

DAVID GROCHOCINSKI, JANUARY 19, 2009

1 with him, but I don't know.

2 Q. Okay. Did Mr. Spehar tell you that you
3 should try to scare Mr. Franco to get his
4 cooperation with your action against Mayer Brown?

5 A. I don't know. I don't think that scare
6 is the appropriate word. Maybe he suggested that
7 we look at Mr. Franco's involvement in the case as
8 well, but I'm not sure -- I can't even be honest
9 whether he said that as well.

10 That -- that is generally something that
11 I look at on my own. So it's -- is it conceivable
12 that he may have --

13 MR. JOYCE: Well, don't --

14 BY THE WITNESS:

15 A. -- suggested that --

16 MR. JOYCE: He's not asking you that. He's
17 not asking you to guess. If you don't know, you
18 just don't know.

19 BY THE WITNESS:

20 A. I --

21 BY MR. MARINELLO:

22 Q. Is the answer you don't know?

23 A. I guess the answer is I don't know.

24 Q. Okay. If you -- this letter states,

1 "Given that you were CMGT's president and chief
2 executive officer, we would like to speak to you
3 about what you believe happened at CMGT." Do you
4 see that?

5 A. I see what it says in the letter, yeah.

6 Q. Yes. Do you know whether your counsel
7 ever did speak to Mr. Franco?

8 A. I don't know.

9 Q. Okay. Attached as Page 3 is a tolling
10 agreement signed by Robert Carroll, correct?

11 A. Yes.

12 Q. And then on the next page, there's a
13 tolling agreement signed by Robert Carroll and also
14 Louis Franco, correct?

15 A. Correct.

16 Q. And that tolling agreement expires on
17 August 24, 2007, correct?

18 A. That's what it says.

19 Q. Okay. Do you know, has this agreement
20 been extended?

21 A. I -- I'm not sure. I don't know the
22 answer to that.

23 MR. JOYCE: I need about a two-minute break.

24 MR. MARINELLO: Okay. Just give me -- I'm

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1 almost done with this line, and you can have it.

2 BY MR. MARINELLO:

3 Q. You said that -- do you know now whether
4 Mr. Franco did anything wrong that you intend to
5 pursue with respect to CMGT?

6 A. Only with respect to his claim, perhaps.

7 Q. So you have no intention of bringing an
8 affirmative claim against Mr. Franco?

9 A. Not at present. I haven't seen anything
10 that would indicate that I'm going to pursue a
11 matter independently against Mr. Franco.

12 Q. Have you received any report from your
13 attorneys with respect to Mr. Franco?

14 MR. JOYCE: Objection.

15 MR. MARINELLO: I didn't ask what he -- what
16 he -- what you said to him.

17 BY MR. MARINELLO:

18 Q. Just whether you received a report.

19 A. Not that I can recall.

20 Q. Okay.

21 MR. MARINELLO: All right. We -- this is a
22 good time to take a break now.

23 MR. JOYCE: I just --

24 MR. MARINELLO: If you'd like one --

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1 MR. JOYCE: -- need two minutes. That's all I
2 need.

3 MR. MARINELLO: I understand.

4 THE VIDEOGRAPHER: Going off the video record
5 at 11:59 a.m.

6 (WHEREUPON, the deposition was
7 recessed for lunch from 11:59 a.m.
8 until 12:31 p.m., this date,
9 January 19, 2009.)

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DAVID GROCHOCINSKI, JANUARY 19, 2009

1 IN THE UNITED STATES DISTRICT COURT
 2 NORTHERN DISTRICT OF ILLINOIS
 3 EASTERN DIVISION
 4 DAVID GROCHOCINSKI, not)
 5 individually but solely in his)
 6 capacity as the Chapter 7)
 7 Trustee for the bankruptcy)
 8 estate of CMGT, INC.,)
 9 Plaintiff,) No. 06 C 5486
 10 -vs-)
 11 MAYER BROWN ROWE MAW LLP and)
 12 RONALD B. GIVEN,)
 13 Defendants.)

14
 15 January 19, 2009
 16 12:31 p.m.

17
 18
 19 The videotaped deposition of DAVID
 20 GROCHOCINSKI resumed pursuant to recess at the
 21 offices of Novack and Macey LLP, 100 North
 22 Riverside Plaza, Suite 1500, Chicago, Illinois.

23
 24

DAVID GROCHOCINSKI, JANUARY 19, 2009

1 PRESENT:

2

3 EDWARD T. JOYCE & ASSOCIATES, P.C.,
4 (11 South LaSalle Street, Suite 1600,
5 Chicago, Illinois 60603,
6 312-641-2600), by:

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,
12 Chicago, Illinois 60606,
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,
20 Esquire Deposition Services.

21

22

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

24 CSR Certificate No. 84-2613

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1 THE VIDEOGRAPHER: Going back on the video
2 record at 12:31 p.m., the beginning of Tape No. 3.

3 MR. MARINELLO: Okay. Thank you.

4 DAVID GROCHOCINSKI,
5 called as a witness herein, having been previously
6 duly sworn and having testified, was examined and
7 testified further as follows:

8 EXAMINATION (Resumed)

9 BY MR. MARINELLO:

10 Q. At the time that you filed your
11 malpractice complaint against Ron Given and
12 Mayer Brown, what was your understanding of the
13 role that James Wong had played in CMGT?

14 A. My limited understanding was that he was
15 a -- like I said before, either a CFO or a
16 controller or accountant. That's the best of my
17 recollection.

18 Q. Do you know whether he was a shareholder
19 in the company?

20 A. I think he had the same status as some
21 of the others, but I, in all honesty, don't recall,
22 no.

23 Q. Do you know whether you knew that -- did
24 you know at that time whether he hadn't paid for

1 his services as an accountant to the company?

2 MR. JOYCE: Can I have that --

3 BY THE WITNESS:

4 A. Could you say that --

5 MR. JOYCE: Hold on.

6 BY THE WITNESS:

7 A. -- again. I didn't hear you.

8 MR. JOYCE: Read it -- read it -- read it
9 back, please.

10 (WHEREUPON, the record was read by
11 the reporter.)

12 MR. JOYCE: I don't think you want --

13 MR. MARINELLO: Let's -- let's strike that.
14 That's a mess.

15 MR. JOYCE: I don't think you want that --

16 MR. MARINELLO: Yeah.

17 MR. JOYCE: -- question. Right.

18 BY MR. MARINELLO:

19 Q. Did you know at the time you filed your
20 complaint whether Mr. Wong had been paid any money
21 for accounting services to CMGT?

22 A. I really don't know. I'm not -- I think
23 Mr. Wong is listed on Schedule F, so there might
24 have been a claim due for him or whatever, but I'm

1 not sure.

2 Q. Okay. Did -- I think you testified
3 earlier that you never interviewed or spoke with
4 Mr. Wong prior to filing your claims?

5 A. No, I've not talked to Mr. Wong.

6 Q. Did your counsel interview Mr. Wong?

7 A. I don't know.

8 Q. Did you ever get a report from your
9 counsel about Mr. -- about any interview or
10 investigation they did with respect to Mr. Wong?

11 A. Not that I can recall.

12 Q. Okay.

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

15 (WHEREUPON, a certain document was
16 marked Defendant's Exhibit No. 26,
17 for identification, as of
18 01/19/2009.)

19 BY MR. MARINELLO:

20 Q. Okay. As Exhibit -- as Exhibit 26, I've
21 marked a letter from Robert Carroll to James Wong
22 dated August 22, 2006. Can you identify that as a
23 letter that your counsel sent to Mr. Wong on or
24 about that date?

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1 A. I don't know. I don't recall seeing
2 this, so I'm not really sure.

3 Q. Well, did you review letters like this
4 that your counsel sent before they went out?

5 A. Before they went out?

6 Q. Yes.

7 A. I don't know if I did it before.

8 Q. Do you know whether you've ever seen
9 this letter before?

10 A. I assume that I did. I may not have a
11 present recollection, but I assume that I did.

12 Q. Okay.

13 A. But I'm not really sure.

14 Q. Um-hum. Did you have a -- did you --
15 after sending this letter to Mr. -- Mr. Wong, did
16 you do any investigation into the actions of
17 Mr. Wong in connection with CMGT?

18 A. Personally?

19 Q. Yes.

20 A. No.

21 Q. Okay. Do you know if your attorneys did
22 any such investigation?

23 A. I don't know.

24 Q. Did your --

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1 A. Or I don't recall.

2 Q. Did your attorneys ever give you a
3 report about whether any cause of action existed
4 against Mr. Wong?

5 A. Not that I recall.

6 Q. Okay. Now, did Mr. Spehar say to you at
7 some point in time either verbally or in writing
8 that you should scare Mr. Wong to get his
9 cooperation with your lawsuit against Mayer Brown?

10 A. You're using the word "scare," and I
11 don't recall him using that language. Might he
12 have suggested that Mr. Wong's actions should be
13 reviewed? Possibly, but I don't recall offhand.

14 Q. Is it also possible that he may have
15 used the word "scare"?

16 A. I suppose, although I don't recall him
17 using those words, but I suppose it's conceivable.

18 MR. MARINELLO: All right. Would you mark
19 that as the next exhibit, please.

20 (WHEREUPON, a certain document was
21 marked Defendant's Exhibit No. 27,
22 for identification, as of
23 01/19/2009.)

24 BY MR. MARINELLO:

DAVID GROCHOCINSKI, JANUARY 19, 2009

1 Q. As 20 -- as Exhibit 27, I've marked a
2 tolling agreement signed by Mr. Carroll, your
3 attorney, and also by Mr. Wong dated August 22,
4 2006. Have you seen this before?

5 A. Yes, I believe I have.

6 Q. Okay. Did you request this tolling
7 agreement?

8 A. I don't know if I requested it or it was
9 just suggested because --

10 MR. JOYCE: Well, I don't want you to disclose
11 any attorney-client communication.

12 THE WITNESS: Okay.

13 BY MR. MARINELLO:

14 Q. This tolling agreement has expired,
15 correct?

16 A. By its terms, yes.

17 Q. Okay. Do you know if it's been
18 extended?

19 A. I don't know.

20 Q. Okay. Did you -- do you have any plans
21 to bring a lawsuit against Mr. Wong?

22 A. As we sit here today, no.

23 Q. Are you aware of anything Mr. Wong did
24 that was wrong in connection with CMGT?

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1 A. Not to the best of my knowledge.

2 Q. Now, do you know Mr. Wayne -- do you
3 know of a Mr. Wayne Baliga?

4 A. I know who -- I know who he is. I don't
5 know him personally.

6 Q. Okay. At the time you filed your
7 malpractice claims against Mayer Brown and Ron
8 Given, what was your understanding of Mr. Baliga's
9 relationship to CMGT?

10 A. I am unclear about what -- or I don't
11 recall exactly. I know that he or -- I'm pretty
12 sure that he had a shareholder, quote, lending
13 interest, but I'm not sure about -- as we sit here
14 today, about what his role was either in terms of
15 being an officer or whatever.

16 Q. Do you know if he was a -- do you know
17 what role he played in the decisions that were made
18 by the company in the last three or four months of
19 its existence prior to the bankruptcy?

20 MR. JOYCE: Can I have that question read
21 back.

22 (WHEREUPON, the record was read by
23 the reporter.)

24 MR. JOYCE: Thank you.

1 BY THE WITNESS:

2 A. As we sit here today, no.

3 BY MR. MARINELLO:

4 Q. Um-hum. Do you know what role he played
5 in connection with any decisions that were made
6 concerning the Spehar lawsuit?

7 A. Not that I have a recollection of right
8 now.

9 Q. Okay. And do you know of anything
10 that -- any role he played in connection with the
11 Trautner Newco proposal?

12 A. Again, not that I recall right now, no.

13 Q. Okay. You did not interview Mr. Baliga
14 or speak to him at any point in time?

15 A. No.

16 Q. Did your counsel interview him or speak
17 to him?

18 A. Don't know.

19 Q. Did you ever receive a report from your
20 counsel with respect to Mr. Baliga?

21 A. Not that I recall.

22 Q. Did you ask Mr. Baliga for a tolling
23 agreement?

24 A. I don't recall.

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1 Q. Do you know whether you had -- ever had
2 a tolling agreement from Mr. Baliga?

3 A. I don't know the answer to that.

4 Q. Have you or your counsel done any
5 investigation into Mr. Baliga's actions with
6 respect to CMGT?

7 A. Not that I recall.

8 Q. Why not?

9 A. Why don't I recall?

10 Q. No, no. Well, I'm not sure of your
11 answer now. If you -- is your answer that you
12 don't -- you don't know if you did --

13 A. I don't --

14 Q. -- an investigation?

15 A. I don't recall presently if there's any
16 investigation that I did with respect to
17 Mr. Baliga.

18 Q. Okay. So you don't -- you don't
19 remember whether or not you did investigate
20 anything Mr. Baliga did?

21 MR. JOYCE: You know, he's answered the
22 question. You -- you have a habit of repeating his
23 answer and then asking him to verify that you heard
24 it right.

1 MR. MARINELLO: Well, not that I recall is
2 kind of a confusing answer as demonstrated by -- by
3 the last exchange.

4 BY MR. MARINELLO:

5 Q. I take it what you mean is you don't
6 remember if you did or did not investigate
7 Mr. Baliga, correct?

8 A. That's right, not --

9 Q. You -- you didn't do --

10 A. -- without showing --

11 Q. -- it personally?

12 A. Not without showing me something else.

13 The -- yes, I did not call Mr. Baliga on the phone
14 and speak to him personally.

15 Q. Okay. And you don't know whether
16 your -- whether your counsel did an investigation
17 of him?

18 A. I'm not sure, right.

19 Q. Okay. Do you have any plans to -- are
20 you aware of anything Mr. Baliga did wrong in
21 connection with CMGT?

22 A. Not that I recall, not that I -- I
23 didn't see anything in the documents that I saw
24 that would lead me to that, but that doesn't mean

1 anything.

2 Q. Okay. Do you have any plans presently
3 to bring any legal action against Mr. Baliga with
4 respect to CMGT?

5 A. Not as we sit here today.

6 Q. Let's talk about Ms. Quarles. I think
7 you previously testified that she was -- you knew
8 her to be an investor in CMGT, correct?

9 A. Yes. She indicated in her letter that
10 she was an investor --

11 Q. Okay. And --

12 A. -- a lender and investor.

13 Q. And I think you also confirmed that you
14 did not personally contact her by telephone or
15 speak to her, correct?

16 A. Not personally. My only -- my only
17 contact with her was correspondence.

18 Q. And we've already marked that
19 correspondence as exhibits, correct?

20 A. I believe so.

21 Q. All right. Did your counsel ever speak
22 to her or interview her?

23 A. I don't know.

24 Q. Did you ever receive a report from your

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1 counsel with respect to -- to anything concerning
2 Ms. Quarles?

3 A. Not that I can recall.

4 Q. Are you aware of any wrongful action
5 that Ms. Quarles took in connection with CMGT?

6 A. No.

7 Q. And do you have any plans presently to
8 bring legal action against Ms. Quarles?

9 A. Not as we sit here today.

10 Q. All right. Mr. Charles Trautner, do you
11 know who he is?

12 MR. JOYCE: Trautner?

13 MR. MARINELLO: Yes.

14 BY THE WITNESS:

15 A. I don't know what his position was with
16 CMGT, but I know the name.

17 BY MR. MARINELLO:

18 Q. What's his -- what -- at the time that
19 you filed your legal malpractice claims against
20 Mayer Brown and Ron Given, what was your
21 understanding of Mr. Trautner's connection to CMGT?

22 A. I'm not sure that I can recall offhand
23 what his role was with CMGT as we sit here today.
24 I'd have to look through documents again. Too many

1 players.

2 Q. Do you know today what his role was in
3 connection with CMGT?

4 A. I looked. If you want to explain it to
5 me, I would be happy to -- to see the record -- you
6 know, jog my memory here, but I don't recall it as
7 we're sitting here.

8 Q. Do you know if Mr. Trautner was an
9 investor in the company?

10 A. I believe he was.

11 Q. Okay. Do you know what efforts, if any,
12 he made in connection with trying to find funding
13 for CMGT?

14 A. I -- you know, I can't answer that with
15 a certainty, so I'm going to have to say I don't
16 know.

17 Q. Okay. Did you ever bring any legal
18 claims against Mr. Trautner as trustee?

19 A. No. In -- as a -- as me personally, you
20 mean?

21 Q. No. We --

22 A. That's what I thought the question --

23 Q. I thought we crossed that Rubicon a --

24 A. No, no --

1 Q. -- long time ago.

2 A. -- no, no. I meant -- but I meant like
3 in a bankruptcy cause of action? No, I have not as
4 a bankruptcy cause of action, no, no -- well, yeah,
5 preferences obviously. I guess I did, because I
6 think we avoided his -- whatever his liens were as
7 well.

8 Q. Right.

9 A. And that would be the same thing that --
10 you know, going backwards in time now, I had
11 forgotten about the -- the preference suits, but
12 all of those people were avoided --

13 Q. Right.

14 A. -- actions.

15 Q. Yeah, let's make -- make it clear that
16 we both understand each other in this regard.

17 I think you testified earlier that there
18 are a number of investors that you brought legal
19 actions against to --

20 A. Right.

21 Q. -- avoid any claim that they had a
22 secured interest --

23 A. That's --

24 Q. -- correct?

- 1 A. -- correct, right.
- 2 Q. And I'm -- I'm not going to --
- 3 A. Okay.
- 4 Q. -- try and trick you by --
- 5 A. I just --
- 6 Q. -- raising things --
- 7 A. -- wanted to make it clear. I wasn't --
- 8 Q. You've made that point clear.
- 9 A. Okay.
- 10 Q. I accept it.
- 11 A. That's fine.
- 12 Q. I'm not going to challenge it.
- 13 A. That's fine.
- 14 Q. My question is, other than that, have
- 15 you brought any claims against Mr. Trautner?
- 16 A. No, I don't believe so.
- 17 Q. As trustee?
- 18 A. No.
- 19 Q. Okay. And did you ever contact
- 20 Mr. Trautner for any purpose?
- 21 A. No, not me personally.
- 22 Q. Do you know whether your counsel did?
- 23 A. I'm not sure.
- 24 Q. Did they ever give you a report with

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1 respect to Mr. Trautner?

2 A. No, not that I recall.

3 Q. And did Mr. Spehar ever give you or
4 Mr. Todhunter as counsel ever give you any
5 information with respect to Mr. Trautner?

6 A. I suppose it's conceivable, but I don't
7 recall it offhand.

8 Q. Okay. Now, previously I mentioned the
9 Washoe Indian Tribe. Do you remember that?

10 A. I do.

11 Q. And you told me that you never spoke
12 with any representative of that tribe?

13 A. I have not.

14 Q. Do you know whether your counsel has
15 ever spoken with a representative of the Washoe
16 Indian Tribe?

17 A. I don't know the answer to that.

18 Q. Okay. Has your counsel ever given you a
19 report about anything they learned from the Washoe
20 Indian Tribe?

21 A. Not that I recall.

22 Q. Okay. Have you ever heard of the
23 Sealaska Indian Tribe?

24 A. Yes.

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1 Q. In what context?

2 A. In the context of this case.

3 Q. Okay. What's your understanding of the
4 Sealaska Indian Tribe's connection to this case?

5 A. Some type of a -- an attempt to do some
6 financing that was either brought to the table by
7 Mr. Spehar or attempted to, maybe one of the people
8 that were -- that they had spoken to relative to
9 investing in CMGT.

10 Q. Okay. Did you ever contact any
11 representative of the Sealaska Indian tribe for
12 any --

13 A. No.

14 Q. -- any purpose?

15 Do you know whether your counsel ever
16 contacted anyone there?

17 A. I don't know.

18 Q. Have -- has your counsel ever given you
19 a report on anything -- any facts they learned from
20 the Sealaska Indian Tribe or with -- with respect
21 to that tribe?

22 A. Not that I can recall.

23 MR. MARINELLO: Would you please mark this as
24 the next -- the next exhibit. We're up to 28 now?

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1 THE COURT REPORTER: Yes, we are.

2 (WHEREUPON, a certain document was
3 marked Defendant's Exhibit No. 28,
4 for identification, as of
5 01/19/2009.)

6 BY MR. MARINELLO:

7 Q. As Exhibit 28 I've marked an application
8 that I believe you filed to hire Mr. Joyce as your
9 counsel.

10 A. Yes.

11 Q. Is that what that is?

12 A. That's what it looks like.

13 Q. Okay. And that document contains all
14 the papers that you submitted to the Court at that
15 time, including the contingency fee agreement with
16 Mr. Joyce's firm?

17 A. Yes.

18 Q. Okay. No other questions about that
19 now, Mr. Grochocinski.

20 Okay. Now, after you hired Mr. Joyce to
21 be your counsel, did you have any meetings with
22 him?

23 A. I'm sure we spoke on the phone. Are you
24 saying face-to-face meetings?

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1 Q. Yes.

2 A. I don't know. I'd have to look at a
3 calendar or whatever. I can't recall.

4 Q. Did you have any meetings with
5 Mr. Carroll of his firm?

6 A. I'm sure I did. But, again, I don't
7 recall offhand times, dates, places.

8 Q. Um-hum. Do you keep a record of these
9 meetings?

10 A. Sometimes, sometimes not.

11 Q. Would they be reflected in your time
12 slips and time records?

13 A. Sometimes, sometimes not.

14 Q. Your application to hire Mr. Joyce's
15 firm was granted by the Court shortly after the
16 date you presented it?

17 A. I believe so.

18 Q. Okay. After Mr. Joyce was hired, did he
19 express concerns to you about taking the
20 malpractice case?

21 MR. JOYCE: Objection, that would be
22 attorney-client privilege. I direct you not to
23 answer the question.

24 BY MR. MARINELLO:

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1 Q. Did there come a time when you were
2 concerned that Mr. Joyce would not take the case?

3 A. No.

4 Q. Okay.

5 MR. MARINELLO: Would you mark that as the
6 next exhibit, please.

7 (WHEREUPON, a certain document was
8 marked Defendant's Exhibit No. 29,
9 for identification, as of
10 01/19/2009.)

11 BY MR. MARINELLO:

12 Q. Okay. As Exhibit 29 I have marked an
13 e-mail dated July 26, 2006, from Gerry Spehar to
14 David Grochocinski --

15 A. Um-hum.

16 Q. -- with a copy to Mr. Todhunter. You
17 received that e-mail on or about the date it bears,
18 correct?

19 A. I'm sure I did.

20 Q. Okay. And in this e-mail, Mr. Spehar is
21 expressing concern that Mr. Joyce is not going to
22 take the case, the malpractice case?

23 A. I don't know. I -- I guess he's -- I'd
24 have to read all of this and see.

1 Q. Well, let's start with the first
2 sentence of it. It says, "I'm sure you've thought
3 of this already, but just in case, here's a laundry
4 list of why it will be impossible to find a new
5 special counsel at this late date in my
6 estimation."

7 A. Um-hum.

8 Q. Now, that's referring to new -- new
9 special counsel to replace Mr. Joyce, correct?

10 A. Someone to replace Mr. Joyce or somebody
11 to replace -- replace Mr. -- Mr. Spellmire?

12 Q. No. Mr. Joyce.

13 A. I -- I don't know. I don't read it that
14 way, but I -- okay.

15 Q. Well, let's look at Paragraph No. 2. Do
16 you see that?

17 A. Yeah, I -- no. I -- I'm looking at it.
18 I -- I've not seen this in a very long time, so if
19 you want to give me a chance to look at it, I'll be
20 happy --

21 Q. Sure.

22 A. -- to review it.

23 Q. Take your time.

24 A. Okay. It does -- looks like he's

DAVID GROCHOCINSKI, JANUARY 19, 2009

1 concerned that Mr. Joyce will not take the case.

2 Q. And he's also concerned, if you look at
3 Paragraph 6, about an August 24 filing deadline?

4 A. That's what it says.

5 Q. And what was that filing -- what was
6 your understanding of that filing deadline?

7 A. Well, that might have been the -- what
8 he thought was the last date to file a complaint
9 against Mayer Brown and Mr. Given.

10 Q. What was the date the complaint was
11 filed? Do you recall?

12 A. I don't. I'm sorry.

13 Q. Do you agree that August 24th was the
14 filing date, filing deadline for filing a
15 malpractice --

16 A. I --

17 Q. -- case?

18 A. I don't know. I'd have to go back and
19 recount dates and all the rest. I hadn't -- I'm
20 not prepared to answer that, 'cause I don't know
21 offhand.

22 Q. Okay. Was it, to the best of your
23 recollection, around July 26, 2006, when -- well,
24 strike that.

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1 In response to this e-mail, did you call
2 Mr. Spehar and have a discussion with him --

3 A. I don't --

4 Q. -- about this subject?

5 A. I don't recall.

6 Q. Did you call on Mr. Joyce and talk to
7 him about this e-mail?

8 A. Again, I don't recall that either. I'm
9 sorry. I just don't.

10 Q. Um-hum. Okay.

11 MR. MARINELLO: Would you -- would you mark
12 that as the next exhibit, please.

13 (WHEREUPON, a certain document was
14 marked Defendant's Exhibit No. 30,
15 for identification, as of
16 01/19/2009.)

17 BY MR. MARINELLO:

18 Q. As Exhibit 30 I have marked an e-mail
19 from Gerry Spehar to you with a copy to Judson
20 Todhunter dated Friday, July 28, 2006. Did you
21 receive this e-mail on or about that date?

22 A. I'm assuming I did.

23 Q. Now, in the first paragraph of this
24 e-mail, Mr. Spehar is warning you that Mr. Joyce

1 should not conduct last minute depositions of
2 certain witnesses, correct?

3 A. This says it would be -- "unwise last
4 minute scramble by Ed Joyce to quickly depose key
5 witnesses before he's adequately prepared." That's
6 what it says. I don't know.

7 Q. Prior to the date of this e-mail, were
8 you intending there to be depositions of some of
9 the witnesses to the malpractice claim?

10 A. I -- I don't know. I was -- my -- my
11 counsel was proceeding with an analysis of this
12 case whether it should be filed or not, and they
13 were doing what they needed to do.

14 Q. Um-hum.

15 A. That's why I hired special counsel.

16 Q. Do you know whether there were plans to
17 take depositions or not?

18 A. On a day-to-day basis, I wouldn't know
19 offhand. Whatever they need to do.

20 Q. Are you aware of any depositions being
21 taken --

22 A. I --

23 Q. -- by your counsel?

24 A. Honestly, personally, no. As we sit

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1 here today? I mean, no.

2 Q. You don't know one way or the other?

3 A. No.

4 Q. Okay. All right. In the last few lines
5 of the first paragraph, it says, "as my prior
6 communications with Joyce and you have stated,
7 great care must be taken in how we approach and
8 depose these people if we are to extract maximum
9 value and their cooperation."

10 What did you understand Mr. Spehar
11 telling you there?

12 A. I have no idea.

13 Q. Did you ever talk to him about this?

14 A. Not that I recall.

15 Q. In the second paragraph of this e-mail,
16 which quotes from a March 6th memo, Mr. Spehar
17 says, "We need real fear on our side in dealing
18 with these people...once we file and leave the door
19 open to going after them, they will clearly know we
20 are serious and it will be a different ballgame."

21 What did you understand that to be referring to?

22 A. No idea.

23 Q. You have no idea whatsoever?

24 A. Well, no. I --

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1 MR. JOYCE: If his answer is no, the answer is
2 no.

3 BY THE WITNESS:

4 A. The answer is no.

5 MR. JOYCE: Okay.

6 BY MR. MARINELLO:

7 Q. Did you talk to Mr. Spehar and ask him,
8 "What did you mean by this?"

9 A. Not that I recall.

10 Q. In the next line, he says, "I'm sorry
11 we're here, but this current dilemma is Joyce's
12 fault." What was Joyce's fault?

13 A. I have no idea.

14 Q. Did you call Mr. Spehar and say, "What
15 are you talking about?"

16 A. No.

17 Q. Never contacted him to ask him what he
18 meant by that?

19 A. No.

20 Q. In the next sentence, it says, "From my
21 recent filings, 7/26/06, DG memo to you," that's
22 referring to a memo that he wrote to you, correct?

23 A. I -- I don't know. I -- that's what he
24 says, but I don't know what --

DAVID GROCHOCINSKI, JANUARY 19, 2009

1 Q. Do you know --

2 A. -- that is.

3 Q. -- whether you have a memo of that
4 date --

5 A. No.

6 Q. -- from Mr. Spehar?

7 A. No idea.

8 Q. He says, and -- and he quotes, "'In
9 March, I warned Joyce the time was short and we
10 would be facing the exact situation that we were
11 currently facing if they didn't get subpoenas out
12 immediately. I told Joyce then that reviewing
13 subpoenaed information was just the first step;
14 armed with that information, we would then have to
15 depose many individuals in a suggested order to get
16 optimum value from them. I said then that the
17 longer we wait, the less likely these individuals
18 will be cooperative because they will know we are
19 up against a filing deadline.'"

20 Do you know what Mr. Spehar was
21 referring to there?

22 A. No.

23 Q. Well, in March, did Mr. Spehar warn you
24 and Mr. Joyce that he wanted some action taken to

1 investigate this case?

2 A. Mr. Spehar is not in charge of the
3 litigation. Mr. Spehar can say anything he wants
4 to say and do whatever he wants to do. I run the
5 case. It's my special counsel and my decision
6 ultimately.

7 I'm satisfied with the way matters
8 resolved with my counsel, and I don't see any --
9 the rest of this is Mr. Spehar being Mr. Spehar.

10 Q. Do you know whether your counsel did
11 serve any subpoenas for information?

12 A. I don't know.

13 Q. Do you know whether your counsel ever
14 told Mr. Spehar that individuals would be deposed
15 in order to establish some basis for this case?

16 A. I don't know of any conversations that
17 my counsel had with Mr. Spehar.

18 Q. It's true that your counsel had many
19 conversations with Mr. Spehar that you were not a
20 party to, isn't it?

21 A. I don't know. It's possible. If I
22 wasn't a party to it, I wouldn't know it.

23 Q. But you did say more than once in your
24 correspondence with Mr. Spehar that he had

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1 communicated with your counsel more than you had
2 about this malpractice claim?

3 A. He may have tried to; don't know whether
4 anyone responded from Mr. Joyce's office or not.

5 Mr. Joyce is my counsel. I would think
6 that attorney-client privilege he would be
7 responding to me and not Mr. Spehar, since
8 Mr. Spehar is not his client.

9 Q. Do you know whether your client --
10 whether your attorney has asserted work product
11 privileges with respect to its communications with
12 Mr. Spehar?

13 A. I don't know.

14 Q. So it's very possible that your
15 attorneys may have had many communications with
16 Mr. Spehar which they are now claiming are
17 privileged for work product reasons?

18 A. I am not aware of any. To the best of
19 my recollection, there are no such meetings.

20 Q. You don't know one way or the other?

21 A. Again, you asked me that question again,
22 and I will respond. To the best of my
23 recollection, I am not aware of any such.

24 Q. Okay. In the next paragraph, if you

1 would look at Mr. Spehar's e-mail --

2 A. Sure.

3 Q. -- Page 2.

4 A. Which one are we talking about now?

5 Q. Well, I'm talking about the very top of
6 Page 2.

7 A. "To my knowledge"?

8 Q. Yeah. Why don't you read that out loud,
9 that first sentence.

10 A. "To my knowledge, no one has been
11 deposed under oath and Joyce had only one
12 conversation with Wayne Baliga as of last week.
13 I have suggested --"

14 Q. No, no. That's -- that's enough. One
15 sentence.

16 A. Okay.

17 Q. Do you know whether it's true that no
18 one was deposed under oath as of the date of this
19 e-mail?

20 A. No, I don't know.

21 Q. Do you know whether it's true that Joyce
22 had only one conversation with Wayne Baliga as of
23 last week --

24 A. I --

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1 Q. -- with respect to the malpractice
2 claims?

3 A. I don't know.

4 Q. Do you have any reason to believe those
5 statements aren't true?

6 A. I don't know.

7 MR. JOYCE: I object. If he doesn't know, he
8 doesn't know. You're asking him to speculate now.

9 BY THE WITNESS:

10 A. I don't have any basis on which to
11 either believe or not believe.

12 BY MR. MARINELLO:

13 Q. Okay. Robert Spaeth and Dick Ross, do
14 you know who they are?

15 A. I know that Mr. Ross was a -- an
16 investor. The name Robert Spaeth, I think he was,
17 too, but I can't be certain offhand. I don't
18 remember the names of everybody, but I thought
19 Mr. Ross was involved with them.

20 Q. Have you ever heard of Mr. Melvin
21 Spaeth?

22 A. Who?

23 Q. Melvin Spaeth?

24 A. I don't know. Doesn't -- name doesn't

1 sound familiar to me, so I'm not sure.

2 Q. Is there -- was there ever a time prior
3 to your filing the legal malpractice claims against
4 Mayer Brown and Ron Given that you spoke with
5 Robert Spaeth, Melvin Spaeth, or Dick Ross?

6 A. I will be honest with you. I don't
7 recall having conversations. Doesn't mean that it
8 didn't happen, but I don't recall.

9 Q. Okay. Now, in Paragraph d) on this
10 Page 2, Mr. Spehar talks about Franco, and he says,
11 "We haven't even approached him yet, and it would
12 not be wise to do so without setting it up" -- "all
13 up properly per the above."

14 Do you know whether on the date that
15 this e-mail was sent, July 28, 2006, it was true
16 that no one had approached Mr. Franco yet about the
17 malpractice claims?

18 A. No clue.

19 Q. Okay. If you look at -- if you go down
20 two paragraphs from d) --

21 A. Is it this one here, "There's simply no
22 way"?

23 Q. Yes. Why don't you read that out loud,
24 please.

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1 A. "There's simply no way anyone but Joyce
2 can do all this by August 24th. Hopefully, it
3 won't come to this, but if it does, Joyce should
4 not be allowed to terminate; Joyce should be held
5 to his agreement, made to file and properly
6 investigate this case."

7 Q. Isn't it clear -- wasn't it clear to you
8 from reading this e-mail that, as of the date of
9 this e-mail, Mr. Spehar was convinced that there
10 had been no proper investigation of the case as
11 of -- as of the date?

12 A. Again, Mr. Spehar is not the one that
13 runs the case. The cause of action belonged to the
14 estate. I hired special counsel, and I was not
15 unhappy with the way matters were proceeding. I
16 relied on my special counsel to do what -- such
17 investigation as they deemed appropriate.

18 Mr. Spehar can, again, say whatever
19 Mr. Spehar wants. He believes very passionately in
20 his situation. It does not surprise me that he
21 says anything in these things.

22 Q. Um-hum. Now, as of July 28, 2006, do
23 you know what your counsel had done to investigate
24 this malpractice claim or these malpractice claims

1 against Ron Given and Mayer Brown?

2 A. Say that again, please.

3 Q. Yeah. As of July 28, 2006 -- well,
4 strike that.

5 You said a moment ago that you were
6 satisfied with the way that things were proceeding,
7 so I'm asking you, on July 28, 2006, what had your
8 counsel done to investigate the legal malpractice
9 claims against Mayer Brown and Ron Given?

10 MR. JOYCE: Objection, that's privileged. I
11 direct you --

12 BY THE WITNESS:

13 A. Attorney-client privilege.

14 MR. JOYCE: -- not to answer the question.

15 BY THE WITNESS:

16 A. I'm not going to answer that.

17 BY MR. MARINELLO:

18 Q. Well, my question isn't what they said
19 to you, but what they did.

20 MR. JOYCE: That's privileged. He's not
21 answering that question.

22 MR. MARINELLO: You're instructing him not to
23 answer?

24 MR. JOYCE: I am.

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1 MR. MARINELLO: Okay.

2 MR. JOYCE: And he's following my instruction.

3 BY MR. MARINELLO:

4 Q. Are there any facts that your counsel
5 reported to you as of July 28, 2006, that related
6 to the malpractice claims?

7 MR. JOYCE: I'm directing you not to answer
8 that question.

9 MR. MARINELLO: Well, facts cannot be
10 privileged, sir.

11 MR. JOYCE: I've directed him not to answer
12 the question.

13 BY MR. MARINELLO:

14 Q. All right. Are you going to take your
15 counsel's instruction?

16 A. Yes.

17 Q. All right. Did you ever approach Mike
18 Cherry to take this case?

19 A. I don't even know who Mike Cherry is.

20 MR. JOYCE: Well, that could be good for you.

21 BY MR. MARINELLO:

22 Q. Okay. At the very end of this e-mail,
23 Mr. Spehar asks you a question. He says, "Did
24 Joyce get back to you today as promised?"

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1 A. Okay.

2 Q. Had Mr. Joyce agreed to get back to you
3 on that day with respect to whether or not he would
4 take the case?

5 A. I would have no recollection of what
6 happened on July 28th, 2006 --

7 Q. Was --

8 A. -- on that date.

9 Q. Was there ever a time when Mr. Joyce got
10 back to you and said, "Yes, I'll take the case,"
11 or, "No, I won't"?

12 A. Well, we hired him as special counsel,
13 so...

14 Q. I'm aware of that, but that was --

15 A. So --

16 Q. That was long before this date, right?

17 A. I don't recall the date, again. I mean,
18 I'm sorry. I would have to put the -- together the
19 dates. You're assuming that I remember all the
20 dates of the orders entered.

21 Special counsel was employed on
22 November 18th. This is on July 28th, 2006.

23 Q. So that's almost --

24 A. Special counsel was employed on

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1 November 18th, 2005.

2 Q. Right, so this is --

3 A. So this is post --

4 Q. -- some eight months later, right?

5 A. Right.

6 Q. Okay. So special counsel was employed
7 to investigate whether there was --

8 A. Yeah.

9 Q. -- a claim, correct?

10 A. Right.

11 Q. Did Mr. -- Mr. Joyce get back to you on
12 July 28th or thereabouts to give you information
13 about whether he would or would not take the case?

14 MR. JOYCE: He said he didn't recall.

15 BY THE WITNESS:

16 A. Yeah, I don't -- I told you before that
17 I don't -- I wouldn't remember what happened on the
18 28th or thereabouts. I mean, obviously, we filed
19 the lawsuit, so I guess that should say to you that
20 we chose to go forward.

21 MR. MARINELLO: Would you mark this as the
22 next exhibit.

23 MR. JOYCE: 31.

24 (WHEREUPON, a certain document was

DAVID GROCHOCINSKI, JANUARY 19, 2009

1 marked Defendant's Exhibit No. 31,
2 for identification, as of
3 01/19/2009.)

4 BY MR. MARINELLO:

5 Q. As Exhibit 31 I've marked a series of
6 e-mails. The first one is from Gerry Spehar to
7 you, and its dated July 31st, 2006, and then there
8 are several other e-mails from you to Mr. Spehar
9 and -- after that.

10 Can you identify this as an e-mail
11 you -- you sent -- you received from Mr. Spehar on
12 July 31st, 2006?

13 A. Looks like it.

14 Q. Okay. And the e-mail chain that's
15 beneath that, those are communications that you and
16 Mr. Spehar had, correct?

17 A. Looks like it.

18 Q. Okay. Now, if you look on Page 3 of
19 this chain of e-mails, there's an e-mail dated
20 July 31st, 2006, from you to Mr. Spehar, correct?

21 A. Yes, I guess. Okay.

22 Q. And you -- it's -- it says here -- and
23 the statements you make in this e-mail were
24 truthful, were they not?

1 A. Reasonably. I'm speaking to Mr. Spehar,
2 so, you know, dealing with Mr. Spehar -- well, I --
3 I guess there's nothing else to say. To the -- for
4 the most part that -- they are correct.

5 Q. Okay. And you say in your e-mail that
6 you hired Joyce's firm on Spehar's recommendation,
7 correct?

8 A. Where is that in there?

9 Q. In the middle of your e-mail --

10 A. This is just very --

11 Q. -- of July --

12 A. -- small.

13 Q. -- 31st, 2006. Is it --

14 MR. JOYCE: What page is it on? 3?

15 MR. MARINELLO: PL 2223, Page 3 of 7.

16 BY THE WITNESS:

17 A. Which -- where are we? What -- what
18 line? I'm sorry. I just don't -- I'm not sure
19 that I see what you're saying.

20 BY MR. MARINELLO:

21 Q. Fifth line, "frankly" is the word that
22 begins the sentence. Do you see that?

23 A. "Frankly, I hired Joyce's firm on your
24 recommendation."

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1 Q. Why don't you read that out loud.

2 A. "Frankly, I hired Joyce's firm on your
3 recommendation, and you have consulted with the
4 attorneys from his firm more often than me."

5 Q. Okay. Is that a truthful statement?

6 A. I don't know. He tried to.

7 Q. Well, you -- you made that statement,
8 didn't you?

9 A. Well, yeah, I made the statement, but,
10 again, I don't know whether anybody from Joyce's
11 firm talked to him or not.

12 He attempted to communicate with them,
13 because, obviously, there are other e-mails that
14 he's tried to contact him. I don't know whether
15 anybody else from -- from Joyce's firm called him
16 back and talked to him.

17 Q. Well, don't you say here, "You have
18 consulted with the" -- "with the attorneys from his
19 firm far" -- "far often" -- "more often than me"?
20 Doesn't it -- isn't that what you wrote?

21 A. It says -- that's what it says. "I
22 hired Joyce's firm on your recommendation, and you
23 have consulted with the attorneys from his firm far
24 often than me."

1 Q. "From his firm far more often than me,"
2 aren't those the words?

3 A. That's what it says.

4 Q. Okay. And you wrote that, correct?

5 A. I did.

6 Q. Okay. At this point in time, are you
7 aware of Mr. Joyce having done any investigation
8 into the malpractice claims?

9 MR. JOYCE: Objection. That's attorney-client
10 privilege. He wouldn't answer that question.

11 BY MR. MARINELLO:

12 Q. Well, the question is not what the
13 investigation revealed or what the advice was, but
14 simply whether you're aware of an investigation
15 having been done as of July 31st, 2006, into the
16 legal malpractice claims.

17 MR. JOYCE: I'm directing him not to answer
18 that question, and he's going to follow my
19 direction.

20 BY MR. MARINELLO:

21 Q. All right. Mr. Grochocinski, that's --
22 you're going to follow your counsel's direction?

23 A. Yes.

24 Q. All right. If you look at Page 2 of

DAVID GROCHOCINSKI, JANUARY 19, 2009

1 this e-mail, looks like you were having a lot of
2 communications with Mr. -- with Mr. Spehar that
3 day, because there -- there -- there are many
4 e-mails dated July 31st, correct?

5 A. I -- it appears so. There are days like
6 that with this case.

7 Q. Okay. And then at 1:25 you wrote him an
8 e-mail. Would you please read that into the
9 record.

10 A. "I understand your position. As a
11 creditor, you are owed an fiduciary duty even if
12 you are the smallest creditor, but his contract is
13 not given the ability to exit if he feels the case
14 is not a good one or the collectibility is bad.
15 Naturally, he has to arrive at that decision via
16 good faith and investigation, but I do not want to
17 trade one lawsuit for another. We still have a
18 little time, and I will give him a chance to
19 respond."

20 Q. Okay. The only comment I have about
21 your reading it is you put the word "not" in.

22 A. Where -- where did I not put in?

23 Q. You -- you put the word -- you said,
24 "but his contract does not give him the ability."

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1 In fact, the e-mail reads, "but his contract
2 does --"

3 A. "Does give him the ability to exit,"
4 right, okay. I apologize, "but his contact does
5 give him the ability to exit if he feels the case
6 is not a good one or the collectibility is bad."

7 Q. Does that e-mail indicate to you that as
8 of July 31st, 2006, you had not received a report
9 from your counsel about any investigation he'd done
10 into the legal malpractice claims against
11 Mayer Brown?

12 MR. JOYCE: That's privileged. I direct you
13 not to answer.

14 BY THE WITNESS:

15 A. I'm going to follow what my counsel
16 says.

17 BY MR. MARINELLO:

18 Q. All right. We can put this e-mail aside
19 for now.

20 MR. MARINELLO: Excuse me. That was
21 Exhibit what?

22 MR. JOYCE: 31.

23 MR. MARINELLO: 31, thank you.

24 Okay. Would you mark that as the next

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1 exhibit, please.

2 (WHEREUPON, a certain document was
3 marked Defendant's Exhibit No. 32,
4 for identification, as of
5 01/19/2009.)

6 BY MR. MARINELLO:

7 Q. As Exhibit 32 I have marked a memo dated
8 July 24, 2006. Can you identify that as a -- as a
9 memo that Mr. Spehar wrote to you and your counsel?

10 A. You know, I don't know. I -- it's
11 conceivable, but I just don't remember.

12 Q. Um-hum.

13 MR. JOYCE: Where does this show to whom it's
14 addressed?

15 THE WITNESS: It doesn't.

16 BY MR. MARINELLO:

17 Q. Well, didn't Mr. Spehar testify at
18 your -- during your litigation with him that this
19 is an e-mail he sent to Mr. Joyce and to you on or
20 about the date that it bears?

21 A. It -- it's possible, but as I told you
22 before, there are so many documents here that I
23 don't recall offhand, but -- but if you want to ask
24 me something about it, go ahead.

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1 Q. Did -- did you review this document
2 prior to filing the malpractice claims?

3 A. I'm sure that I must have seen hundreds
4 of documents. I -- you know, this one
5 specifically, I assume that we did.

6 But I don't know -- again, I just don't
7 have the recollection. It's not that I'm trying to
8 give you a hard time. I just don't know.

9 Q. I'm sorry. But I need to take a break
10 for two minutes.

11 A. Sure.

12 Q. I'll be right back with you.

13 THE VIDEOGRAPHER: Going off the video record
14 at 1:15 p.m.

15 (WHEREUPON, the deposition was
16 recessed from 1:15 p.m. until
17 1:19 p.m.)

18 THE VIDEOGRAPHER: Going back on the video
19 record at 1:19 p.m.

20 BY MR. MARINELLO:

21 Q. Mr. Grochocinski, you are aware, are you
22 not, that Mayer Brown and Ron Given have filed a
23 motion asserting that the case you have filed
24 against them is a fraud on the Court?

DAVID GROCHOCINSKI, JANUARY 19, 2009

1 A. I know that there's a motion. I
2 guess -- I'm not saying that. I don't know if it
3 was a fraud on the Court, but I know there's some
4 kind of a motion relative to another aspect of the
5 case that we haven't gotten to, even underlying
6 discovery on the principal case yet, so I assume
7 that's why I'm here today.

8 Q. Right, and that -- you understand that
9 they've filed a motion accusing you of filing a
10 case that is misconceived and is in fact a fraud on
11 the Court?

12 MR. JOYCE: Their motion's a fraud on the
13 Court, actually.

14 BY THE WITNESS:

15 A. The motion says whatever it says. I
16 don't know.

17 BY MR. MARINELLO:

18 Q. I'm just asking you if you're aware of
19 it.

20 A. If I'm -- I don't know what you mean by
21 whether I'm aware of it yet.

22 Q. Well, are you aware of --

23 A. Did I read it?

24 Q. -- the fact -- well, did you -- let's

DAVID GROCHOCINSKI, JANUARY 19, 2009

1 start there. Did you read the motion?

2 A. A long time ago.

3 Q. Are you -- are you aware of the fact
4 that Mayer Brown and Ron Given have asserted that
5 your complaint is a fraud on the Court?

6 A. Again, that's your interpretation. Does
7 it say it's a fraud on the Court? I don't recall
8 it saying that, but it -- if -- if you say that's
9 what it says, okay.

10 I'm not trying to give you a hard time,
11 but if there's a motion to dismiss then -- or a
12 motion, then it is whatever it is.

13 What -- what is it that you want from
14 me? What do you want me to ask -- answer? Ask me
15 a question.

16 Q. Well, I did. I asked you if you were
17 aware that there was an allegation that's being
18 made against you that you've filed a frivolous case
19 that's a fraud on the Court? And I think --

20 MR. JOYCE: He answered that.

21 BY MR. MARINELLO:

22 Q. I thought you would have remembered
23 that.

24 MR. JOYCE: He answered that question.

1 BY MR. MARINELLO:

2 Q. Do you know that?

3 A. I know.

4 Q. Okay. Do you agree that your complaint
5 is a fraud on the Court?

6 A. No.

7 Q. Why not?

8 A. Why not?

9 Q. Yes.

10 A. Well, let me just put it to you this
11 way. We filed a complaint. A motion to dismiss
12 was presented by your firm. It was denied by the
13 Judge. A motion for rehearing was filed by you and
14 likewise dismissed -- denied by the Court.

15 So I guess, from my perspective, the
16 complaint states a cause of action.

17 Q. Do you realize that the litigation --
18 you -- you understand we're doing some discovery
19 right now that's not on the merits of the case?

20 A. Yes, I understand.

21 Q. And do -- do -- are you aware of the
22 fact that the Court has allowed us to do that
23 discovery?

24 A. Yes.

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1 Q. And -- and are you also aware of the
2 fact that the Court has allowed us to do that
3 discovery in order to establish evidence showing
4 that your complaint is a fraud on the Court?

5 A. Okay.

6 MR. JOYCE: No, that's not true at all. The
7 Court has given you leave to take discovery.
8 You're endeavoring to use it and twist it any way
9 you want, okay?

10 BY MR. MARINELLO:

11 Q. But you understand we're -- we've been
12 given the right to take discovery to prove that
13 your claim is a fraud on the Court?

14 A. Your -- my deposition testimony is
15 whatever it is today. Use it, whatever it is.

16 Q. I understand that. But I'm just asking
17 you if you're aware of the status of the case.

18 MR. JOYCE: He's aware of the status of the
19 case. Now why don't --

20 MR. MARINELLO: The witness --

21 MR. JOYCE: -- you ask a question --

22 MR. MARINELLO: The witness can answer.

23 MR. JOYCE: -- that's relevant.

24 MR. MARINELLO: The witness can answer.

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1 MR. JOYCE: We're not going to stick around
2 here for nonsensical questions all day.

3 BY MR. MARINELLO:

4 Q. My question to you, sir, is why do you
5 believe that the case -- the case you have filed is
6 not a fraud on the Court in terms of the things
7 that you know?

8 A. I don't know of anything.

9 MR. JOYCE: I -- hold on. I object to the
10 question as being almost impossible to answer.
11 He's not here to sit and speculate about what your
12 question means.

13 If you ask a question that can be
14 answered, he'll answer it.

15 BY MR. MARINELLO:

16 Q. What do you believe to be the -- the --
17 why do you believe that the complaint that you have
18 filed against Mayer Brown and Ron Given is valid?

19 MR. JOYCE: He's already told you. It
20 withstood two motions --

21 MR. MARINELLO: Let him answer the question.

22 MR. JOYCE: -- to dismiss. He's already
23 answered the question. It withstood two motions to
24 dismiss.

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1 Okay. What's your next question?

2 BY MR. MARINELLO:

3 Q. Would you answer the question?

4 A. I -- I think I already have.

5 Q. Upon what factual basis --

6 A. Didn't we ask --

7 Q. -- does your complaint have --

8 A. -- this this morning?

9 Q. -- complaint have -- I don't believe so.

10 MR. JOYCE: Let -- let him finish the
11 question.

12 THE WITNESS: Okay.

13 BY MR. MARINELLO:

14 Q. What factual basis does your complaint
15 have that you believe makes it not a fraud?

16 MR. JOYCE: Object. It's a --

17 BY THE WITNESS:

18 A. Come one.

19 MR. JOYCE: That's ridiculous.

20 BY THE WITNESS:

21 A. You don't really expect me to answer
22 that question, do you?

23 MR. JOYCE: It can't even be answered. The
24 only fraud on the Court is the fraud by your firm

1 who concocted a totally bogus objection, taking
2 advantage of the fact the Court is not a Bankruptcy
3 Court.

4 MR. MARINELLO: Well, I'll move to strike your
5 comments, and we can --

6 MR. JOYCE: Denied.

7 MR. MARINELLO: -- disagree.

8 MR. JOYCE: Motion denied.

9 MR. MARINELLO: All right.

10 All right. Would you mark this as the
11 next exhibit, please.

12 (WHEREUPON, a certain document was
13 marked Defendant's Exhibit No. 33,
14 for identification, as of
15 01/19/2009.)

16 MR. JOYCE: Could you imagine if Cherry was
17 defending this dep? There would be a footprint on
18 your head right now. Okay.

19 BY MR. MARINELLO:

20 Q. Mr. Grochocinski, this is a -- this is a
21 copy of the complaint that you've filed that we've
22 marked as Exhibit 33, correct?

23 A. Looks like it.

24 Q. Okay. And your complaint was filed on

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1 August 23, 2006?

2 A. I can't read the front, but I think that
3 that's right.

4 Q. Okay. Are you aware of any
5 investigation that was done between July 31st,
6 2006, and August 23, 2006, with respect to the
7 malpractice claims?

8 MR. JOYCE: Do you mean by his counsel?

9 MR. MARINELLO: Yes, by --

10 MR. JOYCE: Then I --

11 MR. MARINELLO: -- his counsel.

12 MR. JOYCE: -- direct you not to answer it as
13 privileged.

14 BY MR. MARINELLO:

15 Q. Well, are you aware of any investigation
16 by anyone other than your counsel?

17 A. Well, I didn't personally do any further
18 investigation between those dates, and I'm not
19 aware --

20 MR. JOYCE: That's all you have to --

21 BY THE WITNESS:

22 A. I don't have knowledge of anybody else.

23 MR. JOYCE: All right, fine.

24

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1 BY MR. MARINELLO:

2 Q. Okay. Do you know whether your --
3 whether your counsel actually did an investigation
4 between those dates?

5 MR. JOYCE: I direct you not to answer that as
6 being privileged.

7 MR. MARINELLO: Again, I'll -- I'll point out
8 that I'm not asking him what the substance of it --

9 MR. JOYCE: I --

10 MR. MARINELLO: -- was --

11 MR. JOYCE: -- understand.

12 MR. MARINELLO: -- merely whether it was done.

13 MR. JOYCE: I understand what you're asking.

14 MR. MARINELLO: Okay. And you're directing
15 him not to answer?

16 MR. JOYCE: I am.

17 BY MR. MARINELLO:

18 Q. Mr. Grochocinski, are you not going to
19 answer?

20 A. I'm taking the advice of counsel.

21 Q. All right. Okay. If you would turn to
22 Paragraph 3, please, of the complaint.

23 Paragraph 3 refers to engagements --
24 in -- Paragraph 3(c) says that "Mayer Brown

1 accepted engagements which created irreconcilable
2 conflicts between their clients CMGT and SC." What
3 does that refer to, sir?

4 A. I'm not sure.

5 Q. Do you have any facts on which to base
6 your assertion that S -- that SC, which stands for
7 Spehar Capital in your complaint, was a client of
8 Mayer Brown?

9 A. No, I don't think so.

10 Q. Okay. Turn the page, please, to
11 Paragraph 11. Paragraph 11 refers to CMGT being
12 formerly known as Caremanagement.com, Inc.?

13 A. Um-hum.

14 Q. And that it was founded in January of
15 1999, correct?

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

17 Q. Yes. Where do those facts come from?

18 A. I assume in our documentation that was
19 turned over from Franco, and it's possible that
20 other from the Secretary of States. It's possible.

21 Q. And is it also possible it came from
22 Mr. Spehar?

23 A. I -- sure.

24 Q. Okay.

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1 A. There's no reason why not. It could
2 have.

3 Q. Okay. And it says that -- here in
4 Paragraph 11 that CMGT was going to implement an
5 aggressive growth plan through key acquisitions.
6 Do you see that?

7 A. Yes.

8 Q. Do you know if CMGT -- well, strike
9 that.

10 What does that mean to you?

11 A. I assume the company was going to grow
12 based on acquisitions of other companies or
13 acquisition of technologies. Could have been
14 anything.

15 Q. And what does an aggressive growth plan
16 mean?

17 A. I -- I assume it means that it's going
18 to go fast and try to grow as quickly as it could.

19 Q. Do you know whether CMGT had the money
20 to engage in an aggressive growth plan in 1999?

21 A. I think it was trying to find the money
22 to do that.

23 Q. My question was, do you know whether it
24 had the money?

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1 A. No. I don't know that.

2 Q. Okay.

3 A. I don't believe it did, but that -- you
4 know.

5 Q. Okay. If you look at Paragraph 13, the
6 very last sentence, would you read that.

7 A. "Franco relied heavily on given's advice
8 throughout Franco's tenure at CMGT."

9 Q. What -- what facts do you have to
10 support that assertion?

11 A. Again, I don't have the -- the
12 documentation or the information in front of me
13 now, but my recollection is that certainly
14 Mr. Given was counsel to CMGT.

15 It appeared that he had given advice to
16 CMGT on -- on other financing ventures, and I think
17 that Mr. Franco, because of Mr. Given's position
18 with CMGT as its counsel, that he relied on them,
19 because they were largely -- the finance documents
20 are largely legal in nature.

21 So he would have to have relied not only
22 on financial people but on people who would have
23 done the finance documents and the like.

24 Q. Are you aware of CMGT actually doing any

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1 finance transaction during the time prior to the
2 bankruptcy?

3 A. They were attempting to.

4 Q. I -- I --

5 A. Whether it ever completed or not, I
6 don't -- I don't believe so, otherwise we probably
7 wouldn't be here.

8 Q. Okay. Well, if they never completed --
9 completed a financial transaction, then Mr. Franco
10 couldn't have relied on Mr. Given's advice for
11 those transactions, could he?

12 MR. JOYCE: I object. That's argumentative.

13 BY THE WITNESS:

14 A. I don't know what --

15 BY MR. MARINELLO:

16 Q. Well, are you aware of -- other than --
17 other than Mr. --

18 A. I don't know why not.

19 Q. Other than Mr. Franco -- strike that.

20 Did -- again, you've not spoken to
21 Mr. Franco, you've not spoken to Mr. Given, right,
22 about this subject?

23 A. I don't recall about Mr. Franco, but I
24 don't -- I've not spoken to Mr. Given. That's for

1 sure.

2 Q. So this statement that -- that Franco
3 relied heavily on Mr. Given's advice throughout
4 Franco's tenure at CMGT, what you mean by that is
5 that it's your belief based on documents that you
6 saw that Mr. Given was the person who drafted the
7 attempts at getting financing?

8 A. Well, or certainly assisted in it or
9 reviewed them or whatever he might have done, gave
10 legal advice respecting those.

11 Q. Okay. And it's your belief that
12 Mr. Franco must have relied on Mr. Given's advice
13 with respect to those financial transaction
14 documents?

15 A. Yes, it is.

16 Q. Okay. Is there anything else that you
17 believe Mr. Franco -- any other kinds of advice
18 Mr. -- you believe Mr. Given gave to Mr. Franco
19 that he heavily relied on?

20 A. I don't know.

21 Q. Okay. All right. Now, in Paragraph 15,
22 you talk about how CMGT in the year 2000 acquired a
23 company called Touch Speed Technology,
24 Incorporated. Do you see that?

1 A. I do.

2 Q. And you also say in your -- in your
3 Paragraph 15 that Touch Speed added significant
4 value to CMGT because of its Absence Expert
5 software.

6 A. Um-hum.

7 Q. Correct?

8 A. That's what it says.

9 Q. Yes, and is that the same software that
10 you sold to Spehar for \$1500?

11 A. You know what? I don't know the answer
12 to that. I didn't open the software disk that I
13 received, so I don't know the answer to that.

14 Q. You did sell Mr. Spehar software,
15 correct?

16 A. In accordance with the Court Order, yes.

17 Q. And it was for \$1500?

18 A. I believe so.

19 Q. Okay. And is there any other software
20 that you're aware of CMGT having besides that
21 software?

22 A. Not that I'm aware of, but that doesn't
23 mean it doesn't exist.

24 Q. Okay. Now, also, this same paragraph of

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1 yours refers to a First in Touch call center/live
2 operator intake service. Do you see that?

3 A. Yes.

4 Q. Okay. At the time that -- in
5 September of 2003, do you know whether that call
6 center was still operating?

7 A. I don't know the answer to that.

8 Q. Do you know how many people worked in
9 that call center at any point in time?

10 A. No.

11 Q. Okay. Now, your next sentence in
12 Paragraph 15 refers to Touch Speed bringing two
13 existing and valuable clients to CMGT, Sun Life of
14 Canada and Packard Bell/NEC. Do you see that
15 reference?

16 A. Yes.

17 Q. Do you know whether in -- in August of
18 2003 Sun Life of Canada was still a client of CMGT?

19 A. I don't recall.

20 Q. Do you know whether Packard Bell/NEC was
21 still a client of CMGT?

22 A. I don't recall, no.

23 Q. Do you know whether -- do you know how
24 much revenue came to CMGT from Sun Life at any

1 point in time?

2 A. No.

3 Q. Do you know how much revenue came to
4 CMGT from Packard Bell at any point in time?

5 A. No.

6 Q. Okay. Do you know what value these
7 alleged clients had to CMGT?

8 A. You mean monetarily? I don't.

9 Q. Do you know any --

10 A. I wasn't asked to do a calculation for
11 today, so I didn't do anything like that.

12 Q. Do you know anything --

13 A. I don't know.

14 Q. Do you know any -- anything at all about
15 how valuable they were in terms of revenue or
16 anything else?

17 A. I don't have that information today.

18 Q. Did you ever have that information?

19 A. I don't know. I'd have to go back to
20 the office and take a look and see in the
21 documentation that's -- that Franco had given to me
22 to do that.

23 Q. Okay. If you turn, please, to the next
24 page, Page 5 of your complaint, your complaint

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1 refers to a strategy that CMGT had that was -- and
2 I'm going to quote -- "designed to leverage the
3 relationships and reputations of CMGT's key
4 principals who were and are well known in the
5 insurance industry."

6 Who is that referring to?

7 A. I don't know. I don't have the
8 information with me right now.

9 Q. Do you have any idea who that is
10 referring to?

11 A. Not as we sit here right now, no.

12 Q. Did you ever know what that -- what
13 those individuals were?

14 A. I'm sure that I must have discussed it,
15 but I don't recall right now.

16 Q. Okay. Paragraph 18 says that after CMGT
17 acquired Touch Speed, it solidified, and then it
18 says, "As a result, CMGT became an established
19 business."

20 What does the term, "established
21 business" -- what do you mean by that?

22 A. Operating company.

23 Q. Do you know whether, after the
24 acquisition of Touch Speed, CMGT -- what its income

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1 was?

2 A. Not as we sit here right now.

3 Q. Do you know whether it was operating at
4 a -- a profit or a loss?

5 A. I don't know the answer to that.

6 Q. Do -- do you know how big a loss it was
7 operating at?

8 A. Don't know the answer to that right now.

9 Q. Do you know how many employees it had
10 approximately?

11 A. Again, I -- I don't know. If I would
12 have known that you wanted me to give that
13 information, I would have been happy to take a look
14 to see if I could find it, but --

15 Q. Okay.

16 A. You're asking me to -- to remember
17 things about the company back in 2003 when it
18 didn't file the bankruptcy until much later and it
19 wasn't necessary for my administration.

20 Q. Do you have any --

21 A. I don't know --

22 Q. -- idea --

23 A. -- the answer to that.

24 Q. Do you have any idea how many claims it

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1 had, if any?

2 A. Again, not that I recall simply because
3 I was not --

4 MR. JOYCE: Just --

5 BY THE WITNESS:

6 A. -- asked to do it.

7 MR. JOYCE: Just not that you recall. You
8 don't have to justify it.

9 THE WITNESS: Okay.

10 BY MR. MARINELLO:

11 Q. All right. If you look at Paragraph 19,
12 it says that, "In or around May of 2001, CMGT
13 signed a binding letter of intent to establish a
14 strategic partnership with the Hartford Life
15 Insurance Companies." Where did that information
16 come from?

17 A. I believe that was in some of the
18 documents that -- that was turned over to me
19 from --

20 Q. What is --

21 A. -- Franco, but I'm not positive.

22 Q. Could have come from Mr. Spehar, too,
23 right?

24 A. It's conceivable. Mr. Spehar was

1 involved in trying to find financing, so it --
2 there's no reason why he wouldn't have some of that
3 information.

4 Q. Isn't it --

5 A. So it's conceivable.

6 Q. Isn't it -- isn't it also true -- that
7 you had Mr. Spehar review the complaint and edit
8 the complaint before it was filed?

9 A. No.

10 Q. Your counsel didn't do that?

11 A. Not to the best of my knowledge.

12 Q. You don't -- do you know for a fact that
13 your client didn't do it -- that your -- I'm sorry.

14 Do you know for a fact that your counsel
15 didn't share the complaint with Mr. Spehar and give
16 him an opportunity to comment on it and revise it
17 before it was filed?

18 A. No.

19 Q. So it may have happened, for all you
20 know; you just don't know?

21 A. I just don't know.

22 Q. Okay.

23 A. But I certainly didn't --

24 MR. JOYCE: Wait, wait.

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1 BY THE WITNESS:

2 A. -- give it to him.

3 MR. JOYCE: You just don't know.

4 THE WITNESS: No.

5 MR. JOYCE: Okay.

6 BY MR. MARINELLO:

7 Q. Do you know what a strategic -- what do
8 you mean by a strategic partnership with the
9 Hartford Life Insurance Company?

10 A. I assume there was a relationship
11 developed between CMGT and Hartford so that they
12 could take advantage of the software that was being
13 developed or that was owned by CMGT at the time.

14 This was a -- these kind of call centers
15 were -- were the kind of things that -- that
16 insurance companies were looking to do, so this was
17 not -- at the time, this was not a -- an unusual
18 circumstance, and if CMGT had a -- a reasonably
19 decent system, which it appeared that they had --
20 and I'm not a software guy, so I don't know. It
21 sounds like Hartford thought enough of them to
22 enter a -- a relationship with them.

23 Q. Do you know what that relationship was?

24 A. No, I don't offhand.

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1 Q. Okay. What is meant by the word
2 "strategic" in that phrase, "a strategic
3 partnership"?

4 A. I don't know.

5 Q. Okay. In the next sentence, you say,
6 "CMGT obtained several important clients through
7 its relationship with The Hartford," and then you
8 name a bunch of clients. Do you see that?

9 A. I do.

10 Q. Okay. Do you know whether in August of
11 2003 NCS Pearson was a client of -- well, first of
12 all, do you know whether CMGT, in fact, acquired
13 NCS Pearson as a client?

14 A. I don't know.

15 Q. How about Honda Manufacturing of
16 Alabama?

17 A. I don't know.

18 Q. Honda Manufacturing of Ohio?

19 A. I don't know.

20 Q. Platinum Equity and Ball Corporation?

21 A. I don't.

22 Q. Do you know how -- if the -- if -- if
23 CMGT had any of these clients for any period of
24 time, do you have any idea how much money or

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1 revenue it would obtain from them?

2 A. I don't as we sit here.

3 Q. And do you know in August of 2003
4 whether any of those companies were still clients
5 of CMGT?

6 A. I do not know.

7 Q. Okay. The paragraph goes on to talk
8 about strategic partnership relationships with
9 several other major insurance companies, such as
10 Cigna, Liberty Mutual, ICS, and Standard Insurance
11 Company.

12 Do you know -- what does that mean,
13 strategic partnership relationships with those
14 companies?

15 A. I don't know. You just asked me the
16 same question before about Hartford, so I assume
17 the same answer. I don't know.

18 Q. Okay. Do you know whether Cigna or
19 Liberty Mutual, ICS, or Standard Insurance Company
20 were ever clients of CMGT?

21 A. I don't know as we sit here today.

22 Q. Do you know whether they were clients in
23 August of 2003?

24 A. I don't know.