at face
3 value.

4 And I don't usually ask lawyers if
5 they've decided to not take the case they -- why.
6 I assume that they have good reasons. I -- I just
7 don't remember.

8 Q. Okay. This made it necessary for you to
9 find a new attorney to represent you, correct?

10 A. Yes.

11 Q. And that attorney, of course, turned out
12 to be Mr. Joyce?

13 A. Yes.

14 Q. Mr. Spehar found Mr. Joyce and
15 recommended him, correct?

16 A. Again, yes, because I'm not familiar
17 with counsel that do that kind of work.

18 Q. Did you know Mr. Joyce before Mr. Spehar
19 brought him to your attention?

20 A. No, I don't think so. It's possible
21 that we ran into each other from time to time in
22 State Court, but I don't -- never had a -- a
23 recollection of a matter with Mr. Joyce offhand
24 until actually I met him.

1 Q. Did you interview Mr. Joyce prior to
2 presenting a motion that resulted in -- in his
3 being --

4 A. I think we --

5 Q. -- approved?

6 A. -- spoke on the phone.

7 Q. How long did that take?

8 A. I don't know. I don't recall.

9 Q. When was that?

10 A. Again, I don't recall. Sometime after
11 Mr. Spellmire bowed out.

12 Q. Did you -- did you interview Mr. --
13 Mr. Joyce in person, Mr. Todhunter, or anyone
14 else?

15 A. I'm trying to think. I don't recall --
16 I don't recall a meeting offhand.

17 Q. Okay. As of the time that you first
18 contacted Mr. Joyce, had you done any investigation
19 into the malpractice claims yourself?

20 A. Other than the information that I had
21 originally from Mr. Franco, no, not really.

22 Q. And you say other than the information
23 you had from Mr. Franco. Had you spoken to
24 Mr. Franco about the malpractice claims at that

DAVID GROCHOCINSKI, JANUARY 19, 2009

1 point?

2 A. Well, I think he testified about the
3 circumstances relative to the nonrepresentation.
4 Either that, or it was in a letter to me from
5 Mr. Franco.

6 But I did get -- I do recall some
7 information from Mr. Franco to indicate that -- as
8 I indicated before, what was the substance -- what
9 I believed to be the substance at that time of
10 the -- of the cause of action, and -- but I haven't
11 had to do anything further with that at that
12 point --

13 Q. Well, let me --

14 A. -- in time.

15 Q. -- be a little more clear about this.

16 Certainly by -- you've already testified
17 that you received information from Mr. Spehar and
18 from Mr. Todhunter --

19 A. Yeah.

20 Q. -- Mr. Spehar's counsel, about the
21 alleged malpractice, correct?

22 A. Correct.

23 Q. You had not spoken to Mr. -- Mr. Franco
24 as of this point in time, is that correct?

1 A. I don't recall when the first time I
2 spoke to Mr. Franco.

3 Q. You had not spoken to Mr. Franco about
4 the malpractice claims as of this time?

5 A. Again, I don't -- I don't remember
6 specifically talking to him about the malpractice
7 claims directly.

8 Q. All right. Now, also you say that
9 you -- you saw something in a letter from him or in
10 testimony. Can you identify more specifically what
11 letter or what testimony?

12 A. Not offhand. I just recall seeing some
13 documentation somewhere where he indicated -- it --
14 it could have been in pleadings, for all I know.
15 I'm not really sure, but where he indicated that
16 service of process had been had, a discussion had
17 been made with Mr. Given, and a decision was made
18 not to defend.

19 Q. And do you know why that decision was
20 made?

21 A. I think, if I'm not mistaken, Mr. Given
22 told him that there were some problems with respect
23 to jurisdiction in California, and that he didn't
24 think that -- he, being Mr. Given, didn't think

1 that the California Court would enter an
2 injunction.

3 Q. And you say that this information came
4 to you from something that was in a pleading by
5 Mr. Franco or in a letter?

6 A. Again, I --

7 Q. Is that what you recall?

8 A. I -- yes. I believe that's the case,
9 but I can't remember offhand.

10 Q. Is it possible --

11 A. It's just so many documents in this
12 case, I can't -- it's hard to remember which --
13 where I received that information from.

14 Q. Is it possible that this is information
15 that you received from Mr. Spehar and not from
16 Mr. Franco?

17 A. It's conceivable.

18 Q. All right. Well, we'll -- later on,
19 I'll -- I'll show you some of the letters from
20 Mr. Franco and give you an opportunity to -- to
21 look at those letters and see if they refresh your
22 recollection.

23 A. That's fine.

24 Q. See if he ever said anything that

1 you're -- you're saying he said.

2 Now -- now, shortly after Mr. Spehar
3 first approached you about the alleged malpractice
4 claim and his default judgment, you and he began to
5 negotiate an arrangement by which you and -- and
6 Spehar would share in a recovery in the legal
7 malpractice claim?

8 A. Well, it's not me. It's the estate of
9 CMGT.

10 Q. Right.

11 A. The -- actually, the unsecured creditors
12 of CMGT --

13 Q. Right.

14 A. -- provided that Mr. Spehar's claim was
15 eventually determined to be secured.

16 Q. Um-hum. So Mr. Spehar approached you
17 about how you're going to share any proceeds from
18 the legal malpractice claim, correct?

19 A. How the estate would share.

20 Q. Yes.

21 A. The unsecured creditors would share
22 if --

23 Q. I'm not suggesting that you personally
24 were going to share, Mr. Grochocinski.

DAVID GROCHOCINSKI, JANUARY 19, 2009

1 A. Okay. If you're saying that's you, then
2 you're -- acting as me as trustee for the estate,
3 that's fine. I'm not sharing --

4 Q. Yeah.

5 A. -- anything.

6 Q. That's -- that's what I mean.

7 A. Okay.

8 Q. Because you are the trustee, right?

9 A. Right, right, right.

10 Q. Okay. So when I say "you," that's what
11 I mean --

12 A. Okay.

13 Q. -- in your official capacity.

14 A. Fine, fine.

15 Q. But it's -- it is true, isn't it, that
16 Mr. Spehar approached you and wanted to negotiate
17 how the moneys would be shared if they were --

18 A. He --

19 Q. -- awarded?

20 A. He believed that his citation to
21 discover assets made him a secured creditor, and
22 that was undetermined by me at the time.

23 But in order for us to -- to go forward,
24 I would need to make sure that there was going to

DAVID GROCHOCINSKI, JANUARY 19, 2009

1 be a benefit, if at all, to unsecured creditors.
2 So in order to have a benefit for unsecured
3 creditors, presuming that Mr. Spehar was eventually
4 declared to be a secured creditor, then we would
5 need to make sure there was some sort of a
6 carve-out, some sort of an amount that would
7 eventually be distributed to unsecured creditors,
8 otherwise it would make no sense for me as trustee
9 to simply pursue a case on behalf of an otherwise
10 fully secured creditor if he thought he could do it
11 on his own.

12 Q. Your negotiations with Mr. Spehar about
13 how to work this carve-out that you mentioned took
14 a very long time, correct?

15 A. It took unusually long.

16 Q. How long?

17 A. Months.

18 Q. And why do you say it was unusual?

19 A. Simply because the -- I don't even know
20 if it's just Mr. Spehar or his counsel. I think
21 there is an -- an assumption that he may have had a
22 claim that I'm not sure that he had, and I won't
23 know until Judge Squires rules one way or another.

24 But he was -- I think he believed that

DAVID GROCHOCINSKI, JANUARY 19, 2009

1 he -- that -- that -- that Spehar Capital was the
2 most damaged creditor in the CMGT creditor body,
3 and as such, he believed that -- that if there was
4 a chance of a recovery, he wanted to make sure that
5 there was going to be a recovery for Spehar
6 Capital.

7 I don't know if that answered your
8 question exactly or not, but --

9 Q. Well, why --

10 A. -- that's to the best of my guess.

11 Q. How does that explain why the
12 negotiations were unusually long?

13 A. Well, I think his view was that the
14 estate would be entitled to nothing, and from his
15 perspective, if there was a recovery and he was a
16 validly secured creditor, then all of the funds
17 would flow to -- for payment of his claim.

18 Obviously, secured creditors -- I
19 shouldn't say obviously, but in -- in terms of
20 distribution, secured creditors receive money prior
21 to unsecured creditors, and it would make little or
22 no sense for a -- a -- for me to proceed unless
23 there was going to be some type of a distribution
24 to unsecured creditors.

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1 And I think it was just a -- a -- a
2 disagreement between what unsecured creditors
3 should receive and what a -- a, quote, secured
4 creditor should receive.

5 Q. Did you find Mr. Spehar a difficult
6 person to reach an agreement with?

7 A. I think he is a -- a strong -- he has
8 a -- strong beliefs in his positions, and I can't
9 fault anybody for doing that.

10 Q. The question was, did you find him a
11 difficult person to reach an agreement with?

12 A. As difficult as some and not as
13 difficult as others. How's that?

14 Q. More difficult than the typical one?

15 A. I -- I don't know if there is a typical
16 one. Sorry. Each --

17 Q. All right.

18 A. Each -- each case has its own unique set
19 of circumstances.

20 Q. All right. You mentioned that you spent
21 months negotiating a sharing agreement with
22 Mr. Spehar and his attorneys. Did you keep a
23 record of the time you spent on that?

24 A. I assume that I did.

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1 Q. All right. And you did eventually reach
2 an agreement with Mr. Spehar?

3 A. I -- yes, because the Court entered an
4 order.

5 MR. MARINELLO: All right. Would you mark
6 this, please, as the next exhibit.

7 MR. JOYCE: That will be 10?

8 THE COURT REPORTER: Yes.

9 MR. MARINELLO: Okay. Thank you.

10 (WHEREUPON, a certain document was
11 marked Defendant's Exhibit No. 10,
12 for identification, as of
13 01/19/2009.)

14 BY MR. MARINELLO:

15 Q. I've marked as Exhibit 10 -- is -- is
16 this the application you filed with -- with the
17 Court to approve your agreement with -- with
18 Mr. Spehar?

19 A. Looks like it.

20 Q. And the actual agreement between you and
21 Spehar is attached, is it not?

22 A. There's a letter agreement and then
23 there is the order, yes. It appears to be.

24 Q. Okay. And that agreement provides for,

DAVID GROCHOCINSKI, JANUARY 19, 2009

1 among other things, a schedule for how Spehar
2 Capital and the trust -- and -- and the bankruptcy
3 estate will share in any recovery from the
4 malpractice claims?

5 A. Presuming that he's a -- a secured
6 creditor, that's correct.

7 Q. All right.

8 A. If he's an unsecured creditor, just so
9 you know, then he gets -- he gets pro rata
10 distribution like everybody else, again, presuming
11 there's a recovery.

12 MR. MARINELLO: Would you mark this as the
13 next exhibit, please.

14 (WHEREUPON, a certain document was
15 marked Defendant's Exhibit No. 11,
16 for identification, as of
17 01/19/2009.)

18 (WHEREUPON, discussion was had off
19 the record.)

20 BY MR. MARINELLO:

21 Q. All right. And I just want to show you
22 what I've marked as Exhibit 11. That is a copy of
23 the order entered by Judge Squires approving your
24 agreement with Mr. -- I'm sorry, with Spehar

1 Capital, correct?

2 A. Um-hum, yes.

3 Q. All right. And that document refers to
4 Mr. Joyce being your counsel? It says you will --
5 have moved or will move to employ Mr. Joyce?

6 A. Yes, I believe by at that time, we have
7 already had conversations with Mr. Joyce or his
8 counsel.

9 Q. Mr. Joyce had counsel?

10 A. I believe he did.

11 Q. Who was that?

12 A. I think Mr. Fishman.

13 Q. Okay. As of that point in time, had you
14 actually interviewed Mr. Joyce?

15 A. I don't recall. I'm sure I must have
16 talked to him on the phone.

17 Q. Okay. I want to go back now to that
18 default judgment that Spehar Capital obtained
19 against CMGT.

20 A. Where are we? Oh, I'm sorry. I -- I
21 thought it was something else.

22 MR. MARINELLO: Would you mark that as the
23 next exhibit, please.

24 MR. JOYCE: 12.

DAVID GROCHOCINSKI, JANUARY 19, 2009

1 (WHEREUPON, a certain document was
2 marked Defendant's Exhibit No. 12,
3 for identification, as of
4 01/19/2009.)

5 BY MR. MARINELLO:

6 Q. Is that a true and correct copy of the
7 default judgment for 17 million, approximately,
8 that Spehar Capital obtained against CMGT in -- on
9 March 18th, 2004?

10 A. I presume it is. I haven't seen this in
11 a long time, but it looks familiar.

12 Q. Okay. To the best of your knowledge,
13 has CMGT ever paid any -- any part of that default
14 judgment prior to the bankruptcy?

15 A. Not to the best of my knowledge.

16 Q. Does CMGT presently have the ability to
17 pay any part of that judgment?

18 A. No.

19 Q. And didn't Mr. Spehar tell you that --
20 in his conversations with you, either he or his
21 attorneys, that Mr. Spehar thought that he had a
22 direct claim for malpractice against Mayer Brown?

23 A. I don't recall that conversation
24 occurring.

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1 Q. Do you recall seeing that in -- in
2 papers that Mr. Spehar provided to you?

3 A. I'm not going to say that it -- that it
4 didn't exist, but I sure don't remember it.

5 I was surprised at our recent trial when
6 I -- it was reported to me that he said those
7 things, and I don't recall that conversation or
8 seeing it, not to say that I might not have seen
9 something like that, but I sure don't remember it.

10 Q. Um-hum, all right. Let me show you
11 another exhibit now.

12 MR. MARINELLO: This is No. 13, correct?

13 THE COURT REPORTER: Um-hum.

14 (WHEREUPON, a certain document was
15 marked Defendant's Exhibit No. 13,
16 for identification, as of
17 01/19/2009.)

18 BY MR. MARINELLO:

19 Q. Exhibit 13 has a cover page that is a
20 letter dated 6/29/2006 to Rob, who I presume is Rob
21 Carroll, one of your counsel, signed by Gerry, who
22 I assume is Gerry Spehar.

23 MR. JOYCE: I'm sorry. Where are you at?

24 MR. MARINELLO: No. 13.

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1 MR. JOYCE: But where are you at on 13?

2 Page 1?

3 MR. MARINELLO: Page 1, yes.

4 MR. JOYCE: Okay.

5 MR. MARINELLO: Okay.

6 BY MR. MARINELLO:

7 Q. And attached to this cover page is a
8 memo entitled, Spehar Capital LLC versus
9 Mayer Brown, et al.

10 Is this a true and correct copy of the
11 letter with the attached memo that Mr. Spehar sent
12 to Robert Carroll?

13 A. I -- I don't know.

14 Q. Did you ever get a copy of this?

15 A. I -- I'm going to assume that we did,
16 but I've not seen this in a very, very long time,
17 so...

18 Q. Well, did you review it after you did
19 receive it?

20 A. Probably scanned it.

21 Q. Did you make any investigation into any
22 of the -- into the validity of any of the
23 statements in here?

24 A. Well, I think, if I'm not mistaken,

1 by -- you know what? I don't remember.

2 Q. Okay. Doesn't this memo accuse
3 Mayer Brown and Mr. Given of conspiring with
4 Spehar's partners against Spehar, committing fraud
5 against Spehar, breaching fiduciary duties to
6 Spehar, in connection with an insurance partnership
7 that he claims to have been involved in?

8 A. I -- I don't know. If it does, then it
9 does, but I don't recall. I haven't seen this in a
10 long time. I'd be happy -- if you want to point it
11 out to me, I'd be happy to take a look at it,
12 but --

13 Q. Do you remember that this --

14 A. -- I don't recall.

15 Q. Did you remember knowing those facts
16 prior to filing the malpractice claim -- those
17 allegations by Mr. Spehar prior to the filing of
18 the malpractice claim?

19 A. I don't remember.

20 Q. Well, let me ask you this -- and I'm not
21 going to have any specific questions about that
22 now.

23 Was it -- wasn't it clear to you before
24 you filed your malpractice claims against Mr. Given

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1 and Mayer Brown that Mr. Spehar had personal
2 animosity against Mr. Given?

3 A. I don't -- I don't know. I'm sure that
4 he must have had a -- a difficult relationship.
5 Obviously, somebody doesn't sue somebody else if
6 they don't, but I don't know.

7 And you're using the words -- and I
8 can't remember what your -- your qualifying
9 adjective was, but I'm not sure that that's
10 necessarily the case.

11 I do know that Mr. Spehar is a very
12 passionate person about -- about issues, and he's
13 very -- he believes strongly in his positions.

14 And so sometimes I think those types of
15 people sometimes show themselves to be or may
16 appear to be angry or -- or insistent when, in
17 fact, they're just very passionate about what they
18 believe. And -- and I've --

19 Q. Is --

20 A. -- met those people throughout my
21 career, and I don't know if Mr. Spehar is any
22 different than other people that believe strongly
23 about their positions.

24 Q. Um-hum. Did you find Mr. Spehar

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1 insistent?

2 A. I don't know, insistent. I think he
3 believes strongly in what he believes. My position
4 as a trustee is to try to sort through those things
5 and --

6 Q. If -- if you could just answer my
7 questions a little more directly, we could move
8 this --

9 A. I don't --

10 Q. -- along. Yeah.

11 A. I don't know what you're -- you're
12 asking me to -- ask it again.

13 Q. Okay. I think you answered my question
14 with the first sentence of or two of your answer,
15 and then you started talking about yourself as a
16 trustee. I -- I just -- I don't mean to interrupt
17 you, please, understand.

18 A. No, no, no. Go ahead. I'm --

19 Q. I just don't want to --

20 A. -- sorry.

21 Q. There's a lot of material to cover, and
22 I kind of want to move along.

23 A. I apologize.

24 Q. Okay? So Mr. Spehar communicated with

1 you frequently, did he not?

2 A. Through his counsel or together, yeah.

3 Q. Um-hum. All right. Now, shortly after
4 you were appointed trustee, you knew that the
5 7 million -- \$17 million default judgment was the
6 largest claim against CMGT?

7 A. At that time, yes.

8 Q. And it was in the best interests of the
9 estate to vacate that default judgment if it was
10 possible?

11 A. I -- I don't know.

12 Q. Well, if -- if the default judgment was
13 vacated, then the -- the estate wouldn't have a
14 claim against it for \$17 million, correct?

15 A. I suppose that's true.

16 Q. So it would be in the interest of the
17 estate to get rid of that claim so that other
18 creditors could share in the -- whatever assets
19 CMGT had, correct?

20 A. I suppose.

21 Q. Okay. Did you ever investigate whether
22 the default judgment could be vacated?

23 A. Yes.

24 Q. When?

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1 A. I think shortly after I received the
2 information from Mr. Todhunter.

3 Q. What did you do?

4 A. I either looked or I had my associate
5 look at the California statute relative to vacation
6 of judgments. I don't recall offhand the -- the
7 number of the statute or whatever.

8 Q. Okay.

9 A. Their statute --

10 Q. Well, that's your -- that's your answer,
11 right? I mean, I asked you what you did -- what
12 you did. You said you or your associate looked at
13 the --

14 A. Right.

15 Q. -- statute. That's kind of the end of
16 the answer for that question.

17 You said that you did this after you
18 received the materials from Mr. Todhunter?

19 A. Sometime afterward, right.

20 Q. Shortly after that?

21 A. I -- yeah, I mean, I don't remember
22 exactly, but somewhere within that time period. I
23 wouldn't have done anything until I received the
24 information from Mr. Todhunter about the citation.

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1 Q. Okay. Well, we -- we've already
2 established that you were appointed trustee on or
3 about September 21st of 2004 --

4 A. Okay.

5 Q. -- correct?

6 A. Right.

7 Q. And you've testified that Mr. Todhunter
8 contacted you pretty quickly and sent you materials
9 about ten days later, correct?

10 A. Right.

11 Q. Okay. So the time frame, I guess, would
12 be sometime around the beginning of October, 2004,
13 correct?

14 A. I -- I guess, but I'm not positive, but,
15 yes, I suppose that's about right.

16 Q. All right. Now, you say you had your
17 associate look at the California statute?

18 A. And I can't remember if I did it or I
19 was looking over his shoulder doing it or whatever.

20 Q. What's the name of your associate?

21 A. He's not there anymore. His name was
22 Arthur Rummler.

23 Q. Arthur?

24 A. Rummler.

1 Q. How do you spell his last name?

2 A. R-U-M-M-L-E-R.

3 Q. And where is he now?

4 A. He's with Springer Brown.

5 Q. What city --

6 A. Probably get --

7 Q. -- is that?

8 A. In Wheaton.

9 Q. Okay. And you looked at the statute
10 and -- with Mr. Rummler, and what -- what -- is
11 there anything else you did besides that?

12 A. I just looked at the statute. I
13 believed there -- the California statute was in
14 some ways similar to our Illinois statute for --

15 Q. But --

16 A. -- vacating judgments.

17 Q. But I'm just asking you what you did at
18 this point, not what the statute says.

19 A. Oh.

20 Q. Did you do anything besides look at the
21 statute?

22 A. Well, I -- no.

23 Q. Okay.

24 A. I mean, I don't know what I'm supposed

1 to do after I look at the statute.

2 Q. Well, did you look up -- for example,
3 did you look at any case law?

4 A. No.

5 Q. Okay. Did you look at any Hornbooks or
6 treatises on California procedure?

7 A. No.

8 Q. Did you obtain an opinion from
9 California counsel about how to vacate a judgment?

10 A. No.

11 Q. Did you -- did you talk to anybody who
12 was admitted to practice law in California about
13 what -- how the statute worked?

14 A. No.

15 Q. Did you talk to anybody from
16 Mayer Brown?

17 A. No.

18 Q. Did you talk to any of the officers or
19 shareholders or -- of CMGT about whether there were
20 grounds for vacating the default judgment?

21 A. Well, over the time I had received
22 letters --

23 MR. JOYCE: I'm sorry. Can I have that
24 question read back.

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1 (WHEREUPON, the record was read by
2 the reporter.)

3 MR. JOYCE: Thank you.

4 BY THE WITNESS:

5 A. Again, I had received some letters from
6 shareholders indicating that they had certain
7 complaints relative to CMGT's relationships with --
8 with Spehar Capital.

9 There were allegations of what they
10 believed to be misconduct, but it was my opinion
11 that the -- after having scanned the -- the
12 California statute, that the time to vacate the
13 judgment had come and gone and whatever complaints
14 they may have had were too late. They should have
15 been brought at the time.

16 BY MR. MARINELLO:

17 Q. Sir, you're -- you're talking about
18 correspondence now --

19 A. I don't --

20 Q. -- and my -- let me -- let me finish my
21 question, okay?

22 A. Sure.

23 Q. You're talking about correspondence with
24 shareholders, and that, with all due respect,

1 wasn't my question.

2 My question was what you had -- had done
3 as part of your investigation, and you just told me
4 that you looked at the statute, and I was asking
5 you if you talked to anybody -- if you talked to
6 anybody from -- from CMGT, whether they are an
7 officer or shareholder, to see if there were -- if
8 they thought there were factual grounds for
9 vacating the judgment.

10 A. No.

11 Q. All right. Now, you say that at some
12 point, you concluded that it was too late to vacate
13 the judgment. What is your understanding of when
14 the judgment could be vacated?

15 A. I haven't seen the statute in a long
16 time.

17 Q. Um-hum. All right. Let me -- did --
18 did you -- in -- in looking at the question of --
19 did you look at any other statutes besides the
20 California statute when you thought about whether
21 or not the default judgment could be vacated?

22 A. I don't know if I knew -- I don't think
23 so.

24 Q. So, for example, you didn't look and see

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1 if there were any bankruptcy law statutes that
2 applied to it?

3 A. Oh, well, there's a -- I mean, I didn't
4 look at statutes, per se. There's a -- a doctrine
5 called Rooker-Feldman that basically says that you
6 can't collaterally attack a judgment in the
7 Bankruptcy Court.

8 Q. Okay. Aside --

9 A. And -- and --

10 Q. -- from -- you knew -- you knew that?

11 A. And --

12 Q. You were familiar with that doctrine?

13 A. Yeah, for the most part, sure.

14 Q. Okay. But apart from that, did you look
15 at any statutes, bankruptcy law statutes or
16 anything like that in connection with a possible
17 effort to vacate the judgment?

18 A. Not that I'm aware of offhand. I
19 don't -- if you would make a reference to
20 something, then perhaps I would -- refresh my
21 recollection, but I don't know if I -- you know,
22 some of the bankruptcy issues and some of the
23 bankruptcy laws I -- I don't need to look at. I
24 already know what they are. If you ask me what

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1 they are, then that's fine. I don't need to relook
2 at something.

3 Q. Okay.

4 A. So I'm -- you're asking me if I
5 specifically looked at something, and I did not.

6 MR. MARINELLO: All right. Let me -- let me
7 have this marked as the -- as the next exhibit.

8 I think we're on No. 14, is that --

9 MR. JOYCE: Right.

10 MR. MARINELLO: -- correct?

11 MR. JOYCE: 14 is right.

12 (WHEREUPON, a certain document was
13 marked Defendant's Exhibit No. 14,
14 for identification, as of
15 01/19/2009.)

16 BY MR. MARINELLO:

17 Q. All right. As -- as Exhibit 14 I have
18 marked the letter dated December 15, 2004, from Kim
19 Quarles and Robert Quarles to you. Did you receive
20 a copy of that letter on or about the date that it
21 bears?

22 A. Yes.

23 Q. All right. And who is -- what is Kim
24 Quarles' relationship to CMGT?

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1 A. I assume that she was a -- either a
2 shareholder or an investor in CMGT, along with her
3 husband.

4 Q. Okay. Do you know what she does for a
5 living?

6 A. No.

7 Q. You're not aware that she's an attorney?

8 A. No.

9 Q. Now, her letter suggests that Spehar
10 brought a baseless suit against CMGT in California.

11 A. Okay.

12 Q. And -- right?

13 A. That's what it says.

14 Q. And that he filed false affidavits and
15 committed a fraud on the California Court, correct?

16 A. Um-hum, that's what it says.

17 Q. Okay. And she talks about how that
18 litigation was without merit, correct?

19 A. That's her allegation in the -- in the
20 letter, that's correct.

21 Q. Yes, and she says that, as a result of
22 it, CMGT was left unfunded and without financial
23 means to battle the spurious allegations of the
24 lawsuit, correct?

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1 A. That's what the letter says.

2 Q. Right. She asked you at the end of the
3 letter to investigate the situation, correct?

4 A. Yes.

5 Q. Did you ever pick up the telephone and
6 call Ms. Quarles or Mr. Quarles to talk about
7 this -- the things that they had said in their
8 letter?

9 A. No. I don't even know if I had her
10 phone number.

11 Q. Did you ever ask your attorney or anyone
12 else to contact her?

13 A. No.

14 Q. Okay. Did you ever investigate any of
15 Ms. Quarles' accusations against Spehar Capital and
16 Mr. Spehar?

17 A. I sent her a responsive letter.

18 Q. I'm aware of that, sir, but my question
19 was, did you ever investigate any of her
20 allegations against Mr. Spehar or Spehar Capital?

21 A. I didn't think it was necessary.

22 Q. So the answer is no?

23 A. No.

24 Q. Okay. Did you ever investigate, for

1 example, whether her allegation that the reason
2 CMGT did not defend itself in the Spehar suit was
3 because it didn't have the financial resources to
4 do so?

5 A. Could you repeat that, please.

6 Q. Did you ever investigate Ms. Quarles'
7 assertion that the reason that CMGT did not defend
8 itself in the Spehar lawsuit was because it did not
9 have the financial resources to do so?

10 A. No.

11 Q. Why not?

12 A. I didn't think it was relevant.

13 Q. Okay. And would that same -- would that
14 be your answer with respect to all of the
15 allegations that she makes in this letter about
16 Mr. Spehar and Spehar Capital, that you didn't
17 think it was relevant to investigate those?

18 A. Again, my -- my view was that I was not
19 in a position to be able to vacate the judgment
20 because of the lapse of time and, essentially, the
21 due diligence or diligence that was required as
22 part of the motion to vacate.

23 And without that, these actions or these
24 items would only go to a -- a defense, not the

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1 diligence, and it had been clear to me that the
2 debtor was properly served with summons and failed
3 to appear.

4 (WHEREUPON, a certain document was
5 marked Defendant's Exhibit No. 15,
6 for identification, as of
7 01/19/2009.)

8 BY MR. MARINELLO:

9 Q. All right. As Exhibit 15, I have marked
10 a letter that you wrote to Ms. Quarles dated
11 December 16, 2004. Is that a true and correct copy
12 of the letter you sent to her --

13 A. Yes.

14 Q. -- on that date?

15 A. Yes.

16 Q. Your letter states in Paragraph 2 --
17 well, I'm sorry. Is that -- is that the
18 signature -- your signature the end -- at the end
19 of the letter also, by the way?

20 A. Yeah, sometimes I sign with my initials.

21 Q. All right. In the second paragraph of
22 your letter, you state, "No motion to vacate the
23 judgment was filed on behalf of CMGT, and, in fact,
24 the judgment has been executed upon by virtue of a

1 citation to discover assets." I'm going to stop
2 there for a moment.

3 A. Um-hum.

4 Q. The information you had about whether
5 there had been a citation to discover assets that
6 had been executed upon --

7 A. Um-hum.

8 Q. -- that information came to you from
9 Mr. Spehar, correct?

10 A. Or Mr. Todhunter, right.

11 Q. Yes, Mr. Spehar or his counsel --

12 A. Right.

13 Q. -- correct?

14 A. Yeah.

15 Q. Yes. And, in fact, isn't it the case
16 that in your recent litigation with Mr. Spehar and
17 Spehar Capital you are taking the position that
18 that citation was never properly served?

19 A. That's exactly right.

20 Q. Right, so if that citation were not
21 properly served, then the judgment would not have
22 been properly executed upon, isn't that true?

23 A. Maybe, maybe not. I don't know.

24 Q. Well, if a judgment is executed on by

1 serving a citation to discover assets --

2 A. Um-hum.

3 Q. -- and the citation is not properly
4 served, then the judgment has not been executed on,
5 correct?

6 A. Yes.

7 MR. JOYCE: He's already answered the
8 question.

9 BY MR. MARINELLO:

10 Q. May I have an answer.

11 A. I thought I did. Didn't I --

12 Q. Well --

13 A. -- answer the question?

14 Q. May I have another answer.

15 MR. JOYCE: Well, no. You don't get a choice.
16 He answered the question.

17 BY MR. MARINELLO:

18 Q. Is the answer to the question yes?

19 MR. JOYCE: The answer to the question is on
20 the record. You want it read back, we'll read it
21 back to you.

22 BY MR. MARINELLO:

23 Q. Is it your understanding, sir, that a
24 judgment has to be properly executed on in order

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1 for it to be executed on?

2 MR. JOYCE: Can I have that question read
3 back?

4 MR. MARINELLO: I'll -- I'll rephrase.

5 BY MR. MARINELLO:

6 Q. Is it -- is it your position -- is it
7 your understanding that in order for a citation to
8 be effective as an execution upon a judgment, the
9 citation has to be properly served?

10 A. Sure.

11 Q. Okay. All right. Let me continue with
12 what you've written here. It's -- you also say in
13 Paragraph 2, "It is likely that the time period to
14 vacate the judgment has now expired." Is that
15 correct?

16 A. Yes.

17 Q. At the time you wrote this letter, you
18 had already -- you claim you had already researched
19 when the times expire?

20 A. Yeah, in -- in brief, yeah.

21 Q. All right. And you had -- you had
22 concluded that the time had already expired as of
23 the time that you researched that issue?

24 A. I believe that that's the case.